

ceive an increased benefit under any other means-tested welfare or public assistance program for which Federal funds are appropriated as a result of a decrease in the income of the individual (determined under the applicable program) attributable to such reduction.

(b) Welfare or public assistance programs for which Federal funds are appropriated

For purposes of subsection (a), the term “means-tested welfare or public assistance program for which Federal funds are appropriated” includes the food stamp program under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.), any program of public or assisted housing under title I of the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.), and any State program funded under this part.

(Pub. L. 104–193, title IX, §911, Aug. 22, 1996, 110 Stat. 2353.)

REFERENCES IN TEXT

The Food Stamp Act of 1977, referred to in subsec. (b), subsequently renamed the Food and Nutrition Act of 2008, is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, which is classified generally to chapter 51 (§2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

The United States Housing Act of 1937, referred to in subsec. (b), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653, and amended. Title I of the Act is classified generally to subchapter I (§1437 et seq.) of chapter 8 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

CODIFICATION

Section was enacted as part of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and not as part of the Social Security Act which comprises this chapter.

CHANGE OF NAME

References to the food stamp program established under the Food and Nutrition Act of 2008 considered to refer to the supplemental nutrition assistance program established under that Act, see section 4002(c) of Pub. L. 110–246, set out as a note under section 2012 of Title 7, Agriculture.

§ 609. Penalties

(a) In general

Subject to this section:

(1) Use of grant in violation of this part

(A) General penalty

If an audit conducted under chapter 75 of title 31 finds that an amount paid to a State under section 603 of this title for a fiscal year has been used in violation of this part, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year quarter by the amount so used.

(B) Enhanced penalty for intentional violations

If the State does not prove to the satisfaction of the Secretary that the State did not intend to use the amount in violation of this part, the Secretary shall further reduce the

grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year quarter by an amount equal to 5 percent of the State family assistance grant.

(C) Penalty for misuse of competitive welfare-to-work funds

If the Secretary of Labor finds that an amount paid to an entity under section 603(a)(5)(B) of this title has been used in violation of subparagraph (B) or (C) of section 603(a)(5) of this title, the entity shall remit to the Secretary of Labor an amount equal to the amount so used.

(2) Failure to submit required report

(A) Quarterly reports

(i) In general

If the Secretary determines that a State has not, within 45 days after the end of a fiscal quarter, submitted the report required by section 611(a) of this title for the quarter, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year by an amount equal to 4 percent of the State family assistance grant.

(ii) Rescission of penalty

The Secretary shall rescind a penalty imposed on a State under clause (i) with respect to a report if the State submits the report before the end of the fiscal quarter that immediately succeeds the fiscal quarter for which the report was required.

(B) Report on engagement in additional work activities and expenditures for other benefits and services

(i) In general

If the Secretary determines that a State has not submitted the report required by section 611(c)(1)(A)(i) of this title by May 31, 2011, or the report required by section 611(c)(1)(A)(ii) of this title by August 31, 2011, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year by an amount equal to not more than 4 percent of the State family assistance grant.

(ii) Rescission of penalty

The Secretary shall rescind a penalty imposed on a State under clause (i) with respect to a report required by section 611(c)(1)(A) of this title if the State submits the report not later than—

(I) in the case of the report required under section 611(c)(1)(A)(i) of this title, June 15, 2011; and

(II) in the case of the report required under section 611(c)(1)(A)(ii) of this title, September 15, 2011.

(iii) Penalty based on severity of failure

The Secretary shall impose a reduction under clause (i) with respect to a fiscal year based on the degree of noncompliance.

(3) Failure to satisfy minimum participation rates

(A) In general

If the Secretary determines that a State to which a grant is made under section 603 of this title for a fiscal year has failed to comply with section 607(a) of this title for the fiscal year, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year by an amount equal to the applicable percentage of the State family assistance grant.

(B) “Applicable percentage” defined

As used in subparagraph (A), the term “applicable percentage” means, with respect to a State—

(i) if a penalty was not imposed on the State under subparagraph (A) for the immediately preceding fiscal year, 5 percent; or

(ii) if a penalty was imposed on the State under subparagraph (A) for the immediately preceding fiscal year, the lesser of—

(I) the percentage by which the grant payable to the State under section 603(a)(1) of this title was reduced for such preceding fiscal year, increased by 2 percentage points; or

(II) 21 percent.

(C) Penalty based on severity of failure

The Secretary shall impose reductions under subparagraph (A) with respect to a fiscal year based on the degree of noncompliance, and may reduce the penalty if the noncompliance is due to circumstances that caused the State to become a needy State (as defined in section 603(b)(5) of this title) during the fiscal year or if the noncompliance is due to extraordinary circumstances such as a natural disaster or regional recession. The Secretary shall provide a written report to Congress to justify any waiver or penalty reduction due to such extraordinary circumstances.

