

(iv) the Emergency Food Assistance Act of 1983 (7 U.S.C. 7501 et seq.).
(June 4, 1946, ch. 281, §24, as added Pub. L. 111-296, title I, §142, Dec. 13, 2010, 124 Stat. 3210.)

REFERENCES IN TEXT

The Food and Nutrition Act of 2008, referred to in subsecs. (a)(2) and (g)(3)(D)(iii), 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 Child Nutrition Act of 1966, referred to in subsecs. (c)(2) and (g)(3)(D)(ii), is Pub. L. 89-642, Oct. 11, 1966, 80 Stat. 885, which is classified generally to chapter 13A (§1771 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

The Emergency Food Assistance Act of 1983, referred to in subsec. (g)(3)(D)(iv), is title II of Pub. L. 98-8, Mar. 24, 1983, 97 Stat. 35, which is classified principally to chapter 102 (§7501 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 7501 of Title 7 and Tables.

PRIOR PROVISIONS

A prior section 1769e, act June 4, 1946, ch. 281, §24, as added Nov. 10, 1989, Pub. L. 101-147, title I, §112, 103 Stat. 890, related to nutrition guidance for child nutrition programs, prior to repeal by Pub. L. 104-193, title VII, §712, Aug. 22, 1996, 110 Stat. 2301.

EFFECTIVE DATE

Section effective Oct. 1, 2010, except as otherwise specifically provided, see section 445 of Pub. L. 111-296, set out as an Effective Date of 2010 Amendment note under section 1751 of this title.

§ 1769f. Duties of Secretary relating to nonprocurement debarment

(a) Purposes

The purposes of this section are to promote the prevention and deterrence of instances of fraud, bid rigging, and other anticompetitive activities encountered in the procurement of products for child nutrition programs by—

- (1) establishing guidelines and a timetable for the Secretary to initiate debarment proceedings, as well as establishing mandatory debarment periods; and
- (2) providing training, technical advice, and guidance in identifying and preventing the activities.

(b) Definitions

As used in this section:

(1) Child nutrition program

The term “child nutrition program” means—

- (A) the school lunch program established under this chapter;
- (B) the summer food service program for children established under section 1761 of this title;
- (C) the child and adult care food program established under section 1766 of this title;
- (D) the special milk program established under section 1772 of this title;
- (E) the school breakfast program established under section 1773 of this title; and
- (F) the special supplemental nutrition program for women, infants, and children authorized under section 1786 of this title.

(2) Contractor

The term “contractor” means a person that contracts with a State, an agency of a State, or a local agency to provide goods or services in relation to the participation of a local agency in a child nutrition program.

(3) Local agency

The term “local agency” means a school, school food authority, child care center, sponsoring organization, or other entity authorized to operate a child nutrition program at the local level.

(4) Nonprocurement debarment

The term “nonprocurement debarment” means an action to bar a person from programs and activities involving Federal financial and nonfinancial assistance, but not including Federal procurement programs and activities.

(5) Person

The term “person” means any individual, corporation, partnership, association, cooperative, or other legal entity, however organized.

(c) Assistance to identify and prevent fraud and anticompetitive activities

The Secretary shall—

- (1) in cooperation with any other appropriate individual, organization, or agency, provide advice, training, technical assistance, and guidance (which may include awareness training, training films, and troubleshooting advice) to representatives of States and local agencies regarding means of identifying and preventing fraud and anticompetitive activities relating to the provision of goods or services in conjunction with the participation of a local agency in a child nutrition program; and
- (2) provide information to, and fully cooperate with, the Attorney General and State attorneys general regarding investigations of fraud and anticompetitive activities relating to the provision of goods or services in conjunction with the participation of a local agency in a child nutrition program.

(d) Nonprocurement debarment

(1) In general

Except as provided in paragraph (3) and subsection (e), not later than 180 days after notification of the occurrence of a cause for debarment described in paragraph (2), the Secretary shall initiate nonprocurement debarment proceedings against the contractor who has committed the cause for debarment.

(2) Causes for debarment

Actions requiring initiation of nonprocurement debarment pursuant to paragraph (1) shall include a situation in which a contractor is found guilty in any criminal proceeding, or found liable in any civil or administrative proceeding, in connection with the supplying, providing, or selling of goods or services to any local agency in connection with a child nutrition program, of—

- (A) an anticompetitive activity, including bid-rigging, price-fixing, the allocation of customers between competitors, or other violation of Federal or State antitrust laws;

- (B) fraud, bribery, theft, forgery, or embezzlement;
- (C) knowingly receiving stolen property;
- (D) making a false claim or statement; or
- (E) any other obstruction of justice.

