

§ 2021. Civil penalties and disqualification of retail food stores and wholesale food concerns

(a) Disqualification

(1) In general

An approved retail food store or wholesale food concern that violates a provision of this chapter or a regulation under this chapter may be—

- (A) disqualified for a specified period of time from further participation in the supplemental nutrition assistance program;
- (B) assessed a civil penalty of up to \$100,000 for each violation; or
- (C) both.

(2) Regulations

Regulations promulgated under this chapter shall provide criteria for the finding of a violation of, the suspension or disqualification of and the assessment of a civil penalty against a retail food store or wholesale food concern on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, or evidence obtained through a transaction report under an electronic benefit transfer system.

(b) Period of disqualification

Subject to subsection (c), a disqualification under subsection (a) of this section shall be—

- (1) for a reasonable period of time, not to exceed 5 years, upon the first occasion of disqualification;
- (2) for a reasonable period of time, not to exceed 10 years, upon the second occasion of disqualification;
- (3) permanent upon—

- (A) the third occasion of disqualification;
- (B) the first occasion or any subsequent occasion of a disqualification based on the purchase of coupons or trafficking in coupons or authorization cards by a retail food store or wholesale food concern or a finding of the unauthorized redemption, use, transfer, acquisition, alteration, or possession of EBT cards, except that the Secretary shall have the discretion to impose a civil penalty of up to \$20,000 for each violation (except that the amount of civil penalties imposed for violations occurring during a single investigation may not exceed \$40,000) in lieu of disqualification under this subparagraph, for such purchase of coupons or trafficking in coupons or cards that constitutes a violation of the provisions of this chapter or the regulations issued pursuant to this chapter, if the Secretary determines that there is substantial evidence that such store or food concern had an effective policy and program in effect to prevent violations of the chapter and the regulations, including evidence that—

- (i) the ownership of the store or food concern was not aware of, did not approve of, did not benefit from, and was not involved in the conduct of the violation; and
- (ii)(I) the management of the store or food concern was not aware of, did not approve of, did not benefit from, and was not involved in the conduct of the violation; or

(II) the management was aware of, approved of, benefited from, or was involved in the conduct of no more than 1 previous violation by the store or food concern; or

(C) a finding of the sale of firearms, ammunition, explosives, or controlled substance (as defined in section 802 of title 21) for coupons, except that the Secretary shall have the discretion to impose a civil penalty of up to \$20,000 for each violation (except that the amount of civil money penalties imposed for violations occurring during a single investigation may not exceed \$40,000) in lieu of disqualification under this subparagraph if the Secretary determines that there is substantial evidence (including evidence that neither the ownership nor management of the store or food concern was aware of, approved, benefited from, or was involved in the conduct or approval of the violation) that the store or food concern had an effective policy and program in effect to prevent violations of this chapter; and

(4) for a reasonable period of time to be determined by the Secretary, including permanent disqualification, on the knowing submission of an application for the approval or reauthorization to accept and redeem coupons that contains false information about a substantive matter that was a part of the application.

(c) Civil penalty and review of disqualification and penalty determinations

(1) Civil penalty

In addition to a disqualification under this section, the Secretary may assess a civil penalty in an amount not to exceed \$100,000 for each violation.

(2) Review

The action of disqualification or the imposition of a civil penalty shall be subject to review as provided in section 2023 of this title.

(d) Conditions of authorization

(1) In general

As a condition of authorization to accept and redeem benefits, the Secretary may require a retail food store or wholesale food concern that, pursuant to subsection (a), has been disqualified for more than 180 days, or has been subjected to a civil penalty in lieu of a disqualification period of more than 180 days, to furnish a collateral bond or irrevocable letter of credit for a period of not more than 5 years to cover the value of benefits that the store or concern may in the future accept and redeem in violation of this chapter.

(2) Collateral

The Secretary also may require a retail food store or wholesale food concern that has been sanctioned for a violation and incurs a subsequent sanction regardless of the length of the disqualification period to submit a collateral bond or irrevocable letter of credit.