(4) Failure to participate in the income and eligibility verification system

If the Secretary determines that a State program funded under this part is not participating during a fiscal year in the income and eligibility verification system required by section 1320b-7 of this title, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year by an amount equal to not more than 2 percent of the State family assistance grant.

(5) Failure to comply with paternity establishment and child support enforcement requirements under part D

Notwithstanding any other provision of this chapter, if the Secretary determines that the State agency that administers a program funded under this part does not enforce the penalties requested by the agency administering part D against recipients of assistance under the State program who fail to cooperate

in establishing paternity or in establishing, modifying, or enforcing a child support order in accordance with such part and who do not qualify for any good cause or other exception established by the State under section 654(29) of this title, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year (without regard to this section) by not more than 5 percent.

(6) Failure to timely repay a Federal Loan Fund for State Welfare Programs

If the Secretary determines that a State has failed to repay any amount borrowed from the Federal Loan Fund for State Welfare Programs established under section 606 of this title within the period of maturity applicable to the loan, plus any interest owed on the loan, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year quarter (without regard to this section) by the outstanding loan amount, plus the interest owed on the outstanding amount. The Secretary shall not forgive any outstanding loan amount or interest owed on the outstanding amount.

(7) Failure of any State to maintain certain level of historic effort

(A) In general

The Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for a fiscal year by the amount (if any) by which qualified State expenditures for the then immediately preceding fiscal year are less than the applicable percentage of historic State expenditures with respect to such preceding fiscal year.

(B) Definitions

As used in this paragraph:

(i) Qualified State expenditures

(I) In general

The term “qualified State expenditures” means, with respect to a State and a fiscal year, the total expenditures by the State during the fiscal year, under all State programs, for any of the following with respect to eligible families:

(aa) Cash assistance, including any amount collected by the State as support pursuant to a plan approved under part D, on behalf of a family receiving assistance under the State program funded under this part, that is distributed to the family under section 657(a)(1)(B) of this title and disregarded in determining the eligibility of the family for, and the amount of, such assistance.

(bb) Child care assistance.

(cc) Educational activities designed to increase self-sufficiency, job training, and work, excluding any expenditure for public education in the State except expenditures which involve the provision of services or assistance to a member of an eligible family which is

not generally available to persons who are not members of an eligible family.

(dd) Administrative costs in connection with the matters described in items (aa), (bb), (cc), and (ee), but only to the extent that such costs do not exceed 15 percent of the total amount of qualified State expenditures for the fiscal year.

(ee) Any other use of funds allowable under section 604(a)(1) of this title.

(II) Exclusion of transfers from other State and local programs

Such term does not include expenditures under any State or local program during a fiscal year, except to the extent that—

(aa) the expenditures exceed the amount expended under the State or local program in the fiscal year most recently ending before August 22, 1996; or

(bb) the State is entitled to a payment under former section 603 of this title (as in effect immediately before August 22, 1996) with respect to the expenditures.

(III) Exclusion of amounts expended to replace penalty grant reductions

Such term does not include any amount expended in order to comply with paragraph (12).

(IV) Eligible families

As used in subclause (I), the term “eligible families” means families eligible for assistance under the State program funded under this part, families that would be eligible for such assistance but for the application of section 608(a)(7) of this title, and families of aliens lawfully present in the United States that would be eligible for such assistance but for the application of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [8 U.S.C. 1601 et seq.].

(V) Counting of spending on certain pro-family activities

The term “qualified State expenditures” includes the total expenditures by the State during the fiscal year under all State programs for a purpose described in paragraph (3) or (4) of section 601(a) of this title.

(ii) Applicable percentage

The term “applicable percentage” means 80 percent (or, if the State meets the requirements of section 607(a) of this title, 75 percent).

(iii) Historic State expenditures

The term “historic State expenditures” means, with respect to a State, the lesser of—

(I) the expenditures by the State under parts A and F (as in effect during fiscal year 1994) for fiscal year 1994; or

(II) the amount which bears the same ratio to the amount described in subclause (I) as—

(aa) the State family assistance grant, plus the total amount required to be paid to the State under former section 603 of this title for fiscal year 1994 with respect to amounts expended by the State for child care under subsection (g) or (i) of section 602 of this title (as in effect during fiscal year 1994); bears to

(bb) the total amount required to be paid to the State under former section 603 of this title (as in effect during fiscal year 1994) for fiscal year 1994.

Such term does not include any expenditures under the State plan approved under part A (as so in effect) on behalf of individuals covered by a tribal family assistance plan approved under section 612 of this title, as determined by the Secretary.

(iv) Expenditures by the State

The term “expenditures by the State” does not include—

(I) any expenditure from amounts made available by the Federal Government;

(II) any State funds expended for the medicaid program under subchapter XIX;

(III) any State funds which are used to match Federal funds provided under section 603(a)(5) of this title; or

(IV) any State funds which are expended as a condition of receiving Federal funds other than under this part.