(3) Exception

If the Secretary determines that a decision on initiating nonprocurement debarment proceedings cannot be made within 180 days after notification of the occurrence of a cause for debarment described in paragraph (2) because of the need to further investigate matters relating to the possible debarment, the Secretary may have such additional time as the Secretary considers necessary to make a decision, but not to exceed an additional 180 days.

(4) Mandatory child nutrition program debarment periods

(A) In general

Subject to the other provisions of this paragraph and notwithstanding any other provision of law except subsection (e), if, after deciding to initiate nonprocurement debarment proceedings pursuant to paragraph (1), the Secretary decides to debar a contractor, the debarment shall be for a period of not less than 3 years.

(B) Previous debarment

If the contractor has been previously debarred pursuant to nonprocurement debarment proceedings initiated pursuant to paragraph (1), and the cause for debarment is described in paragraph (2) based on activities that occurred subsequent to the initial debarment, the debarment shall be for a period of not less than 5 years.

(C) Scope

At a minimum, a debarment under this subsection shall serve to bar the contractor for the specified period from contracting to provide goods or services in conjunction with the participation of a local agency in a child nutrition program.

(D) Reversal, reduction, or exception

Nothing in this section shall restrict the ability of the Secretary to—

- (i) reverse a debarment decision;
- (ii) reduce the period or scope of a debarment;
- (iii) grant an exception permitting a debarred contractor to participate in a particular contract to provide goods or services; or
- (iv) otherwise settle a debarment action at any time;

in conjunction with the participation of a local agency in a child nutrition program, if the Secretary determines there is good cause for the action, after taking into account factors set forth in paragraphs (1) through (6) of subsection (e).

(5) Information

On request, the Secretary shall present to the Committee on Education and Labor, and the Committee on Agriculture, of the House of Representatives and the Committee on Agri-

culture, Nutrition, and Forestry of the Senate information regarding the decisions required by this subsection.

(6) Relationship to other authorities

A debarment imposed under this section shall not reduce or diminish the authority of a Federal, State, or local government agency or court to penalize, imprison, fine, suspend, debar, or take other adverse action against a person in a civil, criminal, or administrative proceeding.

(7) Regulations

The Secretary shall issue such regulations as are necessary to carry out this subsection.

(e) Mandatory debarment

Notwithstanding any other provision of this section, the Secretary shall initiate nonprocurement debarment proceedings against the contractor (including any cooperative) who has committed the cause for debarment (as determined under subsection (d)(2)), unless the action—

- (1) is likely to have a significant adverse effect on competition or prices in the relevant market or nationally;
- (2) will interfere with the ability of a local agency to procure a needed product for a child nutrition program;
- (3) is unfair to a person, subsidiary corporation, affiliate, parent company, or local division of a corporation that is not involved in the improper activity that would otherwise result in the debarment;
- (4) is likely to have significant adverse economic impacts on the local economy in a manner that is unfair to innocent parties;
- (5) is not justified in light of the penalties already imposed on the contractor for violations relevant to the proposed debarment, including any suspension or debarment arising out of the same matter that is imposed by any Federal or State agency; or
- (6) is not in the public interest, or otherwise is not in the interests of justice, as determined by the Secretary.

(f) Exhaustion of administrative remedies

Prior to seeking judicial review in a court of competent jurisdiction, a contractor against whom a nonprocurement debarment proceeding has been initiated shall—

- (1) exhaust all administrative procedures prescribed by the Secretary; and
- (2) receive notice of the final determination of the Secretary.

(g) Information relating to prevention and control of anticompetitive activities

On request, the Secretary shall present to the Committee on Education and Labor, and the Committee on Agriculture, of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate information regarding the activities of the Secretary relating to anticompetitive activities, fraud, nonprocurement debarment, and any waiver granted by the Secretary under this section.

(June 4, 1946, ch. 281, §25, as added Pub. L. 103-448, title I, §122(a), Nov. 2, 1994, 108 Stat. 4727;

amended Pub. L. 105-336, title I, §107(j)(2)(C)(ii), Oct. 31, 1998, 112 Stat. 3153.)

AMENDMENTS

1998—Subsec. (b)(1)(D) to (G). Pub. L. 105-336 redesignated subpars. (E) to (G) as (D) to (F), respectively, and struck out former subpar. (D) which read as follows: “the homeless children nutrition program established under section 1766b of this title;”.

CHANGE OF NAME

Committee on Education and Labor of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-336 effective July 1, 1999, see section 107(j)(4) of Pub. L. 105-336, set out as a note under section 1761 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1994, see section 401 of Pub. L. 103-448, set out as an Effective Date of 1994 Amendment note under section 1755 of this title.

