

CHAPTER 101—MAGNETIC FUSION ENERGY ENGINEERING

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§ 9301. Congressional findings and declaration of policy

(a) The Congress hereby finds that—

(1) the United States must formulate an energy policy designed to meet an impending worldwide shortage of many exhaustible, conventional energy resources in the next few decades;

(2) the energy policy of the United States must be designed to ensure that energy technologies using essentially inexhaustible resources are commercially available at a time prior to serious depletion of conventional resources;

(3) fusion energy is one of the few known energy sources which are essentially inexhaustible, and thus constitutes a long-term energy option;

(4) major progress in all aspects of magnetic fusion energy technology during the past decade instills confidence that power production from fusion energy systems is achievable;

(5) the United States must aggressively pursue research and development programs in magnetic fusion designed to foster advanced concepts and advanced technology and to develop efficient, reliable components and sub-systems;

(6) to ensure the timely commercialization of magnetic fusion energy systems, the United States must demonstrate at an early date the engineering feasibility of magnetic fusion energy systems;

(7) progress in magnetic fusion energy systems is currently limited by the funds made available rather than technical barriers;

(8) it is a proper role for the Federal Government to accelerate research, development, and demonstration programs in magnetic fusion energy technologies; and

(9) acceleration of the current magnetic fusion program will require a doubling within seven years of the present funding level without consideration of inflation and a 25 per centum increase in funding each of fiscal years 1982 and 1983.

(b) It is therefore declared to be the policy of the United States and the purpose of this chapter to accelerate the national effort in research, development, and demonstration activities related to magnetic fusion energy systems. Further, it is declared to be the policy of the United States and the purpose of this chapter that the objectives of such program shall be—

(1) to promote an orderly transition from the current research and development program through commercial development;

(2) to establish a national goal of demonstrating the engineering feasibility of magnetic fusion by the early 1990's;

(3) to achieve at the earliest practicable time, but not later than the year 1990, operation of a magnetic fusion engineering device based on the best available confinement concept;

(4) to establish as a national goal the operation of a magnetic fusion demonstration plant at the turn of the twenty-first century;

(5) to foster cooperation in magnetic fusion research and development among government, universities, industry, and national laboratories;

(6) to promote the broad participation of domestic industry in the national magnetic fusion program;

(7) to continue international cooperation in magnetic fusion research for the benefit of all nations;

(8) to promote greater public understanding of magnetic fusion; and

(9) to maintain the United States as the world leader in magnetic fusion.

(Pub. L. 96-386, § 2, Oct. 7, 1980, 94 Stat. 1539.)

SHORT TITLE

Section 1 of Pub. L. 96-386 provided: "That this Act [enacting this chapter] may be cited as the 'Magnetic Fusion Energy Engineering Act of 1980.'"

§ 9302. Definitions

For the purposes of this chapter—

(1) "fusion" means a process whereby two light nuclei, such as deuterium and tritium, collide at high velocity, forming a compound nucleus, which subsequently separates into constituents which are different from the original colliding nuclei, and which carry away the accompanying energy release;

(2) "magnetic fusion" means the use of magnetic fields to confine a very hot, fully ionized gas of light nuclei, so that the fusion process can occur;

(3) "energy system" means a facility designed to utilize energy released in the magnetic fusion process for the generation of electricity and the production of hydrogen or other fuels;

(4) "fusion engineering device" means a magnetic fusion facility which achieves at least a burning plasma and serves to test components for engineering purposes;

(5) "demonstration plant" means a prototype energy system which is of sufficient size to provide safety, environmental reliability, availability, and ready engineering extrapolation of all components to commercial size but which system need not be economically competitive with then alternative energy sources; and

(6) "Secretary" means Secretary of Energy.

(Pub. L. 96-386, § 3, Oct. 7, 1980, 94 Stat. 1540.)

§ 9303. Program activities**(a) Development in areas where lack of knowledge limits magnetic fusion energy systems**

The Secretary shall initiate activities or accelerate existing activities in research areas in which the lack of knowledge limits magnetic fusion energy systems in order to ensure the achievement of the purposes of this chapter.

(b) Research programs on plasma confinement, alternate confinement concepts, advanced fuels, and properties of materials likely to be used in construction of fusion engineering devices

(1) The Secretary shall maintain an aggressive plasma confinement research program on the current lead concept to provide a full measure of support for the design, construction, and operation of the fusion engineering devices.

(2) The Secretary shall maintain a broadly based research program on alternate confinement concepts and on advanced fuels at a sufficient level of funding to achieve optimal design of each successive magnetic fusion facility using the then best available confinement and fuel concept.

(3) The Secretary shall ensure that research on properties of materials likely to be required for the construction of fusion engineering devices is adequate to provide timely information for the design of such devices.

(c) Fusion engineering device designs

(1) The Secretary shall initiate design activities on a fusion engineering device using the

best available confinement concept to ensure operation of such a device at the earliest practicable time, but not later than the year 1990.

(2) The Secretary shall develop and test the adequacy of the engineering design of components to be utilized in the fusion engineering device.

(d) Operation of demonstration plant at turn of twenty-first century

The Secretary shall initiate at the earliest practical time each activity which he deems necessary to achieve the national goal for operation of a demonstration plant at the turn of the twenty-first century.

(e) Assessment of factors in determining commercial introduction of magnetic fusion energy systems

The Secretary shall continue efforts to assess factors which will determine the commercial introduction of magnetic fusion energy systems including, but not limited to—

(1) projected costs relative to other alternative energy sources;

(2) projected growth rates in energy demand;

(3) safety-related design limitations;

(4) environmental impacts; and

(5) limitations on the availability of strategic elements, such as helium, lithium, and special metals.

(Pub. L. 96-386, § 4, Oct. 7, 1980, 94 Stat. 1540.)

§ 9304. Comprehensive program management plan; submittal to Congressional committees

(a) The Secretary shall prepare a comprehensive program management plan for the conduct of the research, development, and demonstration activities under this chapter. Such plan shall include at a minimum—

(1) a presentation of the program strategy which will be used to achieve the purposes of this chapter;

(2) a five-year program implementation schedule, including identification of detailed milestone goals, with associated budget and program resources requirements;

(3) risk assessments;

(4) supporting research and development needed to solve problems which may inhibit or limit development of magnetic fusion energy systems; and

(5) an analysis of institutional, environmental, and economic considerations which are limiting the national magnetic fusion program.

(b) The Secretary shall transmit the comprehensive program management plan to the Committee on Science and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate not later than January 1, 1982.

(Pub. L. 96-386, § 5, Oct. 7, 1980, 94 Stat. 1541.)

CHANGE OF NAME

Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundredth Congress, Jan. 6, 1987. Committee on Science, Space, and Technology of House of Representatives treated as referring to

Committee on Science of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

§ 9305. Magnetic fusion engineering center

(a) Development plan

The Secretary shall develop a plan for the creation of a national magnetic fusion engineering center for the purpose of accelerating fusion technology development via the concentration and coordination of major magnetic fusion engineering devices and associated activities at such a national center.

(b) Factors considered in formulation of development plan

In developing the plan, the Secretary shall include relevant factors including, but not limited to—

- (1) means of saving cost and time through the establishment of the national center relative to the cost and schedule currently projected for the program;
- (2) means of providing common facilities to be shared by many magnetic fusion concepts;
- (3) assessment of the environmental and safety-related aspects of the national center;
- (4) provisions for international cooperation in magnetic fusion activities at the national center;
- (5) provision of access to facilities for the broader technical involvement of domestic industry and universities in the magnetic fusion energy program;
- (6) siting criteria for the national center including a list of potential sites;
- (7) the advisability of establishing such a center considering all factors, including the alternative means and associated costs of pursuing such technology; and
- (8) changes in the management structure of the magnetic fusion program to allow more effective direction of activities related to the national center.

(c) Report to Congressional committees

The Secretary shall submit not later than July 1, 1981, a report to the House Committee on Science and Technology and the Senate Committee on Energy and Natural Resources characterizing the plan and setting forth the steps necessary for implementation of the plan, including any steps already implemented.

(Pub. L. 96-386, § 6, Oct. 7, 1980, 94 Stat. 1541.)

CHANGE OF NAME

Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundredth Congress, Jan. 6, 1987. Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

§ 9306. Repealed. Pub. L. 104-46, title V, § 509, Nov. 13, 1995, 109 Stat. 421

Section, Pub. L. 96-386, § 7, Oct. 7, 1980, 94 Stat. 1542, related to establishment, membership, duties, etc., of technical panel on magnetic fusion and required panel to submit to Energy Research Advisory Board on at

least a triennial basis a written report of its findings and recommendations with regard to magnetic fusion program.

§ 9307. Program advisory committees

The Secretary may direct the director of each laboratory or installation at which a major magnetic fusion facility is operated for, or funded primarily by, the Federal Government to establish, for the sole purpose of providing advice to such director, a program advisory committee composed of persons with expertise in magnetic fusion from such domestic industry, universities, government laboratories, and other scientific and technical organizations as such director deems appropriate.

(Pub. L. 96-386, § 8, Oct. 7, 1980, 94 Stat. 1543.)

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 9308. International cooperation; examination of impact on national magnetic fusion program; exploration of prospects for joint funding in construction of fusion engineering device; report to Congressional committees on results of examination and exploration

(a)(1) The Secretary in consultation with the Secretary of State shall actively seek to enter into or to strengthen existing international cooperative agreements in magnetic fusion research and development activities of mutual benefit to all parties.

(2) The Secretary shall seek to achieve equitable exchange of information, data, scientific personnel, and other considerations in the conduct of cooperative efforts with technologically advanced nations.

(b)(1) The Secretary shall examine the potential impacts on the national magnetic fusion program of United States participation in an international effort to construct fusion engineering devices.

(2) The Secretary shall explore, to the extent feasible, the prospects for joint financial participation by other nations with the United States in the construction of a fusion engineering device.

(3) Within two years of October 7, 1980, the Secretary shall transmit to the House Committee on Science and Technology and the Senate Committee on Energy and Natural Resources the results of such examinations and explorations with his recommendations for construction of a national or international fusion engineering device: *Provided, however*, That such examinations and explorations shall not have the effect of delaying design activities related to a national fusion engineering device.

(Pub. L. 96-386, § 9, Oct. 7, 1980, 94 Stat. 1543.)

CHANGE OF NAME

Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundredth Congress, Jan. 6, 1987. Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

§ 9309. Technical manpower requirements; report to President and Congress

(a) The Secretary shall assess the adequacy of the projected United States supply of manpower in the engineering and scientific disciplines required to achieve the purposes of this chapter taking cognizance of the other demands likely to be placed on such manpower supply.

(b) The Secretary shall within one year of October 7, 1980, submit a report to the President and to the Congress setting forth his assessment along with his recommendations regarding the need for increased support for education in such engineering and scientific disciplines.

(Pub. L. 96-386, § 10, Oct. 7, 1980, 94 Stat. 1543.)

§ 9310. Dissemination of information

(a) The Secretary shall take all necessary steps to assure that technical information relevant to the status and progress of the national magnetic fusion program is made readily available to interested persons in domestic industry and universities in the United States: *Provided, however,* That upon a showing to the Secretary by any person that any information or portion thereof provided to the Secretary directly or indirectly from such person would, if made public, divulge (1) trade secrets or (2) other proprietary information of such person, the Secretary shall not disclose such information and disclosure thereof shall be punishable under section 1905 of title 18.

(b) The Secretary shall maintain an aggressive program in the United States for the provision of public information and educational materials to promote widespread knowledge of magnetic fusion among educational, community, business, environmental, labor, and governmental entities and the public at large.

(Pub. L. 96-386, § 11, Oct. 7, 1980, 94 Stat. 1544.)

§ 9311. Repealed. Pub. L. 104-66, title I, § 1051(n), Dec. 21, 1995, 109 Stat. 717

Section, Pub. L. 96-386, § 12, Oct. 7, 1980, 94 Stat. 1544, directed Secretary of Energy to submit annual report of activities pursuant to this chapter as a separate part of the annual report submitted pursuant to section 7321 of this title.

§ 9312. Authorization of appropriations; contract authority

(a) There is hereby authorized to be appropriated to the Secretary, for the fiscal year ending September 30, 1981, such sums as are provided in the annual authorization Act pursuant to section 7270 of this title.

(b) In carrying out the provisions of this chapter, the Secretary is authorized to enter into contracts only to such extent or in such

amounts as may be provided in advance in appropriations Acts.

(Pub. L. 96-386, § 13, Oct. 7, 1980, 94 Stat. 1544.)

CHAPTER 102—MENTAL HEALTH SYSTEMS

Sec.

9401. Congressional statement of findings.

SUBCHAPTER I—GENERAL PROVISIONS

9411. Repealed.

9412. Definitions.

9421 to 9423. Repealed.

SUBCHAPTER II—GRANT PROGRAMS

9431 to 9438. Repealed.

SUBCHAPTER III—GENERAL PROVISIONS RESPECTING GRANT PROGRAMS

PART A—STATE MENTAL HEALTH SERVICE PROGRAMS

9451, 9452. Repealed.

PART B—APPLICATIONS AND RELATED PROVISIONS

9461 to 9465. Repealed.

PART C—PERFORMANCE

9471 to 9473. Repealed.

PART D—ENFORCEMENT

9481. Repealed.

PART E—MISCELLANEOUS

9491 to 9493. Repealed.

SUBCHAPTER IV—MENTAL HEALTH RIGHTS AND ADVOCACY

9501. Bill of Rights.

9502. Repealed.

SUBCHAPTER V—SEX OFFENSE PREVENTION AND CONTROL

9511. Grants for sex offense prevention and control.

(a) Authority of National Center for the Prevention and Control of Sex Offenses; functions.

(b) Advisory committee; functions, membership, etc.

(c) Submission and approval of application; form, manner and contents.

(d) Authorization of appropriations.

(e) "Sex offense" defined.

9512. Repealed.

SUBCHAPTER VI—MISCELLANEOUS

9521. Repealed.

9522. Report on shelter and basic living needs of chronically mentally ill individuals.

(a) Submission to Congressional committees by Secretaries of Health and Human Services and Housing and Urban Development.

(b) Contents.

(c) Submission date.

9523. Repealed.

§ 9401. Congressional statement of findings

The Congress finds—

(1) despite the significant progress that has been made in making community mental health services available and in improving residential mental health facilities since the original community mental health centers legislation was enacted in 1963, unserved and underserved populations remain and there are certain groups in the population, such as chronically mentally ill individuals, children

and youth, elderly individuals, racial and ethnic minorities, women, poor persons, and persons in rural areas, which often lack access to adequate private and public mental health services and support services;

(2) the process of transferring or diverting chronically mentally ill individuals from unwarranted or inappropriate institutionalized settings to their home communities has frequently not been accompanied by a process of providing those individuals with the mental health and support services they need in community-based settings;

(3) the shift in emphasis from institutional care to community-based care has not always been accompanied by a process of affording training, retraining, and job placement for employees affected by institutional closure and conversion;

(4) the delivery of mental health and support services is typically uncoordinated within and among local, State, and Federal entities;

(5) mentally ill persons are often inadequately served by (A) programs of the Department of Health and Human Services such as medicare, medicaid, supplemental security income, and social services, and (B) programs of the Department of Housing and Urban Development, the Department of Labor, and other Federal agencies;

(6) health care systems often lack general health care personnel with adequate mental health care training and often lack mental health care personnel and consequently many individuals with some level of mental disorder do not receive appropriate mental health care;

(7) present knowledge of methods to prevent mental illness through discovery and elimination of its causes and through early detection and treatment is too limited;

(8) a comprehensive and coordinated array of appropriate private and public mental health and support services for all people in need within specific geographic areas, based upon a cooperative local-State-Federal partnership, remains the most effective and humane way to provide a majority of mentally ill individuals with mental health care and needed support; and

(9) because of the rising demand for mental health services and the wide disparity in the distribution of psychiatrists, clinical psychologists, social workers, and psychiatric nurses, there is a shortage in the medical specialty of psychiatry and there are also shortages among the other health personnel who provide mental health services.

(Pub. L. 96-398, § 2, Oct. 7, 1980, 94 Stat. 1565.)

SHORT TITLE

Section 1 of Pub. L. 96-398 provided that: "This Act [enacting this chapter, amending sections 210, 225a, 229b, 242a, 246, 289k-1, 300l-2, 300m-2, 1396b, 2689a to 2689c, 2689e, 2689g, and 2689h of this title, repealing section 2689q of this title, and enacting provisions set out as notes under section 242a, 246, 289k-1, and 2689b of this title] may be cited as the 'Mental Health Systems Act'."

SUBCHAPTER I—GENERAL PROVISIONS

AMENDMENTS

1981—Pub. L. 97-35, title IX, § 902(e)(1), (f)(1)(A), Aug. 13, 1981, 95 Stat. 560, struck out heading "Part A—Defi-

nitions" before section 9411 and heading "Part B—State Administrative Responsibilities" before section 9421.

§ 9411. Repealed. Pub. L. 97-35, title IX, § 902(e)(1), Aug. 13, 1981, 95 Stat. 560

Section, Pub. L. 96-398, title I, § 101, Oct. 7, 1980, 94 Stat. 1566, set forth general provisions respecting community mental health centers.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 902(h) of Pub. L. 97-35, set out as an Effective Date of 1981 Amendment note under section 238l of this title.

§ 9412. Definitions

For purposes of this chapter:

(1) The term "Secretary" means the Secretary of Health and Human Services.

(2) The term "State" includes (in addition to the fifty States) the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.

(3) The term "nonprofit", as applied to any entity, means an entity which is owned and operated by one or more corporations or associations no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or person.

(Pub. L. 96-398, title I, § 102, Oct. 7, 1980, 94 Stat. 1569; Pub. L. 97-35, title IX, § 902(f)(1)(B), (C), Aug. 13, 1981, 95 Stat. 560.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 96-398, Oct. 7, 1980, 94 Stat. 1564, as amended, known as the Mental Health Systems Act, which enacted this chapter, amended sections 210, 225a, 229b, 242a, 246, 289k-1, 300l-2, 300m-2, 1396b, 2689a to 2689c, 2689e, 2689g, and 2689h of this title, repealed section 2689q of this title, and enacted provisions set out as notes under sections 242a, 246, 289k-1, and 2689b of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9401 of this title and Tables.

AMENDMENTS

1981—Pub. L. 97-35 redesignated former par. (5) as (3). Former pars. (3), (4), (6), and (7), which defined "State mental health authority", "mental health service area", "priority population group", and "Governor", respectively, were struck out.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Oct. 1, 1981, see section 902(h) of Pub. L. 97-35, set out as a note under section 238l of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§§ 9421 to 9423. Repealed. Pub. L. 97-35, title IX, § 902(e)(1), Aug. 13, 1981, 95 Stat. 560

Section 9421, Pub. L. 96-398, title I, § 105, Oct. 7, 1980, 94 Stat. 1570, related to designation of State agency for mental health programs.

Section 9422, Pub. L. 96-398, title I, § 106, Oct. 7, 1980, 94 Stat. 1570, related to establishment, etc., of State mental health service areas.

Section 9423, Pub. L. 96-398, title I, §107(a)-(c), Oct. 7, 1980, 94 Stat. 1570, related to allotments to improve State administration of mental health programs.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 902(h) of Pub. L. 97-35, set out as an Effective Date of 1981 Amendment note under section 238f of this title.

SUBCHAPTER II—GRANT PROGRAMS

§§ 9431 to 9438. Repealed. Pub. L. 97-35, title IX, § 902(e)(1), Aug. 13, 1981, 95 Stat. 560

Section 9431, Pub. L. 96-398, title II, §201, Oct. 7, 1980, 94 Stat. 1571, set forth authority, etc., for grants for community mental health centers.

Section 9432, Pub. L. 96-398, title II, §202, Oct. 7, 1980, 94 Stat. 1573, set forth authority, etc., for grants for services for chronically, mentally ill individuals.

Section 9433, Pub. L. 96-398, title II, §203, Oct. 7, 1980, 94 Stat. 1575, set forth authority, etc., for grants for services for severely, mentally disturbed children and adults.

Section 9434, Pub. L. 96-398, title II, §204, Oct. 7, 1980, 94 Stat. 1577, set forth authority, etc., for grants for mental health services for elderly individuals and other priority populations.

Section 9435, Pub. L. 96-398, title II, §205, Oct. 7, 1980, 94 Stat. 1581, set forth authority, etc., for grants for non-revenue producing services.

Section 9436, Pub. L. 96-398, title II, §206, Oct. 7, 1980, 94 Stat. 1582, set forth authority, etc., for grants for mental health services in health care centers.

Section 9437, Pub. L. 96-398, title II, §207, Oct. 7, 1980, 94 Stat. 1583, set forth authority, etc., for grants and contracts for innovative projects.

Section 9438, Pub. L. 96-398, title II, §208, Oct. 7, 1980, 94 Stat. 1584, set forth authority, etc., for grants for prevention of mental illness and promotion of mental health.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 902(h) of Pub. L. 97-35, set out as an Effective Date of 1981 Amendment note under section 238f of this title.

SUBCHAPTER III—GENERAL PROVISIONS RESPECTING GRANT PROGRAMS

PART A—STATE MENTAL HEALTH SERVICE PROGRAMS

§§ 9451, 9452. Repealed. Pub. L. 97-35, title IX, § 902(e)(1), Aug. 13, 1981, 95 Stat. 560

Section 9451, Pub. L. 96-398, title III, §301, Oct. 7, 1980, 94 Stat. 1585, set forth requirements for State mental health services programs.

Section 9452, Pub. L. 96-398, title III, §302, Oct. 7, 1980, 94 Stat. 1585, related to contents of programs with respect to administrative and service parts.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 902(h) of Pub. L. 97-35, set out as an Effective Date of 1981 Amendment note under section 238f of this title.

PART B—APPLICATIONS AND RELATED PROVISIONS

§§ 9461 to 9465. Repealed. Pub. L. 97-35, title IX, § 902(e)(1), Aug. 13, 1981, 95 Stat. 560

Section 9461, Pub. L. 96-398, title III, §305, Oct. 7, 1980, 94 Stat. 1588, set forth provisions respecting State administration of programs, and authorized agreements, etc., for implementation.

Section 9462, Pub. L. 96-398, title III, §306, Oct. 7, 1980, 94 Stat. 1590, related to processing of applications by State mental health authorities.

Section 9463, Pub. L. 96-398, title III, §307, Oct. 7, 1980, 94 Stat. 1592, set forth provisions relating to requirements for applications.

Section 9464, Pub. L. 96-398, title III, §308, Oct. 7, 1980, 94 Stat. 1594, related to Indian tribes and organizations.

Section 9465, Pub. L. 96-398, title III, §309, Oct. 7, 1980, 94 Stat. 1595, related to procedures for consideration of grant or contract application.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 902(h) of Pub. L. 97-35, set out as an Effective Date of 1981 Amendment note under section 238f of this title.

PART C—PERFORMANCE

§§ 9471 to 9473. Repealed. Pub. L. 97-35, title IX, § 902(e)(1), Aug. 13, 1981, 95 Stat. 560

Section 9471, Pub. L. 96-398, title III, §315, Oct. 7, 1980, 94 Stat. 1595, related to performance contracts.

Section 9472, Pub. L. 96-398, title III, §316, Oct. 7, 1980, 94 Stat. 1595, related to performance standards.

Section 9473, Pub. L. 96-398, title III, §317, Oct. 7, 1980, 94 Stat. 1595, related to evaluation and monitoring of projects and activities.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 902(h) of Pub. L. 97-35, set out as an Effective Date of 1981 Amendment note under section 238f of this title.

PART D—ENFORCEMENT

§ 9481. Repealed. Pub. L. 97-35, title IX, § 902(e)(1), Aug. 13, 1981, 95 Stat. 560

Section, Pub. L. 96-398, title III, §321, Oct. 7, 1980, 94 Stat. 1596, set forth enforcement procedures.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 902(h) of Pub. L. 97-35, set out as an Effective Date of 1981 Amendment note under section 238f of this title.

PART E—MISCELLANEOUS

§§ 9491 to 9493. Repealed. Pub. L. 97-35, title IX, § 902(e)(1), Aug. 13, 1981, 95 Stat. 560

Section 9491, Pub. L. 96-398, title III, §326, Oct. 7, 1980, 94 Stat. 1597, related to provision of technical assistance.

Section 9492, Pub. L. 96-398, title III, §327, Oct. 7, 1980, 94 Stat. 1597, related to indirect provision of services.

Section 9493, Pub. L. 96-398, title III, §328, Oct. 7, 1980, 94 Stat. 1597, related to cooperative agreements.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 902(h) of Pub. L. 97-35, set out as an Effective Date of 1981 Amendment note under section 238f of this title.

SUBCHAPTER IV—MENTAL HEALTH RIGHTS AND ADVOCACY

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 10841 of this title.

§ 9501. Bill of Rights

It is the sense of the Congress that each State should review and revise, if necessary, its laws to ensure that mental health patients receive the protection and services they require; and in making such review and revision should take into account the recommendations of the Presi-

dent's Commission on Mental Health and the following:

(1) A person admitted to a program or facility for the purpose of receiving mental health services should be accorded the following:

(A) The right to appropriate treatment and related services in a setting and under conditions that—

(i) are the most supportive of such person's personal liberty; and

(ii) restrict such liberty only to the extent necessary consistent with such person's treatment needs, applicable requirements of law, and applicable judicial orders.

(B) The right to an individualized, written, treatment or service plan (such plan to be developed promptly after admission of such person), the right to treatment based on such plan, the right to periodic review and reassessment of treatment and related service needs, and the right to appropriate revision of such plan, including any revision necessary to provide a description of mental health services that may be needed after such person is discharged from such program or facility.

(C) The right to ongoing participation, in a manner appropriate to such person's capabilities, in the planning of mental health services to be provided such person (including the right to participate in the development and periodic revision of the plan described in subparagraph (B)), and, in connection with such participation, the right to be provided with a reasonable explanation, in terms and language appropriate to such person's condition and ability to understand, of—

(i) such person's general mental condition and, if such program or facility has provided a physical examination, such person's general physical condition;

(ii) the objectives of treatment;

(iii) the nature and significant possible adverse effects of recommended treatments;

(iv) the reasons why a particular treatment is considered appropriate;

(v) the reasons why access to certain visitors may not be appropriate; and

(vi) any appropriate and available alternative treatments, services, and types of providers of mental health services.

(D) The right not to receive a mode or course of treatment, established pursuant to the treatment plan, in the absence of such person's informed, voluntary, written consent to such mode or course of treatment, except treatment—

(i) during an emergency situation if such treatment is pursuant to or documented contemporaneously by the written order of a responsible mental health professional; or

(ii) as permitted under applicable law in the case of a person committed by a court to a treatment program or facility.

(E) The right not to participate in experimentation in the absence of such person's

informed, voluntary, written consent, the right to appropriate protections in connection with such participation, including the right to a reasonable explanation of the procedure to be followed, the benefits to be expected, the relative advantages of alternative treatments, and the potential discomforts and risks, and the right and opportunity to revoke such consent.

(F) The right to freedom from restraint or seclusion, other than as a mode or course of treatment or restraint or seclusion during an emergency situation if such restraint or seclusion is pursuant to or documented contemporaneously by the written order of a responsible mental health professional.

(G) The right to a humane treatment environment that affords reasonable protection from harm and appropriate privacy to such person with regard to personal needs.

(H) The right to confidentiality of such person's records.

(I) The right to access, upon request, to such person's mental health care records, except such person may be refused access to—

(i) information in such records provided by a third party under assurance that such information shall remain confidential; and

(ii) specific material in such records if the health professional responsible for the mental health services concerned has made a determination in writing that such access would be detrimental to such person's health, except that such material may be made available to a similarly licensed health professional selected by such person and such health professional may, in the exercise of professional judgment, provide such person with access to any or all parts of such material or otherwise disclose the information contained in such material to such person.

(J) The right, in the case of a person admitted on a residential or inpatient care basis, to converse with others privately, to have convenient and reasonable access to the telephone and mails, and to see visitors during regularly scheduled hours, except that, if a mental health professional treating such person determines that denial of access to a particular visitor is necessary for treatment purposes, such mental health professional may, for a specific, limited, and reasonable period of time, deny such access if such mental health professional has ordered such denial in writing and such order has been incorporated in the treatment plan for such person. An order denying such access should include the reasons for such denial.

(K) The right to be informed promptly at the time of admission and periodically thereafter, in language and terms appropriate to such person's condition and ability to understand, of the rights described in this section.

(L) The right to assert grievances with respect to infringement of the rights described in this section, including the right to have such grievances considered in a fair, timely, and impartial grievance procedure provided for or by the program or facility.

(M) Notwithstanding subparagraph (J), the right of access to (including the opportunities and facilities for private communication with) any available—

- (i) rights protection service within the program or facility;
- (ii) rights protection service within the State mental health system designed to be available to such person; and
- (iii) qualified advocate;

for the purpose of receiving assistance to understand, exercise, and protect the rights described in this section and in other provisions of law.

(N) The right to exercise the rights described in this section without reprisal, including reprisal in the form of denial of any appropriate, available treatment.

(O) The right to referral as appropriate to other providers of mental health services upon discharge.

(2)(A) The rights described in this section should be in addition to and not in derogation of any other statutory or constitutional rights.

(B) The rights to confidentiality of and access to records as provided in subparagraphs (H) and (I) of paragraph (1) should remain applicable to records pertaining to a person after such person's discharge from a program or facility.

(3)(A) No otherwise eligible person should be denied admission to a program or facility for mental health services as a reprisal for the exercise of the rights described in this section.

(B) Nothing in this section should—

- (i) obligate an individual mental health or health professional to administer treatment contrary to such professional's clinical judgment;
- (ii) prevent any program or facility from discharging any person for whom the provision of appropriate treatment, consistent with the clinical judgment of the mental health professional primarily responsible for such person's treatment, is or has become impossible as a result of such person's refusal to consent to such treatment;
- (iii) require a program or facility to admit any person who, while admitted on prior occasions to such program or facility, has repeatedly frustrated the purposes of such admissions by withholding consent to proposed treatment; or
- (iv) obligate a program or facility to provide treatment services to any person who is admitted to such program or facility solely for diagnostic or evaluative purposes.

(C) In order to assist a person admitted to a program or facility in the exercise or protection of such person's rights, such person's attorney or legal representatives should have reasonable access to—

- (i) such person;
- (ii) the areas of the program or facility where such person has received treatment, resided, or had access; and
- (iii) pursuant to the written authorization of such person, the records and information pertaining to such person's diagnosis, treat-

ment, and related services described in paragraph (1)(I).

(D) Each program and facility should post a notice listing and describing, in language and terms appropriate to the ability of the persons to whom such notice is addressed to understand, the rights described in this section of all persons admitted to such program or facility. Each such notice should conform to the format and content for such notices, and should be posted in all appropriate locations.

(4)(A) In the case of a person adjudicated by a court of competent jurisdiction as being incompetent to exercise the right to consent to treatment or experimentation described in subparagraph (D) or (E) of paragraph (1), or the right to confidentiality of or access to records described in subparagraph (H) or (I) of such paragraph, or to provide authorization as described in paragraph (3)(C)(iii), such right may be exercised or such authorization may be provided by the individual appointed by such court as such person's guardian or representative for the purpose of exercising such right or such authorization.

(B) In the case of a person who lacks capacity to exercise the right to consent to treatment or experimentation under subparagraph (D) or (E) of paragraph (1), or the right to confidentiality of or access to records described in subparagraph (H) or (I) of such paragraph, or to provide authorization as described in paragraph (3)(C)(iii), because such person has not attained an age considered sufficiently advanced under State law to permit the exercise of such right or such authorization to be legally binding, such right may be exercised or such authorization may be provided on behalf of such person by a parent or legal guardian of such person.

(C) Notwithstanding subparagraphs (A) and (B), in the case of a person admitted to a program or facility for the purpose of receiving mental health services, no individual employed by or receiving any remuneration from such program or facility should act as such person's guardian or representative.

(Pub. L. 96-398, title V, § 501, Oct. 7, 1980, 94 Stat. 1598.)

§ 9502. Repealed. Pub. L. 97-35, title IX, § 902(e)(1), Aug. 13, 1981, 95 Stat. 560

Section, Pub. L. 96-398, title V, § 502, Oct. 7, 1980, 94 Stat. 1601, related to grants for protection and advocacy programs.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 902(h) of Pub. L. 97-35, set out as an Effective Date of 1981 Amendment note under section 238f of this title.

SUBCHAPTER V—SEX OFFENSE PREVENTION AND CONTROL

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 238d of this title.

§ 9511. Grants for sex offense prevention and control

(a) Authority of National Center for the Prevention and Control of Sex Offenses; functions

The Secretary, acting through the National Center for the Prevention and Control of Sex Offenses (hereafter in this section referred to as the "Center"), may, directly or by grant, carry out the following:

(1) A continuing study of sex offenses, including a study and investigation of—

(A) the effectiveness of existing Federal, State, and local laws dealing with sex offenses;

(B) the relationship, if any, between traditional legal and social attitudes toward sexual roles, sex offenses, and the formulation of laws dealing with rape;

(C) the treatment of the victims of sex offenses by law enforcement agencies, hospitals or other medical institutions, prosecutors, and the courts;

(D) the causes of sex offenses, identifying to the degree possible—

(i) social conditions which encourage sexual attacks, and

(ii) the motives of offenders, and

(E) the impact of a sex offense on the victim and family of the victim;

(F) sexual assaults in correctional institutions;

(G) the estimated actual incidence of forcible sex offenses as compared to the reported incidence of forcible sex offenses and the reasons for any difference between the two; and

(H) the effectiveness of existing private and local and State government educational, counseling, and other programs designed to prevent and control sex offenses.

(2) The compilation, analysis, and publication of summaries of the continuing study conducted under paragraph (1) and the research and demonstration projects conducted under paragraph (5). The Secretary shall submit not later than March 30, 1983, to the Congress a summary of such study and projects together with a review of their effectiveness and recommendations where appropriate.

(3) The development and maintenance of an information clearinghouse with regard to—

(A) the prevention and control of sex offenses;

(B) the treatment and counseling of the victims of sex offenses and their families; and

(C) the rehabilitation of offenders.

(4) The compilation and publication of training materials for personnel who are engaged or intend to engage in programs designed to prevent and control sex offense.

(5) Assistance to qualified public and non-profit private entities in conducting research and demonstration projects concerning the prevention and control of sex offense, including projects (A) for the planning, development, implementation, and evaluation of alternative methods used in the prevention and control of sex offense, the treatment and counseling of

the victims of sex offense and their families, and the rehabilitation of offenders; (B) for the application of such alternative methods; and (C) for the promotion of community awareness of the specific locations in which, and the specific social and other conditions under which sexual attacks are most likely to occur.

(b) Advisory committee; functions, membership, etc.

The Secretary shall appoint an advisory committee to advise, consult with, and make recommendations to the Secretary on the implementation of subsection (a) of this section. The recommendations of the committee shall be submitted directly to the Secretary without review or revision by any person without the consent of the committee. The Secretary shall appoint to such committee persons who are particularly qualified to assist in carrying out the functions of the committee. A majority of the members of the committee shall be women. Members of the advisory committee shall receive compensation at rates, not to exceed the daily equivalent of the annual rate in effect for grade GS-18 of the General Schedule, for each day (including traveltime) they are engaged in the performance of their duties as members of the advisory committee and, while so serving away from their homes or regular places of business, each member shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as authorized by section 5703 of title 5 for persons in Government service employed intermittently.

(c) Submission and approval of application; form, manner and contents

No grant may be made under subsection (a) of this section unless an application therefor is submitted to and approved by the Secretary. The application shall be submitted in such form and manner and contain such information as the Secretary may prescribe.

(d) Authorization of appropriations

For the purpose of carrying out subsection (a) of this section, there are authorized to be appropriated \$6,000,000 for the fiscal year ending September 30, 1981, \$1,500,000 for the fiscal year ending September 30, 1982, \$1,500,000 for the fiscal year ending September 30, 1983.

(e) "Sex offense" defined

For purposes of subsection (a) of this section, the term "sex offense" includes statutory and attempted rape and any other criminal sexual assault (whether homosexual or heterosexual) which involves force or the threat of force.

(Pub. L. 96-398, title VI, § 601(a)-(e), Oct. 7, 1980, 94 Stat. 1602, 1603; Pub. L. 97-35, title IX, § 902(f)(20), Aug. 13, 1981, 95 Stat. 560; Pub. L. 99-646, § 87(d)(3)-(7), Nov. 10, 1986, 100 Stat. 3624; Pub. L. 99-654, § 3(b)(3)-(7), Nov. 14, 1986, 100 Stat. 3663, 3664.)

AMENDMENTS

1986—Pub. L. 99-646, § 87(d)(3), and Pub. L. 99-654, § 3(b)(3), amended section catchline identically, substituting "sex offense" for "rape".

Subsec. (a). Pub. L. 99-646, § 87(d)(4)-(6), and Pub. L. 99-654, § 3(b)(4)-(6), in amending subsec. (a) identically, in introductory provision substituted "Sex Offenses" for "Rape", in par. (1) and in subpars. (A), (C), (D), (G),

and (H) of par. (1) substituted “sex offenses” for “rape” wherever appearing, in par. (1)(B) substituted “sex offenses” for “the act of rape”, in par. (1)(E) substituted “a sex offense” for “rape”, and in par. (3)(A) and (B) substituted “sex offenses” for “rape”.

Subsec. (e). Pub. L. 99-646, §87(d)(7), and Pub. L. 99-654, §3(b)(7), amended subsec. (e) identically, substituting “the term ‘sex offense’” for “the term ‘rape’”.

1981—Subsec. (a). Pub. L. 97-35 in par. (5) struck out “community mental health centers and other” after “Assistance to”, and struck out par. (6) which related to provision of consultation and education services.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendments by Pub. L. 99-646 and Pub. L. 99-654 effective respectively 30 days after Nov. 10, 1986, and 30 days after Nov. 14, 1986, see section 87(e) of Pub. L. 99-646 and section 4 of Pub. L. 99-654, set out as an Effective Date note under section 2241 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Oct. 1, 1981, see section 902(h) of Pub. L. 97-35, set out as a note under section 2381 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

§ 9512. Repealed. Pub. L. 97-35, title IX, § 902(e)(1), Aug. 13, 1981, 95 Stat. 560

Section, Pub. L. 96-398, title VI, §602, Oct. 7, 1980, 94 Stat. 1604, related to grants for services for rape victims.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 902(h) of Pub. L. 97-35, set out as an Effective Date of 1981 Amendment note under section 2381 of this title.

SUBCHAPTER VI—MISCELLANEOUS

§ 9521. Repealed. Pub. L. 97-35, title IX, § 902(e)(1), Aug. 13, 1981, 95 Stat. 560

Section, Pub. L. 96-398, title VIII, §801, Oct. 7, 1980, 94 Stat. 1605, related to employee protection arrangements.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 902(h) of Pub. L. 97-35, set out as an Effective Date of 1981 Amendment note under section 2381 of this title.

§ 9522. Report on shelter and basic living needs of chronically mentally ill individuals

(a) Submission to Congressional committees by Secretaries of Health and Human Services and Housing and Urban Development

The Secretary of Health and Human Services and the Secretary of Housing and Urban Development shall jointly submit a report to the Committees on Labor and Human Resources and Banking, Housing, and Urban Affairs of the Senate, and the Committees on Energy and Commerce and Banking, Finance, and Urban Affairs of the House of Representatives, relating to Federal efforts to respond to the shelter and basic living needs of chronically mentally ill individuals.

(b) Contents

The report required by subsection (a) of this section shall include—

(1) an analysis of the extent to which chronically mentally ill individuals remain inappropriately housed in institutional facilities or have otherwise inadequate or inappropriate housing arrangements;

(2) an analysis of available permanent noninstitutional housing arrangements for the chronically mentally ill;

(3) an evaluation of ongoing permanent and demonstration programs, funded in whole or in part by Federal funds, which are designed to provide noninstitutional shelter and basic living services for the chronically mentally ill, including—

(A) a description of each program;

(B) the total number of individuals estimated to be eligible to participate in each program, the number of individuals served by each program, and an estimate of the total population each program expects to serve; and

(C) an assessment of the effectiveness of each program in the provision of shelter and basic living services;

(4) recommendations of measures to encourage States to coordinate and link the provisions in State health plans which relate to mental health and, in particular, the shelter and basic living needs of chronically mentally ill individuals, with local and State housing plans;

(5) recommendations for Federal legislation relating to the provision of permanent residential noninstitutional housing arrangements and basic living services for chronically mentally ill individuals, including an estimate of the cost of such recommendations; and

(6) any other recommendations for Federal initiatives which, in the judgment of the Secretary of Health and Human Services and the Secretary of Housing and Urban Development, will lead to improved shelter and basic living services for chronically mentally ill individuals.

(c) Submission date

The report required by subsection (a) of this section shall be submitted to the committees referred to in subsection (a) of this section no later than January 1, 1981.

(Pub. L. 96-398, title VIII, §802, Oct. 7, 1980, 94 Stat. 1606; H. Res. 549, Mar. 25, 1980.)

CHANGE OF NAME

Committee on Interstate and Foreign Commerce of the House of Representatives changed to Committee on Energy and Commerce immediately prior to noon on Jan. 3, 1981, by House Resolution No. 549, Ninety-sixth Congress, Mar. 25, 1980. Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 9523. Repealed. Pub. L. 97-35, title IX, § 902(e)(1), Aug. 13, 1981, 95 Stat. 560

Section, Pub. L. 96-398, title VIII, §806, Oct. 7, 1980, 94 Stat. 1609, related to contracting authority.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 902(h) of Pub. L. 97-35, set out as an Effective Date of 1981 Amendment note under section 238f of this title.

CHAPTER 103—COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 300h-6, 300h-7, 6972, 11004 of this title; title 10 sections 2701, 2703, 2810; title 16 sections 410yy-3, 426n, 460lll, 460lll-46, 545b; title 26 sections 9507, 9508; title 30 section 1240a; title 33 sections 1272, 1321, 2701; title 43 sections 869-2, 1474b-1.

SUBCHAPTER I—HAZARDOUS SUBSTANCES
RELEASES, LIABILITY, COMPENSATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 9655, 9658, 9659 of this title; title 26 section 9507.

§ 9601. Definitions

For purpose of this subchapter—

(1) The term “act of God” means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(2) The term “Administrator” means the Administrator of the United States Environmental Protection Agency.

(3) The term “barrel” means forty-two United States gallons at sixty degrees Fahrenheit.

(4) The term “claim” means a demand in writing for a sum certain.

(5) The term “claimant” means any person who presents a claim for compensation under this chapter.

(6) The term “damages” means damages for injury or loss of natural resources as set forth in section 9607(a) or 9611(b) of this title.

(7) The term “drinking water supply” means any raw or finished water source that is or may be used by a public water system (as defined in the Safe Drinking Water Act [42 U.S.C. 300f et seq.]) or as drinking water by one or more individuals.

(8) The term “environment” means (A) the navigable waters, the waters of the contiguous zone, and the ocean waters of which the natural resources are under the exclusive management authority of the United States under the Magnuson-Stevens Fishery Conservation and Management Act [16 U.S.C. 1801 et seq.], and (B) any other surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the United States or under the jurisdiction of the United States.

(9) The term “facility” means (A) any building, structure, installation, equipment, pipe or

pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or (B) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel.

(10) The term “federally permitted release” means (A) discharges in compliance with a permit under section 402 of the Federal Water Pollution Control Act [33 U.S.C. 1342], (B) discharges resulting from circumstances identified and reviewed and made part of the public record with respect to a permit issued or modified under section 402 of the Federal Water Pollution Control Act and subject to a condition of such permit, (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of the Federal Water Pollution Control Act, which are caused by events occurring within the scope of relevant operating or treatment systems, (D) discharges in compliance with a legally enforceable permit under section 404 of the Federal Water Pollution Control Act [33 U.S.C. 1344], (E) releases in compliance with a legally enforceable final permit issued pursuant to section 3005(a) through (d) of the Solid Waste Disposal Act [42 U.S.C. 6925(a)-(d)] from a hazardous waste treatment, storage, or disposal facility when such permit specifically identifies the hazardous substances and makes such substances subject to a standard of practice, control procedure or bioassay limitation or condition, or other control on the hazardous substances in such releases, (F) any release in compliance with a legally enforceable permit issued under section 1412 of title 33 of¹ section 1413 of title 33, (G) any injection of fluids authorized under Federal underground injection control programs or State programs submitted for Federal approval (and not disapproved by the Administrator of the Environmental Protection Agency) pursuant to part C of the Safe Drinking Water Act [42 U.S.C. 300h et seq.], (H) any emission into the air subject to a permit or control regulation under section 111 [42 U.S.C. 7411], section 112 [42 U.S.C. 7412], title I part C [42 U.S.C. 7470 et seq.], title I part D [42 U.S.C. 7501 et seq.], or State implementation plans submitted in accordance with section 110 of the Clean Air Act [42 U.S.C. 7410] (and not disapproved by the Administrator of the Environmental Protection Agency), including any schedule or waiver granted, promulgated, or approved under these sections, (I) any injection of fluids or other materials authorized under applicable State law (i) for the purpose of stimulating or treating wells for the production of crude oil, natural gas, or water, (ii) for the purpose of secondary, tertiary, or other enhanced recovery of crude oil or natural gas, or (iii) which are brought to the surface in conjunction with the production of crude oil or natural gas and which are reinjected, (J)

¹ So in original. Probably should be “or”.

the introduction of any pollutant into a publicly owned treatment works when such pollutant is specified in and in compliance with applicable pretreatment standards of section 307(b) or (c) of the Clean Water Act [33 U.S.C. 1317(b), (c)] and enforceable requirements in a pretreatment program submitted by a State or municipality for Federal approval under section 402 of such Act [33 U.S.C. 1342], and (K) any release of source, special nuclear, or by-product material, as those terms are defined in the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.], in compliance with a legally enforceable license, permit, regulation, or order issued pursuant to the Atomic Energy Act of 1954.

(11) The term "Fund" or "Trust Fund" means the Hazardous Substance Superfund established by section 9507 of title 26.

(12) The term "ground water" means water in a saturated zone or stratum beneath the surface of land or water.

(13) The term "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this chapter.

(14) The term "hazardous substance" means (A) any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act [33 U.S.C. 1321(b)(2)(A)], (B) any element, compound, mixture, solution, or substance designated pursuant to section 9602 of this title, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act [42 U.S.C. 6921] (but not including any waste the regulation of which under the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.] has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act [33 U.S.C. 1317(a)], (E) any hazardous air pollutant listed under section 112 of the Clean Air Act [42 U.S.C. 7412], and (F) any immiscently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act [15 U.S.C. 2606]. The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

(15) The term "navigable waters" or "navigable waters of the United States" means the waters of the United States, including the territorial seas.

(16) The term "natural resources" means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Magnuson-Stevens Fishery Conservation and Management Act [16 U.S.C. 1801 et seq.]), any State or local government, any

foreign government, any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe.

(17) The term "offshore facility" means any facility of any kind located in, on, or under, any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel.

(18) The term "onshore facility" means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land or nonnavigable waters within the United States.

(19) The term "otherwise subject to the jurisdiction of the United States" means subject to the jurisdiction of the United States by virtue of United States citizenship, United States vessel documentation or numbering, or as provided by international agreement to which the United States is a party.

(20)(A) The term "owner or operator" means (i) in the case of a vessel, any person owning, operating, or chartering by demise, such vessel, (ii) in the case of an onshore facility or an offshore facility, any person owning or operating such facility, and (iii) in the case of any facility, title or control of which was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to a unit of State or local government, any person who owned, operated, or otherwise controlled activities at such facility immediately beforehand. Such term does not include a person, who, without participating in the management of a vessel or facility, holds indicia of ownership primarily to protect his security interest in the vessel or facility.

(B) In the case of a hazardous substance which has been accepted for transportation by a common or contract carrier and except as provided in section 9607(a)(3) or (4) of this title, (i) the term "owner or operator" shall mean such common carrier or other bona fide for hire carrier acting as an independent contractor during such transportation, (ii) the shipper of such hazardous substance shall not be considered to have caused or contributed to any release during such transportation which resulted solely from circumstances or conditions beyond his control.

(C) In the case of a hazardous substance which has been delivered by a common or contract carrier to a disposal or treatment facility and except as provided in section 9607(a)(3) or (4) of this title, (i) the term "owner or operator" shall not include such common or contract carrier, and (ii) such common or contract carrier shall not be considered to have caused or contributed to any release at such disposal or treatment facility resulting from circumstances or conditions beyond its control.

(D) The term "owner or operator" does not include a unit of State or local government which acquired ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances in

which the government involuntarily acquires title by virtue of its function as sovereign. The exclusion provided under this paragraph shall not apply to any State or local government which has caused or contributed to the release or threatened release of a hazardous substance from the facility, and such a State or local government shall be subject to the provisions of this chapter in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under section 9607 of this title.

(E) EXCLUSION OF LENDERS NOT PARTICIPANTS IN MANAGEMENT.—

(i) INDICIA OF OWNERSHIP TO PROTECT SECURITY.—The term “owner or operator” does not include a person that is a lender that, without participating in the management of a vessel or facility, holds indicia of ownership primarily to protect the security interest of the person in the vessel or facility.

(ii) FORECLOSURE.—The term “owner or operator” does not include a person that is a lender that did not participate in management of a vessel or facility prior to foreclosure, notwithstanding that the person—

(I) forecloses on the vessel or facility; and

(II) after foreclosure, sells, re-releases (in the case of a lease finance transaction), or liquidates the vessel or facility, maintains business activities, winds up operations, undertakes a response action under section 9607(d)(1) of this title or under the direction of an on-scene coordinator appointed under the National Contingency Plan, with respect to the vessel or facility, or takes any other measure to preserve, protect, or prepare the vessel or facility prior to sale or disposition,

if the person seeks to sell, re-lease (in the case of a lease finance transaction), or otherwise divest the person of the vessel or facility at the earliest practicable, commercially reasonable time, on commercially reasonable terms, taking into account market conditions and legal and regulatory requirements.

(F) PARTICIPATION IN MANAGEMENT.—For purposes of subparagraph (E)—

(i) the term “participate in management” —

(I) means actually participating in the management or operational affairs of a vessel or facility; and

(II) does not include merely having the capacity to influence, or the unexercised right to control, vessel or facility operations;

(ii) a person that is a lender and that holds indicia of ownership primarily to protect a security interest in a vessel or facility shall be considered to participate in management only if, while the borrower is still in possession of the vessel or facility encumbered by the security interest, the person—

(I) exercises decisionmaking control over the environmental compliance related to the vessel or facility, such that the person

has undertaken responsibility for the hazardous substance handling or disposal practices related to the vessel or facility; or

(II) exercises control at a level comparable to that of a manager of the vessel or facility, such that the person has assumed or manifested responsibility—

(aa) for the overall management of the vessel or facility encompassing day-to-day decisionmaking with respect to environmental compliance; or

(bb) over all or substantially all of the operational functions (as distinguished from financial or administrative functions) of the vessel or facility other than the function of environmental compliance;

(iii) the term “participate in management” does not include performing an act or failing to act prior to the time at which a security interest is created in a vessel or facility; and

(iv) the term “participate in management” does not include—

(I) holding a security interest or abandoning or releasing a security interest;

(II) including in the terms of an extension of credit, or in a contract or security agreement relating to the extension, a covenant, warranty, or other term or condition that relates to environmental compliance;

(III) monitoring or enforcing the terms and conditions of the extension of credit or security interest;

(IV) monitoring or undertaking 1 or more inspections of the vessel or facility;

(V) requiring a response action or other lawful means of addressing the release or threatened release of a hazardous substance in connection with the vessel or facility prior to, during, or on the expiration of the term of the extension of credit;

(VI) providing financial or other advice or counseling in an effort to mitigate, prevent, or cure default or diminution in the value of the vessel or facility;

(VII) restructuring, renegotiating, or otherwise agreeing to alter the terms and conditions of the extension of credit or security interest, exercising forbearance;

(VIII) exercising other remedies that may be available under applicable law for the breach of a term or condition of the extension of credit or security agreement; or

(IX) conducting a response action under section 9607(d) of this title or under the direction of an on-scene coordinator appointed under the National Contingency Plan,

if the actions do not rise to the level of participating in management (within the meaning of clauses (i) and (ii)).

(G) OTHER TERMS.—As used in this chapter:

(i) EXTENSION OF CREDIT.—The term “extension of credit” includes a lease finance transaction—

(I) in which the lessor does not initially select the leased vessel or facility and does

not during the lease term control the daily operations or maintenance of the vessel or facility; or

(II) that conforms with regulations issued by the appropriate Federal banking agency or the appropriate State bank supervisor (as those terms are defined in section 1813 of title 12² or with regulations issued by the National Credit Union Administration Board, as appropriate.

(ii) FINANCIAL OR ADMINISTRATIVE FUNCTION.—The term “financial or administrative function” includes a function such as that of a credit manager, accounts payable officer, accounts receivable officer, personnel manager, comptroller, or chief financial officer, or a similar function.

(iii) FORECLOSURE; FORECLOSE.—The terms “foreclosure” and “foreclose” mean, respectively, acquiring, and to acquire, a vessel or facility through—

(I)(aa) purchase at sale under a judgment or decree, power of sale, or nonjudicial foreclosure sale;

(bb) a deed in lieu of foreclosure, or similar conveyance from a trustee; or

(cc) repossession,

if the vessel or facility was security for an extension of credit previously contracted;

(II) conveyance pursuant to an extension of credit previously contracted, including the termination of a lease agreement; or

(III) any other formal or informal manner by which the person acquires, for subsequent disposition, title to or possession of a vessel or facility in order to protect the security interest of the person.

(iv) LENDER.—The term “lender” means—

(I) an insured depository institution (as defined in section 1813 of title 12);

(II) an insured credit union (as defined in section 1752 of title 12);

(III) a bank or association chartered under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.);

(IV) a leasing or trust company that is an affiliate of an insured depository institution;

(V) any person (including a successor or assignee of any such person) that makes a bona fide extension of credit to or takes or acquires a security interest from a non-affiliated person;

(VI) the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Agricultural Mortgage Corporation, or any other entity that in a bona fide manner buys or sells loans or interests in loans;

(VII) a person that insures or guarantees against a default in the repayment of an extension of credit, or acts as a surety with respect to an extension of credit, to a non-affiliated person; and

(VIII) a person that provides title insurance and that acquires a vessel or facility as a result of assignment or conveyance in

the course of underwriting claims and claims settlement.

(v) OPERATIONAL FUNCTION.—The term “operational function” includes a function such as that of a facility or plant manager, operations manager, chief operating officer, or chief executive officer.

(vi) SECURITY INTEREST.—The term “security interest” includes a right under a mortgage, deed of trust, assignment, judgment lien, pledge, security agreement, factoring agreement, or lease and any other right accruing to a person to secure the repayment of money, the performance of a duty, or any other obligation by a nonaffiliated person.

(21) The term “person” means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipality, commission, political subdivision of a State, or any interstate body.

(22) The term “release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant), but excludes (A) any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons, (B) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine, (C) release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.], if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 170 of such Act [42 U.S.C. 2210], or, for the purposes of section 9604 of this title or any other response action, any release of source byproduct, or special nuclear material from any processing site designated under section 7912(a)(1) or 7942(a) of this title, and (D) the normal application of fertilizer.

(23) The terms “remove” or “removal” means³ the cleanup or removal of released hazardous substances from the environment, such actions as may be necessary taken in the event of the threat of release of hazardous substances into the environment, such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances, the disposal of removed material, or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a release or threat of release. The term includes, in addition, without being limited to, security fencing or other measures to limit access, provision of alternative water supplies, temporary evacuation and housing of threatened individuals not otherwise provided

²So in original. Probably should be followed by a closing parenthesis.

³So in original. Probably should be “mean”.

for, action taken under section 9604(b) of this title, and any emergency assistance which may be provided under the Disaster Relief and Emergency Assistance Act [42 U.S.C. 5121 et seq.].

(24) The terms “remedy” or “remedial action” means³ those actions consistent with permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance into the environment, to prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment. The term includes, but is not limited to, such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous substances and associated contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, on-site treatment or incineration, provision of alternative water supplies, and any monitoring reasonably required to assure that such actions protect the public health and welfare and the environment. The term includes the costs of permanent relocation of residents and businesses and community facilities where the President determines that, alone or in combination with other measures, such relocation is more cost-effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition offsite of hazardous substances, or may otherwise be necessary to protect the public health or welfare; the term includes offsite transport and offsite storage, treatment, destruction, or secure disposition of hazardous substances and associated contaminated materials.

(25) The terms “respond” or “response” means³ remove, removal, remedy, and remedial action;⁴ all such terms (including the terms “removal” and “remedial action”) include enforcement activities related thereto.

(26) The terms “transport” or “transportation” means³ the movement of a hazardous substance by any mode, including a hazardous liquid pipeline facility (as defined in section 60101(a) of title 49), and in the case of a hazardous substance which has been accepted for transportation by a common or contract carrier, the term “transport” or “transportation” shall include any stoppage in transit which is temporary, incidental to the transportation movement, and at the ordinary operating convenience of a common or contract carrier, and any such stoppage shall be considered as a continuity of movement and not as the storage of a hazardous substance.

(27) The terms “United States” and “State” include the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, and

any other territory or possession over which the United States has jurisdiction.

(28) The term “vessel” means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

(29) The terms “disposal”, “hazardous waste”, and “treatment” shall have the meaning provided in section 1004 of the Solid Waste Disposal Act [42 U.S.C. 6903].

(30) The terms “territorial sea” and “contiguous zone” shall have the meaning provided in section 502 of the Federal Water Pollution Control Act [33 U.S.C. 1362].

(31) The term “national contingency plan” means the national contingency plan published under section 311(c)⁵ of the Federal Water Pollution Control Act or revised pursuant to section 9605 of this title.

(32) The terms “liable” or “liability” under this subchapter shall be construed to be the standard of liability which obtains under section 311 of the Federal Water Pollution Control Act [33 U.S.C. 1321].

(33) The term “pollutant or contaminant” shall include, but not be limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring; except that the term “pollutant or contaminant” shall not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of paragraph (14) and shall not include natural gas, liquefied natural gas, or synthetic gas of pipeline quality (or mixtures of natural gas and such synthetic gas).

(34) The term “alternative water supplies” includes, but is not limited to, drinking water and household water supplies.

(35)(A) The term “contractual relationship”, for the purpose of section 9607(b)(3) of this title, includes, but is not limited to, land contracts, deeds, easements, leases, or other instruments transferring title or possession, unless the real property on which the facility concerned is located was acquired by the defendant after the disposal or placement of the hazardous substance on, in, or at the facility, and one or more of the circumstances described in clause (i), (ii), or (iii) is also established by the defendant by a preponderance of the evidence:

(i) At the time the defendant acquired the facility the defendant did not know and had no reason to know that any hazardous substance which is the subject of the release or threatened release was disposed of on, in, or at the facility.

⁴ So in original.

⁵ See References in Text note below.

(ii) The defendant is a government entity which acquired the facility by escheat, or through any other involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation.

(iii) The defendant acquired the facility by inheritance or bequest.

In addition to establishing the foregoing, the defendant must establish that the defendant has satisfied the requirements of section 9607(b)(3)(a) and (b) of this title, provides full cooperation, assistance, and facility access to the persons that are authorized to conduct response actions at the facility (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response action at the facility), is in compliance with any land use restrictions established or relied on in connection with the response action at a facility, and does not impede the effectiveness or integrity of any institutional control employed at the facility in connection with a response action.

(B) REASON TO KNOW.—

(i) ALL APPROPRIATE INQUIRIES.—To establish that the defendant had no reason to know of the matter described in subparagraph (A)(i), the defendant must demonstrate to a court that—

(I) on or before the date on which the defendant acquired the facility, the defendant carried out all appropriate inquiries, as provided in clauses (ii) and (iv), into the previous ownership and uses of the facility in accordance with generally accepted good commercial and customary standards and practices; and

(II) the defendant took reasonable steps to—

(aa) stop any continuing release;

(bb) prevent any threatened future release; and

(cc) prevent or limit any human, environmental, or natural resource exposure to any previously released hazardous substance.

(ii) STANDARDS AND PRACTICES.—Not later than 2 years after January 11, 2002, the Administrator shall by regulation establish standards and practices for the purpose of satisfying the requirement to carry out all appropriate inquiries under clause (i).

(iii) CRITERIA.—In promulgating regulations that establish the standards and practices referred to in clause (ii), the Administrator shall include each of the following:

(I) The results of an inquiry by an environmental professional.

(II) Interviews with past and present owners, operators, and occupants of the facility for the purpose of gathering information regarding the potential for contamination at the facility.

(III) Reviews of historical sources, such as chain of title documents, aerial photographs, building department records, and land use records, to determine previous uses and occupancies of the real property since the property was first developed.

(IV) Searches for recorded environmental cleanup liens against the facility that are filed under Federal, State, or local law.

(V) Reviews of Federal, State, and local government records, waste disposal records, underground storage tank records, and hazardous waste handling, generation, treatment, disposal, and spill records, concerning contamination at or near the facility.

(VI) Visual inspections of the facility and of adjoining properties.

(VII) Specialized knowledge or experience on the part of the defendant.

(VIII) The relationship of the purchase price to the value of the property, if the property was not contaminated.

(IX) Commonly known or reasonably ascertainable information about the property.

(X) The degree of obviousness of the presence or likely presence of contamination at the property, and the ability to detect the contamination by appropriate investigation.

(iv) INTERIM STANDARDS AND PRACTICES.—

(I) PROPERTY PURCHASED BEFORE MAY 31, 1997.—With respect to property purchased before May 31, 1997, in making a determination with respect to a defendant described in clause (i), a court shall take into account—

(aa) any specialized knowledge or experience on the part of the defendant;

(bb) the relationship of the purchase price to the value of the property, if the property was not contaminated;

(cc) commonly known or reasonably ascertainable information about the property;

(dd) the obviousness of the presence or likely presence of contamination at the property; and

(ee) the ability of the defendant to detect the contamination by appropriate inspection.

(II) PROPERTY PURCHASED ON OR AFTER MAY 31, 1997.—With respect to property purchased on or after May 31, 1997, and until the Administrator promulgates the regulations described in clause (ii), the procedures of the American Society for Testing and Materials, including the document known as “Standard E1527-97”, entitled “Standard Practice for Environmental Site Assessment: Phase 1 Environmental Site Assessment Process”, shall satisfy the requirements in clause (i).

(v) SITE INSPECTION AND TITLE SEARCH.—In the case of property for residential use or other similar use purchased by a nongovernmental or noncommercial entity, a facility inspection and title search that reveal no basis for further investigation shall be considered to satisfy the requirements of this subparagraph.

(C) Nothing in this paragraph or in section 9607(b)(3) of this title shall diminish the liabil-

ity of any previous owner or operator of such facility who would otherwise be liable under this chapter. Notwithstanding this paragraph, if the defendant obtained actual knowledge of the release or threatened release of a hazardous substance at such facility when the defendant owned the real property and then subsequently transferred ownership of the property to another person without disclosing such knowledge, such defendant shall be treated as liable under section 9607(a)(1) of this title and no defense under section 9607(b)(3) of this title shall be available to such defendant.

(D) Nothing in this paragraph shall affect the liability under this chapter of a defendant who, by any act or omission, caused or contributed to the release or threatened release of a hazardous substance which is the subject of the action relating to the facility.

(36) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village but not including any Alaska Native regional or village corporation, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(37)(A) The term "service station dealer" means any person—

(i) who owns or operates a motor vehicle service station, filling station, garage, or similar retail establishment engaged in the business of selling, repairing, or servicing motor vehicles, where a significant percentage of the gross revenue of the establishment is derived from the fueling, repairing, or servicing of motor vehicles, and

(ii) who accepts for collection, accumulation, and delivery to an oil recycling facility, recycled oil that (I) has been removed from the engine of a light duty motor vehicle or household appliances by the owner of such vehicle or appliances, and (II) is presented, by such owner, to such person for collection, accumulation, and delivery to an oil recycling facility.

(B) For purposes of section 9614(c) of this title, the term "service station dealer" shall, notwithstanding the provisions of subparagraph (A), include any government agency that establishes a facility solely for the purpose of accepting recycled oil that satisfies the criteria set forth in subclauses (I) and (II) of subparagraph (A)(ii), and, with respect to recycled oil that satisfies the criteria set forth in subclauses (I) and (II), owners or operators of refuse collection services who are compelled by State law to collect, accumulate, and deliver such oil to an oil recycling facility.

(C) The President shall promulgate regulations regarding the determination of what constitutes a significant percentage of the gross revenues of an establishment for purposes of this paragraph.

(38) The term "incineration vessel" means any vessel which carries hazardous substances for the purpose of incineration of such substances, so long as such substances or residues of such substances are on board.

(39) BROWNFIELD SITE.—

(A) IN GENERAL.—The term "brownfield site" means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.

(B) EXCLUSIONS.—The term "brownfield site" does not include—

(i) a facility that is the subject of a planned or ongoing removal action under this subchapter;

(ii) a facility that is listed on the National Priorities List or is proposed for listing;

(iii) a facility that is the subject of a unilateral administrative order, a court order, an administrative order on consent or judicial consent decree that has been issued to or entered into by the parties under this chapter;

(iv) a facility that is the subject of a unilateral administrative order, a court order, an administrative order on consent or judicial consent decree that has been issued to or entered into by the parties, or a facility to which a permit has been issued by the United States or an authorized State under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1321) [33 U.S.C. § 1251 et seq.], the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), or the Safe Drinking Water Act (42 U.S.C. 300f et seq.);

(v) a facility that—

(I) is subject to corrective action under section 3004(u) or 3008(h) of the Solid Waste Disposal Act (42 U.S.C. 6924(u), 6928(h)); and

(II) to which a corrective action permit or order has been issued or modified to require the implementation of corrective measures;

(vi) a land disposal unit with respect to which—

(I) a closure notification under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.) has been submitted; and

(II) closure requirements have been specified in a closure plan or permit;

(vii) a facility that is subject to the jurisdiction, custody, or control of a department, agency, or instrumentality of the United States, except for land held in trust by the United States for an Indian tribe;

(viii) a portion of a facility—

(I) at which there has been a release of polychlorinated biphenyls; and

(II) that is subject to remediation under the Toxic Substances Control Act (15 U.S.C. 2601 et seq.); or

(ix) a portion of a facility, for which portion, assistance for response activity has been obtained under subtitle I of the Solid Waste Disposal Act (42 U.S.C. 6991 et seq.) from the Leaking Underground Storage Tank Trust Fund established under section 9508 of title 26.

(C) SITE-BY-SITE DETERMINATIONS.—Notwithstanding subparagraph (B) and on a site-

by-site basis, the President may authorize financial assistance under section 9604(k) of this title to an eligible entity at a site included in clause (i), (iv), (v), (vi), (viii), or (ix) of subparagraph (B) if the President finds that financial assistance will protect human health and the environment, and either promote economic development or enable the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes.

(D) ADDITIONAL AREAS.—For the purposes of section 9604(k) of this title, the term “brownfield site” includes a site that—

(i) meets the definition of “brownfield site” under subparagraphs (A) through (C); and

(ii)(I) is contaminated by a controlled substance (as defined in section 802 of title 21);

(II)(aa) is contaminated by petroleum or a petroleum product excluded from the definition of “hazardous substance” under this section; and

(bb) is a site determined by the Administrator or the State, as appropriate, to be—

(AA) of relatively low risk, as compared with other petroleum-only sites in the State; and

(BB) a site for which there is no viable responsible party and which will be assessed, investigated, or cleaned up by a person that is not potentially liable for cleaning up the site; and

(cc) is not subject to any order issued under section 9003(h) of the Solid Waste Disposal Act (42 U.S.C. 6991b(h)); or

(III) is mine-scarred land.

(40) BONA FIDE PROSPECTIVE PURCHASER.—The term “bona fide prospective purchaser” means a person (or a tenant of a person) that acquires ownership of a facility after January 11, 2002, and that establishes each of the following by a preponderance of the evidence:

(A) DISPOSAL PRIOR TO ACQUISITION.—All disposal of hazardous substances at the facility occurred before the person acquired the facility.

(B) INQUIRIES.—

(i) IN GENERAL.—The person made all appropriate inquiries into the previous ownership and uses of the facility in accordance with generally accepted good commercial and customary standards and practices in accordance with clauses (ii) and (iii).

(ii) STANDARDS AND PRACTICES.—The standards and practices referred to in clauses (ii) and (iv) of paragraph (35)(B) shall be considered to satisfy the requirements of this subparagraph.

(iii) RESIDENTIAL USE.—In the case of property in residential or other similar use at the time of purchase by a nongovernmental or noncommercial entity, a facility inspection and title search that reveal no basis for further investigation shall be considered to satisfy the requirements of this subparagraph.

(C) NOTICES.—The person provides all legally required notices with respect to the discovery or release of any hazardous substances at the facility.

(D) CARE.—The person exercises appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to—

(i) stop any continuing release;

(ii) prevent any threatened future release; and

(iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance.

(E) COOPERATION, ASSISTANCE, AND ACCESS.—The person provides full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration at a vessel or facility (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response actions or natural resource restoration at the vessel or facility).

(F) INSTITUTIONAL CONTROL.—The person—

(i) is in compliance with any land use restrictions established or relied on in connection with the response action at a vessel or facility; and

(ii) does not impede the effectiveness or integrity of any institutional control employed at the vessel or facility in connection with a response action.

(G) REQUESTS; SUBPOENAS.—The person complies with any request for information or administrative subpoena issued by the President under this chapter.

(H) NO AFFILIATION.—The person is not—

(i) potentially liable, or affiliated with any other person that is potentially liable, for response costs at a facility through—

(I) any direct or indirect familial relationship; or

(II) any contractual, corporate, or financial relationship (other than a contractual, corporate, or financial relationship that is created by the instruments by which title to the facility is conveyed or financed or by a contract for the sale of goods or services); or

(ii) the result of a reorganization of a business entity that was potentially liable.

(41) ELIGIBLE RESPONSE SITE.—

(A) IN GENERAL.—The term “eligible response site” means a site that meets the definition of a brownfield site in subparagraphs (A) and (B) of paragraph (39), as modified by subparagraphs (B) and (C) of this paragraph.

(B) INCLUSIONS.—The term “eligible response site” includes—

(i) notwithstanding paragraph (39)(B)(ix), a portion of a facility, for which portion assistance for response activity has been obtained under subtitle I of the Solid Waste Disposal Act (42 U.S.C. 6991 et seq.) from the Leaking Underground Storage Tank Trust Fund established under section 9508 of title 26; or

(ii) a site for which, notwithstanding the exclusions provided in subparagraph (C) or paragraph (39)(B), the President determines, on a site-by-site basis and after consultation with the State, that limitations on enforcement under section 9628 of this title at sites specified in clause (iv), (v), (vi) or (viii) of paragraph (39)(B) would be appropriate and will—

(I) protect human health and the environment; and

(II) promote economic development or facilitate the creation of, preservation of, or addition to a park, a greenway, undeveloped property, recreational property, or other property used for non-profit purposes.

(C) EXCLUSIONS.—The term “eligible response site” does not include—

(i) a facility for which the President—

(I) conducts or has conducted a preliminary assessment or site inspection; and

(II) after consultation with the State, determines or has determined that the site obtains a preliminary score sufficient for possible listing on the National Priorities List, or that the site otherwise qualifies for listing on the National Priorities List; unless the President has made a determination that no further Federal action will be taken; or

(ii) facilities that the President determines warrant particular consideration as identified by regulation, such as sites posing a threat to a sole-source drinking water aquifer or a sensitive ecosystem.

(Pub. L. 96-510, title I, §101, Dec. 11, 1980, 94 Stat. 2767; Pub. L. 96-561, title II, §238(b), Dec. 22, 1980, 94 Stat. 3300; Pub. L. 99-499, title I, §§101, 114(b), 127(a), title V, §517(c)(2), Oct. 17, 1986, 100 Stat. 1615, 1652, 1692, 1774; Pub. L. 100-707, title I, §109(v), Nov. 23, 1988, 102 Stat. 4710; Pub. L. 103-429, §7(e)(1), Oct. 31, 1994, 108 Stat. 4390; Pub. L. 104-208, div. A, title I, §101(a) [title II, §211(b)], title II, §2502(b), Sept. 30, 1996, 110 Stat. 3009, 3009-41, 3009-464; Pub. L. 104-287, §6(j)(1), Oct. 11, 1996, 110 Stat. 3399; Pub. L. 106-74, title IV, §427, Oct. 20, 1999, 113 Stat. 1095; Pub. L. 107-118, title II, §§211(a), 222(a), 223, 231(a), Jan. 11, 2002, 115 Stat. 2360, 2370, 2372, 2375.)

REFERENCES IN TEXT

This chapter, referred to in pars. (5), (13), (20)(D), (G), (35)(C), (D), (39)(B)(iii), and (40)(G), was in the original “this Act”, meaning Pub. L. 96-510, Dec. 11, 1980, 94 Stat. 2767, as amended, known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. For complete classification of this Act to the Code, see Short Title note below and Tables.

The Safe Drinking Water Act, referred to in pars. (7), (10), and (39)(B)(iv), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93-523, §2(a), 88 Stat. 1660, as amended, which is classified generally to subchapter XII (§300f et seq.) of chapter 6A of this title. Part C of the Safe Drinking Water Act is classified generally to part C (§300h et seq.) of subchapter XII of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The Magnuson-Stevens Fishery Conservation and Management Act, referred to in pars. (8) and (16), is

Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331, as amended, which is classified principally to chapter 38 (§1801 et seq.) of Title 16, Conservation. The fishery conservation zone established by this Act, referred to in par. (16), was established by section 101 of this Act (16 U.S.C. 1811), which as amended generally by Pub. L. 99-659, title I, §101(b), Nov. 14, 1986, 100 Stat. 3706, relates to United States sovereign rights and fishery management authority over fish within the exclusive economic zone as defined in section 1802 of Title 16. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of Title 16 and Tables.

The Clean Air Act, referred to in par. (10), is act July 14, 1955, ch. 360, as amended generally by Pub. L. 88-206, Dec. 17, 1963, 77 Stat. 392, and later by Pub. L. 95-95, Aug. 7, 1977, 91 Stat. 685. The Clean Air Act was originally classified to chapter 15B (§1857 et seq.) of this title. On enactment of Pub. L. 95-95, the Act was reclassified to chapter 85 (§7401 et seq.) of this title. Parts C and D of title I of the Clean Air Act are classified generally to parts C (§7470 et seq.) and D (§7501 et seq.), respectively, of subchapter I of chapter 85 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

The Atomic Energy Act of 1954, referred to in pars. (10) and (22), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

The Solid Waste Disposal Act, referred to in pars. (14), (39)(B)(iv), (vi)(I), (ix), and (41)(B)(i), is title II of Pub. L. 89-272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§6901 et seq.) of this title. Subtitles C and I of the Act are classified generally to subchapters III (§6921 et seq.) and IX (§6991 et seq.), respectively, of chapter 82 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

The Farm Credit Act of 1971, referred to in par. (20)(G)(iv)(III), is Pub. L. 92-181, Dec. 10, 1971, 85 Stat. 583, as amended, which is classified generally to chapter 23 (§2001 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of Title 12 and Tables.

The Disaster Relief and Emergency Assistance Act, referred to in par. (23), is Pub. L. 93-288, May 22, 1974, 88 Stat. 143, as amended, known as the Robert T. Stafford Disaster Relief and Emergency Assistance Act, which is classified principally to chapter 68 (§5121 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

The Federal Water Pollution Control Act, referred to in par. (39)(B)(iv), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 816, also known as the Clean Water Act, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. Section 311(c) of the Act was amended generally by Pub. L. 101-380, title IV, §4201(a), Aug. 18, 1990, 104 Stat. 523, and no longer contains provisions directing the publishing of a National Contingency Plan. However, such provisions are contained in section 1321(d) of Title 33. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Toxic Substances Control Act, referred to in par. (39)(B)(iv), (viii)(II), is Pub. L. 94-469, Oct. 11, 1976, 90 Stat. 2003, as amended, which is classified generally to chapter 53 (§2601 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 15 and Tables.

AMENDMENTS

2002—Par. (35)(A). Pub. L. 107-118, § 223(1), in introductory provisions substituted “deeds, easements, leases, or” for “deeds or” and in concluding provisions substituted “the defendant has satisfied” for “he has satisfied” and inserted before period at end “, provides full cooperation, assistance, and facility access to the persons that are authorized to conduct response actions at the facility (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response action at the facility), is in compliance with any land use restrictions established or relied on in connection with the response action at a facility, and does not impede the effectiveness or integrity of any institutional control employed at the facility in connection with a response action”.

Par. (35)(B). Pub. L. 107-118, § 223(2), added subpar. (B) and struck out former subpar. (B) which read as follows: “ To establish that the defendant had no reason to know, as provided in clause (i) of subparagraph (A) of this paragraph, the defendant must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of the preceding sentence the court shall take into account any specialized knowledge or experience on the part of the defendant, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection.”

Par. (39). Pub. L. 107-118, § 211(a), added par. (39).

Par. (40). Pub. L. 107-118, § 222(a), added par. (40).

Par. (41). Pub. L. 107-118, § 231(a), added par. (41).

1999—Par. (20)(D). Pub. L. 106-74, which directed the amendment of subpar. (D) by inserting “through seizure or otherwise in connection with law enforcement activity” before “involuntary” the first place it appears, could not be executed because the word “involuntary” does not appear in subpar. (D).

1996—Pars. (8), (16). Pub. L. 104-208, § 101(a) [title II, § 211(b)], substituted “Magnuson-Stevens Fishery” for “Magnuson Fishery”.

Par. (20)(E) to (G). Pub. L. 104-208, § 2502(b), added subpars. (E) to (G).

Par. (26). Pub. L. 104-287 substituted “section 60101(a) of title 49” for “the Pipeline Safety Act”.

1994—Par. (26). Pub. L. 103-429 substituted “a hazardous liquid pipeline facility” for “pipeline”.

1988—Par. (23). Pub. L. 100-707 substituted “Disaster Relief and Emergency Assistance Act” for “Disaster Relief Act of 1974”.

1986—Pub. L. 99-499, § 101(f), struck out “, the term” after “subchapter” in introductory text.

Pars. (1) to (10). Pub. L. 99-499, § 101(f), inserted “The term” and substituted a period for the semicolon at end.

Par. (11). Pub. L. 99-499, § 517(c)(2), amended par. (11) generally. Prior to amendment, par. (11) read as follows: “The term ‘Fund’ or ‘Trust Fund’ means the Hazardous Substance Response Fund established by section 9631 of this title or, in the case of a hazardous waste disposal facility for which liability has been transferred under section 9607(k) of this title, the Post-closure Liability Fund established by section 9641 of this title.”

Pub. L. 99-499, § 101(f), inserted “The term” and substituted a period for the semicolon at end.

