

(c) Additional requirement

For the purpose of any investigation or hearing conducted under this chapter by the Secretary, the provisions of section 49 of title 15 (relating to the attendance of witnesses and the production of documents) apply to the Secretary, in the same manner and to the same extent as the provisions apply to the Federal Trade Commission.

(Pub. L. 105-220, title I, §183, Aug. 7, 1998, 112 Stat. 1042.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title" meaning title I of Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 939, which enacted this chapter, repealed sections 1501 to 1505, 1511 to 1583, 1592 to 1735, 1737 to 1791h, 1792 to 1792b, 2301 to 2314 of this title, section 211 of former Title 40, Appendix, Public Buildings, Property, and Works, sections 11421, 11441 to 11447, 11449, 11450, 11461 to 11466, 11471, and 11472 of Title 42, The Public Health and Welfare, and sections 42101 to 42106 of Title 49, Transportation, enacted provisions set out as notes under sections 1501, 2301, and 2940 of this title and section 11421 of Title 42, and repealed provisions set out as notes under sections 801 and 2301 of this title and section 1255a of Title 8, Aliens and Nationality. For complete classification of title I to the Code, see Tables.

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1573 of this title prior to repeal by Pub. L. 105-220.

§ 2934. Fiscal controls; sanctions**(a) Establishment of fiscal controls by States****(1) In general**

Each State shall establish such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursement of, and accounting for, Federal funds allocated to local areas under subchapter II of this chapter. Such procedures shall ensure that all financial transactions carried out under subchapter II of this chapter are conducted and records maintained in accordance with generally accepted accounting principles applicable in each State.

(2) Cost principles**(A) In general**

Each State (including the Governor of the State), local area (including the chief elected official for the area), and provider receiving funds under this chapter shall comply with the applicable uniform cost principles included in the appropriate circulars of the Office of Management and Budget for the type of entity receiving the funds.

(B) Exception

The funds made available to a State for administration of statewide workforce investment activities in accordance with section 2864(a)(3)(B) of this title shall be allocable to the overall administration of workforce investment activities, but need not be specifically allocable to—

- (i) the administration of adult employment and training activities;
- (ii) the administration of dislocated worker employment and training activities; or

- (iii) the administration of youth activities.

(3) Uniform administrative requirements**(A) In general**

Each State (including the Governor of the State), local area (including the chief elected official for the area), and provider receiving funds under this chapter shall comply with the appropriate uniform administrative requirements for grants and agreements applicable for the type of entity receiving the funds, as promulgated in circulars or rules of the Office of Management and Budget.

(B) Additional requirement

Procurement transactions under this chapter between local boards and units of State or local governments shall be conducted only on a cost-reimbursable basis.

(4) Monitoring

Each Governor of a State shall conduct on an annual basis onsite monitoring of each local area within the State to ensure compliance with the uniform administrative requirements referred to in paragraph (3).

(5) Action by Governor

If the Governor determines that a local area is not in compliance with the uniform administrative requirements referred to in paragraph (3), the Governor shall—

- (A) require corrective action to secure prompt compliance; and
- (B) impose the sanctions provided under subsection (b) of this section in the event of failure to take the required corrective action.

(6) Certification

The Governor shall, every 2 years, certify to the Secretary that—

- (A) the State has implemented the uniform administrative requirements referred to in paragraph (3);
- (B) the State has monitored local areas to ensure compliance with the uniform administrative requirements as required under paragraph (4); and
- (C) the State has taken appropriate action to secure compliance pursuant to paragraph (5).

(7) Action by the Secretary

If the Secretary determines that the Governor has not fulfilled the requirements of this subsection, the Secretary shall—

- (A) require corrective action to secure prompt compliance; and
- (B) impose the sanctions provided under subsection (e) of this section in the event of failure of the Governor to take the required appropriate action to secure compliance.