(3) Bond requirements

The Secretary shall, by regulation, prescribe the amount, terms, and conditions of such bond.

(4) Forfeiture

If the Secretary finds that such store or concern has accepted and redeemed coupons in violation of this chapter after furnishing such bond, such store or concern shall forfeit to the Secretary an amount of such bond which is equal to the value of coupons accepted and redeemed by such store or concern in violation of this chapter.

(5) Hearing

A store or concern described in paragraph (4) may obtain a hearing on such forfeiture pursuant to section 2023 of this title.

(e) Transfer of ownership; penalty in lieu of disqualification period; fines for acceptance of loose coupons; judicial action to recover penalty or fine

(1) In the event any retail food store or wholesale food concern that has been disqualified under subsection (a) of this section is sold or the ownership thereof is otherwise transferred to a purchaser or transferee, the person or persons who sell or otherwise transfer ownership of the retail food store or wholesale food concern shall be subjected to a civil penalty in an amount established by the Secretary through regulations to reflect that portion of the disqualification period that has not yet expired. If the retail food store or wholesale food concern has been disqualified permanently, the civil penalty shall be double the penalty for a ten-year disqualification period, as calculated under regulations issued by the Secretary. The disqualification period imposed under subsection (b) of this section shall continue in effect as to the person or persons who sell or otherwise transfer ownership of the retail food store or wholesale food concern notwithstanding the imposition of a civil penalty under this subsection.

(2) At any time after a civil penalty imposed under paragraph (1) has become final under the provisions of section 2023(a) of this title, the Secretary may request the Attorney General to institute a civil action against the person or persons subject to the penalty in a district court of the United States for any district in which such person or persons are found, reside, or transact business to collect the penalty and such court shall have jurisdiction to hear and decide such action. In such action, the validity and amount of such penalty shall not be subject to review.

(3) The Secretary may impose a fine against any retail food store or wholesale food concern that accepts food coupons that are not accompanied by the corresponding book cover, other than the denomination of coupons used for making change as specified in regulations issued under this chapter. The amount of any such fine shall be established by the Secretary and may be assessed and collected in accordance with regulations issued under this chapter separately or in combination with any fiscal claim established by the Secretary. The Attorney General of the United States may institute judicial action in any court of competent jurisdiction against the store or concern to collect the fine.

(f) Fines for unauthorized acceptance

The Secretary may impose a fine against any person not approved by the Secretary to accept

and redeem food coupons who violates any provision of this chapter or a regulation issued under this chapter, including violations concerning the acceptance of food coupons. The amount of any such fine shall be established by the Secretary and may be assessed and collected in accordance with regulations issued under this chapter separately or in combination with any fiscal claim established by the Secretary. The Attorney General of the United States may institute judicial action in any court of competent jurisdiction against the person to collect the fine.

(g) Disqualification of retailers who are disqualified under WIC program**(1) In general**

The Secretary shall issue regulations providing criteria for the disqualification under this chapter of an approved retail food store or a wholesale food concern that is disqualified from accepting benefits under the special supplemental nutrition program for women, infants, and children established under section 1786 of title 42.

(2) Terms

A disqualification under paragraph (1)—

(A) shall be for the same length of time as the disqualification from the program referred to in paragraph (1);

(B) may begin at a later date than the disqualification from the program referred to in paragraph (1); and

(C) notwithstanding section 2023 of this title, shall not be subject to judicial or administrative review.

(h) Flagrant violations**(1) In general**

The Secretary, in consultation with the Inspector General of the Department of Agriculture, shall establish procedures under which the processing of program benefit redemptions for a retail food store or wholesale food concern may be immediately suspended pending administrative action to disqualify the retail food store or wholesale food concern.

