

Subsec. (d)(1)(B), Pub. L. 106-568, §1003(g)(2), and Pub. L. 106-569, §503(f)(2), amended par. (1) identically, adding subpar. (B).

SUBCHAPTER IV—COMPLIANCE, AUDITS,
AND REPORTS

§ 4161. Remedies for noncompliance

(a) Actions by Secretary affecting grant amounts

(1) In general

Except as provided in subsection (b), if the Secretary finds after reasonable notice and opportunity for hearing that a recipient of assistance under this chapter has failed to comply substantially with any provision of this chapter, the Secretary shall—

(A) terminate payments under this chapter to the recipient;

(B) reduce payments under this chapter to the recipient by an amount equal to the amount of such payments that were not expended in accordance with this chapter;

(C) limit the availability of payments under this chapter to programs, projects, or activities not affected by such failure to comply; or

(D) in the case of noncompliance described in section 4162(b) of this title, provide a replacement tribally designated housing entity for the recipient, under section 4162 of this title.

(2) Substantial noncompliance

The failure of a recipient to comply with the requirements of section 4152(b)(1) of this title regarding the reporting of low-income dwelling units shall not, in itself, be considered to be substantial noncompliance for purposes of this subchapter.

(3) Continuance of actions

If the Secretary takes an action under subparagraph (A), (B), or (C) of paragraph (1), the Secretary shall continue such action until the Secretary determines that the failure to comply has ceased.

(4) Exception for certain actions

(A) In general

Notwithstanding any other provision of this subsection, if the Secretary makes a determination that the failure of a recipient of assistance under this chapter to comply substantially with any material provision (as that term is defined by the Secretary) of this chapter is resulting, and would continue to result, in a continuing expenditure of Federal funds in a manner that is not authorized by law, the Secretary may take an action described in paragraph (1)(C) before conducting a hearing.

(B) Procedural requirement

If the Secretary takes an action described in subparagraph (A), the Secretary shall—

(i) provide notice to the recipient at the time that the Secretary takes that action; and

(ii) conduct a hearing not later than 60 days after the date on which the Secretary provides notice under clause (i).

(C) Determination

Upon completion of a hearing under this paragraph, the Secretary shall make a deter-

mination regarding whether to continue taking the action that is the subject of the hearing, or take another action under this subsection.

(b) Noncompliance because of technical incapacity

(1) In general

If the Secretary makes a finding under subsection (a), but determines that the failure to comply substantially with the provisions of this chapter—

(A) is not a pattern or practice of activities constituting willful noncompliance, and

(B) is a result of the limited capability or capacity of the recipient,

the Secretary may provide technical assistance for the recipient (directly or indirectly) that is designed to increase the capability and capacity of the recipient to administer assistance provided under this chapter in compliance with the requirements under this chapter, if the recipient enters into a performance agreement with the Secretary that specifies the compliance objectives that the recipient will be required to achieve by the termination date of the performance agreement.

(2) Performance agreement

The period of a performance agreement described in paragraph (1) shall be for 1 year.

(3) Review

Upon the termination of a performance agreement entered into under paragraph (1), the Secretary shall review the performance of the recipient that is a party to the agreement.

(4) Effect of review

If, on the basis of a review under paragraph (3), the Secretary determines that the recipient—

(A) has made a good faith effort to meet the compliance objectives specified in the agreement, the Secretary may enter into an additional performance agreement for the period specified in paragraph (2); and

(B) has failed to make a good faith effort to meet applicable compliance objectives, the Secretary shall determine the recipient to have failed to comply substantially with this chapter, and the recipient shall be subject to an action under subsection (a).

(c) Referral for civil action

(1) Authority

In lieu of, or in addition to, any action authorized by subsection (a), if the Secretary has reason to believe that a recipient has failed to comply substantially with any provision of this chapter, the Secretary may refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted.

(2) Civil action

Upon such a referral, the Attorney General may bring a civil action in any United States district court having venue thereof for such relief as may be appropriate, including an action to recover the amount of the assistance furnished under this chapter that was not ex-

pending in accordance with it, or for mandatory or injunctive relief.

