

ings of fact shall likewise be conclusive if supported by substantial evidence.

(d) Scope of review; review by Supreme Court

The court shall have jurisdiction to affirm the action of the Office or the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(Pub. L. 90-247, title IV, § 458, as added Pub. L. 100-297, title III, § 3501(a), Apr. 28, 1988, 102 Stat. 356; amended Pub. L. 103-382, title II, § 212(b)(3)(D), Oct. 20, 1994, 108 Stat. 3913.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-382 made technical amendment to reference to section 1232d(a) of this title to reflect renumbering of corresponding section of original act.

EFFECTIVE DATE

Section effective 180 days after Apr. 28, 1988, but not applicable to recipients receiving written notice to return funds prior to that date, see section 3501(b) of Pub. L. 100-297, set out as an Effective Date of 1988 Amendment note under section 1234 of this title.

§ 1234h. Use of recovered funds

(a) Repayment to recipient; factors considered

Whenever the Secretary recovers funds paid to a recipient under a grant or cooperative agreement made under an applicable program because the recipient made an expenditure of funds that was not allowable, or otherwise failed to discharge its responsibility to account properly for funds, the Secretary may consider those funds to be additional funds available for that program and may arrange to repay to the recipient affected by that action an amount not to exceed 75 percent of the recovered funds if the Secretary determines that—

- (1) the practices or procedures of the recipient that resulted in the violation of law have been corrected, and that the recipient is in all other respects in compliance with the requirements of that program, provided that the recipient was notified of any noncompliance with such requirements and given a reasonable period of time to remedy such noncompliance;
- (2) the recipient has submitted to the Secretary a plan for the use of those funds pursuant to the requirements of that program and, to the extent possible, for the benefit of the population that was affected by the failure to comply or by the misuse of funds that resulted in the recovery; and
- (3) the use of those funds in accordance with that plan would serve to achieve the purposes of the program under which the funds were originally paid.

(b) Terms and conditions of repayment

Any payments by the Secretary under this section shall be subject to such other terms and conditions as the Secretary considers necessary to accomplish the purposes of the affected programs, including—

- (1) the submission of periodic reports on the use of funds provided under this section; and
- (2) consultation by the recipient with students, parents, or representatives of the population that will benefit from the payments.

(c) Availability of funds

Notwithstanding any other provisions of law, the funds made available under this section shall remain available for expenditure for a period of time deemed reasonable by the Secretary, but in no case to exceed more than three fiscal years following the later of—

- (1) the fiscal year in which final agency action under section 1234a(e) of this title is taken; or
- (2) if such recipient files a petition for judicial review, the fiscal year in which final judicial action under section 1234g of this title is taken.

(d) Publication in Federal Register of notice of intent to enter into repayment arrangement

At least 30 days prior to entering into an arrangement under this section, the Secretary shall publish in the Federal Register a notice of intent to enter into such an arrangement and the terms and conditions under which payments will be made. Interested persons shall have an opportunity for at least 30 days to submit comments to the Secretary regarding the proposed arrangement.

(Pub. L. 90-247, title IV, § 459, as added Pub. L. 100-297, title III, § 3501(a), Apr. 28, 1988, 102 Stat. 356; amended Pub. L. 103-382, title II, § 250(b), Oct. 20, 1994, 108 Stat. 3927.)

AMENDMENTS

1994—Subsec. (a)(1). Pub. L. 103-382, § 250(b)(1), inserted before semicolon “, provided that the recipient was notified of any noncompliance with such requirements and given a reasonable period of time to remedy such noncompliance”.

Subsec. (c). Pub. L. 103-382, § 250(b)(2), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “Notwithstanding any other provisions of law, the funds made available under this section shall remain available for expenditure for a period of time deemed reasonable by the Secretary, but in no case to exceed more than 3 fiscal years following the fiscal year in which final agency action under section 1234a(e) of this title is taken.”

EFFECTIVE DATE

Section effective 180 days after Apr. 28, 1988, but not applicable to recipients receiving written notice to return funds prior to that date, see section 3501(b) of Pub. L. 100-297, set out as an Effective Date of 1988 Amendment note under section 1234 of this title.

§ 1234i. Definitions

For purposes of this subchapter:

- (1) The term “recipient” means a recipient of a grant or cooperative agreement under an applicable program.
- (2) The term “applicable program” excludes programs authorized by the Higher Education Act of 1965 [20 U.S.C. 1001 et seq., 42 U.S.C. 2751 et seq.] and assistance programs provided under the Act of September 30, 1950¹ (Public Law 874, 81st Congress), and the Act of September 23, 1950¹ (Public Law 815, 81st Congress).

(Pub. L. 90-247, title IV, § 460, as added Pub. L. 100-297, title III, § 3501(a), Apr. 28, 1988, 102 Stat. 357.)

¹ See References in Text note below.