Pars. (12) to (15). Pub. L. 99-499, § 101(f), inserted “The term” and substituted a period for the semicolon at end.

Par. (16). Pub. L. 99-499, § 101(a), (f), inserted “The term”, struck out “or” after “local government,” inserted “, any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of

an Indian tribe”, and substituted a period for the semicolon at end.

Pars. (17) to (19). Pub. L. 99-499, § 101(f), inserted “The term” and substituted a period for the semicolon at end.

Par. (20)(A). Pub. L. 99-499, § 101(f), inserted “The term”.

Pub. L. 99-499, § 101(b)(2), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: “in the case of any abandoned facility, any person who owned, operated, or otherwise controlled activities at such facility immediately prior to such abandonment.”

Pub. L. 99-499, § 101(b)(3), in provisions following subcl. (iii), substituted a period for the semicolon at end.

Par. (20)(B), (C). Pub. L. 99-499, § 101(b)(3), substituted “In the case” for “in the case” and a period for the semicolon at end.

Par. (20)(D). Pub. L. 99-499, § 101(b)(1), (f), added subpar. (D). The part of § 101(f) of Pub. L. 99-499 which directed the amendment of par. (20) by changing the semicolon at end to a period could not be executed in view of the prior amendment of par. (20) by § 101(b)(1) of Pub. L. 99-499 which added subpar. (D) ending in a period.

Par. (21). Pub. L. 99-499, § 101(f), inserted “The term” and substituted a period for the semicolon at end.

Par. (22). Pub. L. 99-499, § 101(c), (f), inserted “The term” and “(including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant)”, substituted a period for the semicolon at end.

Par. (23). Pub. L. 99-499, § 101(f), inserted “The terms” and substituted a period for the semicolon at end.

Par. (24). Pub. L. 99-499, § 101(d), (f), inserted “The terms” and substituted “and associated contaminated materials” for “or contaminated materials” and “welfare; the term includes offsite transport and offsite storage, treatment, destruction, or secure disposition of hazardous substances and associated contaminated materials.” for “welfare. The term does not include offsite transport of hazardous substances, or the storage, treatment, destruction, or secure disposition offsite of such hazardous substances or contaminated materials unless the President determines that such actions (A) are more cost-effective than other remedial actions, (B) will create new capacity to manage, in compliance with subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.], hazardous substances in addition to those located at the affected facility, or (C) are necessary to protect public health or welfare or the environment from a present or potential risk which may be created by further exposure to the continued presence of such substances or materials;”. The part of § 101(f) of Pub. L. 99-499 which directed amendment of par. (24) by changing the semicolon at end to a period could not be executed in view of prior amendment of par. (24) by § 101(d) of Pub. L. 99-499 which substituted language at end of par. (24) ending in a period for former language ending in a semicolon.

Par. (25). Pub. L. 99-499, § 101(e), (f), inserted “The terms” and “, all such terms (including the terms ‘removal’ and ‘remedial action’) include enforcement activities related thereto.” The part of § 101(f) of Pub. L. 99-499 which directed amendment of par. (25) by changing the semicolon at end to a period could not be executed in view of prior amendment of par. (25) by § 101(e) of Pub. L. 99-499 inserting language and a period at end of par. (25).

Pars. (26), (27). Pub. L. 99-499, § 101(f), inserted “The terms” and substituted a period for the semicolon at end.

Par. (28). Pub. L. 99-499, § 101(f), inserted “The term” and substituted a period for the semicolon at end.

Par. (29). Pub. L. 99-499, § 101(f), inserted “The terms” and substituted a period for the semicolon at end.

Par. (30). Pub. L. 99-499, § 101(f), inserted “The terms”.

Par. (31). Pub. L. 99-499, § 101(f), inserted “The term” and substituted a period for “; and”.

Par. (32). Pub. L. 99-499, §101(f), inserted “The terms”.
 Pars. (33) to (36). Pub. L. 99-499, §101(f), added pars.
 (33) to (36).

Par. (37). Pub. L. 99-499, §114(b), added par. (37).

Par. (38). Pub. L. 99-499, §127(a), added par. (38).

1980—Pars. (8), (16). Pub. L. 96-561 substituted “Magnuson Fishery Conservation and Management Act” for “Fishery Conservation and Management Act of 1976”.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 101(a) [title II, §211(b)] of div. A of Pub. L. 104-208 provided that the amendment made by that section is effective 15 days after Oct. 11, 1996.

Amendment by section 2502(b) of Pub. L. 104-208 applicable with respect to any claim that has not been finally adjudicated as of Sept. 30, 1996, see section 2505 of Pub. L. 104-208, set out as a note under section 6991b of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 4 of Pub. L. 99-499 provided that: “Except as otherwise specified in section 121(b) of this Act [set out as an Effective Date note under section 9621 of this title] or in any other provision of titles I, II, III, and IV of this Act [see Tables for classification], the amendments made by titles I through IV of this Act [enacting subchapter IV of this chapter and sections 9616 to 9626, 9658 to 9660, and 9661 of this title and sections 2701 to 2707 and 2810 of Title 10, Armed Forces, amending sections 6926, 6928, 6991 to 6991d, 6991g, 9601 to 9609, 9611 to 9614, 9631, 9651, 9656, and 9657 of this title and section 1416 of Title 33, Navigation and Navigable Waters, and renumbering former section 2701 of Title 10 as section 2721 of Title 10] shall take effect on the enactment of this Act [Oct. 17, 1986].”

Amendment by section 517(c)(2) of Pub. L. 99-499 effective Jan. 1, 1987, see section 517(e) of Pub. L. 99-499, set out as an Effective Date note under section 9507 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 238(b) of Pub. L. 96-561 provided that the amendment made by that section is effective 15 days after Dec. 22, 1980.

SHORT TITLE OF 2002 AMENDMENTS

Pub. L. 107-118, §1, Jan. 11, 2002, 115 Stat. 2356, provided that: “This Act [enacting section 9628 of this title, amending this section and sections 9604, 9605, 9607, and 9622 of this title, and enacting provisions set out as notes under this section and section 9607 of this title] may be cited as the ‘Small Business Liability Relief and Brownfields Revitalization Act’.”

Pub. L. 107-118, title I, §101, Jan. 11, 2002, 115 Stat. 2356, provided that: “This title [amending sections 9607 and 9622 of this title and enacting provisions set out as a note under section 9607 of this title] may be cited as the ‘Small Business Liability Protection Act’.”

Pub. L. 107-118, title II, §201, Jan. 11, 2002, 115 Stat. 2360, provided that: “This title [enacting section 9628 of this title and amending this section and sections 9604, 9605, and 9607 of this title] may be cited as the ‘Brownfields Revitalization and Environmental Restoration Act of 2001’.”

SHORT TITLE OF 1996 AMENDMENT

Section 2501 of div. A of Pub. L. 104-208 provided that: “This subtitle [subtitle E (§§2501-2505) of title II of div. A of Pub. L. 104-208, amending this section and sections 6991b and 9607 of this title and enacting provisions set out as a note under section 6991b of this title] may be cited as the ‘Asset Conservation, Lender Liability, and Deposit Insurance Protection Act of 1996’.”

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102-426, §1, Oct. 19, 1992, 106 Stat. 2174, provided that: “This Act [amending section 9620 of this title and enacting provisions set out as a note under

section 9620 of this title] may be cited as the ‘Community Environmental Response Facilitation Act’.”

SHORT TITLE OF 1986 AMENDMENT

Section 1 of Pub. L. 99-499 provided that: “This Act [enacting subchapter IV of this chapter and sections 9616 to 9626, 9658 to 9662, 11001 to 11005, 11021 to 11023, and 11041 to 11050 of this title, sections 2701 to 2707 and 2810 of Title 10, Armed Forces, and sections 59A, 4671, 4672, 9507, and 9508 of Title 26, Internal Revenue Code, amending this section, sections 6926, 6928, 6991 to 6991d, 6991g, 9602 to 9609, 9611 to 9614, 9631, 9651, 9656, and 9657 of this title, sections 26, 164, 275, 936, 1561, 4041, 4042, 4081, 4221, 4611, 4612, 4661, 4662, 6154, 6416, 6420, 6421, 6425, 6427, 6655, 9502, 9503, and 9506 of Title 26, and section 1416 of Title 33, Navigation and Navigable Waters, renumbering former section 2701 of Title 10 as section 2721 of Title 10, repealing sections 9631 to 9633, 9641, and 9653 of this title and sections 4681 and 4682 of Title 26, and enacting provisions set out as notes under this section, sections 6921, 6991b, 7401, 9620, 9621, 9658, 9660, 9661, and 11001 of this title, section 2703 of Title 10, sections 1, 26, 4041, 4611, 4661, 4671, 4681, 9507, and 9508 of Title 26, and section 655 of Title 29, Labor] may be cited as the ‘Superfund Amendments and Reauthorization Act of 1986’.”

SHORT TITLE

Section 1 of Pub. L. 96-510 provided: “That this Act [enacting this chapter, section 6911a of this title, and sections 4611, 4612, 4661, 4662, 4681, and 4682 of Title 26, Internal Revenue Code, amending section 6911 of this title, section 1364 of Title 33, Navigation and Navigable Waters, and section 11901 of Title 49, Transportation, and enacting provisions set out as notes under section 6911 of this title and sections 1 and 4611 of Title 26] may be cited as the ‘Comprehensive Environmental Response, Compensation, and Liability Act of 1980’.”

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

TERRITORIAL SEA AND CONTIGUOUS ZONE OF UNITED STATES

For extension of territorial sea and contiguous zone of United States, see Proc. No. 5928 and Proc. No. 7219, respectively, set out as notes under section 1331 of Title 43, Public Lands.

DEFINITIONS

Section 2 of Pub. L. 99-499 provided that: “As used in this Act [see Short Title of 1986 Amendment note above]—

“(1) CERCLA.—The term ‘CERCLA’ means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

“(2) ADMINISTRATOR.—The term ‘Administrator’ means the Administrator of the Environmental Protection Agency.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300g-1, 6991, 6991b, 7274q, 9602, 9603, 9604, 9607, 9613, 9624, 9656, 11004 of this title; title 7 section 1985; title 10 sections 2692, 2701, 2703, 2707, 2708, 2810; title 14 section 690; title 16 section 4601ll; title 26 section 198; title 33 section 2701.

§9602. Designation of additional hazardous substances and establishment of reportable released quantities; regulations

(a) The Administrator shall promulgate and revise as may be appropriate, regulations designating as hazardous substances, in addition to those referred to in section 9601(14) of this title,

such elements, compounds, mixtures, solutions, and substances which, when released into the environment may present substantial danger to the public health or welfare or the environment, and shall promulgate regulations establishing that quantity of any hazardous substance the release of which shall be reported pursuant to section 9603 of this title. The Administrator may determine that one single quantity shall be the reportable quantity for any hazardous substance, regardless of the medium into which the hazardous substance is released. For all hazardous substances for which proposed regulations establishing reportable quantities were published in the Federal Register under this subsection on or before March 1, 1986, the Administrator shall promulgate under this subsection final regulations establishing reportable quantities not later than December 31, 1986. For all hazardous substances for which proposed regulations establishing reportable quantities were not published in the Federal Register under this subsection on or before March 1, 1986, the Administrator shall publish under this subsection proposed regulations establishing reportable quantities not later than December 31, 1986, and promulgate final regulations under this subsection establishing reportable quantities not later than April 30, 1988."

(b) Unless and until superseded by regulations establishing a reportable quantity under subsection (a) of this section for any hazardous substance as defined in section 9601(14) of this title, (1) a quantity of one pound, or (2) for those hazardous substances for which reportable quantities have been established pursuant to section 1321(b)(4) of title 33, such reportable quantity, shall be deemed that quantity, the release of which requires notification pursuant to section 9603(a) or (b) of this title.

(Pub. L. 96-510, title I, § 102, Dec. 11, 1980, 94 Stat. 2772; Pub. L. 99-499, title I, § 102, Oct. 17, 1986, 100 Stat. 1617.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-499 inserted provisions setting deadlines for promulgation of proposed and final regulations.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9601, 9603, 11004 of this title; title 10 section 2692; title 26 section 198; title 33 section 1319.

§ 9603. Notification requirements respecting released substances

(a) Notice to National Response Center upon release from vessel or offshore or onshore facility by person in charge; conveyance of notice by Center

Any person in charge of a vessel or an offshore or an onshore facility shall, as soon as he has knowledge of any release (other than a federally permitted release) of a hazardous substance from such vessel or facility in quantities equal to or greater than those determined pursuant to section 9602 of this title, immediately notify the National Response Center established under the Clean Water Act [33 U.S.C. 1251 et seq.] of such release. The National Response Center shall convey the notification expeditiously to all appro-

priate Government agencies, including the Governor of any affected State.

(b) Penalties for failure to notify; use of notice or information pursuant to notice in criminal case

Any person—

(1) in charge of a vessel from which a hazardous substance is released, other than a federally permitted release, into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or

(2) in charge of a vessel from which a hazardous substance is released, other than a federally permitted release, which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson-Stevens Fishery Conservation and Management Act [16 U.S.C. 1801 et seq.]), and who is otherwise subject to the jurisdiction of the United States at the time of the release, or

(3) in charge of a facility from which a hazardous substance is released, other than a federally permitted release,

in a quantity equal to or greater than that determined pursuant to section 9602 of this title who fails to notify immediately the appropriate agency of the United States Government as soon as he has knowledge of such release or who submits in such a notification any information which he knows to be false or misleading shall, upon conviction, be fined in accordance with the applicable provisions of title 18 or imprisoned for not more than 3 years (or not more than 5 years in the case of a second or subsequent conviction), or both. Notification received pursuant to this subsection or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except a prosecution for perjury or for giving a false statement.

(c) Notice to Administrator of EPA of existence of storage, etc., facility by owner or operator; exception; time, manner, and form of notice; penalties for failure to notify; use of notice or information pursuant to notice in criminal case

Within one hundred and eighty days after December 11, 1980, any person who owns or operates or who at the time of disposal owned or operated, or who accepted hazardous substances for transport and selected, a facility at which hazardous substances (as defined in section 9601(14)(C) of this title) are or have been stored, treated, or disposed of shall, unless such facility has a permit issued under, or has been accorded interim status under, subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.], notify the Administrator of the Environmental Protection Agency of the existence of such facility, specifying the amount and type of any hazardous substance to be found there, and any known, suspected, or likely releases of such substances from such facility. The Administrator may prescribe in greater detail the manner and form of the notice and the information included. The Administrator shall notify the affected

State agency, or any department designated by the Governor to receive such notice, of the existence of such facility. Any person who knowingly fails to notify the Administrator of the existence of any such facility shall, upon conviction, be fined not more than \$10,000, or imprisoned for not more than one year, or both. In addition, any such person who knowingly fails to provide the notice required by this subsection shall not be entitled to any limitation of liability or to any defenses to liability set out in section 9607 of this title: *Provided, however,* That notification under this subsection is not required for any facility which would be reportable hereunder solely as a result of any stoppage in transit which is temporary, incidental to the transportation movement, or at the ordinary operating convenience of a common or contract carrier, and such stoppage shall be considered as a continuity of movement and not as the storage of a hazardous substance. Notification received pursuant to this subsection or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except a prosecution for perjury or for giving a false statement.

(d) Recordkeeping requirements; promulgation of rules and regulations by Administrator of EPA; penalties for violations; waiver of retention requirements

(1) The Administrator of the Environmental Protection Agency is authorized to promulgate rules and regulations specifying, with respect to—

(A) the location, title, or condition of a facility, and

(B) the identity, characteristics, quantity, origin, or condition (including containerization and previous treatment) of any hazardous substances contained or deposited in a facility;

the records which shall be retained by any person required to provide the notification of a facility set out in subsection (c) of this section. Such specification shall be in accordance with the provisions of this subsection.

(2) Beginning with December 11, 1980, for fifty years thereafter or for fifty years after the date of establishment of a record (whichever is later), or at any such earlier time as a waiver if obtained under paragraph (3) of this subsection, it shall be unlawful for any such person knowingly to destroy, mutilate, erase, dispose of, conceal, or otherwise render unavailable or unreadable or falsify any records identified in paragraph (1) of this subsection. Any person who violates this paragraph shall, upon conviction, be fined in accordance with the applicable provisions of title 18 or imprisoned for not more than 3 years (or not more than 5 years in the case of a second or subsequent conviction), or both.

(3) At any time prior to the date which occurs fifty years after December 11, 1980, any person identified under paragraph (1) of this subsection may apply to the Administrator of the Environmental Protection Agency for a waiver of the provisions of the first sentence of paragraph (2) of this subsection. The Administrator is authorized to grant such waiver if, in his discretion, such waiver would not unreasonably interfere

with the attainment of the purposes and provisions of this chapter. The Administrator shall promulgate rules and regulations regarding such a waiver so as to inform parties of the proper application procedure and conditions for approval of such a waiver.

(4) Notwithstanding the provisions of this subsection, the Administrator of the Environmental Protection Agency may in his discretion require any such person to retain any record identified pursuant to paragraph (1) of this subsection for such a time period in excess of the period specified in paragraph (2) of this subsection as the Administrator determines to be necessary to protect the public health or welfare.

(e) Applicability to registered pesticide product

This section shall not apply to the application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.] or to the handling and storage of such a pesticide product by an agricultural producer.

(f) Exemptions from notice and penalty provisions for substances reported under other Federal law or is in continuous release, etc.

No notification shall be required under subsection (a) or (b) of this section for any release of a hazardous substance—

(1) which is required to be reported (or specifically exempted from a requirement for reporting) under subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.] or regulations thereunder and which has been reported to the National Response Center, or

(2) which is a continuous release, stable in quantity and rate, and is—

(A) from a facility for which notification has been given under subsection (c) of this section, or

(B) a release of which notification has been given under subsections (a) and (b) of this section for a period sufficient to establish the continuity, quantity, and regularity of such release:

Provided, That notification in accordance with subsections (a) and (b) of this paragraph shall be given for releases subject to this paragraph annually, or at such time as there is any statistically significant increase in the quantity of any hazardous substance or constituent thereof released, above that previously reported or occurring.

(Pub. L. 96-510, title I, § 103, Dec. 11, 1980, 94 Stat. 2772; Pub. L. 96-561, title II, § 238(b), Dec. 22, 1980, 94 Stat. 3300; Pub. L. 99-499, title I, §§ 103, 109(a)(1), (2), Oct. 17, 1986, 100 Stat. 1617, 1632, 1633; Pub. L. 104-208, div. A, title I, § 101(a) [title II, § 211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009-41.)

REFERENCES IN TEXT

The Clean Water Act, referred to in subsec. (a), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, § 2, Oct. 18, 1972, 86 Stat. 816, also known as the Federal Water Pollution Control Act, which is classified generally to chapter 26 (§ 1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Magnuson-Stevens Fishery Conservation and Management Act, referred to in subsec. (b)(2), is Pub. L.

94-265, Apr. 13, 1976, 90 Stat. 331, as amended, which is classified principally to chapter 38 (§1801 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of Title 16 and Tables.

The Solid Waste Disposal Act, referred to in subsecs. (c) and (f)(1), is title II of Pub. L. 89-272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2795. Subtitle C of the Solid Waste Disposal Act is classified generally to subchapter III (§6921 et seq.) of chapter 82 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

The Federal Insecticide, Fungicide, and Rodenticide Act, referred to in subsec. (e), is act June 25, 1947, ch. 125, as amended generally by Pub. L. 92-516, Oct. 21, 1972, 86 Stat. 973, which is classified generally to subchapter II (§136 et seq.) of chapter 6 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 136 of Title 7 and Tables.

AMENDMENTS

1996—Subsec. (b)(2). Pub. L. 104-208 substituted “Magnuson-Stevens Fishery” for “Magnuson Fishery”.

1986—Subsec. (b). Pub. L. 99-499, §§103, 109(a), adjusted left hand margin of text following “federally permitted release,” third place appearing so that there is no indentation of that text, inserted “or who submits in such a notification any information which he knows to be false or misleading”, and substituted “in accordance with the applicable provisions of title 18 or imprisoned for not more than 3 years (or not more than 5 years in the case of a second or subsequent conviction), or both” for “not more than \$10,000 or imprisoned for not more than one year, or both” and “subsection” for “paragraph”.

Subsec. (d)(2). Pub. L. 99-499, §109(a)(2), substituted “in accordance with the applicable provisions of title 18 or imprisoned for not more than 3 years (or not more than 5 years in the case of a second or subsequent conviction), or both” for “not more than \$20,000, or imprisoned for not more than one year, or both” as the probable intent of Congress, notwithstanding directory language that the substitution be made for “not more than \$20,000, or imprisoned for not more than one year or both”.

1980—Subsec. (b)(2). Pub. L. 96-561 substituted “Magnuson Fishery Conservation and Management Act” for “Fishery Conservation and Management Act of 1976”.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 101(a) [title II, §211(b)] of div. A of Pub. L. 104-208 provided that the amendment made by that section is effective 15 days after Oct. 11, 1996.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 238(b) of Pub. L. 96-561 provided that the amendment made by that section is effective 15 days after Dec. 22, 1980.

CONTIGUOUS ZONE OF UNITED STATES

For extension of contiguous zone of United States, see Proc. No. 7219, set out as a note under section 1331 of Title 43, Public Lands.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6937, 6991a, 9602, 9609, 9620, 9626, 11004 of this title.

§ 9604. Response authorities

(a) Removal and other remedial action by President; applicability of national contingency plan; response by potentially responsible parties; public health threats; limitations on response; exception

(1) Whenever (A) any hazardous substance is released or there is a substantial threat of such

a release into the environment, or (B) there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, the President is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance, pollutant, or contaminant at any time (including its removal from any contaminated natural resource), or take any other response measure consistent with the national contingency plan which the President deems necessary to protect the public health or welfare or the environment. When the President determines that such action will be done properly and promptly by the owner or operator of the facility or vessel or by any other responsible party, the President may allow such person to carry out the action, conduct the remedial investigation, or conduct the feasibility study in accordance with section 9622 of this title. No remedial investigation or feasibility study (RI/FS) shall be authorized except on a determination by the President that the party is qualified to conduct the RI/FS and only if the President contracts with or arranges for a qualified person to assist the President in overseeing and reviewing the conduct of such RI/FS and if the responsible party agrees to reimburse the Fund for any cost incurred by the President under, or in connection with, the oversight contract or arrangement. In no event shall a potentially responsible party be subject to a lesser standard of liability, receive preferential treatment, or in any other way, whether direct or indirect, benefit from any such arrangements as a response action contractor, or as a person hired or retained by such a response action contractor, with respect to the release or facility in question. The President shall give primary attention to those releases which the President deems may present a public health threat.

(2) REMOVAL ACTION.—Any removal action undertaken by the President under this subsection (or by any other person referred to in section 9622 of this title) should, to the extent the President deems practicable, contribute to the efficient performance of any long term remedial action with respect to the release or threatened release concerned.

(3) LIMITATIONS ON RESPONSE.—The President shall not provide for a removal or remedial action under this section in response to a release or threat of release—

(A) of a naturally occurring substance in its unaltered form, or altered solely through naturally occurring processes or phenomena, from a location where it is naturally found;

(B) from products which are part of the structure of, and result in exposure within, residential buildings or business or community structures; or

(C) into public or private drinking water supplies due to deterioration of the system through ordinary use.

(4) EXCEPTION TO LIMITATIONS.—Notwithstanding paragraph (3) of this subsection, to the extent authorized by this section, the President may respond to any release or threat of release

if in the President's discretion, it constitutes a public health or environmental emergency and no other person with the authority and capability to respond to the emergency will do so in a timely manner.

(b) Investigations, monitoring, coordination, etc., by President

(1) Information; studies and investigations

Whenever the President is authorized to act pursuant to subsection (a) of this section, or whenever the President has reason to believe that a release has occurred or is about to occur, or that illness, disease, or complaints thereof may be attributable to exposure to a hazardous substance, pollutant, or contaminant and that a release may have occurred or be occurring, he may undertake such investigations, monitoring, surveys, testing, and other information gathering as he may deem necessary or appropriate to identify the existence and extent of the release or threat thereof, the source and nature of the hazardous substances, pollutants or contaminants involved, and the extent of danger to the public health or welfare or to the environment. In addition, the President may undertake such planning, legal, fiscal, economic, engineering, architectural, and other studies or investigations as he may deem necessary or appropriate to plan and direct response actions, to recover the costs thereof, and to enforce the provisions of this chapter.

(2) Coordination of investigations

The President shall promptly notify the appropriate Federal and State natural resource trustees of potential damages to natural resources resulting from releases under investigation pursuant to this section and shall seek to coordinate the assessments, investigations, and planning under this section with such Federal and State trustees.

(c) Criteria for continuance of obligations from Fund over specified amount for response actions; consultation by President with affected States; contracts or cooperative agreements by States with President prior to remedial actions; cost-sharing agreements; selection by President of remedial actions; State credits: granting of credit, expenses before listing or agreement, response actions between 1978 and 1980, State expenses after December 11, 1980, in excess of 10 percent of costs, item-by-item approval, use of credits; operation and maintenance; limitation on source of funds for O&M; recontracting; siting

(1) Unless (A) the President finds that (i) continued response actions are immediately required to prevent, limit, or mitigate an emergency, (ii) there is an immediate risk to public health or welfare or the environment, and (iii) such assistance will not otherwise be provided on a timely basis, or (B) the President has determined the appropriate remedial actions pursuant to paragraph (2) of this subsection and the State or States in which the source of the release is located have complied with the requirements of paragraph (3) of this subsection, or (C) continued response action is otherwise appro-

appropriate and consistent with the remedial action to be taken¹ obligations from the Fund, other than those authorized by subsection (b) of this section, shall not continue after \$2,000,000 has been obligated for response actions or 12 months has elapsed from the date of initial response to a release or threatened release of hazardous substances.

(2) The President shall consult with the affected State or States before determining any appropriate remedial action to be taken pursuant to the authority granted under subsection (a) of this section.

(3) The President shall not provide any remedial actions pursuant to this section unless the State in which the release occurs first enters into a contract or cooperative agreement with the President providing assurances deemed adequate by the President that (A) the State will assure all future maintenance of the removal and remedial actions provided for the expected life of such actions as determined by the President; (B) the State will assure the availability of a hazardous waste disposal facility acceptable to the President and in compliance with the requirements of subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.] for any necessary offsite storage, destruction, treatment, or secure disposition of the hazardous substances; and (C) the State will pay or assure payment of (i) 10 per centum of the costs of the remedial action, including all future maintenance, or (ii) 50 percent (or such greater amount as the President may determine appropriate, taking into account the degree of responsibility of the State or political subdivision for the release) of any sums expended in response to a release at a facility, that was operated by the State or a political subdivision thereof, either directly or through a contractual relationship or otherwise, at the time of any disposal of hazardous substances therein. For the purpose of clause (ii) of this subparagraph, the term "facility" does not include navigable waters or the beds underlying those waters. In the case of remedial action to be taken on land or water held by an Indian tribe, held by the United States in trust for Indians, held by a member of an Indian tribe (if such land or water is subject to a trust restriction on alienation), or otherwise within the borders of an Indian reservation, the requirements of this paragraph for assurances regarding future maintenance and cost-sharing shall not apply, and the President shall provide the assurance required by this paragraph regarding the availability of a hazardous waste disposal facility.

(4) **SELECTION OF REMEDIAL ACTION.**—The President shall select remedial actions to carry out this section in accordance with section 9621 of this title (relating to cleanup standards).

(5) **STATE CREDITS.**—

(A) **GRANTING OF CREDIT.**—The President shall grant a State a credit against the share of the costs, for which it is responsible under paragraph (3) with respect to a facility listed on the National Priorities List under the National Contingency Plan, for amounts expended by a State for remedial action at such

¹ So in original. Probably should be followed by a comma.

facility pursuant to a contract or cooperative agreement with the President. The credit under this paragraph shall be limited to those State expenses which the President determines to be reasonable, documented, direct out-of-pocket expenditures of non-Federal funds.

(B) EXPENSES BEFORE LISTING OR AGREEMENT.—The credit under this paragraph shall include expenses for remedial action at a facility incurred before the listing of the facility on the National Priorities List or before a contract or cooperative agreement is entered into under subsection (d) of this section for the facility if—

(i) after such expenses are incurred the facility is listed on such list and a contract or cooperative agreement is entered into for the facility, and

(ii) the President determines that such expenses would have been credited to the State under subparagraph (A) had the expenditures been made after listing of the facility on such list and after the date on which such contract or cooperative agreement is entered into.

(C) RESPONSE ACTIONS BETWEEN 1978 AND 1980.—The credit under this paragraph shall include funds expended or obligated by the State or a political subdivision thereof after January 1, 1978, and before December 11, 1980, for cost-eligible response actions and claims for damages compensable under section 9611 of this title.

(D) STATE EXPENSES AFTER DECEMBER 11, 1980, IN EXCESS OF 10 PERCENT OF COSTS.—The credit under this paragraph shall include 90 percent of State expenses incurred at a facility owned, but not operated, by such State or by a political subdivision thereof. Such credit applies only to expenses incurred pursuant to a contract or cooperative agreement under subsection (d) of this section and only to expenses incurred after December 11, 1980, but before October 17, 1986.

(E) ITEM-BY-ITEM APPROVAL.—In the case of expenditures made after October 17, 1986, the President may require prior approval of each item of expenditure as a condition of granting a credit under this paragraph.

(F) USE OF CREDITS.—Credits granted under this paragraph for funds expended with respect to a facility may be used by the State to reduce all or part of the share of costs otherwise required to be paid by the State under paragraph (3) in connection with remedial actions at such facility. If the amount of funds for which credit is allowed under this paragraph exceeds such share of costs for such facility, the State may use the amount of such excess to reduce all or part of the share of such costs at other facilities in that State. A credit shall not entitle the State to any direct payment.

(6) OPERATION AND MAINTENANCE.—For the purposes of paragraph (3) of this subsection, in the case of ground or surface water contamination, completed remedial action includes the completion of treatment or other measures, whether taken onsite or offsite, necessary to restore ground and surface water quality to a level that

assures protection of human health and the environment. With respect to such measures, the operation of such measures for a period of up to 10 years after the construction or installation and commencement of operation shall be considered remedial action. Activities required to maintain the effectiveness of such measures following such period or the completion of remedial action, whichever is earlier, shall be considered operation or maintenance.

(7) LIMITATION ON SOURCE OF FUNDS FOR O&M.—During any period after the availability of funds received by the Hazardous Substance Superfund established under subchapter A of chapter 98 of title 26 from tax revenues or appropriations from general revenues, the Federal share of the payment of the cost of operation or maintenance pursuant to paragraph (3)(C)(i) or paragraph (6) of this subsection (relating to operation and maintenance) shall be from funds received by the Hazardous Substance Superfund from amounts recovered on behalf of such fund under this chapter.

(8) RECONTRACTING.—The President is authorized to undertake or continue whatever interim remedial actions the President determines to be appropriate to reduce risks to public health or the environment where the performance of a complete remedial action requires recontracting because of the discovery of sources, types, or quantities of hazardous substances not known at the time of entry into the original contract. The total cost of interim actions undertaken at a facility pursuant to this paragraph shall not exceed \$2,000,000.

(9) SITING.—Effective 3 years after October 17, 1986, the President shall not provide any remedial actions pursuant to this section unless the State in which the release occurs first enters into a contract or cooperative agreement with the President providing assurances deemed adequate by the President that the State will assure the availability of hazardous waste treatment or disposal facilities which—

(A) have adequate capacity for the destruction, treatment, or secure disposition of all hazardous wastes that are reasonably expected to be generated within the State during the 20-year period following the date of such contract or cooperative agreement and to be disposed of, treated, or destroyed,

(B) are within the State or outside the State in accordance with an interstate agreement or regional agreement or authority,

(C) are acceptable to the President, and

(D) are in compliance with the requirements of subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.].

(d) Contracts or cooperative agreements by President with States or political subdivisions or Indian tribes; State applications, terms and conditions; reimbursements; cost-sharing provisions; enforcement requirements and procedures

(1) COOPERATIVE AGREEMENTS.—

(A) STATE APPLICATIONS.—A State or political subdivision thereof or Indian tribe may apply to the President to carry out actions authorized in this section. If the President determines that the State or political subdivision

or Indian tribe has the capability to carry out any or all of such actions in accordance with the criteria and priorities established pursuant to section 9605(a)(8) of this title and to carry out related enforcement actions, the President may enter into a contract or cooperative agreement with the State or political subdivision or Indian tribe to carry out such actions. The President shall make a determination regarding such an application within 90 days after the President receives the application.

(B) **TERMS AND CONDITIONS.**—A contract or cooperative agreement under this paragraph shall be subject to such terms and conditions as the President may prescribe. The contract or cooperative agreement may cover a specific facility or specific facilities.

(C) **REIMBURSEMENTS.**—Any State which expended funds during the period beginning September 30, 1985, and ending on October 17, 1986, for response actions at any site included on the National Priorities List and subject to a cooperative agreement under this chapter shall be reimbursed for the share of costs of such actions for which the Federal Government is responsible under this chapter.

(2) If the President enters into a cost-sharing agreement pursuant to subsection (c) of this section or a contract or cooperative agreement pursuant to this subsection, and the State or political subdivision thereof fails to comply with any requirements of the contract, the President may, after providing sixty days notice, seek in the appropriate Federal district court to enforce the contract or to recover any funds advanced or any costs incurred because of the breach of the contract by the State or political subdivision.

(3) Where a State or a political subdivision thereof is acting in behalf of the President, the President is authorized to provide technical and legal assistance in the administration and enforcement of any contract or subcontract in connection with response actions assisted under this subchapter, and to intervene in any civil action involving the enforcement of such contract or subcontract.

(4) Where two or more noncontiguous facilities are reasonably related on the basis of geography, or on the basis of the threat, or potential threat to the public health or welfare or the environment, the President may, in his discretion, treat these related facilities as one for purposes of this section.

(e) Information gathering and access

(1) Action authorized

Any officer, employee, or representative of the President, duly designated by the President, is authorized to take action under paragraph (2), (3), or (4) (or any combination thereof) at a vessel, facility, establishment, place, property, or location or, in the case of paragraph (3) or (4), at any vessel, facility, establishment, place, property, or location which is adjacent to the vessel, facility, establishment, place, property, or location referred to in such paragraph (3) or (4). Any duly designated officer, employee, or representative of a State or political subdivision under a contract or cooperative agreement under subsection (d)(1) of

this section is also authorized to take such action. The authority of paragraphs (3) and (4) may be exercised only if there is a reasonable basis to believe there may be a release or threat of release of a hazardous substance or pollutant or contaminant. The authority of this subsection may be exercised only for the purposes of determining the need for response, or choosing or taking any response action under this subchapter, or otherwise enforcing the provisions of this subchapter.

(2) Access to information

Any officer, employee, or representative described in paragraph (1) may require any person who has or may have information relevant to any of the following to furnish, upon reasonable notice, information or documents relating to such matter:

(A) The identification, nature, and quantity of materials which have been or are generated, treated, stored, or disposed of at a vessel or facility or transported to a vessel or facility.

(B) The nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at or from a vessel or facility.

(C) Information relating to the ability of a person to pay for or to perform a cleanup.

In addition, upon reasonable notice, such person either (i) shall grant any such officer, employee, or representative access at all reasonable times to any vessel, facility, establishment, place, property, or location to inspect and copy all documents or records relating to such matters or (ii) shall copy and furnish to the officer, employee, or representative all such documents or records, at the option and expense of such person.

(3) Entry

Any officer, employee, or representative described in paragraph (1) is authorized to enter at reasonable times any of the following:

(A) Any vessel, facility, establishment, or other place or property where any hazardous substance or pollutant or contaminant may be or has been generated, stored, treated, disposed of, or transported from.

(B) Any vessel, facility, establishment, or other place or property from which or to which a hazardous substance or pollutant or contaminant has been or may have been released.

(C) Any vessel, facility, establishment, or other place or property where such release is or may be threatened.

(D) Any vessel, facility, establishment, or other place or property where entry is needed to determine the need for response or the appropriate response or to effectuate a response action under this subchapter.

(4) Inspection and samples

(A) Authority

Any officer, employee or representative described in paragraph (1) is authorized to inspect and obtain samples from any vessel, facility, establishment, or other place or property referred to in paragraph (3) or from

any location of any suspected hazardous substance or pollutant or contaminant. Any such officer, employee, or representative is authorized to inspect and obtain samples of any containers or labeling for suspected hazardous substances or pollutants or contaminants. Each such inspection shall be completed with reasonable promptness.

(B) Samples

If the officer, employee, or representative obtains any samples, before leaving the premises he shall give to the owner, operator, tenant, or other person in charge of the place from which the samples were obtained a receipt describing the sample obtained and, if requested, a portion of each such sample. A copy of the results of any analysis made of such samples shall be furnished promptly to the owner, operator, tenant, or other person in charge, if such person can be located.

(5) Compliance orders

(A) Issuance

If consent is not granted regarding any request made by an officer, employee, or representative under paragraph (2), (3), or (4), the President may issue an order directing compliance with the request. The order may be issued after such notice and opportunity for consultation as is reasonably appropriate under the circumstances.

(B) Compliance

The President may ask the Attorney General to commence a civil action to compel compliance with a request or order referred to in subparagraph (A). Where there is a reasonable basis to believe there may be a release or threat of a release of a hazardous substance or pollutant or contaminant, the court shall take the following actions:

(i) In the case of interference with entry or inspection, the court shall enjoin such interference or direct compliance with orders to prohibit interference with entry or inspection unless under the circumstances of the case the demand for entry or inspection is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.

(ii) In the case of information or document requests or orders, the court shall enjoin interference with such information or document requests or orders or direct compliance with the requests or orders to provide such information or documents unless under the circumstances of the case the demand for information or documents is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.

The court may assess a civil penalty not to exceed \$25,000 for each day of noncompliance against any person who unreasonably fails to comply with the provisions of paragraph (2), (3), or (4) or an order issued pursuant to subparagraph (A) of this paragraph.

(6) Other authority

Nothing in this subsection shall preclude the President from securing access or obtaining information in any other lawful manner.

(7) Confidentiality of information

(A) Any records, reports, or information obtained from any person under this section (including records, reports, or information obtained by representatives of the President) shall be available to the public, except that upon a showing satisfactory to the President (or the State, as the case may be) by any person that records, reports, or information, or particular part thereof (other than health or safety effects data), to which the President (or the State, as the case may be) or any officer, employee, or representative has access under this section if made public would divulge information entitled to protection under section 1905 of title 18, such information or particular portion thereof shall be considered confidential in accordance with the purposes of that section, except that such record, report, document or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter, or when relevant in any proceeding under this chapter.

(B) Any person not subject to the provisions of section 1905 of title 18 who knowingly and willfully divulges or discloses any information entitled to protection under this subsection shall, upon conviction, be subject to a fine of not more than \$5,000 or to imprisonment not to exceed one year, or both.

(C) In submitting data under this chapter, a person required to provide such data may (i) designate the data which such person believes is entitled to protection under this subsection and (ii) submit such designated data separately from other data submitted under this chapter. A designation under this paragraph shall be made in writing and in such manner as the President may prescribe by regulation.

(D) Notwithstanding any limitation contained in this section or any other provision of law, all information reported to or otherwise obtained by the President (or any representative of the President) under this chapter shall be made available, upon written request of any duly authorized committee of the Congress, to such committee.

(E) No person required to provide information under this chapter may claim that the information is entitled to protection under this paragraph unless such person shows each of the following:

(i) Such person has not disclosed the information to any other person, other than a member of a local emergency planning committee established under title III of the Amendments and Reauthorization Act of 1986 [42 U.S.C. 11001 et seq.], an officer or employee of the United States or a State or local government, an employee of such person, or a person who is bound by a confidentiality agreement, and such person has taken reasonable measures to protect the confidentiality of such information and intends to continue to take such measures.

(ii) The information is not required to be disclosed, or otherwise made available, to the public under any other Federal or State law.

(iii) Disclosure of the information is likely to cause substantial harm to the competitive position of such person.

(iv) The specific chemical identity, if sought to be protected, is not readily discoverable through reverse engineering.

(F) The following information with respect to any hazardous substance at the facility or vessel shall not be entitled to protection under this paragraph:

(i) The trade name, common name, or generic class or category of the hazardous substance.

(ii) The physical properties of the substance, including its boiling point, melting point, flash point, specific gravity, vapor density, solubility in water, and vapor pressure at 20 degrees celsius.

(iii) The hazards to health and the environment posed by the substance, including physical hazards (such as explosion) and potential acute and chronic health hazards.

(iv) The potential routes of human exposure to the substance at the facility, establishment, place, or property being investigated, entered, or inspected under this subsection.

(v) The location of disposal of any waste stream.

(vi) Any monitoring data or analysis of monitoring data pertaining to disposal activities.

(vii) Any hydrogeologic or geologic data.

(viii) Any groundwater monitoring data.

(f) Contracts for response actions; compliance with Federal health and safety standards

In awarding contracts to any person engaged in response actions, the President or the State, in any case where it is awarding contracts pursuant to a contract entered into under subsection (d) of this section, shall require compliance with Federal health and safety standards established under section 9651(f) of this title by contractors and subcontractors as a condition of such contracts.

(g) Rates for wages and labor standards applicable to covered work

(1) All laborers and mechanics employed by contractors or subcontractors in the performance of construction, repair, or alteration work funded in whole or in part under this section shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act [40 U.S.C. 276a et seq.]. The President shall not approve any such funding without first obtaining adequate assurance that required labor standards will be maintained upon the construction work.

(2) The Secretary of Labor shall have, with respect to the labor standards specified in paragraph (1), the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 276c of title 40.

(h) Emergency procurement powers; exercise by President

Notwithstanding any other provision of law, subject to the provisions of section 9611 of this title, the President may authorize the use of such emergency procurement powers as he deems necessary to effect the purpose of this chapter. Upon determination that such procedures are necessary, the President shall promulgate regulations prescribing the circumstances under which such authority shall be used and the procedures governing the use of such authority.

(i) Agency for Toxic Substances and Disease Registry; establishment, functions, etc.

(1) There is hereby established within the Public Health Service an agency, to be known as the Agency for Toxic Substances and Disease Registry, which shall report directly to the Surgeon General of the United States. The Administrator of said Agency shall, with the cooperation of the Administrator of the Environmental Protection Agency, the Commissioner of the Food and Drug Administration, the Directors of the National Institute of Medicine, National Institute of Environmental Health Sciences, National Institute of Occupational Safety and Health, Centers for Disease Control and Prevention, the Administrator of the Occupational Safety and Health Administration, the Administrator of the Social Security Administration, the Secretary of Transportation, and appropriate State and local health officials, effectuate and implement the health related authorities of this chapter. In addition, said Administrator shall—

(A) in cooperation with the States, establish and maintain a national registry of serious diseases and illnesses and a national registry of persons exposed to toxic substances;

(B) establish and maintain inventory of literature, research, and studies on the health effects of toxic substances;

(C) in cooperation with the States, and other agencies of the Federal Government, establish and maintain a complete listing of areas closed to the public or otherwise restricted in use because of toxic substance contamination;

(D) in cases of public health emergencies caused or believed to be caused by exposure to toxic substances, provide medical care and testing to exposed individuals, including but not limited to tissue sampling, chromosomal testing where appropriate, epidemiological studies, or any other assistance appropriate under the circumstances; and

(E) either independently or as part of other health status survey, conduct periodic survey and screening programs to determine relationships between exposure to toxic substances and illness. In cases of public health emergencies, exposed persons shall be eligible for admission to hospitals and other facilities and services operated or provided by the Public Health Service.

(2)(A) Within 6 months after October 17, 1986, the Administrator of the Agency for Toxic Substances and Disease Registry (ATSDR) and the Administrator of the Environmental Protection Agency ("EPA") shall prepare a list, in order of priority, of at least 100 hazardous substances

which are most commonly found at facilities on the National Priorities List and which, in their sole discretion, they determine are posing the most significant potential threat to human health due to their known or suspected toxicity to humans and the potential for human exposure to such substances at facilities on the National Priorities List or at facilities to which a response to a release or a threatened release under this section is under consideration.

(B) Within 24 months after October 17, 1986, the Administrator of ATSDR and the Administrator of EPA shall revise the list prepared under subparagraph (A). Such revision shall include, in order of priority, the addition of 100 or more such hazardous substances. In each of the 3 consecutive 12-month periods that follow, the Administrator of ATSDR and the Administrator of EPA shall revise, in the same manner as provided in the 2 preceding sentences, such list to include not fewer than 25 additional hazardous substances per revision. The Administrator of ATSDR and the Administrator of EPA shall not less often than once every year thereafter revise such list to include additional hazardous substances in accordance with the criteria in subparagraph (A).

(3) Based on all available information, including information maintained under paragraph (1)(B) and data developed and collected on the health effects of hazardous substances under this paragraph, the Administrator of ATSDR shall prepare toxicological profiles of each of the substances listed pursuant to paragraph (2). The toxicological profiles shall be prepared in accordance with guidelines developed by the Administrator of ATSDR and the Administrator of EPA. Such profiles shall include, but not be limited to each of the following:

(A) An examination, summary, and interpretation of available toxicological information and epidemiologic evaluations on a hazardous substance in order to ascertain the levels of significant human exposure for the substance and the associated acute, subacute, and chronic health effects.

(B) A determination of whether adequate information on the health effects of each substance is available or in the process of development to determine levels of exposure which present a significant risk to human health of acute, subacute, and chronic health effects.

(C) Where appropriate, an identification of toxicological testing needed to identify the types or levels of exposure that may present significant risk of adverse health effects in humans.

Any toxicological profile or revision thereof shall reflect the Administrator of ATSDR's assessment of all relevant toxicological testing which has been peer reviewed. The profiles required to be prepared under this paragraph for those hazardous substances listed under subparagraph (A) of paragraph (2) shall be completed, at a rate of no fewer than 25 per year, within 4 years after October 17, 1986. A profile required on a substance listed pursuant to subparagraph (B) of paragraph (2) shall be completed within 3 years after addition to the list. The profiles prepared under this paragraph shall be of those substances highest on the list of pri-

orities under paragraph (2) for which profiles have not previously been prepared. Profiles required under this paragraph shall be revised and republished as necessary, but no less often than once every 3 years. Such profiles shall be provided to the States and made available to other interested parties.

(4) The Administrator of the ATSDR shall provide consultations upon request on health issues relating to exposure to hazardous or toxic substances, on the basis of available information, to the Administrator of EPA, State officials, and local officials. Such consultations to individuals may be provided by States under cooperative agreements established under this chapter.

(5)(A) For each hazardous substance listed pursuant to paragraph (2), the Administrator of ATSDR (in consultation with the Administrator of EPA and other agencies and programs of the Public Health Service) shall assess whether adequate information on the health effects of such substance is available. For any such substance for which adequate information is not available (or under development), the Administrator of ATSDR, in cooperation with the Director of the National Toxicology Program, shall assure the initiation of a program of research designed to determine the health effects (and techniques for development of methods to determine such health effects) of such substance. Where feasible, such program shall seek to develop methods to determine the health effects of such substance in combination with other substances with which it is commonly found. Before assuring the initiation of such program, the Administrator of ATSDR shall consider recommendations of the Interagency Testing Committee established under section 4(e) of the Toxic Substances Control Act [15 U.S.C. 2603(e)] on the types of research that should be done. Such program shall include, to the extent necessary to supplement existing information, but shall not be limited to—

(i) laboratory and other studies to determine short, intermediate, and long-term health effects;

(ii) laboratory and other studies to determine organ-specific, site-specific, and system-specific acute and chronic toxicity;

(iii) laboratory and other studies to determine the manner in which such substances are metabolized or to otherwise develop an understanding of the biokinetics of such substances; and

(iv) where there is a possibility of obtaining human data, the collection of such information.

(B) In assessing the need to perform laboratory and other studies, as required by subparagraph (A), the Administrator of ATSDR shall consider—

(i) the availability and quality of existing test data concerning the substance on the suspected health effect in question;

(ii) the extent to which testing already in progress will, in a timely fashion, provide data that will be adequate to support the preparation of toxicological profiles as required by paragraph (3); and

(iii) such other scientific and technical factors as the Administrator of ATSDR may de-

termine are necessary for the effective implementation of this subsection.

(C) In the development and implementation of any research program under this paragraph, the Administrator of ATSDR and the Administrator of EPA shall coordinate such research program implemented under this paragraph with the National Toxicology Program and with programs of toxicological testing established under the Toxic Substances Control Act [15 U.S.C. 2601 et seq.] and the Federal Insecticide, Fungicide and Rodenticide Act [7 U.S.C. 136 et seq.]. The purpose of such coordination shall be to avoid duplication of effort and to assure that the hazardous substances listed pursuant to this subsection are tested thoroughly at the earliest practicable date. Where appropriate, consistent with such purpose, a research program under this paragraph may be carried out using such programs of toxicological testing.

(D) It is the sense of the Congress that the costs of research programs under this paragraph be borne by the manufacturers and processors of the hazardous substance in question, as required in programs of toxicological testing under the Toxic Substances Control Act [15 U.S.C. 2601 et seq.]. Within 1 year after October 17, 1986, the Administrator of EPA shall promulgate regulations which provide, where appropriate, for payment of such costs by manufacturers and processors under the Toxic Substances Control Act, and registrants under the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.], and recovery of such costs from responsible parties under this chapter.

(6)(A) The Administrator of ATSDR shall perform a health assessment for each facility on the National Priorities List established under section 9605 of this title. Such health assessment shall be completed not later than December 10, 1988, for each facility proposed for inclusion on such list prior to October 17, 1986, or not later than one year after the date of proposal for inclusion on such list for each facility proposed for inclusion on such list after October 17, 1986.

(B) The Administrator of ATSDR may perform health assessments for releases or facilities where individual persons or licensed physicians provide information that individuals have been exposed to a hazardous substance, for which the probable source of such exposure is a release. In addition to other methods (formal or informal) of providing such information, such individual persons or licensed physicians may submit a petition to the Administrator of ATSDR providing such information and requesting a health assessment. If such a petition is submitted and the Administrator of ATSDR does not initiate a health assessment, the Administrator of ATSDR shall provide a written explanation of why a health assessment is not appropriate.

(C) In determining the priority in which to conduct health assessments under this subsection, the Administrator of ATSDR, in consultation with the Administrator of EPA, shall give priority to those facilities at which there is documented evidence of the release of hazardous substances, at which the potential risk to human health appears highest, and for which in the judgment of the Administrator of ATSDR existing health assessment data are inadequate

to assess the potential risk to human health as provided in subparagraph (F). In determining the priorities for conducting health assessments under this subsection, the Administrator of ATSDR shall consider the National Priorities List schedules and the needs of the Environmental Protection Agency and other Federal agencies pursuant to schedules for remedial investigation and feasibility studies.

(D) Where a health assessment is done at a site on the National Priorities List, the Administrator of ATSDR shall complete such assessment promptly and, to the maximum extent practicable, before the completion of the remedial investigation and feasibility study at the facility concerned.

(E) Any State or political subdivision carrying out a health assessment for a facility shall report the results of the assessment to the Administrator of ATSDR and the Administrator of EPA and shall include recommendations with respect to further activities which need to be carried out under this section. The Administrator of ATSDR shall state such recommendation in any report on the results of any assessment carried out directly by the Administrator of ATSDR for such facility and shall issue periodic reports which include the results of all the assessments carried out under this subsection.

(F) For the purposes of this subsection and section 9611(c)(4) of this title, the term "health assessments" shall include preliminary assessments of the potential risk to human health posed by individual sites and facilities, based on such factors as the nature and extent of contamination, the existence of potential pathways of human exposure (including ground or surface water contamination, air emissions, and food chain contamination), the size and potential susceptibility of the community within the likely pathways of exposure, the comparison of expected human exposure levels to the short-term and long-term health effects associated with identified hazardous substances and any available recommended exposure or tolerance limits for such hazardous substances, and the comparison of existing morbidity and mortality data on diseases that may be associated with the observed levels of exposure. The Administrator of ATSDR shall use appropriate data, risk assessments, risk evaluations and studies available from the Administrator of EPA.

(G) The purpose of health assessments under this subsection shall be to assist in determining whether actions under paragraph (11) of this subsection should be taken to reduce human exposure to hazardous substances from a facility and whether additional information on human exposure and associated health risks is needed and should be acquired by conducting epidemiological studies under paragraph (7), establishing a registry under paragraph (8), establishing a health surveillance program under paragraph (9), or through other means. In using the results of health assessments for determining additional actions to be taken under this section, the Administrator of ATSDR may consider additional information on the risks to the potentially affected population from all sources of such hazardous substances including known point or nonpoint sources other than those from the facility in question.

(H) At the completion of each health assessment, the Administrator of ATSDR shall provide the Administrator of EPA and each affected State with the results of such assessment, together with any recommendations for further actions under this subsection or otherwise under this chapter. In addition, if the health assessment indicates that the release or threatened release concerned may pose a serious threat to human health or the environment, the Administrator of ATSDR shall so notify the Administrator of EPA who shall promptly evaluate such release or threatened release in accordance with the hazard ranking system referred to in section 9605(a)(8)(A) of this title to determine whether the site shall be placed on the National Priorities List or, if the site is already on the list, the Administrator of ATSDR may recommend to the Administrator of EPA that the site be accorded a higher priority.

(7)(A) Whenever in the judgment of the Administrator of ATSDR it is appropriate on the basis of the results of a health assessment, the Administrator of ATSDR shall conduct a pilot study of health effects for selected groups of exposed individuals in order to determine the desirability of conducting full scale epidemiological or other health studies of the entire exposed population.

(B) Whenever in the judgment of the Administrator of ATSDR it is appropriate on the basis of the results of such pilot study or other study or health assessment, the Administrator of ATSDR shall conduct such full scale epidemiological or other health studies as may be necessary to determine the health effects on the population exposed to hazardous substances from a release or threatened release. If a significant excess of disease in a population is identified, the letter of transmittal of such study shall include an assessment of other risk factors, other than a release, that may, in the judgment of the peer review group, be associated with such disease, if such risk factors were not taken into account in the design or conduct of the study.

(8) In any case in which the results of a health assessment indicate a potential significant risk to human health, the Administrator of ATSDR shall consider whether the establishment of a registry of exposed persons would contribute to accomplishing the purposes of this subsection, taking into account circumstances bearing on the usefulness of such a registry, including the seriousness or unique character of identified diseases or the likelihood of population migration from the affected area.

(9) Where the Administrator of ATSDR has determined that there is a significant increased risk of adverse health effects in humans from exposure to hazardous substances based on the results of a health assessment conducted under paragraph (6), an epidemiologic study conducted under paragraph (7), or an exposure registry that has been established under paragraph (8), and the Administrator of ATSDR has determined that such exposure is the result of a release from a facility, the Administrator of ATSDR shall initiate a health surveillance program for such population. This program shall include but not be limited to—

(A) periodic medical testing where appropriate of population subgroups to screen for

diseases for which the population or subgroup is at significant increased risk; and

(B) a mechanism to refer for treatment those individuals within such population who are screened positive for such diseases.

(10) Two years after October 17, 1986, and every 2 years thereafter, the Administrator of ATSDR shall prepare and submit to the Administrator of EPA and to the Congress a report on the results of the activities of ATSDR regarding—

(A) health assessments and pilot health effects studies conducted;

(B) epidemiologic studies conducted;

(C) hazardous substances which have been listed under paragraph (2), toxicological profiles which have been developed, and toxicologic testing which has been conducted or which is being conducted under this subsection;

(D) registries established under paragraph (8); and

(E) an overall assessment, based on the results of activities conducted by the Administrator of ATSDR, of the linkage between human exposure to individual or combinations of hazardous substances due to releases from facilities covered by this chapter or the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.] and any increased incidence or prevalence of adverse health effects in humans.

(11) If a health assessment or other study carried out under this subsection contains a finding that the exposure concerned presents a significant risk to human health, the President shall take such steps as may be necessary to reduce such exposure and eliminate or substantially mitigate the significant risk to human health. Such steps may include the use of any authority under this chapter, including, but not limited to—

(A) provision of alternative water supplies, and

(B) permanent or temporary relocation of individuals.

In any case in which information is insufficient, in the judgment of the Administrator of ATSDR or the President to determine a significant human exposure level with respect to a hazardous substance, the President may take such steps as may be necessary to reduce the exposure of any person to such hazardous substance to such level as the President deems necessary to protect human health.

(12) In any case which is the subject of a petition, a health assessment or study, or a research program under this subsection, nothing in this subsection shall be construed to delay or otherwise affect or impair the authority of the President, the Administrator of ATSDR, or the Administrator of EPA to exercise any authority vested in the President, the Administrator of ATSDR or the Administrator of EPA under any other provision of law (including, but not limited to, the imminent hazard authority of section 7003 of the Solid Waste Disposal Act [42 U.S.C. 6973]) or the response and abatement authorities of this chapter.

(13) All studies and results of research conducted under this subsection (other than health assessments) shall be reported or adopted only

after appropriate peer review. Such peer review shall be completed, to the maximum extent practicable, within a period of 60 days. In the case of research conducted under the National Toxicology Program, such peer review may be conducted by the Board of Scientific Counselors. In the case of other research, such peer review shall be conducted by panels consisting of no less than three nor more than seven members, who shall be disinterested scientific experts selected for such purpose by the Administrator of ATSDR or the Administrator of EPA, as appropriate, on the basis of their reputation for scientific objectivity and the lack of institutional ties with any person involved in the conduct of the study or research under review. Support services for such panels shall be provided by the Agency for Toxic Substances and Disease Registry, or by the Environmental Protection Agency, as appropriate.

(14) In the implementation of this subsection and other health-related authorities of this chapter, the Administrator of ATSDR shall assemble, develop as necessary, and distribute to the States, and upon request to medical colleges, physicians, and other health professionals, appropriate educational materials (including short courses) on the medical surveillance, screening, and methods of diagnosis and treatment of injury or disease related to exposure to hazardous substances (giving priority to those listed in paragraph (2)), through such means as the Administrator of ATSDR deems appropriate.

(15) The activities of the Administrator of ATSDR described in this subsection and section 9611(c)(4) of this title shall be carried out by the Administrator of ATSDR, either directly or through cooperative agreements with States (or political subdivisions thereof) which the Administrator of ATSDR determines are capable of carrying out such activities. Such activities shall include provision of consultations on health information, the conduct of health assessments, including those required under section 3019(b) of the Solid Waste Disposal Act [42 U.S.C. 6939a(b)], health studies, registries, and health surveillance.

(16) The President shall provide adequate personnel for ATSDR, which shall not be fewer than 100 employees. For purposes of determining the number of employees under this subsection, an employee employed by ATSDR on a part-time career employment basis shall be counted as a fraction which is determined by dividing 40 hours into the average number of hours of such employee's regularly scheduled workweek.

(17) In accordance with section 9620 of this title (relating to Federal facilities), the Administrator of ATSDR shall have the same authorities under this section with respect to facilities owned or operated by a department, agency, or instrumentality of the United States as the Administrator of ATSDR has with respect to any nongovernmental entity.

(18) If the Administrator of ATSDR determines that it is appropriate for purposes of this section to treat a pollutant or contaminant as a hazardous substance, such pollutant or contaminant shall be treated as a hazardous substance for such purpose.

(j) Acquisition of property

(1) Authority

The President is authorized to acquire, by purchase, lease, condemnation, donation, or otherwise, any real property or any interest in real property that the President in his discretion determines is needed to conduct a remedial action under this chapter. There shall be no cause of action to compel the President to acquire any interest in real property under this chapter.

(2) State assurance

The President may use the authority of paragraph (1) for a remedial action only if, before an interest in real estate is acquired under this subsection, the State in which the interest to be acquired is located assures the President, through a contract or cooperative agreement or otherwise, that the State will accept transfer of the interest following completion of the remedial action.

(3) Exemption

No Federal, State, or local government agency shall be liable under this chapter solely as a result of acquiring an interest in real estate under this subsection.

(k) Brownfields revitalization funding

(1) Definition of eligible entity

In this subsection, the term "eligible entity" means—

- (A) a general purpose unit of local government;
- (B) a land clearance authority or other quasi-governmental entity that operates under the supervision and control of or as an agent of a general purpose unit of local government;
- (C) a government entity created by a State legislature;
- (D) a regional council or group of general purpose units of local government;
- (E) a redevelopment agency that is chartered or otherwise sanctioned by a State;
- (F) a State;
- (G) an Indian Tribe other than in Alaska; or
- (H) an Alaska Native Regional Corporation and an Alaska Native Village Corporation as those terms are defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601 and following) and the Metlakatla Indian community.

(2) Brownfield site characterization and assessment grant program

(A) Establishment of program

The Administrator shall establish a program to—

- (i) provide grants to inventory, characterize, assess, and conduct planning related to brownfield sites under subparagraph (B); and
- (ii) perform targeted site assessments at brownfield sites.

(B) Assistance for site characterization and assessment

(i) In general

On approval of an application made by an eligible entity, the Administrator may

make a grant to the eligible entity to be used for programs to inventory, characterize, assess, and conduct planning related to one or more brownfield sites.

(ii) Site characterization and assessment

A site characterization and assessment carried out with the use of a grant under clause (i) shall be performed in accordance with section 9601(35)(B) of this title.

(3) Grants and loans for brownfield remediation

(A) Grants provided by the President

Subject to paragraphs (4) and (5), the President shall establish a program to provide grants to—

(i) eligible entities, to be used for capitalization of revolving loan funds; and

(ii) eligible entities or nonprofit organizations, where warranted, as determined by the President based on considerations under subparagraph (C), to be used directly for remediation of one or more brownfield sites owned by the entity or organization that receives the grant and in amounts not to exceed \$200,000 for each site to be remediated.

(B) Loans and grants provided by eligible entities

An eligible entity that receives a grant under subparagraph (A)(i) shall use the grant funds to provide assistance for the remediation of brownfield sites in the form of—

(i) one or more loans to an eligible entity, a site owner, a site developer, or another person; or

(ii) one or more grants to an eligible entity or other nonprofit organization, where warranted, as determined by the eligible entity that is providing the assistance, based on considerations under subparagraph (C), to remediate sites owned by the eligible entity or nonprofit organization that receives the grant.

(C) Considerations

In determining whether a grant under subparagraph (A)(ii) or (B)(ii) is warranted, the President or the eligible entity, as the case may be, shall take into consideration—

(i) the extent to which a grant will facilitate the creation of, preservation of, or addition to a park, a greenway, undeveloped property, recreational property, or other property used for nonprofit purposes;

(ii) the extent to which a grant will meet the needs of a community that has an inability to draw on other sources of funding for environmental remediation and subsequent redevelopment of the area in which a brownfield site is located because of the small population or low income of the community;

(iii) the extent to which a grant will facilitate the use or reuse of existing infrastructure;

(iv) the benefit of promoting the long-term availability of funds from a revolving loan fund for brownfield remediation; and

(v) such other similar factors as the Administrator considers appropriate to consider for the purposes of this subsection.

(D) Transition

Revolving loan funds that have been established before January 11, 2002, may be used in accordance with this paragraph.

(4) General provisions

(A) Maximum grant amount

(i) Brownfield site characterization and assessment

(I) In general

A grant under paragraph (2) may be awarded to an eligible entity on a community-wide or site-by-site basis, and shall not exceed, for any individual brownfield site covered by the grant, \$200,000.

(II) Waiver

The Administrator may waive the \$200,000 limitation under subclause (I) to permit the brownfield site to receive a grant of not to exceed \$350,000, based on the anticipated level of contamination, size, or status of ownership of the site.

(ii) Brownfield remediation

A grant under paragraph (3)(A)(i) may be awarded to an eligible entity on a community-wide or site-by-site basis, not to exceed \$1,000,000 per eligible entity. The Administrator may make an additional grant to an eligible entity described in the previous sentence for any year after the year for which the initial grant is made, taking into consideration—

(I) the number of sites and number of communities that are addressed by the revolving loan fund;

(II) the demand for funding by eligible entities that have not previously received a grant under this subsection;

(III) the demonstrated ability of the eligible entity to use the revolving loan fund to enhance remediation and provide funds on a continuing basis; and

(IV) such other similar factors as the Administrator considers appropriate to carry out this subsection.

(B) Prohibition

(i) In general

No part of a grant or loan under this subsection may be used for the payment of—

(I) a penalty or fine;

(II) a Federal cost-share requirement;

(III) an administrative cost;

(IV) a response cost at a brownfield site for which the recipient of the grant or loan is potentially liable under section 9607 of this title; or

(V) a cost of compliance with any Federal law (including a Federal law specified in section 9601(39)(B) of this title), excluding the cost of compliance with laws applicable to the cleanup.

(ii) Exclusions

For the purposes of clause (i)(III), the term “administrative cost” does not include the cost of—

(I) investigation and identification of the extent of contamination;

(II) design and performance of a response action; or

(III) monitoring of a natural resource.

(C) Assistance for development of local government site remediation programs

A local government that receives a grant under this subsection may use not to exceed 10 percent of the grant funds to develop and implement a brownfields program that may include—

(i) monitoring the health of populations exposed to one or more hazardous substances from a brownfield site; and

(ii) monitoring and enforcement of any institutional control used to prevent human exposure to any hazardous substance from a brownfield site.

(D) Insurance

A recipient of a grant or loan awarded under paragraph (2) or (3) that performs a characterization, assessment, or remediation of a brownfield site may use a portion of the grant or loan to purchase insurance for the characterization, assessment, or remediation of that site.

(5) Grant applications

(A) Submission

(i) In general

(I) Application

An eligible entity may submit to the Administrator, through a regional office of the Environmental Protection Agency and in such form as the Administrator may require, an application for a grant under this subsection for one or more brownfield sites (including information on the criteria used by the Administrator to rank applications under subparagraph (C), to the extent that the information is available).

(II) NCP requirements

The Administrator may include in any requirement for submission of an application under subclause (I) a requirement of the National Contingency Plan only to the extent that the requirement is relevant and appropriate to the program under this subsection.

(ii) Coordination

The Administrator shall coordinate with other Federal agencies to assist in making eligible entities aware of other available Federal resources.

(iii) Guidance

The Administrator shall publish guidance to assist eligible entities in applying for grants under this subsection.

(B) Approval

The Administrator shall—

(i) at least annually, complete a review of applications for grants that are received from eligible entities under this subsection; and

(ii) award grants under this subsection to eligible entities that the Administrator

determines have the highest rankings under the ranking criteria established under subparagraph (C).

(C) Ranking criteria

The Administrator shall establish a system for ranking grant applications received under this paragraph that includes the following criteria:

(i) The extent to which a grant will stimulate the availability of other funds for environmental assessment or remediation, and subsequent reuse, of an area in which one or more brownfield sites are located.

(ii) The potential of the proposed project or the development plan for an area in which one or more brownfield sites are located to stimulate economic development of the area on completion of the cleanup.

(iii) The extent to which a grant would address or facilitate the identification and reduction of threats to human health and the environment, including threats in areas in which there is a greater-than-normal incidence of diseases or conditions (including cancer, asthma, or birth defects) that may be associated with exposure to hazardous substances, pollutants, or contaminants.

(iv) The extent to which a grant would facilitate the use or reuse of existing infrastructure.

(v) The extent to which a grant would facilitate the creation of, preservation of, or addition to a park, a greenway, undeveloped property, recreational property, or other property used for nonprofit purposes.

(vi) The extent to which a grant would meet the needs of a community that has an inability to draw on other sources of funding for environmental remediation and subsequent redevelopment of the area in which a brownfield site is located because of the small population or low income of the community.

(vii) The extent to which the applicant is eligible for funding from other sources.

(viii) The extent to which a grant will further the fair distribution of funding between urban and nonurban areas.

(ix) The extent to which the grant provides for involvement of the local community in the process of making decisions relating to cleanup and future use of a brownfield site.

(x) The extent to which a grant would address or facilitate the identification and reduction of threats to the health or welfare of children, pregnant women, minority or low-income communities, or other sensitive populations.

(6) Implementation of brownfields programs

(A) Establishment of program

The Administrator may provide, or fund eligible entities or nonprofit organizations to provide, training, research, and technical assistance to individuals and organizations, as appropriate, to facilitate the inventory of brownfield sites, site assessments, remediation of brownfield sites, community involvement, or site preparation.

(B) Funding restrictions

The total Federal funds to be expended by the Administrator under this paragraph shall not exceed 15 percent of the total amount appropriated to carry out this subsection in any fiscal year.

(7) Audits**(A) In general**

The Inspector General of the Environmental Protection Agency shall conduct such reviews or audits of grants and loans under this subsection as the Inspector General considers necessary to carry out this subsection.

(B) Procedure

An audit under this subparagraph shall be conducted in accordance with the auditing procedures of the General Accounting Office, including chapter 75 of title 31.

(C) Violations

If the Administrator determines that a person that receives a grant or loan under this subsection has violated or is in violation of a condition of the grant, loan, or applicable Federal law, the Administrator may—

- (i) terminate the grant or loan;
- (ii) require the person to repay any funds received; and
- (iii) seek any other legal remedies available to the Administrator.

(D) Report to Congress

Not later than 3 years after January 11, 2002, the Inspector General of the Environmental Protection Agency shall submit to Congress a report that provides a description of the management of the program (including a description of the allocation of funds under this subsection).

(8) Leveraging

An eligible entity that receives a grant under this subsection may use the grant funds for a portion of a project at a brownfield site for which funding is received from other sources if the grant funds are used only for the purposes described in paragraph (2) or (3).

(9) Agreements

Each grant or loan made under this subsection shall—

- (A) include a requirement of the National Contingency Plan only to the extent that the requirement is relevant and appropriate to the program under this subsection, as determined by the Administrator; and
- (B) be subject to an agreement that—
 - (i) requires the recipient to—
 - (I) comply with all applicable Federal and State laws; and
 - (II) ensure that the cleanup protects human health and the environment;
 - (ii) requires that the recipient use the grant or loan exclusively for purposes specified in paragraph (2) or (3), as applicable;
 - (iii) in the case of an application by an eligible entity under paragraph (3)(A), re-

quires the eligible entity to pay a matching share (which may be in the form of a contribution of labor, material, or services) of at least 20 percent, from non-Federal sources of funding, unless the Administrator determines that the matching share would place an undue hardship on the eligible entity; and

(iv) contains such other terms and conditions as the Administrator determines to be necessary to carry out this subsection.

(10) Facility other than brownfield site

The fact that a facility may not be a brownfield site within the meaning of section 9601(39)(A) of this title has no effect on the eligibility of the facility for assistance under any other provision of Federal law.

(11) Effect on Federal laws

Nothing in this subsection affects any liability or response authority under any Federal law, including—

- (A) this chapter (including the last sentence of section 9601(14) of this title);
- (B) the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);
- (C) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);
- (D) the Toxic Substances Control Act (15 U.S.C. 2601 et seq.); and
- (E) the Safe Drinking Water Act (42 U.S.C. 300f et seq.).

(12) Funding**(A) Authorization of appropriations**

There is authorized to be appropriated to carry out this subsection \$200,000,000 for each of fiscal years 2002 through 2006.

(B) Use of certain funds

Of the amount made available under subparagraph (A), \$50,000,000, or, if the amount made available is less than \$200,000,000, 25 percent of the amount made available, shall be used for site characterization, assessment, and remediation of facilities described in section 9601(39)(D)(ii)(II) of this title.

(Pub. L. 96-510, title I, §104, Dec. 11, 1980, 94 Stat. 2774; Pub. L. 99-499, title I, §§104, 110, title II, §207(b), Oct. 17, 1986, 100 Stat. 1617, 1636, 1705; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 102-531, title III, §312(h), Oct. 27, 1992, 106 Stat. 3506; Pub. L. 107-118, title II, §211(b), Jan. 11, 2002, 115 Stat. 2362.)

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsecs. (c)(3), (9)(D), (i)(10)(E), and (k)(11)(B), is title II of Pub. L. 89-272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§6901 et seq.) of this title. Subtitle C of the Act is classified generally to subchapter III (§6921 et seq.) of chapter 82 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

Title III of the Amendments and Reauthorization Act of 1986, referred to in subsec. (e)(7)(E)(i), probably means title III of the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499, Oct. 17, 1986, 100 Stat. 1728, known as the Emergency Planning and Community Right-To-Know Act of 1986, which is classi-

fied generally to chapter 116 (§11001 et seq.) of this title. For complete classification of title III to the Code, see Short Title note set out under section 11001 of this title and Tables.

The Davis-Bacon Act, referred to in subsec. (g)(1), is act Mar. 3, 1931, ch. 411, 46 Stat. 1494, as amended, which is classified generally to sections 276a to 276a-5 of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 276a of Title 40 and Tables.

Reorganization Plan Numbered 14 of 1950, referred to in subsec. (g)(2), is set out in the Appendix to Title 5, Government Organization and Employees.

The Toxic Substances Control Act, referred to in subsecs. (i)(5)(C), (D) and (k)(11)(D), is Pub. L. 94-469, Oct. 11, 1976, 90 Stat. 2003, as amended, which is classified generally to chapter 53 (§2601 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 15 and Tables.

The Federal Insecticide, Fungicide, and Rodenticide Act, referred to in subsec. (i)(5)(C), (D), is act June 25, 1947, ch. 125, as amended generally by Pub. L. 92-516, Oct. 21, 1972, 86 Stat. 973, which is classified generally to subchapter II (§136 et seq.) of chapter 6 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 136 of Title 7 and Tables.

The Alaska Native Claims Settlement Act, referred to in subsec. (k)(1)(H), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

The Federal Water Pollution Control Act, referred to in subsec. (k)(11)(C), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Safe Drinking Water Act, referred to in subsec. (k)(11)(E), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93-523, §2(a), 88 Stat. 1660, as amended, which is classified generally to subchapter XII (§300f et seq.) of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

AMENDMENTS

2002—Subsec. (k). Pub. L. 107-118 added subsec. (k).

1992—Subsec. (i)(1). Pub. L. 102-531 substituted “Centers for Disease Control and Prevention” for “Centers for Disease Control”.

1986—Subsec. (a)(1). Pub. L. 99-499, §104(a), substituted provisions authorizing the President to allow owner or operator of facility or vessel or any other responsible party to carry out action, conduct the remedial investigation, or conduct feasibility study under section 9622 of this title, specifying conditions under which a remedial investigation or feasibility study would be authorized, providing for treatment of potentially responsible parties, and requiring President to give primary attention to those releases which the President deems may present a public health threat, for “, unless the President determines that such removal and remedial action will be done properly by the owner or operator of the vessel or facility from which the release or threat of release emanates, or by any other responsible party.”

Subsec. (a)(2). Pub. L. 99-499, §104(b), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “For the purposes of this section, ‘pollutant or contaminant’ shall include, but not be limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or

assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring. The term does not include petroleum, including crude oil and any fraction thereof which is not otherwise specifically listed or designated as hazardous substances under section 9601(14)(A) through (F) of this title, nor does it include natural gas, liquefied natural gas, or synthetic gas of pipeline quality (or mixtures of natural gas and such synthetic gas).”

Subsec. (a)(3), (4). Pub. L. 99-499, §104(c), added pars. (3) and (4).

Subsec. (b). Pub. L. 99-499, §104(d), designated existing provisions as par. (1), inserted par. (1) heading, and added par. (2).

Subsec. (c)(1). Pub. L. 99-499, §104(e)(1), substituted “\$2,000,000” for “\$1,000,000” and “12 months” for “six months”.

Subsec. (c)(1)(C). Pub. L. 99-499, §104(e)(2), added cl. (C).

Subsec. (c)(3). Pub. L. 99-499, §§104(f), 207(b), substituted text of cl. (C)(ii) and sentence providing that “facility” does not include navigable waters or beds underlying those waters for “(ii) at least 50 per centum or such greater amount as the President may determine appropriate, taking into account the degree of responsibility of the State or political subdivision, of any sums expended in response to a release at a facility that was owned at the time of any disposal of hazardous substances therein by the State or a political subdivision thereof. The President shall grant the State a credit against the share of the costs for which it is responsible under this paragraph for any documented direct out-of-pocket non-Federal funds expended or obligated by the State or a political subdivision thereof after January 1, 1978, and before December 11, 1980, for cost-eligible response actions and claims for damages compensable under section 9611 of this title relating to the specific release in question: *Provided, however*, That in no event shall the amount of the credit granted exceed the total response costs relating to the release.” and inserted provisions relating to remedial action to be taken on land or water held by an Indian tribe, held by the United States in trust for Indians, held by a member of an Indian Tribe (if such land or water is subject to a trust restriction on alienation), or otherwise within the borders of an Indian reservation.

Subsec. (c)(4). Pub. L. 99-499, §104(g), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “The President shall select appropriate remedial actions determined to be necessary to carry out this section which are to the extent practicable in accordance with the national contingency plan and which provide for that cost-effective response which provides a balance between the need for protection of public health and welfare and the environment at the facility under consideration, and the availability of amounts from the Fund established under subchapter II of this chapter to respond to other sites which present or may present a threat to public health or welfare or the environment, taking into consideration the need for immediate action.”

Subsec. (c)(5). Pub. L. 99-499, §104(h), added par. (5).

Subsec. (c)(6). Pub. L. 99-499, §104(i), added par. (6).

Subsec. (c)(7). Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”, which for purposes of codification was translated as “title 26” thus requiring no change in text.

Pub. L. 99-499, §104(i), added par. (7).

Subsec. (c)(8). Pub. L. 99-499, §104(j), added par. (8).

Subsec. (c)(9). Pub. L. 99-499, §104(k), added par. (9).

Subsec. (d)(1). Pub. L. 99-499, §104(l), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “Where the President determines that a State or political subdivision thereof has the capability to carry out any or all of the actions authorized in this section, the

President may, in his discretion, enter into a contract or cooperative agreement with such State or political subdivision to take such actions in accordance with criteria and priorities established pursuant to section 9605(8) of this title and to be reimbursed for the reasonable response costs thereof from the Fund. Any contract made hereunder shall be subject to the cost-sharing provisions of subsection (c) of this section.”

Subsec. (e)(1). Pub. L. 99-499, §104(m), added par. (1), and struck out former par. (1) which provided for access to, and copying of, records relating to covered substances, and entry by officers, employees or representatives of the President or a State into places where hazardous substances were or had been generated, stored, treated or disposed of, or transported from, and inspection and obtaining of samples of such substances and samples of containers or labeling for such substances.

Subsec. (e)(2) to (6). Pub. L. 99-499, §104(m), added pars. (2) to (6). Former par. (2) redesignated (7).

Subsec. (e)(7). Pub. L. 99-499, §104(m), (n), redesignated par. (2) as (7), aligned margin of par. (7) with pars. (1) through (6), and added par. heading and subpars. (E) and (F).

Subsec. (i). Pub. L. 99-499, §110, designated existing provisions as par. (1), redesignated former pars. (1) to (5) as subpars. (A) to (E), respectively, of par. (1), in introductory provisions of par. (1), struck out “and” after “Health Administration,” and inserted “the Secretary of Transportation, and appropriate State and local health officials,” in par. (1)(D), inserted “where appropriate”, and added pars. (2) to (18).