(b) Substantial violation**(1) Action by Governor**

If, as a result of financial and compliance audits or otherwise, the Governor determines that there is a substantial violation of a specific provision of this chapter, and corrective action has not been taken, the Governor shall—

(A) issue a notice of intent to revoke approval of all or part of the local plan affected; or

(B) impose a reorganization plan, which may include—

(i) decertifying the local board involved;

(ii) prohibiting the use of eligible providers;

(iii) selecting an alternative entity to administer the program for the local area involved;

(iv) merging the local area into one or more other local areas; or

(v) making other such changes as the Secretary or Governor determines necessary to secure compliance.

(2) Appeal

(A) In general

The actions taken by the Governor pursuant to subparagraphs (A) and (B) of paragraph (1) may be appealed to the Secretary and shall not become effective until—

(i) the time for appeal has expired; or

(ii) the Secretary has issued a decision.

(B) Additional requirement

The Secretary shall make a final decision under subparagraph (A) not later than 45 days after the receipt of the appeal.

(3) Action by the Secretary

If the Governor fails to promptly take the actions required under paragraph (1), the Secretary shall take such actions.

(c) Repayment of certain amounts to the United States

(1) In general

Every recipient of funds under this chapter shall repay to the United States amounts found not to have been expended in accordance with this chapter.

(2) Offset of repayment

If the Secretary determines that a State has expended funds made available under this chapter in a manner contrary to the requirements of this chapter, the Secretary may offset repayment of such expenditures against any other amount to which the State is or may be entitled, except as provided under subsection (d)(1) of this section.

(3) Repayment from deduction by State

If the Secretary requires a State to repay funds as a result of a determination that a local area of the State has expended funds contrary to the requirements of this chapter, the Governor of the State may use an amount deducted under paragraph (4) to repay the funds, except as provided under subsection (e)(1)¹ of this section.

(4) Deduction by State

The Governor may deduct an amount equal to the misexpenditure described in paragraph (3) from subsequent program year allocations to the local area from funds reserved for the administrative costs of the local programs involved, as appropriate.

(5) Limitations

A deduction made by a State as described in paragraph (4) shall not be made until such time as the Governor has taken appropriate corrective action to ensure full compliance within such local area with regard to appropriate expenditures of funds under this chapter.

(d) Repayment of amounts

(1) In general

Each recipient of funds under this chapter shall be liable to repay the amounts described in subsection (c)(1) of this section, from funds other than funds received under this chapter, upon a determination by the Secretary that the misexpenditure of funds was due to willful disregard of the requirements of this chapter, gross negligence, failure to observe accepted standards of administration, or a pattern of misexpenditure as described in paragraphs (2) and (3) of subsection (c) of this section. No such determination shall be made under this subsection or subsection (c) of this section until notice and opportunity for a fair hearing has been given to the recipient.

(2) Factors in imposing sanctions

In determining whether to impose any sanction authorized by this section against a recipient for violations by a subgrantee or contractor of such recipient under this chapter (including the regulations issued under this chapter), the Secretary shall first determine whether such recipient has adequately demonstrated that the recipient has—

(A) established and adhered to an appropriate system for the award and monitoring of grants and contracts with subgrantees and contractors that contains acceptable standards for ensuring accountability;

(B) entered into a written grant agreement or contract with such subgrantee or contractor that established clear goals and obligations in unambiguous terms;

(C) acted with due diligence to monitor the implementation of the grant agreement or contract, including the carrying out of the appropriate monitoring activities (including audits) at reasonable intervals; and

(D) taken prompt and appropriate corrective action upon becoming aware of any evidence of a violation of this chapter, including regulations issued under this chapter, by such subgrantee or contractor.

(3) Waiver

If the Secretary determines that the recipient has demonstrated substantial compliance with the requirements of paragraph (2), the Secretary may waive the imposition of sanctions authorized by this section upon such recipient. The Secretary is authorized to impose any sanction consistent with the provisions of this chapter and any applicable Federal or State law directly against any subgrantee or contractor for violation of this chapter, including regulations issued under this chapter.