(2) Requirements

Under the procedures described in paragraph (1), if the Secretary, in consultation with the Inspector General, determines that a retail food store or wholesale food concern is engaged in flagrant violations of this chapter (including regulations promulgated under this chapter), unsettled program benefits that have been redeemed by the retail food store or wholesale food concern—

(A) may be suspended; and

(B)(i) if the program disqualification is upheld, may be subject to forfeiture pursuant to section 2024(g) of this title; or

(ii) if the program disqualification is not upheld, shall be released to the retail food store or wholesale food concern.

(3) No liability for interest

The Secretary shall not be liable for the value of any interest on funds suspended under this subsection.

(Pub. L. 88-525, §12, Aug. 31, 1964, 78 Stat. 707; Pub. L. 95-113, title XIII, §1301, Sept. 29, 1977, 91 Stat. 974; Pub. L. 97-253, title I, §§175, 176(a), Sept. 8, 1982, 96 Stat. 781; Pub. L. 99-198, title XV, §1532(a), Dec. 23, 1985, 99 Stat. 1582; Pub. L. 100-435, title III, §344, Sept. 19, 1988, 102 Stat. 1664; Pub. L. 101-624, title XVII, §§1743-1745, Nov. 28, 1990, 104 Stat. 3795, 3796; Pub. L. 103-66, title XIII, §§13943, 13944, Aug. 10, 1993, 107 Stat. 677; Pub. L. 104-127, title IV, §401(a), Apr. 4, 1996, 110 Stat. 1026; Pub. L. 104-193, title VIII, §§841-843, Aug. 22, 1996, 110 Stat. 2331, 2332; Pub. L. 110-234, title IV, §4132, May 22, 2008, 122 Stat. 1114; Pub. L. 110-246, §4(a), title IV, §4132, June 18, 2008, 122 Stat. 1664, 1875.)

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

AMENDMENTS

2008—Pub. L. 110-246, §4132(1), substituted “Civil penalties” for “Civil money penalties” in section catchline.

Subsec. (a). Pub. L. 110-246, §4132(1), added subsec. (a) and struck out former subsec. (a) which read as follows: “Any approved retail food store or wholesale food concern may be disqualified for a specified period of time from further participation in the food stamp program, or subjected to a civil money penalty of up to \$10,000 for each violation if the Secretary determines that its disqualification would cause hardship to food stamp households, on a finding, made as specified in the regulations, that such store or concern has violated any of the provisions of this chapter or the regulations issued pursuant to this chapter. Regulations issued pursuant to this chapter shall provide criteria for the finding of a violation and the suspension or disqualification of a retail food store or wholesale food concern on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, or evidence obtained through a transaction report under an electronic benefit transfer system.”

Subsec. (b). Pub. L. 110-246, §4132(2)(A), inserted heading and substituted “Subject to subsection (c), a disqualification” for “Disqualification” in introductory provisions.

Subsec. (b)(1). Pub. L. 110-246, §4132(2)(B), substituted “not to exceed 5 years” for “of no less than six months nor more than five years”.

Subsec. (b)(2). Pub. L. 110-246, §4132(2)(C), substituted “not to exceed 10 years” for “of no less than twelve months nor more than ten years”.

Subsec. (b)(3)(B). Pub. L. 110-246, §4132(2)(D), (E), in introductory provisions, inserted “or a finding of the unauthorized redemption, use, transfer, acquisition, alteration, or possession of EBT cards” after “wholesale food concern” and substituted “civil penalty” for “civil money penalty” and “civil penalties” for “civil money penalties”.

Subsec. (b)(3)(C). Pub. L. 110-246, §4132(2)(E), substituted “civil penalty” for “civil money penalty”.

Subsec. (c). Pub. L. 110-246, §4132(3), inserted subsec. heading, added par. (1), designated existing provisions as par. (2), inserted par. heading, and substituted “civil penalty” for “civil money penalty” in text.