Subsec. (j). Pub. L. 99-499, §104(o)(1), added subsec. (j).

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (i)(10) of this section relating to the requirement that the Administrator of ATSDR submit a biennial report to Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 13th item on page 154 of House Document No. 103-7.

COORDINATION OF TITLES I TO IV OF PUB. L. 99-499

Any provision of titles I to IV of Pub. L. 99-499, imposing any tax, premium, or fee; establishing any trust fund; or authorizing expenditures from any trust fund, to have no force or effect, see section 531 of Pub. L. 99-499, set out as a note under section 1 of Title 26, Internal Revenue Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6924, 6939a, 6939b, 6972, 9601, 9607, 9609, 9611, 9613, 9617, 9618, 9619, 9620, 9621, 9622, 9626, 9628, 9660, 9661 of this title; title 10 section 2704; title 26 section 198.

§ 9605. National contingency plan

(a) Revision and republication

Within one hundred and eighty days after December 11, 1980, the President shall, after notice and opportunity for public comments, revise and republish the national contingency plan for the removal of oil and hazardous substances, originally prepared and published pursuant to section 1321 of title 33, to reflect and effectuate the responsibilities and powers created by this chapter, in addition to those matters specified in section 1321(c)(2)¹ of title 33. Such revision shall include a section of the plan to be known as the national hazardous substance response plan which shall establish procedures and standards for responding to releases of hazardous substances, pollutants, and contaminants, which shall include at a minimum:

(1) methods for discovering and investigating facilities at which hazardous substances

have been disposed of or otherwise come to be located;

(2) methods for evaluating, including analyses of relative cost, and remedying any releases or threats of releases from facilities which pose substantial danger to the public health or the environment;

(3) methods and criteria for determining the appropriate extent of removal, remedy, and other measures authorized by this chapter;

(4) appropriate roles and responsibilities for the Federal, State, and local governments and for interstate and nongovernmental entities in effectuating the plan;

(5) provision for identification, procurement, maintenance, and storage of response equipment and supplies;

(6) a method for and assignment of responsibility for reporting the existence of such facilities which may be located on federally owned or controlled properties and any releases of hazardous substances from such facilities;

(7) means of assuring that remedial action measures are cost-effective over the period of potential exposure to the hazardous substances or contaminated materials;

(8)(A) criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action. Criteria and priorities under this paragraph shall be based upon relative risk or danger to public health or welfare or the environment, in the judgment of the President, taking into account to the extent possible the population at risk, the hazard potential of the hazardous substances at such facilities, the potential for contamination of drinking water supplies, the potential for direct human contact, the potential for destruction of sensitive ecosystems, the damage to natural resources which may affect the human food chain and which is associated with any release or threatened release, the contamination or potential contamination of the ambient air which is associated with the release or threatened release, State preparedness to assume State costs and responsibilities, and other appropriate factors;

(B) based upon the criteria set forth in subparagraph (A) of this paragraph, the President shall list as part of the plan national priorities among the known releases or threatened releases throughout the United States and shall revise the list no less often than annually. Within one year after December 11, 1980, and annually thereafter, each State shall establish and submit for consideration by the President priorities for remedial action among known releases and potential releases in that State based upon the criteria set forth in subparagraph (A) of this paragraph. In assembling or revising the national list, the President shall consider any priorities established by the States. To the extent practicable, the highest priority facilities shall be designated individually and shall be referred to as the “top priority among known response targets”, and, to

¹ See References in Text note below.

the extent practicable, shall include among the one hundred highest priority facilities one such facility from each State which shall be the facility designated by the State as presenting the greatest danger to public health or welfare or the environment among the known facilities in such State. A State shall be allowed to designate its highest priority facility only once. Other priority facilities or incidents may be listed singly or grouped for response priority purposes;

(9) specified roles for private organizations and entities in preparation for response and in responding to releases of hazardous substances, including identification of appropriate qualifications and capacity therefor and including consideration of minority firms in accordance with subsection (f) of this section; and

(10) standards and testing procedures by which alternative or innovative treatment technologies can be determined to be appropriate for utilization in response actions authorized by this chapter.

The plan shall specify procedures, techniques, materials, equipment, and methods to be employed in identifying, removing, or remedying releases of hazardous substances comparable to those required under section 1321(c)(2)(F) and (G) and (j)(1) of title 33. Following publication of the revised national contingency plan, the response to and actions to minimize damage from hazardous substances releases shall, to the greatest extent possible, be in accordance with the provisions of the plan. The President may, from time to time, revise and republish the national contingency plan.

(b) Revision of plan

Not later than 18 months after the enactment of the Superfund Amendments and Reauthorization Act of 1986 [October 17, 1986], the President shall revise the National Contingency Plan to reflect the requirements of such amendments. The portion of such Plan known as "the National Hazardous Substance Response Plan" shall be revised to provide procedures and standards for remedial actions undertaken pursuant to this chapter which are consistent with amendments made by the Superfund Amendments and Reauthorization Act of 1986 relating to the selection of remedial action.

(c) Hazard ranking system

(1) Revision

Not later than 18 months after October 17, 1986, and after publication of notice and opportunity for submission of comments in accordance with section 553 of title 5, the President shall by rule promulgate amendments to the hazard ranking system in effect on September 1, 1984. Such amendments shall assure, to the maximum extent feasible, that the hazard ranking system accurately assesses the relative degree of risk to human health and the environment posed by sites and facilities subject to review. The President shall establish an effective date for the amended hazard ranking system which is not later than 24 months after October 17, 1986. Such amended hazard ranking system shall be applied to any site or

facility to be newly listed on the National Priorities List after the effective date established by the President. Until such effective date of the regulations, the hazard ranking system in effect on September 1, 1984, shall continue in full force and effect.

(2) Health assessment of water contamination risks

In carrying out this subsection, the President shall ensure that the human health risks associated with the contamination or potential contamination (either directly or as a result of the runoff of any hazardous substance or pollutant or contaminant from sites or facilities) of surface water are appropriately assessed where such surface water is, or can be, used for recreation or potable water consumption. In making the assessment required pursuant to the preceding sentence, the President shall take into account the potential migration of any hazardous substance or pollutant or contaminant through such surface water to downstream sources of drinking water.

(3) Reevaluation not required

The President shall not be required to reevaluate, after October 17, 1986, the hazard ranking of any facility which was evaluated in accordance with the criteria under this section before the effective date of the amendments to the hazard ranking system under this subsection and which was assigned a national priority under the National Contingency Plan.

(4) New information

Nothing in paragraph (3) shall preclude the President from taking new information into account in undertaking response actions under this chapter.

(d) Petition for assessment of release

Any person who is, or may be, affected by a release or threatened release of a hazardous substance or pollutant or contaminant, may petition the President to conduct a preliminary assessment of the hazards to public health and the environment which are associated with such release or threatened release. If the President has not previously conducted a preliminary assessment of such release, the President shall, within 12 months after the receipt of any such petition, complete such assessment or provide an explanation of why the assessment is not appropriate. If the preliminary assessment indicates that the release or threatened release concerned may pose a threat to human health or the environment, the President shall promptly evaluate such release or threatened release in accordance with the hazard ranking system referred to in paragraph (8)(A) of subsection (a) of this section to determine the national priority of such release or threatened release.

(e) Releases from earlier sites

Whenever there has been, after January 1, 1985, a significant release of hazardous substances or pollutants or contaminants from a site which is listed by the President as a "Site Cleaned Up To Date" on the National Priorities List (revised edition, December 1984) the site shall be restored to the National Priorities List,

without application of the hazard ranking system.

(f) Minority contractors

In awarding contracts under this chapter, the President shall consider the availability of qualified minority firms. The President shall describe, as part of any annual report submitted to the Congress under this chapter, the participation of minority firms in contracts carried out under this chapter. Such report shall contain a brief description of the contracts which have been awarded to minority firms under this chapter and of the efforts made by the President to encourage the participation of such firms in programs carried out under this chapter.

(g) Special study wastes

(1) Application

This subsection applies to facilities—

(A) which as of October 17, 1986, were not included on, or proposed for inclusion on, the National Priorities List; and

(B) at which special study wastes described in paragraph (2), (3)(A)(ii) or (3)(A)(iii) of section 6921(b) of this title are present in significant quantities, including any such facility from which there has been a release of a special study waste.

(2) Considerations in adding facilities to NPL

Pending revision of the hazard ranking system under subsection (c) of this section, the President shall consider each of the following factors in adding facilities covered by this section to the National Priorities List:

(A) The extent to which hazard ranking system score for the facility is affected by the presence of any special study waste at, or any release from, such facility.

(B) Available information as to the quantity, toxicity, and concentration of hazardous substances that are constituents of any special study waste at, or released from such facility, the extent of or potential for release of such hazardous constituents, the exposure or potential exposure to human population and the environment, and the degree of hazard to human health or the environment posed by the release of such hazardous constituents at such facility. This subparagraph refers only to available information on actual concentrations of hazardous substances and not on the total quantity of special study waste at such facility.

(3) Savings provisions

Nothing in this subsection shall be construed to limit the authority of the President to remove any facility which as of October 17, 1986, is included on the National Priorities List from such List, or not to list any facility which as of such date is proposed for inclusion on such list.

(4) Information gathering and analysis

Nothing in this chapter shall be construed to preclude the expenditure of monies from the Fund for gathering and analysis of information which will enable the President to consider the specific factors required by paragraph (2).

(h) NPL deferral

(1) Deferral to State voluntary cleanups

At the request of a State and subject to paragraphs (2) and (3), the President generally shall defer final listing of an eligible response site on the National Priorities List if the President determines that—

(A) the State, or another party under an agreement with or order from the State, is conducting a response action at the eligible response site—

(i) in compliance with a State program that specifically governs response actions for the protection of public health and the environment; and

(ii) that will provide long-term protection of human health and the environment; or

(B) the State is actively pursuing an agreement to perform a response action described in subparagraph (A) at the site with a person that the State has reason to believe is capable of conducting a response action that meets the requirements of subparagraph (A).

(2) Progress toward cleanup

If, after the last day of the 1-year period beginning on the date on which the President proposes to list an eligible response site on the National Priorities List, the President determines that the State or other party is not making reasonable progress toward completing a response action at the eligible response site, the President may list the eligible response site on the National Priorities List.

(3) Cleanup agreements

With respect to an eligible response site under paragraph (1)(B), if, after the last day of the 1-year period beginning on the date on which the President proposes to list the eligible response site on the National Priorities List, an agreement described in paragraph (1)(B) has not been reached, the President may defer the listing of the eligible response site on the National Priorities List for an additional period of not to exceed 180 days if the President determines deferring the listing would be appropriate based on—

(A) the complexity of the site;

(B) substantial progress made in negotiations; and

(C) other appropriate factors, as determined by the President.

(4) Exceptions

The President may decline to defer, or elect to discontinue a deferral of, a listing of an eligible response site on the National Priorities List if the President determines that—

(A) deferral would not be appropriate because the State, as an owner or operator or a significant contributor of hazardous substances to the facility, is a potentially responsible party;

(B) the criteria under the National Contingency Plan for issuance of a health advisory have been met; or

(C) the conditions in paragraphs (1) through (3), as applicable, are no longer being met.

(Pub. L. 96-510, title I, §105, Dec. 11, 1980, 94 Stat. 2779; Pub. L. 99-499, title I, §105, Oct. 17, 1986, 100 Stat. 1625; Pub. L. 107-118, title II, §232, Jan. 11, 2002, 115 Stat. 2379.)

REFERENCES IN TEXT

Section 1321(c)(2) of title 33, referred to in subsec. (a), was amended generally by Pub. L. 101-380, title IV, §4201(a), Aug. 18, 1990, 104 Stat. 523. Prior to general amendment, subsec. (c)(2) related to preparation of a National Contingency Plan. Provisions relating to a National Contingency Plan are contained in section 1321(d) of Title 33, Navigation and Navigable Waters.

Such amendments and the amendments made by the Superfund Amendments and Reauthorization Act of 1986, referred to in subsec. (b), are the amendments made by Pub. L. 99-499, Oct. 17, 1986, 100 Stat. 1613. For complete classification of this Act to the Code, see Short Title of 1986 Amendment note set out under section 9601 of this title and Tables.

AMENDMENTS

2002—Subsec. (h). Pub. L. 107-118 added subsec. (h).

1986—Subsec. (a). Pub. L. 99-499, §105(a)(1), designated existing provisions as subsec. (a) and added heading.

Subsec. (a)(8)(A). Pub. L. 99-499, §105(a)(2), inserted “the damage to natural resources which may affect the human food chain and which is associated with any release or threatened release, the contamination or potential contamination of the ambient air which is associated with the release or threatened release,” after “ecosystems.”

Subsec. (a)(8)(B). Pub. L. 99-499, §105(a)(3), struck out “at least four hundred of” after “To the extent practicable,” substituted “one hundred highest priority facilities” for “one hundred highest priority facilities at least”, and inserted “A State shall be allowed to designate its highest priority facility only once.”

Subsec. (a)(9). Pub. L. 99-499, §105(a)(4), inserted “and including consideration of minority firms in accordance with subsection (f) of this section”.

Subsec. (a)(10). Pub. L. 99-499, §105(a)(5), added par. (10).

Subsecs. (b) to (g). Pub. L. 99-499, §105(b), added subsecs. (b) to (g).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9601, 9604, 9607, 9611, 9616, 9620, 9622, 9626, 9651, 11003 of this title; title 26 sections 198, 468; title 33 section 2701; title 49 sections 5102, 5115.

§ 9606. Abatement actions

(a) Maintenance, jurisdiction, etc.

In addition to any other action taken by a State or local government, when the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may require the Attorney General of the United States to secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require. The President may also, after notice to the affected State, take other action under this section including, but not limited to, issuing such orders as may be necessary to protect public health and welfare and the environment.

(b) Fines; reimbursement

(1) Any person who, without sufficient cause, willfully violates, or fails or refuses to comply

with, any order of the President under subsection (a) of this section may, in an action brought in the appropriate United States district court to enforce such order, be fined not more than \$25,000 for each day in which such violation occurs or such failure to comply continues.

(2)(A) Any person who receives and complies with the terms of any order issued under subsection (a) of this section may, within 60 days after completion of the required action, petition the President for reimbursement from the Fund for the reasonable costs of such action, plus interest. Any interest payable under this paragraph shall accrue on the amounts expended from the date of expenditure at the same rate as specified for interest on investments of the Hazardous Substance Superfund established under subchapter A of chapter 98 of title 26.

(B) If the President refuses to grant all or part of a petition made under this paragraph, the petitioner may within 30 days of receipt of such refusal file an action against the President in the appropriate United States district court seeking reimbursement from the Fund.

(C) Except as provided in subparagraph (D), to obtain reimbursement, the petitioner shall establish by a preponderance of the evidence that it is not liable for response costs under section 9607(a) of this title and that costs for which it seeks reimbursement are reasonable in light of the action required by the relevant order.

(D) A petitioner who is liable for response costs under section 9607(a) of this title may also recover its reasonable costs of response to the extent that it can demonstrate, on the administrative record, that the President's decision in selecting the response action ordered was arbitrary and capricious or was otherwise not in accordance with law. Reimbursement awarded under this subparagraph shall include all reasonable response costs incurred by the petitioner pursuant to the portions of the order found to be arbitrary and capricious or otherwise not in accordance with law.

(E) Reimbursement awarded by a court under subparagraph (C) or (D) may include appropriate costs, fees, and other expenses in accordance with subsections (a) and (d) of section 2412 of title 28.

(c) Guidelines for using imminent hazard, enforcement, and emergency response authorities; promulgation by Administrator of EPA, scope, etc.

Within one hundred and eighty days after December 11, 1980, the Administrator of the Environmental Protection Agency shall, after consultation with the Attorney General, establish and publish guidelines for using the imminent hazard, enforcement, and emergency response authorities of this section and other existing statutes administered by the Administrator of the Environmental Protection Agency to effectuate the responsibilities and powers created by this chapter. Such guidelines shall to the extent practicable be consistent with the national hazardous substance response plan, and shall include, at a minimum, the assignment of responsibility for coordinating response actions with the issuance of administrative orders, enforce-

ment of standards and permits, the gathering of information, and other imminent hazard and emergency powers authorized by (1) sections 1321(c)(2),¹ 1318, 1319, and 1364(a) of title 33, (2) sections 6927, 6928, 6934, and 6973 of this title, (3) sections 300j-4 and 300i of this title, (4) sections 7413, 7414, and 7603 of this title, and (5) section 2606 of title 15.

(Pub. L. 96-510, title I, § 106, Dec. 11, 1980, 94 Stat. 2780; Pub. L. 99-499, title I, §§ 106, 109(b), Oct. 17, 1986, 100 Stat. 1628, 1633; Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c), was in the original "this Act", meaning Pub. L. 96-510, Dec. 11, 1980, 94 Stat. 2767, as amended, known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, which enacted this chapter, section 6911a of this title, and sections 4611, 4612, 4661, 4662, 4681, and 4682 of Title 26, Internal Revenue Code, amended section 6911 of this title, section 1364 of Title 33, Navigation and Navigable Waters, and section 11901 of Title 49, Transportation, and enacted provisions set out as notes under section 6911 of this title and sections 1 and 4611 of Title 26. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

Section 1321(c)(2) of title 33, referred to in subsec. (c), was amended generally by Pub. L. 101-380, title IV, § 4201(a), Aug. 18, 1990, 104 Stat. 523. Prior to general amendment, subsec. (c)(2) related to preparation of a National Contingency Plan. Provisions relating to a National Contingency Plan are contained in section 1321(d) of Title 33, Navigation and Navigable Waters.

AMENDMENTS

1986—Subsec. (b). Pub. L. 99-499 designated existing provisions as par. (1), substituted "who, without sufficient cause, willfully" for "who willfully" and "\$25,000" for "\$5,000", and added par. (2).

Subsec. (b)(2)(A). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

COORDINATION OF TITLES I TO IV OF PUB. L. 99-499

Any provision of titles I to IV of Pub. L. 99-499, imposing any tax, premium, or fee; establishing any trust fund; or authorizing expenditures from any trust fund, to have no force or effect, see section 531 of Pub. L. 99-499, set out as a note under section 1 of Title 26, Internal Revenue Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6924, 6939b, 6972, 7412, 9607, 9613, 9614, 9617, 9618, 9619, 9620, 9621, 9622, 9624, 9628 of this title; title 26 section 4662.

§ 9607. Liability

(a) Covered persons; scope; recoverable costs and damages; interest rate; "comparable maturity" date

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section—

(1) the owner and operator of a vessel or a facility,

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,

(3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances, and

(4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for—

(A) all costs of removal or remedial action incurred by the United States Government or a State or an Indian tribe not inconsistent with the national contingency plan;

(B) any other necessary costs of response incurred by any other person consistent with the national contingency plan;

(C) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release; and

(D) the costs of any health assessment or health effects study carried out under section 9604(i) of this title.

The amounts recoverable in an action under this section shall include interest on the amounts recoverable under subparagraphs (A) through (D). Such interest shall accrue from the later of (i) the date payment of a specified amount is demanded in writing, or (ii) the date of the expenditure concerned. The rate of interest on the outstanding unpaid balance of the amounts recoverable under this section shall be the same rate as is specified for interest on investments of the Hazardous Substance Superfund established under subchapter A of chapter 98 of title 26. For purposes of applying such amendments to interest under this subsection, the term "comparable maturity" shall be determined with reference to the date on which interest accruing under this subsection commences.

(b) Defenses

There shall be no liability under subsection (a) of this section for a person otherwise liable who can establish by a preponderance of the evidence that the release or threat of release of a hazardous substance and the damages resulting therefrom were caused solely by—

(1) an act of God;

(2) an act of war;

(3) an act or omission of a third party other than an employee or agent of the defendant, or than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant (except where the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier by rail), if the defendant establishes by a preponderance of the evidence that (a) he exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of such hazardous substance, in

¹ See References in Text note below.

light of all relevant facts and circumstances, and (b) he took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions; or

(4) any combination of the foregoing paragraphs.

(c) Determination of amounts

(1) Except as provided in paragraph (2) of this subsection, the liability under this section of an owner or operator or other responsible person for each release of a hazardous substance or incident involving release of a hazardous substance shall not exceed—

(A) for any vessel, other than an incineration vessel, which carries any hazardous substance as cargo or residue, \$300 per gross ton, or \$5,000,000, whichever is greater;

(B) for any other vessel, other than an incineration vessel, \$300 per gross ton, or \$500,000, whichever is greater;

(C) for any motor vehicle, aircraft, hazardous liquid pipeline facility (as defined in section 60101(a) of title 49), or rolling stock, \$50,000,000 or such lesser amount as the President shall establish by regulation, but in no event less than \$5,000,000 (or, for releases of hazardous substances as defined in section 9601(14)(A) of this title into the navigable waters, \$8,000,000). Such regulations shall take into account the size, type, location, storage, and handling capacity and other matters relating to the likelihood of release in each such class and to the economic impact of such limits on each such class; or

(D) for any incineration vessel or any facility other than those specified in subparagraph (C) of this paragraph, the total of all costs of response plus \$50,000,000 for any damages under this subchapter.

(2) Notwithstanding the limitations in paragraph (1) of this subsection, the liability of an owner or operator or other responsible person under this section shall be the full and total costs of response and damages, if (A)(i) the release or threat of release of a hazardous substance was the result of willful misconduct or willful negligence within the privity or knowledge of such person, or (ii) the primary cause of the release was a violation (within the privity or knowledge of such person) of applicable safety, construction, or operating standards or regulations; or (B) such person fails or refuses to provide all reasonable cooperation and assistance requested by a responsible public official in connection with response activities under the national contingency plan with respect to regulated carriers subject to the provisions of title 49 or vessels subject to the provisions of title 33, 46, or 46 Appendix, subparagraph (A)(ii) of this paragraph shall be deemed to refer to Federal standards or regulations.

(3) If any person who is liable for a release or threat of release of a hazardous substance fails without sufficient cause to properly provide removal or remedial action upon order of the President pursuant to section 9604 or 9606 of this title, such person may be liable to the United States for punitive damages in an amount at least equal to, and not more than three times,

the amount of any costs incurred by the Fund as a result of such failure to take proper action. The President is authorized to commence a civil action against any such person to recover the punitive damages, which shall be in addition to any costs recovered from such person pursuant to section 9612(c) of this title. Any moneys received by the United States pursuant to this subsection shall be deposited in the Fund.

(d) Rendering care or advice

(1) In general

Except as provided in paragraph (2), no person shall be liable under this subchapter for costs or damages as a result of actions taken or omitted in the course of rendering care, assistance, or advice in accordance with the National Contingency Plan (“NCP”) or at the direction of an onscene coordinator appointed under such plan, with respect to an incident creating a danger to public health or welfare or the environment as a result of any releases of a hazardous substance or the threat thereof. This paragraph shall not preclude liability for costs or damages as the result of negligence on the part of such person.

(2) State and local governments

No State or local government shall be liable under this subchapter for costs or damages as a result of actions taken in response to an emergency created by the release or threatened release of a hazardous substance generated by or from a facility owned by another person. This paragraph shall not preclude liability for costs or damages as a result of gross negligence or intentional misconduct by the State or local government. For the purpose of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence.

(3) Savings provision

This subsection shall not alter the liability of any person covered by the provisions of paragraph (1), (2), (3), or (4) of subsection (a) of this section with respect to the release or threatened release concerned.

(e) Indemnification, hold harmless, etc., agreements or conveyances; subrogation rights

(1) No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any vessel or facility or from any person who may be liable for a release or threat of release under this section, to any other person the liability imposed under this section. Nothing in this subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this section.

(2) Nothing in this subchapter, including the provisions of paragraph (1) of this subsection, shall bar a cause of action that an owner or operator or any other person subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

(f) Natural resources liability; designation of public trustees of natural resources

(1) Natural resources liability

In the case of an injury to, destruction of, or loss of natural resources under subparagraph

(C) of subsection (a) of this section liability shall be to the United States Government and to any State for natural resources within the State or belonging to, managed by, controlled by, or appertaining to such State and to any Indian tribe for natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation: *Provided, however,* That no liability to the United States or State or Indian tribe shall be imposed under subparagraph (C) of subsection (a) of this section, where the party sought to be charged has demonstrated that the damages to natural resources complained of were specifically identified as an irreversible and irretrievable commitment of natural resources in an environmental impact statement, or other comparable environment analysis, and the decision to grant a permit or license authorizes such commitment of natural resources, and the facility or project was otherwise operating within the terms of its permit or license, so long as, in the case of damages to an Indian tribe occurring pursuant to a Federal permit or license, the issuance of that permit or license was not inconsistent with the fiduciary duty of the United States with respect to such Indian tribe. The President, or the authorized representative of any State, shall act on behalf of the public as trustee of such natural resources to recover for such damages. Sums recovered by the United States Government as trustee under this subsection shall be retained by the trustee, without further appropriation, for use only to restore, replace, or acquire the equivalent of such natural resources. Sums recovered by a State as trustee under this subsection shall be available for use only to restore, replace, or acquire the equivalent of such natural resources by the State. The measure of damages in any action under subparagraph (C) of subsection (a) of this section shall not be limited by the sums which can be used to restore or replace such resources. There shall be no double recovery under this chapter for natural resource damages, including the costs of damage assessment or restoration, rehabilitation, or acquisition for the same release and natural resource. There shall be no recovery under the authority of subparagraph (C) of subsection (a) of this section where such damages and the release of a hazardous substance from which such damages resulted have occurred wholly before December 11, 1980.

(2) Designation of Federal and State officials

(A) Federal

The President shall designate in the National Contingency Plan published under section 9605 of this title the Federal officials who shall act on behalf of the public as trustees for natural resources under this chapter and section 1321 of title 33. Such officials shall assess damages for injury to, destruction of, or loss of natural resources for purposes of this chapter and such section 1321 of title 33 for those resources under

their trusteeship and may, upon request of and reimbursement from a State and at the Federal officials' discretion, assess damages for those natural resources under the State's trusteeship.

(B) State

The Governor of each State shall designate State officials who may act on behalf of the public as trustees for natural resources under this chapter and section 1321 of title 33 and shall notify the President of such designations. Such State officials shall assess damages to natural resources for the purposes of this chapter and such section 1321 of title 33 for those natural resources under their trusteeship.

(C) Rebuttable presumption

Any determination or assessment of damages to natural resources for the purposes of this chapter and section 1321 of title 33 made by a Federal or State trustee in accordance with the regulations promulgated under section 9651(c) of this title shall have the force and effect of a rebuttable presumption on behalf of the trustee in any administrative or judicial proceeding under this chapter or section 1321 of title 33.

(g) Federal agencies

For provisions relating to Federal agencies, see section 9620 of this title.

(h) Owner or operator of vessel

The owner or operator of a vessel shall be liable in accordance with this section, under maritime tort law, and as provided under section 9614 of this title notwithstanding any provision of the Act of March 3, 1851 (46 U.S.C. 183ff) [46 App. U.S.C. 182, 183, 184-188] or the absence of any physical damage to the proprietary interest of the claimant.

(i) Application of a registered pesticide product

No person (including the United States or any State or Indian tribe) may recover under the authority of this section for any response costs or damages resulting from the application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.]. Nothing in this paragraph shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action of such hazardous substance.

(j) Obligations or liability pursuant to federally permitted release

Recovery by any person (including the United States or any State or Indian tribe) for response costs or damages resulting from a federally permitted release shall be pursuant to existing law in lieu of this section. Nothing in this paragraph shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or remedial action or the costs of removal

or remedial action of such hazardous substance. In addition, costs of response incurred by the Federal Government in connection with a discharge specified in section 9601(10)(B) or (C) of this title shall be recoverable in an action brought under section 1319(b) of title 33.

(k) Transfer to, and assumption by, Post-Closure Liability Fund of liability of owner or operator of hazardous waste disposal facility in receipt of permit under applicable solid waste disposal law; time, criteria applicable, procedures, etc.; monitoring costs; reports

(1) The liability established by this section or any other law for the owner or operator of a hazardous waste disposal facility which has received a permit under subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.], shall be transferred to and assumed by the Post-closure Liability Fund established by section 9641¹ of this title when—

(A) such facility and the owner and operator thereof has complied with the requirements of subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.] and regulations issued thereunder, which may affect the performance of such facility after closure; and

(B) such facility has been closed in accordance with such regulations and the conditions of such permit, and such facility and the surrounding area have been monitored as required by such regulations and permit conditions for a period not to exceed five years after closure to demonstrate that there is no substantial likelihood that any migration offsite or release from confinement of any hazardous substance or other risk to public health or welfare will occur.

(2) Such transfer of liability shall be effective ninety days after the owner or operator of such facility notifies the Administrator of the Environmental Protection Agency (and the State where it has an authorized program under section 3006(b) of the Solid Waste Disposal Act [42 U.S.C. 6926(b)]) that the conditions imposed by this subsection have been satisfied. If within such ninety-day period the Administrator of the Environmental Protection Agency or such State determines that any such facility has not complied with all the conditions imposed by this subsection or that insufficient information has been provided to demonstrate such compliance, the Administrator or such State shall so notify the owner and operator of such facility and the administrator of the Fund established by section 9641¹ of this title, and the owner and operator of such facility shall continue to be liable with respect to such facility under this section and other law until such time as the Administrator and such State determines that such facility has complied with all conditions imposed by this subsection. A determination by the Administrator or such State that a facility has not complied with all conditions imposed by this subsection or that insufficient information has been supplied to demonstrate compliance, shall be a final administrative action for purposes of judicial review. A request for additional information shall state in specific terms the data required.

¹See References in Text note below.

(3) In addition to the assumption of liability of owners and operators under paragraph (1) of this subsection, the Post-closure Liability Fund established by section 9641¹ of this title may be used to pay costs of monitoring and care and maintenance of a site incurred by other persons after the period of monitoring required by regulations under subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.] for hazardous waste disposal facilities meeting the conditions of paragraph (1) of this subsection.

(4)(A) Not later than one year after December 11, 1980, the Secretary of the Treasury shall conduct a study and shall submit a report thereon to the Congress on the feasibility of establishing or qualifying an optional system of private insurance for postclosure financial responsibility for hazardous waste disposal facilities to which this subsection applies. Such study shall include a specification of adequate and realistic minimum standards to assure that any such privately placed insurance will carry out the purposes of this subsection in a reliable, enforceable, and practical manner. Such a study shall include an examination of the public and private incentives, programs, and actions necessary to make privately placed insurance a practical and effective option to the financing system for the Post-closure Liability Fund provided in subchapter II¹ of this chapter.

(B) Not later than eighteen months after December 11, 1980, and after a public hearing, the President shall by rule determine whether or not it is feasible to establish or qualify an optional system of private insurance for postclosure financial responsibility for hazardous waste disposal facilities to which this subsection applies. If the President determines the establishment or qualification of such a system would be infeasible, he shall promptly publish an explanation of the reasons for such a determination. If the President determines the establishment or qualification of such a system would be feasible, he shall promptly publish notice of such determination. Not later than six months after an affirmative determination under the preceding sentence and after a public hearing, the President shall by rule promulgate adequate and realistic minimum standards which must be met by any such privately placed insurance, taking into account the purposes of this chapter and this subsection. Such rules shall also specify reasonably expeditious procedures by which privately placed insurance plans can qualify as meeting such minimum standards.

(C) In the event any privately placed insurance plan qualifies under subparagraph (B), any person enrolled in, and complying with the terms of, such plan shall be excluded from the provisions of paragraphs (1), (2), and (3) of this subsection and exempt from the requirements to pay any tax or fee to the Post-closure Liability Fund under subchapter II¹ of this chapter.

(D) The President may issue such rules and take such other actions as are necessary to effectuate the purposes of this paragraph.

(5) SUSPENSION OF LIABILITY TRANSFER.—Notwithstanding paragraphs (1), (2), (3), and (4) of this subsection and subsection (j) of section 9611 of this title, no liability shall be transferred to or assumed by the Post-Closure Liability Trust

Fund established by section 9641¹ of this title prior to completion of the study required under paragraph (6) of this subsection, transmission of a report of such study to both Houses of Congress, and authorization of such a transfer or assumption by Act of Congress following receipt of such study and report.

(6) STUDY OF OPTIONS FOR POST-CLOSURE PROGRAM.—

(A) STUDY.—The Comptroller General shall conduct a study of options for a program for the management of the liabilities associated with hazardous waste treatment, storage, and disposal sites after their closure which complements the policies set forth in the Hazardous and Solid Waste Amendments of 1984 and assures the protection of human health and the environment.

(B) PROGRAM ELEMENTS.—The program referred to in subparagraph (A) shall be designed to assure each of the following:

(i) Incentives are created and maintained for the safe management and disposal of hazardous wastes so as to assure protection of human health and the environment.

(ii) Members of the public will have reasonable confidence that hazardous wastes will be managed and disposed of safely and that resources will be available to address any problems that may arise and to cover costs of long-term monitoring, care, and maintenance of such sites.

(iii) Persons who are or seek to become owners and operators of hazardous waste disposal facilities will be able to manage their potential future liabilities and to attract the investment capital necessary to build, operate, and close such facilities in a manner which assures protection of human health and the environment.

(C) ASSESSMENTS.—The study under this paragraph shall include assessments of treatment, storage, and disposal facilities which have been or are likely to be issued a permit under section 3005 of the Solid Waste Disposal Act [42 U.S.C. 6925] and the likelihood of future insolvency on the part of owners and operators of such facilities. Separate assessments shall be made for different classes of facilities and for different classes of land disposal facilities and shall include but not be limited to—

(i) the current and future financial capabilities of facility owners and operators;

(ii) the current and future costs associated with facilities, including the costs of routine monitoring and maintenance, compliance monitoring, corrective action, natural resource damages, and liability for damages to third parties; and

(iii) the availability of mechanisms by which owners and operators of such facilities can assure that current and future costs, including post-closure costs, will be financed.

(D) PROCEDURES.—In carrying out the responsibilities of this paragraph, the Comptroller General shall consult with the Administrator, the Secretary of Commerce, the Secretary of the Treasury, and the heads of other appropriate Federal agencies.

(E) CONSIDERATION OF OPTIONS.—In conducting the study under this paragraph, the Comptroller General shall consider various mechanisms and combinations of mechanisms to complement the policies set forth in the Hazardous and Solid Waste Amendments of 1984 to serve the purposes set forth in subparagraph (B) and to assure that the current and future costs associated with hazardous waste facilities, including post-closure costs, will be adequately financed and, to the greatest extent possible, borne by the owners and operators of such facilities. Mechanisms to be considered include, but are not limited to—

(i) revisions to closure, post-closure, and financial responsibility requirements under subtitles C and I of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq., 6991 et seq.];

(ii) voluntary risk pooling by owners and operators;

(iii) legislation to require risk pooling by owners and operators;

(iv) modification of the Post-Closure Liability Trust Fund previously established by section 9641² of this title, and the conditions for transfer of liability under this subsection, including limiting the transfer of some or all liability under this subsection only in the case of insolvency of owners and operators;

(v) private insurance;

(vi) insurance provided by the Federal Government;

(vii) coinsurance, reinsurance, or pooled-risk insurance, whether provided by the private sector or provided or assisted by the Federal Government; and

(viii) creation of a new program to be administered by a new or existing Federal agency or by a federally chartered corporation.

(F) RECOMMENDATIONS.—The Comptroller General shall consider options for funding any program under this section and shall, to the extent necessary, make recommendations to the appropriate committees of Congress for additional authority to implement such program.

(I) Federal lien

(1) In general

All costs and damages for which a person is liable to the United States under subsection (a) of this section (other than the owner or operator of a vessel under paragraph (1) of subsection (a) of this section) shall constitute a lien in favor of the United States upon all real property and rights to such property which—

(A) belong to such person; and

(B) are subject to or affected by a removal or remedial action.

(2) Duration

The lien imposed by this subsection shall arise at the later of the following:

(A) The time costs are first incurred by the United States with respect to a response action under this chapter.

(B) The time that the person referred to in paragraph (1) is provided (by certified or reg-

²See References in Text note below.

istered mail) written notice of potential liability.

Such lien shall continue until the liability for the costs (or a judgment against the person arising out of such liability) is satisfied or becomes unenforceable through operation of the statute of limitations provided in section 9613 of this title.

(3) Notice and validity

The lien imposed by this subsection shall be subject to the rights of any purchaser, holder of a security interest, or judgment lien creditor whose interest is perfected under applicable State law before notice of the lien has been filed in the appropriate office within the State (or county or other governmental subdivision), as designated by State law, in which the real property subject to the lien is located. Any such purchaser, holder of a security interest, or judgment lien creditor shall be afforded the same protections against the lien imposed by this subsection as are afforded under State law against a judgment lien which arises out of an unsecured obligation and which arises as of the time of the filing of the notice of the lien imposed by this subsection. If the State has not by law designated one office for the receipt of such notices of liens, the notice shall be filed in the office of the clerk of the United States district court for the district in which the real property is located. For purposes of this subsection, the terms “purchaser” and “security interest” shall have the definitions provided under section 6323(h) of title 26.

(4) Action in rem

The costs constituting the lien may be recovered in an action in rem in the United States district court for the district in which the removal or remedial action is occurring or has occurred. Nothing in this subsection shall affect the right of the United States to bring an action against any person to recover all costs and damages for which such person is liable under subsection (a) of this section.

(m) Maritime lien

All costs and damages for which the owner or operator of a vessel is liable under subsection (a)(1) of this section with respect to a release or threatened release from such vessel shall constitute a maritime lien in favor of the United States on such vessel. Such costs may be recovered in an action in rem in the district court of the United States for the district in which the vessel may be found. Nothing in this subsection shall affect the right of the United States to bring an action against the owner or operator of such vessel in any court of competent jurisdiction to recover such costs.

(n) Liability of fiduciaries

(1) In general

The liability of a fiduciary under any provision of this chapter for the release or threatened release of a hazardous substance at, from, or in connection with a vessel or facility held in a fiduciary capacity shall not exceed the assets held in the fiduciary capacity.

(2) Exclusion

Paragraph (1) does not apply to the extent that a person is liable under this chapter inde-

pendently of the person’s ownership of a vessel or facility as a fiduciary or actions taken in a fiduciary capacity.

(3) Limitation

Paragraphs (1) and (4) do not limit the liability pertaining to a release or threatened release of a hazardous substance if negligence of a fiduciary causes or contributes to the release or threatened release.

(4) Safe harbor

A fiduciary shall not be liable in its personal capacity under this chapter for—

(A) undertaking or directing another person to undertake a response action under subsection (d)(1) of this section or under the direction of an on scene coordinator designated under the National Contingency Plan;

(B) undertaking or directing another person to undertake any other lawful means of addressing a hazardous substance in connection with the vessel or facility;

(C) terminating the fiduciary relationship;

(D) including in the terms of the fiduciary agreement a covenant, warranty, or other term or condition that relates to compliance with an environmental law, or monitoring, modifying or enforcing the term or condition;

(E) monitoring or undertaking 1 or more inspections of the vessel or facility;

(F) providing financial or other advice or counseling to other parties to the fiduciary relationship, including the settlor or beneficiary;

(G) restructuring, renegotiating, or otherwise altering the terms and conditions of the fiduciary relationship;

(H) administering, as a fiduciary, a vessel or facility that was contaminated before the fiduciary relationship began; or

(I) declining to take any of the actions described in subparagraphs (B) through (H).

(5) Definitions

As used in this chapter:

(A) Fiduciary

The term “fiduciary”—

(i) means a person acting for the benefit of another party as a bona fide—

(I) trustee;

(II) executor;

(III) administrator;

(IV) custodian;

(V) guardian of estates or guardian ad litem;

(VI) receiver;

(VII) conservator;

(VIII) committee of estates of incapacitated persons;

(IX) personal representative;

(X) trustee (including a successor to a trustee) under an indenture agreement, trust agreement, lease, or similar financing agreement, for debt securities, certificates of interest or certificates of participation in debt securities, or other forms of indebtedness as to which the trustee is not, in the capacity of trustee, the lender; or

(XI) representative in any other capacity that the Administrator, after providing public notice, determines to be similar to the capacities described in subclauses (I) through (X); and

(ii) does not include—

(I) a person that is acting as a fiduciary with respect to a trust or other fiduciary estate that was organized for the primary purpose of, or is engaged in, actively carrying on a trade or business for profit, unless the trust or other fiduciary estate was created as part of, or to facilitate, 1 or more estate plans or because of the incapacity of a natural person; or

(II) a person that acquires ownership or control of a vessel or facility with the objective purpose of avoiding liability of the person or of any other person.

(B) Fiduciary capacity

The term “fiduciary capacity” means the capacity of a person in holding title to a vessel or facility, or otherwise having control of or an interest in the vessel or facility, pursuant to the exercise of the responsibilities of the person as a fiduciary.

(6) Savings clause

Nothing in this subsection—

(A) affects the rights or immunities or other defenses that are available under this chapter or other law that is applicable to a person subject to this subsection; or

(B) creates any liability for a person or a private right of action against a fiduciary or any other person.

(7) No effect on certain persons

Nothing in this subsection applies to a person if the person—

(A)(i) acts in a capacity other than that of a fiduciary or in a beneficiary capacity; and
(ii) in that capacity, directly or indirectly benefits from a trust or fiduciary relationship; or

(B)(i) is a beneficiary and a fiduciary with respect to the same fiduciary estate; and

(ii) as a fiduciary, receives benefits that exceed customary or reasonable compensation, and incidental benefits, permitted under other applicable law.

(8) Limitation

This subsection does not preclude a claim under this chapter against—

(A) the assets of the estate or trust administered by the fiduciary; or

(B) a nonemployee agent or independent contractor retained by a fiduciary.

(o) De micromis exemption

(1) In general

Except as provided in paragraph (2), a person shall not be liable, with respect to response costs at a facility on the National Priorities List, under this chapter if liability is based solely on paragraph (3) or (4) of subsection (a) of this section, and the person, except as provided in paragraph (4) of this subsection, can demonstrate that—

(A) the total amount of the material containing hazardous substances that the per-

son arranged for disposal or treatment of, arranged with a transporter for transport for disposal or treatment of, or accepted for transport for disposal or treatment, at the facility was less than 110 gallons of liquid materials or less than 200 pounds of solid materials (or such greater or lesser amounts as the Administrator may determine by regulation); and

(B) all or part of the disposal, treatment, or transport concerned occurred before April 1, 2001.

(2) Exceptions

Paragraph (1) shall not apply in a case in which—

(A) the President determines that—

(i) the materials containing hazardous substances referred to in paragraph (1) have contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration with respect to the facility; or

(ii) the person has failed to comply with an information request or administrative subpoena issued by the President under this chapter or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the facility; or

(B) a person has been convicted of a criminal violation for the conduct to which the exemption would apply, and that conviction has not been vitiated on appeal or otherwise.

(3) No judicial review

A determination by the President under paragraph (2)(A) shall not be subject to judicial review.

(4) Nongovernmental third-party contribution actions

In the case of a contribution action, with respect to response costs at a facility on the National Priorities List, brought by a party, other than a Federal, State, or local government, under this chapter, the burden of proof shall be on the party bringing the action to demonstrate that the conditions described in paragraph (1)(A) and (B) of this subsection are not met.

(p) Municipal solid waste exemption

(1) In general

Except as provided in paragraph (2) of this subsection, a person shall not be liable, with respect to response costs at a facility on the National Priorities List, under paragraph (3) of subsection (a) of this section for municipal solid waste disposed of at a facility if the person, except as provided in paragraph (5) of this subsection, can demonstrate that the person is—

(A) an owner, operator, or lessee of residential property from which all of the person’s municipal solid waste was generated with respect to the facility;

(B) a business entity (including a parent, subsidiary, or affiliate of the entity) that, during its 3 taxable years preceding the date

of transmittal of written notification from the President of its potential liability under this section, employed on average not more than 100 full-time individuals, or the equivalent thereof, and that is a small business concern (within the meaning of the Small Business Act (15 U.S.C. 631 et seq.)) from which was generated all of the municipal solid waste attributable to the entity with respect to the facility; or

(C) an organization described in section 501(c)(3) of title 26 and exempt from tax under section 501(a) of such title that, during its taxable year preceding the date of transmittal of written notification from the President of its potential liability under this section, employed not more than 100 paid individuals at the location from which was generated all of the municipal solid waste attributable to the organization with respect to the facility.

For purposes of this subsection, the term “affiliate” has the meaning of that term provided in the definition of “small business concern” in regulations promulgated by the Small Business Administration in accordance with the Small Business Act (15 U.S.C. 631 et seq.).

(2) Exception

Paragraph (1) shall not apply in a case in which the President determines that—

(A) the municipal solid waste referred to in paragraph (1) has contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration with respect to the facility;

(B) the person has failed to comply with an information request or administrative subpoena issued by the President under this chapter; or

(C) the person has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the facility.

(3) No judicial review

A determination by the President under paragraph (2) shall not be subject to judicial review.

(4) Definition of municipal solid waste

(A) In general

For purposes of this subsection, the term “municipal solid waste” means waste material—

(i) generated by a household (including a single or multifamily residence); and

(ii) generated by a commercial, industrial, or institutional entity, to the extent that the waste material—

(I) is essentially the same as waste normally generated by a household;

(II) is collected and disposed of with other municipal solid waste as part of normal municipal solid waste collection services; and

(III) contains a relative quantity of hazardous substances no greater than the relative quantity of hazardous sub-

stances contained in waste material generated by a typical single-family household.

(B) Examples

Examples of municipal solid waste under subparagraph (A) include food and yard waste, paper, clothing, appliances, consumer product packaging, disposable diapers, office supplies, cosmetics, glass and metal food containers, elementary or secondary school science laboratory waste, and household hazardous waste.

(C) Exclusions

The term “municipal solid waste” does not include—

(i) combustion ash generated by resource recovery facilities or municipal incinerators; or

(ii) waste material from manufacturing or processing operations (including pollution control operations) that is not essentially the same as waste normally generated by households.

(5) Burden of proof

In the case of an action, with respect to response costs at a facility on the National Priorities List, brought under this section or section 9613 of this title by—

(A) a party, other than a Federal, State, or local government, with respect to municipal solid waste disposed of on or after April 1, 2001; or

(B) any party with respect to municipal solid waste disposed of before April 1, 2001, the burden of proof shall be on the party bringing the action to demonstrate that the conditions described in paragraphs (1) and (4) for exemption for entities and organizations described in paragraph (1)(B) and (C) are not met.

(6) Certain actions not permitted

No contribution action may be brought by a party, other than a Federal, State, or local government, under this chapter with respect to circumstances described in paragraph (1)(A).

(7) Costs and fees

A nongovernmental entity that commences, after January 11, 2002, a contribution action under this chapter shall be liable to the defendant for all reasonable costs of defending the action, including all reasonable attorney’s fees and expert witness fees, if the defendant is not liable for contribution based on an exemption under this subsection or subsection (o) of this section.

(q) Contiguous properties

(1) Not considered to be an owner or operator

(A) In general

A person that owns real property that is contiguous to or otherwise similarly situated with respect to, and that is or may be contaminated by a release or threatened release of a hazardous substance from, real property that is not owned by that person shall not be considered to be an owner or op-

erator of a vessel or facility under paragraph (1) or (2) of subsection (a) of this section solely by reason of the contamination if—

(i) the person did not cause, contribute, or consent to the release or threatened release;

(ii) the person is not—

(I) potentially liable, or affiliated with any other person that is potentially liable, for response costs at a facility through any direct or indirect familial relationship or any contractual, corporate, or financial relationship (other than a contractual, corporate, or financial relationship that is created by a contract for the sale of goods or services); or

(II) the result of a reorganization of a business entity that was potentially liable;

(iii) the person takes reasonable steps to—

(I) stop any continuing release;

(II) prevent any threatened future release; and

(III) prevent or limit human, environmental, or natural resource exposure to any hazardous substance released on or from property owned by that person;

(iv) the person provides full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration at the vessel or facility from which there has been a release or threatened release (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response action or natural resource restoration at the vessel or facility);

(v) the person—

(I) is in compliance with any land use restrictions established or relied on in connection with the response action at the facility; and

(II) does not impede the effectiveness or integrity of any institutional control employed in connection with a response action;

(vi) the person is in compliance with any request for information or administrative subpoena issued by the President under this chapter;

(vii) the person provides all legally required notices with respect to the discovery or release of any hazardous substances at the facility; and

(viii) at the time at which the person acquired the property, the person—

(I) conducted all appropriate inquiry within the meaning of section 9601(35)(B) of this title with respect to the property; and

(II) did not know or have reason to know that the property was or could be contaminated by a release or threatened release of one or more hazardous substances from other real property not owned or operated by the person.

(B) Demonstration

To qualify as a person described in subparagraph (A), a person must establish by a preponderance of the evidence that the conditions in clauses (i) through (viii) of subparagraph (A) have been met.

(C) Bona fide prospective purchaser

Any person that does not qualify as a person described in this paragraph because the person had, or had reason to have, knowledge specified in subparagraph (A)(viii) at the time of acquisition of the real property may qualify as a bona fide prospective purchaser under section 9601(40) of this title if the person is otherwise described in that section.

(D) Ground water

With respect to a hazardous substance from one or more sources that are not on the property of a person that is a contiguous property owner that enters ground water beneath the property of the person solely as a result of subsurface migration in an aquifer, subparagraph (A)(iii) shall not require the person to conduct ground water investigations or to install ground water remediation systems, except in accordance with the policy of the Environmental Protection Agency concerning owners of property containing contaminated aquifers, dated May 24, 1995.

(2) Effect of law

With respect to a person described in this subsection, nothing in this subsection—

(A) limits any defense to liability that may be available to the person under any other provision of law; or

(B) imposes liability on the person that is not otherwise imposed by subsection (a) of this section.

(3) Assurances

The Administrator may—

(A) issue an assurance that no enforcement action under this chapter will be initiated against a person described in paragraph (1); and

(B) grant a person described in paragraph (1) protection against a cost recovery or contribution action under section 9613(f) of this title.

(r) Prospective purchaser and windfall lien

(1) Limitation on liability

Notwithstanding subsection (a)(1) of this section, a bona fide prospective purchaser whose potential liability for a release or threatened release is based solely on the purchaser's being considered to be an owner or operator of a facility shall not be liable as long as the bona fide prospective purchaser does not impede the performance of a response action or natural resource restoration.

(2) Lien

If there are unrecovered response costs incurred by the United States at a facility for which an owner of the facility is not liable by reason of paragraph (1), and if each of the conditions described in paragraph (3) is met, the

United States shall have a lien on the facility, or may by agreement with the owner, obtain from the owner a lien on any other property or other assurance of payment satisfactory to the Administrator, for the unrecovered response costs.

(3) Conditions

The conditions referred to in paragraph (2) are the following:

(A) Response action

A response action for which there are unrecovered costs of the United States is carried out at the facility.

(B) Fair market value

The response action increases the fair market value of the facility above the fair market value of the facility that existed before the response action was initiated.

(4) Amount; duration

A lien under paragraph (2)—

(A) shall be in an amount not to exceed the increase in fair market value of the property attributable to the response action at the time of a sale or other disposition of the property;

(B) shall arise at the time at which costs are first incurred by the United States with respect to a response action at the facility;

(C) shall be subject to the requirements of subsection (l)(3) of this section; and

(D) shall continue until the earlier of—

(i) satisfaction of the lien by sale or other means; or

(ii) notwithstanding any statute of limitations under section 9613 of this title, recovery of all response costs incurred at the facility.

(Pub. L. 96-510, title I, §107, Dec. 11, 1980, 94 Stat. 2781; Pub. L. 99-499, title I, §§107(a)-(d)(2), (e), (f), 127(b), (e), title II, §§201, 207(c), Oct. 17, 1986, 100 Stat. 1628-1630, 1692, 1693, 1705; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 103-429, §7(e)(2), Oct. 31, 1994, 108 Stat. 4390; Pub. L. 104-208, div. A, title II, §2502(a), Sept. 30, 1996, 110 Stat. 3009-462; Pub. L. 104-287, §6(j)(2), Oct. 11, 1996, 110 Stat. 3400; Pub. L. 107-118, title I, §102(a), title II, §§221, 222(b), Jan. 11, 2002, 115 Stat. 2356, 2368, 2371.)

REFERENCES IN TEXT

Such amendments, referred to in the last sentence of subsec. (a), probably means the amendments made by Pub. L. 99-499, Oct. 17, 1986, 100 Stat. 1613, known as the "Superfund Amendments and Reauthorization Act of 1986". For complete classification of this Act to the Code, see Short Title of 1986 Amendment note set out under section 9601 of this title and Tables.

Act of March 3, 1851 (46 U.S.C. 183ff), referred to in subsec. (h), is act Mar. 3, 1851, ch. 43, 9 Stat. 635, which was incorporated into the Revised Statutes as R.S. §§4282 to 4287 and 4289, and is classified to sections 182, 183, and 184 to 188 of Title 46, Appendix, Shipping.

The Federal Insecticide, Fungicide, and Rodenticide Act, referred to in subsec. (i), is act June 25, 1947, ch. 125, as amended generally by Pub. L. 92-516, Oct. 21, 1972, 86 Stat. 973, which is classified generally to subchapter II (§136 et seq.) of chapter 6 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 136 of Title 7 and Tables.

The Solid Waste Disposal Act, referred to in subsec. (k)(1), (3), (6)(E)(i), is title II of Pub. L. 89-272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2795. Subtitles C and I of the Solid Waste Disposal Act are classified generally to subchapters III (§6921 et seq.) and IX (§6991 et seq.), respectively, of chapter 82 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

Section 9641 of this title, referred to in subsec. (k), was repealed by Pub. L. 99-499, title V, §514(b), Oct. 17, 1986, 100 Stat. 1767.

Subchapter II of this chapter, referred to in subsec. (k)(4)(A) and (C), was in the original "title II of this Act", meaning title II of Pub. L. 96-510, Dec. 11, 1980, 94 Stat. 2796, known as the Hazardous Substance Response Revenue Act of 1980, which enacted subchapter II of this chapter and sections 4611, 4612, 4661, 4662, 4681, and 4682 of Title 26, Internal Revenue Code. Sections 221 to 223 and 232 of Pub. L. 96-510, which were classified to sections 9631 to 9633 and 9641 of this title, comprising subchapter II of this chapter, were repealed by Pub. L. 99-499, title V, §§514(b), 517(c)(1), Oct. 17, 1986, 100 Stat. 1767, 1774. For complete classification of title II to the Code, see Short Title of 1980 Amendment note set out under section 1 of Title 26 and Tables.

The Hazardous and Solid Waste Amendments of 1984, referred to in subsec. (k)(6)(A), (E), is Pub. L. 98-616, Nov. 8, 1984, 98 Stat. 3221. For complete classification of this Act to the Code, see Short Title of 1984 Amendment note set out under section 6901 of this title and Tables.

The Small Business Act, referred to in subsec. (p)(1), is Pub. L. 85-536, July 18, 1958, 72 Stat. 384, as amended, which is classified generally to chapter 14A (§631 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 631 of Title 15 and Tables.

AMENDMENTS

2002—Subsecs. (o), (p). Pub. L. 107-118, §102(a), added subsecs. (o) and (p).

Subsec. (q). Pub. L. 107-118, §221, added subsec. (q).

Subsec. (r). Pub. L. 107-118, §222(b), added subsec. (r).

1996—Subsec. (c)(1)(C). Pub. L. 104-287 substituted "section 60101(a) of title 49" for "the Hazardous Liquid Pipeline Safety Act of 1979".

Subsec. (n). Pub. L. 104-208 added subsec. (n).

1994—Subsec. (c)(1)(C). Pub. L. 103-429 substituted "hazardous liquid pipeline facility" for "pipeline".

1986—Subsec. (a). Pub. L. 99-514, in penultimate sentence, substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

Pub. L. 99-499, §107(b), inserted concluding provisions relating to accrual and rate of interest on amounts recoverable under this section.

Subsec. (a)(1). Pub. L. 99-499, §107(a), struck out "(otherwise subject to the jurisdiction of the United States)" after "vessel".

Subsec. (a)(3). Pub. L. 99-499, §127(b)(1), inserted "or incineration vessel" after "facility".

Subsec. (a)(4). Pub. L. 99-499, §§107(b), 127(b)(2), 207(c)(1), in introductory provisions, inserted ", incineration vessels" after "vessels", in subpar. (A), inserted "or an Indian tribe" after "State", and added subpar. (D).

Subsec. (c)(1)(A). Pub. L. 99-499, §127(b)(3), inserted ", other than an incineration vessel," after "vessel".

Subsec. (c)(1)(B). Pub. L. 99-499, §127(b)(4), inserted "other than an incineration vessel," after "other vessel,".

Subsec. (c)(1)(D). Pub. L. 99-499, §127(b)(5), inserted "any incineration vessel or" before "any facility".

Subsec. (d). Pub. L. 99-499, §107(c), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "No person shall be liable under this subchapter for damages as a result of actions taken or omitted in the course of rendering care, assistance, or

advice in accordance with the national contingency plan or at the direction of an onscene coordinator appointed under such plan, with respect to an incident creating a danger to public health or welfare or the environment as a result of any release of a hazardous substance or the threat thereof. This subsection shall not preclude liability for damages as the result of gross negligence or intentional misconduct on the part of such person. For the purposes of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence."

Subsec. (f)(1). Pub. L. 99-499, §107(d)(1), designated existing provisions as par. (1) and added heading.

Pub. L. 99-499, §207(c)(2)(A), inserted "and to any Indian tribe for natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation" after third reference to "State".

Pub. L. 99-499, §207(c)(2)(B), inserted "or Indian tribe" after fourth reference to "State".

Pub. L. 99-499, §207(c)(2)(C), inserted in first sentence " , so long as, in the case of damages to an Indian tribe occurring pursuant to a Federal permit or license, the issuance of that permit or license was not inconsistent with the fiduciary duty of the United States with respect to such Indian tribe".

Pub. L. 99-499, §107(d)(2), substituted "Sums recovered by the United States Government as trustee under this subsection shall be retained by the trustee, without further appropriation, for use only to restore, replace, or acquire the equivalent of such natural resources. Sums recovered by a State as trustee under this subsection shall be available for use only to restore, replace, or acquire the equivalent of such natural resources by the State. The measure of damages in any action under subparagraph (C) of subsection (a) of this section shall not be limited by the sums which can be used to restore or replace such resources. There shall be no double recovery under this chapter for natural resource damages, including the costs of damage assessment or restoration, rehabilitation, or acquisition for the same release and natural resource" for "Sums recovered shall be available for use to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Federal Government or the State government, but the measure of such damages shall not be limited by the sums which can be used to restore or replace such resources".

Pub. L. 99-499, §207(c)(2)(D), which directed the insertion of "or the Indian tribe" after "State government", could not be executed because the prior amendment by section 107(d)(2) of Pub. L. 99-499, struck out third sentence referring to "State government".

Subsec. (f)(2). Pub. L. 99-499, §107(d)(1), added par. (2).

Subsec. (g). Pub. L. 99-499, §107(e), amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: "Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government shall be subject to, and comply with, this chapter in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under this section."

Subsec. (h). Pub. L. 99-499, §127(e), inserted " , under maritime tort law," after "with this section" and inserted "or the absence of any physical damage to the proprietary interest of the claimant" before the period at end.

Subsec. (i). Pub. L. 99-499, §207(c)(3), inserted "or Indian tribe" after "State".

Subsec. (j). Pub. L. 99-499, §207(c)(4), inserted "or Indian tribe" after first reference to "State".

Subsec. (k)(5), (6). Pub. L. 99-499, §201, added pars. (5) and (6).

Subsec. (l), Pub. L. 99-499, §107(f), added subsec. (l).

Subsec. (l)(3). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

Subsec. (m). Pub. L. 99-499, §107(f), added subsec. (m).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-208 applicable with respect to any claim that has not been finally adjudicated as of Sept. 30, 1996, see section 2505 of Pub. L. 104-208, set out as a note under section 6991b of this title.

EFFECT ON CONCLUDED ACTIONS

Pub. L. 107-118, title I, §103, Jan. 11, 2002, 115 Stat. 2360, provided that: "The amendments made by this title [amending this section and section 9622 of this title] shall not apply to or in any way affect any settlement lodged in, or judgment issued by, a United States District Court, or any administrative settlement or order entered into or issued by the United States or any State, before the date of the enactment of this Act [Jan. 11, 2002]."

RECOVERY OF COSTS

Pub. L. 104-303, title II, §209, Oct. 12, 1996, 110 Stat. 3681, provided that: "Amounts recovered under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607) for any response action taken by the Secretary in support of the civil works program of the Department of the Army and any other amounts recovered by the Secretary from a contractor, insurer, surety, or other person to reimburse the Department of the Army for any expenditure for environmental response activities in support of the Army civil works program shall be credited to the appropriate trust fund account from which the cost of such response action has been paid or will be charged."

COORDINATION OF TITLES I TO IV OF PUB. L. 99-499

Any provision of titles I to IV of Pub. L. 99-499, imposing any tax, premium, or fee; establishing any trust fund; or authorizing expenditures from any trust fund, to have no force or effect, see section 531 of Pub. L. 99-499, set out as a note under section 1 of Title 26, Internal Revenue Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6924, 6939a, 6991b, 6991c, 9601, 9603, 9604, 9606, 9608, 9611, 9612, 9613, 9614, 9619, 9620, 9622, 9624, 9627, 9628, 9651, 9656, 9658 of this title; title 14 section 692; title 16 sections 1437, 1443; title 26 section 9507.

§ 9608. Financial responsibility

(a) Establishment and maintenance by owner or operator of vessel; amount; failure to obtain certification of compliance

(1) The owner or operator of each vessel (except a nonself-propelled barge that does not carry hazardous substances as cargo) over three hundred gross tons that uses any port or place in the United States or the navigable waters or any offshore facility, shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility of \$300 per gross ton (or for a vessel carrying hazardous substances as cargo, or \$5,000,000, whichever is greater) to cover the liability prescribed under paragraph (1) of section 9607(a) of this title. Financial responsibility may be established by any one, or any combination, of the following: insurance, guarantee, surety bond, or qualification as a self-insurer. Any bond filed shall be issued by a bonding company authorized to do business in the United States. In cases where an owner or operator owns, operates, or charters more than one vessel subject to

this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such vessels.

(2) The Secretary of the Treasury shall withhold or revoke the clearance required by section 91 of title 46, Appendix, of any vessel subject to this subsection that does not have certification furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(3) The Secretary of Transportation, in accordance with regulations issued by him, shall (A) deny entry to any port or place in the United States or navigable waters to, and (B) detain at the port or place in the United States from which it is about to depart for any other port or place in the United States, any vessel subject to this subsection that, upon request, does not produce certification furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(4) In addition to the financial responsibility provisions of paragraph (1) of this subsection, the President shall require additional evidence of financial responsibility for incineration vessels in such amounts, and to cover such liabilities recognized by law, as the President deems appropriate, taking into account the potential risks posed by incineration and transport for incineration, and any other factors deemed relevant.

(b) Establishment and maintenance by owner or operator of production, etc., facilities; amount; adjustment; consolidated form of responsibility; coverage of motor carriers

(1) Beginning not earlier than five years after December 11, 1980, the President shall promulgate requirements (for facilities in addition to those under subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.] and other Federal law) that classes of facilities establish and maintain evidence of financial responsibility consistent with the degree and duration of risk associated with the production, transportation, treatment, storage, or disposal of hazardous substances. Not later than three years after December 11, 1980, the President shall identify those classes for which requirements will be first developed and publish notice of such identification in the Federal Register. Priority in the development of such requirements shall be accorded to those classes of facilities, owners, and operators which the President determines present the highest level of risk of injury.

(2) The level of financial responsibility shall be initially established, and, when necessary, adjusted to protect against the level of risk which the President in his discretion believes is appropriate based on the payment experience of the Fund, commercial insurers, courts settlements and judgments, and voluntary claims satisfaction. To the maximum extent practicable, the President shall cooperate with and seek the advice of the commercial insurance industry in developing financial responsibility requirements. Financial responsibility may be established by any one, or any combination, of the following: insurance, guarantee, surety bond,

letter of credit, or qualification as a self-insurer. In promulgating requirements under this section, the President is authorized to specify policy or other contractual terms, conditions, or defenses which are necessary, or which are unacceptable, in establishing such evidence of financial responsibility in order to effectuate the purposes of this chapter.

(3) Regulations promulgated under this subsection shall incrementally impose financial responsibility requirements as quickly as can reasonably be achieved but in no event more than 4 years after the date of promulgation. Where possible, the level of financial responsibility which the President believes appropriate as a final requirement shall be achieved through incremental, annual increases in the requirements.

(4) Where a facility is owned or operated by more than one person, evidence of financial responsibility covering the facility may be established and maintained by one of the owners or operators, or, in consolidated form, by or on behalf of two or more owners or operators. When evidence of financial responsibility is established in a consolidated form, the proportional share of each participant shall be shown. The evidence shall be accompanied by a statement authorizing the applicant to act for and in behalf of each participant in submitting and maintaining the evidence of financial responsibility.

(5) The requirements for evidence of financial responsibility for motor carriers covered by this chapter shall be determined under section 31139 of title 49.

(c) Direct action

(1) Releases from vessels

In the case of a release or threatened release from a vessel, any claim authorized by section 9607 or 9611 of this title may be asserted directly against any guarantor providing evidence of financial responsibility for such vessel under subsection (a) of this section. In defending such a claim, the guarantor may invoke all rights and defenses which would be available to the owner or operator under this subchapter. The guarantor may also invoke the defense that the incident was caused by the willful misconduct of the owner or operator, but the guarantor may not invoke any other defense that the guarantor might have been entitled to invoke in a proceeding brought by the owner or operator against him.

(2) Releases from facilities

In the case of a release or threatened release from a facility, any claim authorized by section 9607 or 9611 of this title may be asserted directly against any guarantor providing evidence of financial responsibility for such facility under subsection (b) of this section, if the person liable under section 9607 of this title is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code, or if, with reasonable diligence, jurisdiction in the Federal courts cannot be obtained over a person liable under section 9607 of this title who is likely to be solvent at the time of judgment. In the case of any action pursuant to this paragraph, the guarantor shall be enti-

to invoke all rights and defenses which would have been available to the person liable under section 9607 of this title if any action had been brought against such person by the claimant and all rights and defenses which would have been available to the guarantor if an action had been brought against the guarantor by such person.

(d) Limitation of guarantor liability

(1) Total liability

The total liability of any guarantor in a direct action suit brought under this section shall be limited to the aggregate amount of the monetary limits of the policy of insurance, guarantee, surety bond, letter of credit, or similar instrument obtained from the guarantor by the person subject to liability under section 9607 of this title for the purpose of satisfying the requirement for evidence of financial responsibility.

(2) Other liability

Nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual, or common law liability of a guarantor, including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed, interpreted, or applied to diminish the liability of any person under section 9607 of this title or other applicable law.

(Pub. L. 96-510, title I, §108, Dec. 11, 1980, 94 Stat. 2785; Pub. L. 99-499, title I, §§108, 127(c), Oct. 17, 1986, 100 Stat. 1631, 1692.)

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsec. (b)(1), is title II of Pub. L. 89-272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2795. Subtitle C of the Solid Waste Disposal Act is classified generally to subchapter III (§6921 et seq.) of chapter 82 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

The Federal Bankruptcy Code, referred to in subsec. (c)(2), probably means a reference to Title 11, Bankruptcy.

CODIFICATION

In subsec. (b)(5), "section 31139 of title 49" substituted for "section 30 of the Motor Carrier Act of 1980, Public Law 96-296" on authority of Pub. L. 103-272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

AMENDMENTS

1986—Subsec. (a)(1). Pub. L. 99-499, §127(c)(1), inserted "to cover the liability prescribed under paragraph (1) of section 9607(a) of this title" after "whichever is greater".

Subsec. (a)(4). Pub. L. 99-499, §127(c)(2), added par. (4).

Subsec. (b)(2). Pub. L. 99-499, §108(a), inserted provisions relating to evidence of financial responsibility and authority of the President regarding establishment of that evidence.

Subsec. (b)(3). Pub. L. 99-499, §108(b), substituted "as quickly as can reasonably be achieved but in no event more than 4 years" for "over a period of not less than three and no more than six years".

Subsec. (c). Pub. L. 99-499, §108(c), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as

follows: "Any claim authorized by section 9607 or 9611 of this title may be asserted directly against any guarantor providing evidence of financial responsibility as required under this section. In defending such a claim, the guarantor may invoke all rights and defenses which would be available to the owner or operator under this subchapter. The guarantor may also invoke the defense that the incident was caused by the willful misconduct of the owner or operator, but such guarantor may not invoke any other defense that such guarantor might have been entitled to invoke in a proceeding brought by the owner or operator against him."

Subsec. (d). Pub. L. 99-499, §108(c), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "Any guarantor acting in good faith against which claims under this chapter are asserted as a guarantor shall be liable under section 9607 of this title or section 9612(c) of this title only up to the monetary limits of the policy of insurance or indemnity contract such guarantor has undertaken or of the guaranty of other evidence of financial responsibility furnished under this section, and only to the extent that liability is not excluded by restrictive endorsement: *Provided*, That this subsection shall not alter the liability of any person under section 9607 of this title."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9609 of this title.

§9609. Civil penalties and awards

(a) Class I administrative penalty

(1) Violations

A civil penalty of not more than \$25,000 per violation may be assessed by the President in the case of any of the following—

(A) A violation of the requirements of section 9603(a) or (b) of this title (relating to notice).

(B) A violation of the requirements of section 9603(d)(2) of this title (relating to destruction of records, etc.).

(C) A violation of the requirements of section 9608 of this title (relating to financial responsibility, etc.), the regulations issued under section 9608 of this title, or with any denial or detention order under section 9608 of this title.

(D) A violation of an order under section 9622(d)(3) of this title (relating to settlement agreements for action under section 9604(b) of this title).

(E) Any failure or refusal referred to in section 9622(l) of this title (relating to violations of administrative orders, consent decrees, or agreements under section 9620 of this title).

(2) Notice and hearings

No civil penalty may be assessed under this subsection unless the person accused of the violation is given notice and opportunity for a hearing with respect to the violation.

(3) Determining amount

In determining the amount of any penalty assessed pursuant to this subsection, the President shall take into account the nature, circumstances, extent and gravity of the violation or violations and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.

(4) Review

Any person against whom a civil penalty is assessed under this subsection may obtain review thereof in the appropriate district court of the United States by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the President. The President shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed. If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order or after the appropriate court has entered final judgment in favor of the United States, the President may request the Attorney General of the United States to institute a civil action in an appropriate district court of the United States to collect the penalty, and such court shall have jurisdiction to hear and decide any such action. In hearing such action, the court shall have authority to review the violation and the assessment of the civil penalty on the record.

(5) Subpoenas

The President may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with hearings under this subsection. In case of contumacy or refusal to obey a subpoena issued pursuant to this paragraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the administrative law judge or to appear and produce documents before the administrative law judge, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) Class II administrative penalty

A civil penalty of not more than \$25,000 per day for each day during which the violation continues may be assessed by the President in the case of any of the following—

- (1) A violation of the notice requirements of section 9603(a) or (b) of this title.
- (2) A violation of section 9603(d)(2) of this title (relating to destruction of records, etc.).
- (3) A violation of the requirements of section 9608 of this title (relating to financial responsibility, etc.), the regulations issued under section 9608 of this title, or with any denial or detention order under section 9608 of this title.
- (4) A violation of an order under section 9622(d)(3) of this title (relating to settlement agreements for action under section 9604(b) of this title).
- (5) Any failure or refusal referred to in section 9622(l) of this title (relating to violations of administrative orders, consent decrees, or agreements under section 9620 of this title).

In the case of a second or subsequent violation the amount of such penalty may be not more than \$75,000 for each day during which the violation continues. Any civil penalty under this sub-

section shall be assessed and collected in the same manner, and subject to the same provisions, as in the case of civil penalties assessed and collected after notice and opportunity for hearing on the record in accordance with section 554 of title 5. In any proceeding for the assessment of a civil penalty under this subsection the President may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents and may promulgate rules for discovery procedures. Any person who requested a hearing with respect to a civil penalty under this subsection and who is aggrieved by an order assessing the civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued.

(c) Judicial assessment

The President may bring an action in the United States district court for the appropriate district to assess and collect a penalty of not more than \$25,000 per day for each day during which the violation (or failure or refusal) continues in the case of any of the following—

- (1) A violation of the notice requirements of section 9603(a) or (b) of this title.
- (2) A violation of section 9603(d)(2) of this title (relating to destruction of records, etc.).
- (3) A violation of the requirements of section 9608 of this title (relating to financial responsibility, etc.), the regulations issued under section 9608 of this title, or with any denial or detention order under section 9608 of this title.
- (4) A violation of an order under section 9622(d)(3) of this title (relating to settlement agreements for action under section 9604(b) of this title).
- (5) Any failure or refusal referred to in section 9622(l) of this title (relating to violations of administrative orders, consent decrees, or agreements under section 9620 of this title).

In the case of a second or subsequent violation (or failure or refusal), the amount of such penalty may be not more than \$75,000 for each day during which the violation (or failure or refusal) continues. For additional provisions providing for judicial assessment of civil penalties for failure to comply with a request or order under section 9604(e) of this title (relating to information gathering and access authorities), see section 9604(e) of this title.

(d) Awards

The President may pay an award of up to \$10,000 to any individual who provides information leading to the arrest and conviction of any person for a violation subject to a criminal penalty under this chapter, including any violation of section 9603 of this title and any other violation referred to in this section. The President shall, by regulation, prescribe criteria for such an award and may pay any award under this subsection from the Fund, as provided in section 9611 of this title.

(e) Procurement procedures

Notwithstanding any other provision of law, any executive agency may use competitive procedures or procedures other than competitive procedures to procure the services of experts for use in preparing or prosecuting a civil or criminal action under this chapter, whether or not the expert is expected to testify at trial. The executive agency need not provide any written justification for the use of procedures other than competitive procedures when procuring such expert services under this chapter and need not furnish for publication in the Commerce Business Daily or otherwise any notice of solicitation or synopsis with respect to such procurement.

(f) Savings clause

Action taken by the President pursuant to this section shall not affect or limit the President's authority to enforce any provisions of this chapter.

(Pub. L. 96-510, title I, § 109, Dec. 11, 1980, 94 Stat. 2787; Pub. L. 99-499, title I, § 109(c), Oct. 17, 1986, 100 Stat. 1633.)

AMENDMENTS

1986—Pub. L. 99-499 amended section generally. Prior to amendment, section read as follows: "Any person who, after notice and an opportunity for a hearing, is found to have failed to comply with the requirements of section 9608 of this title, the regulations issued thereunder, or with any denial or detention order shall be liable to the United States for a civil penalty, not to exceed \$10,000 for each day of violation."

COORDINATION OF TITLES I TO IV OF PUB. L. 99-499

Any provision of titles I to IV of Pub. L. 99-499, imposing any tax, premium, or fee; establishing any trust fund; or authorizing expenditures from any trust fund, to have no force or effect, see section 531 of Pub. L. 99-499, set out as a note under section 1 of Title 26, Internal Revenue Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9611, 9622 of this title.

§ 9610. Employee protection**(a) Activities of employee subject to protection**

No person shall fire or in any other way discriminate against, or cause to be fired or discriminated against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has provided information to a State or to the Federal Government, filed, instituted, or caused to be filed or instituted any proceeding under this chapter, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this chapter.

(b) Administrative grievance procedure in cases of alleged violations

Any employee or a representative of employees who believes that he has been fired or otherwise discriminated against by any person in violation of subsection (a) of this section may, within thirty days after such alleged violation occurs, apply to the Secretary of Labor for a review of such firing or alleged discrimination. A

copy of the application shall be sent to such person, who shall be the respondent. Upon receipt of such application, the Secretary of Labor shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to such review to enable the parties to present information relating to such alleged violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5. Upon receiving the report of such investigation, the Secretary of Labor shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein and his findings, requiring the party committing such violation to take such affirmative action to abate the violation as the Secretary of Labor deems appropriate, including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation. If he finds that there was no such violation, he shall issue an order denying the application. Such order issued by the Secretary of Labor under this subparagraph shall be subject to judicial review in the same manner as orders and decisions are subject to judicial review under this chapter.

(c) Assessment of costs and expenses against violator subsequent to issuance of order of abatement

Whenever an order is issued under this section to abate such violation, at the request of the applicant a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees) determined by the Secretary of Labor to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing such violation.

(d) Defenses

This section shall have no application to any employee who acting without discretion from his employer (or his agent) deliberately violates any requirement of this chapter.

(e) Presidential evaluations of potential loss of shifts of employment resulting from administration or enforcement of provisions; investigations; procedures applicable, etc.

The President shall conduct continuing evaluations of potential loss of shifts of employment which may result from the administration or enforcement of the provisions of this chapter, including, where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such administration or enforcement. Any employee who is discharged, or laid off, threatened with discharge or layoff, or otherwise discriminated against by any person because of the alleged results of such administration or enforcement, or any representative of such employee, may request the President to conduct a full investigation of the matter and, at the request of any party, shall hold public hearings, require the parties, including the employer involved, to

present information relating to the actual or potential effect of such administration or enforcement on employment and any alleged discharge, layoff, or other discrimination, and the detailed reasons or justification therefore.¹ Any such hearing shall be of record and shall be subject to section 554 of title 5. Upon receiving the report of such investigation, the President shall make findings of fact as to the effect of such administration or enforcement on employment and on the alleged discharge, layoff, or discrimination and shall make such recommendations as he deems appropriate. Such report, findings, and recommendations shall be available to the public. Nothing in this subsection shall be construed to require or authorize the President or any State to modify or withdraw any action, standard, limitation, or any other requirement of this chapter.

(Pub. L. 96-510, title I, § 110, Dec. 11, 1980, 94 Stat. 2787.)

§ 9611. Uses of Fund

(a) In general

For the purposes specified in this section there is authorized to be appropriated from the Hazardous Substance Superfund established under subchapter A of chapter 98 of title 26 not more than \$8,500,000,000 for the 5-year period beginning on October 17, 1986, and not more than \$5,100,000,000 for the period commencing October 1, 1991, and ending September 30, 1994, and such sums shall remain available until expended. The preceding sentence constitutes a specific authorization for the funds appropriated under title II of Public Law 99-160 (relating to payment to the Hazardous Substances Trust Fund). The President shall use the money in the Fund for the following purposes:

(1) Payment of governmental response costs incurred pursuant to section 9604 of this title, including costs incurred pursuant to the Intervention on the High Seas Act [33 U.S.C. 1471 et seq.].

(2) Payment of any claim for necessary response costs incurred by any other person as a result of carrying out the national contingency plan established under section 1321(c)¹ of title 33 and amended by section 9605 of this title: *Provided, however*, That such costs must be approved under said plan and certified by the responsible Federal official.

(3) Payment of any claim authorized by subsection (b) of this section and finally decided pursuant to section 9612 of this title, including those costs set out in subsection 9612(c)(3) of this title.

(4) Payment of costs specified under subsection (c) of this section.