(e) Immediate termination or suspension of assistance in emergency situations

In emergency situations, if the Secretary determines it is necessary to protect the integrity

¹ So in original. Probably should be subsection "(d)(1)".

of the funds or ensure the proper operation of the program or activity involved, the Secretary may immediately terminate or suspend financial assistance, in whole or in part, to the recipient if the recipient is given prompt notice and the opportunity for a subsequent hearing within 30 days after such termination or suspension. The Secretary shall not delegate any of the functions or authority specified in this subsection, other than to an officer whose appointment is required to be made by and with the advice and consent of the Senate.

(f) Discrimination against participants

If the Secretary determines that any recipient under this chapter has discharged or in any other manner discriminated against a participant or against any individual in connection with the administration of the program involved, or against any individual because such individual has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter, or has testified or is about to testify in any such proceeding or investigation under or related to this chapter, or otherwise unlawfully denied to any individual a benefit to which that individual is entitled under the provisions of this chapter or the Secretary's regulations, the Secretary shall, within 30 days, take such action or order such corrective measures, as necessary, with respect to the recipient or the aggrieved individual, or both.

(g) Remedies

The remedies described in this section shall not be construed to be the exclusive remedies available for violations described in this section. (Pub. L. 105-220, title I, §184, Aug. 7, 1998, 112 Stat. 1042.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(2)(A), (3)(A), (B), (b)(1), (c)(1) to (3), (5), (d)(1), (2)(D), (3), and (f), was in the original "this title" meaning title I of Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 939, which enacted this chapter, repealed sections 1501 to 1505, 1511 to 1583, 1592 to 1735, 1737 to 1791h, 1792 to 1792b, 2301 to 2314 of this title, section 211 of former Title 40, Appendix, Public Buildings, Property, and Works, sections 11421, 11441 to 11447, 11449, 11450, 11461 to 11466, 11471, and 11472 of Title 42, The Public Health and Welfare, and sections 42101 to 42106 of Title 49, Transportation, enacted provisions set out as notes under sections 1501, 2301, and 2940 of this title and section 11421 of Title 42, and repealed provisions set out as notes under sections 801 and 2301 of this title and section 1255a of Title 8, Aliens and Nationality. For complete classification of title I to the Code, see Tables.

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1574 of this title prior to repeal by Pub. L. 105-220.

§ 2935. Reports; recordkeeping; investigations

(a) Reports

(1) In general

Recipients of funds under this chapter shall keep records that are sufficient to permit the preparation of reports required by this chapter and to permit the tracing of funds to a level of expenditure adequate to ensure that the funds have not been spent unlawfully.

(2) Submission to the Secretary

Every such recipient shall maintain such records and submit such reports, in such form and containing such information, as the Secretary may require regarding the performance of programs and activities carried out under this chapter. Such records and reports shall be submitted to the Secretary but shall not be required to be submitted more than once each quarter unless specifically requested by Congress or a committee of Congress, in which case an estimate may be provided.

(3) Maintenance of standardized records

In order to allow for the preparation of the reports required under subsection (c) of this section, such recipients shall maintain standardized records for all individual participants and provide to the Secretary a sufficient number of such records to provide for an adequate analysis of the records.

(4) Availability to the public

(A) In general

Except as provided in subparagraph (B), records maintained by such recipients pursuant to this subsection shall be made available to the public upon request.

(B) Exception

Subparagraph (A) shall not apply to—

- (i) information, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and
- (ii) trade secrets, or commercial or financial information, that is obtained from a person and privileged or confidential.

(C) Fees to recover costs

Such recipients may charge fees sufficient to recover costs applicable to the processing of requests for records under subparagraph (A).

(b) Investigations of use of funds

(1) In general

(A) Secretary

In order to evaluate compliance with the provisions of this chapter, the Secretary shall conduct, in several States, in each fiscal year, investigations of the use of funds received by recipients under this chapter.

(B) Comptroller General of the United States

In order to ensure compliance with the provisions of this chapter, the Comptroller General of the United States may conduct investigations of the use of funds received under this chapter by any recipient.

(2) Prohibition

In conducting any investigation under this chapter, the Secretary or the Comptroller General of the United States may not request the compilation of any information that the recipient is not otherwise required to compile and that is not readily available to such recipient.

(3) Audits

(A) In general

In carrying out any audit under this chapter (other than any initial audit survey or