Notwithstanding subclause (IV) of the preceding sentence, such term includes expenditures by a State for child care in a fiscal year to the extent that the total amount of the expenditures does not exceed the amount of State expenditures in fiscal year 1994 or 1995 (whichever is the greater) that equal the non-Federal share for the programs described in section 618(a)(1)(A) of this title.

(v) Source of data

In determining expenditures by a State for fiscal years 1994 and 1995, the Secretary shall use information which was reported by the State on ACF Form 231 or (in the case of expenditures under part F) ACF Form 331, available as of the dates specified in clauses (ii) and (iii) of section 603(a)(1)(D)¹ of this title.

(8) Noncompliance of State child support enforcement program with requirements of part D

(A) In general

If the Secretary finds, with respect to a State’s program under part D, in a fiscal year beginning on or after October 1, 1997—

(i)(I) on the basis of data submitted by a State pursuant to section 654(15)(B) of this title, or on the basis of the results of a review conducted under section 652(a)(4) of this title, that the State program failed to achieve the paternity establishment percentages (as defined in section 652(g)(2) of

¹ See References in Text note below.

this title), or to meet other performance measures that may be established by the Secretary;

(II) on the basis of the results of an audit or audits conducted under section 652(a)(4)(C)(i) of this title that the State data submitted pursuant to section 654(15)(B) of this title is incomplete or unreliable; or

(III) on the basis of the results of an audit or audits conducted under section 652(a)(4)(C) of this title that a State failed to substantially comply with 1 or more of the requirements of part D (other than paragraph (24), or subparagraph (A) or (B)(i) of paragraph (27), of section 654 of this title); and

(i) that, with respect to the succeeding fiscal year—

(I) the State failed to take sufficient corrective action to achieve the appropriate performance levels or compliance as described in subparagraph (A)(i); or

(II) the data submitted by the State pursuant to section 654(15)(B) of this title is incomplete or unreliable;

the amounts otherwise payable to the State under this part for quarters following the end of such succeeding fiscal year, prior to quarters following the end of the first quarter throughout which the State program has achieved the paternity establishment percentages or other performance measures as described in subparagraph (A)(i)(I), or is in substantial compliance with 1 or more of the requirements of part D as described in subparagraph (A)(i)(III), as appropriate, shall be reduced by the percentage specified in subparagraph (B).

(B) Amount of reductions

The reductions required under subparagraph (A) shall be—

(i) not less than 1 nor more than 2 percent;

(ii) not less than 2 nor more than 3 percent, if the finding is the 2nd consecutive finding made pursuant to subparagraph (A); or

(iii) not less than 3 nor more than 5 percent, if the finding is the 3rd or a subsequent consecutive such finding.

(C) Disregard of noncompliance which is of a technical nature

For purposes of this section and section 652(a)(4) of this title, a State determined as a result of an audit—

(i) to have failed to have substantially complied with 1 or more of the requirements of part D shall be determined to have achieved substantial compliance only if the Secretary determines that the extent of the noncompliance is of a technical nature which does not adversely affect the performance of the State's program under part D; or

(ii) to have submitted incomplete or unreliable data pursuant to section 654(15)(B) of this title shall be determined to have submitted adequate data only if the Sec-

retary determines that the extent of the incompleteness or unreliability of the data is of a technical nature which does not adversely affect the determination of the level of the State's paternity establishment percentages (as defined under section 652(g)(2) of this title) or other performance measures that may be established by the Secretary.

(9) Failure to comply with 5-year limit on assistance

If the Secretary determines that a State has not complied with section 608(a)(7) of this title during a fiscal year, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year by an amount equal to 5 percent of the State family assistance grant.

(10) Failure of State receiving amounts from Contingency Fund to maintain 100 percent of historic effort

If, at the end of any fiscal year during which amounts from the Contingency Fund for State Welfare Programs have been paid to a State, the Secretary finds that the qualified State expenditures (as defined in paragraph (7)(B)(i) (other than the expenditures described in subclause (I)(bb) of that paragraph)) under the State program funded under this part for the fiscal year are less than 100 percent of historic State expenditures (as defined in paragraph (7)(B)(iii) of this subsection), excluding any amount expended by the State for child care under subsection (g) or (i) of section 602 of this title (as in effect during fiscal year 1994) for fiscal year 1994, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year by the total of the amounts so paid to the State that the State has not remitted under section 603(b)(6) of this title.

(11) Failure to maintain assistance to adult single custodial parent who cannot obtain child care for child under age 6

(A) In general

If the Secretary determines that a State to which a grant is made under section 603 of this title for a fiscal year has violated section 607(e)(2) of this title during the fiscal year, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year by an amount equal to not more than 5 percent of the State family assistance grant.

(B) Penalty based on severity of failure

The Secretary shall impose reductions under subparagraph (A) with respect to a fiscal year based on the degree of noncompliance.