(5) GRANTS FOR TECHNICAL ASSISTANCE.—The cost of grants under section 9617(e) of this title (relating to public participation grants for technical assistance).

(6) LEAD CONTAMINATED SOIL.—Payment of not to exceed \$15,000,000 for the costs of a pilot program for removal, decontamination, or other action with respect to lead-contami-

nated soil in one to three different metropolitan areas.

The President shall not pay for any administrative costs or expenses out of the Fund unless such costs and expenses are reasonably necessary for and incidental to the implementation of this subchapter.

(b) Additional authorized purposes

(1) In general

Claims asserted and compensable but unsatisfied under provisions of section 1321 of title 33, which are modified by section 304 of this Act may be asserted against the Fund under this subchapter; and other claims resulting from a release or threat of release of a hazardous substance from a vessel or a facility may be asserted against the Fund under this subchapter for injury to, or destruction or loss of, natural resources, including cost for damage assessment: *Provided, however*, That any such claim may be asserted only by the President, as trustee, for natural resources over which the United States has sovereign rights, or natural resources within the territory or the fishery conservation zone of the United States to the extent they are managed or protected by the United States, or by any State for natural resources within the boundary of that State belonging to, managed by, controlled by, or appertaining to the State, or by any Indian tribe or by the United States acting on behalf of any Indian tribe for natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation.

(2) Limitation on payment of natural resource claims

(A) General requirements

No natural resource claim may be paid from the Fund unless the President determines that the claimant has exhausted all administrative and judicial remedies to recover the amount of such claim from persons who may be liable under section 9607 of this title.

(B) Definition

As used in this paragraph, the term “natural resource claim” means any claim for injury to, or destruction or loss of, natural resources. The term does not include any claim for the costs of natural resource damage assessment.

(c) Peripheral matters and limitations

Uses of the Fund under subsection (a) of this section include—

(1) The costs of assessing both short-term and long-term injury to, destruction of, or loss of any natural resources resulting from a release of a hazardous substance.

(2) The costs of Federal or State or Indian tribe efforts in the restoration, rehabilitation, or replacement or acquiring the equivalent of any natural resources injured, destroyed, or lost as a result of a release of a hazardous substance.

¹ So in original.

¹ See References in Text note below.

(3) Subject to such amounts as are provided in appropriation Acts, the costs of a program to identify, investigate, and take enforcement and abatement action against releases of hazardous substances.

(4) Any costs incurred in accordance with subsection (m) of this section (relating to ATSDR) and section 9604(i) of this title, including the costs of epidemiologic and laboratory studies, health assessments, preparation of toxicologic profiles, development and maintenance of a registry of persons exposed to hazardous substances to allow long-term health effect studies, and diagnostic services not otherwise available to determine whether persons in populations exposed to hazardous substances in connection with a release or a suspected release are suffering from long-latency diseases.

(5) Subject to such amounts as are provided in appropriation Acts, the costs of providing equipment and similar overhead, related to the purposes of this chapter and section 1321 of title 33, and needed to supplement equipment and services available through contractors or other non-Federal entities, and of establishing and maintaining damage assessment capability, for any Federal agency involved in strike forces, emergency task forces, or other response teams under the national contingency plan.

(6) Subject to such amounts as are provided in appropriation Acts, the costs of a program to protect the health and safety of employees involved in response to hazardous substance releases. Such program shall be developed jointly by the Environmental Protection Agency, the Occupational Safety and Health Administration, and the National Institute for Occupational Safety and Health and shall include, but not be limited to, measures for identifying and assessing hazards to which persons engaged in removal, remedy, or other response to hazardous substances may be exposed, methods to protect workers from such hazards, and necessary regulatory and enforcement measures to assure adequate protection of such employees.

(7) EVALUATION COSTS UNDER PETITION PROVISIONS OF SECTION 9605(d).—Costs incurred by the President in evaluating facilities pursuant to petitions under section 9605(d) of this title (relating to petitions for assessment of release).

(8) CONTRACT COSTS UNDER SECTION 9604(a)(1).—The costs of contracts or arrangements entered into under section 9604(a)(1) of this title to oversee and review the conduct of remedial investigations and feasibility studies undertaken by persons other than the President and the costs of appropriate Federal and State oversight of remedial activities at National Priorities List sites resulting from consent orders or settlement agreements.

(9) ACQUISITION COSTS UNDER SECTION 9604(j).—The costs incurred by the President in acquiring real estate or interests in real estate under section 9604(j) of this title (relating to acquisition of property).

(10) RESEARCH, DEVELOPMENT, AND DEMONSTRATION COSTS UNDER SECTION 9660.—The cost of carrying out section 9660 of this title

(relating to research, development, and demonstration), except that the amounts available for such purposes shall not exceed the amounts specified in subsection (n) of this section.

(11) LOCAL GOVERNMENT REIMBURSEMENT.—Reimbursements to local governments under section 9623 of this title, except that during the 8-fiscal year period beginning October 1, 1986, not more than 0.1 percent of the total amount appropriated from the Fund may be used for such reimbursements.

(12) WORKER TRAINING AND EDUCATION GRANTS.—The costs of grants under section 9660a of this title for training and education of workers to the extent that such costs do not exceed \$20,000,000 for each of the fiscal years 1987, 1988, 1989, 1990, 1991, 1992, 1993, and 1994.

(13) AWARDS UNDER SECTION 9609.—The costs of any awards granted under section 9609(d) of this title.

(14) LEAD POISONING STUDY.—The cost of carrying out the study under subsection (f) of section 118 of the Superfund Amendments and Reauthorization Act of 1986 (relating to lead poisoning in children).

(d) Additional limitations

(1) No money in the Fund may be used under subsection (c)(1) and (2) of this section, nor for the payment of any claim under subsection (b) of this section, where the injury, destruction, or loss of natural resources and the release of a hazardous substance from which such damages resulted have occurred wholly before December 11, 1980.

(2) No money in the Fund may be used for the payment of any claim under subsection (b) of this section where such expenses are associated with injury or loss resulting from long-term exposure to ambient concentrations of air pollutants from multiple or diffuse sources.

(e) Funding requirements respecting moneys in Fund; limitation on certain claims; Fund use outside Federal property boundaries

(1) Claims against or presented to the Fund shall not be valid or paid in excess of the total money in the Fund at any one time. Such claims become valid only when additional money is collected, appropriated, or otherwise added to the Fund. Should the total claims outstanding at any time exceed the current balance of the Fund, the President shall pay such claims, to the extent authorized under this section, in full in the order in which they were finally determined.

(2) In any fiscal year, 85 percent of the money credited to the Fund under subchapter II² of this chapter shall be available only for the purposes specified in paragraphs (1), (2), and (4) of subsection (a) of this section. No money in the Fund may be used for the payment of any claim under subsection (a)(3) or subsection (b) of this section in any fiscal year for which the President determines that all of the Fund is needed for response to threats to public health from releases or threatened releases of hazardous substances.

(3) No money in the Fund shall be available for remedial action, other than actions specified in

² See References in Text note below.

subsection (c) of this section, with respect to federally owned facilities; except that money in the Fund shall be available for the provision of alternative water supplies (including the reimbursement of costs incurred by a municipality) in any case involving groundwater contamination outside the boundaries of a federally owned facility in which the federally owned facility is not the only potentially responsible party.

(4) Paragraphs (1) and (4) of subsection (a) of this section shall in the aggregate be subject to such amounts as are provided in appropriation Acts.

(f) Obligation of moneys by Federal officials; obligation of moneys or settlement of claims by State officials or Indian tribe

The President is authorized to promulgate regulations designating one or more Federal officials who may obligate money in the Fund in accordance with this section or portions thereof. The President is also authorized to delegate authority to obligate money in the Fund or to settle claims to officials of a State or Indian tribe operating under a contract or cooperative agreement with the Federal Government pursuant to section 9604(d) of this title.

(g) Notice to potential injured parties by owner and operator of vessel or facility causing release of substance; rules and regulations

The President shall provide for the promulgation of rules and regulations with respect to the notice to be provided to potential injured parties by an owner and operator of any vessel, or facility from which a hazardous substance has been released. Such rules and regulations shall consider the scope and form of the notice which would be appropriate to carry out the purposes of this subchapter. Upon promulgation of such rules and regulations, the owner and operator of any vessel or facility from which a hazardous substance has been released shall provide notice in accordance with such rules and regulations. With respect to releases from public vessels, the President shall provide such notification as is appropriate to potential injured parties. Until the promulgation of such rules and regulations, the owner and operator of any vessel or facility from which a hazardous substance has been released shall provide reasonable notice to potential injured parties by publication in local newspapers serving the affected area.

(h) Repealed. Pub. L. 99-499, title I, § 111(c)(2), Oct. 17, 1986, 100 Stat. 1643

(i) Restoration, etc., of natural resources

Except in a situation requiring action to avoid an irreversible loss of natural resources or to prevent or reduce any continuing danger to natural resources or similar need for emergency action, funds may not be used under this chapter for the restoration, rehabilitation, or replacement or acquisition of the equivalent of any natural resources until a plan for the use of such funds for such purposes has been developed and adopted by affected Federal agencies and the Governor or Governors of any State having sustained damage to natural resources within its borders, belonging to, managed by or appertaining to such State, and by the governing body of

any Indian tribe having sustained damage to natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation, after adequate public notice and opportunity for hearing and consideration of all public comment.

(j) Use of Post-closure Liability Fund

The President shall use the money in the Post-closure Liability Fund for any of the purposes specified in subsection (a) of this section with respect to a hazardous waste disposal facility for which liability has transferred to such fund under section 9607(k) of this title, and, in addition, for payment of any claim or appropriate request for costs of response, damages, or other compensation for injury or loss under section 9607 of this title or any other State or Federal law, resulting from a release of a hazardous substance from such a facility.

(k) Inspector General

In each fiscal year, the Inspector General of each department, agency, or instrumentality of the United States which is carrying out any authority of this chapter shall conduct an annual audit of all payments, obligations, reimbursements, or other uses of the Fund in the prior fiscal year, to assure that the Fund is being properly administered and that claims are being appropriately and expeditiously considered. The audit shall include an examination of a sample of agreements with States (in accordance with the provisions of the Single Audit Act [31 U.S.C. 7501 et seq.]) carrying out response actions under this subchapter and an examination of remedial investigations and feasibility studies prepared for remedial actions. The Inspector General shall submit to the Congress an annual report regarding the audit report required under this subsection. The report shall contain such recommendations as the Inspector General deems appropriate. Each department, agency, or instrumentality of the United States shall cooperate with its inspector general in carrying out this subsection.

(l) Foreign claimants

To the extent that the provisions of this chapter permit, a foreign claimant may assert a claim to the same extent that a United States claimant may assert a claim if—

(1) the release of a hazardous substance occurred (A) in the navigable waters or (B) in or on the territorial sea or adjacent shoreline of a foreign country of which the claimant is a resident;

(2) the claimant is not otherwise compensated for his loss;

(3) the hazardous substance was released from a facility or from a vessel located adjacent to or within the navigable waters or was discharged in connection with activities conducted under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 et seq.) or the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501 et seq.); and

(4) recovery is authorized by a treaty or an executive agreement between the United

States and foreign country involved, or if the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for United States claimants.

(m) Agency for Toxic Substances and Disease Registry

There shall be directly available to the Agency for Toxic Substances and Disease Registry to be used for the purpose of carrying out activities described in subsection (c)(4) of this section and section 9604(i) of this title not less than \$50,000,000 per fiscal year for each of fiscal years 1987 and 1988, not less than \$55,000,000 for fiscal year 1989, and not less than \$60,000,000 per fiscal year for each of fiscal years 1990, 1991, 1992, 1993, and 1994. Any funds so made available which are not obligated by the end of the fiscal year in which made available shall be returned to the Fund.

(n) Limitations on research, development, and demonstration program

(1) Section 9660(b)

For each of the fiscal years 1987, 1988, 1989, 1990, 1991, 1992, 1993, and 1994, not more than \$20,000,000 of the amounts available in the Fund may be used for the purposes of carrying out the applied research, development, and demonstration program for alternative or innovative technologies and training program authorized under section 9660(b) of this title (relating to research, development, and demonstration) other than basic research. Such amounts shall remain available until expended.

(2) Section 9660(a)

From the amounts available in the Fund, not more than the following amounts may be used for the purposes of section 9660(a) of this title (relating to hazardous substance research, demonstration, and training activities):

- (A) For the fiscal year 1987, \$3,000,000.
- (B) For the fiscal year 1988, \$10,000,000.
- (C) For the fiscal year 1989, \$20,000,000.
- (D) For the fiscal year 1990, \$30,000,000.
- (E) For each of the fiscal years 1991, 1992, 1993, and 1994, \$35,000,000.

No more than 10 percent of such amounts shall be used for training under section 9660(a) of this title in any fiscal year.

(3) Section 9660(d)

For each of the fiscal years 1987, 1988, 1989, 1990, 1991, 1992, 1993, and 1994, not more than \$5,000,000 of the amounts available in the Fund may be used for the purposes of section 9660(d) of this title (relating to university hazardous substance research centers).

(o) Notification procedures for limitations on certain payments

Not later than 90 days after October 17, 1986, the President shall develop and implement procedures to adequately notify, as soon as practicable after a site is included on the National Priorities List, concerned local and State officials and other concerned persons of the limita-

tions, set forth in subsection (a)(2) of this section, on the payment of claims for necessary response costs incurred with respect to such site.

(p) General revenue share of Superfund

(1) In general

The following sums are authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Hazardous Substance Superfund:

- (A) For fiscal year 1987, \$212,500,000.
- (B) For fiscal year 1988, \$212,500,000.
- (C) For fiscal year 1989, \$212,500,000.
- (D) For fiscal year 1990, \$212,500,000.
- (E) For fiscal year 1991, \$212,500,000.
- (F) For fiscal year 1992, \$212,500,000.
- (G) For fiscal year 1993, \$212,500,000.
- (H) For fiscal year 1994, \$212,500,000.

In addition there is authorized to be appropriated to the Hazardous Substance Superfund for each fiscal year an amount equal to so much of the aggregate amount authorized to be appropriated under this subsection (and paragraph (2) of section 9631(b)³ of this title) as has not been appropriated before the beginning of the fiscal year involved.

(2) Computation

The amounts authorized to be appropriated under paragraph (1) of this subsection in a given fiscal year shall be available only to the extent that such amount exceeds the amount determined by the Secretary under section 9507(b)(2) of title 26 for the prior fiscal year.

(Pub. L. 96-510, title I, §111, Dec. 11, 1980, 94 Stat. 2788; Pub. L. 99-499, title I, §111, title II, §207(d), Oct. 17, 1986, 100 Stat. 1642, 1706; Pub. L. 101-144, title III, Nov. 9, 1989, 103 Stat. 857; Pub. L. 101-508, title VI, §6301, Nov. 5, 1990, 104 Stat. 1388-319.)

REFERENCES IN TEXT

Title II of Public Law 99-160 (relating to payment to the Hazardous Substances Trust Fund), referred to in subsec. (a), is title II of Pub. L. 99-160, Nov. 25, 1985, 99 Stat. 914. Provisions of title II relating to the Hazardous Substance Response Trust Fund are not classified to the Code. For complete classification of this Act to the Code, see Tables.

The Intervention on the High Seas Act, referred to in subsec. (a)(1), is Pub. L. 93-248, Feb. 5, 1974, 88 Stat. 8, as amended, which is classified generally to chapter 28 (§1471 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1471 of Title 33 and Tables.

Section 1321(c) of title 33, referred to in subsec. (a)(2), was amended generally by Pub. L. 101-380, title IV, §4201(a), Aug. 18, 1990, 104 Stat. 523, and no longer contains provisions establishing a National Contingency Plan. However, such provisions are contained in section 1321(d) of Title 33, Navigation and Navigable Waters.

Section 304 of this Act, referred to in subsec. (b), is section 304 of Pub. L. 96-510, title III, Dec. 11, 1980, 94 Stat. 2809, which enacted section 9654 of this title and amended section 1364 of Title 33.

Fishery conservation zone, referred to in subsec. (b), probably means the fishery conservation zone established by section 1811 of Title 16, Conservation, which as amended generally by Pub. L. 99-659, title I, §101(b), Nov. 14, 1986, 100 Stat. 3706, relates to United States sovereign rights and fishery management authority

³ See References in Text note below.

over fish within the exclusive economic zone as defined in section 1802 of Title 16.

Subsection (f) of section 118 of the Superfund Amendments and Reauthorization Act of 1986, referred to in subsec. (c)(14), is section 118(f) of Pub. L. 99-499, title I, Oct. 17, 1986, 100 Stat. 1657, which is not classified to the Code.

Subchapter II of this chapter, referred to in subsec. (e)(2), was in the original "title II of this Act", meaning title II of Pub. L. 96-510, Dec. 11, 1980, 94 Stat. 2796, known as the Hazardous Substance Response Revenue Act of 1980, which enacted subchapter II of this chapter and sections 4611, 4612, 4661, 4662, 4681, and 4682 of Title 26, Internal Revenue Code. Sections 221 to 223 and 232 of Pub. L. 96-510, which were classified to sections 9631 to 9633 and 9641 of this title, comprising subchapter II of this chapter, were repealed by Pub. L. 99-499, title V, §§ 514(b), 517(c)(1), Oct. 17, 1986, 100 Stat. 1767, 1774. For complete classification of title II to the Code, see Short Title of 1980 Amendment note set out under section 1 of Title 26 and Tables.

The Single Audit Act, referred to in subsec. (k), probably means the Single Audit Act of 1984, Pub. L. 98-502, Oct. 19, 1984, 98 Stat. 2327, as amended, which is classified generally to chapter 75 (§ 7501 et seq.) of Title 31, Money and Finance. For complete classification of this Act to the Code, see Short Title note set out under section 7501 of Title 31 and Tables.

The Outer Continental Shelf Lands Act as amended, referred to in subsec. (l)(3), is act Aug. 7, 1953, ch. 345, 67 Stat. 462, as amended, which is classified generally to subchapter III (§ 1331 et seq.) of chapter 29 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1331 of Title 43 and Tables.

The Deepwater Port Act of 1974, as amended, referred to in subsec. (l)(3), is Pub. L. 93-627, Jan. 3, 1975, 88 Stat. 2126, as amended, which is classified generally to chapter 29 (§ 1501 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1501 of Title 33 and Tables.

Section 9631(b) of this title, referred to in subsec. (p)(1), was repealed by Pub. L. 99-499, title V, § 517(c)(1), Oct. 17, 1986, 100 Stat. 1774.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101-508, § 6301(1), inserted "and not more than \$5,100,000,000 for the period commencing October 1, 1991, and ending September 30, 1994," after "October 17, 1986," in introductory provisions.

Subsec. (c)(11). Pub. L. 101-508, § 6301(2), substituted "8-fiscal year period" for "5-fiscal-year period".

Subsec. (c)(12). Pub. L. 101-508, § 6301(3), substituted "1991, 1992, 1993, and 1994" for "and 1991".

Subsec. (m). Pub. L. 101-508, § 6301(4), substituted "1990, 1991, 1992, 1993, and 1994" for "1990 and 1991".

Subsec. (n)(1). Pub. L. 101-508, § 6301(5), substituted "1991, 1992, 1993, and 1994" for "and 1991".

Subsec. (n)(2)(E). Pub. L. 101-508, § 6301(6), added subpar. (E) and struck out former subpar. (E) which read as follows: "For the fiscal year 1991, \$35,000,000."

Subsec. (n)(3). Pub. L. 101-508, § 6301(7), substituted "1991, 1992, 1993, and 1994" for "and 1991".

Subsec. (p)(1)(F) to (H). Pub. L. 101-508, § 6301(8), added subpars. (F) to (H).

1989—Subsec. (c)(12). Pub. L. 101-144, which directed that section 9611(c)(12) of the Superfund Amendments and Reauthorization Act of 1986 be amended by substituting "\$20,000,000" for "\$10,000,000", was executed by making the substitution in subsec. (c)(12) of this section, as the probable intent of Congress because the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499, does not contain a section 9611, but section 111(d)(2) of Pub. L. 99-499 enacted subsec. (c)(12) of this section.

1986—Subsec. (a). Pub. L. 99-499, § 111(a), (b), inserted heading and "For the purposes specified in this section there is authorized to be appropriated from the Hazard-

ous Substance Superfund established under subchapter A of chapter 98 of title 26 not more than \$8,500,000,000 for the 5-year period beginning on October 17, 1986, and such sums shall remain available until expended. The preceding sentence constitutes a specific authorization for the funds appropriated under title II of Public Law 99-160 (relating to payment to the Hazardous Substances Trust Fund)." in introductory provisions, substituted "Payment" for "payment" in pars. (1) to (4), a period for a semicolon in pars. (1) and (2), and a period for "; and" in par. (3), and added pars. (5) and (6).

Subsec. (b). Pub. L. 99-499, §§ 111(c)(1), 207(d)(1), designated existing provisions as par. (1), inserted ", or by any Indian tribe or by the United States acting on behalf of any Indian tribe for natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation" in par. (1), and added par. (2).

Subsec. (c). Pub. L. 99-499, §§ 111(d), 207(d)(2), in par. (1), substituted "The" for "the" and substituted a period for the semicolon at end, in par. (2), substituted "The" for "the", inserted "or Indian tribe" and substituted a period for the semicolon at end, in par. (3), substituted "Subject" for "subject" and substituted a period for the semicolon at end, in par. (4), substituted "Any costs incurred in accordance with subsection (m) of this section (relating to ATSDR) and section 9604(i) of this title, including the costs of epidemiologic and laboratory studies, health assessments, preparation of toxicologic profiles" for "the costs of epidemiologic studies" and substituted a period for the semicolon at end, in par. (5), substituted a period for "; and", in pars. (5) and (6), substituted "Subject" for "subject", and added pars. (7) to (14).

Subsec. (e)(2). Pub. L. 99-499, § 111(e), inserted at end "No money in the Fund may be used for the payment of any claim under subsection (a)(3) or subsection (b) of this section in any fiscal year for which the President determines that all of the Fund is needed for response to threats to public health from releases or threatened releases of hazardous substances."

Subsec. (e)(3). Pub. L. 99-499, § 111(f), inserted before the period at end "; except that money in the Fund shall be available for the provision of alternative water supplies (including the reimbursement of costs incurred by a municipality) in any case involving groundwater contamination outside the boundaries of a federally owned facility in which the federally owned facility is not the only potentially responsible party".

Subsec. (f). Pub. L. 99-499, § 207(d)(3), inserted "or Indian tribe".

Subsec. (h). Pub. L. 99-499, § 111(c)(2), struck out subsec. (h) which read as follows:

"(1) In accordance with regulations promulgated under section 9651(c) of this title, damages for injury to, destruction of, or loss of natural resources resulting from a release of a hazardous substance, for the purposes of this chapter and section 1321(f)(4) and (5) of title 33, shall be assessed by Federal officials designated by the President under the national contingency plan published under section 9605 of this title, and such officials shall act for the President as trustee under this section and section 1321(f)(5) of title 33.

"(2) Any determination or assessment of damages for injury to, destruction of, or loss of natural resources for the purposes of this chapter and section 1321(f)(4) and (5) of title 33 shall have the force and effect of a rebuttable presumption on behalf of any claimant (including a trustee under section 9607 of this title or a Federal agency) in any judicial or adjudicatory administrative proceeding under this chapter or section 1321 of title 33."

Subsec. (i). Pub. L. 99-499, § 207(d)(4), inserted "and by the governing body of any Indian tribe having sustained damage to natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation," after "State,".

Subsec. (k). Pub. L. 99-499, §111(g), amended subsec. (k) generally. Prior to amendment, subsec. (k) read as follows: "The Inspector General of each department or agency to which responsibility to obligate money in the Fund is delegated shall provide an audit review team to audit all payments, obligations, reimbursements, or other uses of the Fund, to assure that the Fund is being properly administered and that claims are being appropriately and expeditiously considered. Each such Inspector General shall submit to the Congress an interim report one year after the establishment of the Fund and a final report two years after the establishment of the Fund. Each such Inspector General shall thereafter provide such auditing of the Fund as is appropriate. Each Federal agency shall cooperate with the Inspector General in carrying out this subsection."

Subsecs. (m) to (p). Pub. L. 99-499, §111(h), (i), added subsecs. (m) to (p).

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (k) of this section relating to the requirement that the Inspector General submit an annual report to Congress on the audit report required under subsec. (k), see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 7th item on page 151 of House Document No. 103-7.

COORDINATION OF TITLES I TO IV OF PUB. L. 99-499

Any provision of titles I to IV of Pub. L. 99-499, imposing any tax, premium, or fee; establishing any trust fund; or authorizing expenditures from any trust fund, to have no force or effect, see section 531 of Pub. L. 99-499, set out as a note under section 1 of Title 26, Internal Revenue Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6924, 6991b, 6991c, 9601, 9604, 9607, 9608, 9609, 9612, 9619, 9661 of this title; title 26 section 9507.

§ 9612. Claims procedure

(a) Claims against Fund for response costs

No claim may be asserted against the Fund pursuant to section 9611(a) of this title unless such claim is presented in the first instance to the owner, operator, or guarantor of the vessel or facility from which a hazardous substance has been released, if known to the claimant, and to any other person known to the claimant who may be liable under section 9607 of this title. In any case where the claim has not been satisfied within 60 days of presentation in accordance with this subsection, the claimant may present the claim to the Fund for payment. No claim against the Fund may be approved or certified during the pendency of an action by the claimant in court to recover costs which are the subject of the claim.

(b) Forms and procedures applicable

(1) Prescribing forms and procedures

The President shall prescribe appropriate forms and procedures for claims filed hereunder, which shall include a provision requiring the claimant to make a sworn verification of the claim to the best of his knowledge. Any person who knowingly gives or causes to be given any false information as a part of any such claim shall, upon conviction, be fined in accordance with the applicable provisions of title 18 or imprisoned for not more than 3

years (or not more than 5 years in the case of a second or subsequent conviction), or both.

(2) Payment or request for hearing

The President may, if satisfied that the information developed during the processing of the claim warrants it, make and pay an award of the claim, except that no claim may be awarded to the extent that a judicial judgment has been made on the costs that are the subject of the claim. If the President declines to pay all or part of the claim, the claimant may, within 30 days after receiving notice of the President's decision, request an administrative hearing.

(3) Burden of proof

In any proceeding under this subsection, the claimant shall bear the burden of proving his claim.

(4) Decisions

All administrative decisions made hereunder shall be in writing, with notification to all appropriate parties, and shall be rendered within 90 days of submission of a claim to an administrative law judge, unless all the parties to the claim agree in writing to an extension or unless the President, in his discretion, extends the time limit for a period not to exceed sixty days.

(5) Finality and appeal

All administrative decisions hereunder shall be final, and any party to the proceeding may appeal a decision within 30 days of notification of the award or decision. Any such appeal shall be made to the Federal district court for the district where the release or threat of release took place. In any such appeal, the decision shall be considered binding and conclusive, and shall not be overturned except for arbitrary or capricious abuse of discretion.

(6) Payment

Within 20 days after the expiration of the appeal period for any administrative decision concerning an award, or within 20 days after the final judicial determination of any appeal taken pursuant to this subsection, the President shall pay any such award from the Fund. The President shall determine the method, terms, and time of payment.

(c) Subrogation rights; actions maintainable

(1) Payment of any claim by the Fund under this section shall be subject to the United States Government acquiring by subrogation the rights of the claimant to recover those costs of removal or damages for which it has compensated the claimant from the person responsible or liable for such release.

(2) Any person, including the Fund, who pays compensation pursuant to this chapter to any claimant for damages or costs resulting from a release of a hazardous substance shall be subrogated to all rights, claims, and causes of action for such damages and costs of removal that the claimant has under this chapter or any other law.

(3) Upon request of the President, the Attorney General shall commence an action on behalf of the Fund to recover any compensation paid

by the Fund to any claimant pursuant to this subchapter, and, without regard to any limitation of liability, all interest, administrative and adjudicative costs, and attorney's fees incurred by the Fund by reason of the claim. Such an action may be commenced against any owner, operator, or guarantor, or against any other person who is liable, pursuant to any law, to the compensated claimant or to the Fund, for the damages or costs for which compensation was paid.

(d) Statute of limitations

(1) Claims for recovery of costs

No claim may be presented under this section for recovery of the costs referred to in section 9607(a) of this title after the date 6 years after the date of completion of all response action.

(2) Claims for recovery of damages

No claim may be presented under this section for recovery of the damages referred to in section 9607(a) of this title unless the claim is presented within 3 years after the later of the following:

(A) The date of the discovery of the loss and its connection with the release in question.

(B) The date on which final regulations are promulgated under section 9651(c) of this title.

(3) Minors and incompetents

The time limitations contained herein shall not begin to run—

(A) against a minor until the earlier of the date when such minor reaches 18 years of age or the date on which a legal representative is duly appointed for the minor, or

(B) against an incompetent person until the earlier of the date on which such person's incompetency ends or the date on which a legal representative is duly appointed for such incompetent person.

(e) Other statutory or common law claims not waived, etc.

Regardless of any State statutory or common law to the contrary, no person who asserts a claim against the Fund pursuant to this subchapter shall be deemed or held to have waived any other claim not covered or assertable against the Fund under this subchapter arising from the same incident, transaction, or set of circumstances, nor to have split a cause of action. Further, no person asserting a claim against the Fund pursuant to this subchapter shall as a result of any determination of a question of fact or law made in connection with that claim be deemed or held to be collaterally estopped from raising such question in connection with any other claim not covered or assertable against the Fund under this subchapter arising from the same incident, transaction, or set of circumstances.

(f) Double recovery prohibited

Where the President has paid out of the Fund for any response costs or any costs specified under section 9611(c)(1) or (2) of this title, no other claim may be paid out of the Fund for the same costs.

(Pub. L. 96-510, title I, § 112, Dec. 11, 1980, 94 Stat. 2792; Pub. L. 99-499, title I, §§ 109(a)(3), 112, Oct. 17, 1986, 100 Stat. 1633, 1646.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-499, § 112(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "All claims which may be asserted against the Fund pursuant to section 9611 of this title shall be presented in the first instance to the owner, operator, or guarantor of the vessel or facility from which a hazardous substance has been released, if known to the claimant, and to any other person known to the claimant who may be liable under section 9607 of this title. In any case where the claim has not been satisfied within sixty days of presentation in accordance with this subsection, the claimant may elect to commence an action in court against such owner, operator, guarantor, or other person or to present the claim to the Fund for payment."

Subsec. (b)(1). Pub. L. 99-499, § 112(b), added heading. Pub. L. 99-499, § 109(a)(3), substituted "in accordance with the applicable provisions of title 18 or imprisoned for not more than 3 years (or not more than 5 years in the case of a second or subsequent conviction), or both" for "up to \$5,000 or imprisoned for not more than one year, or both".

Subsec. (b)(2) to (6). Pub. L. 99-499, § 112(b), added pars. (2) to (6) and struck out former pars. (2) to (4) which related to the settlement and arbitration of claims against liable persons and against the Fund.

Subsec. (d). Pub. L. 99-499, § 112(c), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "No claim may be presented, nor may an action be commenced for damages under this subchapter, unless that claim is presented or action commenced within three years from the date of the discovery of the loss or December 11, 1980, whichever is later: *Provided, however,* That the time limitations contained herein shall not begin to run against a minor until he reaches eighteen years of age or a legal representative is duly appointed for him, nor against an incompetent person until his incompetency ends or a legal representative is duly appointed for him."

Subsec. (f). Pub. L. 99-499, § 112(d), added subsec. (f).

COORDINATION OF TITLES I TO IV OF PUB. L. 99-499

Any provision of titles I to IV of Pub. L. 99-499, imposing any tax, premium, or fee; establishing any trust fund; or authorizing expenditures from any trust fund, to have no force or effect, see section 531 of Pub. L. 99-499, set out as a note under section 1 of Title 26, Internal Revenue Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9607, 9611 of this title.

§ 9613. Civil proceedings

(a) Review of regulations in Circuit Court of Appeals of the United States for the District of Columbia

Review of any regulation promulgated under this chapter may be had upon application by any interested person only in the Circuit Court of Appeals of the United States for the District of Columbia. Any such application shall be made within ninety days from the date of promulgation of such regulations. Any matter with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or to obtain damages or recovery of response costs.

(b) Jurisdiction; venue

Except as provided in subsections (a) and (h) of this section, the United States district courts

shall have exclusive original jurisdiction over all controversies arising under this chapter, without regard to the citizenship of the parties or the amount in controversy. Venue shall lie in any district in which the release or damages occurred, or in which the defendant resides, may be found, or has his principal office. For the purposes of this section, the Fund shall reside in the District of Columbia.

(c) Controversies or other matters resulting from tax collection or tax regulation review

The provisions of subsections (a) and (b) of this section shall not apply to any controversy or other matter resulting from the assessment of collection of any tax, as provided by subchapter II¹ of this chapter, or to the review of any regulation promulgated under title 26.

(d) Litigation commenced prior to December 11, 1980

No provision of this chapter shall be deemed or held to moot any litigation concerning any release of any hazardous substance, or any damages associated therewith, commenced prior to December 11, 1980.

(e) Nationwide service of process

In any action by the United States under this chapter, process may be served in any district where the defendant is found, resides, transacts business, or has appointed an agent for the service of process.

(f) Contribution

(1) Contribution

Any person may seek contribution from any other person who is liable or potentially liable under section 9607(a) of this title, during or following any civil action under section 9606 of this title or under section 9607(a) of this title. Such claims shall be brought in accordance with this section and the Federal Rules of Civil Procedure, and shall be governed by Federal law. In resolving contribution claims, the court may allocate response costs among liable parties using such equitable factors as the court determines are appropriate. Nothing in this subsection shall diminish the right of any person to bring an action for contribution in the absence of a civil action under section 9606 of this title or section 9607 of this title.

(2) Settlement

A person who has resolved its liability to the United States or a State in an administrative or judicially approved settlement shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially liable persons unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

(3) Persons not party to settlement

(A) If the United States or a State has obtained less than complete relief from a person who has resolved its liability to the United States or the State in an administrative or judicially approved settlement, the United States or the State may bring an action

against any person who has not so resolved its liability.

(B) A person who has resolved its liability to the United States or a State for some or all of a response action or for some or all of the costs of such action in an administrative or judicially approved settlement may seek contribution from any person who is not party to a settlement referred to in paragraph (2).

(C) In any action under this paragraph, the rights of any person who has resolved its liability to the United States or a State shall be subordinate to the rights of the United States or the State. Any contribution action brought under this paragraph shall be governed by Federal law.

(g) Period in which action may be brought

(1) Actions for natural resource damages

Except as provided in paragraphs (3) and (4), no action may be commenced for damages (as defined in section 9601(6) of this title) under this chapter, unless that action is commenced within 3 years after the later of the following:

(A) The date of the discovery of the loss and its connection with the release in question.

(B) The date on which regulations are promulgated under section 9651(c) of this title.

With respect to any facility listed on the National Priorities List (NPL), any Federal facility identified under section 9620 of this title (relating to Federal facilities), or any vessel or facility at which a remedial action under this chapter is otherwise scheduled, an action for damages under this chapter must be commenced within 3 years after the completion of the remedial action (excluding operation and maintenance activities) in lieu of the dates referred to in subparagraph (A) or (B). In no event may an action for damages under this chapter with respect to such a vessel or facility be commenced (i) prior to 60 days after the Federal or State natural resource trustee provides to the President and the potentially responsible party a notice of intent to file suit, or (ii) before selection of the remedial action if the President is diligently proceeding with a remedial investigation and feasibility study under section 9604(b) of this title or section 9620 of this title (relating to Federal facilities). The limitation in the preceding sentence on commencing an action before giving notice or before selection of the remedial action does not apply to actions filed on or before October 17, 1986.

(2) Actions for recovery of costs

An initial action for recovery of the costs referred to in section 9607 of this title must be commenced—

(A) for a removal action, within 3 years after completion of the removal action, except that such cost recovery action must be brought within 6 years after a determination to grant a waiver under section 9604(c)(1)(C) of this title for continued response action; and

(B) for a remedial action, within 6 years after initiation of physical on-site construction of the remedial action, except that, if

¹ See References in Text note below.

the remedial action is initiated within 3 years after the completion of the removal action, costs incurred in the removal action may be recovered in the cost recovery action brought under this subparagraph.

In any such action described in this subsection, the court shall enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages. A subsequent action or actions under section 9607 of this title for further response costs at the vessel or facility may be maintained at any time during the response action, but must be commenced no later than 3 years after the date of completion of all response action. Except as otherwise provided in this paragraph, an action may be commenced under section 9607 of this title for recovery of costs at any time after such costs have been incurred.

(3) Contribution

No action for contribution for any response costs or damages may be commenced more than 3 years after—

(A) the date of judgment in any action under this chapter for recovery of such costs or damages, or

(B) the date of an administrative order under section 9622(g) of this title (relating to de minimis settlements) or 9622(h) of this title (relating to cost recovery settlements) or entry of a judicially approved settlement with respect to such costs or damages.

(4) Subrogation

No action based on rights subrogated pursuant to this section by reason of payment of a claim may be commenced under this subchapter more than 3 years after the date of payment of such claim.

(5) Actions to recover indemnification payments

Notwithstanding any other provision of this subsection, where a payment pursuant to an indemnification agreement with a response action contractor is made under section 9619 of this title, an action under section 9607 of this title for recovery of such indemnification payment from a potentially responsible party may be brought at any time before the expiration of 3 years from the date on which such payment is made.

(6) Minors and incompetents

The time limitations contained herein shall not begin to run—

(A) against a minor until the earlier of the date when such minor reaches 18 years of age or the date on which a legal representative is duly appointed for such minor, or

(B) against an incompetent person until the earlier of the date on which such incompetent's incompetency ends or the date on which a legal representative is duly appointed for such incompetent.

(h) Timing of review

No Federal court shall have jurisdiction under Federal law other than under section 1332 of

title 28 (relating to diversity of citizenship jurisdiction) or under State law which is applicable or relevant and appropriate under section 9621 of this title (relating to cleanup standards) to review any challenges to removal or remedial action selected under section 9604 of this title, or to review any order issued under section 9606(a) of this title, in any action except one of the following:

(1) An action under section 9607 of this title to recover response costs or damages or for contribution.

(2) An action to enforce an order issued under section 9606(a) of this title or to recover a penalty for violation of such order.

(3) An action for reimbursement under section 9606(b)(2) of this title.

(4) An action under section 9659 of this title (relating to citizens suits) alleging that the removal or remedial action taken under section 9604 of this title or secured under section 9606 of this title was in violation of any requirement of this chapter. Such an action may not be brought with regard to a removal where a remedial action is to be undertaken at the site.

(5) An action under section 9606 of this title in which the United States has moved to compel a remedial action.

(i) Intervention

In any action commenced under this chapter or under the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.] in a court of the United States, any person may intervene as a matter of right when such person claims an interest relating to the subject of the action and is so situated that the disposition of the action may, as a practical matter, impair or impede the person's ability to protect that interest, unless the President or the State shows that the person's interest is adequately represented by existing parties.

(j) Judicial review

(1) Limitation

In any judicial action under this chapter, judicial review of any issues concerning the adequacy of any response action taken or ordered by the President shall be limited to the administrative record. Otherwise applicable principles of administrative law shall govern whether any supplemental materials may be considered by the court.

(2) Standard

In considering objections raised in any judicial action under this chapter, the court shall uphold the President's decision in selecting the response action unless the objecting party can demonstrate, on the administrative record, that the decision was arbitrary and capricious or otherwise not in accordance with law.

(3) Remedy

If the court finds that the selection of the response action was arbitrary and capricious or otherwise not in accordance with law, the court shall award (A) only the response costs or damages that are not inconsistent with the national contingency plan, and (B) such other relief as is consistent with the National Contingency Plan.

(4) Procedural errors

In reviewing alleged procedural errors, the court may disallow costs or damages only if the errors were so serious and related to matters of such central relevance to the action that the action would have been significantly changed had such errors not been made.

(k) Administrative record and participation procedures**(1) Administrative record**

The President shall establish an administrative record upon which the President shall base the selection of a response action. The administrative record shall be available to the public at or near the facility at issue. The President also may place duplicates of the administrative record at any other location.

(2) Participation procedures**(A) Removal action**

The President shall promulgate regulations in accordance with chapter 5 of title 5 establishing procedures for the appropriate participation of interested persons in the development of the administrative record on which the President will base the selection of removal actions and on which judicial review of removal actions will be based.

(B) Remedial action

The President shall provide for the participation of interested persons, including potentially responsible parties, in the development of the administrative record on which the President will base the selection of remedial actions and on which judicial review of remedial actions will be based. The procedures developed under this subparagraph shall include, at a minimum, each of the following:

- (i) Notice to potentially affected persons and the public, which shall be accompanied by a brief analysis of the plan and alternative plans that were considered.
- (ii) A reasonable opportunity to comment and provide information regarding the plan.
- (iii) An opportunity for a public meeting in the affected area, in accordance with section 9617(a)(2) of this title (relating to public participation).
- (iv) A response to each of the significant comments, criticisms, and new data submitted in written or oral presentations.
- (v) A statement of the basis and purpose of the selected action.

For purposes of this subparagraph, the administrative record shall include all items developed and received under this subparagraph and all items described in the second sentence of section 9617(d) of this title. The President shall promulgate regulations in accordance with chapter 5 of title 5 to carry out the requirements of this subparagraph.

(C) Interim record

Until such regulations under subparagraphs (A) and (B) are promulgated, the administrative record shall consist of all items developed and received pursuant to current

procedures for selection of the response action, including procedures for the participation of interested parties and the public. The development of an administrative record and the selection of response action under this chapter shall not include an adjudicatory hearing.

(D) Potentially responsible parties

The President shall make reasonable efforts to identify and notify potentially responsible parties as early as possible before selection of a response action. Nothing in this paragraph shall be construed to be a defense to liability.

(I) Notice of actions

Whenever any action is brought under this chapter in a court of the United States by a plaintiff other than the United States, the plaintiff shall provide a copy of the complaint to the Attorney General of the United States and to the Administrator of the Environmental Protection Agency.

(Pub. L. 96-510, title I, § 113, Dec. 11, 1980, 94 Stat. 2795; Pub. L. 99-499, title I, § 113, Oct. 17, 1986, 100 Stat. 1647; Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

REFERENCES IN TEXT

Subchapter II of this chapter, referred to in subsec. (c), was in the original "title II of this Act", meaning title II of Pub. L. 96-510, Dec. 11, 1980, 94 Stat. 2796, known as the Hazardous Substance Response Revenue Act of 1980, which enacted subchapter II of this chapter and sections 4611, 4612, 4661, 4662, 4681, and 4682 of Title 26, Internal Revenue Code. Sections 221 to 223 and 232 of Pub. L. 96-510, which were classified to sections 9631 to 9633 and 9641 of this title, comprising subchapter II of this chapter, were repealed by Pub. L. 99-499, title V, §§ 514(b), 517(c)(1), Oct. 17, 1986, 100 Stat. 1767, 1774. For complete classification of title II to the Code, see Short Title of 1980 Amendment note set out under section 1 of Title 26 and Tables.

The Federal Rules of Civil Procedure, referred to in subsec. (f)(1), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Solid Waste Disposal Act, referred to in subsec. (i), is title II of Pub. L. 89-272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94-580, § 2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§ 6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

AMENDMENTS

1986—Subsec. (b). Pub. L. 99-499, § 113(c)(1), substituted "subsections (a) and (h)" for "subsection (a)".
Subsec. (c). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

Subsecs. (e) to (I). Pub. L. 99-499, § 113(a), (b), (c)(2), added subsecs. (e) to (I).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9607, 9659 of this title.

§ 9614. Relationship to other law**(a) Additional State liability or requirements with respect to release of substances within State**

Nothing in this chapter shall be construed or interpreted as preempting any State from im-

posing any additional liability or requirements with respect to the release of hazardous substances within such State.

(b) Recovery under other State or Federal law of compensation for removal costs or damages, or payment of claims

Any person who receives compensation for removal costs or damages or claims pursuant to this chapter shall be precluded from recovering compensation for the same removal costs or damages or claims pursuant to any other State or Federal law. Any person who receives compensation for removal costs or damages or claims pursuant to any other Federal or State law shall be precluded from receiving compensation for the same removal costs or damages or claims as provided in this chapter.

(c) Recycled oil

(1) Service station dealers, etc.

No person (including the United States or any State) may recover, under the authority of subsection (a)(3) or (a)(4) of section 9607 of this title, from a service station dealer for any response costs or damages resulting from a release or threatened release of recycled oil, or use the authority of section 9606 of this title against a service station dealer other than a person described in subsection (a)(1) or (a)(2) of section 9607 of this title, if such recycled oil—

(A) is not mixed with any other hazardous substance, and

(B) is stored, treated, transported, or otherwise managed in compliance with regulations or standards promulgated pursuant to section 3014 of the Solid Waste Disposal Act [42 U.S.C. 6935] and other applicable authorities.

Nothing in this paragraph shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release or threatened release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action.

(2) Presumption

Solely for the purposes of this subsection, a service station dealer may presume that a small quantity of used oil is not mixed with other hazardous substances if it—

(A) has been removed from the engine of a light duty motor vehicle or household appliances by the owner of such vehicle or appliances, and

(B) is presented, by such owner, to the dealer for collection, accumulation, and delivery to an oil recycling facility.

(3) Definition

For purposes of this subsection, the terms “used oil” and “recycled oil” have the same meanings as set forth in sections 1004(36) and 1004(37) of the Solid Waste Disposal Act [42 U.S.C. 6903(36), (37)] and regulations promulgated pursuant to that Act [42 U.S.C. 6901 et seq.].

(4) Effective date

The effective date of paragraphs (1) and (2) of this subsection shall be the effective date of

regulations or standards promulgated under section 3014 of the Solid Waste Disposal Act [42 U.S.C. 6935] that include, among other provisions, a requirement to conduct corrective action to respond to any releases of recycled oil under subtitle C or subtitle I of such Act [42 U.S.C. 6921 et seq., 6991 et seq.].

(d) Financial responsibility of owner or operator of vessel or facility under State or local law, rule, or regulation

Except as provided in this subchapter, no owner or operator of a vessel or facility who establishes and maintains evidence of financial responsibility in accordance with this subchapter shall be required under any State or local law, rule, or regulation to establish or maintain any other evidence of financial responsibility in connection with liability for the release of a hazardous substance from such vessel or facility. Evidence of compliance with the financial responsibility requirements of this subchapter shall be accepted by a State in lieu of any other requirement of financial responsibility imposed by such State in connection with liability for the release of a hazardous substance from such vessel or facility.

(Pub. L. 96-510, title I, § 114, Dec. 11, 1980, 94 Stat. 2795; Pub. L. 99-499, title I, § 114(a), Oct. 17, 1986, 100 Stat. 1652.)

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsec. (c)(3), (4), is title II of Pub. L. 89-272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94-580, § 2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§ 6901 et seq.) of this title. Subtitles C and I of the Solid Waste Disposal Act are classified generally to subchapters III (§ 6921 et seq.) and IX (§ 6991 et seq.), respectively, of chapter 82 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

AMENDMENTS

1986—Subsec. (c). Pub. L. 99-499 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “Except as provided in this chapter, no person may be required to contribute to any fund, the purpose of which is to pay compensation for claims for any costs of response or damages or claims which may be compensated under this subchapter. Nothing in this section shall preclude any State from using general revenues for such a fund, or from imposing a tax or fee upon any person or upon any substance in order to finance the purchase or prepositioning of hazardous substance response equipment or other preparations for the response to a release of hazardous substances which affects such State.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9601, 9607 of this title.

§ 9615. Presidential delegation and assignment of duties or powers and promulgation of regulations

The President is authorized to delegate and assign any duties or powers imposed upon or assigned to him and to promulgate any regulations necessary to carry out the provisions of this subchapter.

(Pub. L. 96-510, title I, § 115, Dec. 11, 1980, 94 Stat. 2796.)

EX. ORD. NO. 12580. SUPERFUND IMPLEMENTATION

Ex. Ord. No. 12580, Jan. 23, 1987, 52 F.R. 2923, as amended by Ex. Ord. No. 12777, §1(a), Oct. 18, 1991, 56 F.R. 54757; Ex. Ord. No. 13016, Aug. 28, 1996, 61 F.R. 45871, provided:

By the authority vested in me as President of the United States of America by Section 115 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9615 *et seq.*) ("the Act"), and by Section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

SECTION 1. *National Contingency Plan.* (a)(1) The National Contingency Plan ("the NCP"), shall provide for a National Response Team ("the NRT") composed of representatives of appropriate Federal departments and agencies for national planning and coordination of preparedness and response actions, and Regional Response Teams as the regional counterparts to the NRT for planning and coordination of regional preparedness and response actions.

(2) The following agencies (in addition to other appropriate agencies) shall provide representatives to the National and Regional Response Teams to carry out their responsibilities under the NCP: Department of State, Department of Defense, Department of Justice, Department of the Interior, Department of Agriculture, Department of Commerce, Department of Labor, Department of Health and Human Services, Department of Transportation, Department of Energy, Environmental Protection Agency, Federal Emergency Management Agency, United States Coast Guard, and the Nuclear Regulatory Commission.

(3) Except for periods of activation because of response action, the representative of the Environmental Protection Agency ("EPA") shall be the chairman, and the representative of the United States Coast Guard shall be the vice chairman, of the NRT and these agencies' representatives shall be co-chairs of the Regional Response Teams ("the RRTs"). When the NRT or an RRT is activated for a response action, the EPA representative shall be the chairman when the release or threatened release or discharge or threatened discharge occurs in the inland zone, and the United States Coast Guard representative shall be the chairman when the release or threatened release or discharge or threatened discharge occurs in the coastal zone, unless otherwise agreed upon by the EPA and the United States Coast Guard representatives (inland and coastal zones are defined in the NCP).

(4) The RRTs may include representatives from State governments, local governments (as agreed upon by the States), and Indian tribal governments. Subject to the functions and authorities delegated to Executive departments and agencies in other sections of this order, the NRT shall provide policy and program direction to the RRTs.

(b)(1) The responsibility for the revision of the NCP and all the other functions vested in the President by Sections 105(a), (b), (c), and (g), 125, and 301(f) of the Act [42 U.S.C. 9605(a), (b), (c), (g), 9625, 9651(f)], by Section 311(d)(1) of the Federal Water Pollution Control Act [33 U.S.C. 1321(d)(1)], and by Section 4201(c) of the Oil Pollution Act of 1990 [Pub. L. 101-380, 33 U.S.C. 1321 note] is delegated to the Administrator of the Environmental Protection Agency ("the Administrator").

(2) The function vested in the President by Section 118(p) of the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499) ("SARA") [100 Stat. 1662] is delegated to the Administrator.

(c) In accord with Section 107(f)(2)(A) of the Act [42 U.S.C. 9607(f)(2)(A)], Section 311(f)(5) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321(f)(5)), and Section 1006(b)(1) and (2) of the Oil Pollution Act of 1990 [33 U.S.C. 2706(b)(1), (2)], the following shall be among those designated in the NCP as Federal trustees for natural resources:

- (1) Secretary of Defense;
- (2) Secretary of the Interior;
- (3) Secretary of Agriculture;

(4) Secretary of Commerce;

(5) Secretary of Energy.

In the event of a spill, the above named Federal trustees for natural resources shall designate one trustee to act as Lead Administrative Trustee, the duties of which shall be defined in the regulations promulgated pursuant to Section 1006(e)(1) of OPA. If there are natural resource trustees other than those designated above which are acting in the event of a spill, those other trustees may join with the Federal trustees to name a Lead Administrative Trustee which shall exercise the duties defined in the regulations promulgated pursuant to Section 1006(e)(1) of OPA.

(d) Revisions to the NCP shall be made in consultation with members of the NRT prior to publication for notice and comment.

(e) All revisions to the NCP, whether in proposed or final form, shall be subject to review and approval by the Director of the Office of Management and Budget ("OMB").

SEC. 2. *Response and Related Authorities.* (a) The functions vested in the President by the first sentence of Section 104(b)(1) of the Act [42 U.S.C. 9604(b)(1)] relating to "illness, disease, or complaints thereof" are delegated to the Secretary of Health and Human Services who shall, in accord with Section 104(i) of the Act, perform those functions through the Public Health Service.

(b) The functions vested in the President by Sections 104(e)(7)(C), 113(k)(2), 119(c)(7), and 121(f)(1) of the Act [42 U.S.C. 9604(e)(7)(C), 9613(k)(2), 9619(c)(7), 9621(f)(1)], relating to promulgation of regulations and guidelines, are delegated to the Administrator, to be exercised in consultation with the NRT.

(c)(1) The functions vested in the President by Sections 104(a) and the second sentence of 126(b) of the Act [42 U.S.C. 9604(a), 9626(b)], to the extent they require permanent relocation of residents, businesses, and community facilities or temporary evacuation and housing of threatened individuals not otherwise provided for, are delegated to the Director of the Federal Emergency Management Agency.

(2) Subject to subsection (b) of this Section, the functions vested in the President by Sections 117(a) and (c), and 119 of the Act [42 U.S.C. 9617(a), (c), 9619], to the extent such authority is needed to carry out the functions delegated under paragraph (1) of this subsection, are delegated to the Director of the Federal Emergency Management Agency.

(d) Subject to subsections (a), (b) and (c) of this Section, the functions vested in the President by Sections 104(a), (b) and (c)(4), 113(k), 117(a) and (c), 119, and 121 of the Act [42 U.S.C. 9604(a), (b), (c)(4), 9613(k), 9617(a), (c), 9619, 9621] are delegated to the Secretaries of Defense and Energy, with respect to releases or threatened releases where either the release is on or the sole source of the release is from any facility or vessel under the jurisdiction, custody or control of their departments, respectively, including vessels bare-boat chartered and operated. These functions must be exercised consistent with the requirements of Section 120 of the Act [42 U.S.C. 9620].

(e)(1) Subject to subsections (a), (b), (c), and (d) of this Section, the functions vested in the President by Sections 104(a), (b), and (c)(4), and 121 of the Act [42 U.S.C. 9604(a), (b), (c)(4), 9621] are delegated to the heads of Executive departments and agencies, with respect to remedial actions for releases or threatened releases which are not on the National Priorities List ("the NPL") and removal actions other than emergencies, where either the release is on or the sole source of the release is from any facility or vessel under the jurisdiction, custody or control of those departments and agencies, including vessels bare-boat chartered and operated. The Administrator shall define the term "emergency", solely for the purposes of this subsection, either by regulation or by a memorandum of understanding with the head of an Executive department or agency.

(2) Subject to subsections (b), (c), and (d) of this Section, the functions vested in the President by Sections

104(b)(2), 113(k), 117(a) and (c), and 119 of the Act [42 U.S.C. 9604(b)(2), 9613(k), 9617(a), (c), 9619] are delegated to the heads of Executive departments and agencies, with respect to releases or threatened releases where either the release is on or the sole source of the release is from any facility or vessel under the jurisdiction, custody or control of those departments and agencies, including vessels bare-boat chartered and operated.

(f) Subject to subsections (a), (b), (c), (d), and (e) of this Section, the functions vested in the President by Sections 104(a), (b) and (c)(4), 113(k), 117(a) and (c), 119, and 121 of the Act [42 U.S.C. 9604(a), (b), (c)(4), 9613(k), 9617(a), (c), 9619, 9621] are delegated to the Secretary of the Department in which the Coast Guard is operating ("the Coast Guard"), with respect to any release or threatened release involving the coastal zone, Great Lakes waters, ports, and harbors.

(g) Subject to subsections (a), (b), (c), (d), (e), and (f) of this Section, the functions vested in the President by Sections 101(24), 104(a), (b), (c)(4) and (c)(9), 113(k), 117(a) and (c), 119, 121, and 126(b) of the Act [42 U.S.C. 9601(24), 9604(a), (b), (c)(4), (9), 9613(k), 9617(a), (c), 9619, 9621, 9626(b)] are delegated to the Administrator. The Administrator's authority under Section 119 of the Act is retroactive to the date of enactment of SARA [Oct. 17, 1986].

(h) The functions vested in the President by Section 104(c)(3) of the Act [42 U.S.C. 9604(c)(3)] are delegated to the Administrator, with respect to providing assurances for Indian tribes, to be exercised in consultation with the Secretary of the Interior.

(i) Subject to subsections (d), (e), (f), (g) and (h) of this Section, the functions vested in the President by Section 104(c) and (d) of the Act are delegated to the Coast Guard, the Secretary of Health and Human Services, the Director of the Federal Emergency Management Agency, and the Administrator in order to carry out the functions delegated to them by this Section.

(j)(1) The functions vested in the President by Section 104(e)(5)(A) are delegated to the heads of Executive departments and agencies, with respect to releases or threatened releases where either the release is on or the sole source of the release is from any facility or vessel under the jurisdiction, custody or control of those departments and agencies, to be exercised with the concurrence of the Attorney General.

(2) Subject to subsection (b) of this Section and paragraph (1) of this subsection, the functions vested in the President by Section 104(e) are delegated to the heads of Executive departments and agencies in order to carry out their functions under this Order or the Act.

(k) The functions vested in the President by Section 104(f), (g), (h), (i)(11), and (j) of the Act are delegated to the heads of Executive departments and agencies in order to carry out the functions delegated to them by this Section. The exercise of authority under Section 104(h) of the Act shall be subject to the approval of the Administrator of the Office of Federal Procurement Policy.

SEC. 3. Cleanup Schedules. (a) The functions vested in the President by Sections 116(a) and the first two sentences of 105(d) of the Act [42 U.S.C. 9616(a), 9605(d)] are delegated to the heads of Executive departments and agencies with respect to facilities under the jurisdiction, custody or control of those departments and agencies.

(b) Subject to subsection (a) of this Section, the functions vested in the President by Sections 116 and 105(d) are delegated to the Administrator.

SEC. 4. Enforcement. (a) The functions vested in the President by Sections 109(d) and 122(e)(3)(A) of the Act [42 U.S.C. 9609(d), 9622(e)(3)(A)], relating to development of regulations and guidelines, are delegated to the Administrator, to be exercised in consultation with the Attorney General.

(b)(1) Subject to subsection (a) of this Section, the functions vested in the President by Section 122 [42 U.S.C. 9622] (except subsection (b)(1)) are delegated to the heads of Executive departments and agencies, with respect to releases or threatened releases not on the

NPL where either the release is on or the sole source of the release is from any facility under the jurisdiction, custody or control of those Executive departments and agencies. These functions may be exercised only with the concurrence of the Attorney General.

(2) Subject to subsection (a) of this Section, the functions vested in the President by Section 109 of the Act [42 U.S.C. 9609], relating to violations of Section 122 of the Act, are delegated to the heads of Executive departments and agencies, with respect to releases or threatened releases not on the NPL where either the release is on or the sole source of the release is from any facility under the jurisdiction, custody or control of those Executive departments and agencies. These functions may be exercised only with the concurrence of the Attorney General.

(c)(1) Subject to subsection[s] (a) and (b)(1) of this Section, the functions vested in the President by Sections 106(a) and 122 of the Act [42 U.S.C. 9606(a), 9622] are delegated to the Coast Guard with respect to any release or threatened release involving the coastal zone, Great Lakes waters, ports, and harbors.

(2) Subject to subsection[s] (a) and (b)(2) of this Section, the functions vested in the President by Section 109 of the Act [42 U.S.C. 9609], relating to violations of Sections 103(a) and (b), and 122 of the Act [42 U.S.C. 9603(a), (b), 9622], are delegated to the Coast Guard with respect to any release or threatened release involving the coastal zone, Great Lakes waters, ports, and harbors.

(3) Subject to subsections (a) and (b)(1) of this section, the functions vested in the President by sections 106(a) [42 U.S.C. 9606(a)] and 122 [42 U.S.C. 9622] (except subsection (b)(1)) of the Act are delegated to the Secretary of the Interior, the Secretary of Commerce, the Secretary of Agriculture, the Secretary of Defense, and the Secretary of Energy, to be exercised only with the concurrence of the Coast Guard, with respect to any release or threatened release in the coastal zone, Great Lakes waters, ports, and harbors, affecting (1) natural resources under their trusteeship, or (2) a vessel or facility subject to their custody, jurisdiction, or control. Such authority shall not be exercised at any vessel or facility at which the Coast Guard is the lead Federal agency for the conduct or oversight of a response action. Such authority shall not be construed to authorize or permit use of the Hazardous Substance Superfund to implement section 106 or to fund performance of any response action in lieu of the payment by a person who receives but does not comply with an order pursuant to section 106(a), where such order has been issued by the Secretary of the Interior, the Secretary of Commerce, the Secretary of Agriculture, the Secretary of Defense, or the Secretary of Energy. This subsection shall not be construed to limit any authority delegated by any other section of this order. Authority granted under this subsection shall be exercised in a manner to ensure interagency coordination that enhances efficiency and effectiveness.

(d)(1) Subject to subsections (a), (b)(1), and (c)(1) of this Section, the functions vested in the President by Sections 106 and 122 of the Act [42 U.S.C. 9606, 9622] are delegated to the Administrator.

(2) Subject to subsections (a), (b)(2), and (c)(2) of this Section, the functions vested in the President by Section 109 of the Act [42 U.S.C. 9609], relating to violations of Sections 103 and 122 of the Act [42 U.S.C. 9603, 9622], are delegated to the Administrator.

(3) Subject to subsections (a), (b)(1), and (c)(1) of this section, the functions vested in the President by sections 106(a) [42 U.S.C. 9606(a)] and 122 [42 U.S.C. 9622] (except subsection (b)(1)) of the Act are delegated to the Secretary of the Interior, the Secretary of Commerce, the Secretary of Agriculture, the Secretary of Defense, and the Department of Energy, to be exercised only with the concurrence of the Administrator, with respect to any release or threatened release affecting (1) natural resources under their trusteeship, or (2) a vessel or facility subject to their custody, jurisdiction, or control. Such authority shall not be exercised at any

vessel or facility at which the Administrator is the lead Federal official for the conduct or oversight of a response action. Such authority shall not be construed to authorize or permit use of the Hazardous Substance Superfund to implement section 106 or to fund performance of any response action in lieu of the payment by a person who receives but does not comply with an order pursuant to section 106(a), where such order has been issued by the Secretary of the Interior, the Secretary of Commerce, the Secretary of Agriculture, the Secretary of Defense, or the Secretary of Energy. This subsection shall not be construed to limit any authority delegated by any other section of this order. Authority granted under this subsection shall be exercised in a manner to ensure interagency coordination that enhances efficiency and effectiveness.

(e) Notwithstanding any other provision of this Order, the authority under Sections 104(e)(5)(A) and 106(a) of the Act [42 U.S.C. 9604(e)(5)(A), 9606(a)] to seek information, entry, inspection, samples, or response actions from Executive departments and agencies may be exercised only with the concurrence of the Attorney General.

SEC. 5. *Liability.* (a) The function vested in the President by Section 107(c)(1)(C) of the Act [42 U.S.C. 9607(c)(1)(C)] is delegated to the Secretary of Transportation.

(b) The functions vested in the President by Section 107(c)(3) of the Act are delegated to the Coast Guard with respect to any release or threatened release involving the coastal zone, Great Lakes waters, ports and harbors.

(c) Subject to subsection (b) of this Section, the functions vested in the President by Section 107(c)(3) of the Act are delegated to the Administrator.

(d) The functions vested in the President by Section 107(f)(1) of the Act are delegated to each of the Federal trustees for natural resources designated in the NCP for resources under their trusteeship.

(e) The functions vested in the President by Section 107(f)(2)(B) of the Act, to receive notification of the state natural resource trustee designations, are delegated to the Administrator.

SEC. 6. *Litigation.* (a) Notwithstanding any other provision of this Order, any representation pursuant to or under this Order in any judicial proceedings shall be by or through the Attorney General. The conduct and control of all litigation arising under the Act shall be the responsibility of the Attorney General.

(b) Notwithstanding any other provision of this Order, the authority under the Act to require the Attorney General to commence litigation is retained by the President.

(c) The functions vested in the President by Section 113(g) of the Act [42 U.S.C. 9613(g)], to receive notification of a natural resource trustee's intent to file suit, are delegated to the heads of Executive departments and agencies with respect to response actions for which they have been delegated authority under Section 2 of this Order. The Administrator shall promulgate procedural regulations for providing such notification.

(d) The functions vested in the President by Sections [sic] 310(d) and (e) of the Act [42 U.S.C. 9659(d), (e)], relating to promulgation of regulations, are delegated to the Administrator.

SEC. 7. *Financial Responsibility.* (a) The functions vested in the President by Section 107(k)(4)(B) of the Act [42 U.S.C. 9607(k)(4)(B)] are delegated to the Secretary of the Treasury. The Administrator will provide the Secretary with such technical information and assistance as the Administrator may have available.

(b)(1) The functions vested in the President by Section 108(a)(1) of the Act [42 U.S.C. 9608(a)(1)] are delegated to the Coast Guard.

(2) Subject to Section 4(a) of this Order, the functions vested in the President by Section 109 of the Act [42 U.S.C. 9609], relating to violations of Section 108(a)(1) of the Act, are delegated to the Coast Guard.

(c)(1) The functions vested in the President by Section 108(b) of the Act are delegated to the Secretary of

Transportation with respect to all transportation related facilities, including any pipeline, motor vehicle, rolling stock, or aircraft.

(2) Subject to Section 4(a) of this Order, the functions vested in the President by Section 109 of the Act, relating to violations of Section 108(a)(3) of the Act, are delegated to the Secretary of Transportation.

(3) Subject to Section 4(a) of this Order, the functions vested in the President by Section 109 of the Act, relating to violations of Section 108(b) of the Act, are delegated to the Secretary of Transportation with respect to all transportation related facilities, including any pipeline, motor vehicle, rolling stock, or aircraft.

(d)(1) Subject to subsection (c)(1) of this Section, the functions vested in the President by Section 108(a)(4) and (b) of the Act are delegated to the Administrator.

(2) Subject to Section 4(a) of this Order and subsection (c)(3) of this Section, the functions vested in the President by Section 109 of the Act, relating to violations of Section 108(a)(4) and (b) of the Act, are delegated to the Administrator.

SEC. 8. *Employee Protection and Notice to Injured.* (a) The functions vested in the President by Section 110(e) of the Act [42 U.S.C. 9610(e)] are delegated to the Administrator.

(b) The functions vested in the President by Section 111(g) of the Act [42 U.S.C. 9611(g)] are delegated to the Secretaries of Defense and Energy with respect to releases from facilities or vessels under the jurisdiction, custody or control of their departments, respectively, including vessels bare-boat chartered and operated.

(c) Subject to subsection (b) of this Section, the functions vested in the President by Section 111(g) of the Act are delegated to the Administrator.

SEC. 9. *Management of the Hazardous Substance Superfund and Claims.* (a) The functions vested in the President by Section 111(a) of the Act [42 U.S.C. 9611(a)] are delegated to the Administrator, subject to the provisions of this Section and other applicable provisions of this Order.

(b) The Administrator shall transfer to other agencies, from the Hazardous Substance Superfund out of sums appropriated, such amounts as the Administrator may determine necessary to carry out the purposes of the Act. These amounts shall be consistent with the President's Budget, within the total approved by the Congress, unless a revised amount is approved by OMB. Funds appropriated specifically for the Agency for Toxic Substances and Disease Registry ("ATSDR"), shall be directly transferred to ATSDR, consistent with fiscally responsible investment of trust fund money.

(c) The Administrator shall chair a budget task force composed of representatives of Executive departments and agencies having responsibilities under this Order or the Act. The Administrator shall also, as part of the budget request for the Environmental Protection Agency, submit to OMB a budget for the Hazardous Substance Superfund which is based on recommended levels developed by the budget task force. The Administrator may prescribe reporting and other forms, procedures, and guidelines to be used by the agencies of the Task Force in preparing the budget request, consistent with budgetary reporting requirements issued by OMB. The Administrator shall prescribe forms to agency task force members for reporting the expenditure of funds on a site specific basis.

(d) The Administrator and each department and agency head to whom funds are provided pursuant to this Section, with respect to funds provided to them, are authorized in accordance with Section 111(f) of the Act [42 U.S.C. 9611(f)] to designate Federal officials who may obligate such funds.

(e) The functions vested in the President by Section 112 of the Act [42 U.S.C. 9612] are delegated to the Administrator for all claims presented pursuant to Section 111 of the Act.

(f) The functions vested in the President by Section 111(o) of the Act are delegated to the Administrator.

(g) The functions vested in the President by Section 117(e) of the Act [42 U.S.C. 9617(e)] are delegated to the

Administrator, to be exercised in consultation with the Attorney General.

(h) The functions vested in the President by Section 123 of the Act [42 U.S.C. 9623] are delegated to the Administrator.

(i) Funds from the Hazardous Substance Superfund may be used, at the discretion of the Administrator or the Coast Guard, to pay for removal actions for releases or threatened releases from facilities or vessels under the jurisdiction, custody or control of Executive departments and agencies but must be reimbursed to the Hazardous Substance Superfund by such Executive department or agency.

SEC. 10. *Federal Facilities.* (a) When necessary, prior to selection of a remedial action by the Administrator under Section 120(e)(4)(A) of the Act [42 U.S.C. 9620(e)(4)(A)], Executive agencies shall have the opportunity to present their views to the Administrator after using the procedures under Section 1-6 of Executive Order No. 12088 of October 13, 1978 [set out as a note under section 4321 of this title], or any other mutually acceptable process. Notwithstanding subsection 1-602 of Executive Order No. 12088, the Director of the Office of Management and Budget shall facilitate resolution of any issues.

(b) Executive Order No. 12088 of October 13, 1978, is amended by renumbering the current Section 1-802 as Section 1-803 and inserting the following new Section 1-802.

"1-802. Nothing in this Order shall create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person."

SEC. 11. *General Provisions.* (a) The function vested in the President by Section 101(37) of the Act [42 U.S.C. 9601(37)] is delegated to the Administrator.

(b)(1) The function vested in the President by Section 105(f) of the Act [42 U.S.C. 9605(f)], relating to reporting on minority participation in contracts, is delegated to the Administrator.

(2) Subject to paragraph 1 of this subsection, the functions vested in the President by Section 105(f) of the Act are delegated to the heads of Executive departments and agencies in order to carry out the functions delegated to them by this Order. Each Executive department and agency shall provide to the Administrator any requested information on minority contracting for inclusion in the Section 105(f) annual report.

(c) The functions vested in the President by Section 126(c) of the Act [42 U.S.C. 9626(c)] are delegated to the Administrator, to be exercised in consultation with the Secretary of the Interior.

(d) The functions vested in the President by Section 301(c) of the Act [42 U.S.C. 9651(c)] are delegated to the Secretary of the Interior.

(e) Each agency shall have authority to issue such regulations as may be necessary to carry out the functions delegated to them by this Order.

(f) The performance of any function under this Order shall be done in consultation with interested Federal departments and agencies represented on the NRT, as well as with any other interested Federal agency.

(g) The following functions vested in the President by the Act which have been delegated or assigned by this Order may be redelegated to the head of any Executive department or agency with his consent: functions set forth in Sections 2 (except subsection (b)), 3, 4(b), 4(c), 4(d), 5(b), 5(c), and 8(c) of this Order.

(h) Executive Order No. 12316 of August 14, 1981, is revoked.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9627 of this title.

§ 9616. Schedules

(a) Assessment and listing of facilities

It shall be a goal of this chapter that, to the maximum extent practicable—

(1) not later than January 1, 1988, the President shall complete preliminary assessments of all facilities that are contained (as of October 17, 1986) on the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) including in each assessment a statement as to whether a site inspection is necessary and by whom it should be carried out; and

(2) not later than January 1, 1989, the President shall assure the completion of site inspections at all facilities for which the President has stated a site inspection is necessary pursuant to paragraph (1).

(b) Evaluation

Within 4 years after October 17, 1986, each facility listed (as of October 17, 1986) in the CERCLIS shall be evaluated if the President determines that such evaluation is warranted on the basis of a site inspection or preliminary assessment. The evaluation shall be in accordance with the criteria established in section 9605 of this title under the National Contingency Plan for determining priorities among release for inclusion on the National Priorities List. In the case of a facility listed in the CERCLIS after October 17, 1986, the facility shall be evaluated within 4 years after the date of such listing if the President determines that such evaluation is warranted on the basis of a site inspection or preliminary assessment.

(c) Explanations

If any of the goals established by subsection (a) or (b) of this section are not achieved, the President shall publish an explanation of why such action could not be completed by the specified date.

(d) Commencement of RI/FS

The President shall assure that remedial investigations and feasibility studies (RI/FS) are commenced for facilities listed on the National Priorities List, in addition to those commenced prior to October 17, 1986, in accordance with the following schedule:

(1) not fewer than 275 by the date 36 months after October 17, 1986, and

(2) if the requirement of paragraph (1) is not met, not fewer than an additional 175 by the date 4 years after October 17, 1986, an additional 200 by the date 5 years after October 17, 1986, and a total of 650 by the date 5 years after October 17, 1986.

(e) Commencement of remedial action

The President shall assure that substantial and continuous physical on-site remedial action commences at facilities on the National Priorities List, in addition to those facilities on which remedial action has commenced prior to October 17, 1986, at a rate not fewer than:

(1) 175 facilities during the first 36-month period after October 17, 1986; and

(2) 200 additional facilities during the following 24 months after such 36-month period.

(Pub. L. 96-510, title I, § 116, as added Pub. L. 99-499, title I, § 116, Oct. 17, 1986, 100 Stat. 1653.)

§ 9617. Public participation**(a) Proposed plan**

Before adoption of any plan for remedial action to be undertaken by the President, by a State, or by any other person, under section 9604, 9606, 9620, or 9622 of this title, the President or State, as appropriate, shall take both of the following actions:

(1) Publish a notice and brief analysis of the proposed plan and make such plan available to the public.

(2) Provide a reasonable opportunity for submission of written and oral comments and an opportunity for a public meeting at or near the facility at issue regarding the proposed plan and regarding any proposed findings under section 9621(d)(4) of this title (relating to cleanup standards). The President or the State shall keep a transcript of the meeting and make such transcript available to the public.

The notice and analysis published under paragraph (1) shall include sufficient information as may be necessary to provide a reasonable explanation of the proposed plan and alternative proposals considered.

(b) Final plan

Notice of the final remedial action plan adopted shall be published and the plan shall be made available to the public before commencement of any remedial action. Such final plan shall be accompanied by a discussion of any significant changes (and the reasons for such changes) in the proposed plan and a response to each of the significant comments, criticisms, and new data submitted in written or oral presentations under subsection (a) of this section.

(c) Explanation of differences

After adoption of a final remedial action plan—

- (1) if any remedial action is taken,
- (2) if any enforcement action under section 9606 of this title is taken, or
- (3) if any settlement or consent decree under section 9606 of this title or section 9622 of this title is entered into,

and if such action, settlement, or decree differs in any significant respects from the final plan, the President or the State shall publish an explanation of the significant differences and the reasons such changes were made.

(d) Publication

For the purposes of this section, publication shall include, at a minimum, publication in a major local newspaper of general circulation. In addition, each item developed, received, published, or made available to the public under this section shall be available for public inspection and copying at or near the facility at issue.

(e) Grants for technical assistance**(1) Authority**

Subject to such amounts as are provided in appropriations Acts and in accordance with rules promulgated by the President, the President may make grants available to any group of individuals which may be affected by a re-

lease or threatened release at any facility which is listed on the National Priorities List under the National Contingency Plan. Such grants may be used to obtain technical assistance in interpreting information with regard to the nature of the hazard, remedial investigation and feasibility study, record of decision, remedial design, selection and construction of remedial action, operation and maintenance, or removal action at such facility.

(2) Amount

The amount of any grant under this subsection may not exceed \$50,000 for a single grant recipient. The President may waive the \$50,000 limitation in any case where such waiver is necessary to carry out the purposes of this subsection. Each grant recipient shall be required, as a condition of the grant, to contribute at least 20 percent of the total of costs of the technical assistance for which such grant is made. The President may waive the 20 percent contribution requirement if the grant recipient demonstrates financial need and such waiver is necessary to facilitate public participation in the selection of remedial action at the facility. Not more than one grant may be made under this subsection with respect to a single facility, but the grant may be renewed to facilitate public participation at all stages of remedial action.

(Pub. L. 96-510, title I, §117, as added Pub. L. 99-499, title I, §117, Oct. 17, 1986, 100 Stat. 1654.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9611, 9613, 9620 of this title.

§ 9618. High priority for drinking water supplies

For purposes of taking action under section 9604 or 9606 of this title and listing facilities on the National Priorities List, the President shall give a high priority to facilities where the release of hazardous substances or pollutants or contaminants has resulted in the closing of drinking water wells or has contaminated a principal drinking water supply.

(Pub. L. 96-510, title I, §118, as added Pub. L. 99-499, title I, §118(a), Oct. 17, 1986, 100 Stat. 1655.)

§ 9619. Response action contractors**(a) Liability of response action contractors****(1) Response action contractors**

A person who is a response action contractor with respect to any release or threatened release of a hazardous substance or pollutant or contaminant from a vessel or facility shall not be liable under this subchapter or under any other Federal law to any person for injuries, costs, damages, expenses, or other liability (including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness or loss of or damage to property or economic loss) which results from such release or threatened release.

(2) Negligence, etc.

Paragraph (1) shall not apply in the case of a release that is caused by conduct of the re-

sponse action contractor which is negligent, grossly negligent, or which constitutes intentional misconduct.

(3) Effect on warranties; employer liability

Nothing in this subsection shall affect the liability of any person under any warranty under Federal, State, or common law. Nothing in this subsection shall affect the liability of an employer who is a response action contractor to any employee of such employer under any provision of law, including any provision of any law relating to worker's compensation.

(4) Governmental employees

A state employee or an employee of a political subdivision who provides services relating to response action while acting within the scope of his authority as a governmental employee shall have the same exemption from liability (subject to the other provisions of this section) as is provided to the response action contractor under this section.

(b) Savings provisions

(1) Liability of other persons

The defense provided by section 9607(b)(3) of this title shall not be available to any potentially responsible party with respect to any costs or damages caused by any act or omission of a response action contractor. Except as provided in subsection (a)(4) of this section and the preceding sentence, nothing in this section shall affect the liability under this chapter or under any other Federal or State law of any person, other than a response action contractor.

(2) Burden of plaintiff

Nothing in this section shall affect the plaintiff's burden of establishing liability under this subchapter.

(c) Indemnification

(1) In general

The President may agree to hold harmless and indemnify any response action contractor meeting the requirements of this subsection against any liability (including the expenses of litigation or settlement) for negligence arising out of the contractor's performance in carrying out response action activities under this subchapter, unless such liability was caused by conduct of the contractor which was grossly negligent or which constituted intentional misconduct.

(2) Applicability

This subsection shall apply only with respect to a response action carried out under written agreement with—

- (A) the President;
- (B) any Federal agency;
- (C) a State or political subdivision which has entered into a contract or cooperative agreement in accordance with section 9604(d)(1) of this title; or
- (D) any potentially responsible party carrying out any agreement under section 9622 of this title (relating to settlements) or section 9606 of this title (relating to abatement).