Pub. L. 103-448, title I, §122(b), Nov. 2, 1994, 108 Stat. 4730, provided that: “Section 25 of the [Richard B. Russell] National School Lunch Act [42 U.S.C. 1769f] (as added by subsection (a)) shall not apply to a cause for debarment as described in section 25(d)(2) of such Act that is based on an activity that took place prior to the effective date of section 25 of such Act [Oct. 1, 1994].”

NO REDUCTION IN AUTHORITY OF SECRETARY OF AGRICULTURE TO DEBAR OR SUSPEND A PERSON FROM FEDERAL FINANCIAL AND NONFINANCIAL ASSISTANCE AND BENEFITS

Pub. L. 103-448, title I, §122(c), Nov. 2, 1994, 108 Stat. 4731, provided that: “The authority of the Secretary of Agriculture that exists on the day before the date of enactment of this Act [Nov. 2, 1994] to debar or suspend a person from Federal financial and nonfinancial assistance and benefits under Federal programs and activities shall not be diminished or reduced by subsection (a) [enacting this section] or the amendment made by subsection (a).”

§ 1769g. Information clearinghouse

(a) In general

The Secretary shall enter into a contract with a nongovernmental organization described in subsection (b) to establish and maintain a clearinghouse to provide information to nongovernmental groups located throughout the United States that assist low-income individuals or communities regarding food assistance, self-help activities to aid individuals in becoming self-reliant, and other activities that empower low-income individuals or communities to improve the lives of low-income individuals and reduce reliance on Federal, State, or local governmental agencies for food or other assistance.

(b) Nongovernmental organization

The nongovernmental organization referred to in subsection (a) shall be selected on a competitive basis and shall—

- (1) be experienced in the gathering of firsthand information in all the States through on-site visits to grassroots organizations in each State that fight hunger and poverty or that assist individuals in becoming self-reliant;
- (2) be experienced in the establishment of a clearinghouse similar to the clearinghouse described in subsection (a);

(3) agree to contribute in-kind resources towards the establishment and maintenance of the clearinghouse and agree to provide clearinghouse information, free of charge, to the Secretary, States, counties, cities, antihunger groups, and grassroots organizations that assist individuals in becoming self-sufficient and self-reliant;

(4) be sponsored by an organization, or be an organization, that—

(A) has helped combat hunger for at least 10 years;

(B) is committed to reinvesting in the United States; and

(C) is knowledgeable regarding Federal nutrition programs;

(5) be experienced in communicating the purpose of the clearinghouse through the media, including the radio and print media, and be able to provide access to the clearinghouse information through computer or telecommunications technology, as well as through the mails; and

(6) be able to provide examples, advice, and guidance to States, counties, cities, communities, antihunger groups, and local organizations regarding means of assisting individuals and communities to reduce reliance on government programs, reduce hunger, improve nutrition, and otherwise assist low-income individuals and communities become more self-sufficient.

(c) Audits

The Secretary shall establish fair and reasonable auditing procedures regarding the expenditures of funds to carry out this section.

(d) Funding

Out of any moneys in the Treasury not otherwise appropriated, the Secretary of the Treasury shall pay to the Secretary to provide to the organization selected under this section, to establish and maintain the information clearinghouse, \$200,000 for each of fiscal years 1995 and 1996, \$150,000 for fiscal year 1997, \$100,000 for fiscal year 1998, \$166,000 for each of fiscal years 1999 through 2004, and \$250,000 for each of fiscal years 2010 through 2017. The Secretary shall be entitled to receive the funds and shall accept the funds, without further appropriation.

(June 4, 1946, ch. 281, §26, as added Pub. L. 103-448, title I, §123, Nov. 2, 1994, 108 Stat. 4731; amended Pub. L. 105-336, title I, §§103(c)(2), 112, Oct. 31, 1998, 112 Stat. 3147, 3157; Pub. L. 108-265, title I, §128, June 30, 2004, 118 Stat. 767; Pub. L. 111-80, title VII, §749(f), Oct. 21, 2009, 123 Stat. 2132; Pub. L. 111-296, title IV, §409, Dec. 13, 2010, 124 Stat. 3260; Pub. L. 114-113, div. A, title IV, Dec. 18, 2015, 129 Stat. 2266; Pub. L. 114-223, div. C, §148, as added Pub. L. 114-254, div. A, §101(3), Dec. 10, 2016, 130 Stat. 1006; Pub. L. 115-31, div. A, title IV, May 5, 2017, 131 Stat. 159.)

AMENDMENTS

2017—Subsec. (d). Pub. L. 115-31, which directed substitution of “2010 through 2017” for “2010 through 2016” in first sentence, could not be executed because of the prior identical amendment by Pub. L. 114-223, §148. See 2016 Amendment note below.

2016—Subsec. (d). Pub. L. 114-223, §148, as added by Pub. L. 114-254, §101(3), substituted “2010 through 2017” for “2010 through 2016” in first sentence.