(12) Requirement to expend additional State funds to replace grant reductions; penalty for failure to do so

If the grant payable to a State under section 603(a)(1) of this title for a fiscal year is reduced by reason of this subsection, the State shall, during the immediately succeeding fis-

cal year, expend under the State program funded under this part an amount equal to the total amount of such reductions. If the State fails during such succeeding fiscal year to make the expenditure required by the preceding sentence from its own funds, the Secretary may reduce the grant payable to the State under section 603(a)(1) of this title for the fiscal year that follows such succeeding fiscal year by an amount equal to the sum of—

- (A) not more than 2 percent of the State family assistance grant; and
- (B) the amount of the expenditure required by the preceding sentence.

(13) Penalty for failure of State to maintain historic effort during year in which welfare-to-work grant is received

If a grant is made to a State under section 603(a)(5)(A) of this title for a fiscal year and paragraph (7) of this subsection requires the grant payable to the State under section 603(a)(1) of this title to be reduced for the immediately succeeding fiscal year, then the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for such succeeding fiscal year by the amount of the grant made to the State under section 603(a)(5)(A) of this title for the fiscal year.

(14) Penalty for failure to reduce assistance for recipients refusing without good cause to work

(A) In general

If the Secretary determines that a State to which a grant is made under section 603 of this title in a fiscal year has violated section 607(e) of this title during the fiscal year, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year by an amount equal to not less than 1 percent and not more than 5 percent of the State family assistance grant.

(B) Penalty based on severity of failure

The Secretary shall impose reductions under subparagraph (A) with respect to a fiscal year based on the degree of noncompliance.

(15) Penalty for failure to establish or comply with work participation verification procedures

(A) In general

If the Secretary determines that a State to which a grant is made under section 603 of this title in a fiscal year has violated section 607(i)(2) of this title during the fiscal year, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year by an amount equal to not less than 1 percent and not more than 5 percent of the State family assistance grant.

(B) Penalty based on severity of failure

The Secretary shall impose reductions under subparagraph (A) with respect to a fiscal year based on the degree of noncompliance.

(16) Penalty for failure to enforce spending policies

(A) In general

If, within 2 years after February 22, 2012, any State has not reported to the Secretary on such State's implementation of the policies and practices required by section 608(a)(12) of this title, or the Secretary determines, based on the information provided in State reports, that any State has not implemented and maintained such policies and practices, the Secretary shall reduce, by an amount equal to 5 percent of the State family assistance grant, the grant payable to such State under section 603(a)(1) of this title for—

- (i) the fiscal year immediately succeeding the year in which such 2-year period ends; and
- (ii) each succeeding fiscal year in which the State does not demonstrate that such State has implemented and maintained such policies and practices.

(B) Reduction of applicable penalty

The Secretary may reduce the amount of the reduction required under subparagraph (A) based on the degree of noncompliance of the State.

(C) State not responsible for individual violations

Fraudulent activity by any individual in an attempt to circumvent the policies and practices required by section 608(a)(12) of this title shall not trigger a State penalty under subparagraph (A).

(b) Reasonable cause exception

(1) In general

The Secretary may not impose a penalty on a State under subsection (a) with respect to a requirement if the Secretary determines that the State has reasonable cause for failing to comply with the requirement.

(2) Exception

Paragraph (1) of this subsection shall not apply to any penalty under paragraph (6), (7), (8), (10), (12), or (13) of subsection (a) and, with respect to the penalty under paragraph (2)(B) of subsection (a), shall only apply to the extent the Secretary determines that the reasonable cause for failure to comply with a requirement of that paragraph is as a result of a one-time, unexpected event, such as a widespread data system failure or a natural or man-made disaster.

(c) Corrective compliance plan

(1) In general

(A) Notification of violation

Before imposing a penalty against a State under subsection (a) with respect to a violation of this part, the Secretary shall notify the State of the violation and allow the State the opportunity to enter into a corrective compliance plan in accordance with this subsection which outlines how the State will correct or discontinue, as appropriate, the violation and how the State will insure continuing compliance with this part.

(B) 60-day period to propose a corrective compliance plan

During the 60-day period that begins on the date the State receives a notice provided under subparagraph (A) with respect to a violation, the State may submit to the Federal Government a corrective compliance plan to correct or discontinue, as appropriate, the violation.

(C) Consultation about modifications

During the 60-day period that begins with the date the Secretary receives a corrective compliance plan submitted by a State in accordance with subparagraph (B), the Secretary may consult with the State on modifications to the plan.

(D) Acceptance of plan

A corrective compliance plan submitted by a State in accordance with subparagraph (B) is deemed to be accepted by the Secretary if the Secretary does not accept or reject the plan during 60-day period that begins on the date the plan is submitted.

(2) Effect of correcting or discontinuing violation

The Secretary may not impose any penalty under subsection (a) with respect to any violation covered by a State corrective compliance plan accepted by the Secretary if the State corrects or discontinues, as appropriate, the violation pursuant to the plan.