(3) Source of funding

This subsection shall not be subject to section 1301 or 1341 of title 31 or section 11 of title 41 or to section 9662 of this title. For purposes of section 9611 of this title, amounts expended pursuant to this subsection for indemnification of any response action contractor (except with respect to federally owned or operated facilities) shall be considered governmental response costs incurred pursuant to section 9604 of this title. If sufficient funds are unavailable in the Hazardous Substance Superfund established under subchapter A of chapter 98 of title 26 to make payments pursuant to such indemnification or if the Fund is repealed, there are authorized to be appropriated such amounts as may be necessary to make such payments.

(4) Requirements

An indemnification agreement may be provided under this subsection only if the President determines that each of the following requirements are met:

(A) The liability covered by the indemnification agreement exceeds or is not covered by insurance available, at a fair and reasonable price, to the contractor at the time the contractor enters into the contract to provide response action, and adequate insurance to cover such liability is not generally available at the time the response action contract is entered into.

(B) The response action contractor has made diligent efforts to obtain insurance coverage from non-Federal sources to cover such liability.

(C) In the case of a response action contract covering more than one facility, the response action contractor agrees to continue to make such diligent efforts each time the contractor begins work under the contract at a new facility.

(5) Limitations

(A) Liability covered

Indemnification under this subsection shall apply only to response action contractor liability which results from a release of any hazardous substance or pollutant or contaminant if such release arises out of response action activities.

(B) Deductibles and limits

An indemnification agreement under this subsection shall include deductibles and shall place limits on the amount of indemnification to be made available.

(C) Contracts with potentially responsible parties

(i) Decision to indemnify

In deciding whether to enter into an indemnification agreement with a response action contractor carrying out a written contract or agreement with any potentially responsible party, the President shall determine an amount which the potentially responsible party is able to indemnify the contractor. The President may enter into such an indemnification agreement only if the President deter-

mines that such amount of indemnification is inadequate to cover any reasonable potential liability of the contractor arising out of the contractor's negligence in performing the contract or agreement with such party. The President shall make the determinations in the preceding sentences (with respect to the amount and the adequacy of the amount) taking into account the total net assets and resources of potentially responsible parties with respect to the facility at the time of such determinations.

(ii) Conditions

The President may pay a claim under an indemnification agreement referred to in clause (i) for the amount determined under clause (i) only if the contractor has exhausted all administrative, judicial, and common law claims for indemnification against all potentially responsible parties participating in the clean-up of the facility with respect to the liability of the contractor arising out of the contractor's negligence in performing the contract or agreement with such party. Such indemnification agreement shall require such contractor to pay any deductible established under subparagraph (B) before the contractor may recover any amount from the potentially responsible party or under the indemnification agreement.

(D) RCRA facilities

No owner or operator of a facility regulated under the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.] may be indemnified under this subsection with respect to such facility.

(E) Persons retained or hired

A person retained or hired by a person described in subsection (e)(2)(B) of this section shall be eligible for indemnification under this subsection only if the President specifically approves of the retaining or hiring of such person.

(6) Cost recovery

For purposes of section 9607 of this title, amounts expended pursuant to this subsection for indemnification of any person who is a response action contractor with respect to any release or threatened release shall be considered a cost of response incurred by the United States Government with respect to such release.

(7) Regulations

The President shall promulgate regulations for carrying out the provisions of this subsection. Before promulgation of the regulations, the President shall develop guidelines to carry out this section. Development of such guidelines shall include reasonable opportunity for public comment.

(8) Study

The Comptroller General shall conduct a study in the fiscal year ending September 30, 1989, on the application of this subsection, including whether indemnification agreements under this subsection are being used, the num-

ber of claims that have been filed under such agreements, and the need for this subsection. The Comptroller General shall report the findings of the study to Congress no later than September 30, 1989.

(d) Exception

The exemption provided under subsection (a) of this section and the authority of the President to offer indemnification under subsection (c) of this section shall not apply to any person covered by the provisions of paragraph (1), (2), (3), or (4) of section 9607(a) of this title with respect to the release or threatened release concerned if such person would be covered by such provisions even if such person had not carried out any actions referred to in subsection (e) of this section.

(e) Definitions

For purposes of this section—

(1) Response action contract

The term "response action contract" means any written contract or agreement entered into by a response action contractor (as defined in paragraph (2)(A) of this subsection) with—

- (A) the President;
- (B) any Federal agency;
- (C) a State or political subdivision which has entered into a contract or cooperative agreement in accordance with section 9604(d)(1) of this title; or
- (D) any potentially responsible party carrying out an agreement under section 9606 or 9622 of this title;

to provide any remedial action under this chapter at a facility listed on the National Priorities List, or any removal under this chapter, with respect to any release or threatened release of a hazardous substance or pollutant or contaminant from the facility or to provide any evaluation, planning, engineering, surveying and mapping, design, construction, equipment, or any ancillary services thereto for such facility.

(2) Response action contractor

The term "response action contractor" means—

- (A) any—
 - (i) person who enters into a response action contract with respect to any release or threatened release of a hazardous substance or pollutant or contaminant from a facility and is carrying out such contract; and¹
 - (ii) person, public or nonprofit private entity, conducting a field demonstration pursuant to section 9660(b) of this title; and
 - (iii) Recipients² of grants (including subgrantees) under section 9660a³ of this title for the training and education of workers who are or may be engaged in activities related to hazardous waste removal, contain-

¹ So in original. The word "and" probably should not appear.

² So in original. Probably should not be capitalized.

³ See References in Text note below.

ment, or emergency response under this chapter; and¹

(B) any person who is retained or hired by a person described in subparagraph (A) to provide any services relating to a response action; and

(C) any surety who after October 16, 1990, provides a bid, performance or payment bond to a response action contractor, and begins activities to meet its obligations under such bond, but only in connection with such activities or obligations.

(3) Insurance

The term "insurance" means liability insurance which is fair and reasonably priced, as determined by the President, and which is made available at the time the contractor enters into the response action contract to provide response action.

(f) Competition

Response action contractors and subcontractors for program management, construction management, architectural and engineering, surveying and mapping, and related services shall be selected in accordance with title IX of the Federal Property and Administrative Services Act of 1949 [40 U.S.C. 541 et seq.]. The Federal selection procedures shall apply to appropriate contracts negotiated by all Federal governmental agencies involved in carrying out this chapter. Such procedures shall be followed by response action contractors and subcontractors.

(g) Surety bonds

(1) If under the Act of August 24, 1935 (40 U.S.C. 270a-270d), commonly referred to as the "Miller Act", surety bonds are required for any direct Federal procurement of any response action contract and are not waived pursuant to the Act of April 29, 1941 (40 U.S.C. 270e-270f), they shall be issued in accordance with such Act of August 24, 1935.

(2) If under applicable Federal law surety bonds are required for any direct Federal procurement of any response action contract, no right of action shall accrue on the performance bond issued on such response action contract to or for the use of any person other than the obligee named in the bond.

(3) If under applicable Federal law surety bonds are required for any direct Federal procurement of any response action contract, unless otherwise provided for by the procuring agency in the bond, in the event of a default, the surety's liability on a performance bond shall be only for the cost of completion of the contract work in accordance with the plans and specifications less the balance of funds remaining to be paid under the contract, up to the penal sum of the bond. The surety shall in no event be liable on bonds to indemnify or compensate the obligee for loss or liability arising from personal injury or property damage whether or not caused by a breach of the bonded contract.

(4) Nothing in this subsection shall be construed as preempting, limiting, superseding, affecting, applying to, or modifying any State laws, regulations, requirements, rules, practices or procedures. Nothing in this subsection shall be construed as affecting, applying to, modify-

ing, limiting, superseding, or preempting any rights, authorities, liabilities, demands, actions, causes of action, losses, judgments, claims, statutes of limitation, or obligations under Federal or State law, which do not arise on or under the bond.

(5) This subsection shall not apply to bonds executed before October 17, 1990.

(Pub. L. 96-510, title I, §119, as added Pub. L. 99-499, title I, §119, Oct. 17, 1986, 100 Stat. 1662; amended Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100-202, §101(f) [title II, §201], Dec. 22, 1987, 101 Stat. 1329-187, 1329-198; Pub. L. 101-584, §1, Nov. 15, 1990, 104 Stat. 2872; Pub. L. 102-484, div. A, title III, §331(a), Oct. 23, 1992, 106 Stat. 2373; Pub. L. 105-276, title III, Oct. 21, 1998, 112 Stat. 2497.)

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsec. (c)(5)(D), is title II of Pub. L. 89-272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

Section 9660a of this title, referred to in subsec. (e)(2)(A)(iii), was in the original "section 126" probably meaning section 126 of Pub. L. 99-499, title I, Oct. 17, 1986, 100 Stat. 1690. Subsecs. (a) to (f) of section 126, which relate to worker protection standards, are set out as a note under section 655 of Title 29, Labor. Subsec. (g) of section 126, which relates grants for training and education of workers who are or may be engaged in activities related to hazardous waste removal, etc., is classified to section 9660a of this title.

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (f), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Title IX of the Federal Property and Administrative Services Act of 1949 is classified generally to subchapter VI (§541 et seq.) of chapter 10 of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 471 of Title 40 and Tables.

Act of August 24, 1935, referred to in subsec. (g)(1), is act Aug. 24, 1935, ch. 642, 49 Stat. 793, as amended, known as the Miller Act, which is classified generally to sections 270a to 270d-1 of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 270a of Title 40 and Tables.

Act of April 29, 1941, referred to in subsec. (g)(1), is act April 29, 1941, ch. 81, 55 Stat. 147, which is classified to sections 270e and 270f of Title 40. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1998—Subsec. (e)(2)(C). Pub. L. 105-276 struck out "and before January 1, 1996," after "1990,".

Subsec. (g)(5). Pub. L. 105-276 struck out " , or after December 31, 1995" before period at end.

1992—Subsec. (e)(2)(C). Pub. L. 102-484, §321(a)(1)(A), substituted "January 1, 1996," for "January 1, 1993" .

Subsec. (g)(1). Pub. L. 102-484, §331(a)(2), substituted "the Act of August 24, 1935 (40 U.S.C. 270a-270d), commonly referred to as the 'Miller Act'," for "the Miller Act, 40 U.S.C. sections 270a-270f.", inserted "and are not waived pursuant to the Act of April 29, 1941 (40 U.S.C. 270e-270f)", and substituted "in accordance with such Act of August 24, 1935." for "in accordance with 40 U.S.C. sections 270a-270d."

Subsec. (g)(5). Pub. L. 102-484, §331(a)(1)(B), substituted "December 31, 1995" for "December 31, 1992" .

1990—Subsec. (e)(2)(C). Pub. L. 101-584, §1(1), (2), added subpar. (C).

Subsec. (g). Pub. L. 101-584, §1(3), added subsec. (g).

1987—Subsec. (e)(2)(A)(iii). Pub. L. 100-202 added cl. (iii).

1986—Subsec. (c)(3). Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”, which for purposes of codification was translated as “title 26” thus requiring no change in text.

COORDINATION OF TITLES I TO IV OF PUB. L. 99-499

Any provision of titles I to IV of Pub. L. 99-499, imposing any tax, premium, or fee; establishing any trust fund; or authorizing expenditures from any trust fund, to have no force or effect, see section 531 of Pub. L. 99-499, set out as a note under section 1 of Title 26, Internal Revenue Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9613 of this title; title 10 section 2701; title 14 section 691.

§ 9620. Federal facilities

(a) Application of chapter to Federal Government

(1) In general

Each department, agency, and instrumentality of the United States (including the executive, legislative, and judicial branches of government) shall be subject to, and comply with, this chapter in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under section 9607 of this title. Nothing in this section shall be construed to affect the liability of any person or entity under sections 9606 and 9607 of this title.

(2) Application of requirements to Federal facilities

All guidelines, rules, regulations, and criteria which are applicable to preliminary assessments carried out under this chapter for facilities at which hazardous substances are located, applicable to evaluations of such facilities under the National Contingency Plan, applicable to inclusion on the National Priorities List, or applicable to remedial actions at such facilities shall also be applicable to facilities which are owned or operated by a department, agency, or instrumentality of the United States in the same manner and to the extent as such guidelines, rules, regulations, and criteria are applicable to other facilities. No department, agency, or instrumentality of the United States may adopt or utilize any such guidelines, rules, regulations, or criteria which are inconsistent with the guidelines, rules, regulations, and criteria established by the Administrator under this chapter.

(3) Exceptions

This subsection shall not apply to the extent otherwise provided in this section with respect to applicable time periods. This subsection shall also not apply to any requirements relating to bonding, insurance, or financial responsibility. Nothing in this chapter shall be construed to require a State to comply with section 9604(c)(3) of this title in the case of a facility which is owned or operated by any department, agency, or instrumentality of the United States.

(4) State laws

State laws concerning removal and remedial action, including State laws regarding en-

forcement, shall apply to removal and remedial action at facilities owned or operated by a department, agency, or instrumentality of the United States or facilities that are the subject of a deferral under subsection (h)(3)(C) of this section when such facilities are not included on the National Priorities List. The preceding sentence shall not apply to the extent a State law would apply any standard or requirement to such facilities which is more stringent than the standards and requirements applicable to facilities which are not owned or operated by any such department, agency, or instrumentality.

(b) Notice

Each department, agency, and instrumentality of the United States shall add to the inventory of Federal agency hazardous waste facilities required to be submitted under section 3016 of the Solid Waste Disposal Act [42 U.S.C. 6937] (in addition to the information required under section 3016(a)(3) of such Act [42 U.S.C. 6937(a)(3)]) information on contamination from each facility owned or operated by the department, agency, or instrumentality if such contamination affects contiguous or adjacent property owned by the department, agency, or instrumentality or by any other person, including a description of the monitoring data obtained.

(c) Federal Agency Hazardous Waste Compliance Docket

The Administrator shall establish a special Federal Agency Hazardous Waste Compliance Docket (hereinafter in this section referred to as the “docket”) which shall contain each of the following:

(1) All information submitted under section 3016 of the Solid Waste Disposal Act [42 U.S.C. 6937] and subsection (b) of this section regarding any Federal facility and notice of each subsequent action taken under this chapter with respect to the facility.

(2) Information submitted by each department, agency, or instrumentality of the United States under section 3005 or 3010 of such Act [42 U.S.C. 6925, 6930].

(3) Information submitted by the department, agency, or instrumentality under section 9603 of this title.

The docket shall be available for public inspection at reasonable times. Six months after establishment of the docket and every 6 months thereafter, the Administrator shall publish in the Federal Register a list of the Federal facilities which have been included in the docket during the immediately preceding 6-month period. Such publication shall also indicate where in the appropriate regional office of the Environmental Protection Agency additional information may be obtained with respect to any facility on the docket. The Administrator shall establish a program to provide information to the public with respect to facilities which are included in the docket under this subsection.

(d) Assessment and evaluation

(1) In general

The Administrator shall take steps to assure that a preliminary assessment is conducted

for each facility on the docket. Following such preliminary assessment, the Administrator shall, where appropriate—

(A) evaluate such facilities in accordance with the criteria established in accordance with section 9605 of this title under the National Contingency Plan for determining priorities among releases; and

(B) include such facilities on the National Priorities List maintained under such plan if the facility meets such criteria.

(2) Application of criteria

(A) In general

Subject to subparagraph (B), the criteria referred to in paragraph (1) shall be applied in the same manner as the criteria are applied to facilities that are owned or operated by persons other than the United States.

(B) Response under other law

It shall be an appropriate factor to be taken into consideration for the purposes of section 9605(a)(8)(A) of this title that the head of the department, agency, or instrumentality that owns or operates a facility has arranged with the Administrator or appropriate State authorities to respond appropriately, under authority of a law other than this chapter, to a release or threatened release of a hazardous substance.

(3) Completion

Evaluation and listing under this subsection shall be completed in accordance with a reasonable schedule established by the Administrator.

(e) Required action by department

(1) RI/FS

Not later than 6 months after the inclusion of any facility on the National Priorities List, the department, agency, or instrumentality which owns or operates such facility shall, in consultation with the Administrator and appropriate State authorities, commence a remedial investigation and feasibility study for such facility. In the case of any facility which is listed on such list before October 17, 1986, the department, agency, or instrumentality which owns or operates such facility shall, in consultation with the Administrator and appropriate State authorities, commence such an investigation and study for such facility within one year after October 17, 1986. The Administrator and appropriate State authorities shall publish a timetable and deadlines for expeditious completion of such investigation and study.

(2) Commencement of remedial action; inter-agency agreement

The Administrator shall review the results of each investigation and study conducted as provided in paragraph (1). Within 180 days thereafter, the head of the department, agency, or instrumentality concerned shall enter into an interagency agreement with the Administrator for the expeditious completion by such department, agency, or instrumentality of all necessary remedial action at such facility. Substantial continuous physical onsite re-

medial action shall be commenced at each facility not later than 15 months after completion of the investigation and study. All such interagency agreements, including review of alternative remedial action plans and selection of remedial action, shall comply with the public participation requirements of section 9617 of this title.

(3) Completion of remedial actions

Remedial actions at facilities subject to interagency agreements under this section shall be completed as expeditiously as practicable. Each agency shall include in its annual budget submissions to the Congress a review of alternative agency funding which could be used to provide for the costs of remedial action. The budget submission shall also include a statement of the hazard posed by the facility to human health, welfare, and the environment and identify the specific consequences of failure to begin and complete remedial action.

(4) Contents of agreement

Each interagency agreement under this subsection shall include, but shall not be limited to, each of the following:

(A) A review of alternative remedial actions and selection of a remedial action by the head of the relevant department, agency, or instrumentality and the Administrator or, if unable to reach agreement on selection of a remedial action, selection by the Administrator.

(B) A schedule for the completion of each such remedial action.

(C) Arrangements for long-term operation and maintenance of the facility.

(5) Annual report

Each department, agency, or instrumentality responsible for compliance with this section shall furnish an annual report to the Congress concerning its progress in implementing the requirements of this section. Such reports shall include, but shall not be limited to, each of the following items:

(A) A report on the progress in reaching interagency agreements under this section.

(B) The specific cost estimates and budgetary proposals involved in each interagency agreement.

(C) A brief summary of the public comments regarding each proposed interagency agreement.

(D) A description of the instances in which no agreement was reached.

(E) A report on progress in conducting investigations and studies under paragraph (1).

(F) A report on progress in conducting remedial actions.

(G) A report on progress in conducting remedial action at facilities which are not listed on the National Priorities List.

With respect to instances in which no agreement was reached within the required time period, the department, agency, or instrumentality filing the report under this paragraph shall include in such report an explanation of the reasons why no agreement was reached. The annual report required by this paragraph shall

also contain a detailed description on a State-by-State basis of the status of each facility subject to this section, including a description of the hazard presented by each facility, plans and schedules for initiating and completing response action, enforcement status (where appropriate), and an explanation of any postponements or failure to complete response action. Such reports shall also be submitted to the affected States.

(6) Settlements with other parties

If the Administrator, in consultation with the head of the relevant department, agency, or instrumentality of the United States, determines that remedial investigations and feasibility studies or remedial action will be done properly at the Federal facility by another potentially responsible party within the deadlines provided in paragraphs (1), (2), and (3) of this subsection, the Administrator may enter into an agreement with such party under section 9622 of this title (relating to settlements). Following approval by the Attorney General of any such agreement relating to a remedial action, the agreement shall be entered in the appropriate United States district court as a consent decree under section 9606 of this title.

(f) State and local participation

The Administrator and each department, agency, or instrumentality responsible for compliance with this section shall afford to relevant State and local officials the opportunity to participate in the planning and selection of the remedial action, including but not limited to the review of all applicable data as it becomes available and the development of studies, reports, and action plans. In the case of State officials, the opportunity to participate shall be provided in accordance with section 9621 of this title.

(g) Transfer of authorities

Except for authorities which are delegated by the Administrator to an officer or employee of the Environmental Protection Agency, no authority vested in the Administrator under this section may be transferred, by executive order of the President or otherwise, to any other officer or employee of the United States or to any other person.

(h) Property transferred by Federal agencies

(1) Notice

After the last day of the 6-month period beginning on the effective date of regulations under paragraph (2) of this subsection, whenever any department, agency, or instrumentality of the United States enters into any contract for the sale or other transfer of real property which is owned by the United States and on which any hazardous substance was stored for one year or more, known to have been released, or disposed of, the head of such department, agency, or instrumentality shall include in such contract notice of the type and quantity of such hazardous substance and notice of the time at which such storage, release, or disposal took place, to the extent such information is available on the basis of a complete search of agency files.

(2) Form of notice; regulations

Notice under this subsection shall be provided in such form and manner as may be provided in regulations promulgated by the Administrator. As promptly as practicable after October 17, 1986, but not later than 18 months after October 17, 1986, and after consultation with the Administrator of the General Services Administration, the Administrator shall promulgate regulations regarding the notice required to be provided under this subsection.

(3) Contents of certain deeds

(A) In general

After the last day of the 6-month period beginning on the effective date of regulations under paragraph (2) of this subsection, in the case of any real property owned by the United States on which any hazardous substance was stored for one year or more, known to have been released, or disposed of, each deed entered into for the transfer of such property by the United States to any other person or entity shall contain—

(i) to the extent such information is available on the basis of a complete search of agency files—

(I) a notice of the type and quantity of such hazardous substances,

(II) notice of the time at which such storage, release, or disposal took place, and

(III) a description of the remedial action taken, if any;

(ii) a covenant warranting that—

(I) all remedial action necessary to protect human health and the environment with respect to any such substance remaining on the property has been taken before the date of such transfer, and

(II) any additional remedial action found to be necessary after the date of such transfer shall be conducted by the United States; and

(iii) a clause granting the United States access to the property in any case in which remedial action or corrective action is found to be necessary after the date of such transfer.

(B) Covenant requirements

For purposes of subparagraphs (A)(ii)(I) and (C)(iii), all remedial action described in such subparagraph has been taken if the construction and installation of an approved remedial design has been completed, and the remedy has been demonstrated to the Administrator to be operating properly and successfully. The carrying out of long-term pumping and treating, or operation and maintenance, after the remedy has been demonstrated to the Administrator to be operating properly and successfully does not preclude the transfer of the property. The requirements of subparagraph (A)(ii) shall not apply in any case in which the person or entity to whom the real property is transferred is a potentially responsible party with respect to such property. The requirements of

subparagraph (A)(ii) shall not apply in any case in which the transfer of the property occurs or has occurred by means of a lease, without regard to whether the lessee has agreed to purchase the property or whether the duration of the lease is longer than 55 years. In the case of a lease entered into after September 30, 1995, with respect to real property located at an installation approved for closure or realignment under a base closure law, the agency leasing the property, in consultation with the Administrator, shall determine before leasing the property that the property is suitable for lease, that the uses contemplated for the lease are consistent with protection of human health and the environment, and that there are adequate assurances that the United States will take all remedial action referred to in subparagraph (A)(ii) that has not been taken on the date of the lease.

(C) Deferral

(i) In general

The Administrator, with the concurrence of the Governor of the State in which the facility is located (in the case of real property at a Federal facility that is listed on the National Priorities List), or the Governor of the State in which the facility is located (in the case of real property at a Federal facility not listed on the National Priorities List) may defer the requirement of subparagraph (A)(ii)(I) with respect to the property if the Administrator or the Governor, as the case may be, determines that the property is suitable for transfer, based on a finding that—

(I) the property is suitable for transfer for the use intended by the transferee, and the intended use is consistent with protection of human health and the environment;

(II) the deed or other agreement proposed to govern the transfer between the United States and the transferee of the property contains the assurances set forth in clause (ii);

(III) the Federal agency requesting deferral has provided notice, by publication in a newspaper of general circulation in the vicinity of the property, of the proposed transfer and of the opportunity for the public to submit, within a period of not less than 30 days after the date of the notice, written comments on the suitability of the property for transfer; and

(IV) the deferral and the transfer of the property will not substantially delay any necessary response action at the property.

(ii) Response action assurances

With regard to a release or threatened release of a hazardous substance for which a Federal agency is potentially responsible under this section, the deed or other agreement proposed to govern the transfer shall contain assurances that—

(I) provide for any necessary restrictions on the use of the property to en-

sure the protection of human health and the environment;

(II) provide that there will be restrictions on use necessary to ensure that required remedial investigations, response action, and oversight activities will not be disrupted;

(III) provide that all necessary response action will be taken and identify the schedules for investigation and completion of all necessary response action as approved by the appropriate regulatory agency; and

(IV) provide that the Federal agency responsible for the property subject to transfer will submit a budget request to the Director of the Office of Management and Budget that adequately addresses schedules for investigation and completion of all necessary response action, subject to congressional authorizations and appropriations.

(iii) Warranty

When all response action necessary to protect human health and the environment with respect to any substance remaining on the property on the date of transfer has been taken, the United States shall execute and deliver to the transferee an appropriate document containing a warranty that all such response action has been taken, and the making of the warranty shall be considered to satisfy the requirement of subparagraph (A)(ii)(I).

(iv) Federal responsibility

A deferral under this subparagraph shall not increase, diminish, or affect in any manner any rights or obligations of a Federal agency (including any rights or obligations under this section and sections 9606 and 9607 of this title existing prior to transfer) with respect to a property transferred under this subparagraph.

(4) Identification of uncontaminated property

(A) In the case of real property to which this paragraph applies (as set forth in subparagraph (E)), the head of the department, agency, or instrumentality of the United States with jurisdiction over the property shall identify the real property on which no hazardous substances and no petroleum products or their derivatives were known to have been released or disposed of. Such identification shall be based on an investigation of the real property to determine or discover the obviousness of the presence or likely presence of a release or threatened release of any hazardous substance or any petroleum product or its derivatives, including aviation fuel and motor oil, on the real property. The identification shall consist, at a minimum, of a review of each of the following sources of information concerning the current and previous uses of the real property:

(i) A detailed search of Federal Government records pertaining to the property.

(ii) Recorded chain of title documents regarding the real property.

(iii) Aerial photographs that may reflect prior uses of the real property and that are

reasonably obtainable through State or local government agencies.

(iv) A visual inspection of the real property and any buildings, structures, equipment, pipe, pipeline, or other improvements on the real property, and a visual inspection of properties immediately adjacent to the real property.

(v) A physical inspection of property adjacent to the real property, to the extent permitted by owners or operators of such property.

(vi) Reasonably obtainable Federal, State, and local government records of each adjacent facility where there has been a release of any hazardous substance or any petroleum product or its derivatives, including aviation fuel and motor oil, and which is likely to cause or contribute to a release or threatened release of any hazardous substance or any petroleum product or its derivatives, including aviation fuel and motor oil, on the real property.

(vii) Interviews with current or former employees involved in operations on the real property.

Such identification shall also be based on sampling, if appropriate under the circumstances. The results of the identification shall be provided immediately to the Administrator and State and local government officials and made available to the public.

(B) The identification required under subparagraph (A) is not complete until concurrence in the results of the identification is obtained, in the case of real property that is part of a facility on the National Priorities List, from the Administrator, or, in the case of real property that is not part of a facility on the National Priorities List, from the appropriate State official. In the case of a concurrence which is required from a State official, the concurrence is deemed to be obtained if, within 90 days after receiving a request for the concurrence, the State official has not acted (by either concurring or declining to concur) on the request for concurrence.

(C)(i) Except as provided in clauses (ii), (iii), and (iv), the identification and concurrence required under subparagraphs (A) and (B), respectively, shall be made at least 6 months before the termination of operations on the real property.

(ii) In the case of real property described in subparagraph (E)(i)(II) on which operations have been closed or realigned or scheduled for closure or realignment pursuant to a base closure law described in subparagraph (E)(ii)(I) or (E)(ii)(II) by October 19, 1992, the identification and concurrence required under subparagraphs (A) and (B), respectively, shall be made not later than 18 months after October 19, 1992.

(iii) In the case of real property described in subparagraph (E)(i)(II) on which operations are closed or realigned or become scheduled for closure or realignment pursuant to the base closure law described in subparagraph (E)(ii)(II) after October 19, 1992, the identification and concurrence required under subparagraphs (A) and (B), respectively, shall be made not later than 18 months after the date by

which a joint resolution disapproving the closure or realignment of the real property under section 2904(b) of such base closure law must be enacted, and such a joint resolution has not been enacted.

(iv) In the case of real property described in subparagraphs (E)(i)(II) on which operations are closed or realigned pursuant to a base closure law described in subparagraph (E)(ii)(III) or (E)(ii)(IV), the identification and concurrence required under subparagraphs (A) and (B), respectively, shall be made not later than 18 months after the date on which the real property is selected for closure or realignment pursuant to such a base closure law.

(D) In the case of the sale or other transfer of any parcel of real property identified under subparagraph (A), the deed entered into for the sale or transfer of such property by the United States to any other person or entity shall contain—

(i) a covenant warranting that any response action or corrective action found to be necessary after the date of such sale or transfer shall be conducted by the United States; and

(ii) a clause granting the United States access to the property in any case in which a response action or corrective action is found to be necessary after such date at such property, or such access is necessary to carry out a response action or corrective action on adjoining property.

(E)(i) This paragraph applies to—

(I) real property owned by the United States and on which the United States plans to terminate Federal Government operations, other than real property described in subclause (II); and

(II) real property that is or has been used as a military installation and on which the United States plans to close or realign military operations pursuant to a base closure law.

(ii) For purposes of this paragraph, the term “base closure law” includes the following:

(I) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).

(II) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note).

(III) Section 2687 of title 10.

(IV) Any provision of law authorizing the closure or realignment of a military installation enacted on or after October 19, 1992.

(F) Nothing in this paragraph shall affect, preclude, or otherwise impair the termination of Federal Government operations on real property owned by the United States.

(5) Notification of States regarding certain leases

In the case of real property owned by the United States, on which any hazardous substance or any petroleum product or its derivatives (including aviation fuel and motor oil) was stored for one year or more, known to have been released, or disposed of, and on

which the United States plans to terminate Federal Government operations, the head of the department, agency, or instrumentality of the United States with jurisdiction over the property shall notify the State in which the property is located of any lease entered into by the United States that will encumber the property beyond the date of termination of operations on the property. Such notification shall be made before entering into the lease and shall include the length of the lease, the name of person to whom the property is leased, and a description of the uses that will be allowed under the lease of the property and buildings and other structures on the property.

(i) Obligations under Solid Waste Disposal Act

Nothing in this section shall affect or impair the obligation of any department, agency, or instrumentality of the United States to comply with any requirement of the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.] (including corrective action requirements).

(j) National security

(1) Site specific Presidential orders

The President may issue such orders regarding response actions at any specified site or facility of the Department of Energy or the Department of Defense as may be necessary to protect the national security interests of the United States at that site or facility. Such orders may include, where necessary to protect such interests, an exemption from any requirement contained in this subchapter or under title III of the Superfund Amendments and Reauthorization Act of 1986 [42 U.S.C. 11001 et seq.] with respect to the site or facility concerned. The President shall notify the Congress within 30 days of the issuance of an order under this paragraph providing for any such exemption. Such notification shall include a statement of the reasons for the granting of the exemption. An exemption under this paragraph shall be for a specified period which may not exceed one year. Additional exemptions may be granted, each upon the President's issuance of a new order under this paragraph for the site or facility concerned. Each such additional exemption shall be for a specified period which may not exceed one year. It is the intention of the Congress that whenever an exemption is issued under this paragraph the response action shall proceed as expeditiously as practicable. The Congress shall be notified periodically of the progress of any response action with respect to which an exemption has been issued under this paragraph. No exemption shall be granted under this paragraph due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation.

(2) Classified information

Notwithstanding any other provision of law, all requirements of the Atomic Energy Act [42 U.S.C. 2011 et seq.] and all Executive orders concerning the handling of restricted data and national security information, including

“need to know” requirements, shall be applicable to any grant of access to classified information under the provisions of this chapter or under title III of the Superfund Amendments and Reauthorization Act of 1986 [42 U.S.C. 11001 et seq.].

(Pub. L. 96-510, title I, §120, as added Pub. L. 99-499, title I, §120(a), Oct. 17, 1986, 100 Stat. 1666; amended Pub. L. 102-426, §§3-5, Oct. 19, 1992, 106 Stat. 2175-2177; Pub. L. 104-106, div. B, title XXVIII, §2834, Feb. 10, 1996, 110 Stat. 559; Pub. L. 104-201, div. A, title III, §§330, 331, 334, Sept. 23, 1996, 110 Stat. 2484, 2486.)

REFERENCES IN TEXT

Section 2904(b) of such base closure law, referred to in subsec. (h)(4)(C)(iii), means section 2904(b) of Pub. L. 101-510, which is set out as a note under section 2687 of Title 10, Armed Forces.

The Solid Waste Disposal Act, referred to in subsec. (i), is title II of Pub. L. 89-272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

Title III of the Superfund Amendments and Reauthorization Act of 1986, referred to in subsec. (j), is title III of Pub. L. 99-499, Oct. 17, 1986, 100 Stat. 1728, known as the Emergency Planning and Community Right-To-Know Act of 1986, which is classified generally to chapter 116 (§11001 et seq.) of this title. For complete classification of title III to the Code, see Short Title note set out under section 11001 of this title and Tables.

The Atomic Energy Act, referred to in subsec. (j)(2), probably means the Atomic Energy Act of 1954, act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

AMENDMENTS

1996—Subsec. (a)(4). Pub. L. 104-201, §334(b), inserted “or facilities that are the subject of a deferral under subsection (h)(3)(C) of this section” after “United States”.

Subsec. (d). Pub. L. 104-201, §330(2)-(4), designated existing provisions as par. (1), inserted par. heading, substituted “The Administrator” for “Not later than 18 months after October 17, 1986, the Administrator”, realigned margins of par. (1) and subpars. (A) and (B), and substituted pars. (2) and (3) for “Such criteria shall be applied in the same manner as the criteria are applied to facilities which are owned or operated by other persons. Evaluation and listing under this subsection shall be completed not later than 30 months after October 17, 1986. Upon the receipt of a petition from the Governor of any State, the Administrator shall make such an evaluation of any facility included in the docket.”

Pub. L. 104-201, §330(1), redesignated pars. (1) and (2) as subpars. (A) and (B), respectively.

Subsec. (h)(3). Pub. L. 104-201, §334(a)(8), added subpar. (C).

Pub. L. 104-201, §334(a)(6), (7), designated existing provisions as subpar. (B), inserted heading, substituted “For purposes of subparagraphs (A)(ii)(I) and (C)(iii)” for “For purposes of subparagraph (B)(i)”, and substituted “subparagraph (A)(ii)” for “subparagraph (B)” in three places.

Pub. L. 104-201, §334(a)(1)-(5), designated first sentence as subpar. (A), inserted heading, redesignated former subpar. (A) and cls. (i) to (iii) of that subpar. as cl. (i) of subpar. (A) and subcls. (I) to (III) of that cl., respectively, redesignated former subpar. (B) and cls. (i) and (ii) of that subpar. as cl. (ii) of subpar. (A) and

subcls. (I) and (II) of that cl., respectively, redesignated former subpar. (C) as cl. (iii) of subpar. (A), and realigned margins of such cls. and subcls.

Pub. L. 104-106, §2834(2), which directed that par. (3) be amended in the matter following subpar. (C) by adding at the end, flush to the paragraph margin, the following, was executed by inserting the following provision at the end of the concluding provisions "The requirements of subparagraph (B) shall not apply in any case in which the person or entity to whom the real property is transferred is a potentially responsible party with respect to such property. The requirements of subparagraph (B) shall not apply in any case in which the transfer of the property occurs or has occurred by means of a lease, without regard to whether the lessee has agreed to purchase the property or whether the duration of the lease is longer than 55 years. In the case of a lease entered into after September 30, 1995, with respect to real property located at an installation approved for closure or realignment under a base closure law, the agency leasing the property, in consultation with the Administrator, shall determine before leasing the property that the property is suitable for lease, that the uses contemplated for the lease are consistent with protection of human health and the environment, and that there are adequate assurances that the United States will take all remedial action referred to in subparagraph (B) that has not been taken on the date of the lease."

Pub. L. 104-106, §2834(1), struck out first sentence of concluding provisions which read as follows: "The requirements of subparagraph (B) shall not apply in any case in which the person or entity to whom the property is transferred is a potentially responsible party with respect to such real property."

Subsec. (h)(4)(A). Pub. L. 104-201, §331, substituted "known to have been released" for "stored for one year or more, known to have been released."

1992—Subsec. (h)(3). Pub. L. 102-426, §4(a), inserted at end "For purposes of subparagraph (B)(i), all remedial action described in such subparagraph has been taken if the construction and installation of an approved remedial design has been completed, and the remedy has been demonstrated to the Administrator to be operating properly and successfully. The carrying out of long-term pumping and treating, or operation and maintenance, after the remedy has been demonstrated to the Administrator to be operating properly and successfully does not preclude the transfer of the property."

Subsec. (h)(3)(C). Pub. L. 102-426, §4(b), added subpar. (C).

Subsec. (h)(4). Pub. L. 102-426, §3, added par. (4).

Subsec. (h)(5). Pub. L. 102-426, §5, added par. (5).

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which a report required under subsec. (e)(5) of this section is listed as the 5th item on page 151), see section 3003 of Pub. L. 104-66, as amended, and section 1(a)(4) [div. A, §1402(1)] of Pub. L. 106-554, set out as notes under section 1113 of Title 31, Money and Finance.

IDENTIFICATION OF UNCONTAMINATED PROPERTY AT INSTALLATIONS TO BE CLOSED

Pub. L. 103-160, div. B, title XXIX, §2910, Nov. 30, 1993, 107 Stat. 1924, provided that: "The identification by the Secretary of Defense required under section 120(h)(4)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)(4)(A)), and the concurrence required under section 120(h)(4)(B) of such Act, shall be made not later than the earlier of—

"(1) the date that is 9 months after the date of the submittal, if any, to the transition coordinator for the installation concerned of a specific use proposed for all or a portion of the real property of the installation; or

"(2) the date specified in section 120(h)(4)(C)(iii) of such Act."

CONGRESSIONAL FINDINGS

Section 2 of Pub. L. 102-426 provided that: "The Congress finds the following:

"(1) The closure of certain Federal facilities is having adverse effects on the economies of local communities by eliminating jobs associated with such facilities, and delay in remediation of environmental contamination of real property at such facilities is preventing transfer and private development of such property.

"(2) Each department, agency, or instrumentality of the United States, in cooperation with local communities, should expeditiously identify real property that offers the greatest opportunity for reuse and redevelopment on each facility under the jurisdiction of the department, agency, or instrumentality where operations are terminating.

"(3) Remedial actions, including remedial investigations and feasibility studies, and corrective actions at such Federal facilities should be expedited in a manner to facilitate environmental protection and the sale or transfer of such excess real property for the purpose of mitigating adverse economic effects on the surrounding community.

"(4) Each department, agency, or instrumentality of the United States, in accordance with applicable law, should make available without delay such excess real property.

"(5) In the case of any real property owned by the United States and transferred to another person, the United States Government should remain responsible for conducting any remedial action or corrective action necessary to protect human health and the environment with respect to any hazardous substance or petroleum product or its derivatives, including aviation fuel and motor oil, that was present on such real property at the time of transfer."

APPLICABILITY

Section 120(b) of Pub. L. 99-499 provided that: "Section 120 of CERCLA [42 U.S.C. 9620] shall not apply to any response action or remedial action for which a plan is under development by the Department of Energy on the date of enactment of this Act [Oct. 17, 1986] with respect to facilities—

"(1) owned or operated by the United States and subject to the jurisdiction of such Department;

"(2) located in St. Charles and St. Louis counties, Missouri, or the city of St. Louis, Missouri, and

"(3) published in the National Priorities List.

In preparing such plans, the Secretary of Energy shall consult with the Administrator of the Environmental Protection Agency."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7274q, 9604, 9607, 9609, 9613, 9617, 9622, 9659 of this title; title 10 section 2701.

§ 9621. Cleanup standards

(a) Selection of remedial action

The President shall select appropriate remedial actions determined to be necessary to be carried out under section 9604 of this title or secured under section 9606 of this title which are in accordance with this section and, to the extent practicable, the national contingency plan, and which provide for cost-effective response. In evaluating the cost effectiveness of proposed alternative remedial actions, the President shall take into account the total short- and long-term costs of such actions, including the costs of operation and maintenance for the entire period during which such activities will be required.

(b) General rules

(1) Remedial actions in which treatment which permanently and significantly reduces the volume, toxicity or mobility of the hazardous substances, pollutants, and contaminants is a principal element, are to be preferred over remedial actions not involving such treatment. The off-site transport and disposal of hazardous substances or contaminated materials without such treatment should be the least favored alternative remedial action where practicable treatment technologies are available. The President shall conduct an assessment of permanent solutions and alternative treatment technologies or resource recovery technologies that, in whole or in part, will result in a permanent and significant decrease in the toxicity, mobility, or volume of the hazardous substance, pollutant, or contaminant. In making such assessment, the President shall specifically address the long-term effectiveness of various alternatives. In assessing alternative remedial actions, the President shall, at a minimum, take into account:

(A) the long-term uncertainties associated with land disposal;

(B) the goals, objectives, and requirements of the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.];

(C) the persistence, toxicity, mobility, and propensity to bioaccumulate of such hazardous substances and their constituents;

(D) short- and long-term potential for adverse health effects from human exposure;

(E) long-term maintenance costs;

(F) the potential for future remedial action costs if the alternative remedial action in question were to fail; and

(G) the potential threat to human health and the environment associated with excavation, transportation, and redispersion, or containment.

The President shall select a remedial action that is protective of human health and the environment, that is cost effective, and that utilizes permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. If the President selects a remedial action not appropriate for a preference under this subsection, the President shall publish an explanation as to why a remedial action involving such reductions was not selected.

(2) The President may select an alternative remedial action meeting the objectives of this subsection whether or not such action has been achieved in practice at any other facility or site that has similar characteristics. In making such a selection, the President may take into account the degree of support for such remedial action by parties interested in such site.

(c) Review

If the President selects a remedial action that results in any hazardous substances, pollutants, or contaminants remaining at the site, the President shall review such remedial action no less often than each 5 years after the initiation of such remedial action to assure that human health and the environment are being protected by the remedial action being implemented. In addition, if upon such review it is the judgment

of the President that action is appropriate at such site in accordance with section 9604 or 9606 of this title, the President shall take or require such action. The President shall report to the Congress a list of facilities for which such review is required, the results of all such reviews, and any actions taken as a result of such reviews.

(d) Degree of cleanup

(1) Remedial actions selected under this section or otherwise required or agreed to by the President under this chapter shall attain a degree of cleanup of hazardous substances, pollutants, and contaminants released into the environment and of control of further release at a minimum which assures protection of human health and the environment. Such remedial actions shall be relevant and appropriate under the circumstances presented by the release or threatened release of such substance, pollutant, or contaminant.

(2)(A) With respect to any hazardous substance, pollutant or contaminant that will remain onsite, if—

(i) any standard, requirement, criteria, or limitation under any Federal environmental law, including, but not limited to, the Toxic Substances Control Act [15 U.S.C. 2601 et seq.], the Safe Drinking Water Act [42 U.S.C. 300f et seq.], the Clean Air Act [42 U.S.C. 7401 et seq.], the Clean Water Act [33 U.S.C. 1251 et seq.], the Marine Protection, Research and Sanctuaries Act [16 U.S.C. 1431 et seq., 1447 et seq., 33 U.S.C. 1401 et seq., 2801 et seq.], or the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.]; or

(ii) any promulgated standard, requirement, criteria, or limitation under a State environmental or facility siting law that is more stringent than any Federal standard, requirement, criteria, or limitation, including each such State standard, requirement, criteria, or limitation contained in a program approved, authorized or delegated by the Administrator under a statute cited in subparagraph (A), and that has been identified to the President by the State in a timely manner,

is legally applicable to the hazardous substance or pollutant or contaminant concerned or is relevant and appropriate under the circumstances of the release or threatened release of such hazardous substance or pollutant or contaminant, the remedial action selected under section 9604 of this title or secured under section 9606 of this title shall require, at the completion of the remedial action, a level or standard of control for such hazardous substance or pollutant or contaminant which at least attains such legally applicable or relevant and appropriate standard, requirement, criteria, or limitation. Such remedial action shall require a level or standard of control which at least attains Maximum Contaminant Level Goals established under the Safe Drinking Water Act [42 U.S.C. 300f et seq.] and water quality criteria established under section 304 or 303 of the Clean Water Act [33 U.S.C. 1314, 1313], where such goals or criteria are relevant and appropriate under the circumstances of the release or threatened release.

(B)(i) In determining whether or not any water quality criteria under the Clean Water Act [33

U.S.C. 1251 et seq.] is relevant and appropriate under the circumstances of the release or threatened release, the President shall consider the designated or potential use of the surface or groundwater, the environmental media affected, the purposes for which such criteria were developed, and the latest information available.

(ii) For the purposes of this section, a process for establishing alternate concentration limits to those otherwise applicable for hazardous constituents in groundwater under subparagraph (A) may not be used to establish applicable standards under this paragraph if the process assumes a point of human exposure beyond the boundary of the facility, as defined at the conclusion of the remedial investigation and feasibility study, except where—

(I) there are known and projected points of entry of such groundwater into surface water; and

(II) on the basis of measurements or projections, there is or will be no statistically significant increase of such constituents from such groundwater in such surface water at the point of entry or at any point where there is reason to believe accumulation of constituents may occur downstream; and

(III) the remedial action includes enforceable measures that will preclude human exposure to the contaminated groundwater at any point between the facility boundary and all known and projected points of entry of such groundwater into surface water

then the assumed point of human exposure may be at such known and projected points of entry.

(C)(i) Clause (ii) of this subparagraph shall be applicable only in cases where, due to the President's selection, in compliance with subsection (b)(1) of this section, of a proposed remedial action which does not permanently and significantly reduce the volume, toxicity, or mobility of hazardous substances, pollutants, or contaminants, the proposed disposition of waste generated by or associated with the remedial action selected by the President is land disposal in a State referred to in clause (ii).

(ii) Except as provided in clauses (iii) and (iv), a State standard, requirement, criteria, or limitation (including any State siting standard or requirement) which could effectively result in the statewide prohibition of land disposal of hazardous substances, pollutants, or contaminants shall not apply.

(iii) Any State standard, requirement, criteria, or limitation referred to in clause (ii) shall apply where each of the following conditions is met:

(I) The State standard, requirement, criteria, or limitation is of general applicability and was adopted by formal means.

(II) The State standard, requirement, criteria, or limitation was adopted on the basis of hydrologic, geologic, or other relevant considerations and was not adopted for the purpose of precluding onsite remedial actions or other land disposal for reasons unrelated to protection of human health and the environment.

(III) The State arranges for, and assures payment of the incremental costs of utilizing, a facility for disposition of the hazardous sub-

stances, pollutants, or contaminants concerned.

(iv) Where the remedial action selected by the President does not conform to a State standard and the State has initiated a law suit against the Environmental Protection Agency prior to May 1, 1986, to seek to have the remedial action conform to such standard, the President shall conform the remedial action to the State standard. The State shall assure the availability of an offsite facility for such remedial action.

(3) In the case of any removal or remedial action involving the transfer of any hazardous substance or pollutant or contaminant offsite, such hazardous substance or pollutant or contaminant shall only be transferred to a facility which is operating in compliance with section 3004 and 3005 of the Solid Waste Disposal Act [42 U.S.C. 6924, 6925] (or, where applicable, in compliance with the Toxic Substances Control Act [15 U.S.C. 2601 et seq.] or other applicable Federal law) and all applicable State requirements. Such substance or pollutant or contaminant may be transferred to a land disposal facility only if the President determines that both of the following requirements are met:

(A) The unit to which the hazardous substance or pollutant or contaminant is transferred is not releasing any hazardous waste, or constituent thereof, into the groundwater or surface water or soil.

(B) All such releases from other units at the facility are being controlled by a corrective action program approved by the Administrator under subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.].

The President shall notify the owner or operator of such facility of determinations under this paragraph.

(4) The President may select a remedial action meeting the requirements of paragraph (1) that does not attain a level or standard of control at least equivalent to a legally applicable or relevant and appropriate standard, requirement, criteria, or limitation as required by paragraph (2) (including subparagraph (B) thereof), if the President finds that—

(A) the remedial action selected is only part of a total remedial action that will attain such level or standard of control when completed;

(B) compliance with such requirement at that facility will result in greater risk to human health and the environment than alternative options;

(C) compliance with such requirements is technically impracticable from an engineering perspective;

(D) the remedial action selected will attain a standard of performance that is equivalent to that required under the otherwise applicable standard, requirement, criteria, or limitation, through use of another method or approach;

(E) with respect to a State standard, requirement, criteria, or limitation, the State has not consistently applied (or demonstrated the intention to consistently apply) the standard, requirement, criteria, or limitation in similar circumstances at other remedial actions within the State; or

(F) in the case of a remedial action to be undertaken solely under section 9604 of this title using the Fund, selection of a remedial action that attains such level or standard of control will not provide a balance between the need for protection of public health and welfare and the environment at the facility under consideration, and the availability of amounts from the Fund to respond to other sites which present or may present a threat to public health or welfare or the environment, taking into consideration the relative immediacy of such threats.

The President shall publish such findings, together with an explanation and appropriate documentation.

(e) Permits and enforcement

(1) No Federal, State, or local permit shall be required for the portion of any removal or remedial action conducted entirely onsite, where such remedial action is selected and carried out in compliance with this section.

(2) A State may enforce any Federal or State standard, requirement, criteria, or limitation to which the remedial action is required to conform under this chapter in the United States district court for the district in which the facility is located. Any consent decree shall require the parties to attempt expeditiously to resolve disagreements concerning implementation of the remedial action informally with the appropriate Federal and State agencies. Where the parties agree, the consent decree may provide for administrative enforcement. Each consent decree shall also contain stipulated penalties for violations of the decree in an amount not to exceed \$25,000 per day, which may be enforced by either the President or the State. Such stipulated penalties shall not be construed to impair or affect the authority of the court to order compliance with the specific terms of any such decree.

(f) State involvement

(1) The President shall promulgate regulations providing for substantial and meaningful involvement by each State in initiation, development, and selection of remedial actions to be undertaken in that State. The regulations, at a minimum, shall include each of the following:

(A) State involvement in decisions whether to perform a preliminary assessment and site inspection.

(B) Allocation of responsibility for hazard ranking system scoring.

(C) State concurrence in deleting sites from the National Priorities List.

(D) State participation in the long-term planning process for all remedial sites within the State.

(E) A reasonable opportunity for States to review and comment on each of the following:

(i) The remedial investigation and feasibility study and all data and technical documents leading to its issuance.

(ii) The planned remedial action identified in the remedial investigation and feasibility study.

(iii) The engineering design following selection of the final remedial action.

(iv) Other technical data and reports relating to implementation of the remedy.

(v) Any proposed finding or decision by the President to exercise the authority of subsection (d)(4) of this section.

(F) Notice to the State of negotiations with potentially responsible parties regarding the scope of any response action at a facility in the State and an opportunity to participate in such negotiations and, subject to paragraph (2), be a party to any settlement.

(G) Notice to the State and an opportunity to comment on the President's proposed plan for remedial action as well as on alternative plans under consideration. The President's proposed decision regarding the selection of remedial action shall be accompanied by a response to the comments submitted by the State, including an explanation regarding any decision under subsection (d)(4) of this section on compliance with promulgated State standards. A copy of such response shall also be provided to the State.

(H) Prompt notice and explanation of each proposed action to the State in which the facility is located.

Prior to the promulgation of such regulations, the President shall provide notice to the State of negotiations with potentially responsible parties regarding the scope of any response action at a facility in the State, and such State may participate in such negotiations and, subject to paragraph (2), any settlements.

(2)(A) This paragraph shall apply to remedial actions secured under section 9606 of this title. At least 30 days prior to the entering of any consent decree, if the President proposes to select a remedial action that does not attain a legally applicable or relevant and appropriate standard, requirement, criteria, or limitation, under the authority of subsection (d)(4) of this section, the President shall provide an opportunity for the State to concur or not concur in such selection. If the State concurs, the State may become a signatory to the consent decree.

(B) If the State does not concur in such selection, and the State desires to have the remedial action conform to such standard, requirement, criteria, or limitation, the State shall intervene in the action under section 9606 of this title before entry of the consent decree, to seek to have the remedial action so conform. Such intervention shall be a matter of right. The remedial action shall conform to such standard, requirement, criteria, or limitation if the State establishes, on the administrative record, that the finding of the President was not supported by substantial evidence. If the court determines that the remedial action shall conform to such standard, requirement, criteria, or limitation, the remedial action shall be so modified and the State may become a signatory to the decree. If the court determines that the remedial action need not conform to such standard, requirement, criteria, or limitation, and the State pays or assures the payment of the additional costs attributable to meeting such standard, requirement, criteria, or limitation, the remedial action shall be so modified and the State shall become a signatory to the decree.

(C) The President may conclude settlement negotiations with potentially responsible parties without State concurrence.

(3)(A) This paragraph shall apply to remedial actions at facilities owned or operated by a department, agency, or instrumentality of the United States. At least 30 days prior to the publication of the President's final remedial action plan, if the President proposes to select a remedial action that does not attain a legally applicable or relevant and appropriate standard, requirement, criteria, or limitation, under the authority of subsection (d)(4) of this section, the President shall provide an opportunity for the State to concur or not concur in such selection. If the State concurs, or does not act within 30 days, the remedial action may proceed.

(B) If the State does not concur in such selection as provided in subparagraph (A), and desires to have the remedial action conform to such standard, requirement, criteria, or limitation, the State may maintain an action as follows:

(i) If the President has notified the State of selection of such a remedial action, the State may bring an action within 30 days of such notification for the sole purpose of determining whether the finding of the President is supported by substantial evidence. Such action shall be brought in the United States district court for the district in which the facility is located.

(ii) If the State establishes, on the administrative record, that the President's finding is not supported by substantial evidence, the remedial action shall be modified to conform to such standard, requirement, criteria, or limitation.

(iii) If the State fails to establish that the President's finding was not supported by substantial evidence and if the State pays, within 60 days of judgment, the additional costs attributable to meeting such standard, requirement, criteria, or limitation, the remedial action shall be selected to meet such standard, requirement, criteria, or limitation. If the State fails to pay within 60 days, the remedial action selected by the President shall proceed through completion.

(C) Nothing in this section precludes, and the court shall not enjoin, the Federal agency from taking any remedial action unrelated to or not inconsistent with such standard, requirement, criteria, or limitation.

(Pub. L. 96-510, title I, §121, as added Pub. L. 99-499, title I, §121(a), Oct. 17, 1986, 100 Stat. 1672.)

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsecs. (b)(1)(B) and (d)(2)(A)(i), (3)(B), is title II of Pub. L. 89-272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§6901 et seq.) of this title. Subtitle C of the Solid Waste Disposal Act is classified generally to subchapter III (§6921 et seq.) of chapter 82 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

The Toxic Substances Control Act, referred to in subsec. (d)(2)(A)(i), (3), is Pub. L. 94-469, Oct. 11, 1976, 90 Stat. 2003, as amended, which is classified generally to chapter 53 (§2601 et seq.) of Title 15, Commerce and

Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 15 and Tables.

The Safe Drinking Water Act, referred to in subsec. (d)(2)(A), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93-523, §2(a), 88 Stat. 1660, as amended, which is classified generally to subchapter XII (§300f et seq.) of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The Clean Air Act, referred to in subsec. (d)(2)(A)(i), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

The Clean Water Act, referred to in subsec. (d)(2)(A)(i), (B)(i), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 816, also known as the Federal Water Pollution Control Act, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Marine Protection, Research and Sanctuaries Act, referred to in subsec. (d)(2)(A)(i), probably means the Marine Protection, Research and Sanctuaries Act of 1972, Pub. L. 92-532, Oct. 23, 1972, 86 Stat. 1052, as amended, which enacted chapters 32 (§1431 et seq.) and 32A (§1447 et seq.) of Title 16, Conservation, and chapters 27 (§1401 et seq.) and 41 (§2801 et seq.) of Title 33. For complete classification of this Act to the Code, see Short Title note set out under section 1401 of Title 33 and Tables.

EFFECTIVE DATE

Section 121(b) of Pub. L. 99-499 provided that: "With respect to section 121 of CERCLA [this section], as added by this section—

"(1) The requirements of section 121 of CERCLA shall not apply to any remedial action for which the Record of Decision (hereinafter in this section referred to as the 'ROD') was signed, or the consent decree was lodged, before date of enactment [Oct. 17, 1986].

"(2) If the ROD was signed, or the consent decree lodged, within the 30-day period immediately following enactment of the Act [Oct. 17, 1986], the Administrator shall certify in writing that the portion of the remedial action covered by the ROD or consent decree complies to the maximum extent practicable with section 121 of CERCLA.

Any ROD signed before enactment of this Act [Oct. 17, 1986] and reopened after enactment of this Act to modify or supplement the selection of remedy shall be subject to the requirements of section 121 of CERCLA."

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which the report under subsec. (c) of this section appears to be the report listed as the 15th item on page 20), see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9604, 9613, 9617, 9620 of this title.

§ 9622. Settlements

(a) Authority to enter into agreements

The President, in his discretion, may enter into an agreement with any person (including the owner or operator of the facility from which a release or substantial threat of release ema-

nates, or any other potentially responsible person), to perform any response action (including any action described in section 9604(b) of this title) if the President determines that such action will be done properly by such person. Whenever practicable and in the public interest, as determined by the President, the President shall act to facilitate agreements under this section that are in the public interest and consistent with the National Contingency Plan in order to expedite effective remedial actions and minimize litigation. If the President decides not to use the procedures in this section, the President shall notify in writing potentially responsible parties at the facility of such decision and the reasons why use of the procedures is inappropriate. A decision of the President to use or not to use the procedures in this section is not subject to judicial review.

(b) Agreements with potentially responsible parties

(1) Mixed funding

An agreement under this section may provide that the President will reimburse the parties to the agreement from the Fund, with interest, for certain costs of actions under the agreement that the parties have agreed to perform but which the President has agreed to finance. In any case in which the President provides such reimbursement, the President shall make all reasonable efforts to recover the amount of such reimbursement under section 9607 of this title or under other relevant authorities.

(2) Reviewability

The President's decisions regarding the availability of fund financing under this subsection shall not be subject to judicial review under subsection (d) of this section.

(3) Retention of funds

If, as part of any agreement, the President will be carrying out any action and the parties will be paying amounts to the President, the President may, notwithstanding any other provision of law, retain and use such amounts for purposes of carrying out the agreement.

(4) Future obligation of Fund

In the case of a completed remedial action pursuant to an agreement described in paragraph (1), the Fund shall be subject to an obligation for subsequent remedial actions at the same facility but only to the extent that such subsequent actions are necessary by reason of the failure of the original remedial action. Such obligation shall be in a proportion equal to, but not exceeding, the proportion contributed by the Fund for the original remedial action. The Fund's obligation for such future remedial action may be met through Fund expenditures or through payment, following settlement or enforcement action, by parties who were not signatories to the original agreement.

(c) Effect of agreement

(1) Liability

Whenever the President has entered into an agreement under this section, the liability to

the United States under this chapter of each party to the agreement, including any future liability to the United States, arising from the release or threatened release that is the subject of the agreement shall be limited as provided in the agreement pursuant to a covenant not to sue in accordance with subsection (f) of this section. A covenant not to sue may provide that future liability to the United States of a settling potentially responsible party under the agreement may be limited to the same proportion as that established in the original settlement agreement. Nothing in this section shall limit or otherwise affect the authority of any court to review in the consent decree process under subsection (d) of this section any covenant not to sue contained in an agreement under this section. In determining the extent to which the liability of parties to an agreement shall be limited pursuant to a covenant not to sue, the President shall be guided by the principle that a more complete covenant not to sue shall be provided for a more permanent remedy undertaken by such parties.

(2) Actions against other persons

If an agreement has been entered into under this section, the President may take any action under section 9606 of this title against any person who is not a party to the agreement, once the period for submitting a proposal under subsection (e)(2)(B) of this section has expired. Nothing in this section shall be construed to affect either of the following:

(A) The liability of any person under section 9606 or 9607 of this title with respect to any costs or damages which are not included in the agreement.

(B) The authority of the President to maintain an action under this chapter against any person who is not a party to the agreement.

(d) Enforcement

(1) Cleanup agreements

(A) Consent decree

Whenever the President enters into an agreement under this section with any potentially responsible party with respect to remedial action under section 9606 of this title, following approval of the agreement by the Attorney General, except as otherwise provided in the case of certain administrative settlements referred to in subsection (g) of this section, the agreement shall be entered in the appropriate United States district court as a consent decree. The President need not make any finding regarding an imminent and substantial endangerment to the public health or the environment in connection with any such agreement or consent decree.

(B) Effect

The entry of any consent decree under this subsection shall not be construed to be an acknowledgment by the parties that the release or threatened release concerned constitutes an imminent and substantial endangerment to the public health or welfare or

the environment. Except as otherwise provided in the Federal Rules of Evidence, the participation by any party in the process under this section shall not be considered an admission of liability for any purpose, and the fact of such participation shall not be admissible in any judicial or administrative proceeding, including a subsequent proceeding under this section.

(C) Structure

The President may fashion a consent decree so that the entering of such decree and compliance with such decree or with any determination or agreement made pursuant to this section shall not be considered an admission of liability for any purpose.

(2) Public participation

(A) Filing of proposed judgment

At least 30 days before a final judgment is entered under paragraph (1), the proposed judgment shall be filed with the court.

(B) Opportunity for comment

The Attorney General shall provide an opportunity to persons who are not named as parties to the action to comment on the proposed judgment before its entry by the court as a final judgment. The Attorney General shall consider, and file with the court, any written comments, views, or allegations relating to the proposed judgment. The Attorney General may withdraw or withhold its consent to the proposed judgment if the comments, views, and allegations concerning the judgment disclose facts or considerations which indicate that the proposed judgment is inappropriate, improper, or inadequate.

(3) 9604(b) agreements

Whenever the President enters into an agreement under this section with any potentially responsible party with respect to action under section 9604(b) of this title, the President shall issue an order or enter into a decree setting forth the obligations of such party. The United States district court for the district in which the release or threatened release occurs may enforce such order or decree.

(e) Special notice procedures

(1) Notice

Whenever the President determines that a period of negotiation under this subsection would facilitate an agreement with potentially responsible parties for taking response action (including any action described in section 9604(b) of this title) and would expedite remedial action, the President shall so notify all such parties and shall provide them with information concerning each of the following:

(A) The names and addresses of potentially responsible parties (including owners and operators and other persons referred to in section 9607(a) of this title), to the extent such information is available.

(B) To the extent such information is available, the volume and nature of substances contributed by each potentially responsible party identified at the facility.

(C) A ranking by volume of the substances at the facility, to the extent such information is available.

The President shall make the information referred to in this paragraph available in advance of notice under this paragraph upon the request of a potentially responsible party in accordance with procedures provided by the President. The provisions of subsection (e) of section 9604 of this title regarding protection of confidential information apply to information provided under this paragraph. Disclosure of information generated by the President under this section to persons other than the Congress, or any duly authorized Committee thereof, is subject to other privileges or protections provided by law, including (but not limited to) those applicable to attorney work product. Nothing contained in this paragraph or in other provisions of this chapter shall be construed, interpreted, or applied to diminish the required disclosure of information under other provisions of this or other Federal or State laws.

(2) Negotiation

(A) Moratorium

Except as provided in this subsection, the President may not commence action under section 9604(a) of this title or take any action under section 9606 of this title for 120 days after providing notice and information under this subsection with respect to such action. Except as provided in this subsection, the President may not commence a remedial investigation and feasibility study under section 9604(b) of this title for 90 days after providing notice and information under this subsection with respect to such action. The President may commence any additional studies or investigations authorized under section 9604(b) of this title, including remedial design, during the negotiation period.

(B) Proposals

Persons receiving notice and information under paragraph (1) of this subsection with respect to action under section 9606 of this title shall have 60 days from the date of receipt of such notice to make a proposal to the President for undertaking or financing the action under section 9606 of this title. Persons receiving notice and information under paragraph (1) of this subsection with respect to action under section 9604(b) of this title shall have 60 days from the date of receipt of such notice to make a proposal to the President for undertaking or financing the action under section 9604(b) of this title.

(C) Additional parties

If an additional potentially responsible party is identified during the negotiation period or after an agreement has been entered into under this subsection concerning a release or threatened release, the President may bring the additional party into the negotiation or enter into a separate agreement with such party.

(3) Preliminary allocation of responsibility**(A) In general**

The President shall develop guidelines for preparing nonbinding preliminary allocations of responsibility. In developing these guidelines the President may include such factors as the President considers relevant, such as: volume, toxicity, mobility, strength of evidence, ability to pay, litigative risks, public interest considerations, precedential value, and inequities and aggravating factors. When it would expedite settlements under this section and remedial action, the President may, after completion of the remedial investigation and feasibility study, provide a nonbinding preliminary allocation of responsibility which allocates percentages of the total cost of response among potentially responsible parties at the facility.

(B) Collection of information

To collect information necessary or appropriate for performing the allocation under subparagraph (A) or for otherwise implementing this section, the President may by subpoena require the attendance and testimony of witnesses and the production of reports, papers, documents, answers to questions, and other information that the President deems necessary. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In the event of contumacy or failure or refusal of any person to obey any such subpoena, any district court of the United States in which venue is proper shall have jurisdiction to order any such person to comply with such subpoena. Any failure to obey such an order of the court is punishable by the court as a contempt thereof.

(C) Effect

The nonbinding preliminary allocation of responsibility shall not be admissible as evidence in any proceeding, and no court shall have jurisdiction to review the nonbinding preliminary allocation of responsibility. The nonbinding preliminary allocation of responsibility shall not constitute an apportionment or other statement on the divisibility of harm or causation.

(D) Costs

The costs incurred by the President in producing the nonbinding preliminary allocation of responsibility shall be reimbursed by the potentially responsible parties whose offer is accepted by the President. Where an offer under this section is not accepted, such costs shall be considered costs of response.

(E) Decision to reject offer

Where the President, in his discretion, has provided a nonbinding preliminary allocation of responsibility and the potentially responsible parties have made a substantial offer providing for response to the President which he rejects, the reasons for the rejection shall be provided in a written explanation. The President's decision to reject such an offer shall not be subject to judicial review.

(4) Failure to propose

If the President determines that a good faith proposal for undertaking or financing action under section 9606 of this title has not been submitted within 60 days of the provision of notice pursuant to this subsection, the President may thereafter commence action under section 9604(a) of this title or take an action against any person under section 9606 of this title. If the President determines that a good faith proposal for undertaking or financing action under section 9604(b) of this title has not been submitted within 60 days after the provision of notice pursuant to this subsection, the President may thereafter commence action under section 9604(b) of this title.

(5) Significant threats

Nothing in this subsection shall limit the President's authority to undertake response or enforcement action regarding a significant threat to public health or the environment within the negotiation period established by this subsection.

(6) Inconsistent response action

When either the President, or a potentially responsible party pursuant to an administrative order or consent decree under this chapter, has initiated a remedial investigation and feasibility study for a particular facility under this chapter, no potentially responsible party may undertake any remedial action at the facility unless such remedial action has been authorized by the President.

(f) Covenant not to sue**(1) Discretionary covenants**

The President may, in his discretion, provide any person with a covenant not to sue concerning any liability to the United States under this chapter, including future liability, resulting from a release or threatened release of a hazardous substance addressed by a remedial action, whether that action is onsite or offsite, if each of the following conditions is met:

(A) The covenant not to sue is in the public interest.

(B) The covenant not to sue would expedite response action consistent with the National Contingency Plan under section 9605 of this title.

(C) The person is in full compliance with a consent decree under section 9606 of this title (including a consent decree entered into in accordance with this section) for response to the release or threatened release concerned.

(D) The response action has been approved by the President.

(2) Special covenants not to sue

In the case of any person to whom the President is authorized under paragraph (1) of this subsection to provide a covenant not to sue, for the portion of remedial action—

(A) which involves the transport and secure disposition offsite of hazardous substances in a facility meeting the requirements of sections 6924(c), (d), (e), (f), (g), (m), (o), (p), (u), and (v) and 6925(c) of this title,

where the President has rejected a proposed remedial action that is consistent with the National Contingency Plan that does not include such offsite disposition and has thereafter required offsite disposition; or

(B) which involves the treatment of hazardous substances so as to destroy, eliminate, or permanently immobilize the hazardous constituents of such substances, such that, in the judgment of the President, the substances no longer present any current or currently foreseeable future significant risk to public health, welfare or the environment, no byproduct of the treatment or destruction process presents any significant hazard to public health, welfare or the environment, and all byproducts are themselves treated, destroyed, or contained in a manner which assures that such byproducts do not present any current or currently foreseeable future significant risk to public health, welfare or the environment,

the President shall provide such person with a covenant not to sue with respect to future liability to the United States under this chapter for a future release or threatened release of hazardous substances from such facility, and a person provided such covenant not to sue shall not be liable to the United States under section 9606 or 9607 of this title with respect to such release or threatened release at a future time.

(3) Requirement that remedial action be completed

A covenant not to sue concerning future liability to the United States shall not take effect until the President certifies that remedial action has been completed in accordance with the requirements of this chapter at the facility that is the subject of such covenant.

(4) Factors

In assessing the appropriateness of a covenant not to sue under paragraph (1) and any condition to be included in a covenant not to sue under paragraph (1) or (2), the President shall consider whether the covenant or condition is in the public interest on the basis of such factors as the following:

(A) The effectiveness and reliability of the remedy, in light of the other alternative remedies considered for the facility concerned.

(B) The nature of the risks remaining at the facility.

(C) The extent to which performance standards are included in the order or decree.

(D) The extent to which the response action provides a complete remedy for the facility, including a reduction in the hazardous nature of the substances at the facility.

(E) The extent to which the technology used in the response action is demonstrated to be effective.

(F) Whether the Fund or other sources of funding would be available for any additional remedial actions that might eventually be necessary at the facility.

(G) Whether the remedial action will be carried out, in whole or in significant part, by the responsible parties themselves.

(5) Satisfactory performance

Any covenant not to sue under this subsection shall be subject to the satisfactory performance by such party of its obligations under the agreement concerned.

(6) Additional condition for future liability

(A) Except for the portion of the remedial action which is subject to a covenant not to sue under paragraph (2) or under subsection (g) of this section (relating to de minimis settlements), a covenant not to sue a person concerning future liability to the United States shall include an exception to the covenant that allows the President to sue such person concerning future liability resulting from the release or threatened release that is the subject of the covenant where such liability arises out of conditions which are unknown at the time the President certifies under paragraph (3) that remedial action has been completed at the facility concerned.

(B) In extraordinary circumstances, the President may determine, after assessment of relevant factors such as those referred to in paragraph (4) and volume, toxicity, mobility, strength of evidence, ability to pay, litigative risks, public interest considerations, precedential value, and inequities and aggravating factors, not to include the exception referred to in subparagraph (A) if other terms, conditions, or requirements of the agreement containing the covenant not to sue are sufficient to provide all reasonable assurances that public health and the environment will be protected from any future releases at or from the facility.

(C) The President is authorized to include any provisions allowing future enforcement action under section 9606 or 9607 of this title that in the discretion of the President are necessary and appropriate to assure protection of public health, welfare, and the environment.

(g) De minimis settlements

(1) Expedited final settlement

Whenever practicable and in the public interest, as determined by the President, the President shall as promptly as possible reach a final settlement with a potentially responsible party in an administrative or civil action under section 9606 or 9607 of this title if such settlement involves only a minor portion of the response costs at the facility concerned and, in the judgment of the President, the conditions in either of the following subparagraph (A) or (B) are met:

(A) Both of the following are minimal in comparison to other hazardous substances at the facility:

(i) The amount of the hazardous substances contributed by that party to the facility.

(ii) The toxic or other hazardous effects of the substances contributed by that party to the facility.

(B) The potentially responsible party—

(i) is the owner of the real property on or in which the facility is located;

(ii) did not conduct or permit the generation, transportation, storage, treatment,

or disposal of any hazardous substance at the facility; and

(iii) did not contribute to the release or threat of release of a hazardous substance at the facility through any action or omission.

This subparagraph (B) does not apply if the potentially responsible party purchased the real property with actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment, or disposal of any hazardous substance.

(2) Covenant not to sue

The President may provide a covenant not to sue with respect to the facility concerned to any party who has entered into a settlement under this subsection unless such a covenant would be inconsistent with the public interest as determined under subsection (f) of this section.

(3) Expedited agreement

The President shall reach any such settlement or grant any such covenant not to sue as soon as possible after the President has available the information necessary to reach such a settlement or grant such a covenant.

(4) Consent decree or administrative order

A settlement under this subsection shall be entered as a consent decree or embodied in an administrative order setting forth the terms of the settlement. In the case of any facility where the total response costs exceed \$500,000 (excluding interest), if the settlement is embodied as an administrative order, the order may be issued only with the prior written approval of the Attorney General. If the Attorney General or his designee has not approved or disapproved the order within 30 days of this referral, the order shall be deemed to be approved unless the Attorney General and the Administrator have agreed to extend the time. The district court for the district in which the release or threatened release occurs may enforce any such administrative order.

(5) Effect of agreement

A party who has resolved its liability to the United States under this subsection shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially responsible parties unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

(6) Settlements with other potentially responsible parties

Nothing in this subsection shall be construed to affect the authority of the President to reach settlements with other potentially responsible parties under this chapter.

(7) Reduction in settlement amount based on limited ability to pay

(A) In general

The condition for settlement under this paragraph is that the potentially responsible

party is a person who demonstrates to the President an inability or a limited ability to pay response costs.

(B) Considerations

In determining whether or not a demonstration is made under subparagraph (A) by a person, the President shall take into consideration the ability of the person to pay response costs and still maintain its basic business operations, including consideration of the overall financial condition of the person and demonstrable constraints on the ability of the person to raise revenues.

(C) Information

A person requesting settlement under this paragraph shall promptly provide the President with all relevant information needed to determine the ability of the person to pay response costs.

(D) Alternative payment methods

If the President determines that a person is unable to pay its total settlement amount at the time of settlement, the President shall consider such alternative payment methods as may be necessary or appropriate.

(8) Additional conditions for expedited settlements

(A) Waiver of claims

The President shall require, as a condition for settlement under this subsection, that a potentially responsible party waive all of the claims (including a claim for contribution under this chapter) that the party may have against other potentially responsible parties for response costs incurred with respect to the facility, unless the President determines that requiring a waiver would be unjust.

(B) Failure to comply

The President may decline to offer a settlement to a potentially responsible party under this subsection if the President determines that the potentially responsible party has failed to comply with any request for access or information or an administrative subpoena issued by the President under this chapter or has impeded or is impeding, through action or inaction, the performance of a response action with respect to the facility.

(C) Responsibility to provide information and access

A potentially responsible party that enters into a settlement under this subsection shall not be relieved of the responsibility to provide any information or access requested in accordance with subsection (e)(3)(B) of this section or section 9604(e) of this title.

(9) Basis of determination

If the President determines that a potentially responsible party is not eligible for settlement under this subsection, the President shall provide the reasons for the determination in writing to the potentially responsible party that requested a settlement under this subsection.

(10) Notification

As soon as practicable after receipt of sufficient information to make a determination, the President shall notify any person that the President determines is eligible under paragraph (1) of the person's eligibility for an expedited settlement.

(11) No judicial review

A determination by the President under paragraph (7), (8), (9), or (10) shall not be subject to judicial review.

(12) Notice of settlement

After a settlement under this subsection becomes final with respect to a facility, the President shall promptly notify potentially responsible parties at the facility that have not resolved their liability to the United States of the settlement.

(h) Cost recovery settlement authority**(1) Authority to settle**

The head of any department or agency with authority to undertake a response action under this chapter pursuant to the national contingency plan may consider, compromise, and settle a claim under section 9607 of this title for costs incurred by the United States Government if the claim has not been referred to the Department of Justice for further action. In the case of any facility where the total response costs exceed \$500,000 (excluding interest), any claim referred to in the preceding sentence may be compromised and settled only with the prior written approval of the Attorney General.

(2) Use of arbitration

Arbitration in accordance with regulations promulgated under this subsection may be used as a method of settling claims of the United States where the total response costs for the facility concerned do not exceed \$500,000 (excluding interest). After consultation with the Attorney General, the department or agency head may establish and publish regulations for the use of arbitration or settlement under this subsection.

(3) Recovery of claims

If any person fails to pay a claim that has been settled under this subsection, the department or agency head shall request the Attorney General to bring a civil action in an appropriate district court to recover the amount of such claim, plus costs, attorneys' fees, and interest from the date of the settlement. In such an action, the terms of the settlement shall not be subject to review.

(4) Claims for contribution

A person who has resolved its liability to the United States under this subsection shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement shall not discharge any of the other potentially liable persons unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

(i) Settlement procedures**(1) Publication in Federal Register**

At least 30 days before any settlement (including any settlement arrived at through ar-

bitration) may become final under subsection (h) of this section, or under subsection (g) of this section in the case of a settlement embodied in an administrative order, the head of the department or agency which has jurisdiction over the proposed settlement shall publish in the Federal Register notice of the proposed settlement. The notice shall identify the facility concerned and the parties to the proposed settlement.

(2) Comment period

For a 30-day period beginning on the date of publication of notice under paragraph (1) of a proposed settlement, the head of the department or agency which has jurisdiction over the proposed settlement shall provide an opportunity for persons who are not parties to the proposed settlement to file written comments relating to the proposed settlement.

(3) Consideration of comments

The head of the department or agency shall consider any comments filed under paragraph (2) in determining whether or not to consent to the proposed settlement and may withdraw or withhold consent to the proposed settlement if such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate.

(j) Natural resources**(1) Notification of trustee**

Where a release or threatened release of any hazardous substance that is the subject of negotiations under this section may have resulted in damages to natural resources under the trusteeship of the United States, the President shall notify the Federal natural resource trustee of the negotiations and shall encourage the participation of such trustee in the negotiations.

(2) Covenant not to sue

An agreement under this section may contain a covenant not to sue under section 9607(a)(4)(C) of this title for damages to natural resources under the trusteeship of the United States resulting from the release or threatened release of hazardous substances that is the subject of the agreement, but only if the Federal natural resource trustee has agreed in writing to such covenant. The Federal natural resource trustee may agree to such covenant if the potentially responsible party agrees to undertake appropriate actions necessary to protect and restore the natural resources damaged by such release or threatened release of hazardous substances.

(k) Section not applicable to vessels

The provisions of this section shall not apply to releases from a vessel.

(l) Civil penalties

A potentially responsible party which is a party to an administrative order or consent decree entered pursuant to an agreement under this section or section 9620 of this title (relating to Federal facilities) or which is a party to an agreement under section 9620 of this title and which fails or refuses to comply with any term

or condition of the order, decree or agreement shall be subject to a civil penalty in accordance with section 9609 of this title.