Subsec. (d). Pub. L. 110-246, §4132(4), inserted subsec. heading, added pars. (1) and (2), designated part of existing provisions as pars. (3) to (5), inserted par. headings, in par. (5), substituted “A store or concern described in paragraph (4)” for “Such store or concern”, and struck out after subsec. designation “As a condition of authorization to accept and redeem coupons, the Secretary may require a retail food store or wholesale food concern which has been disqualified or sub-

jected to a civil penalty pursuant to subsection (a) of this section to furnish a bond to cover the value of coupons which such store or concern may in the future accept and redeem in violation of this chapter.”

Subsec. (e). Pub. L. 110-246, §4132(5), substituted “civil penalty” for “civil money penalty” wherever appearing.

Subsec. (h). Pub. L. 110-246, §4132(6), added subsec. (h).
1996—Subsec. (a). Pub. L. 104-193, §841, inserted at end “Regulations issued pursuant to this chapter shall provide criteria for the finding of a violation and the suspension or disqualification of a retail food store or wholesale food concern on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, or evidence obtained through a transaction report under an electronic benefit transfer system.”

Subsec. (b)(3)(B). Pub. L. 104-127, §401(a), struck out “(including evidence that neither the ownership nor management of the store or food concern was aware of, approved, benefited from, or was involved in the conduct or approval of the violation)” after “substantial evidence” and substituted “, including evidence that—” and cls. (i) and (ii) for “; or”.

Subsec. (b)(4). Pub. L. 104-193, §842, added par. (4).

Subsec. (g). Pub. L. 104-193, §843, added subsec. (g).

1993—Subsec. (b)(3)(B). Pub. L. 103-66, §13943, substituted “for violations occurring during a single investigation” for “during a 2-year period”.

Subsec. (b)(3)(C). Pub. L. 103-66, §13944, substituted “substance (as” for “substances (as the term is” and “for violations occurring during a single investigation” for “during a 2-year period”.

1990—Subsec. (b)(3). Pub. L. 101-624, §1743, in subpar. (A) struck out “or” after “disqualification;”, in subpar. (B) inserted “for each violation (except that the amount of civil money penalties imposed during a 2-year period may not exceed \$40,000)” after “\$20,000” and “(including evidence that neither the ownership nor management of the store or food concern was aware of, approved, benefited from, or was involved in the conduct or approval of the violation)” after “evidence”, and substituted “; or” for period at end, and added subpar. (C).

Subsec. (e)(3). Pub. L. 101-624, §1744, added par. (3).

Subsec. (f). Pub. L. 101-624, §1745, added subsec. (f).

1988—Subsec. (b)(3). Pub. L. 100-435 amended par. (3) generally. Prior to amendment, par. (3) read as follows: “permanent upon the third occasion of disqualification or the first occasion of a disqualification based on the purchase of coupons or trafficking in coupons or authorization cards by a retail food store or wholesale food concern.”

1985—Subsec. (e). Pub. L. 99-198 added subsec. (e).

1982—Subsec. (a). Pub. L. 97-253, §175(1)-(3), redesignated first sentence as subsec. (a), substituted “\$10,000” for “\$5,000”, and struck out second sentence relating to disqualification.

Subsec. (b). Pub. L. 97-253, §175(3), added subsec. (b) relating to disqualification.

Subsec. (c). Pub. L. 97-253, §175(4), redesignated last sentence as subsec. (c).

Subsec. (d). Pub. L. 97-253, §176(a), added subsec. (d).

1977—Pub. L. 95-113 substituted revised provisions covering civil money penalties and disqualification of retail food stores and wholesale food concerns for provisions relating to the determination and disposition of claims which are now covered by section 2022 of this title.

CHANGE OF NAME

References to a “coupon”, “authorization card”, or other access device provided under the Food and Nutrition Act of 2008 considered to refer to a “benefit” under that Act, see section 4115(d) of Pub. L. 110-246, set out as a note under section 2012 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the

date of enactment of Pub. L. 110-234, except as otherwise provided, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of this title.