(3) Effect of failing to correct or discontinue violation

The Secretary shall assess some or all of a penalty imposed on a State under subsection (a) with respect to a violation if the State does not, in a timely manner, correct or discontinue, as appropriate, the violation pursuant to a State corrective compliance plan accepted by the Secretary.

(4) Inapplicability to certain penalties

This subsection shall not apply to the imposition of a penalty against a State under paragraph (2)(B), (6), (7), (8), (10), (12), (13), or (16) of subsection (a).

(d) Limitation on amount of penalties

(1) In general

In imposing the penalties described in subsection (a), the Secretary shall not reduce any quarterly payment to a State by more than 25 percent.

(2) Carryforward of unrecovered penalties

To the extent that paragraph (1) of this subsection prevents the Secretary from recovering during a fiscal year the full amount of penalties imposed on a State under subsection (a) of this section for a prior fiscal year, the Secretary shall apply any remaining amount of such penalties to the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year.

(Aug. 14, 1935, ch. 531, title IV, § 409, as added Pub. L. 104-193, title I, § 103(a)(1), Aug. 22, 1996, 110 Stat. 2142; amended Pub. L. 105-33, title V, §§ 5001(a)(2), (g), 5004(a), 5506, 5514(c), Aug. 5, 1997,

111 Stat. 589, 592, 594, 613, 620; Pub. L. 105-200, title I, § 101(b), July 16, 1998, 112 Stat. 647; Pub. L. 106-113, div. B, § 1000(a)(4) [title VIII, § 807(b)], Nov. 29, 1999, 113 Stat. 1535, 1501A-287; Pub. L. 106-169, title IV, § 401(b), Dec. 14, 1999, 113 Stat. 1858; Pub. L. 108-40, § 3(g), June 30, 2003, 117 Stat. 837; Pub. L. 108-89, title I, § 101(b)(3), Oct. 1, 2003, 117 Stat. 1131; Pub. L. 108-308, § 2(b)(3), Sept. 30, 2004, 118 Stat. 1135; Pub. L. 109-68, § 2(b)(2)(C), Sept. 21, 2005, 119 Stat. 2003; Pub. L. 109-171, title VII, §§ 7101(b)(3), 7102(c)(2), 7103(b), Feb. 8, 2006, 120 Stat. 135, 137, 140; Pub. L. 111-242, § 131(b)(3), Sept. 30, 2010, 124 Stat. 2612; Pub. L. 111-291, title VIII, § 812(b), Dec. 8, 2010, 124 Stat. 3162; Pub. L. 112-35, § 2(b), Sept. 30, 2011, 125 Stat. 384; Pub. L. 112-96, title IV, §§ 4002(c), 4004(b), (d), 4005(b)-(d), Feb. 22, 2012, 126 Stat. 195, 197, 198.)

REFERENCES IN TEXT

Part D, referred to in subsec. (a)(5), (7)(B)(i)(I)(aa), (8), is classified to section 651 et seq. of this title.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, referred to in subsec. (a)(7)(B)(i)(IV), is Pub. L. 104-193, Aug. 22, 1996, 110 Stat. 2105. Title IV of the Act is classified principally to chapter 14 (§ 1601 et seq.) of Title 8, Aliens and Nationality. For complete classification of title IV to the Code, see Tables.

Part F, referred to in subsec. (a)(7)(B)(iii)(I), (v), was classified to section 681 et seq. of this title, prior to repeal by Pub. L. 104-193, title I, § 108(e), Aug. 22, 1996, 110 Stat. 2167.

Section 603(a)(1)(D) of this title, referred to in subsec. (a)(7)(B)(v), was repealed by Pub. L. 108-40, § 3(a)(2), June 30, 2003, 117 Stat. 836.

PRIOR PROVISIONS

A prior section 609, act Aug. 14, 1935, ch. 531, title IV, § 409, as added Nov. 5, 1990, Pub. L. 101-508, title V, § 5052(a), 104 Stat. 1388-228, related to exclusion from AFDC unit of child for whom Federal, State, or local foster care maintenance or adoption assistance payments were made, prior to repeal by Pub. L. 104-193, § 103(a)(1), as amended by Pub. L. 105-33, title V, § 5514(c), Aug. 5, 1997, 111 Stat. 620.