(m) Applicability of general principles of law

In the case of consent decrees and other settlements under this section (including covenants not to sue), no provision of this chapter shall be construed to preclude or otherwise affect the applicability of general principles of law regarding the setting aside or modification of consent decrees or other settlements.

(Pub. L. 96-510, title I, §122, as added Pub. L. 99-499, title I, §122(a), Oct. 17, 1986, 100 Stat. 1678; amended Pub. L. 107-118, title I, §102(b), Jan. 11, 2002, 115 Stat. 2359.)

REFERENCES IN TEXT

The Federal Rules of Evidence, referred to in subsec. (d)(1)(B), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

2002—Subsec. (g)(7) to (12). Pub. L. 107-118 added pars. (7) to (12).

EFFECT ON CONCLUDED ACTIONS

Amendment by Pub. L. 107-118 not to apply to or in any way affect any settlement lodged in, or judgment issued by, a United States District Court, or any administrative settlement or order entered into or issued by the United States or any State, before Jan. 11, 2002, see section 103 of Pub. L. 107-118, set out as a note under section 9607 of this title.

COORDINATION OF TITLES I TO IV OF PUB. L. 99-499

Any provision of titles I to IV of Pub. L. 99-499, imposing any tax, premium, or fee; establishing any trust fund; or authorizing expenditures from any trust fund, to have no force or effect, see section 531 of Pub. L. 99-499, set out as a note under section 1 of Title 26, Internal Revenue Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9604, 9609, 9613, 9617, 9619, 9620, 9657 of this title; title 10 section 2701; title 14 section 691.

§ 9623. Reimbursement to local governments

(a) Application

Any general purpose unit of local government for a political subdivision which is affected by a release or threatened release at any facility may apply to the President for reimbursement under this section.

(b) Reimbursement

(1) Temporary emergency measures

The President is authorized to reimburse local community authorities for expenses incurred (before or after October 17, 1986) in carrying out temporary emergency measures necessary to prevent or mitigate injury to human health or the environment associated with the release or threatened release of any hazardous substance or pollutant or contaminant. Such measures may include, where appropriate, security fencing to limit access, response to fires and explosions, and other measures which require immediate response at the local level.

(2) Local funds not supplanted

Reimbursement under this section shall not supplant local funds normally provided for response.

(c) Amount

The amount of any reimbursement to any local authority under subsection (b)(1) of this section may not exceed \$25,000 for a single response. The reimbursement under this section with respect to a single facility shall be limited to the units of local government having jurisdiction over the political subdivision in which the facility is located.

(d) Procedure

Reimbursements authorized pursuant to this section shall be in accordance with rules promulgated by the Administrator within one year after October 17, 1986.

(Pub. L. 96-510, title I, §123, as added Pub. L. 99-499, title I, §123(a), Oct. 17, 1986, 100 Stat. 1688.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9611 of this title.

§ 9624. Methane recovery

(a) In general

In the case of a facility at which equipment for the recovery or processing (including recirculation of condensate) of methane has been installed, for purposes of this chapter:

(1) The owner or operator of such equipment shall not be considered an "owner or operator", as defined in section 9601(20) of this title, with respect to such facility.

(2) The owner or operator of such equipment shall not be considered to have arranged for disposal or treatment of any hazardous substance at such facility pursuant to section 9607 of this title.

(3) The owner or operator of such equipment shall not be subject to any action under section 9606 of this title with respect to such facility.

(b) Exceptions

Subsection (a) of this section does not apply with respect to a release or threatened release of a hazardous substance from a facility described in subsection (a) of this section if either of the following circumstances exist:

(1) The release or threatened release was primarily caused by activities of the owner or operator of the equipment described in subsection (a) of this section.

(2) The owner or operator of such equipment would be covered by paragraph (1), (2), (3), or (4) of subsection (a) of section 9607 of this title with respect to such release or threatened release if he were not the owner or operator of such equipment.

In the case of any release or threatened release referred to in paragraph (1), the owner or operator of the equipment described in subsection (a) of this section shall be liable under this chapter only for costs or damages primarily caused by the activities of such owner or operator.

(Pub. L. 96-510, title I, §124, as added Pub. L. 99-499, title I, §124(a), Oct. 17, 1986, 100 Stat. 1688.)

§ 9625. Section 6921(b)(3)(A)(i) waste**(a) Revision of hazard ranking system**

This section shall apply only to facilities which are not included or proposed for inclusion on the National Priorities List and which contain substantial volumes of waste described in section 6921(b)(3)(A)(i) of this title. As expeditiously as practicable, the President shall revise the hazard ranking system in effect under the National Contingency Plan with respect to such facilities in a manner which assures appropriate consideration of each of the following site-specific characteristics of such facilities:

(1) The quantity, toxicity, and concentrations of hazardous constituents which are present in such waste and a comparison thereof with other wastes.

(2) The extent of, and potential for, release of such hazardous constituents into the environment.

(3) The degree of risk to human health and the environment posed by such constituents.

(b) Inclusion prohibited

Until the hazard ranking system is revised as required by this section, the President may not include on the National Priorities List any facility which contains substantial volumes of waste described in section 6921(b)(3)(A)(i) of this title on the basis of an evaluation made principally on the volume of such waste and not on the concentrations of the hazardous constituents of such waste. Nothing in this section shall be construed to affect the President's authority to include any such facility on the National Priorities List based on the presence of other substances at such facility or to exercise any other authority of this chapter with respect to such other substances.

(Pub. L. 96-510, title I, §125, as added Pub. L. 99-499, title I, §125, Oct. 17, 1986, 100 Stat. 1689.)

§ 9626. Indian tribes**(a) Treatment generally**

The governing body of an Indian tribe shall be afforded substantially the same treatment as a State with respect to the provisions of section 9603(a) of this title (regarding notification of releases), section 9604(c)(2) of this title (regarding consultation on remedial actions), section 9604(e) of this title (regarding access to information), section 9604(i) of this title (regarding health authorities) and section 9605 of this title (regarding roles and responsibilities under the national contingency plan and submittal of priorities for remedial action, but not including the provision regarding the inclusion of at least one facility per State on the National Priorities List).

(b) Community relocation

Should the President determine that proper remedial action is the permanent relocation of tribal members away from a contaminated site because it is cost effective and necessary to protect their health and welfare, such finding must be concurred in by the affected tribal government before relocation shall occur. The President, in cooperation with the Secretary of the Interior, shall also assure that all benefits of the

relocation program are provided to the affected tribe and that alternative land of equivalent value is available and satisfactory to the tribe. Any lands acquired for relocation of tribal members shall be held in trust by the United States for the benefit of the tribe.

(c) Study

The President shall conduct a survey, in consultation with the Indian tribes, to determine the extent of hazardous waste sites on Indian lands. Such survey shall be included within a report which shall make recommendations on the program needs of tribes under this chapter, with particular emphasis on how tribal participation in the administration of such programs can be maximized. Such report shall be submitted to Congress along with the President's budget request for fiscal year 1988.

(d) Limitation

Notwithstanding any other provision of this chapter, no action under this chapter by an Indian tribe shall be barred until the later of the following:

(1) The applicable period of limitations has expired.

(2) 2 years after the United States, in its capacity as trustee for the tribe, gives written notice to the governing body of the tribe that it will not present a claim or commence an action on behalf of the tribe or fails to present a claim or commence an action within the time limitations specified in this chapter.

(Pub. L. 96-510, title I, §126, as added Pub. L. 99-499, title II, §207(e), Oct. 17, 1986, 100 Stat. 1706.)

§ 9627. Recycling transactions**(a) Liability clarification**

(1) As provided in subsections (b), (c), (d), and (e) of this section, a person who arranged for recycling of recyclable material shall not be liable under sections 9607(a)(3) and 9607(a)(4) of this title with respect to such material.

(2) A determination whether or not any person shall be liable under section 9607(a)(3) of this title or section 9607(a)(4) of this title for any material that is not a recyclable material as that term is used in subsections (b) and (c), (d), or (e) of this section shall be made, without regard to subsections¹ (b), (c), (d), or (e) of this section.

(b) Recyclable material defined

For purposes of this section, the term "recyclable material" means scrap paper, scrap plastic, scrap glass, scrap textiles, scrap rubber (other than whole tires), scrap metal, or spent lead-acid, spent nickel-cadmium, and other spent batteries, as well as minor amounts of material incident to or adhering to the scrap material as a result of its normal and customary use prior to becoming scrap; except that such term shall not include—

(1) shipping containers of a capacity from 30 liters to 3,000 liters, whether intact or not, having any hazardous substance (but not metal bits and pieces or hazardous substance that form an integral part of the container) contained in or adhering thereto; or

¹ So in original. Probably should be "subsection".

(2) any item of material that contained polychlorinated biphenyls at a concentration in excess of 50 parts per million or any new standard promulgated pursuant to applicable Federal laws.

(c) Transactions involving scrap paper, plastic, glass, textiles, or rubber

Transactions involving scrap paper, scrap plastic, scrap glass, scrap textiles, or scrap rubber (other than whole tires) shall be deemed to be arranging for recycling if the person who arranged for the transaction (by selling recyclable material or otherwise arranging for the recycling of recyclable material) can demonstrate by a preponderance of the evidence that all of the following criteria were met at the time of the transaction:

(1) The recyclable material met a commercial specification grade.

(2) A market existed for the recyclable material.

(3) A substantial portion of the recyclable material was made available for use as feedstock for the manufacture of a new saleable product.

(4) The recyclable material could have been a replacement or substitute for a virgin raw material, or the product to be made from the recyclable material could have been a replacement or substitute for a product made, in whole or in part, from a virgin raw material.

(5) For transactions occurring 90 days or more after November 29, 1999, the person exercised reasonable care to determine that the facility where the recyclable material was handled, processed, reclaimed, or otherwise managed by another person (hereinafter in this section referred to as a "consuming facility") was in compliance with substantive (not procedural or administrative) provisions of any Federal, State, or local environmental law or regulation, or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, storage, or other management activities associated with recyclable material.

(6) For purposes of this subsection, "reasonable care" shall be determined using criteria that include (but are not limited to)—

(A) the price paid in the recycling transaction;

(B) the ability of the person to detect the nature of the consuming facility's operations concerning its handling, processing, reclamation, or other management activities associated with recyclable material; and

(C) the result of inquiries made to the appropriate Federal, State, or local environmental agency (or agencies) regarding the consuming facility's past and current compliance with substantive (not procedural or administrative) provisions of any Federal, State, or local environmental law or regulation, or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, storage, or other management activities associated with the recyclable material. For the purposes of this paragraph, a requirement to obtain a permit applicable to the handling, processing, rec-

lamation, or other management activity associated with the recyclable materials shall be deemed to be a substantive provision.

(d) Transactions involving scrap metal

(1) Transactions involving scrap metal shall be deemed to be arranging for recycling if the person who arranged for the transaction (by selling recyclable material or otherwise arranging for the recycling of recyclable material) can demonstrate by a preponderance of the evidence that at the time of the transaction—

(A) the person met the criteria set forth in subsection (c) of this section with respect to the scrap metal;

(B) the person was in compliance with any applicable regulations or standards regarding the storage, transport, management, or other activities associated with the recycling of scrap metal that the Administrator promulgates under the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.] subsequent to November 29, 1999, and with regard to transactions occurring after the effective date of such regulations or standards; and

(C) the person did not melt the scrap metal prior to the transaction.

(2) For purposes of paragraph (1)(C), melting of scrap metal does not include the thermal separation of 2 or more materials due to differences in their melting points (referred to as "sweating").

(3) For purposes of this subsection, the term "scrap metal" means bits and pieces of metal parts (e.g., bars, turnings, rods, sheets, wire) or metal pieces that may be combined together with bolts or soldering (e.g., radiators, scrap automobiles, railroad box cars), which when worn or superfluous can be recycled, except for scrap metals that the Administrator excludes from this definition by regulation.

(e) Transactions involving batteries

Transactions involving spent lead-acid batteries, spent nickel-cadmium batteries, or other spent batteries shall be deemed to be arranging for recycling if the person who arranged for the transaction (by selling recyclable material or otherwise arranging for the recycling of recyclable material) can demonstrate by a preponderance of the evidence that at the time of the transaction—

(1) the person met the criteria set forth in subsection (c) of this section with respect to the spent lead-acid batteries, spent nickel-cadmium batteries, or other spent batteries, but the person did not recover the valuable components of such batteries; and

(2)(A) with respect to transactions involving lead-acid batteries, the person was in compliance with applicable Federal environmental regulations or standards, and any amendments thereto, regarding the storage, transport, management, or other activities associated with the recycling of spent lead-acid batteries;

(B) with respect to transactions involving nickel-cadmium batteries, Federal environmental regulations or standards are in effect regarding the storage, transport, management, or other activities associated with the recycling of spent nickel-cadmium batteries,

and the person was in compliance with applicable regulations or standards or any amendments thereto; or

(C) with respect to transactions involving other spent batteries, Federal environmental regulations or standards are in effect regarding the storage, transport, management, or other activities associated with the recycling of such batteries, and the person was in compliance with applicable regulations or standards or any amendments thereto.

(f) Exclusions

(1) The exemptions set forth in subsections (c), (d), and (e) of this section shall not apply if—

(A) the person had an objectively reasonable basis to believe at the time of the recycling transaction—

(i) that the recyclable material would not be recycled;

(ii) that the recyclable material would be burned as fuel, or for energy recovery or incineration; or

(iii) for transactions occurring before 90 days after November 29, 1999, that the consuming facility was not in compliance with a substantive (not procedural or administrative) provision of any Federal, State, or local environmental law or regulation, or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, or other management activities associated with the recyclable material;

(B) the person had reason to believe that hazardous substances had been added to the recyclable material for purposes other than processing for recycling; or

(C) the person failed to exercise reasonable care with respect to the management and handling of the recyclable material (including adhering to customary industry practices current at the time of the recycling transaction designed to minimize, through source control, contamination of the recyclable material by hazardous substances).

(2) For purposes of this subsection, an objectively reasonable basis for belief shall be determined using criteria that include (but are not limited to) the size of the person's business, customary industry practices (including customary industry practices current at the time of the recycling transaction designed to minimize, through source control, contamination of the recyclable material by hazardous substances), the price paid in the recycling transaction, and the ability of the person to detect the nature of the consuming facility's operations concerning its handling, processing, reclamation, or other management activities associated with the recyclable material.

(3) For purposes of this subsection, a requirement to obtain a permit applicable to the handling, processing, reclamation, or other management activities associated with recyclable material shall be deemed to be a substantive provision.

(g) Effect on other liability

Nothing in this section shall be deemed to affect the liability of a person under paragraph (1) or (2) of section 9607(a) of this title.

(h) Regulations

The Administrator has the authority, under section 9615 of this title, to promulgate additional regulations concerning this section.

(i) Effect on pending or concluded actions

The exemptions provided in this section shall not affect any concluded judicial or administrative action or any pending judicial action initiated by the United States prior to November 29, 1999.

(j) Liability for attorney's fees for certain actions

Any person who commences an action in contribution against a person who is not liable by operation of this section shall be liable to that person for all reasonable costs of defending that action, including all reasonable attorney's and expert witness fees.

(k) Relationship to liability under other laws

Nothing in this section shall affect—

(1) liability under any other Federal, State, or local statute or regulation promulgated pursuant to any such statute, including any requirements promulgated by the Administrator under the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.]; or

(2) the ability of the Administrator to promulgate regulations under any other statute, including the Solid Waste Disposal Act.

(l) Limitation on statutory construction

Nothing in this section shall be construed to—

(1) affect any defenses or liabilities of any person to whom subsection (a)(1) of this section does not apply; or

(2) create any presumption of liability against any person to whom subsection (a)(1) of this section does not apply.

(Pub. L. 96-510, title I, §127, as added Pub. L. 106-113, div. B, §1000(a)(9) [title VI, §6001(b)(1)], Nov. 29, 1999, 113 Stat. 1536, 1501A-599.)

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsecs. (d)(1)(B) and (k), is title II of Pub. L. 89-272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

SUPERFUND RECYCLING EQUITY; PURPOSES

Pub. L. 106-113, div. B, §1000(a)(9) [title VI, §6001(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A-598, provided that: "The purposes of this section [enacting this section] are—

"(1) to promote the reuse and recycling of scrap material in furtherance of the goals of waste minimization and natural resource conservation while protecting human health and the environment;

"(2) to create greater equity in the statutory treatment of recycled versus virgin materials; and

"(3) to remove the disincentives and impediments to recycling created as an unintended consequence of the 1980 Superfund liability provisions."

§ 9628. State response programs

(a) Assistance to States

(1) In general

(A) States

The Administrator may award a grant to a State or Indian tribe that—

- (i) has a response program that includes each of the elements, or is taking reasonable steps to include each of the elements, listed in paragraph (2); or
- (ii) is a party to a memorandum of agreement with the Administrator for voluntary response programs.

(B) Use of grants by States

(i) In general

A State or Indian tribe may use a grant under this subsection to establish or enhance the response program of the State or Indian tribe.

(ii) Additional uses

In addition to the uses under clause (i), a State or Indian tribe may use a grant under this subsection to—

- (I) capitalize a revolving loan fund for brownfield remediation under section 9604(k)(3) of this title; or
- (II) purchase insurance or develop a risk sharing pool, an indemnity pool, or insurance mechanism to provide financing for response actions under a State response program.

(2) Elements

The elements of a State or Indian tribe response program referred to in paragraph (1)(A)(i) are the following:

- (A) Timely survey and inventory of brownfield sites in the State.
- (B) Oversight and enforcement authorities or other mechanisms, and resources, that are adequate to ensure that—
 - (i) a response action will—
 - (I) protect human health and the environment; and
 - (II) be conducted in accordance with applicable Federal and State law; and
 - (ii) if the person conducting the response action fails to complete the necessary response activities, including operation and maintenance or long-term monitoring activities, the necessary response activities are completed.
- (C) Mechanisms and resources to provide meaningful opportunities for public participation, including—
 - (i) public access to documents that the State, Indian tribe, or party conducting the cleanup is relying on or developing in making cleanup decisions or conducting site activities;
 - (ii) prior notice and opportunity for comment on proposed cleanup plans and site activities; and
 - (iii) a mechanism by which—
 - (I) a person that is or may be affected by a release or threatened release of a hazardous substance, pollutant, or contaminant at a brownfield site located in the community in which the person works or resides may request the conduct of a site assessment; and
 - (II) an appropriate State official shall consider and appropriately respond to a request under subclause (I).
- (D) Mechanisms for approval of a cleanup plan, and a requirement for verification by

and certification or similar documentation from the State, an Indian tribe, or a licensed site professional to the person conducting a response action indicating that the response is complete.

(3) Funding

There is authorized to be appropriated to carry out this subsection \$50,000,000 for each of fiscal years 2002 through 2006.

(b) Enforcement in cases of a release subject to State program

(1) Enforcement

(A) In general

Except as provided in subparagraph (B) and subject to subparagraph (C), in the case of an eligible response site at which—

- (i) there is a release or threatened release of a hazardous substance, pollutant, or contaminant; and
- (ii) a person is conducting or has completed a response action regarding the specific release that is addressed by the response action that is in compliance with the State program that specifically governs response actions for the protection of public health and the environment,

the President may not use authority under this chapter to take an administrative or judicial enforcement action under section 9606(a) of this title or to take a judicial enforcement action to recover response costs under section 9607(a) of this title against the person regarding the specific release that is addressed by the response action.

(B) Exceptions

The President may bring an administrative or judicial enforcement action under this chapter during or after completion of a response action described in subparagraph (A) with respect to a release or threatened release at an eligible response site described in that subparagraph if—

- (i) the State requests that the President provide assistance in the performance of a response action;
- (ii) the Administrator determines that contamination has migrated or will migrate across a State line, resulting in the need for further response action to protect human health or the environment, or the President determines that contamination has migrated or is likely to migrate onto property subject to the jurisdiction, custody, or control of a department, agency, or instrumentality of the United States and may impact the authorized purposes of the Federal property;
- (iii) after taking into consideration the response activities already taken, the Administrator determines that—

- (I) a release or threatened release may present an imminent and substantial endangerment to public health or welfare or the environment; and
- (II) additional response actions are likely to be necessary to address, prevent, limit, or mitigate the release or threatened release; or

(iv) the Administrator, after consultation with the State, determines that information, that on the earlier of the date on which cleanup was approved or completed, was not known by the State, as recorded in documents prepared or relied on in selecting or conducting the cleanup, has been discovered regarding the contamination or conditions at a facility such that the contamination or conditions at the facility present a threat requiring further remediation to protect public health or welfare or the environment. Consultation with the State shall not limit the ability of the Administrator to make this determination.

(C) Public record

The limitations on the authority of the President under subparagraph (A) apply only at sites in States that maintain, update not less than annually, and make available to the public a record of sites, by name and location, at which response actions have been completed in the previous year and are planned to be addressed under the State program that specifically governs response actions for the protection of public health and the environment in the upcoming year. The public record shall identify whether or not the site, on completion of the response action, will be suitable for unrestricted use and, if not, shall identify the institutional controls relied on in the remedy. Each State and tribe receiving financial assistance under subsection (a) of this section shall maintain and make available to the public a record of sites as provided in this paragraph.

(D) EPA notification

(i) In general

In the case of an eligible response site at which there is a release or threatened release of a hazardous substance, pollutant, or contaminant and for which the Administrator intends to carry out an action that may be barred under subparagraph (A), the Administrator shall—

(I) notify the State of the action the Administrator intends to take; and

(II)(aa) wait 48 hours for a reply from the State under clause (ii); or

(bb) if the State fails to reply to the notification or if the Administrator makes a determination under clause (iii), take immediate action under that clause.

(ii) State reply

Not later than 48 hours after a State receives notice from the Administrator under clause (i), the State shall notify the Administrator if—

(I) the release at the eligible response site is or has been subject to a cleanup conducted under a State program; and

(II) the State is planning to abate the release or threatened release, any actions that are planned.

(iii) Immediate Federal action

The Administrator may take action immediately after giving notification under

clause (i) without waiting for a State reply under clause (ii) if the Administrator determines that one or more exceptions under subparagraph (B) are met.

(E) Report to Congress

Not later than 90 days after the date of initiation of any enforcement action by the President under clause (ii), (iii), or (iv) of subparagraph (B), the President shall submit to Congress a report describing the basis for the enforcement action, including specific references to the facts demonstrating that enforcement action is permitted under subparagraph (B).

(2) Savings provision

(A) Costs incurred prior to limitations

Nothing in paragraph (1) precludes the President from seeking to recover costs incurred prior to January 11, 2002, or during a period in which the limitations of paragraph (1)(A) were not applicable.

(B) Effect on agreements between States and EPA

Nothing in paragraph (1)—

(i) modifies or otherwise affects a memorandum of agreement, memorandum of understanding, or any similar agreement relating to this chapter between a State agency or an Indian tribe and the Administrator that is in effect on or before January 11, 2002 (which agreement shall remain in effect, subject to the terms of the agreement); or

(ii) limits the discretionary authority of the President to enter into or modify an agreement with a State, an Indian tribe, or any other person relating to the implementation by the President of statutory authorities.

(3) Effective date

This subsection applies only to response actions conducted after February 15, 2001.

(c) Effect on Federal laws

Nothing in this section affects any liability or response authority under any Federal law, including—

(1) this chapter, except as provided in subsection (b) of this section;

(2) the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);

(3) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

(4) the Toxic Substances Control Act (15 U.S.C. 2601 et seq.); and

(5) the Safe Drinking Water Act (42 U.S.C. 300f et seq.).

(Pub. L. 96-510, title I, §128, as added Pub. L. 107-118, title II, §231(b), Jan. 11, 2002, 115 Stat. 2375.)

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsec. (c)(2), is title II of Pub. L. 89-272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

The Federal Water Pollution Control Act, referred to in subsec. (c)(3), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§ 1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Toxic Substances Control Act, referred to in subsec. (c)(4), is Pub. L. 94-469, Oct. 11, 1976, 90 Stat. 2003, as amended, which is classified generally to chapter 53 (§ 2601 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 15 and Tables.

The Safe Drinking Water Act, referred to in subsec. (c)(5), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93-523, § 2(a), 88 Stat. 1660, as amended, which is classified generally to subchapter XII (§ 300f et seq.) of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9601 of this title.

SUBCHAPTER II—HAZARDOUS SUBSTANCE RESPONSE REVENUE

PART A—HAZARDOUS SUBSTANCE RESPONSE TRUST FUND

§§ 9631 to 9633. Repealed. Pub. L. 99-499, title V, § 517(c)(1), Oct. 17, 1986, 100 Stat. 1774

Section 9631, Pub. L. 96-510, title II, § 221, Dec. 11, 1980, 94 Stat. 2801; Pub. L. 99-499, title II, § 204, Oct. 17, 1986, 100 Stat. 1696, provided for establishment of a Hazardous Substances Superfund, so redesignated by section 204 of Pub. L. 99-499. See section 9507 of Title 26, Internal Revenue Code.

Section 9632, Pub. L. 96-510, title II, § 222, Dec. 11, 1980, 94 Stat. 2802, limited liability of United States to amount in Trust Fund.

Section 9633, Pub. L. 96-510, title II, § 223, Dec. 11, 1980, 94 Stat. 2802, contained administrative provisions.

EFFECTIVE DATE OF REPEAL

Repeal by Pub. L. 99-499 effective Jan. 1, 1987, see section 517(e) of Pub. L. 99-499, set out as an Effective Date note under section 9507 of Title 26, Internal Revenue Code.

PART B—POST-CLOSURE LIABILITY TRUST FUND

§ 9641. Repealed. Pub. L. 99-499, title V, § 514(b), Oct. 17, 1986, 100 Stat. 1767

Section, Pub. L. 96-510, title II, § 232, Dec. 11, 1980, 94 Stat. 2804, provided for establishment of the Post-closure Liability Trust Fund in the Treasury of the United States.

EFFECTIVE DATE OF REPEAL

Section 514(c) of Pub. L. 99-499 provided that:

“(1) IN GENERAL.—The amendments made by this section [repealing this section and sections 4681 and 4682 of Title 26, Internal Revenue Code] shall take effect on October 1, 1983.

“(2) WAIVER OF STATUTE OF LIMITATIONS.—If on the date of the enactment of this Act [Oct. 17, 1986] (or at any time within 1 year after such date of enactment) refund or credit of any overpayment of tax resulting from the application of this section is barred by any law or rule of law, refund or credit of such overpayment shall, nevertheless, be made or allowed if claim therefor is filed before the date 1 year after the date of the enactment of this Act.”

SUBCHAPTER III—MISCELLANEOUS PROVISIONS

§ 9651. Reports and studies

(a) Implementation experiences; identification and disposal of waste

(1) The President shall submit to the Congress, within four years after December 11, 1980, a comprehensive report on experience with the implementation of this chapter including, but not limited to—

(A) the extent to which the chapter and Fund are effective in enabling Government to respond to and mitigate the effects of releases of hazardous substances;

(B) a summary of past receipts and disbursements from the Fund;

(C) a projection of any future funding needs remaining after the expiration of authority to collect taxes, and of the threat to public health, welfare, and the environment posed by the projected releases which create any such needs;

(D) the record and experience of the Fund in recovering Fund disbursements from liable parties;

(E) the record of State participation in the system of response, liability, and compensation established by this chapter;

(F) the impact of the taxes imposed by subchapter II¹ of this chapter on the Nation's balance of trade with other countries;

(G) an assessment of the feasibility and desirability of a schedule of taxes which would take into account one or more of the following: the likelihood of a release of a hazardous substance, the degree of hazard and risk of harm to public health, welfare, and the environment resulting from any such release, incentives to proper handling, recycling, incineration, and neutralization of hazardous wastes, and disincentives to improper or illegal handling or disposal of hazardous materials, administrative and reporting burdens on Government and industry, and the extent to which the tax burden falls on the substances and parties which create the problems addressed by this chapter. In preparing the report, the President shall consult with appropriate Federal, State, and local agencies, affected industries and claimants, and such other interested parties as he may find useful. Based upon the analyses and consultation required by this subsection, the President shall also include in the report any recommendations for legislative changes he may deem necessary for the better effectuation of the purposes of this chapter, including but not limited to recommendations concerning authorization levels, taxes, State participation, liability and liability limits, and financial responsibility provisions for the Response Trust Fund and the Post-closure Liability Trust Fund;

(H) an exemption from or an increase in the substances or the amount of taxes imposed by section 4661 of title 26 for copper, lead, and zinc oxide, and for feedstocks when used in the

¹ See References in Text note below.

manufacture and production of fertilizers, based upon the expenditure experience of the Response Trust Fund;

(1) the economic impact of taxing coal-derived substances and recycled metals.

(2) The Administrator of the Environmental Protection Agency (in consultation with the Secretary of the Treasury) shall submit to the Congress (i) within four years after December 11, 1980, a report identifying additional wastes designated by rule as hazardous after the effective date of this chapter and pursuant to section 3001 of the Solid Waste Disposal Act [42 U.S.C. 6921] and recommendations on appropriate tax rates for such wastes for the Post-closure Liability Trust Fund. The report shall, in addition, recommend a tax rate, considering the quantity and potential danger to human health and the environment posed by the disposal of any wastes which the Administrator, pursuant to subsection 3001(b)(2)(B) and subsection 3001(b)(3)(A) of the Solid Waste Disposal Act of 1980 [42 U.S.C. 6921(b)(2)(B) and 6921(b)(3)(A)], has determined should be subject to regulation under subtitle C of such Act [42 U.S.C. 6921 et seq.], (ii) within three years after December 11, 1980, a report on the necessity for and the adequacy of the revenue raised, in relation to estimated future requirements, of the Post-closure Liability Trust Fund.

(b) Private insurance protection

The President shall conduct a study to determine (1) whether adequate private insurance protection is available on reasonable terms and conditions to the owners and operators of vessels and facilities subject to liability under section 9607 of this title, and (2) whether the market for such insurance is sufficiently competitive to assure purchasers of features such as a reasonable range of deductibles, coinsurance provisions, and exclusions. The President shall submit the results of his study, together with his recommendations, within two years of December 11, 1980, and shall submit an interim report on his study within one year of December 11, 1980.

(c) Regulations respecting assessment of damages to natural resources

(1) The President, acting through Federal officials designated by the National Contingency Plan published under section 9605 of this title, shall study and, not later than two years after December 11, 1980, shall promulgate regulations for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a release of oil or a hazardous substance for the purposes of this chapter and section 1321(f)(4) and (5) of title 33. Notwithstanding the failure of the President to promulgate the regulations required under this subsection on the required date, the President shall promulgate such regulations not later than 6 months after October 17, 1986.

(2) Such regulations shall specify (A) standard procedures for simplified assessments requiring minimal field observation, including establishing measures of damages based on units of discharge or release or units of affected area, and (B) alternative protocols for conducting assess-

ments in individual cases to determine the type and extent of short- and long-term injury, destruction, or loss. Such regulations shall identify the best available procedures to determine such damages, including both direct and indirect injury, destruction, or loss and shall take into consideration factors including, but not limited to, replacement value, use value, and ability of the ecosystem or resource to recover.

(3) Such regulations shall be reviewed and revised as appropriate every two years.

(d) Issues, alternatives, and policy considerations involving selection of locations for waste treatment, storage, and disposal facilities

The Administrator of the Environmental Protection Agency shall, in consultation with other Federal agencies and appropriate representatives of State and local governments and non-governmental agencies, conduct a study and report to the Congress within two years of December 11, 1980, on the issues, alternatives, and policy considerations involved in the selection of locations for hazardous waste treatment, storage, and disposal facilities. This study shall include—

(A) an assessment of current and projected treatment, storage, and disposal capacity needs and shortfalls for hazardous waste by management category on a State-by-State basis;

(B) an evaluation of the appropriateness of a regional approach to siting and designing hazardous waste management facilities and the identification of hazardous waste management regions, interstate or intrastate, or both, with similar hazardous waste management needs;

(C) solicitation and analysis of proposals for the construction and operation of hazardous waste management facilities by nongovernmental entities, except that no proposal solicited under terms of this subsection shall be analyzed if it involves cost to the United States Government or fails to comply with the requirements of subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.] and other applicable provisions of law;

(D) recommendations on the appropriate balance between public and private sector involvement in the siting, design, and operation of new hazardous waste management facilities;

(E) documentation of the major reasons for public opposition to new hazardous waste management facilities; and

(F) an evaluation of the various options for overcoming obstacles to siting new facilities, including needed legislation for implementing the most suitable option or options.

(e) Adequacy of existing common law and statutory remedies

(1) In order to determine the adequacy of existing common law and statutory remedies in providing legal redress for harm to man and the environment caused by the release of hazardous substances into the environment, there shall be submitted to the Congress a study within twelve months of December 11, 1980.

(2) This study shall be conducted with the assistance of the American Bar Association, the

American Law Institute, the Association of American Trial Lawyers, and the National Association of State Attorneys General with the President of each entity selecting three members from each organization to conduct the study. The study chairman and one reporter shall be elected from among the twelve members of the study group.

(3) As part of their review of the adequacy of existing common law and statutory remedies, the study group shall evaluate the following:

(A) the nature, adequacy, and availability of existing remedies under present law in compensating for harm to man from the release of hazardous substances;

(B) the nature of barriers to recovery (particularly with respect to burdens of going forward and of proof and relevancy) and the role such barriers play in the legal system;

(C) the scope of the evidentiary burdens placed on the plaintiff in proving harm from the release of hazardous substances, particularly in light of the scientific uncertainty over causation with respect to—

(i) carcinogens, mutagens, and teratogens, and

(ii) the human health effects of exposure to low doses of hazardous substances over long periods of time;

(D) the nature and adequacy of existing remedies under present law in providing compensation for damages to natural resources from the release of hazardous substances;

(E) the scope of liability under existing law and the consequences, particularly with respect to obtaining insurance, of any changes in such liability;

(F) barriers to recovery posed by existing statutes of limitations.

(4) The report shall be submitted to the Congress with appropriate recommendations. Such recommendations shall explicitly address—

(A) the need for revisions in existing statutory or common law, and

(B) whether such revisions should take the form of Federal statutes or the development of a model code which is recommended for adoption by the States.

(5) The Fund shall pay administrative expenses incurred for the study. No expenses shall be available to pay compensation, except expenses on a per diem basis for the one reporter, but in no case shall the total expenses of the study exceed \$300,000.

(f) Modification of national contingency plan

The President, acting through the Administrator of the Environmental Protection Agency, the Secretary of Transportation, the Administrator of the Occupational Safety and Health Administration, and the Director of the National Institute for Occupational Safety and Health shall study and, not later than two years after December 11, 1980, shall modify the national contingency plan to provide for the protection of the health and safety of employees involved in response actions.

(g) Insurability study

(1) Study by Comptroller General

The Comptroller General of the United States, in consultation with the persons de-

scribed in paragraph (2), shall undertake a study to determine the insurability, and effects on the standard of care, of the liability of each of the following:

(A) Persons who generate hazardous substances: liability for costs and damages under this chapter.

(B) Persons who own or operate facilities: liability for costs and damages under this chapter.

(C) Persons liable for injury to persons or property caused by the release of hazardous substances into the environment.

(2) Consultation

In conducting the study under this subsection, the Comptroller General shall consult with the following:

(A) Representatives of the Administrator.

(B) Representatives of persons described in subparagraphs (A) through (C) of the preceding paragraph.

(C) Representatives (i) of groups or organizations comprised generally of persons adversely affected by releases or threatened releases of hazardous substances and (ii) of groups organized for protecting the interests of consumers.

(D) Representatives of property and casualty insurers.

(E) Representatives of reinsurers.

(F) Persons responsible for the regulation of insurance at the State level.

(3) Items evaluated

The study under this section shall include, among other matters, an evaluation of the following:

(A) Current economic conditions in, and the future outlook for, the commercial market for insurance and reinsurance.

(B) Current trends in statutory and common law remedies.

(C) The impact of possible changes in traditional standards of liability, proof, evidence, and damages on existing statutory and common law remedies.

(D) The effect of the standard of liability and extent of the persons upon whom it is imposed under this chapter on the protection of human health and the environment and on the availability, underwriting, and pricing of insurance coverage.

(E) Current trends, if any, in the judicial interpretation and construction of applicable insurance contracts, together with the degree to which amendments in the language of such contracts and the description of the risks assumed, could affect such trends.

(F) The frequency and severity of a representative sample of claims closed during the calendar year immediately preceding October 17, 1986.

(G) Impediments to the acquisition of insurance or other means of obtaining liability coverage other than those referred to in the preceding subparagraphs.

(H) The effects of the standards of liability and financial responsibility requirements imposed pursuant to this chapter on the cost of, and incentives for, developing and dem-

onstrating alternative and innovative treatment technologies, as well as waste generation minimization.

(4) Submission

The Comptroller General shall submit a report on the results of the study to Congress with appropriate recommendations within 12 months after October 17, 1986.

(Pub. L. 96-510, title III, §301, Dec. 11, 1980, 94 Stat. 2805; Pub. L. 99-499, title I, §107(d)(3), title II, §§208, 212, Oct. 17, 1986, 100 Stat. 1630, 1707, 1726; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1)(A), (E), (G), (c)(1), and (g), was in the original "this Act", meaning Pub. L. 96-510, Dec. 11, 1980, 94 Stat. 2767, as amended, known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, which enacted this chapter, section 6911a of this title, and sections 4611, 4612, 4661, 4662, 4681, and 4682 of Title 26, Internal Revenue Code, amended section 6911 of this title, section 1364 of Title 33, Navigation and Navigable Waters, and section 11901 of Title 49, Transportation, and enacted provisions set out as notes under section 6911 of this title and sections 1 and 4611 of Title 26. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

Subchapter II of this chapter, referred to in subsec. (a)(1)(F), was in the original "title II of this Act", meaning title II of Pub. L. 96-510, Dec. 11, 1980, 94 Stat. 2796, known as the Hazardous Substance Response Revenue Act of 1980, which enacted subchapter II of this chapter and sections 4611, 4612, 4661, 4662, 4681, and 4682 of Title 26. Sections 221 to 223 and 232 of Pub. L. 96-510, which were classified to sections 9631 to 9633 and 9641 of this title, comprising subchapter II of this chapter, were repealed by Pub. L. 99-499, title V, §§514(b), 517(c)(1), Oct. 17, 1986, 100 Stat. 1767, 1774. For complete classification of title II to the Code, see Short Title of 1980 Amendment note set out under section 1 of Title 26 and Tables.

For effective date of this chapter, referred to in subsec. (a)(2), see section 9652 of this title.

Subsection 3001(b)(2)(B) and subsection 3001(b)(3)(A) of the Solid Waste Disposal Act of 1980, referred to in subsec. (a)(2), probably mean section 3001(b)(2)(B) and (3)(A) of the Solid Waste Disposal Act, as amended by the Solid Waste Disposal Act Amendments of 1980, which enacted section 6921(b)(2)(B) and (3)(A) of this title.

The Solid Waste Disposal Act, referred to in subsecs. (a)(2) and (d)(C), is title II of Pub. L. 89-272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2795. Subtitle C of the Solid Waste Disposal Act is classified generally to subchapter III (§6921 et seq.) of chapter 82 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

CODIFICATION

Subsec. (h) of this section, which required the Administrator of the Environmental Protection Agency to submit an annual report to Congress of such Agency on the progress achieved in implementing this chapter during the preceding fiscal year, required the Inspector General of the Agency to review the report for reasonableness and accuracy and submit to Congress, as a part of that report, a report on the results of the review, and required the appropriate authorizing committees of Congress, after receiving those reports, to conduct oversight hearings to ensure that this chapter is being implemented according to the purposes of this

chapter and congressional intent in enacting this chapter, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 5th item on page 164 of House Document No. 103-7.

AMENDMENTS

1986—Subsec. (a)(1)(H), Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

Subsec. (c)(1), Pub. L. 99-499, §107(d)(3), inserted at end "Notwithstanding the failure of the President to promulgate the regulations required under this subsection on the required date, the President shall promulgate such regulations not later than 6 months after October 17, 1986."

Subsec. (g), Pub. L. 99-499, §208, added subsec. (g).

Subsec. (h), Pub. L. 99-499, §212, added subsec. (h).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9604, 9607, 9612, 9613 of this title.

§ 9652. Effective dates; savings provisions

(a) Unless otherwise provided, all provisions of this chapter shall be effective on December 11, 1980.

(b) Any regulation issued pursuant to any provisions of section 1321 of title 33 which is repealed or superseded by this chapter and which is in effect on the date immediately preceding the effective date of this chapter shall be deemed to be a regulation issued pursuant to the authority of this chapter and shall remain in full force and effect unless or until superseded by new regulations issued thereunder.

(c) Any regulation—

- (1) respecting financial responsibility,
- (2) issued pursuant to any provision of law repealed or superseded by this chapter, and
- (3) in effect on the date immediately preceding the effective date of this chapter shall be deemed to be a regulation issued pursuant to the authority of this chapter and shall remain in full force and effect unless or until superseded by new regulations issued thereunder.

(d) Nothing in this chapter shall affect or modify in any way the obligations or liabilities of any person under other Federal or State law, including common law, with respect to releases of hazardous substances or other pollutants or contaminants. The provisions of this chapter shall not be considered, interpreted, or construed in any way as reflecting a determination, in part or whole, of policy regarding the inapplicability of strict liability, or strict liability doctrines, to activities relating to hazardous substances, pollutants, or contaminants or other such activities.

(Pub. L. 96-510, title III, §302, Dec. 11, 1980, 94 Stat. 2808.)

§ 9653. Repealed. Pub. L. 99-499, title V, § 511(b), Oct. 17, 1986, 100 Stat. 1761

Section, Pub. L. 96-510, title III, §303, Dec. 11, 1980, 94 Stat. 2808, provided for termination of authority to collect taxes under this chapter.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 1987, see section 511(c) of Pub. L. 99-499, set out as an Effective Date of 1986 Amend-

ment note under section 4611 of Title 26, Internal Revenue Code.

§ 9654. Applicability of Federal water pollution control funding, etc., provisions

(a) Omitted

(b) One-half of the unobligated balance remaining before December 11, 1980, under subsection (k)¹ of section 1321 of title 33 and all sums appropriated under section 1364(b)¹ of title 33 shall be transferred to the Fund established under subchapter II¹ of this chapter.

(c) In any case in which any provision of section 1321 of title 33 is determined to be in conflict with any provisions of this chapter, the provisions of this chapter shall apply.

(Pub. L. 96-510, title III, §304, Dec. 11, 1980, 94 Stat. 2809.)

REFERENCES IN TEXT

Subsection (k) of section 1321 of title 33, referred to in subsec. (b), was repealed by Pub. L. 101-380, title II, §2002(b)(2), Aug. 18, 1990, 104 Stat. 507.

Section 1364(b) of title 33, referred to in subsec. (b), was repealed by Pub. L. 96-510, title III, §304(a), Dec. 11, 1980, 94 Stat. 2809.

Subchapter II of this chapter, referred to in subsec. (b), was in the original "title II of this Act", meaning title II of Pub. L. 96-510, Dec. 11, 1980, 94 Stat. 2796, known as the Hazardous Substance Response Revenue Act of 1980, which enacted subchapter II of this chapter and sections 4611, 4612, 4661, 4662, 4681, and 4682 of Title 26, Internal Revenue Code. Sections 221 to 223 and 232 of Pub. L. 96-510, which were classified to sections 9631 to 9633 and 9641 of this title, comprising subchapter II of this chapter, were repealed by Pub. L. 99-499, title V, §514(b), 517(c)(1), Oct. 17, 1986, 100 Stat. 1767, 1774. For complete classification of title II to the Code, see Short Title of 1980 Amendment note set out under section 1 of Title 26 and Tables.

CODIFICATION

Subsec. (a) of this section repealed section 1364(b) of Title 33, Navigation and Navigable Waters.

§ 9655. Legislative veto of rule or regulation

(a) Transmission to Congress upon promulgation or repromulgation of rule or regulation; disapproval procedures

Notwithstanding any other provision of law, simultaneously with promulgation or repromulgation of any rule or regulation under authority of subchapter I of this chapter, the head of the department, agency, or instrumentality promulgating such rule or regulation shall transmit a copy thereof to the Secretary of the Senate and the Clerk of the House of Representatives. Except as provided in subsection (b) of this section, the rule or regulation shall not become effective, if—

(1) within ninety calendar days of continuous session of Congress after the date of promulgation, both Houses of Congress adopt a concurrent resolution, the matter after the resolving clause of which is as follows: "That Congress disapproves the rule or regulation promulgated by the _____ dealing with the matter of _____, which rule or regulation was transmitted to Congress on _____.", the blank spaces therein being appropriately filled; or

(2) within sixty calendar days of continuous session of Congress after the date of promulgation, one House of Congress adopts such a concurrent resolution and transmits such resolution to the other House, and such resolution is not disapproved by such other House within thirty calendar days of continuous session of Congress after such transmittal.

(b) Approval; effective dates

If, at the end of sixty calendar days of continuous session of Congress after the date of promulgation of a rule or regulation, no committee of either House of Congress has reported or been discharged from further consideration of a concurrent resolution disapproving the rule or regulation and neither House has adopted such a resolution, the rule or regulation may go into effect immediately. If, within such sixty calendar days, such a committee has reported or been discharged from further consideration of such a resolution, or either House has adopted such a resolution, the rule or regulation may go into effect not sooner than ninety calendar days of continuous session of Congress after such rule is prescribed unless disapproved as provided in subsection (a) of this section.

(c) Sessions of Congress as applicable

For purposes of subsections (a) and (b) of this section—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of thirty, sixty, and ninety calendar days of continuous session of Congress.

(d) Congressional inaction on, or rejection of, resolution of disapproval

Congressional inaction on, or rejection of, a resolution of disapproval shall not be deemed an expression of approval of such rule or regulation.

(Pub. L. 96-510, title III, §305, Dec. 11, 1980, 94 Stat. 2809.)

§ 9656. Transportation of hazardous substances; listing as hazardous material; liability for release

(a) Each hazardous substance which is listed or designated as provided in section 9601(14) of this title shall, within 30 days after October 17, 1986, or at the time of such listing or designation, whichever is later, be listed and regulated as a hazardous material under chapter 51 of title 49.

(b) A common or contract carrier shall be liable under other law in lieu of section 9607 of this title for damages or remedial action resulting from the release of a hazardous substance during the course of transportation which commenced prior to the effective date of the listing and regulation of such substance as a hazardous material under chapter 51 of title 49, or for substances listed pursuant to subsection (a) of this section, prior to the effective date of such listing: *Provided, however,* That this subsection shall not apply where such a carrier can demonstrate

¹ See References in Text note below.

that he did not have actual knowledge of the identity or nature of the substance released.

(Pub. L. 96-510, title III, §306(a), (b), Dec. 11, 1980, 94 Stat. 2810; Pub. L. 99-499, title II, §202, Oct. 17, 1986, 100 Stat. 1695.)

CODIFICATION

In subsecs. (a) and (b), “chapter 51 of title 49” substituted for “the Hazardous Materials Transportation Act [49 App. U.S.C. 1801 et seq.]” on authority of Pub. L. 103-272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-499, §202(a), substituted “within 30 days after October 17, 1986” for “within ninety days after December 11, 1980” and inserted “and regulated” before “as a hazardous material”.

Subsec. (b). Pub. L. 99-499, §202(b), inserted “and regulation” after “prior to the effective date of the listing”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 49 section 31301.

§ 9657. Separability; contribution

If any provision of this chapter, or the application of any provision of this chapter to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances and the remainder of this chapter shall not be affected thereby. If an administrative settlement under section 9622 of this title has the effect of limiting any person's right to obtain contribution from any party to such settlement, and if the effect of such limitation would constitute a taking without just compensation in violation of the fifth amendment of the Constitution of the United States, such person shall not be entitled, under other laws of the United States, to recover compensation from the United States for such taking, but in any such case, such limitation on the right to obtain contribution shall be treated as having no force and effect.

(Pub. L. 96-510, title III, §308, Dec. 11, 1980, 94 Stat. 2811; Pub. L. 99-499, title I, §122(b), Oct. 17, 1986, 100 Stat. 1688.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 96-510, Dec. 11, 1980, 94 Stat. 2767, as amended, known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, which enacted this chapter, section 6911a of this title, and sections 4611, 4612, 4661, 4662, 4681, and 4682 of Title 26, Internal Revenue Code, amended section 6911 of this title, section 1364 of Title 33, Navigation and Navigable Waters, and section 11901 of Title 49, Transportation, and enacted provisions set out as notes under section 6911 of this title and sections 1 and 4611 of Title 26. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

AMENDMENTS

1986—Pub. L. 99-499 inserted sentence at end relating to administrative settlements under section 9622 of this title which have effect of limiting any person's right to obtain contribution from any party to such settlement.

§ 9658. Actions under State law for damages from exposure to hazardous substances

(a) State statutes of limitations for hazardous substance cases

(1) Exception to State statutes

In the case of any action brought under State law for personal injury, or property damages, which are caused or contributed to by exposure to any hazardous substance, or pollutant or contaminant, released into the environment from a facility, if the applicable limitations period for such action (as specified in the State statute of limitations or under common law) provides a commencement date which is earlier than the federally required commencement date, such period shall commence at the federally required commencement date in lieu of the date specified in such State statute.

(2) State law generally applicable

Except as provided in paragraph (1), the statute of limitations established under State law shall apply in all actions brought under State law for personal injury, or property damages, which are caused or contributed to by exposure to any hazardous substance, or pollutant or contaminant, released into the environment from a facility.

(3) Actions under section 9607

Nothing in this section shall apply with respect to any cause of action brought under section 9607 of this title.

(b) Definitions

As used in this section—

(1) Subchapter I terms

The terms used in this section shall have the same meaning as when used in subchapter I of this chapter.

(2) Applicable limitations period

The term “applicable limitations period” means the period specified in a statute of limitations during which a civil action referred to in subsection (a)(1) of this section may be brought.

(3) Commencement date

The term “commencement date” means the date specified in a statute of limitations as the beginning of the applicable limitations period.

(4) Federally required commencement date

(A) In general

Except as provided in subparagraph (B), the term “federally required commencement date” means the date the plaintiff knew (or reasonably should have known) that the personal injury or property damages referred to in subsection (a)(1) of this section were caused or contributed to by the hazardous substance or pollutant or contaminant concerned.

(B) Special rules

In the case of a minor or incompetent plaintiff, the term “federally required commencement date” means the later of the

date referred to in subparagraph (A) or the following:

(i) In the case of a minor, the date on which the minor reaches the age of majority, as determined by State law, or has a legal representative appointed.

(ii) In the case of an incompetent individual, the date on which such individual becomes competent or has had a legal representative appointed.

(Pub. L. 96-510, title III, §309, as added Pub. L. 99-499, title II, §203(a), Oct. 17, 1986, 100 Stat. 1695.)

EFFECTIVE DATE

Section 203(b) of Pub. L. 99-499 provided that: "The amendment made by subsection (a) of this section [enacting this section] shall take effect with respect to actions brought after December 11, 1980."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9659 of this title.

§ 9659. Citizens suits

(a) Authority to bring civil actions

Except as provided in subsections (d) and (e) of this section and in section 9613(h) of this title (relating to timing of judicial review), any person may commence a civil action on his own behalf—

(1) against any person (including the United States and any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any standard, regulation, condition, requirement, or order which has become effective pursuant to this chapter (including any provision of an agreement under section 9620 of this title, relating to Federal facilities); or

(2) against the President or any other officer of the United States (including the Administrator of the Environmental Protection Agency and the Administrator of the ATSDR) where there is alleged a failure of the President or of such other officer to perform any act or duty under this chapter, including an act or duty under section 9620 of this title (relating to Federal facilities), which is not discretionary with the President or such other officer.

Paragraph (2) shall not apply to any act or duty under the provisions of section 9660 of this title (relating to research, development, and demonstration).

(b) Venue

(1) Actions under subsection (a)(1)

Any action under subsection (a)(1) of this section shall be brought in the district court for the district in which the alleged violation occurred.

(2) Actions under subsection (a)(2)

Any action brought under subsection (a)(2) of this section may be brought in the United States District Court for the District of Columbia.

(c) Relief

The district court shall have jurisdiction in actions brought under subsection (a)(1) of this

section to enforce the standard, regulation, condition, requirement, or order concerned (including any provision of an agreement under section 9620 of this title), to order such action as may be necessary to correct the violation, and to impose any civil penalty provided for the violation. The district court shall have jurisdiction in actions brought under subsection (a)(2) of this section to order the President or other officer to perform the act or duty concerned.

(d) Rules applicable to subsection (a)(1) actions

(1) Notice

No action may be commenced under subsection (a)(1) of this section before 60 days after the plaintiff has given notice of the violation to each of the following:

(A) The President.

(B) The State in which the alleged violation occurs.

(C) Any alleged violator of the standard, regulation, condition, requirement, or order concerned (including any provision of an agreement under section 9620 of this title).

Notice under this paragraph shall be given in such manner as the President shall prescribe by regulation.

(2) Diligent prosecution

No action may be commenced under paragraph (1) of subsection (a) of this section if the President has commenced and is diligently prosecuting an action under this chapter, or under the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.] to require compliance with the standard, regulation, condition, requirement, or order concerned (including any provision of an agreement under section 9620 of this title).

(e) Rules applicable to subsection (a)(2) actions

No action may be commenced under paragraph (2) of subsection (a) of this section before the 60th day following the date on which the plaintiff gives notice to the Administrator or other department, agency, or instrumentality that the plaintiff will commence such action. Notice under this subsection shall be given in such manner as the President shall prescribe by regulation.

(f) Costs

The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or the substantially prevailing party whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(g) Intervention

In any action under this section, the United States or the State, or both, if not a party may intervene as a matter of right. For other provisions regarding intervention, see section 9613 of this title.

(h) Other rights

This chapter does not affect or otherwise impair the rights of any person under Federal,

State, or common law, except with respect to the timing of review as provided in section 9613(h) of this title or as otherwise provided in section 9658 of this title (relating to actions under State law).

(i) Definitions

The terms used in this section shall have the same meanings as when used in subchapter I of this chapter.

(Pub. L. 96-510, title III, §310, as added Pub. L. 99-499, title II, §206, Oct. 17, 1986, 100 Stat. 1703.)

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsec. (d)(2), is title II of Pub. L. 89-272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

The Federal Rules of Civil Procedure, referred to in subsec. (f), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9613 of this title.

§ 9660. Research, development, and demonstration

(a) Hazardous substance research and training

(1) Authorities of Secretary

The Secretary of Health and Human Services (hereinafter in this subsection referred to as the Secretary), in consultation with the Administrator, shall establish and support a basic research and training program (through grants, cooperative agreements, and contracts) consisting of the following:

(A) Basic research (including epidemiologic and ecologic studies) which may include each of the following:

(i) Advanced techniques for the detection, assessment, and evaluation of the effects on human health of hazardous substances.

(ii) Methods to assess the risks to human health presented by hazardous substances.

(iii) Methods and technologies to detect hazardous substances in the environment and basic biological, chemical, and physical methods to reduce the amount and toxicity of hazardous substances.

(B) Training, which may include each of the following:

(i) Short courses and continuing education for State and local health and environment agency personnel and other personnel engaged in the handling of hazardous substances, in the management of facilities at which hazardous substances are located, and in the evaluation of the hazards to human health presented by such facilities.

(ii) Graduate or advanced training in environmental and occupational health and safety and in the public health and engineering aspects of hazardous waste control.

(iii) Graduate training in the geosciences, including hydrogeology, geologi-

cal engineering, geophysics, geochemistry, and related fields necessary to meet professional personnel needs in the public and private sectors and to effectuate the purposes of this chapter.

(2) Director of NIEHS

The Director of the National Institute for Environmental Health Sciences shall cooperate fully with the relevant Federal agencies referred to in subparagraph (A) of paragraph (5) in carrying out the purposes of this section.

(3) Recipients of grants, etc.

A grant, cooperative agreement, or contract may be made or entered into under paragraph (1) with an accredited institution of higher education. The institution may carry out the research or training under the grant, cooperative agreement, or contract through contracts, including contracts with any of the following:

(A) Generators of hazardous wastes.

(B) Persons involved in the detection, assessment, evaluation, and treatment of hazardous substances.

(C) Owners and operators of facilities at which hazardous substances are located.

(D) State and local governments.

(4) Procedures

In making grants and entering into cooperative agreements and contracts under this subsection, the Secretary shall act through the Director of the National Institute for Environmental Health Sciences. In considering the allocation of funds for training purposes, the Director shall ensure that at least one grant, cooperative agreement, or contract shall be awarded for training described in each of clauses (i), (ii), and (iii) of paragraph (1)(B). Where applicable, the Director may choose to operate training activities in cooperation with the Director of the National Institute for Occupational Safety and Health. The procedures applicable to grants and contracts under title IV of the Public Health Service Act [42 U.S.C. 281 et seq.] shall be followed under this subsection.

(5) Advisory council

To assist in the implementation of this subsection and to aid in the coordination of this research and demonstration and training activities funded from the Fund under this section, the Secretary shall appoint an advisory council (hereinafter in this subsection referred to as the "Advisory Council") which shall consist of representatives of the following:

(A) The relevant Federal agencies.

(B) The chemical industry.

(C) The toxic waste management industry.

(D) Institutions of higher education.

(E) State and local health and environmental agencies.

(F) The general public.

(6) Planning

Within nine months after October 17, 1986, the Secretary, acting through the Director of the National Institute for Environmental Health Sciences, shall issue a plan for the implementation of paragraph (1). The plan shall include priorities for actions under paragraph

(1) and include research and training relevant to scientific and technological issues resulting from site specific hazardous substance response experience. The Secretary shall, to the maximum extent practicable, take appropriate steps to coordinate program activities under this plan with the activities of other Federal agencies in order to avoid duplication of effort. The plan shall be consistent with the need for the development of new technologies for meeting the goals of response actions in accordance with the provisions of this chapter. The Advisory Council shall be provided an opportunity to review and comment on the plan and priorities and assist appropriate coordination among the relevant Federal agencies referred to in subparagraph (A) of paragraph (5).

(b) Alternative or innovative treatment technology research and demonstration program

(1) Establishment

The Administrator is authorized and directed to carry out a program of research, evaluation, testing, development, and demonstration of alternative or innovative treatment technologies (hereinafter in this subsection referred to as the "program") which may be utilized in response actions to achieve more permanent protection of human health and welfare and the environment.

(2) Administration

The program shall be administered by the Administrator, acting through an office of technology demonstration and shall be coordinated with programs carried out by the Office of Solid Waste and Emergency Response and the Office of Research and Development.

(3) Contracts and grants

In carrying out the program, the Administrator is authorized to enter into contracts and cooperative agreements with, and make grants to, persons, public entities, and non-profit private entities which are exempt from tax under section 501(c)(3) of title 26. The Administrator shall, to the maximum extent possible, enter into appropriate cost sharing arrangements under this subsection.

(4) Use of sites

In carrying out the program, the Administrator may arrange for the use of sites at which a response may be undertaken under section 9604 of this title for the purposes of carrying out research, testing, evaluation, development, and demonstration projects. Each such project shall be carried out under such terms and conditions as the Administrator shall require to assure the protection of human health and the environment and to assure adequate control by the Administrator of the research, testing, evaluation, development, and demonstration activities at the site.

(5) Demonstration assistance

(A) Program components

The demonstration assistance program shall include the following:

- (i) The publication of a solicitation and the evaluation of applications for dem-

onstration projects utilizing alternative or innovative technologies.

- (ii) The selection of sites which are suitable for the testing and evaluation of innovative technologies.

- (iii) The development of detailed plans for innovative technology demonstration projects.

- (iv) The supervision of such demonstration projects and the providing of quality assurance for data obtained.

- (v) The evaluation of the results of alternative innovative technology demonstration projects and the determination of whether or not the technologies used are effective and feasible.

(B) Solicitation

Within 90 days after October 17, 1986, and no less often than once every 12 months thereafter, the Administrator shall publish a solicitation for innovative or alternative technologies at a stage of development suitable for full-scale demonstrations at sites at which a response action may be undertaken under section 9604 of this title. The purpose of any such project shall be to demonstrate the use of an alternative or innovative treatment technology with respect to hazardous substances or pollutants or contaminants which are located at the site or which are to be removed from the site. The solicitation notice shall prescribe information to be included in the application, including technical and economic data derived from the applicant's own research and development efforts, and other information sufficient to permit the Administrator to assess the technology's potential and the types of remedial action to which it may be applicable.

(C) Applications

Any person and any public or private non-profit entity may submit an application to the Administrator in response to the solicitation. The application shall contain a proposed demonstration plan setting forth how and when the project is to be carried out and such other information as the Administrator may require.

(D) Project selection

In selecting technologies to be demonstrated, the Administrator shall fully review the applications submitted and shall consider at least the criteria specified in paragraph (7). The Administrator shall select or refuse to select a project for demonstration under this subsection within 90 days of receiving the completed application for such project. In the case of a refusal to select the project, the Administrator shall notify the applicant within such 90-day period of the reasons for his refusal.

(E) Site selection

The Administrator shall propose 10 sites at which a response may be undertaken under section 9604 of this title to be the location of any demonstration project under this subsection within 60 days after the close of the public comment period. After an oppor-

tunity for notice and public comment, the Administrator shall select such sites and projects. In selecting any such site, the Administrator shall take into account the applicant's technical data and preferences either for onsite operation or for utilizing the site as a source of hazardous substances or pollutants or contaminants to be treated off-site.

(F) Demonstration plan

Within 60 days after the selection of the site under this paragraph to be the location of a demonstration project, the Administrator shall establish a final demonstration plan for the project, based upon the demonstration plan contained in the application for the project. Such plan shall clearly set forth how and when the demonstration project will be carried out.

(G) Supervision and testing

Each demonstration project under this subsection shall be performed by the applicant, or by a person satisfactory to the applicant, under the supervision of the Administrator. The Administrator shall enter into a written agreement with each applicant granting the Administrator the responsibility and authority for testing procedures, quality control, monitoring, and other measurements necessary to determine and evaluate the results of the demonstration project. The Administrator may pay the costs of testing, monitoring, quality control, and other measurements required by the Administrator to determine and evaluate the results of the demonstration project, and the limitations established by subparagraph (J) shall not apply to such costs.

(H) Project completion

Each demonstration project under this subsection shall be completed within such time as is established in the demonstration plan.

(I) Extensions

The Administrator may extend any deadline established under this paragraph by mutual agreement with the applicant concerned.

(J) Funding restrictions

The Administrator shall not provide any Federal assistance for any part of a full-scale field demonstration project under this subsection to any applicant unless such applicant can demonstrate that it cannot obtain appropriate private financing on reasonable terms and conditions sufficient to carry out such demonstration project without such Federal assistance. The total Federal funds for any full-scale field demonstration project under this subsection shall not exceed 50 percent of the total cost of such project estimated at the time of the award of such assistance. The Administrator shall not expend more than \$10,000,000 for assistance under the program in any fiscal year and shall not expend more than \$3,000,000 for any single project.

(6) Field demonstrations

In carrying out the program, the Administrator shall initiate or cause to be initiated at least 10 field demonstration projects of alternative or innovative treatment technologies at sites at which a response may be undertaken under section 9604 of this title, in fiscal year 1987 and each of the succeeding three fiscal years. If the Administrator determines that 10 field demonstration projects under this subsection cannot be initiated consistent with the criteria set forth in paragraph (7) in any of such fiscal years, the Administrator shall transmit to the appropriate committees of Congress a report explaining the reasons for his inability to conduct such demonstration projects.

(7) Criteria

In selecting technologies to be demonstrated under this subsection, the Administrator shall, consistent with the protection of human health and the environment, consider each of the following criteria:

(A) The potential for contributing to solutions to those waste problems which pose the greatest threat to human health, which cannot be adequately controlled under present technologies, or which otherwise pose significant management difficulties.

(B) The availability of technologies which have been sufficiently developed for field demonstration and which are likely to be cost-effective and reliable.

(C) The availability and suitability of sites for demonstrating such technologies, taking into account the physical, biological, chemical, and geological characteristics of the sites, the extent and type of contamination found at the site, and the capability to conduct demonstration projects in such a manner as to assure the protection of human health and the environment.

(D) The likelihood that the data to be generated from the demonstration project at the site will be applicable to other sites.

(8) Technology transfer

In carrying out the program, the Administrator shall conduct a technology transfer program including the development, collection, evaluation, coordination, and dissemination of information relating to the utilization of alternative or innovative treatment technologies for response actions. The Administrator shall establish and maintain a central reference library for such information. The information maintained by the Administrator shall be made available to the public, subject to the provisions of section 552 of title 5 and section 1905 of title 18, and to other Government agencies in a manner that will facilitate its dissemination; except, that upon a showing satisfactory to the Administrator by any person that any information or portion thereof obtained under this subsection by the Administrator directly or indirectly from such person, would, if made public, divulge—

(A) trade secrets; or

(B) other proprietary information of such person,

the Administrator shall not disclose such information and disclosure thereof shall be punishable under section 1905 of title 18. This subsection is not authority to withhold information from Congress or any committee of Congress upon the request of the chairman of such committee.

(9) Training

The Administrator is authorized and directed to carry out, through the Office of Technology Demonstration, a program of training and an evaluation of training needs for each of the following:

(A) Training in the procedures for the handling and removal of hazardous substances for employees who handle hazardous substances.

(B) Training in the management of facilities at which hazardous substances are located and in the evaluation of the hazards to human health presented by such facilities for State and local health and environment agency personnel.

(10) Definition

For purposes of this subsection, the term "alternative or innovative treatment technologies" means those technologies, including proprietary or patented methods, which permanently alter the composition of hazardous waste through chemical, biological, or physical means so as to significantly reduce the toxicity, mobility, or volume (or any combination thereof) of the hazardous waste or contaminated materials being treated. The term also includes technologies that characterize or assess the extent of contamination, the chemical and physical character of the contaminants, and the stresses imposed by the contaminants on complex ecosystems at sites.

(c) Hazardous substance research

The Administrator may conduct and support, through grants, cooperative agreements, and contracts, research with respect to the detection, assessment, and evaluation of the effects on and risks to human health of hazardous substances and detection of hazardous substances in the environment. The Administrator shall coordinate such research with the Secretary of Health and Human Services, acting through the advisory council established under this section, in order to avoid duplication of effort.

(d) University hazardous substance research centers

(1) Grant program

The Administrator shall make grants to institutions of higher learning to establish and operate not fewer than 5 hazardous substance research centers in the United States. In carrying out the program under this subsection, the Administrator should seek to have established and operated 10 hazardous substance research centers in the United States.

(2) Responsibilities of centers

The responsibilities of each hazardous substance research center established under this subsection shall include, but not be limited to, the conduct of research and training relating

to the manufacture, use, transportation, disposal, and management of hazardous substances and publication and dissemination of the results of such research.

(3) Applications

Any institution of higher learning interested in receiving a grant under this subsection shall submit to the Administrator an application in such form and containing such information as the Administrator may require by regulation.

(4) Selection criteria

The Administrator shall select recipients of grants under this subsection on the basis of the following criteria:

(A) The hazardous substance research center shall be located in a State which is representative of the needs of the region in which such State is located for improved hazardous waste management.

(B) The grant recipient shall be located in an area which has experienced problems with hazardous substance management.

(C) There is available to the grant recipient for carrying out this subsection demonstrated research resources.

(D) The capability of the grant recipient to provide leadership in making national and regional contributions to the solution of both long-range and immediate hazardous substance management problems.

(E) The grant recipient shall make a commitment to support ongoing hazardous substance research programs with budgeted institutional funds of at least \$100,000 per year.

(F) The grant recipient shall have an interdisciplinary staff with demonstrated expertise in hazardous substance management and research.

(G) The grant recipient shall have a demonstrated ability to disseminate results of hazardous substance research and educational programs through an interdisciplinary continuing education program.

(H) The projects which the grant recipient proposes to carry out under the grant are necessary and appropriate.

(5) Maintenance of effort

No grant may be made under this subsection in any fiscal year unless the recipient of such grant enters into such agreements with the Administrator as the Administrator may require to ensure that such recipient will maintain its aggregate expenditures from all other sources for establishing and operating a regional hazardous substance research center and related research activities at or above the average level of such expenditures in its 2 fiscal years preceding October 17, 1986.

(6) Federal share

The Federal share of a grant under this subsection shall not exceed 80 percent of the costs of establishing and operating the regional hazardous substance research center and related research activities carried out by the grant recipient.

(7) Limitation on use of funds

No funds made available to carry out this subsection shall be used for acquisition of real

property (including buildings) or construction of any building.

(8) Administration through the Office of the Administrator

Administrative responsibility for carrying out this subsection shall be in the Office of the Administrator.

(9) Equitable distribution of funds

The Administrator shall allocate funds made available to carry out this subsection equitably among the regions of the United States.

(10) Technology transfer activities

Not less than five percent of the funds made available to carry out this subsection for any fiscal year shall be available to carry out technology transfer activities.

(e) Report to Congress

At the time of the submission of the annual budget request to Congress, the Administrator shall submit to the appropriate committees of the House of Representatives and the Senate and to the advisory council established under subsection (a) of this section, a report on the progress of the research, development, and demonstration program authorized by subsection (b) of this section, including an evaluation of each demonstration project completed in the preceding fiscal year, findings with respect to the efficacy of such demonstrated technologies in achieving permanent and significant reductions in risk from hazardous wastes, the costs of such demonstration projects, and the potential applicability of, and projected costs for, such technologies at other hazardous substance sites.

(f) Saving provision

Nothing in this section shall be construed to affect the provisions of the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.].

(g) Small business participation

The Administrator shall ensure, to the maximum extent practicable, an adequate opportunity for small business participation in the program established by subsection (b) of this section.

(Pub. L. 96-510, title III, §311, as added Pub. L. 99-499, title II, §209(b), Oct. 17, 1986, 100 Stat. 1708; amended Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095.)

REFERENCES IN TEXT

The Public Health Service Act, referred to in subsec. (a)(4), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Title IV of the Public Health Service Act is classified generally to subchapter III (§281 et seq.) of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The Solid Waste Disposal Act, referred to in subsec. (f), is title II of Pub. L. 89-272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

AMENDMENTS

1986—Subsec. (b)(3). Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code

of 1954”, which for purposes of codification was translated as “title 26” thus requiring no change in text.

GULF COAST HAZARDOUS SUBSTANCE RESEARCH,
DEVELOPMENT, AND DEMONSTRATION CENTER

Section 118(l) of Pub. L. 99-499 provided that:

“(1) ESTABLISHMENT OF HAZARDOUS SUBSTANCE RESEARCH, DEVELOPMENT, AND DEMONSTRATION CENTER.—The Administrator shall establish a hazardous substance research, development, and demonstration center (hereinafter in this subsection referred to as the ‘Center’) for the purpose of conducting research to aid in more effective hazardous substance response and waste management throughout the Gulf Coast.

“(2) PURPOSES OF THE CENTER.—The Center shall carry out a program of research, evaluation, testing, development, and demonstration of alternative or innovative technologies which may be utilized in response actions or in normal handling of hazardous wastes to achieve better protection of human health and the environment.

“(3) OPERATION OF CENTER.—(A) For purposes of operating the Center, the Administrator is authorized to enter into contracts and cooperative agreements with, and make grants to, a university related institute involved with the improvement of waste management. Such institute shall be located in Jefferson County, Texas.

“(B) The Center shall be authorized to make grants, accept contributions, and enter into agreements with universities located in the States of Texas, Louisiana, Mississippi, Alabama, and Florida in order to carry out the purposes of the Center.

“(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Administrator for purposes of carrying out this subsection for fiscal years beginning after September 30, 1986, not more than \$5,000,000.”

PACIFIC NORTHWEST HAZARDOUS SUBSTANCE RESEARCH,
DEVELOPMENT, AND DEMONSTRATION CENTER

Section 118(o) of Pub. L. 99-499 provided that:

“(1) ESTABLISHMENT.—The Administrator shall establish a hazardous substance research, development, and demonstration center (hereinafter in this subsection referred to as the ‘Center’) for the purpose of conducting research to aid in more effective hazardous substance response in the Pacific Northwest.

“(2) PURPOSES OF CENTER.—The Center shall carry out a program of research, evaluation, testing, development, and demonstration of alternative or innovative technologies which may be utilized in response actions to achieve more permanent protection of human health and welfare and the environment.

“(3) OPERATION OF CENTER.—

“(A) NONPROFIT ENTITY.—For the purposes of operating the Center, the Administrator is authorized to enter into contracts and cooperative agreements with, and make grants to, a nonprofit private entity as defined in section 201(i) of Public Law 96-517 [probably means section 201(i) of Title 35, Patents, which was enacted by section 6(a) of Pub. L. 96-517, Dec. 12, 1980, 94 Stat. 3020] which entity shall agree to provide the basic technical and management personnel. Such nonprofit private entity shall also agree to provide at least two permanent research facilities, one of which shall be located in Benton County, Washington, and one of which shall be located in Clallam County, Washington.

“(B) AUTHORITIES.—The Center shall be authorized to make grants, accept contributions, and enter into agreements with universities located in the States of Washington, Oregon, Idaho, and Montana in order to carry out the purposes of the Center.

“(4) HAZARDOUS WASTE RESEARCH AT THE HANFORD SITE.—

“(A) INTERAGENCY AGREEMENTS.—The Administrator and the Secretary of Energy are authorized to enter into interagency agreements with one another

for the purpose of providing for research, evaluation, testing, development, and demonstration into alternative or innovative technologies to characterize and assess the nature and extent of hazardous waste (including radioactive mixed waste) contamination at the Hanford site, in the State of Washington.

“(B) FUNDING.—There is authorized to be appropriated to the Secretary of Energy for purposes of carrying out this paragraph for fiscal years beginning after September 30, 1986, not more than \$5,000,000. All sums appropriated under this subparagraph shall be provided to the Administrator by the Secretary of Energy, pursuant to the interagency agreement entered into under subparagraph (A), for the purpose of the Administrator entering into contracts and cooperative agreements with, and making grants to, the Center in order to carry out the research, evaluation, testing, development, and demonstration described in paragraph (1).

“(5) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Administrator for purposes of carrying out this subsection (other than paragraph (4)) for fiscal years beginning after September 30, 1986, not more than \$5,000,000.”

CONGRESSIONAL STATEMENT OF PURPOSE

Section 209(a) of Pub. L. 99-499 provided that: “The purposes of this section [enacting this section] are as follows:

“(1) To establish a comprehensive and coordinated Federal program of research, development, demonstration, and training for the purpose of promoting the development of alternative and innovative treatment technologies that can be used in response actions under the CERCLA program, to provide incentives for the development and use of such technologies, and to improve the scientific capability to assess, detect and evaluate the effects on and risks to human health from hazardous substances.

“(2) To establish a basic university research and education program within the Department of Health and Human Services and a research, demonstration, and training program within the Environmental Protection Agency.

“(3) To reserve certain funds from the Hazardous Substance Trust Fund to support a basic research program within the Department of Health and Human Services, and an applied and developmental research program within the Environmental Protection Agency.

“(4) To enhance the Environmental Protection Agency’s internal research capabilities related to CERCLA activities, including site assessment and technology evaluation.

“(5) To provide incentives for the development of alternative and innovative treatment technologies in a manner that supplements or coordinates with, but does not compete with or duplicate, private sector development of such technologies.”

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9611, 9619, 9659 of this title; title 10 section 2702.

§ 9660a. Grant program

(1) Grant purposes

Grants for the training and education of workers who are or may be engaged in activities related to hazardous waste removal or containment or emergency response may be made under this section.

(2) Administration

Grants under this section shall be administered by the National Institute of Environmental Health Sciences.

(3) Grant recipients

Grants shall be awarded to nonprofit organizations which demonstrate experience in implementing and operating worker health and safety training and education programs and demonstrate the ability to reach and involve in training programs target populations of workers who are or will be engaged in hazardous waste removal or containment or emergency response operations.

(Pub. L. 99-499, title I, § 126(g), Oct. 17, 1986, 100 Stat. 1692.)

CODIFICATION

Section was enacted as part of the Superfund Amendments and Reauthorization Act of 1986, and not as part of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7274d, 9611, 9619 of this title; title 49 section 5115.

§ 9661. Love Canal property acquisition

(a) Acquisition of property in Emergency Declaration Area

The Administrator of the Environmental Protection Agency (hereinafter referred to as the “Administrator”) may make grants not to exceed \$2,500,000 to the State of New York (or to any duly constituted public agency or authority thereof) for purposes of acquisition of private property in the Love Canal Emergency Declaration Area. Such acquisition shall include (but shall not be limited to) all private property within the Emergency Declaration Area, including non-owner occupied residential properties, commercial, industrial, public, religious, nonprofit, and vacant properties.

(b) Procedures for acquisition

No property shall be acquired pursuant to this section unless the property owner voluntarily agrees to such acquisition. Compensation for any property acquired pursuant to this section shall be based upon the fair market value of the property as it existed prior to the emergency declaration. Valuation procedures for property acquired with funds provided under this section shall be in accordance with those set forth in the agreement entered into between the New York State Disaster Preparedness Commission and the Love Canal Revitalization Agency on October 9, 1980.

(c) State ownership

The Administrator shall not provide any funds under this section for the acquisition of any

properties pursuant to this section unless a public agency or authority of the State of New York first enters into a cooperative agreement with the Administrator providing assurances deemed adequate by the Administrator that the State or an agency created under the laws of the State shall take title to the properties to be so acquired.

(d) Maintenance of property

The Administrator shall enter into a cooperative agreement with an appropriate public agency or authority of the State of New York under which the Administrator shall maintain or arrange for the maintenance of all properties within the Emergency Declaration Area that have been acquired by any public agency or authority of the State. Ninety (90) percent of the costs of such maintenance shall be paid by the Administrator. The remaining portion of such costs shall be paid by the State (unless a credit is available under section 9604(c) of this title). The Administrator is authorized, in his discretion, to provide technical assistance to any public agency or authority of the State of New York in order to implement the recommendations of the habitability and land-use study in order to put the land within the Emergency Declaration Area to its best use.

(e) Habitability and land use study

The Administrator shall conduct or cause to be conducted a habitability and land-use study. The study shall—

- (1) assess the risks associated with inhabiting of the Love Canal Emergency Declaration Area;
- (2) compare the level of hazardous waste contamination in that Area to that present in other comparable communities; and
- (3) assess the potential uses of the land within the Emergency Declaration Area, including but not limited to residential, industrial, commercial and recreational, and the risks associated with such potential uses.

The Administrator shall publish the findings of such study and shall work with the State of New York to develop recommendations based upon the results of such study.

(f) Funding

For purposes of section 9611 of this title [and 9631(c)¹ of this title], the expenditures authorized by this section shall be treated as a cost specified in section 9611(c) of this title.

(g) Response

The provisions of this section shall not affect the implementation of other response actions within the Emergency Declaration Area that the Administrator has determined (before October 17, 1986) to be necessary to protect the public health or welfare or the environment.