Amendment by section 4132 of Pub. L. 110-246 effective Oct. 1, 2008, see section 4407 of Pub. L. 110-246, set out as a note under section 1161 of Title 2, The Congress.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 effective, and to be implemented beginning on, Oct. 1, 1993, see section 13971(a) of Pub. L. 103-66, set out as a note under section 2025 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-624 effective and implemented first day of month beginning 120 days after publication of implementing regulations to be promulgated not later than Oct. 1, 1991, see section 1781(a) of Pub. L. 101-624, set out as a note under section 2012 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-435 to be effective and implemented on Oct. 1, 1988, see section 701(a) of Pub. L. 100-435, set out as a note under section 2012 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-253 effective Sept. 8, 1982, see section 193(a) of Pub. L. 97-253, set out as a note under section 2012 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Pub. L. 95-113, title XIII, §1301, Sept. 29, 1977, 91 Stat. 958, provided that the amendment made by section 1301 is effective Oct. 1, 1977.

§ 2022. Disposition of claims

(a) General authority of the Secretary

(1) Determination of claims

Except in the case of an at-risk amount required under section 2025(c)(1)(D)(i)(III) of this title, the Secretary shall have the power to determine the amount of and settle and adjust any claim and to compromise or deny all or part of any such claim or claims arising under the provisions of this chapter or the regulations issued pursuant to this chapter, including, but not limited to, claims arising from fraudulent and nonfraudulent overissuances to recipients, including the power to waive claims if the Secretary determines that to do so would serve the purposes of this chapter. Such powers with respect to claims against recipients may be delegated by the Secretary to State agencies. The Secretary shall have the power to reduce amounts otherwise due to a State agency under section 2025 of this title to collect unpaid claims assessed against the State agency if the State agency has declined or exhausted its appeal rights under section 2023 of this title.

(2) Claims established under quality control system

To the extent that a State agency does not pay a claim established under section 2025(c)(1) of this title, including an agreement to have all or part of the claim paid through a reduction in Federal administrative funding, within 30 days from the date on which the bill for collection is received by the State agency, the State agency shall be liable for interest on

any unpaid portion of such claim accruing from the date on which the bill for collection was received by the State agency, unless the State agency appeals the claim under section 2025(c)(7) of this title. If the State agency appeals such claim (in whole or in part), the interest on any unpaid portion of the claim shall accrue from the date of the decision on the administrative appeal, or from a date that is 1 year after the date the bill is received, whichever is earlier, until the date the unpaid portion of the payment is received. If the State agency pays such claim (in whole or in part, including an agreement to have all or part of the claim paid through a reduction in Federal administrative funding) and the claim is subsequently overturned through administrative or judicial appeal, any amounts paid by the State agency shall be promptly returned with interest, accruing from the date the payment is received until the date the payment is returned.

(3) Computation of interest

Any interest assessed under this paragraph shall be computed at a rate determined by the Secretary based on the average of the bond equivalent of the weekly 90-day Treasury bill auction rates during the period such interest accrues.

(4) Joint and several liability of household members

Each adult member of a household shall be jointly and severally liable for the value of any overissuance of benefits.

(b) Collection of overissuances

(1) In general

Except as otherwise provided in this subsection, a State agency shall collect any overissuance of benefits issued to a household by—

- (A) reducing the allotment of the household;
- (B) withholding amounts from unemployment compensation from a member of the household under subsection (c) of this section;
- (C) recovering from Federal pay or a Federal income tax refund under subsection (d) of this section; or
- (D) any other means.

(2) Cost effectiveness

Paragraph (1) shall not apply if the State agency demonstrates to the satisfaction of the Secretary that all of the means referred to in paragraph (1) are not cost effective.

(3) Maximum reduction absent fraud

If a household received an overissuance of benefits without any member of the household being found ineligible to participate in the program under section 2015(b)(1) of this title and a State agency elects to reduce the allotment of the household under paragraph (1)(A), the State agency shall not reduce the monthly allotment of the household under paragraph (1)(A) by an amount in excess of the greater of—

- (A) 10 percent of the monthly allotment of the household; or