Another prior section 609, act Aug. 14, 1935, ch. 531, title IV, § 409, as added and amended July 25, 1962, Pub. L. 87-543, title I, §§ 101(b)(2)(E), 105(a), 76 Stat. 180, 186; Aug. 13, 1981, Pub. L. 97-35, title XXIII, § 2307(a), 95 Stat. 846; Sept. 3, 1982, Pub. L. 97-248, title I, § 154(c), 96 Stat. 397; July 18, 1984, Pub. L. 98-369, div. B, title VI, §§ 2627, 2641(a), 2663(c)(5), 98 Stat. 1136, 1146, 1166, related to community work experience programs, prior to repeal by Pub. L. 100-485, title II, §§ 202(b)(12), 204(a), (b)(1)(A), Oct. 13, 1988, 102 Stat. 2378, 2381, effective Oct. 1, 1990, with provision for earlier effective dates in case of States making certain changes in their State plans and formally notifying the Secretary of Health and Human Services of their desire to become subject to the amendments by title II of Pub. L. 100-485 at such earlier effective dates.

AMENDMENTS

2012—Subsec. (a)(2)(A)(i), (ii). Pub. L. 112-96, § 4005(c), realigned margins.

Subsec. (a)(3)(C). Pub. L. 112-96, § 4005(b), substituted “603(b)(5)” for “603(b)(6)”.

Subsec. (a)(7)(A). Pub. L. 112-96, § 4002(c)(1), substituted “a fiscal year” for “fiscal year 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, or 2013”.

Subsec. (a)(7)(B)(ii). Pub. L. 112-96, § 4002(c)(2), struck out “for fiscal years 1997 through 2012,” after “means” and substituted “607(a) of this title,” for “607(a) of this title for the fiscal year.”

Subsec. (a)(16). Pub. L. 112-96, § 4004(b), added par. (16).

Subsec. (c)(2). Pub. L. 112-96, § 4005(d), inserted comma after “appropriate”.

Subsec. (c)(4). Pub. L. 112-96, §4004(d), substituted “(13), or (16)” for “or (13)”.

2011—Subsec. (a)(7)(A). Pub. L. 112-35, §2(b)(1), substituted “2012, or 2013” for “or 2012”.

Subsec. (a)(7)(B)(ii). Pub. L. 112-35, §2(b)(2), substituted “2012” for “2011”.

2010—Subsec. (a)(2). Pub. L. 111-291, §812(b)(1), designated existing provisions as subpar. (A), inserted heading, redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, of subpar. (A), in subpar. (A)(ii), substituted “clause (i)” for “subparagraph (A)”, and added subpar. (B).

Subsec. (a)(7)(A). Pub. L. 111-242, §131(b)(3)(A), substituted “2011, or 2012” for “or 2011”.

Subsec. (a)(7)(B)(ii). Pub. L. 111-242, §131(b)(3)(B), substituted “2011” for “2010”.

Subsec. (b)(2). Pub. L. 111-291, §812(b)(2), inserted before period at end “and, with respect to the penalty under paragraph (2)(B) of subsection (a), shall only apply to the extent the Secretary determines that the reasonable cause for failure to comply with a requirement of that paragraph is as a result of a one-time, unexpected event, such as a widespread data system failure or a natural or man-made disaster”.

Subsec. (c)(4). Pub. L. 111-291, §812(b)(3), inserted “(2)(B),” after “paragraph”.

2006—Subsec. (a)(7)(A). Pub. L. 109-171, §7101(b)(3)(A), substituted “2007, 2008, 2009, 2010, or 2011” for “or 2007”.

Subsec. (a)(7)(B)(i)(V). Pub. L. 109-171, §7103(b), added subcl. (V).

Subsec. (a)(7)(B)(ii). Pub. L. 109-171, §7101(b)(3)(B), substituted “2010” for “2006”.

Subsec. (a)(15). Pub. L. 109-171, §7102(c)(2), added par. (15).

2005—Subsec. (a)(7)(A). Pub. L. 109-68, §2(b)(2)(C)(i), substituted “2006, or 2007” for “or 2006”.

Subsec. (a)(7)(B)(ii). Pub. L. 109-68, §2(b)(2)(C)(ii), substituted “2006” for “2005”.

2004—Subsec. (a)(7)(A). Pub. L. 108-308, §2(b)(3)(A), substituted “2005, or 2006” for “or 2005”.

Subsec. (a)(7)(B)(ii). Pub. L. 108-308, §2(b)(3)(B), substituted “2005” for “2004”.

2003—Subsec. (a)(7)(A). Pub. L. 108-89, §101(b)(3)(A), substituted “2004, or 2005” for “or 2004”.

Pub. L. 108-40, §3(g)(1), substituted “2003, or 2004” for “or 2003”.

Subsec. (a)(7)(B)(ii). Pub. L. 108-89, §101(b)(3)(B), substituted “2004” for “2003”.

Pub. L. 108-40, §3(g)(2), substituted “2003” for “2002”.

1999—Subsec. (a)(7)(B)(i)(II). Pub. L. 106-169 made technical amendment to reference in original act which appears in text as reference to August 22, 1996.

Subsec. (a)(8)(A)(i)(III). Pub. L. 106-113 substituted “paragraph (24), or subparagraph (A) or (B)(i) of paragraph (27), of section 654 of this title” for “section 654(24) of this title”.