(h) Definitions

For purposes of this section:

(1) Emergency Declaration Area

The terms “Emergency Declaration Area” and “Love Canal Emergency Declaration

Area” mean the Emergency Declaration Area as defined in section 950, paragraph (2) of the General Municipal Law of the State of New York, Chapter 259, Laws of 1980, as in effect on October 17, 1986.

(2) Private property

As used in subsection (a) of this section, the term “private property” means all property which is not owned by a department, agency, or instrumentality of—

(A) the United States, or

(B) the State of New York (or any public agency or authority thereof).

(Pub. L. 96-510, title III, §312, as added Pub. L. 99-499, title II, §213(b), Oct. 17, 1986, 100 Stat. 1727.)

REFERENCES IN TEXT

Section 9631 of this title, referred to in subsec. (f), was repealed by Pub. L. 99-499, title V, §517(c)(1), Oct. 17, 1986, 100 Stat. 1774.

LOVE CANAL PROPERTY ACQUISITION; CONGRESSIONAL FINDINGS

Section 213(a) of Pub. L. 99-499 provided that:

“(1) The area known as Love Canal located in the city of Niagara Falls and the town of Wheatfield, New York, was the first toxic waste site to receive national attention. As a result of that attention Congress investigated the problems associated with toxic waste sites and enacted CERCLA [Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.)] to deal with these problems.

“(2) Because Love Canal came to the Nation’s attention prior to the passage of CERCLA and because the fund under CERCLA was not available to compensate for all of the hardships endured by the citizens in the area, Congress has determined that special provisions are required. These provisions do not affect the lawfulness, implementation, or selection of any other response actions at Love Canal or at any other facilities.”

COORDINATION OF TITLES I TO IV OF PUB. L. 99-499

Any provision of titles I to IV of Pub. L. 99-499, imposing any tax, premium, or fee; establishing any trust fund; or authorizing expenditures from any trust fund, to have no force or effect, see section 531 of Pub. L. 99-499, set out as a note under section 1 of Title 26, Internal Revenue Code.

§ 9662. Limitation on contract and borrowing authority

Any authority provided by this Act, including any amendment made by this Act, to enter into contracts to obligate the United States or to incur indebtedness for the repayment of which the United States is liable shall be effective only to such extent or in such amounts as are provided in appropriation Acts.

(Pub. L. 99-499, §3, Oct. 17, 1986, 100 Stat. 1614.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 99-499, Oct. 17, 1986, 100 Stat. 1613, as amended, known as the Superfund Amendments and Reauthorization Act of 1986. For complete classification of this Act to the Code, see Short Title of 1986 Amendment note set out under section 9601 of this title and Tables.

CODIFICATION

Section was enacted as part of the Superfund Amendments and Reauthorization Act of 1986, and not as part

¹ See References in Text note below.

of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9619 of this title.

SUBCHAPTER IV—POLLUTION INSURANCE

§ 9671. Definitions

As used in this subchapter—

(1) Insurance

The term “insurance” means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk which is determined to be insurance under applicable State or Federal law.

(2) Pollution liability

The term “pollution liability” means liability for injuries arising from the release of hazardous substances or pollutants or contaminants.

(3) Risk retention group

The term “risk retention group” means any corporation or other limited liability association taxable as a corporation, or as an insurance company, formed under the laws of any State—

(A) whose primary activity consists of assuming and spreading all, or any portion, of the pollution liability of its group members;

(B) which is organized for the primary purpose of conducting the activity described under subparagraph (A);

(C) which is chartered or licensed as an insurance company and authorized to engage in the business of insurance under the laws of any State; and

(D) which does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person.

(4) Purchasing group

The term “purchasing group” means any group of persons which has as one of its purposes the purchase of pollution liability insurance on a group basis.

(5) State

The term “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession over which the United States has jurisdiction.

(Pub. L. 96-510, title IV, §401, as added Pub. L. 99-499, title II, §210(a), formerly §210, Oct. 17, 1986, 100 Stat. 1716; renumbered §210(a), Pub. L. 99-563, §11(c)(1), Oct. 27, 1986, 100 Stat. 3177.)

STATE POWERS AND AUTHORITIES UNDER RISK RETENTION AMENDMENTS OF 1986

Section 210(b) of Pub. L. 99-499, as added by Pub. L. 99-563, §11(c)(1), Oct. 27, 1986, 100 Stat. 3177, provided that: “For purposes of subsection (a) of this section [enacting this subchapter], the powers and authorities of States addressed by the Risk Retention Amendments

of 1986 [Pub. L. 99-563, see Short Title of 1986 Amendment note set out under section 3901 of Title 15, Commerce and Trade] are in addition to those of this Act [see Short Title of 1986 Amendment note set out under section 9601 of this title].”

§ 9672. State laws; scope of subchapter

(a) State laws

Nothing in this subchapter shall be construed to affect either the tort law or the law governing the interpretation of insurance contracts of any State. The definitions of pollution liability and pollution liability insurance under any State law shall not be applied for the purposes of this subchapter, including recognition or qualification of risk retention groups or purchasing groups.

(b) Scope of subchapter

The authority to offer or to provide insurance under this subchapter shall be limited to coverage of pollution liability risks and this subchapter does not authorize a risk retention group or purchasing group to provide coverage of any other line of insurance.

(Pub. L. 96-510, title IV, §402, as added Pub. L. 99-499, title II, §210(a), formerly §210, Oct. 17, 1986, 100 Stat. 1716; renumbered §210(a), Pub. L. 99-563, §11(c)(1), Oct. 27, 1986, 100 Stat. 3177.)

§ 9673. Risk retention groups

(a) Exemption

Except as provided in this section, a risk retention group shall be exempt from the following:

(1) A State law, rule, or order which makes unlawful, or regulates, directly or indirectly, the operation of a risk retention group.

(2) A State law, rule, or order which requires or permits a risk retention group to participate in any insurance insolvency guaranty association to which an insurer licensed in the State is required to belong.

(3) A State law, rule, or order which requires any insurance policy issued to a risk retention group or any member of the group to be countersigned by an insurance agent or broker residing in the State.

(4) A State law, rule, or order which otherwise discriminates against a risk retention group or any of its members.

(b) Exceptions

(1) State laws generally applicable

Nothing in subsection (a) of this section shall be construed to affect the applicability of State laws generally applicable to persons or corporations. The State in which a risk retention group is chartered may regulate the formation and operation of the group.

(2) State regulations not subject to exemption

Subsection (a) of this section shall not apply to any State law which requires a risk retention group to do any of the following:

(A) Comply with the unfair claim settlement practices law of the State.

(B) Pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on admitted insurers and surplus line

insurers, brokers, or policyholders under the laws of the State.

(C) Participate, on a nondiscriminatory basis, in any mechanism established or authorized under the law of the State for the equitable apportionment among insurers of pollution liability insurance losses and expenses incurred on policies written through such mechanism.

(D) Submit to the appropriate authority reports and other information required of licensed insurers under the laws of a State relating solely to pollution liability insurance losses and expenses.

(E) Register with and designate the State insurance commissioner as its agent solely for the purpose of receiving service of legal documents or process.

(F) Furnish, upon request, such commissioner a copy of any financial report submitted by the risk retention group to the commissioner of the chartering or licensing jurisdiction.

(G) Submit to an examination by the State insurance commissioner in any State in which the group is doing business to determine the group's financial condition, if—

(i) the commissioner has reason to believe the risk retention group is in a financially impaired condition; and

(ii) the commissioner of the jurisdiction in which the group is chartered has not begun or has refused to initiate an examination of the group.

(H) Comply with a lawful order issued in a delinquency proceeding commenced by the State insurance commissioner if the commissioner of the jurisdiction in which the group is chartered has failed to initiate such a proceeding after notice of a finding of financial impairment under subparagraph (G).

(c) Application of exemptions

The exemptions specified in subsection (a) of this section apply to—

(1) pollution liability insurance coverage provided by a risk retention group for—

(A) such group; or

(B) any person who is a member of such group;

(2) the sale of pollution liability insurance coverage for a risk retention group; and

(3) the provision of insurance related services or management services for a risk retention group or any member of such a group.

(d) Agents or brokers

A State may require that a person acting, or offering to act, as an agent or broker for a risk retention group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

(Pub. L. 96-510, title IV, §403, as added Pub. L. 99-499, title II, §210(a), formerly §210, Oct. 17, 1986, 100 Stat. 1717; renumbered §210(a), Pub. L. 99-563, §11(c)(1), Oct. 27, 1986, 100 Stat. 3177.)

§ 9674. Purchasing groups

(a) Exemption

Except as provided in this section, a purchasing group is exempt from the following:

(1) A State law, rule, or order which prohibits the establishment of a purchasing group.

(2) A State law, rule, or order which makes it unlawful for an insurer to provide or offer to provide insurance on a basis providing, to a purchasing group or its member, advantages, based on their loss and expense experience, not afforded to other persons with respect to rates, policy forms, coverages, or other matters.

(3) A State law, rule, or order which prohibits a purchasing group or its members from purchasing insurance on the group basis described in paragraph (2) of this subsection.

(4) A State law, rule, or order which prohibits a purchasing group from obtaining insurance on a group basis because the group has not been in existence for a minimum period of time or because any member has not belonged to the group for a minimum period of time.

(5) A State law, rule, or order which requires that a purchasing group must have a minimum number of members, common ownership or affiliation, or a certain legal form.

(6) A State law, rule, or order which requires that a certain percentage of a purchasing group must obtain insurance on a group basis.

(7) A State law, rule, or order which requires that any insurance policy issued to a purchasing group or any members of the group be countersigned by an insurance agent or broker residing in that State.

(8) A State law, rule, or order which otherwise discriminate¹ against a purchasing group or any of its members.

(b) Application of exemptions

The exemptions specified in subsection (a) of this section apply to the following:

(1) Pollution liability insurance, and comprehensive general liability insurance which includes this coverage, provided to—

(A) a purchasing group; or

(B) any person who is a member of a purchasing group.

(2) The sale of any one of the following to a purchasing group or a member of the group:

(A) Pollution liability insurance and comprehensive general liability coverage.

(B) Insurance related services.

(C) Management services.

(c) Agents or brokers

A State may require that a person acting, or offering to act, as an agent or broker for a purchasing group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

(Pub. L. 96-510, title IV, §404, as added Pub. L. 99-499, title II, §210(a), formerly §210, Oct. 17, 1986, 100 Stat. 1718; renumbered §210(a), Pub. L. 99-563, §11(c)(1), Oct. 27, 1986, 100 Stat. 3177.)

§ 9675. Applicability of securities laws

(a) Ownership interests

The ownership interests of members of a risk retention group shall be considered to be—

¹ So in original. Probably should be "discriminates".

(1) exempted securities for purposes of section 77e of title 15 and for purposes of section 78l of title 15; and

(2) securities for purposes of the provisions of section 77q of title 15 and the provisions of section 78j of title 15.

(b) Investment Company Act

A risk retention group shall not be considered to be an investment company for purposes of the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).

(c) Blue sky law

The ownership interests of members in a risk retention group shall not be considered securities for purposes of any State blue sky law.

(Pub. L. 96-510, title IV, §405, as added Pub. L. 99-499, title II, §210(a), formerly §210, Oct. 17, 1986, 100 Stat. 1719; renumbered §210(a), Pub. L. 99-563, §11(c)(1), Oct. 27, 1986, 100 Stat. 3177.)

REFERENCES IN TEXT

The Investment Company Act of 1940, referred to in subsec. (b), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§80a-1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a-51 of Title 15 and Tables.

CHAPTER 104—NUCLEAR SAFETY RESEARCH, DEVELOPMENT, AND DEMONSTRATION

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§ 9701. Congressional findings and declaration of policy

- (a) The Congress finds that—
- (1) nuclear energy is one of the two major energy sources available for electric energy production in the United States during the balance of the twentieth century;
 - (2) continued development of nuclear power is dependent upon maintaining an extremely high level of safety in the operation of nuclear plants, and on public recognition that these facilities do not constitute a significant threat to human health or safety;
 - (3) it is the responsibility of utilities, as owners and operators of nuclear powerplants,

to assure that such plants are designed and operated safely and reliably; and

(4) a proper role of the Federal Government in assuring nuclear powerplant safety, in addition to its regulatory function, is the conduct of a research, development, and demonstration program to provide important scientific and technical information which can contribute to sound design and safe operation of these plants.

(b) It is declared to be the policy of the United States and the purpose of this chapter to establish a research, development, and demonstration program for developing practical improvements in the generic safety of nuclear powerplants during the next five years, beginning in the fiscal year 1981. The objectives of such program shall be—

- (1) to reduce the likelihood and severity of potentially serious nuclear powerplant accidents; and
- (2) to reduce the likelihood of disrupting the population in the vicinity of nuclear powerplants as the result of nuclear powerplant accidents.

Nothing in this chapter shall be construed as preventing the Secretary from undertaking projects or activities, in addition to those specified in this chapter, which appropriately further the purpose and objectives set forth in this subsection. Nothing in this chapter shall authorize the Secretary to assume responsibility for the management, cleanup or repair of any commercial nuclear powerplant. Nothing in this chapter shall be construed as limiting the authority of the Secretary under any other law.

(Pub. L. 96-567, §2, Dec. 22, 1980, 94 Stat. 3329.)

SHORT TITLE

Section 1 of Pub. L. 96-567 provided: "That this Act [enacting this chapter] may be cited as the 'Nuclear Safety Research, Development, and Demonstration Act of 1980'."

§ 9702. Definitions

- For purposes of this chapter—
- (1) the term "Secretary" means the Secretary of Energy;
 - (2) the term "Government agency" means any department, agency, commission, or independent establishment in the executive branch of the Federal Government, or any corporation, wholly or partly owned by the United States, which is an instrumentality of the United States, or any board, bureau, division, service, office, officer, authority, administration, or other establishment in the executive branch of the Federal Government;
 - (3) the term "Commission" means the Nuclear Regulatory Commission; and
 - (4) the term "Advisory Committee" means the Advisory Committee on Reactor Safeguards established by section 2039 of this title.

(Pub. L. 96-567, §3, Dec. 22, 1980, 94 Stat. 3329.)

§ 9703. Research, development, and demonstration program; establishment; purposes; implementation

(a) The Secretary shall establish a research, development, and demonstration program to

carry out the purpose of this chapter. As part of such program, the Secretary shall at a minimum—

(1) refine further the assessment of risk factors associated with the generic design and operation of nuclear powerplants to determine the degree and consequences of propagation of failures of systems, subsystems, and components, including consideration of the interaction between the primary and secondary systems;

(2) develop potentially cost-beneficial changes in the generic design and operation of nuclear powerplants that can (A) significantly reduce the risks from unintentional release of radioactive material from the various engineered barriers of nuclear powerplants and (B) reduce the radiation exposure to workers during plant operation and maintenance;

(3) develop potentially cost-beneficial generic methods and designs that will significantly improve the performance of operators of nuclear powerplants under routine, abnormal, and accident conditions;

(4) identify the effect of total or partial automation of generic plant systems on reactor safety, operation, reliability, economics, and operator performance;

(5) conduct further experimental investigations under abnormal operational and postulated accident conditions primarily for light water reactors to determine the consequences of such conditions. These investigations shall include, but not be limited to, the following:

(A) fuel failure at higher than standard burn-up levels;

(B) fuel-cladding interactions;

(C) fuel and cladding interactions with coolant under various temperatures and pressures;

(D) thermohydraulic behavior in the reactor core;

(E) mechanisms to suppress and control the generation of hydrogen gas;

(F) improved instrumentation for monitoring reactor cores;

(G) engineered-barrier failure modes; and

(H) fission product release and transport from failed fuel;

(6) provide for the examination and analysis of any nuclear powerplant fuel, component, or system which the Secretary deems to offer significant benefit in safety analysis and which is made available to the Secretary for a nominal cost, such as \$1: *Provided, however,* That the Secretary shall accept only the number of samples of such fuel, component, or system necessary to carry out such examination and analysis; and

(7) identify the aptitudes, training, and manning levels which are necessary to assure reliable operator performance under normal, abnormal, and emergency conditions.

(b) In carrying out the generic safety research, development, and demonstration program established under this chapter, the Secretary—

(1) shall coordinate with the Commission and, to the extent necessary, enter into a new memorandum of understanding or revise existing memoranda for the purpose of eliminating

unnecessary duplication and avoiding programmatic conflict with any reactor safety research program of the Commission, including the Improved Safety Systems Research program;

(2) shall, to the extent practical, coordinate his activities with such other Government agencies, foreign governments, and industry as he deems appropriate to utilize their expertise, to minimize duplication of effort, and to ensure that information useful for improved concepts applicable to nuclear powerplant safety can be applied in a timely manner. The Secretary may enter into agreements and memoranda of understanding to accomplish these ends, but no such agreement shall have the effect of delaying the development and implementation of programs authorized under this chapter;

(3) shall utilize, to the extent feasible, underutilized federally owned research reactors and facilities, along with the associated personnel, to maintain existing capabilities and to ensure that the research is generic in nature; and

(4) shall make such recommendations as are practical to minimize the complexity of nuclear powerplant systems, including secondary systems, and operations.

(Pub. L. 96-567, § 4, Dec. 22, 1980, 94 Stat. 3330.)

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9707 of this title.

§ 9704. National reactor engineering simulator feasibility study

(a) Consultative requirements; purpose

The Secretary, in consultation with the Commission and the Advisory Committee, shall initiate a study of the need for and feasibility of establishing a reactor engineering simulator facility at a national laboratory, for the primary purpose of fostering research in generic design improvements and simplifications through the simulation of the performance of various types of light water reactors under a wide variety of abnormal conditions and postulated accident conditions.

(b) Applicability of relevant factors

In performing the study, the Secretary shall consider relevant factors including, but not limited to—

(1) the potential advantages that would accrue from the establishment of such a facility;

(2) the extent to which such a facility would further the generic safety research and development program established by this chapter;

(3) the extent to which such a facility can be established by nongovernmental entities;

(4) the opportunities for cost sharing by nongovernmental entities in the construction and operation of such a facility;

(5) the importance of such a facility in emergencies to limit the extent of any future nuclear powerplant excursions;

(6) the potential for international cooperation in the establishment and operation of such a facility; and

(7) the appropriate national laboratory for siting such a facility.

(c) Report to Congressional committees

The Secretary shall, by January 1, 1982, submit to the Committee on Science and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report characterizing the study and the resulting conclusions and recommendations.

(Pub. L. 96-567, § 5, Dec. 22, 1980, 94 Stat. 3331.)

CHANGE OF NAME

Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundredth Congress, Jan. 6, 1987. Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

§ 9705. Federal Nuclear Operations Corps' study

(a) Cooperation and coordination requirements; purpose

The Secretary, in cooperation with the Nuclear Regulatory Commission, shall initiate a study as to the sufficiency of efforts in the United States to provide specially trained professionals to operate the controls of nuclear powerplants and other facilities in the back-end of the nuclear fuel cycle. In carrying out the study, the Secretary shall coordinate his activities with the ongoing programs of the utility industry and other Federal governmental agencies for obtaining high standards of operator performance.

(b) Assessments

(1) In conducting the study the Secretary shall assess the desirability and feasibility of creating a Federal Corps of such professionals to inspect and supervise such operations.

(2) The assessment shall consider the establishment of an academy to train Corps professionals in all aspects of nuclear technology, nuclear operations, nuclear regulatory and related law, and health science.

(3) The assessment shall include the appropriate organizational approach for the establishment of a Federal Corps within the executive branch.

(c) Report to Congress

The Secretary shall complete the study within one year after December 22, 1980, and shall submit a report along with his recommendations to the Congress.

(Pub. L. 96-567, § 6, Dec. 22, 1980, 94 Stat. 3332.)

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg.

Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

§ 9706. Dissemination of information

The Secretary shall assure that full and complete safety-related information resulting from any project or other activity conducted under this chapter is made available in a timely manner to appropriate committees of Congress, Federal, State, and local authorities, relevant segments of private industry, the scientific community, and the public.

(Pub. L. 96-567, § 7, Dec. 22, 1980, 94 Stat. 3332.)

§ 9707. Comprehensive program management plan

(a) Preparation; scope; consultative requirements

The Secretary is authorized and directed to prepare a comprehensive program management plan for the conduct of research, development, and demonstration activities under this chapter consistent with the provisions of section 9703 of this title. In the preparation of such plan, the Secretary shall consult with the Commission and the Advisory Committee and with the heads of such other Government agencies and such public and private organizations as he deems appropriate.

(b) Transmission to Congressional committees; revisions

The Secretary shall transmit the comprehensive program management plan along with any comments by the Commission on the plan to the Committee on Science and Technology of the House of Representatives and the Committee on Energy and Natural Resources and the Committee on Environment and Public Works of the Senate within twelve months after December 22, 1980. Revisions to the plan shall be transmitted to such committees whenever deemed appropriate by the Secretary.

(Pub. L. 96-567, § 8, Dec. 22, 1980, 94 Stat. 3332; Pub. L. 104-66, title I, § 1051(I), Dec. 21, 1995, 109 Stat. 717.)

AMENDMENTS

1995—Subsec. (c). Pub. L. 104-66 struck out subsec. (c) which directed Secretary of Energy to transmit to Congress, concurrently with submission of President's annual budget to Congress, detailed description of comprehensive plan as then in effect.

CHANGE OF NAME

Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundredth Congress, Jan. 6, 1987. Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

§ 9708. Authorization of appropriations

There is authorized to be appropriated to the Secretary to carry out this chapter such sums as

may be authorized by legislation hereafter enacted.

(Pub. L. 96-567, § 9, Dec. 22, 1980, 94 Stat. 3333.)

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SUBCHAPTER I—COMMUNITY ECONOMIC DEVELOPMENT

CODIFICATION

Subchapter is based on subchapter A of chapter 8 of subtitle A of title VI of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 489, as amended.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 4953 of this title.

§ 9801. Statement of purpose

The purpose of this subchapter is to encourage the development of special programs by which the residents of urban and rural low-income areas may, through self-help and mobilization of the community at large, with appropriate Federal assistance, improve the quality of their economic and social participation in community life in such a way as to contribute to the elimination of poverty and the establishment of permanent economic and social benefits.

(Pub. L. 97-35, title VI, §612, Aug. 13, 1981, 95 Stat. 489.)

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105-285, §1, Oct. 27, 1998, 112 Stat. 2702, provided that: "This Act [see Tables for classification] may be cited as the 'Community Opportunities, Accountability, and Training and Educational Services Act of 1998' or the 'Coats Human Services Reauthorization Act of 1998'."

Pub. L. 105-285, title I, §101, Oct. 27, 1998, 112 Stat. 2703, provided that: "This title [enacting section 9837a of this title, amending sections 9831 to 9835, 9836 to 9837, 9838 to 9840a, 9843 to 9844, and 9846 of this title, and repealing sections 9852a and 9855 to 9855g of this title and provisions set out as a note under this section] may be cited as the 'Head Start Amendments of 1998'."

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104-193, title VI, §601(a), Aug. 22, 1996, 110 Stat. 2278, provided that: "This title [enacting section 618 of this title, amending sections 9858, 9858b to 9858e, 9858g to 9858j, 9858m, and 9858n of this title, repealing section 9858f of this title, enacting provisions set out as

notes under section 9858 of this title, and amending provisions set out as a note below] may be cited as the 'Child Care and Development Block Grant Amendments of 1996'."

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103-252, §1, May 18, 1994, 108 Stat. 623, provided that: "This Act [see Tables for classification] may be cited as the 'Human Services Amendments of 1994'."

Pub. L. 103-252, title I, §101(a), May 18, 1994, 108 Stat. 624, provided that: "This title [enacting sections 9836a, 9840a, 9843a, and 9852a of this title, transferring sections 3161 to 3161g of Title 20, Education, to sections 1235 to 1235g of Title 20, respectively, amending sections 1396r-5, 9832 to 9835, 9836, 9837, 9839, 9840, 9841, 9843, 9844, 9846, 9855a, 9871, and 10905 of this title and sections 1235, 1235a, and 1235c to 1235e of Title 20, repealing sections 9835a, 9845, 9846a, 9847, and 9881 to 9887 of this title, enacting provisions set out as notes under sections 9832, 9839, 9844, and 9881 of this title, and repealing provisions set out as notes under this section and section 9881 of this title] may be cited as the 'Head Start Act Amendments of 1994'."

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102-401, §1, Oct. 7, 1992, 106 Stat. 1956, provided that: "This Act [amending sections 9835 to 9839, 9846, 9846a, and 9858n of this title and enacting provisions set out as notes under sections 9835 and 9836 of this title] may be cited as the 'Head Start Improvement Act of 1992'."

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101-501, §1(a), Nov. 3, 1990, 104 Stat. 1222, provided that: "This Act [see Tables for classification] may be cited as the 'Augustus F. Hawkins Human Services Reauthorization Act of 1990'."

Pub. L. 101-501, title I, §101, Nov. 3, 1990, 104 Stat. 1224, provided that: "This subtitle [subtitle A (§§101-123) of title I of Pub. L. 101-501, enacting sections 9835a and 9846a of this title and amending sections 9831, 9832, 9834, 9835, 9836 to 9841, 9843 to 9846, 9847, and 9848 of this title] may be cited as the 'Head Start Expansion and Quality Improvement Act'."

Pub. L. 101-501, title I, §131, Nov. 3, 1990, 104 Stat. 1238, provided that subtitle B (§§131-140) of title I of Pub. L. 101-501, enacting subchapter II-A of this chapter and amending section 9834 of this title, could be cited as the 'Head Start Transition Project Act', prior to repeal by Pub. L. 105-285, title I, §119, Oct. 27, 1998, 112 Stat. 2728.

SHORT TITLE OF 1989 AMENDMENT

Pub. L. 101-120, §1, Oct. 23, 1989, 103 Stat. 700, provided that: "This Act [amending section 9834 of this title] may be cited as the 'Head Start Supplemental Authorization Act of 1989'."

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100-297, title II, §2501, Apr. 28, 1988, 102 Stat. 325, provided that part E (§§2501-2504) of title II of Pub. L. 100-297, which enacted subchapter V of this chapter, amended section 9833 of this title, and enacted provisions set out as notes under this section and section 9881 of this title, could be cited as the "Comprehensive Child Development Centers Act of 1988", prior to repeal by Pub. L. 103-252, title I, §112(b)(1), (2)(A), May 18, 1994, 108 Stat. 640, 641.

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99-425, §1, Sept. 30, 1986, 100 Stat. 966, provided: "That this Act [enacting sections 8628a, 9812a, 9910b, and 10901 to 10905 of this title, amending sections 8621, 8623, 8624, 8629, 9803, 9834, 9835, 9837, 9840, 9862, 9867, 9871, 9874, 9877, 9901 to 9904, 9905a, 9908 to 9910, and 9910a of this title and section 4033 of Title 20, Education, enacting provisions set out as notes under this section and sections 8621, 8623, and 10901 of this title, and

amending provisions set out as notes under section 9861 of this title and section 1932 of Title 7, Agriculture may be cited as the 'Human Services Reauthorization Act of 1986'."

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98-558, §1, Oct. 30, 1984, 98 Stat. 2878, provided: "That this Act [enacting sections 9871 to 9877, 9905a, and 9910a of this title and sections 1070d-31 to 1070d-41, 1119d to 1119d-8, 1119e to 1119e-5, and 4201 to 4206 of Title 20, Education, amending sections 2991b, 2992b to 2992d, 6862, 6865, 8621 to 8624, 8626, 8627, 8629, 9832, 9834 to 9836, 9840, 9843, 9844, 9846, 9862, 9901, 9902, 9904, 9908, and 9910 of this title and section 4061 of Title 20, enacting provisions set out as notes under sections 2991, 8621, and 9904 of this title, and amending provisions set out as a note under section 9861 of this title] may be cited as the 'Human Services Reauthorization Act'."

SHORT TITLE

Section 611 of subchapter A (§§611-633) of chapter 8 of subtitle A of title VI of Pub. L. 97-35 provided that: "This subchapter [enacting this subchapter] may be cited as the 'Community Economic Development Act of 1981'."

Section 635 of subchapter B (§§635-657) of chapter 8 of subtitle A of title VI of Pub. L. 97-35 provided that: "This subchapter [enacting subchapter II of this chapter] may be cited as the 'Head Start Act'."

Section 658A(a) of subchapter C (§658A et seq.) of chapter 8 of subtitle A of title VI of Pub. L. 97-35, as added by Pub. L. 101-508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388-236, and amended by Pub. L. 102-401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 104-193, title VI, §602(1), Aug. 22, 1996, 110 Stat. 2279, provided that: "This subchapter [enacting subchapter II-B of this chapter] may be cited as the 'Child Care and Development Block Grant Act of 1990'."

Section 661 of subchapter D [formerly C] (§§661-670) of chapter 8 of subtitle A of title VI of Pub. L. 97-35, as renumbered by Pub. L. 101-508, title V, §5082(1), Nov. 5, 1990, 104 Stat. 1388-236, and amended by Pub. L. 102-401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036, provided that former subchapter III of this chapter could be cited as the "Follow Through Act", prior to repeal by Pub. L. 103-382, title III, §391(w), Oct. 20, 1994, 108 Stat. 4025.

Section 670H of subchapter E [formerly D] (§§670A-670H) of chapter 8 of subtitle A of title VI of Pub. L. 97-35, as added by Pub. L. 99-425, title III, §304, Sept. 30, 1986, 100 Stat. 968, renumbered by Pub. L. 101-508, title V, §5082(1), Nov. 5, 1990, 104 Stat. 1388-236, and amended by Pub. L. 102-401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036, provided that: "This subchapter [enacting subchapter IV of this chapter] may be cited as the 'State Dependent Care Development Grants Act'."

Section 670M of subchapter F [formerly E] (§§670M-670T) of chapter 8 of subtitle A of title VI of Pub. L. 97-35, as added by Pub. L. 100-297, title II, §2503, Apr. 28, 1988, 102 Stat. 325, renumbered by Pub. L. 101-508, title V, §5082(1), Nov. 5, 1990, 104 Stat. 1388-236, and amended by Pub. L. 102-401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036, provided that former subchapter V of this chapter could be cited as the "Comprehensive Child Development Act", prior to repeal by Pub. L. 103-252, title I, §112(b)(1), (2)(B), May 18, 1994, 108 Stat. 640, 641.

INCONSISTENT LAWS SUPERSEDED DURING FISCAL YEARS 1982, 1983, AND 1984

Section 601 of subtitle A (§§601-670) of title VI of Pub. L. 97-35 provided that:

"(a) Any provision of law which is not consistent with the provisions of this subtitle hereby is superseded and shall have only such force and effect during each of the fiscal years 1982, 1983, and 1984 which is consistent with this subtitle.

"(b) Notwithstanding any authorization of appropriations for fiscal year 1982, 1983, or 1984 contained in any provision of law which is specified in this subtitle, no funds are authorized to be appropriated in excess of the limitations imposed upon appropriations by the provisions of this subtitle."

§9802. "Community development corporation" defined

For purposes of this subchapter, the term "community development corporation" means a nonprofit organization responsible to residents of the area it serves which is receiving financial assistance under part A of this subchapter and any organization more than 50 percent of which is owned by such an organization, or otherwise controlled by such an organization, or designated by such an organization for the purpose of this subchapter.

(Pub. L. 97-35, title VI, §613, Aug. 13, 1981, 95 Stat. 489.)

§9803. Repealed. Pub. L. 105-285, title II, §202(b)(1), Oct. 27, 1998, 112 Stat. 2755

Section, Pub. L. 97-35, title VI, §614, Aug. 13, 1981, 95 Stat. 489; Pub. L. 99-425, title IV, §405(c)(3), Sept. 30, 1986, 100 Stat. 970, related to source of funds for carrying out this subchapter.

§9804. Advisory Community Investment Board

(a) National Community Investment Board; functions, composition, etc.

(1) The President is authorized to establish a National Advisory Community Investment Board (hereinafter in this section referred to as the "Investment Board"). Such Investment Board shall be composed of 15 members appointed, for staggered terms and without regard to the civil service laws, by the President, in consultation with the Secretary of Health and Human Services (hereinafter in this subchapter referred to as the "Secretary"). Such members shall be representative of the investment and business communities and appropriate fields of endeavor related to this subchapter. The Investment Board shall meet at the call of the chairperson, but not less often than 3 times each year. The Secretary and the administrator of community economic development programs shall be ex officio members of the Investment Board.

(2) The Secretary shall carry out the provisions of this subchapter through an appropriate office.

(b) Function

The Investment Board shall promote cooperation between private investors and businesses and community development corporation projects through—

(1) advising the Secretary and the community development corporations on ways to facilitate private investment;

(2) advising businesses and other investors of opportunities in community development corporation projects; and

(3) advising the Secretary, community development corporations, and private investors and businesses of ways in which they might engage in mutually beneficial efforts.

(c) Local advisory community investment boards; establishment, composition, etc.

The governing body of each Community Development Corporation may establish an advisory community investment board composed of not to exceed 15 members who shall be appointed by the governing body after consultation with appropriate local officials. Each such board shall promote cooperation between private investors and businesses and the governing body of the Community Development Corporation through—

- (1) advising the governing body on ways to facilitate private investors;
- (2) advising businesses and other investors of opportunities in Community Development Corporation projects; and
- (3) advising the governing body, private investors, and businesses of ways in which they might engage in mutually beneficial efforts.

(Pub. L. 97-35, title VI, §615, Aug. 13, 1981, 95 Stat. 489; Pub. L. 105-285, title II, §202(b)(2), Oct. 27, 1998, 112 Stat. 2755.)

REFERENCES IN TEXT

The civil service laws, referred to in subsec. (a)(1), are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

AMENDMENTS

1998—Subsec. (a)(2). Pub. L. 105-285 substituted “through an appropriate office” for “through the Office of Community Services established in section 9905(a) of this title”.

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by the Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

PART A—URBAN AND RURAL SPECIAL IMPACT PROGRAMS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 9802, 9819 of this title; title 15 section 632.

§ 9805. Statement of purpose

The purpose of this part is to establish special programs of assistance to nonprofit private locally initiated community development corporations which (1) are directed to the solution of the critical problems existing in particular communities or neighborhoods (defined without regard to political or other subdivisions or boundaries) within those urban and rural areas having concentrations or substantial numbers of low-income persons; (2) are of sufficient size, scope, and duration to have an appreciable impact in such communities, neighborhoods, and rural areas in arresting tendencies toward dependency, chronic unemployment, and community deterioration; (3) hold forth the prospect of continuing to have such impact after the termi-

nation of financial assistance under this part; and (4) provide financial and other assistance to start, expand, or locate enterprises in or near the area to be served so as to provide employment and ownership opportunities for residents of such areas, including those who are disadvantaged in the labor market because of their limited speaking, reading, and writing abilities in the English language.

(Pub. L. 97-35, title VI, §616, Aug. 13, 1981, 95 Stat. 490.)

§ 9806. Establishment and scope of programs

(a) The Secretary is authorized to provide financial assistance in the form of grants to nonprofit and for profit community development corporations and other affiliated and supportive agencies and organizations associated with qualifying community development corporations for the payment of all or part of the cost of programs which are designed to carry out the purposes of this part. Financial assistance shall be provided so that each community economic development program is of sufficient size, scope, and duration to have an appreciable impact on the area served. Such programs may include—

(1) community business and commercial development programs, including (A) programs which provide financial and other assistance (including equity capital) to start, expand, or locate businesses in or near the area served so as to provide employment and ownership opportunities for residents of such areas; and (B) programs for small businesses located in or owned by residents of such areas;

(2) community physical development programs, including industrial parks and housing activities, which contribute to an improved environment and which create new training, employment and ownership opportunities for residents of such area;

(3) training and public service employment programs and related services for unemployed or low-income persons which support and complement community development programs financed under this part, including, without limitation, activities such as the activities described in title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.]; and

(4) social service programs which support and complement community business and commercial development programs financed under this part, including child care, educational services, health services, credit counseling, energy conservation, recreation services, and programs for the maintenance of housing facilities.

(b) The Secretary shall conduct programs assisted under this part so as to contribute, on an equitable basis between urban and rural areas, to the elimination of poverty and the establishment of permanent economic and social benefits in such areas.

(Pub. L. 97-35, title VI, §617, Aug. 13, 1981, 95 Stat. 491; Pub. L. 105-277, div. A, §101(f) [title VIII, §405(d)(40), (f)(31)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-427, 2681-434.)

REFERENCES IN TEXT

The Workforce Investment Act of 1998, referred to in subsec. (a)(3), is Pub. L. 105-220, Aug. 7, 1998, 112 Stat.

936, as amended. Title I of the Act is classified principally to chapter 30 (§2801 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

AMENDMENTS

1998—Subsec. (a)(3). Pub. L. 105-277, §101(f) [title VIII, §405(f)(31)], struck out “the Job Training Partnership Act or” after “activities described in”.

Pub. L. 105-277, §101(f) [title VIII, §405(d)(40)], substituted “activities such as the activities described in the Job Training Partnership Act or title I of the Workforce Investment Act of 1998” for “activities such as those described in the Comprehensive Employment and Training Act”.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 101(f) [title VIII, §405(d)(40)] of Pub. L. 105-277 effective Oct. 21, 1998, and amendment by section 101(f) [title VIII, §405(f)(31)] of Pub. L. 105-277 effective July 1, 2000, see section 101(f) [title VIII, §405(g)(1), (2)(B)] of Pub. L. 105-277, set out as a note under section 3502 of Title 5, Government Organization and Employees.

§ 9807. Financial assistance requirements

(a) Conditions

The Secretary, under such regulations as the Secretary may establish, shall not provide financial assistance for any community economic development program under this part unless the Secretary determines that—

(1) such community development corporation is responsible to residents of the area served (A) through a governing body not less than 50 percent of the members of which are area residents; and (B) in accordance with such other guidelines as may be established by the Secretary, except that the composition of the governing bodies of organizations owned or controlled by the community development corporation need not be subject to such residency requirement;

(2) the program will be appropriately coordinated with local planning under this subchapter with housing and community development programs, with employment and training programs, and with other relevant planning for physical and human resources in the areas served;

(3) adequate technical assistance is made available and committed to the programs being supported;

(4) such financial assistance will materially further the purposes of this part;

(5) the applicant is fulfilling or will fulfill a need for services, supplies, or facilities which is otherwise not being met;

(6) all projects and related facilities will, to the maximum feasible extent, be located in the areas served;

(7) projects will, where feasible, promote the development of entrepreneurial and management skills and the ownership or participation in ownership of assisted businesses and housing, cooperatively or otherwise, by residents of the area served;

(8) projects will be planned and carried out with the fullest possible participation of resident or local businessmen and representatives of financial institutions, including participation through contract, joint venture, partner-

ship, stock ownership or membership on the governing boards or advisory councils of such projects consistent with the self-help purposes of this subchapter;

(9) no participant will be employed on projects involving political parties, or the construction, operation, or maintenance of so much of any facility as is used or to be used for sectarian instruction or as a place for religious worship;

(10) the program will not result in the displacement of employed workers or impair existing contracts for services, or result in the substitution of Federal or other funds in connection with work that would otherwise be performed;

(11) the rates of pay for time spent in work training and education, and other conditions of employment, will be appropriate and reasonable in the light of such factors as the type of work, geographical region, and proficiency of the participant;

(12) the program will, to the maximum extent feasible, contribute to the occupational development or upward mobility of individual participants;

(13) preference will be given to low-income or economically disadvantaged residents of the areas served in filling jobs and training opportunities; and

(14) training programs carried out in connection with projects financed under this part shall be designed wherever feasible to provide those persons who successfully complete such training with skills which are also in demand in communities, neighborhoods, or rural areas other than those for which programs are established under this part.

(b) Relocations substantially increasing unemployment

Financial assistance under this section shall not be extended to assist in the relocation of establishments from one location to another if such relocation would result in a substantial increase in unemployment in the area of original location.

(c) Community economic development program; application; specification of goals

Financial assistance for commercial development under this part shall not be extended until the community economic development program that has applied for assistance under this subchapter has specified in some detail its development goals and its development timetable. The Secretary, in providing continued financial assistance to a community economic development program, shall give serious consideration to the experience such program has had in meeting development goals or in adhering to development timetables.

(Pub. L. 97-35, title VI, §618, Aug. 13, 1981, 95 Stat. 491.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9808 of this title.

§ 9808. Federal share; amount; availability; ownership of property acquired with Federal financial assistance

(a)(1) Assistance provided under this subchapter to any program described in section

9807(a) of this title shall not exceed 90 percent of the cost of such program, including costs of administration, unless the Secretary determines that the assistance in excess of such percentage is required in furtherance of the purposes of this subchapter. Non-Federal contributions may be in cash or in kind, fairly evaluated, including but not limited to plant, equipment, and services.

(2) The assistance referred to in paragraph (1) shall be made available (A) for deposit to the order of grantees which have demonstrated successful program performance, under conditions which the Secretary deems appropriate, within 30 days following approval of the grant agreement by the Secretary and such grantee; or (B) whenever the Secretary deems appropriate, in accordance with applicable rules and regulations prescribed by the Secretary of the Treasury, and including any other conditions which the Secretary of Health and Human Services deems appropriate, within 30 days following approval of the grant agreement by the Secretary and such grantee.

(b) Property acquired as a result of capital investments made by any community development corporation with funds granted as its Federal share of the cost of programs carried out under this subchapter, and the proceeds from such property, shall become the property of the community development corporation and shall not be considered to be Federal property. The Federal Government retains the right to direct that on severance of the grant relationship the assets purchased with grant funds shall continue to be used for the original purpose for which they were granted.

(Pub. L. 97-35, title VI, § 619, Aug. 13, 1981, 95 Stat. 493.)

PART B—SPECIAL RURAL PROGRAMS

§ 9809. Statement of purpose

It is the purpose of this part to meet the special economic needs of rural communities or areas with concentrations or substantial numbers of low-income persons by providing support to self-help programs which promote economic development and independence, as a supplement to existing similar programs conducted by other departments and agencies of the Federal Government. Such programs should encourage low-income families to pool their talents and resources so as to create and expand rural economic enterprise.

(Pub. L. 97-35, title VI, § 620, Aug. 13, 1981, 95 Stat. 493.)

§ 9810. Financial assistance to low-income families, local cooperative associations, and local public or private nonprofit organizations or entities; amount, purposes, etc.

(a) The Secretary is authorized to provide financial assistance, including loans having a maximum maturity of fifteen years and in amounts not resulting in an aggregate principal indebtedness of more than \$3,500 at any one time, to any low-income rural family where, in the judgment of the Secretary, such financial assistance has a reasonable possibility of effect-

ing a permanent increase in the income of such families, or will contribute to the improvement of their living or housing conditions, by assisting or permitting them to—

(1) acquire or improve real estate or reduce encumbrances or erect improvements thereon;

(2) operate or improve the operation of farms not larger than family sized, including but not limited to the purchase of feed, seed, fertilizer, livestock, poultry, and equipment; or

(3) participate in cooperative associations, or finance nonagricultural¹ enterprises which will enable such families to supplement their income.

(b) The Secretary is authorized to provide financial assistance to local cooperative associations or local public and private nonprofit organizations or agencies in rural areas containing concentrations or substantial numbers of low-income persons for the purpose of defraying all or part of the costs of establishing and operating cooperative programs for farming, purchasing, marketing, processing, and to improve their income as producers and their purchasing power as consumers, and to provide such essentials as credit and health services. Costs which may be defrayed shall include—

(1) administrative costs of staff and overhead;

(2) costs of planning and developing new enterprises;

(3) costs of acquiring technical assistance; and

(4) initial capital where it is determined by the Secretary that the poverty of the families participating in the program and the social conditions of the rural area require such assistance.

(Pub. L. 97-35, title VI, § 621, Aug. 13, 1981, 95 Stat. 493.)

§ 9811. Limitation on assistance

No financial assistance shall be provided under this part unless the Secretary determines that—

(1) any cooperative association receiving assistance has a minimum of fifteen active members, a majority of which are low-income rural persons;

(2) adequate technical assistance is made available and committed to the programs being supported;

(3) such financial assistance will materially further the purposes of this part; and

(4) the applicant is fulfilling or will fulfill a need for services, supplies, or facilities which is otherwise not being met.

(Pub. L. 97-35, title VI, § 622, Aug. 13, 1981, 95 Stat. 494.)

PART C—DEVELOPMENT LOANS TO COMMUNITY ECONOMIC DEVELOPMENT PROGRAMS

§ 9812. Development loan fund

(a) Authorities, scope, and purposes; conditions; interest rate; repayment

The Secretary is authorized to make or guarantee loans (either directly or in cooperation

¹ So in original. Probably should be "nonagricultural".

with banks or other organizations through agreements to participate on an immediate or deferred basis) to community development corporations, to families and local cooperatives and the designated supportive organizations of cooperatives eligible for financial assistance under this subchapter, to private nonprofit organizations receiving assistance under chapter 106 of this title, or to public and private nonprofit organizations or agencies, for business facilities and community development projects, including community development credit unions, which the Secretary determines will carry out the purposes of this part. No loans, guarantees, or other financial assistance shall be provided under this section unless the Secretary determines that—

- (1) there is reasonable assurance of repayment of the loan;
- (2) the loan is not otherwise available on reasonable terms from private sources or other Federal, State, or local programs; and
- (3) the amount of the loan, together with other funds available, is adequate to assure completion of the project or achievement of the purposes for which the loan is made.

Loans made by the Secretary pursuant to this section shall bear interest at a rate not less than a rate determined by the Secretary of the Treasury taking into consideration the average market yield on outstanding Treasury obligations of comparable maturity, plus such additional charge, if any, toward covering other costs of the program as the Secretary of Health and Human Services may determine to be consistent with its purposes, except that, for the 5 years following the date in which funds are initially available to the borrower, the rate of interest shall be set at a rate considered appropriate by the Secretary in light of the particular needs of the borrower, which rate shall not be lower than 1 percent. All such loans shall be repayable within a period of not more than 30 years.

(b) Adjustment of interest rates, moratorium on principal and interest, etc.

The Secretary is authorized to adjust interest rates, grant moratoriums on repayment of principal and interest, collect or compromise any obligations held by the Secretary, and to take such other actions in respect to such loans as the Secretary shall determine to be necessary or appropriate, consistent with the purposes of this section.

(c) Establishment, funding, etc.

(1) To carry out the lending and guaranty functions authorized under this part, there shall be established a Development Loan Fund consisting of two separate accounts, one of which shall be a revolving fund called the Rural Development Loan Fund and the other of which shall be a revolving fund called the Community Development Loan Fund. The capital of each such revolving fund shall remain available until expended.

(2) The Rural Development Loan Fund shall consist of the remaining funds provided for in part A of title III of the Economic Opportunity Act of 1964 [42 U.S.C. 2841 et seq.], as in effect on September 19, 1972, and such amounts as may be

deposited in such fund by the Secretary out of funds made available from appropriations for purposes of carrying out this part. The Secretary shall utilize the services of the Farmers Home Administration,¹ or the Rural Development Administration in administering such fund.

(3) The Community Development Loan Fund shall consist of such amounts as may be deposited in such fund by the Secretary out of funds made available from appropriations for purposes of carrying out this subchapter. The Secretary may make deposits in the Community Development Loan Fund in any fiscal year in which the Secretary has made available for grants to community development corporations under this subchapter not less than \$60,000,000 out of funds made available from appropriations for purposes of carrying out this subchapter.

(Pub. L. 97-35, title VI, §623, Aug. 13, 1981, 95 Stat. 494; Pub. L. 101-624, title XXIII, §2303(f)(1), Nov. 28, 1990, 104 Stat. 3981.)

REFERENCES IN TEXT

Chapter 106 of this title, referred to in subsec. (a), was in the original "subtitle B of this title", meaning subtitle B (§671 et seq.) of title VI of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 511, as amended, known as the Community Services Block Grant Act, which is classified generally to chapter 106 (§9901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9901 of this title and Tables.

The Economic Opportunity Act of 1964, referred to in subsec. (c)(2), is Pub. L. 88-452, Aug. 20, 1964, 78 Stat. 508, as amended. Part A of title III of the Economic Opportunity Act of 1964 was classified generally to part A (§2841 et seq.) of subchapter III of chapter 34 of this title prior to repeal by Pub. L. 97-35, title VI, §683(a), Aug. 13, 1981, 95 Stat. 519. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1990—Subsec. (c)(2). Pub. L. 101-624 inserted " or the Rural Development Administration" after "Farmers Home Administration".

TRANSFER OF FUNCTIONS

Functions relating to administration of Community Development Credit Union Revolving Loan Fund transferred from Secretary of Health and Human Services to National Credit Union Administration Board by Pub. L. 99-609, set out as a note under section 9822 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9812a, 9822 of this title.

§ 9812a. Interest rates payable on certain rural development loans; assignment of loan contracts

(a) Modification of interest rates

Notwithstanding any other provision of law—

(1) any outstanding loan made after December 31, 1982, by the Secretary of Health and Human Services; or

(2) any loan made after September 30, 1986;

with moneys from the Rural Development Loan Fund established by section 9812(c)(1) of this title or with funds available (before October 27, 1998) under section 9910(a) of this title (as in ef-

¹ So in original. The comma probably should not appear.

fect before October 27, 1998) to an intermediary borrower shall bear interest at a fixed rate equal to the rate of interest that was in effect on the date of issuance for loans made in 1980 with such moneys or such funds if the weighted average rate of interest for all loans made after December 31, 1982, by such intermediary borrower with such moneys or such funds does not exceed the sum of 6 percent and the rate of interest payable under this subsection by such intermediary borrower.

(b) Assignment of certain loan contracts

Any contract for a loan made during the period beginning on December 31, 1982, and ending on September 30, 1986, with—

(1) moneys from the Rural Development Loan Fund established by section 9812(c)(1) of this title; or

(2) funds available (before October 27, 1998) under section 9910(a) of this title (as in effect before October 27, 1998);

to an intermediary borrower that is a county government may be assigned by such borrower to an entity to which such loan could have been made for the purpose for which such contract was made. Any entity to which such contract is so assigned shall be substituted as a party to such contract and shall be obligated to carry out such contract and the purpose for which such contract was made.

(Pub. L. 99-425, title IV, §407(a), (b), Sept. 30, 1986, 100 Stat. 971; Pub. L. 105-285, title II, §202(c), Oct. 27, 1998, 112 Stat. 2755.)

REFERENCES IN TEXT

Section 9910 of this title, referred to in subsecs. (a) and (b)(2), was in the original a reference to section 681 of Pub. L. 97-35. Section 681 of Pub. L. 97-35 was omitted, and a new section 681 enacted, in the general amendment of chapter 106 of this title by Pub. L. 105-285, title II, §201, Oct. 27, 1998, 112 Stat. 2728. The new section 681 is classified to section 9922 of this title.

CODIFICATION

Section was enacted as part of the Human Services Reauthorization Act of 1986, and not as part of the Community Economic Development Act of 1981 which comprises this subchapter.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-285, §202(c)(1), in concluding provisions, inserted “(before October 27, 1998)” after “funds available” and “(as in effect before October 27, 1998)” after “9910(a) of this title”.

Subsec. (b)(2). Pub. L. 105-285, §202(c)(2), inserted “(before October 27, 1998)” after “funds available” and “(as in effect before October 27, 1998)” after “9910(a) of this title”.

EFFECTIVE DATE

Section effective Oct. 1, 1986, see section 1001 of Pub. L. 99-425, set out as an Effective Date of 1986 Amendment note under section 8621 of this title.

TRANSFER OF LOAN BY UTAH OR OHIO LOCAL PUBLIC BODY TO NONPROFIT CORPORATION

Pub. L. 99-500, §101(a) [title VI, §640], Oct. 18, 1986, 100 Stat. 1783, 1783-35, and Pub. L. 99-591, §101(a) [title VI, §640], Oct. 30, 1986, 100 Stat. 3341, 3341-35, purported to amend section 623B(b)(2) of the Community Economic Development Act of 1981, a nonexistent section of that Act (Pub. L. 99-35, title VI, §611 et seq.), by adding at the end thereof the following new sentence: “Notwith-

standing any other provision of law, any Utah or Ohio local public body to which a loan was made after December 31, 1982, from the Rural Development Loan Fund may, at the discretion of such local public body and with the approval of the Secretary of Health and Human Services, transfer such loan to a nonprofit corporation designated by such body to serve as an intermediate borrower and to carry out the purposes of the loan.”

§ 9813. Model Community Economic Development Finance Corporation; establishment; functions

To the extent he deems appropriate, the Secretary shall utilize funds available under this part to prepare a plan of action for the establishment of a Model Community Economic Development Finance Corporation to provide a user-controlled independent and professionally operated long-term financing vehicle with the principal purpose of providing financial support for community economic development corporations, cooperatives, other affiliated and supportive agencies and organizations associated with community economic development corporations, and other entities eligible for assistance under this subchapter.

(Pub. L. 97-35, title VI, §624, Aug. 13, 1981, 95 Stat. 495.)

PART D—SUPPORTIVE PROGRAMS AND ACTIVITIES

§ 9814. Training and technical assistance

(a) Grants, contracts, and other arrangements; preconditions

The Secretary shall provide, directly or through grants, contracts, or other arrangements, such technical assistance and training of personnel as may be required to effectively implement the purposes of this subchapter. No financial assistance shall be provided to any public or private organization under this section unless the Secretary provides the beneficiaries of these services with opportunity to participate in the selection of and to review the quality and utility of the services furnished them by such organization.

(b) Technical assistance to community development corporations and urban and rural cooperatives

Technical assistance to community development corporations and both urban and rural cooperatives may include planning, management, legal assistance or support, preparation of feasibility studies, product development, marketing, and the provision of stipends to encourage skilled professionals to engage in full-time activities under the direction of a community organization financially assisted under this subchapter.

(c) Training for employees of community development corporations and employees and members of urban and rural cooperatives

Training for employees of community development corporations and for employees and members of urban and rural cooperatives shall include on-the-job training, classroom instruction, and scholarships to assist them in development, managerial, entrepreneurial, planning, and

other technical and organizational skills which will contribute to the effectiveness of programs assisted under this subchapter.

(Pub. L. 97-35, title VI, § 625, Aug. 13, 1981, 95 Stat. 496.)

§ 9815. Small Business Administration and Department of Commerce economic development programs; regulations

(a)(1) Funds granted under this subchapter which are invested directly or indirectly, in a small investment company, local development company, limited small business investment company, or small business investment company licensee under section 681(d)¹ of title 15 shall be included as “private paid-in capital and paid-in surplus”, “combined paid-in capital and paid-in surplus”, and “paid-in capital” for purposes of sections 682, 683, and 696, respectively, of title 15.

(2) Not later than 90 days after August 13, 1981, the Administrator of the Small Business Administration, after consultation with the Secretary, shall promulgate regulations to ensure the availability to community development corporations of such programs as shall further the purposes of this subchapter, including programs under section 637(a) of title 15.

(b)(1) Areas selected for assistance under this subchapter shall be deemed “redevelopment areas” within the meaning of section 401 of the Public² Works and Economic Development Act of 1965,¹ shall qualify for assistance under the provisions of title I and title II of such Act, and shall be deemed to have met the overall economic development program requirements of section 202(b)(10) of such Act.

(2) Not later than 90 days after August 13, 1981, the Secretary of Commerce shall prescribe regulations which will ensure that community development corporations and cooperatives shall qualify for assistance and shall be eligible to receive such assistance under all such programs of the Economic Development Administration as shall further the purposes of this subchapter.

(Pub. L. 97-35, title VI, § 626, Aug. 13, 1981, 95 Stat. 496.)

REFERENCES IN TEXT

Section 681(d) of title 15, referred to in subsec. (a)(1), was repealed by Pub. L. 104-208, div. D, title II, § 208(b)(3)(A), Sept. 30, 1996, 110 Stat. 3009-742.

The Public Works and Economic Development Act of 1965, referred to in subsec. (b)(1), is Pub. L. 89-136, Aug. 26, 1965, 79 Stat. 552, as amended. Titles I to VI of the Act of 1965 were repealed and new titles I to VI were enacted by Pub. L. 105-393, title I, § 102(a), Nov. 13, 1998, 112 Stat. 3597. As so enacted, section 401 of the Act no longer defines “redevelopment areas” and section 202 of the Act no longer contains a subsec. (b). For complete classification of this Act to the Code, see Short Title note set out under section 3121 of this title and Tables.

§ 9816. Department of Housing and Urban Development programs

The Secretary of Housing and Urban Development, after consultation with the Secretary, shall take all necessary steps to assist commu-

nity development corporations and local cooperative associations to qualify for and receive (1) such assistance in connection with technical assistance, counseling to tenants and homeowners, and loans to sponsors of low-income and moderate-income housing under section 106 of the Housing and Urban Development Act of 1968 [12 U.S.C. 1701x], as amended by section 811 of the Housing and Community Development Act of 1974; (2) such land for housing and business location and expansion under title I of the Housing and Community Development Act of 1974 [42 U.S.C. 5301 et seq.]; and (3) such funds for comprehensive planning under section 701 of the Housing Act of 1954 [40 U.S.C. 461], as amended by section 401 of the Housing and Community Development Act of 1974, as shall further the purposes of this subchapter.

(Pub. L. 97-35, title VI, § 627, Aug. 13, 1981, 95 Stat. 497.)

REFERENCES IN TEXT

Section 811 of the Housing and Community Development Act of 1974, referred to in text, is section 811 of Pub. L. 93-383, title VIII, Aug. 22, 1974, 88 Stat. 735, which amended section 1701x of Title 12, Banks and Banking.

The Housing and Community Development Act of 1974, referred to in text, is Pub. L. 93-383, Aug. 22, 1974, 88 Stat. 633, as amended. Title I of the Housing and Community Development Act of 1974 is classified principally to chapter 69 (§ 5301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

Section 701 of the Housing Act of 1954 [40 U.S.C. 461], referred to in text, was repealed by Pub. L. 97-35, title III, 313(b), Aug. 13, 1981, 95 Stat. 398.

Section 401 of the Housing and Community Development Act of 1974, referred to in text, is section 401 of Pub. L. 93-383, title IV, Aug. 22, 1974, 88 Stat. 686, subsecs. (a) and (b) of which amended section 461 of Title 40, Public Buildings, Property, and Works, prior to its repeal by Pub. L. 97-35, and subsec. (c) of which amended section 460 of Title 40.

CAPACITY BUILDING FOR COMMUNITY DEVELOPMENT AND AFFORDABLE HOUSING

Pub. L. 103-120, § 4, Oct. 27, 1993, 107 Stat. 1148, as amended by Pub. L. 105-18, title II, § 10004, June 12, 1997, 111 Stat. 201, provided that:

“(a) IN GENERAL.—The Secretary is authorized to provide assistance through the National Community Development Initiative, Local Initiatives Support Corporation, The Enterprise Foundation, Habitat for Humanity, and Youthbuild USA to develop the capacity and ability of community development corporations and community housing development organizations to undertake community development and affordable housing projects and programs.

“(b) FORM OF ASSISTANCE.—Assistance under this section may be used for—

“(1) training, education, support, and advice to enhance the technical and administrative capabilities of community development corporations and community housing development organizations;

“(2) loans, grants, or predevelopment assistance to community development corporations and community housing development organizations to carry out community development and affordable housing activities that benefit low-income families; and

“(3) such other activities as may be determined by the National Community Development Initiative, Local Initiatives Support Corporation, The Enterprise Foundation, Habitat for Humanity, and Youthbuild USA in consultation with the Secretary.

¹ See References in Text note below.

² So in original. Probably should be “Public”.

“(c) MATCHING REQUIREMENT.—Assistance provided under this section shall be matched from private sources in an amount equal to 3 times the amount made available under this section.

“(d) IMPLEMENTATION.—The Secretary shall by notice establish such requirements as may be necessary to carry out the provisions of this section. The notice shall take effect upon issuance.

“(e) AUTHORIZATION.—There are authorized to be appropriated \$25,000,000 for fiscal year 1994 to carry out this section.”

§ 9817. Department of Agriculture; Rural Development Administration programs

The Secretary of Agriculture or, where appropriate, the Administrator of the Farmers Home Administration, or of the Rural Development Administration, after consultation with the Secretary of Health and Human Services, shall take all necessary steps to ensure that community development corporations and local cooperative associations shall qualify for and shall receive—

(1) such assistance in connection with housing development under the Housing Act of 1949, as amended [42 U.S.C. 1441 et seq.];

(2) such assistance in connection with housing, business, industrial, and community development under the Consolidated Farmers Home Administration Act of 1961 [7 U.S.C. 1921 et seq.] and the Rural Development Act of 1972; and

(3) such further assistance under all such programs of the United States Department of Agriculture; as shall further the purposes of this subchapter.

(Pub. L. 97-35, title VI, § 628, Aug. 13, 1981, 95 Stat. 497; Pub. L. 101-624, title XXIII, § 2303(f)(2), Nov. 28, 1990, 104 Stat. 3981.)

REFERENCES IN TEXT

The Housing Act of 1949, referred to in par. (1), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended, which is classified principally to chapter 8A (§1441 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of this title and Tables.

The Consolidated Farmers Home Administration Act of 1961, referred to in par. (2), is title III of Pub. L. 87-128, Aug. 8, 1961, 75 Stat. 307, as amended, which was redesignated the Consolidated Farm and Rural Development Act by Pub. L. 92-419, §101, Aug. 30, 1972, 86 Stat. 657, and is classified principally to chapter 50 (§1921 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1921 of Title 7 and Tables.

The Rural Development Act of 1972, referred to in par. (2), is Pub. L. 92-419, Aug. 30, 1972, 86 Stat. 657, as amended. For complete classification of this Act to the Code, see Short Title of 1972 Amendment note set out under section 1921 of Title 7.

AMENDMENTS

1990—Pub. L. 101-624 substituted “Department of Agriculture; Rural Development Administration programs” for “Department of Agriculture and Farmers Home Administration programs” in section catchline and inserted “, or of the Rural Development Administration” after “of the Farmers Home Administration” in text.

§ 9818. Coordination and eligibility

(a) The Secretary shall take all necessary and appropriate steps to encourage Federal departments and agencies and State and local govern-

ments to make grants, provide technical assistance, enter into contracts, and generally support and cooperate with community development corporations and local cooperative associations.

(b) Eligibility for assistance under other Federal programs shall not be denied to any applicant on the ground that it is a community development corporation or any other entity assisted under this subchapter.

(Pub. L. 97-35, title VI, § 629, Aug. 13, 1981, 95 Stat. 497.)

§ 9819. Evaluation of programs; implementation and funding, etc.; research and demonstration projects; implementation and purposes

(a) Each program for which grants are made under this subchapter shall provide for a thorough evaluation of the effectiveness of the program in achieving its purposes, which evaluation shall be conducted by such public or private organizations as the Secretary in consultation with existing grantees familiar with programs carried out under the Community Services Block Grant Act [42 U.S.C. 9901 et seq.] may designate, and all or part of the costs of evaluation may be paid from funds appropriated to carry out this part. In evaluating the performance of any community development corporation funded under part A of this subchapter, the criteria for evaluation shall be based upon such program objectives, goals, and priorities as are consistent with the purposes of this subchapter and were set forth by such community development corporation in its proposal for funding as approved and agreed upon by or as subsequently modified from time to time by mutual agreement between the Secretary and such community development corporation.

(b) The Secretary shall conduct, either directly or through grants or other arrangements, research and demonstration projects designed to suggest new programs and policies to achieve the purposes of this subchapter in such ways as to provide opportunities for employment, ownership, and a better quality of life for low-income residents.

(Pub. L. 97-35, title VI, § 630, Aug. 13, 1981, 95 Stat. 497.)

REFERENCES IN TEXT

The Community Services Block Grant Act, referred to in subsec. (a), is subtitle B (§671 et seq.) of title VI of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 511, as amended, which is classified generally to chapter 106 (§9901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9901 of this title and Tables.

§ 9820. Grants to plan economic development and cooperative programs

In order to facilitate the purposes of this subchapter, the Secretary is authorized to provide financial assistance to any public or private nonprofit agency or organization for planning of community economic development programs and cooperative programs under this subchapter.

(Pub. L. 97-35, title VI, § 631, Aug. 13, 1981, 95 Stat. 498.)

§ 9821. Nondiscrimination provisions

(a) The Secretary shall not provide financial assistance for any program, project, or activity under this subchapter unless the grant or contract with respect thereto specifically provides that no person with responsibilities in the operation thereof will discriminate with respect to any such program, project, or activity because of race, creed, color, national origin, sex, political affiliation, or beliefs.

(b) No person in the United States shall on the ground of sex be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in connection with any program or activity receiving assistance under this subchapter. The Secretary shall enforce the provisions of the preceding sentence in accordance with section 2000d-1 of this title. Section 2000d-2 of this title shall apply with respect to any action taken by the Secretary to enforce such sentence. This section shall not be construed as affecting any other legal remedy that a person may have if such person is excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with, any program, project, or activity receiving assistance under this subchapter.

(Pub. L. 97-35, title VI, § 632, Aug. 13, 1981, 95 Stat. 498.)

§ 9822. Availability of certain appropriated funds

Funds appropriated to the Rural Development Loan Fund under title VII of the Economic Opportunity Act of 1964 [42 U.S.C. 2981 et seq.] (as in effect on August 12, 1981), and interest accumulated in such fund, shall be deposited in the Rural Development Loan Fund established under section 9812(c)(1) of this title and shall continue to be available to carry out the purposes of such fund. Funds appropriated to the Community Development Credit Union Revolving Loan Fund under title VII of the Economic Opportunity Act of 1964 (as in effect on August 12, 1981), and interest accumulated in such fund, shall continue to be available to carry out the purposes of such fund.

(Pub. L. 97-35, title VI, § 633, Aug. 13, 1981, 95 Stat. 498.)

REFERENCES IN TEXT

The Economic Opportunity Act of 1964, referred to in text, is Pub. L. 88-452, Aug. 20, 1964, 78 Stat. 508, as amended. Title VII of the Economic Opportunity Act of 1964 was classified generally to subchapter VII (§ 2981 et seq.) of chapter 34 of this title, prior to repeal by Pub. L. 97-35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519. For complete classification of this Act to the Code, see Tables.

CODIFICATION

“August 12, 1981” substituted in text for “the day before the date of the enactment of this Act”.

TRANSFER OF COMMUNITY DEVELOPMENT CREDIT UNION REVOLVING LOAN FUND

Pub. L. 99-609, Nov. 6, 1986, 100 Stat. 3475, provided that:

“SECTION 1. SHORT TITLE.

“This Act may be cited as the ‘Community Development Credit Union Revolving Loan Fund Transfer Act’.

“SEC. 2. TRANSFER OF COMMUNITY DEVELOPMENT CREDIT UNION REVOLVING LOAN FUND.

“(a) ADMINISTRATION OF FUND BY NCUA.—

“(1) IN GENERAL.—Beginning on the date of the enactment of this Act [Nov. 6, 1986], the National Credit Union Administration Board shall administer the Community Development Credit Union Revolving Loan Fund.

“(2) TRANSFER OF AUTHORITY.—All authority to carry out the purposes of the Fund and to prescribe regulations in connection with the administration of the Fund which, on the day before the date of the enactment of this Act, was vested in the Secretary of Health and Human Services shall vest on such date in the Board. Except as provided in subsection (c), the Secretary shall have no further responsibility with respect to the Fund.

“(b) CONTINUED AVAILABILITY OF APPROPRIATED FUNDS.—All funds appropriated to the Fund and interest accumulated in the Fund which continue to be available under section 633 of the Omnibus Budget Reconciliation Act of 1981 [42 U.S.C. 9822] shall continue to be available to the Board to carry out the purposes of the Fund.

“(c) TRANSFER OF ASSETS; ETC.—The Secretary shall transfer to the National Credit Union Administration all assets, liabilities, grants, contracts, property, records, and funds held, used, arising from, or available to the Secretary in connection with the administration of the Fund before the end of the 60-day period beginning on the date of the enactment of this Act [Nov. 6, 1986].

“(d) SAVINGS PROVISIONS.—

“(1) REGULATIONS.—Any regulations prescribed by the Secretary in connection with the administration of the Fund shall continue in effect until superseded by regulations prescribed by the Board.

“(2) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Subsection (a) shall not be construed as affecting the validity of any right, duty, or obligation of the United States or any other person arising under or pursuant to any contract, loan, or other instrument or agreement which was in effect on the day before the date of the enactment of this Act [Nov. 6, 1986].

“(3) CONTINUATION OF SUITS.—No action or other proceeding commenced by or against the Secretary in connection with the administration of the Fund shall abate by reason of the enactment of this Act, except that the Board shall be substituted for the Secretary as a party to any such action or proceeding.

“(e) DEFINITIONS.—For purposes of this section—

“(1) BOARD.—The term ‘Board’ means the National Credit Union Administration Board.

“(2) FUND.—The term ‘Fund’ means the Community Development Credit Union Revolving Loan Fund established under title VII of the Economic Opportunity Act of 1964 [see References in Text note above] (as in effect before the date of the enactment of the Omnibus Budget Reconciliation Act of 1981 [Aug. 13, 1981]).

“(3) SECRETARY.—The term ‘Secretary’ means the Secretary of Health and Human Services.”

SUBCHAPTER II—HEAD START PROGRAMS

CODIFICATION

Subchapter is based on subchapter B of chapter 8 of subtitle A of title VI of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 499, as amended.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 247b-16, 280g, 290bb-23, 290bb-25, 1396r-1a, 1758, 1766, 4953, 5011, 12653, 12653c of this title; title 8 section 1613; title 20 sections 1087ee, 6311, 6322, 6367, 6376, 6381a, 6775, 7544, 9252; title 31 section 6703.

§ 9831. Statement of purpose

It is the purpose of this subchapter to promote school readiness by enhancing the social and

cognitive development of low-income children through the provision, to low-income children and their families, of health, educational, nutritional, social, and other services that are determined, based on family needs assessments, to be necessary.

(Pub. L. 97-35, title VI, §636, Aug. 13, 1981, 95 Stat. 499; Pub. L. 101-501, title I, §102, Nov. 3, 1990, 104 Stat. 1224; Pub. L. 105-285, title I, §102, Oct. 27, 1998, 112 Stat. 2703.)

AMENDMENTS

1998—Pub. L. 105-285 amended section catchline and text generally. Prior to amendment, text read as follows:

“(a) In recognition of the role which Project Head Start has played in the effective delivery of comprehensive health, educational, nutritional, social, and other services to economically disadvantaged children and their families, it is the purpose of this subchapter to extend the authority for the appropriation of funds for such program.

“(b) In carrying out the provisions of this subchapter, the Secretary of Health and Human Services shall continue the administrative arrangement responsible for meeting the needs of migrant, non-English language background, and Indian children and shall assure that appropriate funding is provided to meet such needs.”

1990—Subsec. (b). Pub. L. 101-501 inserted “, non-English language background,” after “migrant”.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101-501, set out as a note under section 8621 of this title.

SHORT TITLE

For short title of this subchapter as the “Head Start Act”, see section 635 of Pub. L. 97-35, set out as a note under section 9801 of this title.

§ 9832. Definitions

For purposes of this subchapter:

(1) The term “child with a disability” means—

(A) a child with a disability, as defined in section 1401(3) of title 20; and

(B) an infant or toddler with a disability, as defined in section 1432(5) of title 20.

(2) The term “delegate agency” means a public, private nonprofit, or for-profit organization or agency to which a grantee has delegated all or part of the responsibility of the grantee for operating a Head Start program.

(3) The term “family literacy services” means services that are of sufficient intensity in terms of hours, and of sufficient duration, to make sustainable changes in a family, and that integrate all of the following activities:

(A) Interactive literacy activities between parents and their children.

(B) Training for parents regarding how to be the primary teacher for their children and full partners in the education of their children.

(C) Parent literacy training that leads to economic self-sufficiency.

(D) An age-appropriate education to prepare children for success in school and life experiences.

(4) The term “financial assistance” includes assistance provided by grant, agreement, or

contract, and payments may be made in installments and in advance or by way of reimbursement with necessary adjustments on account of overpayments or underpayments.

(5) The term “full calendar year” means all days of the year other than Saturday, Sunday, and a legal public holiday.

(6) The term “full-working-day” means not less than 10 hours per day. Nothing in this paragraph shall be construed to require an agency to provide services to a child who has not reached the age of compulsory school attendance for more than the number of hours per day permitted by State law (including regulation) for the provision of services to such a child.

(7) The term “Head Start classroom” means a group of children supervised and taught by two paid staff members (a teacher and a teacher’s aide or two teachers) and, where possible, a volunteer.

(8) The term “Head Start family day care” means Head Start services provided in a private residence other than the residence of the child receiving such services.

(9) The term “home-based Head Start program” means a Head Start program that provides Head Start services in the private residence of the child receiving such services.

(10) The term “Indian tribe” means any tribe, band, nation, pueblo, or other organized group or community of Indians, including any Native village described in section 3(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(c)) or established pursuant to such Act (43 U.S.C. 1601 et seq.), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(11) The term “local educational agency” has the meaning given such term in the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.].

(12) The term “migrant and seasonal Head Start program” means—

(A) with respect to services for migrant farmworkers, a Head Start program that serves families who are engaged in agricultural labor and who have changed their residence from one geographic location to another in the preceding 2-year period; and

(B) with respect to services for seasonal farmworkers, a Head Start program that serves families who are engaged primarily in seasonal agricultural labor and who have not changed their residence to another geographic location in the preceding 2-year period.

(13) The term “mobile Head Start program” means the provision of Head Start services utilizing transportable equipment set up in various community-based locations on a routine, weekly schedule, operating in conjunction with home-based Head Start programs, or as a Head Start classroom.

(14) The term “poverty line” means the official poverty line (as defined by the Office of Management and Budget)—

(A) adjusted to reflect the percentage change in the Consumer Price Index For¹ All

¹ So in original. Probably should not be capitalized.

Urban Consumers, issued by the Bureau of Labor Statistics, occurring in the 1-year period or other interval immediately preceding the date such adjustment is made; and

(B) adjusted for family size.

(15) The term “scientifically based reading research”—

(A) means the application of rigorous, systematic, and objective procedures to obtain valid knowledge relevant to reading development, reading instruction, and reading difficulties; and

(B) shall include research that—

(i) employs systematic, empirical methods that draw on observation or experiment;

(ii) involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;

(iii) relies on measurements or observational methods that provide valid data across evaluators and observers and across multiple measurements and observations; and

(iv) has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

(16) The term “Secretary” means the Secretary of Health and Human Services.

(17) The term “State” means a State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands, but for fiscal years ending before October 1, 2001 (and fiscal year 2002, if the legislation described in section 9835(a)(2)(B)(iii) of this title has not been enacted before September 30, 2001), also means the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

(Pub. L. 97-35, title VI, §637, Aug. 13, 1981, 95 Stat. 499; Pub. L. 98-558, title I, §101, Oct. 30, 1984, 98 Stat. 2878; Pub. L. 101-501, title I, §§104(b), 116(b), 117(b), 121(b), 123(a), Nov. 3, 1990, 104 Stat. 1228, 1232, 1233, 1237; Pub. L. 103-252, title I, §102, May 18, 1994, 108 Stat. 624; Pub. L. 105-285, title I, §103, Oct. 27, 1998, 112 Stat. 2703.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in par. (10), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

The Elementary and Secondary Education Act of 1965, referred to in par. (11), is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27, as amended, which is classified generally to chapter 70 (§6301 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

AMENDMENTS

1998—Pars. (1), (2). Pub. L. 105-285, §103(2), added pars. (1) and (2). Former pars. (1) and (2) redesignated (16) and (17), respectively.

Pars. (3), (4). Pub. L. 105-285, §103(3)–(5), added par. (3), redesignated former par. (3) as (4), and struck out

former par. (4) which read as follows: “The term ‘family literacy services’ means services and activities that include interactive literacy activities between parents and their children, training for parents on techniques for being the primary teacher of their children and full partners in the education of their children, parent literacy training (including training in English as a second language), and early childhood education.”

Par. (6). Pub. L. 105-285, §103(6), inserted at end “Nothing in this paragraph shall be construed to require an agency to provide services to a child who has not reached the age of compulsory school attendance for more than the number of hours per day permitted by State law (including regulation) for the provision of services to such a child.”

Par. (12). Pub. L. 105-285, §103(7), added par. (12) and struck out former par. (12) which read as follows: “The term ‘migrant Head Start program’ means a Head Start program that serves families who are engaged in agricultural work and who have changed their residence from one geographical location to another in the preceding 2-year period.”

Par. (15). Pub. L. 105-285, §103(8), added par. (15).

Par. (16). Pub. L. 105-285, §103(1), redesignated par. (1) as (16) and transferred it to appear after par. (15).

Par. (17). Pub. L. 105-285, §103(9)(B), (C), substituted “Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands, but for fiscal years ending before October 1, 2001 (and fiscal year 2002, if the legislation described in section 9835(a)(2)(B)(iii) of this title has not been enacted before September 30, 2001), also means” for “Virgin Islands,” and “and the Republic of Palau” for “Palau, and the Commonwealth of the Northern Mariana Islands”.

Pub. L. 105-285, §103(9)(A), which directed substitution of “term” for “Term”, could not be executed because “Term” does not appear in par. (17).

Pub. L. 105-285, §103(1), redesignated par. (2) as (17) and transferred it to appear after par. (16).

1994—Par. (4). Pub. L. 103-252, §102(1), (4), (5)(A), redesignated par. (12) as (4) and struck out former par. (4) which defined “adjusted appropriation”.

Par. (5). Pub. L. 103-252, §102(1), (4), (5)(B), redesignated par. (10) as (5) and struck out former par. (5) which defined “quality improvement funds”.

Par. (6). Pub. L. 103-252, §102(4), (5)(B), redesignated par. (11) as (6). Former par. (6) redesignated (7).

Pars. (7), (8). Pub. L. 103-252, §102(4), redesignated pars. (6) and (7) as (7) and (8), respectively. Former par. (8) redesignated (9).

Par. (9). Pub. L. 103-252, §102(4), redesignated par. (8) as (9). Former par. (9) redesignated (14).

Pub. L. 103-252, §102(2), added par. (9) and struck out former par. (9) which defined “poverty line”.

Par. (10). Pub. L. 103-252, §102(4), (5)(C), redesignated par. (13) as (10). Former par. (10) redesignated (5).

Par. (11). Pub. L. 103-252, §102(5)(D), added par. (11). Former par. (11) redesignated (6).

Par. (12). Pub. L. 103-252, §102(5)(D), added par. (12). Former par. (12) redesignated (4).

Pub. L. 103-252, §102(3), (4), added par. (12) and redesignated it as (4).

Par. (13). Pub. L. 103-252, §102(5)(D), added par. (13). Former par. (13) redesignated (10).

Pub. L. 103-252, §102(3), (4), added par. (13) and redesignated it as (10).

Par. (14). Pub. L. 103-252, §102(4), redesignated par. (9) as (14).

1990—Par. (2). Pub. L. 101-501, §104(b)(1), substituted “the Federated States of Micronesia, the Republic of the Marshall Islands, Palau” for “the Trust Territory of the Pacific Islands”.

Pars. (4), (5). Pub. L. 101-501, §104(b)(2), added pars. (4) and (5).

