

the procedures for such hearing and a simple form that may be used to request such hearing if such person desires to use such form. If a hearing is requested, the Secretary shall establish by such certified notice the time and place for such hearing, which shall be located, to the greatest extent possible, at a location convenient to such person. The Secretary (or the Secretary's designee) and such person may consult to arrange a suitable date and location where appropriate.

**(3) Circumstances affecting penalty or order**

In determining the amount of the civil penalty or the nature of the administrative compliance order, the Secretary shall take into account, as appropriate—

(A) the nature, circumstances, extent, and gravity of the violation;

(B) with respect to the violator, any good faith efforts to comply, the importance of achieving early and permanent compliance, the ability to pay or comply, the effect of the penalty or order on the ability to continue operation, any prior history of the same kind of violation, the degree of culpability, and any demonstration of willingness to comply with the prohibitions of this section in a timely manner; and

(C) such other matters as justice may require.

**(4) Modification**

The Secretary may, as appropriate, compromise, modify, or remit, with or without conditions, any civil penalty or administrative compliance order. In the case of a civil penalty, the amount, as finally determined by the Secretary or agreed upon in compromise, may be deducted from any sums that the United States or the agencies or instrumentalities of the United States owe to the person against whom the penalty is assessed.

**(5) Petition for review**

Any person aggrieved by a penalty assessed or an order issued, or both, by the Secretary under this section may file a petition for judicial review of the order with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which the person resides or transacts business. Such person shall provide a copy of the petition to the Secretary or the Secretary's designee. The petition shall be filed within 30 days after the Secretary's assessment or order, or both, are final and have been provided to such person by certified mail. The Secretary shall promptly provide to the court a certified copy of the transcript of any hearing held under this section and a copy of the notice or order.

**(6) Failure to comply**

If a person fails to pay an assessment of a civil penalty or comply with an order, after the assessment or order, or both, are final under this section, or after a court has entered a final judgment under paragraph (5) in favor of the Secretary, the Attorney General, at the request of the Secretary, shall recover the amount of the civil penalty (plus interest at prevailing rates from the day the assessment

or order, or both, are final) or enforce the order in an action brought in the appropriate district court of the United States. In such action, the validity and appropriateness of the penalty or order or the amount of the penalty shall not be subject to review.

(Pub. L. 89-10, title VIII, § 8573, formerly title IV, § 4303, as added Pub. L. 107-110, title IV, § 401, Jan. 8, 2002, 115 Stat. 1774; renumbered title IX, § 9563, renumbered title VIII, § 8573, and amended Pub. L. 114-95, title IV, § 4001(a)(1), (4)(A), (B), (C)(ii), title VIII, § 8001(a)(9), Dec. 10, 2015, 129 Stat. 1966, 2088, 2089.)

CODIFICATION

Section was classified to section 7183 of this title prior to renumbering by Pub. L. 114-95.

AMENDMENTS

2015—Subsec. (b)(1). Pub. L. 114-95, § 4001(a)(1)(A), substituted “early childhood education programs” for “early childhood development (Head Start) services”.

Subsec. (c)(2). Pub. L. 114-95, § 4001(a)(1)(B)(i), substituted “education programs” for “development services” in heading.

Subsec. (c)(2)(A). Pub. L. 114-95, § 4001(a)(1)(B)(ii), substituted “education programs” for “development (Head Start) services”.

Subsec. (e)(3)(C). Pub. L. 114-95, § 4001(a)(1)(C), added subpar. (C) and struck out former subpar. (C) which was missing an opening parenthesis before the subpar. designation and read as follows: “such other matters as justice may require.”

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114-95 effective Dec. 10, 2015, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 114-95, set out as a note under section 6301 of this title.

**§ 7974. Preemption**

Nothing in this subpart<sup>1</sup> is intended to preempt any provision of law of a State or political subdivision of a State that is more restrictive than a provision of this subpart.<sup>1</sup>

(Pub. L. 89-10, title VIII, § 8574, formerly title IV, § 4304, as added Pub. L. 107-110, title IV, § 401, Jan. 8, 2002, 115 Stat. 1776; renumbered title IX, § 9564, renumbered title VIII, § 8574, Pub. L. 114-95, title IV, § 4001(a)(4)(A), (B), (C)(ii), title VIII, § 8001(a)(9), Dec. 10, 2015, 129 Stat. 1966, 2088, 2089.)

REFERENCES IN TEXT

This subpart, referred to in text, was in the original “this part”, and was translated as reading “this subpart”, to reflect the probable intent of Congress. Pub. L. 114-95 redesignated part C of title IV of Pub. L. 89-10 as subpart 5 of part F of title VIII of Pub. L. 89-10, which is classified to this subpart.

CODIFICATION

Section was classified to section 7184 of this title prior to renumbering by Pub. L. 114-95.

PART G—EVALUATIONS

CODIFICATION

Pub. L. 114-95, title VIII, § 8001(a), (b)(1), Dec. 10, 2015, 129 Stat. 2088, 2089, redesignated part F (§ 7941) of subchapter IX of this chapter as part G of this subchapter.

<sup>1</sup> See References in Text note below.