1998—Subsec. (a)(8)(A)(i)(III). Pub. L. 105-200 inserted “(other than section 654(24) of this title)” before semicolon.

1997—Pub. L. 105-33, §5514(c), made technical amendment to directory language of Pub. L. 104-193, §103(a)(1), which enacted this section.

Subsec. (a)(1)(C). Pub. L. 105-33, §5001(g)(2), added subpar. (C).

Subsec. (a)(2)(A). Pub. L. 105-33, §5506(a), substituted “45 days” for “1 month”.

Subsec. (a)(3)(A). Pub. L. 105-33, §5506(n)(1), struck out “not more than” after “an amount equal to”.

Subsec. (a)(3)(C). Pub. L. 105-33, §5506(n)(2), inserted before period at end “or if the noncompliance is due to extraordinary circumstances such as a natural disaster or regional recession. The Secretary shall provide a written report to Congress to justify any waiver or penalty reduction due to such extraordinary circumstances”.

Subsec. (a)(7)(B)(i)(I)(aa). Pub. L. 105-33, §5506(b), inserted before period at end “, including any amount collected by the State as support pursuant to a plan approved under part D, on behalf of a family receiving assistance under the State program funded under this

part, that is distributed to the family under section 657(a)(1)(B) of this title and disregarded in determining the eligibility of the family for, and the amount of, such assistance”.

Subsec. (a)(7)(B)(i)(III). Pub. L. 105-33, §5506(c), added subcl. (III). Former subcl. (III) redesignated (IV).

Subsec. (a)(7)(B)(i)(IV). Pub. L. 105-33, §5506(d), substituted “this part, families” for “this part, and families” and “section 608(a)(7) of this title, and families of aliens lawfully present in the United States that would be eligible for such assistance but for the application of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996” for “section 608(a)(7) of this title or section 1612 of title 8”.

Pub. L. 105-33, §5506(c), redesignated subcl. (III) as (IV).

Subsec. (a)(7)(B)(ii). Pub. L. 105-33, §5506(e), struck out “reduced (if appropriate) in accordance with subparagraph (C)(ii)” after “75 percent”.

Subsec. (a)(7)(B)(iv). Pub. L. 105-33, §5001(a)(2), amended heading and text of cl. (iv) generally. Prior to amendment, text read as follows: “The term ‘expenditures by the State’ does not include—

“(I) any expenditures from amounts made available by the Federal Government;

“(II) any State funds expended for the medicaid program under subchapter XIX of this chapter;

“(III) any State funds which are used to match Federal funds; or

“(IV) any State funds which are expended as a condition of receiving Federal funds under Federal programs other than under this part.

Notwithstanding subclause (IV) of the preceding sentence, such term includes expenditures by a State for child care in a fiscal year to the extent that the total amount of such expenditures does not exceed an amount equal to the amount of State expenditures in fiscal year 1994 or 1995 (whichever is greater) that equal the non-Federal share for the programs described in section 618(a)(1)(A) of this title.”

Subsec. (a)(7)(B)(v). Pub. L. 105-33, §5506(f), added cl. (v).

Subsec. (a)(8). Pub. L. 105-33, §5506(g), amended heading and text of par. (8) generally. Prior to amendment, par. (8) provided that if a State program operated under part D of this subchapter was found to not have complied substantially with the requirements of such part for any quarter, and was not complying substantially with such requirements at the time of the finding, the Secretary was to reduce the grant payable to the State under section 603(a)(1) of this title for certain quarters until the program was found to be in substantial compliance with such requirements.

Subsec. (a)(9). Pub. L. 105-33, §5506(h), substituted “608(a)(7)” for “608(a)(1)(B)”.

Subsec. (a)(10). Pub. L. 105-33, §5506(i), substituted “the qualified State expenditures (as defined in paragraph (7)(B)(i) (other than the expenditures described in subclause (I)(bb) of that paragraph) under the State program funded under this part for the fiscal year” for “the expenditures under the State program funded under this part for the fiscal year (excluding any amounts made available by the Federal Government)”, inserted “excluding any amount expended by the State for child care under subsection (g) or (i) of section 602 of this title (as in effect during fiscal year 1994) for fiscal year 1994,” after “(as defined in paragraph (7)(B)(iii) of this subsection),”, and inserted before period at end “that the State has not remitted under section 603(b)(6) of this title”.

Subsec. (a)(12). Pub. L. 105-33, §5506(j), in heading substituted “Requirement” for “Failure” and “reductions; penalty for failure to do so” for “reductions” and in text inserted at end “If the State fails during such succeeding fiscal year to make the expenditure required by the preceding sentence from its own funds, the Secretary may reduce the grant payable to the State under section 603(a)(1) of this title for the fiscal year that follows such succeeding fiscal year by an amount equal to the sum of—

“(A) not more than 2 percent of the State family assistance grant; and

“(B) the amount of the expenditure required by the preceding sentence.”