(d) Review

(1) In general

Any recipient who receives notice under subsection (a) of the termination, reduction, or limitation of payments under this chapter—

(A) may, not later than 60 days after receiving such notice, file with the United States Court of Appeals for the circuit in which such State is located, or in the United States Court of Appeals for the District of Columbia, a petition for review of the action of the Secretary; and

(B) upon the filing of any petition under subparagraph (A), shall forthwith transmit copies of the petition to the Secretary and the Attorney General of the United States, who shall represent the Secretary in the litigation.

(2) Procedure

The Secretary shall file in the court a record of the proceeding on which the Secretary based the action, as provided in section 2112 of title 28. No objection to the action of the Secretary shall be considered by the court unless such objection has been urged before the Secretary.

(3) Disposition

(A) Court proceedings

The court shall have jurisdiction to affirm or modify the action of the Secretary or to set it aside in whole or in part. The findings of fact by the Secretary, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may order additional evidence to be taken by the Secretary, and to be made part of the record.

(B) Secretary

The Secretary—

(i) may modify the findings of fact of the Secretary, or make new findings, by reason of the new evidence so taken and filed with the court; and

(ii) shall file—

(I) such modified or new findings, which findings with respect to questions of fact shall be conclusive if supported by substantial evidence on the record considered as a whole; and

(II) the recommendation of the Secretary, if any, for the modification or setting aside of the original action of the Secretary.

(4) Finality

Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment shall be final, except that such judgment shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

(Pub. L. 104-330, title IV, § 401, Oct. 26, 1996, 110 Stat. 4037; Pub. L. 106-568, title X, § 1003(h), (i), Dec. 27, 2000, 114 Stat. 2928, 2929; Pub. L. 106-569, title V, § 503(g), (h), Dec. 27, 2000, 114 Stat. 2964, 2965; Pub. L. 110-411, title IV, § 401, Oct. 14, 2008, 122 Stat. 4330.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 104-330, Oct. 26, 1996, 110 Stat. 4016, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

AMENDMENTS

2008—Subsec. (a)(2) to (4). Pub. L. 110-411 added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

2000—Subsec. (a). Pub. L. 106-568, § 1003(h), and Pub. L. 106-569, § 503(g), amended subsec. (a) identically, designating existing provisions as par. (1), inserting heading, redesignating former pars. (1) to (4) as subpars. (A) to (D), respectively, of par. (1), realigning margins, designating concluding provisions as par. (2), inserting heading, substituting “If the Secretary takes an action under subparagraph (A), (B), or (C) of paragraph (1)” for “If the Secretary takes an action under paragraph (1), (2), or (3)”, and adding par. (3).

Subsec. (b). Pub. L. 106-568, § 1003(i), and Pub. L. 106-569, § 503(h), amended subsec. (b) identically, designating existing provisions as par. (1), inserting heading, redesignating former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), realigning margins of concluding provisions, inserting “, if the recipient enters into a performance agreement with the Secretary that specifies the compliance objectives that the recipient will be required to achieve by the termination date of the performance agreement” before period at end of concluding provisions, and adding pars. (2) to (4).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as a note under section 4101 of this title.

§ 4162. Replacement of recipient

(a) Authority

As a condition of the Secretary making a grant under this chapter on behalf of an Indian tribe, the tribe shall agree that, notwithstanding any other provision of law, the Secretary may, only in the circumstances set forth in subsection (b), require that a replacement tribally designated housing entity serve as the recipient for the tribe, in accordance with subsection (c).

(b) Conditions of removal

The Secretary may require such replacement tribally designated housing entity for a tribe only upon a determination by the Secretary on the record after opportunity for a hearing that the recipient for the tribe has engaged in a pattern or practice of activities that constitutes substantial or willful noncompliance with the requirements under this chapter.

(c) Choice and term of replacement

If the Secretary requires that a replacement tribally designated housing entity serve as the recipient for a tribe (or tribes)—

(1) the replacement entity shall be an entity mutually agreed upon by the Secretary and the tribe (or tribes) for which the recipient was authorized to act, except that if no such entity is agreed upon before the expiration of