Subsec. (a)(13). Pub. L. 105-33, §5001(g)(1)(A), added par. (13).

Subsec. (a)(14). Pub. L. 105-33, §5004(a), added par. (14).

Subsec. (b)(2). Pub. L. 105-33, §5506(k), substituted “(6), (7), (8), (10), or (12)” for “(7) or (8)”.

Pub. L. 105-33, §5001(g)(1)(B), substituted “(12), or (13)” for “or (12)”.

Subsec. (c)(1)(A), (B). Pub. L. 105-33, §5506(l)(1), inserted “or discontinue, as appropriate,” after “correct”.

Subsec. (c)(2). Pub. L. 105-33, §5506(l)(2), inserted “or discontinuing” after “correcting” in heading and “or discontinues, as appropriate” after “corrects” in text.

Subsec. (c)(3). Pub. L. 105-33, §5506(l)(3), inserted “or discontinue” after “correct” in heading and “or discontinue, as appropriate,” before “the violation” in text.

Subsec. (c)(4). Pub. L. 105-33, §5506(m), amended heading and text of par. (4) generally. Prior to amendment, text read as follows: “This subsection shall not apply to the imposition of a penalty against a State under subsection (a)(6) of this section.”

Pub. L. 105-33, §5001(g)(1)(C), substituted “(12), or (13)” for “or (12)”.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-171 effective as if enacted on Oct. 1, 2005, except as otherwise provided, see section 7701 of Pub. L. 109-171, set out as a note under section 603 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-40 effective July 1, 2003, see section 8 of Pub. L. 108-40, set out as a note under section 603 of this title.

EFFECTIVE DATE OF 1999 AMENDMENTS

Amendment by Pub. L. 106-169 effective as if included in the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, see section 401(q) of Pub. L. 106-169, set out as a note under section 602 of this title.

Pub. L. 106-113, div. B, §1000(a)(4) [title VIII, §807(c)], Nov. 29, 1999, 113 Stat. 1535, 1501A-287, provided that: “The amendments made by this section [amending this section and section 655 of this title] shall take effect on October 1, 1999.”

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-33, title V, §5004(b), Aug. 5, 1997, 111 Stat. 594, provided that: “The amendment made by subsection (a) of this section [amending this section] shall take effect as if included in the enactment of section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [Pub. L. 104-193].”

Amendment by section 5506 of Pub. L. 105-33 effective as if included in section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, at the time such section 103(a) became law, see section 5518(a) of Pub. L. 105-33, set out as a note under section 602 of this title.

Amendment by section 5514(c) of Pub. L. 105-33 effective as if included in the provision of Pub. L. 104-193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105-33, set out as a note under section 862a of Title 21, Food and Drugs.

EFFECTIVE DATE

Section effective July 1, 1997, with delayed effective date for subsec. (a)(2)-(5), (8), (10) of this section, and with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of

Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104-193, set out as a note under section 601 of this title.

§ 610. Appeal of adverse decision

(a) In general

Within 5 days after the date the Secretary takes any adverse action under this part with respect to a State, the Secretary shall notify the chief executive officer of the State of the adverse action, including any action with respect to the State plan submitted under section 602 of this title or the imposition of a penalty under section 609 of this title.

(b) Administrative review

(1) In general

Within 60 days after the date a State receives notice under subsection (a) of an adverse action, the State may appeal the action, in whole or in part, to the Departmental Appeals Board established in the Department of Health and Human Services (in this section referred to as the “Board”) by filing an appeal with the Board.

(2) Procedural rules

The Board shall consider an appeal filed by a State under paragraph (1) on the basis of such documentation as the State may submit and as the Board may require to support the final decision of the Board. In deciding whether to uphold an adverse action or any portion of such an action, the Board shall conduct a thorough review of the issues and take into account all relevant evidence. The Board shall make a final determination with respect to an appeal filed under paragraph (1) not less than 60 days after the date the appeal is filed.

(c) Judicial review of adverse decision

(1) In general

Within 90 days after the date of a final decision by the Board under this section with respect to an adverse action taken against a State, the State may obtain judicial review of the final decision (and the findings incorporated into the final decision) by filing an action in—

(A) the district court of the United States for the judicial district in which the principal or headquarters office of the State agency is located; or

(B) the United States District Court for the District of Columbia.

(2) Procedural rules

The district court in which an action is filed under paragraph (1) shall review the final decision of the Board on the record established in the administrative proceeding, in accordance with the standards of review prescribed by subparagraphs (A) through (E) of section 706(2) of title 5. The review shall be on the basis of the documents and supporting data submitted to the Board.

(Aug. 14, 1935, ch. 531, title IV, §410, as added Pub. L. 104-193, title I, §103(a)(1), Aug. 22, 1996, 110 Stat. 2148; amended Pub. L. 105-33, title V, §5514(c), Aug. 5, 1997, 111 Stat. 620.)