Par. (6). Pub. L. 101-501, §116(b), added par. (6).

Pars. (7), (8). Pub. L. 101-501, §117(b), added pars. (7) and (8).

Par. (9). Pub. L. 101-501, §121(b), added par. (9).

Pars. (10), (11). Pub. L. 101-501, §123(a), added pars. (10) and (11).

1984—Par. (2). Pub. L. 98-558 inserted “the Commonwealth of” before “the Northern Mariana Islands”.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 127 of title I of Pub. L. 103-252 provided that: “(a) EFFECTIVE DATE.—This title [see Short Title of 1994 Amendment note set out under section 9801 of this title], and the amendments made by this title, shall take effect on the date of enactment of this title [May 18, 1994].

“(b) APPLICATION.—The requirements of this title and the amendments made by this title shall not apply to Head Start agencies and other recipients of financial assistance under the Head Start Act [42 U.S.C. 9831 et seq.] until October 1, 1994.”

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101-501, set out as a note under section 8621 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9902 of this title.

§ 9833. Financial assistance for Head Start programs

The Secretary may, upon application by an agency which is eligible for designation as a Head Start agency pursuant to section 9836 of this title, provide financial assistance to such agency for the planning, conduct, administration, and evaluation of a Head Start program focused primarily upon children from low-income families who have not reached the age of compulsory school attendance which (1) will provide such comprehensive health, education, parental involvement, nutritional, social, and other services as will enable the children to attain their full potential and attain school readiness; and (2) will provide for direct participation of the parents of such children in the development, conduct, and overall program direction at the local level.

(Pub. L. 97-35, title VI, § 638, Aug. 13, 1981, 95 Stat. 499; Pub. L. 100-297, title II, § 2504, Apr. 28, 1988, 102 Stat. 330; Pub. L. 103-252, title I, §§ 103, 112(c), May 18, 1994, 108 Stat. 625, 641; Pub. L. 105-285, title I, § 104, Oct. 27, 1998, 112 Stat. 2705.)

AMENDMENTS

1998—Cl. (1). Pub. L. 105-285 substituted “enable the children” for “aid the children” and inserted “and attain school readiness” before the semicolon.

1994—Pub. L. 103-252 struck out subsec. (a) designation, in cl. (1), substituted “health, education, parental involvement, nutritional, social, and other services” for “health, nutritional, educational, social, and other services”, and struck out subsec. (b) which read as follows: “For purposes of providing financial assistance under subsection (a) of this section to agencies, the Secretary may not take into consideration whether such agency applies for or receives funds under subchapter V of this chapter.”

1988—Pub. L. 100-297 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-252 effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103-252, set out as a note under section 9832 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

For effective date and applicability of amendment by Pub. L. 100-297, see section 6303 of Pub. L. 100-297, set out as a note under section 1071 of Title 20, Education.

§ 9834. Authorization of appropriations

(a) There are authorized to be appropriated for carrying out the provisions of this subchapter such sums as may be necessary for fiscal years 1999 through 2003.

(b) From the amount appropriated under subsection (a) of this section, the Secretary shall make available—

(1) for each of fiscal years 1999 through 2003 to carry out activities authorized under section 9837a of this title, not more than \$35,000,000 but not less than the amount that was made available for such activities for fiscal year 1998;

(2) not more than \$5,000,000 for each of fiscal years 1999 through 2003 to carry out impact studies under section 9844(g) of this title; and

(3) not more than \$12,000,000 for fiscal year 1999, and such sums as may be necessary for each of fiscal years 2000 through 2003, to carry out other research, demonstration, and evaluation activities, including longitudinal studies, under section 9844 of this title.

(Pub. L. 97-35, title VI, § 639, Aug. 13, 1981, 95 Stat. 499; Pub. L. 98-558, title I, § 102, Oct. 30, 1984, 98 Stat. 2878; Pub. L. 99-425, title I, § 101, Sept. 30, 1986, 100 Stat. 966; Pub. L. 101-120, § 2, Oct. 23, 1989, 103 Stat. 700; Pub. L. 101-501, title I, §§ 103, 120(b), 140, Nov. 3, 1990, 104 Stat. 1224, 1236, 1242; Pub. L. 103-252, title I, § 104, May 18, 1994, 108 Stat. 625; Pub. L. 105-285, title I, § 105, Oct. 27, 1998, 112 Stat. 2705.)

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-285, § 105(1), substituted “1999 through 2003” for “1995 through 1998”.

Subsec. (b)(1) to (3). Pub. L. 105-285, § 105(2), added pars. (1) to (3) and struck out former pars. (1) and (2) which read as follows:

“(1) \$35,000,000 for each of the fiscal years 1995 through 1998 to—

“(A) carry out the Head Start Transition Project Act; and

“(B) carry out activities authorized under section 9837(d) of this title; and

“(2) not more than \$3,000,000 for fiscal year 1995, and such sums as may be necessary for each of the fiscal years 1996 through 1998, to carry out longitudinal research under section 9844(e) of this title.”

1994—Subsec. (a). Pub. L. 103-252, § 104(1), substituted “such sums as may be necessary for fiscal years 1995 through 1998” for “(other than section 9846a of this title) \$1,552,000,000 for fiscal year 1990, \$2,386,000,000 for fiscal year 1991, \$4,273,000,000 for fiscal year 1992, \$5,924,000,000 for fiscal year 1993, and \$7,660,000,000 for fiscal year 1994”.

Subsecs. (b), (c). Pub. L. 103-252, § 104(2), added subsec. (b) and struck out former subsecs. (b) and (c) which read as follows:

“(b) There are authorized to be appropriated to carry out section 9846a of this title, such sums as may be necessary for fiscal years 1991 through 1996.

“(c)(1) If the amount appropriated under subsection (a) of this section for fiscal year 1991 exceeds the adjusted appropriation, the Secretary shall make available not less than \$20,000,000 to carry out the Head Start Transition Project Act.

“(2) The Secretary shall make available not less than \$20,000,000 for each of the fiscal years 1992, 1993, and 1994 to carry out the Head Start Transition Project Act.”

1990—Pub. L. 101-501, §140, added subsec. (c).

Pub. L. 101-501, §120(b), designated existing provisions as subsec. (a), inserted “(other than section 9846a of this title)” after “of this subchapter”, and added subsec. (b).

Pub. L. 101-501, §103, struck out “\$1,198,000,000 for fiscal year 1987, \$1,263,000,000 for fiscal year 1988, \$1,332,000,000 for fiscal year 1989, and” after “of this subchapter” and inserted “, \$2,386,000,000 for fiscal year 1991, \$4,273,000,000 for fiscal year 1992, \$5,924,000,000 for fiscal year 1993, and \$7,660,000,000 for fiscal year 1994” after “1990”.

1989—Pub. L. 101-120 substituted “\$1,552,000,000” for “\$1,405,000,000”.

1986—Pub. L. 99-425 amended section generally, substituting “\$1,198,000,000 for fiscal year 1987, \$1,263,000,000 for fiscal year 1988, \$1,332,000,000 for fiscal year 1989, and \$1,405,000,000 for fiscal year 1990” for “\$1,093,030,000 for fiscal year 1985, and \$1,221,000,000 for fiscal year 1986”.

1984—Pub. L. 98-558 substituted “\$1,093,030,000 for fiscal year 1985, and \$1,221,000,000 for fiscal year 1986” for “\$950,000,000 for fiscal year 1982, \$1,007,000,000 for fiscal year 1983, and \$1,058,357,000 for fiscal year 1984”.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-252 effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103-252, set out as a note under section 9832 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101-501, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-425 effective Oct. 1, 1986, see section 1001 of Pub. L. 99-425, set out as a note under section 8621 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9835 of this title.

§ 9835. Allotment of funds

(a) Distribution of appropriations; priorities, etc.

(1) Of the sums appropriated pursuant to section 9834 of this title for any fiscal year beginning after September 30, 1981, the Secretary shall allot such sums in accordance with paragraphs (2) through (4), and subject to paragraphs (5) and (6).

(2) The Secretary shall reserve 13 percent of the amount appropriated for each fiscal year for use in accordance with the following order of priorities—

(A) Indian Head Start programs, services for children with disabilities, and migrant and seasonal Head Start programs, except that there shall be made available for each fiscal year for use by Indian Head Start programs and by migrant and seasonal Head Start programs, on a nationwide basis, not less than the amount that was obligated for use by Indian Head Start programs and by migrant and seasonal Head Start programs for fiscal year 1998;

(B) payments, subject to paragraph (7)—

(i) to Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands of the United States;

(ii) for fiscal years ending before October 1, 2001, to the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau; and

(iii) if legislation approving renegotiated Compacts of Free Association for the jurisdictions described in clause (ii) has not been enacted before September 30, 2001, for fiscal year 2002 to those jurisdictions;

according to their respective needs, except that such amount shall not exceed one-half of 1 percent of the sums appropriated for any fiscal year;

(C) training and technical assistance activities which are sufficient to meet the needs associated with program expansion and to foster program and management improvement activities as described in section 9843 of this title, in an amount for each fiscal year which is not less than 2 percent of the amount appropriated for such fiscal year, of which not less than \$3,000,000 of the amount appropriated for such fiscal year shall be made available to carry out activities described in section 9843(c)(4) of this title;

(D) discretionary payments made by the Secretary (including payments for all costs (other than compensation of Federal employees) of reviews of Head Start agencies and programs under section 9836a(c) of this title, and of activities carried out under paragraph (1), (2), or (3) of section 9836a(d) of this title related to correcting deficiencies and conducting proceedings to terminate the designation of Head Start agencies;¹ and

(E) payments for research, demonstration, and evaluation activities under section 9844 of this title.

No funds reserved under this paragraph or paragraph (3) may be combined with funds appropriated under any other Act if the purpose of combining funds is to make a single discretionary grant or a single discretionary payment, unless such funds appropriated under this subchapter are separately identified in such grant or payment and are used for the purposes of this subchapter. No Freely Associated State may receive financial assistance under this subchapter after fiscal year 2002.

(3)(A)(i) In order to provide assistance for activities specified in subparagraph (C) directed at the goals specified in subparagraph (B), the Secretary shall reserve, from the amount (if any) by which the funds appropriated under section 9834(a) of this title for a fiscal year exceed the adjusted prior year appropriation, a share equal to the sum of—

(I) 60 percent of such excess amount for fiscal year 1999, 50 percent of such excess amount for fiscal year 2000, 47.5 percent of such excess amount for fiscal year 2001, 35 percent of such excess amount for fiscal year 2002, and 25 percent of such excess amount for fiscal year 2003; and

(II) any additional amount the Secretary may find necessary to address a demonstrated need for such activities.

(ii) As used in clause (i), the term “adjusted prior year appropriation” means, with respect to a fiscal year, the amount appropriated pursuant to section 9834(a) of this title for the preced-

¹So in original. Probably should be “agencies;”. See 1998 Amendment note below.

ing fiscal year, adjusted to reflect the percentage change in the Consumer Price Index for All Urban Consumers (issued by the Bureau of Labor Statistics) during such preceding fiscal year.

(B) Funds reserved under this paragraph (referred to in this paragraph as “quality improvement funds”) shall be used to accomplish any or all of the following goals:

(i) Ensuring that Head Start programs meet or exceed performance standards pursuant to section 9836a(a)(1)(A) of this title.

(ii) Ensuring that such programs have adequate numbers of qualified staff, and that such staff are furnished adequate training, including developing skills in working with children with non-English language background and children with disabilities, when appropriate.

(iii) Ensuring that salary levels and benefits are adequate to attract and retain qualified staff for such programs.

(iv) Using salary increases to improve staff qualifications, and to assist with the implementation of career development programs, for the staff of Head Start programs, and to encourage the staff to continually improve their skills and expertise by informing the staff of the availability of Federal and State incentive and loan forgiveness programs for professional development.

(v) Improving community-wide strategic planning and needs assessments for such programs and collaboration efforts for such programs.

(vi) Ensuring that the physical environments of Head Start programs are conducive to providing effective program services to children and families, and are accessible to children with disabilities and their parents.

(vii) Ensuring that such programs have qualified staff that can promote language skills and literacy growth of children and that can provide children with a variety of skills that have been identified, through scientifically based reading research, as predictive of later reading achievement.

(viii) Making such other improvements in the quality of such programs as the Secretary may designate.

(C) Quality improvement funds shall be used to carry out any or all of the following activities:

(i)(I) Not less than one-half of the amount reserved under this paragraph, to improve the compensation (including benefits) of classroom teachers and other staff of Head Start agencies and thereby enhance recruitment and retention of qualified staff, including recruitment and retention pursuant to achieving the requirements set forth in section 9843a(a) of this title. The expenditure of funds under this clause shall be subject to section 9848 of this title. Preferences in awarding salary increases, in excess of cost-of-living allowances, with such funds shall be granted to classroom teachers and staff who obtain additional training or education related to their responsibilities as employees of a Head Start program.

(II) If a Head Start agency certifies to the Secretary for such fiscal year that part of the funds set aside under subclause (I) to improve wages cannot be expended by such agency to

improve wages because of the operation of section 9848 of this title, then such agency may expend such part for any of the uses specified in this subparagraph (other than wages).

(III) From the remainder of the amount reserved under this paragraph (after the Secretary carries out subclause (I)), the Secretary shall carry out any or all of the activities described in clauses (ii) through (vii), placing the highest priority on the activities described in clause (ii).

(ii) To train classroom teachers and other staff to meet the education performance standards described in section 9836a(a)(1)(B) of this title, through activities—

(I) to promote children’s language and literacy growth, through techniques identified through scientifically based reading research;

(II) to promote the acquisition of the English language for non-English background children and families;

(III) to foster children’s school readiness skills through activities described in section 9843a(a)(1) of this title; and

(IV) to provide training necessary to improve the qualifications of the staff of the Head Start agencies and to support staff training, child counseling, and other services necessary to address the problems of children participating in Head Start programs, including children from dysfunctional families, children who experience chronic violence in their communities, and children who experience substance abuse in their families.

(iii) To employ additional Head Start staff, including staff necessary to reduce the child-staff ratio and staff necessary to coordinate a Head Start program with other services available to children participating in such program and to their families.

(iv) To pay costs incurred by Head Start agencies to purchase insurance (other than employee benefits) and thereby maintain or expand Head Start services.

(v) To supplement amounts provided under paragraph (2)(C) to provide training necessary to improve the qualifications of the staff of the Head Start agencies, and to support staff training, child counseling, and other services necessary to address the problems of children participating in Head Start programs, including children from dysfunctional families, children who experience chronic violence in their communities, and children who experience substance abuse in their families.

(vi) Such other activities as the Secretary may designate.

(D)(i) Funds reserved under subparagraph (A) shall be allotted by the Secretary as follows:

(I) 80 percent of such funds shall be allotted among the States in the same proportion as the Secretary allots funds among the States under paragraph (4) for the respective fiscal year.

(II) 20 percent of such funds shall be allotted among the States, geographical areas specified in subsection (a)(2)(B) of this section and Indian Head Start programs and migrant and

seasonal Head Start programs, and used to make grants to Head Start agencies, at the discretion of the Secretary.

(ii) Funds allotted under clause (i) shall be used by the Secretary to make grants to Head Start agencies that receive grants from funds allotted under paragraph (4) for such fiscal year, in such amounts as the Secretary considers to be appropriate, for expenditure for activities specified in subparagraph (C).

(iii) Funds received under this subparagraph shall be used to supplement, not to supplant, funds received under paragraph (2) or (4).

(4) Subject to section 9834(b) of this title, the Secretary shall allot the remaining amounts appropriated in each fiscal year among the States, in accordance with latest satisfactory data so that—

(A) each State receives an amount which is equal to the amount the State received for fiscal year 1998; and

(B) any amount available after all allotments are made under subparagraph (A) for such fiscal year shall be distributed proportionately on the basis of the number of children less than 5 years of age from families whose income is below the poverty line.

For purposes of this paragraph, for each fiscal year the Secretary shall use the most recent data available on the number of children less than 5 years of age from families whose income is below the poverty line, as published by the Department of Commerce, unless the Secretary and the Secretary of Commerce determine that use of the most recent data available would be inappropriate or unreliable. If the Secretary and the Secretary of Commerce determine that some or all of the data referred to in this paragraph are inappropriate or unreliable, the Secretaries shall issue a report setting forth their reasons in detail.

(5)(A) From amounts reserved and allotted pursuant to paragraph (4), the Secretary shall reserve such sums as may be necessary to award the collaboration grants described in subparagraphs (B) and (D).

(B) From the reserved sums, the Secretary may award a collaboration grant to each State to facilitate collaboration regarding activities carried out in the State under this subchapter, and other activities carried out in, and by, the State that are designed to benefit low-income children and families and to encourage Head Start agencies to collaborate with entities involved in State and local planning processes (including the State lead agency administering the financial assistance received under subchapter II-B of this chapter and the entities providing resource and referral services in the State) in order to better meet the needs of low-income children and families.

(C) A State that receives a grant under subparagraph (B) shall—

(i) appoint an individual to serve as a State liaison between—

(I) the appropriate regional office of the Administration for Children and Families and agencies and individuals carrying out Head Start programs in the State; and

(II) agencies (including local educational agencies) and entities carrying out programs serving low-income children and families;

(ii) involve the State Head Start Association in the selection of the individual, and involve the association in determinations relating to the ongoing direction of the collaboration;

(iii) ensure that the individual holds a position with sufficient authority and access to ensure that the collaboration described in subparagraph (B) is effective and involves a range of State agencies;

(iv) ensure that the collaboration described in subparagraph (B) involves coordination of Head Start services with health care, welfare, child care, education, and community service activities, family literacy services, activities relating to children with disabilities (including coordination of services with those State officials who are responsible for administering part C and section 619 of the Individuals with Disabilities Education Act (20 U.S.C. 1431-1445, 1419)), and services for homeless children;

(v) include representatives of the State Head Start Association and local Head Start agencies in unified planning regarding early care and education services at both the State and local levels, including collaborative efforts to plan for the provision of full-working-day, full calendar year early care and education services for children; and

(vi) encourage local Head Start agencies to appoint a State level representative to represent Head Start agencies within the State in conducting collaborative efforts described in subparagraphs (B) and (D), and in clause (v).

(D) Following the award of collaboration grants described in subparagraph (B), the Secretary shall provide, from the reserved sums, supplemental funding for collaboration grants—

(i) to States that (in consultation with their State Head Start Associations) develop statewide, regional, or local unified plans for early childhood education and child care that include the participation of Head Start agencies; and

(ii) to States that engage in other innovative collaborative initiatives, including plans for collaborative training and professional development initiatives for child care, early childhood education and Head Start service managers, providers, and staff.

(E)(i) The Secretary shall—

(I) review on an ongoing basis evidence of barriers to effective collaboration between Head Start programs and other Federal, State, and local child care and early childhood education programs and resources;

(II) develop initiatives, including providing additional training and technical assistance and making regulatory changes, in necessary cases, to eliminate barriers to the collaboration; and

(III) develop a mechanism to resolve administrative and programmatic conflicts between programs described in subclause (I) that would be a barrier to service providers, parents, or children related to the provision of unified services and the consolidation of funding for child care services.

(ii) In the case of a collaborative activity funded under this subchapter and another provision of law providing for Federal child care or

early childhood education, the use of equipment and nonconsumable supplies purchased with funds made available under this subchapter or such provision shall not be restricted to children enrolled or otherwise participating in the program carried out under that subchapter or provision, during a period in which the activity is predominantly funded under this subchapter or such provision.

(F) As used in this paragraph, the term “low-income”, used with respect to children or families, shall not be considered to refer only to children or families that meet the low-income criteria prescribed pursuant to section 9840(a)(1)(A) of this title.

(6)(A) From amounts reserved and allotted pursuant to paragraphs (2) and (4), the Secretary shall use, for grants for programs described in section 9840a(a) of this title, a portion of the combined total of such amounts equal to 7.5 percent for fiscal year 1999, 8 percent for fiscal year 2000, 9 percent for fiscal year 2001, 10 percent for fiscal year 2002, and 10 percent for fiscal year 2003, of the amount appropriated pursuant to section 9834(a) of this title, except as provided in subparagraph (B).

(B)(i) If the Secretary does not submit an interim report on the preliminary findings of the Early Head Start impact study currently being conducted by the Secretary (as of October 27, 1998) to the appropriate committees by June 1, 2001, the amount of the reserved portion for fiscal year 2002 that exceeds the reserved portion for fiscal year 2001, if any, shall be used for quality improvement activities described in subsection (a)(3) of this section and shall not be used to serve an increased number of eligible children under section 9840a of this title.

(ii) If the Secretary does not submit a final report on the Early Head Start impact study to the appropriate committees by June 1, 2002, or if the Secretary finds in the report that there are substantial deficiencies in the programs carried out under section 9840a of this title, the amount of the reserved portion for fiscal year 2003 that exceeds the reserved portion for fiscal year 2002, if any, shall be used for quality improvement activities described in subsection (a)(3) of this section and shall not be used to serve an increased number of eligible children under section 9840a of this title.

(iii) In this subparagraph:

(I) The term “appropriate committees” means the Committee on Education and the Workforce and the Committee on Appropriations of the House of Representatives and the Committee on Labor and Human Resources and the Committee on Appropriations of the Senate.

(II) The term “reserved portion”, used with respect to a fiscal year, means the amount required to be used in accordance with subparagraph (A) for that fiscal year.

(C)(i) For any fiscal year for which the Secretary determines that the amount appropriated under section 9834(a) of this title is not sufficient to permit the Secretary to reserve the portion described in subparagraph (A) without reducing the number of children served by Head Start programs or adversely affecting the quality of Head Start services, relative to the num-

ber of children served and the quality of the services during the preceding fiscal year, the Secretary may reduce the percentage of funds required to be reserved for the portion described in subparagraph (A) for the fiscal year for which the determination is made, but not below the percentage required to be so reserved for the preceding fiscal year.

(ii) For any fiscal year for which the amount appropriated under section 9834(a) of this title is reduced to a level that requires a lower amount to be made available under this subchapter to Head Start agencies and entities described in section 9840a of this title, relative to the amount made available to the agencies and entities for the preceding fiscal year, adjusted as described in paragraph (3)(A)(ii), the Secretary shall proportionately reduce—

(I) the amounts made available to the entities for programs carried out under section 9840a of this title; and

(II) the amounts made available to Head Start agencies for Head Start programs.

(7) For purposes of this subsection, the term “State” does not include Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, and Palau.

(b) Federal share

Financial assistance extended under this subchapter for a Head Start program shall not exceed 80 percent of the approved costs of the assisted program or activities, except that the Secretary may approve assistance in excess of such percentage if the Secretary determines that such action is required in furtherance of the purposes of this subchapter. For the purpose of making such determination, the Secretary shall take into consideration with respect to the Head Start program involved—

(1) the lack of resources available in the community that may prevent the Head Start agency from providing all or a portion of the non-Federal contribution that may be required under this subsection;

(2) the impact of the cost the Head Start agency may incur in initial years it carries out such program;

(3) the impact of an unanticipated increase in the cost the Head Start agency may incur to carry out such program;

(4) whether the Head Start agency is located in a community adversely affected by a major disaster; and

(5) the impact on the community that would result if the Head Start agency ceased to carry out such program.

Non-Federal contributions may be in cash or in kind, fairly evaluated, including plant, equipment, or services. The Secretary shall not require non-Federal contributions in excess of 20 percent of the approved costs of programs or activities assisted under this subchapter.

(c) Services covered

No programs shall be approved for assistance under this subchapter unless the Secretary is satisfied that the services to be provided under such program will be in addition to, and not in

substitution for, comparable services previously provided without Federal assistance. The requirement imposed by the preceding sentence shall be subject to such regulations as the Secretary may prescribe.

(d) Enrollment of children with disabilities and provision of services

The Secretary shall establish policies and procedures designed to assure that for fiscal year 1999 and thereafter no less than 10 percent of the total number of enrollment opportunities in Head Start programs in each State shall be available for children with disabilities and that services shall be provided to meet their special needs. Such policies and procedures shall require Head Start agencies to coordinate programmatic efforts with efforts to implement part C and section 619 of the Individuals with Disabilities Education Act (20 U.S.C. 1431-1445, 1419).

(e) Distribution of benefits between residents of rural and urban areas

The Secretary shall adopt appropriate administrative measures to assure that the benefits of this subchapter will be distributed equitably between residents of rural and urban areas.

(f) Guidelines for local service delivery models

The Secretary shall establish procedures to enable Head Start agencies to develop locally designed or specialized service delivery models to address local community needs.

(g) Maintenance of current services; expansion of Head Start programs

(1) If in any fiscal year, the amounts appropriated to carry out the program under this subchapter exceed the amount appropriated in the prior fiscal year, the Secretary shall, prior to using such additional funds to serve an increased number of children, allocate such funds in a manner that makes available the funds necessary to maintain the level of services provided during the prior year, taking into consideration the percentage change in the Consumer Price Index For All Urban Consumers, as published by the Bureau of Labor Statistics.

(2) For the purpose of expanding Head Start programs, in allocating funds to an applicant within a State, from amounts allotted to a State pursuant to subsection (a)(4) of this section, the Secretary shall take into consideration—

(A) the quality of the applicant's programs (including Head Start and other child care or child development programs) in existence on the date of the allocation, including, in the case of Head Start programs in existence on the date of the allocation, the extent to which such programs meet or exceed performance standards and other requirements under this subchapter, and the performance history of the applicant in providing services under other Federal programs (other than the program carried out under this subchapter);

(B) the applicant's capacity to expand services (including, in the case of Head Start programs in existence on the date of the allocation, whether the applicant accomplished any prior expansions in an effective and timely manner);

(C) the extent to which the applicant has undertaken community-wide strategic planning and needs assessments involving other community organizations and public agencies serving children and families (including organizations serving families in whose homes English is not the language customarily spoken), and organizations and public entities serving children with disabilities;

(D) the extent to which the family and community needs assessment of the applicant reflects a need to provide full-working-day or full calendar year services and the extent to which, and manner in which, the applicant demonstrates the ability to collaborate and participate with other local community providers of child care or preschool services to provide full-working-day full calendar year services;

(E) the numbers of eligible children in each community who are not participating in a Head Start program or any other early childhood program;

(F) the concentration of low-income families in each community;

(G) the extent to which the applicant proposes to foster partnerships with other service providers in a manner that will enhance the resource capacity of the applicant; and

(H) the extent to which the applicant, in providing services, plans to coordinate with the local educational agency serving the community involved and with schools in which children participating in a Head Start program operated by such agency will enroll following such program, regarding such services and the education services provided by such local educational agency.

(3) In determining the amount of funds reserved pursuant to subparagraph (A) or (B) of subsection (a)(2) of this section to be used for expanding Head Start programs under this subchapter, the Secretary shall take into consideration, to the extent appropriate, the factors specified in paragraph (2).

(4) Notwithstanding subsection (a)(2) of this section, after taking into account paragraph (1), the Secretary may allocate a portion of the remaining additional funds under subsection (a)(2)(A) of this section for the purpose of increasing funds available for activities described in such subsection.

(h) Full-working-day services

Financial assistance provided under this subchapter may be used by each Head Start program to provide full-working-day Head Start services to any eligible child throughout the full calendar year.

(i) Vehicle safety regulations

The Secretary shall issue regulations establishing requirements for the safety features, and the safe operation, of vehicles used by Head Start agencies to transport children participating in Head Start programs.

(j) Compensation of staff

Any agency that receives financial assistance under this subchapter to improve the compensation of staff who provide services under this sub-

chapter² shall use the financial assistance to improve the compensation of such staff, regardless of whether the agency has the ability to improve the compensation of staff employed by the agency who do not provide Head Start services.

(k) Flexibility in hours of service requirement

(1) The Secretary shall allow center-based Head Start programs the flexibility to satisfy the total number of hours of service required by the regulations in effect on May 18, 1994, to be provided to children in Head Start programs so long as such agencies do not—

(A) provide less than 3 hours of service per day;

(B) reduce the number of days of service per week; or

(C) reduce the number of days of service per year.

(2) The provisions of this subsection shall not be construed to restrict the authority of the Secretary to fund alternative program variations authorized under section 1306.35 of title 45 of the Code of Federal Regulations in effect on May 18, 1994.

(l) Frequent relocation of migrant families

(1) With funds made available under subsection (a)(2) of this section to migrant and seasonal Head Start programs, the Secretary shall give priority to migrant and seasonal Head Start programs that serve eligible children of migrant and seasonal farmworker families whose work requires them to relocate most frequently.

(2) For purposes of subsection (a)(2)(A) of this section, in determining the need and demand for migrant and seasonal Head Start programs (and services provided through such programs), the Secretary shall consult with appropriate entities, including providers of services for migrant and seasonal Head Start programs. The Secretary shall, after taking into consideration the need and demand for migrant and seasonal Head Start programs (and such services), ensure that there is an adequate level of such services for eligible children of migrant farmworkers before approving an increase in the allocation of funds provided under such subsection for unserved eligible children of seasonal farmworkers. In serving the eligible children of seasonal farmworkers, the Secretary shall ensure that services provided by migrant and seasonal Head Start programs do not duplicate or overlap with other Head Start services available to eligible children of such farmworkers.

(3) In carrying out this subchapter, the Secretary shall continue the administrative arrangement responsible for meeting the needs of children of migrant and seasonal farmworkers and Indian children and shall ensure that appropriate funding is provided to meet such needs.

(Pub. L. 97-35, title VI, §640, Aug. 13, 1981, 95 Stat. 499; Pub. L. 98-558, title I, §103, Oct. 30, 1984, 98 Stat. 2878; Pub. L. 99-425, title I, §102, Sept. 30, 1986, 100 Stat. 966; Pub. L. 101-476, title IX, §901(d), Oct. 30, 1990, 104 Stat. 1151; Pub. L. 101-501, title I, §§104(a), 105, 123(b), Nov. 3, 1990, 104 Stat. 1224, 1228, 1237; Pub. L. 102-119, §26(g),

Oct. 7, 1991, 105 Stat. 607; Pub. L. 102-401, §2(a)-(d), (k)(1), Oct. 7, 1992, 106 Stat. 1956, 1958; Pub. L. 103-252, title I, §105, May 18, 1994, 108 Stat. 626; Pub. L. 104-193, title I, §110(t), Aug. 22, 1996, 110 Stat. 2175; Pub. L. 105-285, title I, §106(a)-(d), Oct. 27, 1998, 112 Stat. 2705-2711.)

REFERENCES IN TEXT

The Individuals with Disabilities Education Act, referred to in subsecs. (a)(5)(C)(iv) and (d), is title VI of Pub. L. 91-230, Apr. 13, 1970, 84 Stat. 175, as amended. Part C of the Act is classified generally to subchapter III (§1431 et seq.) of chapter 33 of Title 20, Education. Section 619 of the Act is classified to section 1419 of Title 20. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

This subchapter, referred to in subsec. (j), was in the original “this Act” and was translated as reading “this subchapter”, meaning subchapter B (§§635-657) of chapter 8 of subtitle A of title VI of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 499, known as the Head Start Act, which is classified generally to this subchapter, to reflect the probable intent of Congress.

AMENDMENTS

1998—Subsec. (a)(2). Pub. L. 105-285, §106(a)(1)(F), inserted at end of concluding provisions “No Freely Associated State may receive financial assistance under this subchapter after fiscal year 2002.”

Subsec. (a)(2)(A). Pub. L. 105-285, §106(a)(1)(A), substituted “Head Start programs, services for children with disabilities, and migrant and seasonal Head Start programs” for “and migrant Head Start programs and services for handicapped children”, “Head Start programs and by migrant and seasonal” for “and migrant” before “Head Start programs” in two places, and “1998” for “1994”.

Subsec. (a)(2)(B). Pub. L. 105-285, §106(a)(1)(B), substituted “(B) payments, subject to paragraph (7)—”, cls. (i) to (iii), and “according” for “(B) payments to Guam, American Samoa, the Federated States of Micronesia, the Republic of the Marshall Islands, Palau, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands according”.

Subsec. (a)(2)(C). Pub. L. 105-285, §106(a)(1)(C), substituted “, of which not less than \$3,000,000 of the amount appropriated for such fiscal year shall be made available to carry out activities described in section 9843(c)(4) of this title;” for “; and”.

Subsec. (a)(2)(D). Pub. L. 105-285, §106(a)(1)(D), which directed substitution of “carried out under paragraph (1), (2), or (3) of section 9836a(d) of this title related to correcting deficiencies and conducting proceedings to terminate the designation of Head Start agencies; and” for “related to the development and implementation of quality improvement plans under section 9836a(d)(2) of this title.”, was executed by making the substitution for “related to the development and implementation of quality improvement plans under section 9836a(d)(2) of this title.”

Subsec. (a)(2)(E). Pub. L. 105-285, §106(a)(1)(E), added subpar. (E).

Subsec. (a)(3)(A)(i)(I). Pub. L. 105-285, §106(a)(2)(A), substituted “60 percent of such excess amount for fiscal year 1999, 50 percent of such excess amount for fiscal year 2000, 47.5 percent of such excess amount for fiscal year 2001, 35 percent of such excess amount for fiscal year 2002, and 25 percent of such excess amount for fiscal year 2003;” for “25 percent of such excess amount;”.

Subsec. (a)(3)(B)(ii). Pub. L. 105-285, §106(a)(2)(B)(i), substituted “adequate numbers of qualified staff” for “adequate qualified staff” and inserted “and children with disabilities” before “, when appropriate”.

Subsec. (a)(3)(B)(iv). Pub. L. 105-285, §106(a)(2)(B)(ii), inserted before period at end “, and to encourage the staff to continually improve their skills and expertise by informing the staff of the availability of Federal and State incentive and loan forgiveness programs for professional development”.

²See References in Text note below.

Subsec. (a)(3)(B)(v). Pub. L. 105-285, § 106(a)(2)(B)(iii), inserted “and collaboration efforts for such programs” before period at end.

Subsec. (a)(3)(B)(vi). Pub. L. 105-285, § 106(a)(2)(B)(iv), inserted before period at end “, and are accessible to children with disabilities and their parents”.

Subsec. (a)(3)(B)(vii), (viii). Pub. L. 105-285, § 106(a)(2)(B)(v), (vi), added cl. (vii) and redesignated former cl. (vii) as (viii).

Subsec. (a)(3)(C)(i)(I). Pub. L. 105-285, § 106(a)(2)(C)(i)(I), substituted “this paragraph” for “this subparagraph”, “of classroom teachers and other staff” for “of staff”, and “qualified staff, including recruitment and retention pursuant to achieving the requirements set forth in section 9843a(a) of this title” for “such staff”, and inserted at end “Preferences in awarding salary increases, in excess of cost-of-living allowances, with such funds shall be granted to classroom teachers and staff who obtain additional training or education related to their responsibilities as employees of a Head Start program.”

Subsec. (a)(3)(C)(i)(II). Pub. L. 105-285, § 106(a)(2)(C)(i)(II), substituted “this subparagraph” for “the subparagraph”.

Subsec. (a)(3)(C)(i)(III). Pub. L. 105-285, § 106(a)(2)(C)(i)(III), added subcl. (III).

Subsec. (a)(3)(C)(ii). Pub. L. 105-285, § 106(a)(2)(C)(ii), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: “To pay transportation costs incurred by Head Start agencies to enable eligible children to participate in a Head Start program.”

Subsec. (a)(3)(C)(v) to (vii). Pub. L. 105-285, § 106(a)(2)(C)(iii), (iv), redesignated cls. (vi) and (vii) as (v) and (vi), respectively, and struck out former cl. (v) which read as follows: “To make nonstructural and minor structural changes, and to acquire and install equipment, for the purpose of improving facilities necessary to expand the availability, or enhance the quality, of Head Start programs.”

Subsec. (a)(3)(D)(i)(II). Pub. L. 105-285, § 106(a)(2)(D), substituted “Head Start programs and migrant and seasonal” for “and migrant”.

Subsec. (a)(4). Pub. L. 105-285, § 106(a)(3)(C), inserted concluding provisions.

Subsec. (a)(4)(A). Pub. L. 105-285, § 106(a)(3)(A), substituted “1998” for “1981”.

Subsec. (a)(4)(B). Pub. L. 105-285, § 106(a)(3)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows:

“(B)(i) 33 $\frac{1}{3}$ percent of any amount available after all allotments have been made under subparagraph (A) for such fiscal year shall be distributed on the basis of the relative number of children from birth through 18 years of age, on whose behalf payments are made under the State program of assistance funded under part A of title IV of the Social Security Act in each State as compared to all States; and

“(ii) 66 $\frac{2}{3}$ percent of such amount shall be distributed on the basis of the relative number of children from birth through 5 years of age living with families with incomes below the poverty line in each State as compared to all States.”

Subsec. (a)(5)(A). Pub. L. 105-285, § 106(a)(4)(A), substituted “subparagraphs (B) and (D)” for “subparagraph (B)”.

Subsec. (a)(5)(B). Pub. L. 105-285, § 106(a)(4)(B), inserted before period at end “and to encourage Head Start agencies to collaborate with entities involved in State and local planning processes (including the State lead agency administering the financial assistance received under subchapter II-B of this chapter and the entities providing resource and referral services in the State) in order to better meet the needs of low-income children and families”.

Subsec. (a)(5)(C)(i)(I). Pub. L. 105-285, § 106(a)(4)(C)(i), inserted “the appropriate regional office of the Administration for Children and Families and” before “agencies”.

Subsec. (a)(5)(C)(iii). Pub. L. 105-285, § 106(a)(4)(C)(ii), struck out “and” at end.

Subsec. (a)(5)(C)(iv). Pub. L. 105-285, § 106(a)(4)(C)(iii), substituted “education, and community service activities,” for “education, and national service activities,” “activities” for “and activities” before “relating to children with disabilities”, and “(including coordination of services with those State officials who are responsible for administering part C and section 619 of the Individuals with Disabilities Education Act (20 U.S.C. 1431-1445, 1419)), and services for homeless children;” for period at end.

Subsec. (a)(5)(C)(v), (vi). Pub. L. 105-285, § 106(a)(4)(C)(iv), added cls. (v) and (vi).

Subsec. (a)(5)(D) to (F). Pub. L. 105-285, § 106(a)(4)(D), (E), added subpars. (D) and (E) and redesignated former subpar. (D) as (F).

Subsec. (a)(6). Pub. L. 105-285, § 106(a)(5), designated existing provisions as subpar. (A), substituted “7.5 percent for fiscal year 1999, 8 percent for fiscal year 2000, 9 percent for fiscal year 2001, 10 percent for fiscal year 2002, and 10 percent for fiscal year 2003, of the amount appropriated pursuant to section 9834(a) of this title, except as provided in subparagraph (B).” for “3 percent for fiscal year 1995, 4 percent for each of fiscal years 1996 and 1997, and 5 percent for fiscal year 1998, of the amount appropriated pursuant to section 9834(a) of this title.”, and added subpars. (B) and (C).

Subsec. (d). Pub. L. 105-285, § 106(b)(2), which directed striking out “(as defined in section 1401(a) of title 20)”, was executed by striking out “(as defined in section 1401(a)(1) of title 20)” after “children with disabilities” to reflect the probable intent of Congress.

Pub. L. 105-285, § 106(b)(1), (3), substituted “1999” for “1982” and inserted at end “Such policies and procedures shall require Head Start agencies to coordinate programmatic efforts with efforts to implement part C and section 619 of the Individuals with Disabilities Education Act (20 U.S.C. 1431-1445, 1419).”

Subsec. (g)(2)(A). Pub. L. 105-285, § 106(c)(1)(A), inserted before semicolon at end “, and the performance history of the applicant in providing services under other Federal programs (other than the program carried out under this subchapter)”.

Subsec. (g)(2)(C). Pub. L. 105-285, § 106(c)(1)(B), inserted “, and organizations and public entities serving children with disabilities” before semicolon at end.

Subsec. (g)(2)(D). Pub. L. 105-285, § 106(c)(1)(C), inserted before semicolon at end “and the extent to which, and manner in which, the applicant demonstrates the ability to collaborate and participate with other local community providers of child care or preschool services to provide full-working-day full calendar year services”.

Subsec. (g)(2)(E). Pub. L. 105-285, § 106(c)(1)(D), substituted “program or any other early childhood program;” for “program; and”.

Subsec. (g)(2)(G), (H). Pub. L. 105-285, § 106(c)(1)(E), (F), added subpars. (G) and (H).

Subsec. (g)(4). Pub. L. 105-285, § 106(c)(2), added par. (4).

Subsec. (I). Pub. L. 105-285, § 106(d), designated existing provisions as par. (1), substituted “migrant and seasonal Head Start programs” for “migrant Head Start programs” in two places and “migrant and seasonal farmworker families” for “migrant families”, and added pars. (2) and (3).

1996—Subsec. (a)(4)(B)(i). Pub. L. 104-193 substituted “State program of assistance funded” for “program of aid to families with dependent children under a State plan approved”.

1994—Subsec. (a)(1). Pub. L. 103-252, § 105(b)(1), substituted “through (4), and subject to paragraphs (5) and (6)” for “through (5)”.

Subsec. (a)(2)(A). Pub. L. 103-252, § 105(b)(2)(A), substituted “1994” for “1990”.

Subsec. (a)(2)(D). Pub. L. 103-252, § 105(b)(2)(B), inserted “(including payments for all costs (other than compensation of Federal employees) of reviews of Head Start agencies and programs under section 9836a(c) of this title, and of activities related to the development and implementation of quality improvement plans

under section 9836a(d)(2) of this title” after “Secretary”.

Subsec. (a)(3)(A), (B). Pub. L. 103-252, §105(a)(2), added subpars. (A) and (B). Former subpars. (A) and (B) redesignated subpars. (C) and (D), respectively.

Subsec. (a)(3)(C). Pub. L. 103-252, §105(a)(1)-(3), redesignated subpar. (A) as (C), substituted in introductory provisions “Quality improvement funds shall be used to carry out any or all of the following activities:” for “For any fiscal year for which the amount appropriated under section 9834(a) of this title exceeds the adjusted appropriation, the Secretary shall reserve the quality improvement funds for such fiscal year, for one or more of the following quality improvement activities:”, and added cl. (vii).

Subsec. (a)(3)(D). Pub. L. 103-252, §105(a)(1), redesignated subpar. (B) as (D).

Subsec. (a)(3)(D)(i). Pub. L. 103-252, §105(a)(4)(A), (b)(3), struck out “for the first, second, and third fiscal years for which funds are so reserved” after “subparagraph (A)” in introductory provisions, substituted “paragraph (4)” for “paragraph (5)” in subcl. (I), and inserted “geographical areas specified in subsection (a)(2)(B) of this section and Indian and migrant Head Start programs,” after “States,” in subcl. (II).

Subsec. (a)(3)(D)(ii). Pub. L. 103-252, §105(b)(3), substituted “paragraph (4)” for “paragraph (5)”.

Pub. L. 103-252, §105(a)(4)(B), (E), redesignated cl. (iv) as (ii) and struck out former cl. (ii) which read as follows: “Funds reserved under subparagraph (A) for any fiscal year subsequent to the third fiscal year for which funds are so reserved shall be allotted by the Secretary among the States in the same proportion as the Secretary allots funds among the States under paragraph (5) for the respective subsequent fiscal year.”

Subsec. (a)(3)(D)(iii). Pub. L. 103-252, §105(a)(4)(B), (E), redesignated cl. (vi) as (iii) and struck out former cl. (iii) which read as follows: “To be expended for the activities specified in subparagraph (A) in the first fiscal, second, and third fiscal years for which funds are required by such subparagraph to be reserved, funds allotted under clause (i)(I) shall be used by the Secretary to make a grant to each Head Start agency that receives a grant from funds allotted under paragraph (5) for such fiscal year, in the amount that bears the same ratio to the amount allotted under clause (i)(I) for such fiscal year for the State in which such agency is located as the number of children participating in the Head Start program of such agency in such fiscal year bears to the number of children participating in all Head Start programs in such State in such fiscal year.”

Subsec. (a)(3)(D)(iv). Pub. L. 103-252, §105(a)(4)(E), redesignated cl. (iv) as (ii).

Pub. L. 103-252, §105(a)(4)(C), substituted “Funds” for “To be expended for the activities specified in subparagraph (A) in each subsequent fiscal year for which funds are required by such subparagraph to be reserved, funds” and “clause (i)” for “clause (ii)”, inserted “, for expenditure for activities specified in subparagraph (C)”, and struck out at end “The aggregate amount of grants made under this clause to Head Start agencies in a State for a fiscal year may not exceed the amount allotted under clause (ii) for such State for such fiscal year.”

Subsec. (a)(3)(D)(v). Pub. L. 103-252, §105(a)(4)(E), struck out cl. (v) which read as follows: “If a Head Start agency certifies for such fiscal year to the Secretary that it does not need any funds under subparagraph (A), or does not need part of such funds it would otherwise receive under clause (iii) or (iv), then unneeded funds shall be used by the Secretary to make grants under this subparagraph without regard to such agency.”

Subsec. (a)(3)(D)(vi). Pub. L. 103-252, §105(a)(4)(E), redesignated cl. (vi) as (iii).

Pub. L. 103-252, §105(a)(4)(D), substituted “paragraph (2) or (4)” for “paragraphs (2), (4), and (5)”.

Subsec. (a)(4). Pub. L. 103-252, §105(b)(4), (5), redesignated par. (5) as (4), substituted “Subject to section 9834(b) of this title, the Secretary” for “The Sec-

retary”, and struck out former par. (4), which related to Secretary reserving sums for grants to carry out early childhood intervention programs, known as “Parent-Child Centers”.

Subsec. (a)(5), (6). Pub. L. 103-252, §105(b)(6), added pars. (5) and (6). Former pars. (5) and (6) redesignated (4) and (7), respectively.

Subsec. (a)(7). Pub. L. 103-252, §105(b)(4), redesignated par. (6) as (7).

Subsec. (g). Pub. L. 103-252, §105(c), designated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (h). Pub. L. 103-252, §105(d), substituted “Financial assistance provided under this subchapter may be used by each Head Start program to” for “Each Head Start program may”.

Subsecs. (j) to (l). Pub. L. 103-252, §105(e), added subsecs. (j) to (l).

1992—Subsec. (a)(2)(A). Pub. L. 102-401, §2(k)(1)(A)(i)(I), inserted “children” after “handicapped”.

Subsec. (a)(2)(B). Pub. L. 102-401, §2(k)(1)(A)(i)(II), substituted “Commonwealth of” for “Commonwealth of,”.

Subsec. (a)(2)(C). Pub. L. 102-401, §2(k)(1)(A)(i)(III), substituted “such fiscal year” for “any such fiscal year”.

Subsec. (a)(3)(A)(vi). Pub. L. 102-401, §2(k)(1)(A)(ii), substituted “paragraph (2)(C)” for “subsection (a)(2)(C) of this section”.

Subsec. (a)(3)(B)(i). Pub. L. 102-401, §2(a)(1), substituted “, second, and third” for “and second”.

Subsec. (a)(3)(B)(ii). Pub. L. 102-401, §2(a)(2), substituted “third” for “second”.

Subsec. (a)(3)(B)(iii). Pub. L. 102-401, §2(a)(1), substituted “, second, and third” for “and second”.

Subsec. (a)(4)(B)(i)(II). Pub. L. 102-401, §2(b), inserted “, literacy,” after “skills”.

Subsec. (a)(5)(B)(i). Pub. L. 102-401, §2(k)(1)(A)(iii), substituted “subparagraph (A)” for “clause (A)”.

Subsec. (b). Pub. L. 102-401, §2(c), struck out “, in accordance with regulations establishing objective criteria,” after “if the Secretary determines” and inserted after first sentence “For the purpose of making such determination, the Secretary shall take into consideration with respect to the Head Start program involved—” and cls. (1) to (5).

Subsec. (g). Pub. L. 102-401, §2(k)(1)(B), substituted “Price Index For All” for “Price Index for all”.

Subsec. (i). Pub. L. 102-401, §2(d), added subsec. (i).

1991—Subsec. (d). Pub. L. 102-119 substituted “section 1401(a)(1) of title 20” for “paragraph (1) of section 1401 of title 20”. The references to section 1401 of title 20 include the substitution of “Individuals with Disabilities Education Act” for “Education of the Handicapped Act” in the original.

1990—Subsec. (a)(1). Pub. L. 101-501, §104(a)(1), substituted “through (5)” for “and (3)”.

Subsec. (a)(2). Pub. L. 101-501, §104(a)(2)(D), (E), struck out before last sentence “The minimum reservation contained in clause (C) of this paragraph shall not apply in any fiscal year in which the appropriation for the program authorized by this subchapter is less than the amount appropriated for fiscal year 1984.” and inserted “or paragraph (3)” after “under this paragraph” in last sentence.

Subsec. (a)(2)(A). Pub. L. 101-501, §104(a)(2)(A), substituted “, except that there shall be made available for each fiscal year for use by Indian and migrant Head Start programs, on a nationwide basis, not less than the amount that was obligated for use by Indian and migrant Head Start programs for fiscal year 1990” for “children, except that there shall be made available for use by Indian and migrant Head Start programs, on a nationwide basis, no less funds for fiscal year 1987 and each subsequent fiscal year than were obligated for use by Indian and migrant Head Start programs for fiscal year 1985”.

Subsec. (a)(2)(B). Pub. L. 101-501, §104(a)(2)(B), substituted “the Federated States of Micronesia, the Republic of the Marshall Islands, Palau, the Common-

wealth of' for "the Trust Territory of the Pacific Islands".

Subsec. (a)(2)(C). Pub. L. 101-501, §104(a)(2)(C), substituted "2 percent of the amount appropriated for any such fiscal year" for "the amount expended for training and technical assistance activities under this clause for fiscal year 1982".

Subsec. (a)(3), (4). Pub. L. 101-501, §104(a)(5), added pars. (3) and (4). Former pars. (3) and (4) redesignated (5) and (6), respectively.

Subsec. (a)(5). Pub. L. 101-501, §104(a)(3), (4), redesignated par. (3) as (5) and struck out "87 percent of the" after "allot the remaining".

Subsec. (a)(6). Pub. L. 101-501, §104(a)(4), (6), redesignated par. (4) as (6), inserted "the Commonwealth of" before "the Northern Mariana", and substituted "the Federated States of Micronesia, the Republic of the Marshall Islands, and Palau" for "or the Trust Territory of the Pacific Islands".

Subsec. (d). Pub. L. 101-501, §105(1), struck out sentence at end requiring Secretary to report to Congress at least annually on status of children with disabilities in Head Start programs.

Pub. L. 101-476, §901(d), substituted "children with disabilities" for "handicapped children" in two places and substituted "disabling" for "handicapping".

Subsecs. (f), (g). Pub. L. 101-501, §105(2), added subsecs. (f) and (g).

Subsec. (h). Pub. L. 101-501, §123(b), added subsec. (h).

1986—Subsec. (a)(2)(A). Pub. L. 99-425, in amending cl. (A) generally, designated existing subcl. (i) as all of cl. (A), substituted "1987" for "1982" and "1985" for "1981", and struck out subcl. (ii) relating to cost-of-living adjustments.

1984—Subsec. (a)(2). Pub. L. 98-558 inserted "as described in section 9843 of this title, in an amount for each fiscal year which is not less than the amount expended for training and technical assistance activities under this clause for fiscal year 1982" in cl. (C), and inserted at end "The minimum reservation contained in clause (C) of this paragraph shall not apply in any fiscal year in which the appropriation for the program authorized by this subchapter is less than the amount appropriated for fiscal year 1984. No funds reserved under this paragraph may be combined with funds appropriated under any other Act if the purpose of combining funds is to make a single discretionary grant or a single discretionary payment, unless such funds appropriated under this subchapter are separately identified in such grant or payment and are used for the purposes of this subchapter."

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-193 effective July 1, 1997, 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, as amended, set out as an Effective Date note under section 601 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-252 effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103-252, set out as a note under section 9832 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 4 of Pub. L. 102-401 provided that:
 "(a) EFFECTIVE DATES.—(1) Except as provided in paragraph (2) and subsection (b), this Act [amending this section and sections 9835a to 9839, 9846, 9846a, and 9858n of this title and enacting provisions set out as a

note under section 9836 of this title] and the amendments made by this Act shall take effect on the date of the enactment of this Act [Oct. 7, 1992].

"(2) The amendment made by section 2(e)(1) [amending section 9836 of this title] shall take effect on July 30, 1992.

"(b) APPLICATION OF AMENDMENTS.—The amendments made by this Act, other than the amendment made by section 2(e)(1), shall not apply with respect to fiscal years beginning before October 1, 1992."

EFFECTIVE DATE OF 1990 AMENDMENTS

Amendment by Pub. L. 101-501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101-501, set out as a note under section 8621 of this title.

Amendment by Pub. L. 101-476 effective Oct. 1, 1990, see section 1001 of Pub. L. 101-476, set out as a note under section 1087ee of Title 20, Education.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-425 effective Oct. 1, 1986, see section 1001 of Pub. L. 99-425, set out as a note under section 8621 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9832, 9839, 9840, 9840a, 9843, 9843a, 9844, 9846 of this title; title 20 section 9409.

§ 9835a. Repealed. Pub. L. 103-252, title I, § 106, May 18, 1994, 108 Stat. 629

Section, Pub. L. 97-35, title VI, §640A, as added Pub. L. 101-501, title I, §106, Nov. 3, 1990, 104 Stat. 1229; amended Pub. L. 102-401, §2(k)(2), Oct. 7, 1992, 106 Stat. 1958, directed Secretary to prepare both interim and final comprehensive reports to Congress on administration, funding, and demographics of Head Start programs.

EFFECTIVE DATE OF REPEAL

Repeal effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103-252, set out as an Effective Date of 1994 Amendment note under section 9832 of this title.

§ 9836. Designation of Head Start agencies

(a) Authorization; prerequisites

The Secretary is authorized to designate as a Head Start agency any local public or private nonprofit or for-profit agency, within a community, which (1) has the power and authority to carry out the purposes of this subchapter and perform the functions set forth in section 9837 of this title within a community; and (2) is determined by the Secretary (in consultation with the chief executive officer of the State involved, if such State expends non-Federal funds to carry out Head Start programs) to be capable of planning, conducting, administering, and evaluating, either directly or by other arrangements, a Head Start program.

(b) Definition

For purposes of this subchapter, a community may be a city, county, or multicity or multi-county unit within a State, an Indian reservation (including Indians in any off-reservation area designated by an appropriate tribal government in consultation with the Secretary), or a neighborhood or other area (irrespective of boundaries or political subdivisions) which provides a suitable organizational base and pos-

sesses the commonality of interest needed to operate a Head Start program.

(c) Priority

(1) In the administration of the provisions of this section (subject to paragraph (2)), the Secretary shall, in consultation with the chief executive officer of the State involved if such State expends non-Federal funds to carry out Head Start programs, give priority in the designation of Head Start agencies to any local public or private nonprofit or for-profit agency which is receiving funds under any Head Start program on August 13, 1981, unless the Secretary determines that the agency involved fails to meet program and financial management requirements, performance standards described in section 9836a(a)(1) of this title, results-based performance measures developed by the Secretary under section 9836a(b) of this title, or other requirements established by the Secretary.

(2) If there is no agency of the type referred to in paragraph (1) because of any change in the assistance furnished to programs for economically disadvantaged persons, the Secretary shall, in consultation with the chief executive officer of the State if such State expends non-Federal funds to carry out Head Start programs, give priority in the designation of Head Start agencies to any successor agency that is operating a Head Start program in substantially the same manner as the predecessor agency that did receive funds in the fiscal year preceding the fiscal year for which the determination is made.

(3) Notwithstanding any other provision of this subsection, the Secretary shall not give such priority to any agency with respect to which financial assistance has been terminated, or an application for refunding has been denied, under this subchapter by the Secretary after affording such agency reasonable notice and opportunity for a full and fair hearing in accordance with section 9841(a)(3) of this title.

(d) Designation; Head Start agency; qualified applicants

If no entity in a community is entitled to the priority specified in subsection (c) of this section, then the Secretary may designate a Head Start agency from among qualified applicants in such community. In selecting from among qualified applicants for designation as a Head Start agency, the Secretary shall give priority to any qualified agency that functioned as a Head Start delegate agency in the community and carried out a Head Start program that the Secretary determines met or exceeded such performance standards and such results-based performance measures. In selecting from among qualified applicants for designation as a Head Start agency, the Secretary shall consider the effectiveness of each such applicant to provide Head Start services, based on—

(1) any past performance of such applicant in providing services comparable to Head Start services, including how effectively such applicant provided such comparable services;

(2) the plan of such applicant to provide comprehensive health, nutritional, educational, social, and other services needed to aid participating children in attaining their full potential;

(3) the plan of such applicant to coordinate the Head Start program it proposes to carry out, with other preschool programs, including Even Start programs under part B of chapter 1 of title I of the Elementary and Secondary Education Act of 1965¹ (20 U.S.C. 2741 et seq.) and programs under part C and section 619 of the Individuals with Disabilities Education Act (20 U.S.C. 1431–1445, 1419), and with the educational programs such children will enter at the age of compulsory school attendance;

(4) the plan of such applicant—

(A) to seek the involvement of parents of participating children in activities (at home and in the center involved where practicable) designed to help such parents become full partners in the education of their children;

(B) to afford such parents the opportunity to participate in the development, conduct, and overall performance of the program at the local level;

(C) to offer (directly or through referral to local entities, such as entities carrying out Even Start programs under part B of chapter 1 of title I of the Elementary and Secondary Education Act of 1965¹ (20 U.S.C. 2741 et seq.), public and school libraries, and family support programs) to such parents—

(i) family literacy services; and

(ii) parenting skills training;

(D) to offer to parents of participating children substance abuse counseling (either directly or through referral to local entities), including information on drug-exposed infants and fetal alcohol syndrome;

(E) at the option of such applicant, to offer (directly or through referral to local entities) to such parents—

(i) training in basic child development;

(ii) assistance in developing communication skills;

(iii) opportunities for parents to share experiences with other parents; or

(iv) any other activity designed to help such parents become full partners in the education of their children; and

(F) to provide, with respect to each participating family, a family needs assessment that includes consultation with such parents about the benefits of parent involvement and about the activities described in subparagraphs (C), (D), and (E) in which such parents may choose to become involved (taking into consideration their specific family needs, work schedules, and other responsibilities);

(5) the ability of such applicant to carry out the plans described in paragraphs (2), (3), and (4);

(6) other factors related to the requirements of this subchapter;

(7) the plan of such applicant to meet the needs of non-English background children and their families, including needs related to the acquisition of the English language;

(8) the plan of such applicant to meet the needs of children with disabilities;

¹ See References in Text note below.

(9) the plan of such applicant who chooses to assist younger siblings of children who will participate in the proposed Head Start program to obtain health services from other sources; and

(10) the plan of such applicant to collaborate with other entities carrying out early childhood education and child care programs in the community.

(e) Designation of agency on an interim basis

If no agency in the community receives priority designation under subsection (c) of this section, and there is no qualified applicant in the community, the Secretary shall designate a qualified agency to carry out the Head Start program in the community on an interim basis until a qualified applicant from the community is so designated.

(f) Involvement of parents and area residents in selection of agencies

The Secretary shall require that the practice of significantly involving parents and area residents affected by the program in selection of Head Start agencies be continued.

(g) Priority for nonprofit agencies and applicants with demonstrated capacity

If the Secretary determines that a nonprofit agency and a for-profit agency have submitted applications for designation of equivalent quality under subsection (d) of this section, the Secretary may give priority to the nonprofit agency. In selecting from among qualified applicants for designation as a Head Start agency under subsection (d) of this section, the Secretary shall give priority to applicants that have demonstrated capacity in providing comprehensive early childhood services to children and their families.

(Pub. L. 97-35, title VI, §641, Aug. 13, 1981, 95 Stat. 501; Pub. L. 98-558, title I, §104, Oct. 30, 1984, 98 Stat. 2878; Pub. L. 101-501, title I, §§107, 108, Nov. 3, 1990, 104 Stat. 1229, 1230; Pub. L. 102-401, §2(e)(1), (f)-(h), Oct. 7, 1992, 106 Stat. 1957; Pub. L. 103-252, title I, §107, May 18, 1994, 108 Stat. 629; Pub. L. 105-285, title I, §107, Oct. 27, 1998, 112 Stat. 2712.)

REFERENCES IN TEXT

Part B of chapter 1 of title I of the Elementary and Secondary Education Act of 1965, referred to in subsec. (d)(3), (4)(C), means part B of chapter 1 of title I of Pub. L. 89-10 which was classified generally to part B (§2741 et seq.) of division 1 of subchapter I of chapter 47 of Title 20, Education, prior to being omitted in the general amendment of Pub. L. 89-10 by Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3519. See section 6381 et seq. of Title 20.

The Individuals with Disabilities Education Act, referred to in subsec. (d)(3), is title VI of Pub. L. 91-230, Apr. 13, 1970, 84 Stat. 175, as amended. Part C of the Act is classified generally to subchapter III (§1431 et seq.) of chapter 33 of Title 20, Education. Section 619 of the Act is classified to section 1419 of Title 20. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-285, §107(1), inserted “or for-profit” after “nonprofit” and “(in consultation with the chief executive officer of the State involved, if such State expends non-Federal funds to carry out Head Start programs)” after “Secretary” in cl. (2).

Subsec. (b). Pub. L. 105-285, §107(2), substituted “off-reservation area designated by an appropriate tribal government in consultation with the Secretary” for “area designated by the Bureau of Indian Affairs as near-reservation”.

Subsec. (c)(1). Pub. L. 105-285, §107(3)(A), inserted “, in consultation with the chief executive officer of the State involved if such State expends non-Federal funds to carry out Head Start programs,” after “Secretary shall” and “or for-profit” after “nonprofit” and substituted “determines that the agency involved fails to meet program and financial management requirements, performance standards described in section 9836a(a)(1) of this title, results-based performance measures developed by the Secretary under section 9836a(b) of this title, or other requirements established by the Secretary” for “makes a finding that the agency involved fails to meet program, financial management, and other requirements established by the Secretary”.

Subsec. (c)(2). Pub. L. 105-285, §107(3)(B), (C), inserted “, in consultation with the chief executive officer of the State if such State expends non-Federal funds to carry out Head Start programs,” after “Secretary shall” and realigned margins.

Subsec. (c)(3). Pub. L. 105-285, §107(3)(C), realigned margins.

Subsec. (d). Pub. L. 105-285, §107(4)(A), inserted in introductory provisions “In selecting from among qualified applicants for designation as a Head Start agency, the Secretary shall give priority to any qualified agency that functioned as a Head Start delegate agency in the community and carried out a Head Start program that the Secretary determines met or exceeded such performance standards and such results-based performance measures.”

Subsec. (d)(3). Pub. L. 105-285, §107(4)(B), inserted “and programs under part C and section 619 of the Individuals with Disabilities Education Act (20 U.S.C. 1431-1445, 1419)” after “(20 U.S.C. 2741 et seq.)”.

Subsec. (d)(4)(A). Pub. L. 105-285, §107(4)(C)(i), inserted “(at home and in the center involved where practicable)” after “activities”.

Subsec. (d)(4)(D). Pub. L. 105-285, §107(4)(C)(v), added subpar. (D). Former subpar. (D) redesignated (E).

Subsec. (d)(4)(D)(iii). Pub. L. 105-285, §107(4)(C)(ii)(I), inserted “or” at end.

Subsec. (d)(4)(D)(iv), (v). Pub. L. 105-285, §107(4)(C)(ii)(II), (III), redesignated cl. (v) as (iv) and struck out former cl. (iv) which read as follows: “substance abuse counseling; or”.

Subsec. (d)(4)(E). Pub. L. 105-285, §107(4)(C)(iv), redesignated subpar. (D) as (E). Former subpar. (E) redesignated (F).

Pub. L. 105-285, §107(4)(C)(iii), substituted “, (D), and (E)” for “and (D)”.

Subsec. (d)(4)(F). Pub. L. 105-285, §107(4)(C)(iv), redesignated subpar. (E) as (F).

Subsec. (d)(7). Pub. L. 105-285, §107(4)(D), amended par. (7) generally. Prior to amendment, par. (7) read as follows: “the plan of such applicant to meet the needs of non-English language background children and their families in the community; and”.

Subsec. (d)(8) to (10). Pub. L. 105-285, §107(4)(E)-(G), added pars. (8) and (10) and redesignated former par. (8) as (9).

Subsec. (e). Pub. L. 105-285, §107(5), added subsec. (e) and struck out former subsec. (e) which read as follows: “If, in a community served by a Head Start program, there is no applicant qualified for designation as a Head Start agency to carry out such program, the Secretary may appoint an interim grantee to carry out such program until a qualified applicant is so designated.”

Subsec. (g). Pub. L. 105-285, §107(6), added subsec. (g). 1994—Subsec. (b). Pub. L. 103-252, §107(a), inserted “(including Indians in any area designated by the Bureau of Indian Affairs as near-reservation)” after “Indian reservation”.

Subsec. (c)(1). Pub. L. 103-252, §107(b)(2), (3), (5), inserted “(subject to paragraph (2))” after “the provisions of this section”, struck out subpar. (A), inserted

“the Secretary makes a finding that the agency involved fails to meet program, financial management, and other requirements established by the Secretary.” after “unless”, and redesignated subpar. (B) as par. (2) and concluding provisions as par. (3).

Subsec. (c)(2). Pub. L. 103-252, §107(b)(1), (3), (4), (6), redesignated par. (1)(B) as (2) and realigned margins, substituted “If” for “except that, if” and “paragraph (1)” for “subparagraph (A)”, and struck out former par. (2) which read as follows:

“(2)(A) The Secretary shall conduct a full review of each designated Head Start agency at least once during each 3-year period, and shall determine whether each agency meets program and fiscal requirements established by the Secretary.

“(B) The Secretary shall conduct a review of each newly designated Head Start agency immediately after the completion of the first year such agency carries out a Head Start program.

“(C) The Secretary shall conduct followup reviews of Head Start agencies when appropriate.”

Subsec. (c)(3). Pub. L. 103-252, §107(b)(1), (5), redesignated concluding provisions of par. (1) as (3), substituted “this subsection” for “this paragraph”, and struck out former par. (3) which read as follows: “In carrying out a review of each Head Start agency under paragraph (2), the Secretary shall—

“(A) to the maximum extent practicable, carry out such review by using employees of the Department of Health and Human Services who are knowledgeable about Head Start programs;

“(B) ensure that an employee of the Department of Health and Human Services who is knowledgeable about Head Start programs supervises such review at the site of such agency;

“(C) measure the compliance of the programs of such agency with the performance standards in effect under section 9846(b) of this title; and

“(D) identify the types and conditions of facilities in which such programs are located.”

Subsec. (c)(4). Pub. L. 103-252, §107(b)(1), struck out par. (4) which read as follows: “The results of a review conducted under this subsection shall not be sufficient alone for the purpose of determining whether to continue, or to discontinue, providing funds to a particular Head Start agency.”

Subsec. (d). Pub. L. 103-252, §107(c)(1)-(3)(A), in introductory provisions substituted “If no entity in a community is entitled to the priority specified in subsection (c) of this section,” for “If there is no Head Start agency as described in subsection (c)(2) of this section, and no existing Head Start program serving a community,” and struck out “Any such designation shall be governed by the program and fiscal requirements, criteria, and standards applicable on September 1, 1983, to then existing Head Start agencies.” after first sentence and “subject to the preceding sentence” after “as a Head Start agency”.

Subsec. (d)(3). Pub. L. 103-252, §107(c)(3)(B), inserted “, including Even Start programs under part B of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2741 et seq.)” after “pre-school programs”.

Subsec. (d)(4). Pub. L. 103-252, §107(c)(3)(C), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “the plan of such applicant to involve parents of children who will participate in the proposed Head Start program in appropriate educational services (in accordance with the performance standards in effect under section 9846(b) of this title or through referral of such parents to educational services available in the community) in order to aid their children to attain their full potential;”

Subsec. (d)(7). Pub. L. 103-252, §107(c)(4), substituted “non-English language background children and their families” for “non-English language children” and inserted “and” after semicolon.

Subsec. (d)(8), (9). Pub. L. 103-252, §107(c)(5), (6), redesignated par. (9) as (8) and struck out former par. (8) which read as follows: “the plan of such applicant to

provide (directly or through referral to educational services available in the community) parents of children who will participate in the proposed Head Start program with child development and literacy skills training in order to aid their children to attain their full potential; and”.

Subsecs. (f), (g). Pub. L. 103-252, §107(d), redesignated subsec. (g) as (f) and struck out former subsec. (f) which read as follows: “The provisions of subsections (c), (d), and (e) of this section shall be applied by the Secretary in the distribution of any additional appropriations made available under this subchapter during any fiscal year as well as to initial designations of Head Start agencies.”

1992—Subsec. (c)(1). Pub. L. 102-401, §2(e)(1), inserted at end “Notwithstanding any other provision of this paragraph, the Secretary shall not give such priority to any agency with respect to which financial assistance has been terminated, or an application for refunding has been denied, under this subchapter by the Secretary after affording such agency reasonable notice and opportunity for a full and fair hearing in accordance with section 9841(a)(3) of this title.”

Subsec. (c)(2). Pub. L. 102-401, §2(f), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (d)(8), (9). Pub. L. 102-401, §2(g), added pars. (8) and (9).

Subsec. (e). Pub. L. 102-401, §2(h)(3), added subsec. (e). Former subsec. (e) redesignated (f).

Pub. L. 102-401, §2(h)(1), substituted “(c), (d), and (e)” for “(c) and (d)”.

Subsecs. (f), (g). Pub. L. 102-401, §2(h)(2), redesignated subsecs. (e) and (f) as (f) and (g), respectively.

1990—Subsec. (c). Pub. L. 101-501, §107, designated existing provisions as par. (1), redesignated former par. (1) as subpar. (A), added subpar. (B) and pars. (2) to (4), and struck out former par. (2) and last sentence which read as follows:

“(2) except that if there is no such agency because of any change in the assistance furnished to programs for economically disadvantaged persons, then the Secretary shall give priority in the designation of Head Start agencies to any successor agency which is operated in substantially the same manner as the predecessor agency which did receive funds in the fiscal year preceding the fiscal year for which the determination is made.

The provisions of clause (2) shall apply only to agencies actually operating Head Start programs.”

Subsec. (d). Pub. L. 101-501, §108, inserted at end “In selecting from among qualified applicants for designation as a Head Start agency and subject to the preceding sentence, the Secretary shall consider the effectiveness of each such applicant to provide Head Start services, based on—” and pars. (1) to (7).

1984—Subsec. (a). Pub. L. 98-558, §104(a), inserted “, within a community,” after “private nonprofit agency”.

Subsec. (c). Pub. L. 98-558, §104(b)(1), substituted “unless” for “, except that” in provisions preceding cl. (1).

Subsec. (c)(1). Pub. L. 98-558, §104(b)(2), (3), substituted “makes a finding” for “shall, before giving such priority, determine” and “fails to meet” for “meet”.

Subsec. (c)(2). Pub. L. 98-558, §104(b)(4), inserted “except that” before “if”.

Subsecs. (d) to (f). Pub. L. 98-558, §104(c), added subsecs. (d) and (e) and redesignated former subsec. (d) as (f).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-252 effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103-252, set out as a note under section 9832 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 2(e)(2) of Pub. L. 102-401 provided that: “The amendment made by paragraph (1) [amending this sec-

tion] shall apply only with respect to terminations of financial assistance, and denials of refunding, occurring after July 29, 1992.”

Amendment by section 2(f)–(h) of Pub. L. 102–401 effective Oct. 7, 1992, but not applicable with respect to fiscal years beginning before Oct. 1, 1992, and amendment by section 2(e)(1) of Pub. L. 102–401 effective July 30, 1992, see section 4 of Pub. L. 102–401, set out as a note under section 9835 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101–501, set out as a note under section 8621 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9833, 9836a, 9841, 9846 of this title; title 20 section 6312.

§ 9836a. Quality standards; monitoring of Head Start agencies and programs

(a) Quality standards

(1) Establishment of standards

The Secretary shall establish by regulation standards, including minimum levels of overall accomplishment, applicable to Head Start agencies, programs, and projects under this subchapter, including—

(A) performance standards with respect to services required to be provided, including health, parental involvement, nutritional, social, transition activities described in section 9837(d) of this title, and other services;

(B)(i) education performance standards to ensure the school readiness of children participating in a Head Start program, on completion of the Head Start program and prior to entering school; and

(ii) additional education performance standards to ensure that the children participating in the program, at a minimum—

(I) develop phonemic, print, and numeracy awareness;

(II) understand and use language to communicate for various purposes;

(III) understand and use increasingly complex and varied vocabulary;

(IV) develop and demonstrate an appreciation of books; and

(V) in the case of non-English background children, progress toward acquisition of the English language.¹

(C) administrative and financial management standards;

(D) standards relating to the condition and location of facilities for such agencies, programs, and projects; and

(E) such other standards as the Secretary finds to be appropriate.

(2) Considerations in developing standards

In developing the regulations required under paragraph (1), the Secretary shall—

(A) consult with experts in the fields of child development, early childhood education, child health care, family services (including linguistically and culturally appropriate services to non-English language background children and their families), ad-

ministration, and financial management, and with persons with experience in the operation of Head Start programs;

(B) take into consideration—

(i) past experience with use of the standards in effect under this subchapter on May 18, 1994;

(ii) changes over the period since August 31, 1981, in the circumstances and problems typically facing children and families served by Head Start agencies;

(iii) developments concerning best practices with respect to early childhood education and development, children with disabilities, family services, program administration, and financial management;

(iv) projected needs of an expanding Head Start program;

(v) guidelines and standards currently in effect or under consideration that promote child health services, and projected needs of expanding Head Start programs;

(vi) changes in the population of children who are eligible to participate in Head Start programs, including the language background and family structure of such children; and

(vii) the need for, and state-of-the-art developments relating to, local policies and activities designed to ensure that children participating in Head Start programs make a successful transition to public schools; and

(C)(i) review and revise as necessary the performance standards in effect under this subsection; and

(ii) ensure that any such revisions in the performance standards will not result in the elimination of or any reduction in the scope or types of health, education, parental involvement, nutritional, social, or other services required to be provided under such standards as in effect on October 27, 1998.

(3) Standards relating to obligations to delegate agencies

In developing standards under this subsection, the Secretary shall describe the obligations of a Head Start agency to a delegate agency to which the Head Start agency has delegated responsibility for providing services under this subchapter and determine whether the Head Start agency complies with the standards. The Secretary shall consider such compliance during the review described in subsection (c)(1)(A) of this section and in determining whether to renew financial assistance to the Head Start agency under this subchapter.

(b) Results-based performance measures

(1) In general

The Secretary, in consultation with representatives of Head Start agencies and with experts in the fields of early childhood education and development, family services, and program management, shall develop methods and procedures for measuring, annually and over longer periods, the quality and effectiveness of programs operated by Head Start agencies, and the impact of the services provided

¹ So in original. The period should probably be a semicolon.

through the programs to children and their families (referred to in this subchapter as “results-based performance measures”).

(2) Characteristics of measures

The performance measures developed under this subsection shall—

(A) be used to assess the impact of the various services provided by Head Start programs and, to the extent the Secretary finds appropriate, administrative and financial management practices of such programs;

(B) be adaptable for use in self-assessment, peer review, and program evaluation of individual Head Start agencies and programs, not later than July 1, 1999; and

(C) be developed for other program purposes as determined by the Secretary.

The performance measures shall include the performance standards described in subsection (a)(1)(B)(ii) of this section.

(3) Use of measures

The Secretary shall use the performance measures developed pursuant to this subsection—

(A) to identify strengths and weaknesses in the operation of Head Start programs nationally, regionally, and locally; and

(B) to identify problem areas that may require additional training and technical assistance resources.

(4) Educational performance measures

Such results-based performance measures shall include educational performance measures that ensure that children participating in Head Start programs—

(A) know that letters of the alphabet are a special category of visual graphics that can be individually named;

(B) recognize a word as a unit of print;

(C) identify at least 10 letters of the alphabet; and

(D) associate sounds with written words.

(5) Additional local results-based performance measures

In addition to other applicable results-based performance measures, Head Start agencies may establish local results-based educational performance measures.

(c) Monitoring of local agencies and programs

(1) In general

In order to determine whether Head Start agencies meet standards established under this subchapter and results-based performance measures developed by the Secretary under subsection (b) of this section with respect to program, administrative, financial management, and other requirements, the Secretary shall conduct the following reviews of designated Head Start agencies, and of the Head Start programs operated by such agencies:

(A) A full review of each such agency at least once during each 3-year period.

(B) A review of each newly designated agency immediately after the completion of the first year such agency carries out a Head Start program.

(C) Followup reviews including prompt return visits to agencies and programs that fail to meet the standards.

(D) Other reviews as appropriate.

(2) Conduct of reviews

The Secretary shall ensure that reviews described in subparagraphs (A) through (C) of paragraph (1)—

(A) are performed, to the maximum extent practicable, by employees of the Department of Health and Human Services who are knowledgeable about Head Start programs;

(B) are supervised by such an employee at the site of such Head Start agency;

(C) are conducted by review teams that shall include individuals who are knowledgeable about Head Start programs and, to the maximum extent practicable, the diverse (including linguistic and cultural) needs of eligible children (including children with disabilities) and their families;

(D) include as part of the reviews of the programs, a review and assessment of program effectiveness, as measured in accordance with the results-based performance measures developed by the Secretary pursuant to subsection (b) of this section and with the performance standards established pursuant to subparagraphs (A) and (B) of subsection (a)(1) of this section; and

(E) seek information from the communities and the States involved about the performance of the programs and the efforts of the Head Start agencies to collaborate with other entities carrying out early childhood education and child care programs in the community.

(d) Corrective action; termination

(1) Determination

If the Secretary determines, on the basis of a review pursuant to subsection (c) of this section, that a Head Start agency designated pursuant to section 9836 of this title fails to meet the standards described in subsection (a) of this section or results-based performance measures developed by the Secretary under subsection (b) of this section, the Secretary shall—

(A) inform the agency of the deficiencies that shall be corrected;

(B) with respect to each identified deficiency, require the agency—

(i) to correct the deficiency immediately, if the Secretary finds that the deficiency threatens the health or safety of staff or program participants or poses a threat to the integrity of Federal funds;

(ii) to correct the deficiency not later than 90 days after the identification of the deficiency if the Secretary finds, in the discretion of the Secretary, that such a 90-day period is reasonable, in light of the nature and magnitude of the deficiency; or

(iii) in the discretion of the Secretary (taking into consideration the seriousness of the deficiency and the time reasonably required to correct the deficiency), to comply with the requirements of paragraph (2) concerning a quality improvement plan; and

(C) initiate proceedings to terminate the designation of the agency unless the agency corrects the deficiency.

(2) Quality improvement plan**(A) Agency responsibilities**

In order to retain a designation as a Head Start agency under this subchapter, a Head Start agency that is the subject of a determination described in paragraph (1) (other than an agency required to correct a deficiency immediately or during a 90-day period under clause (i) or (ii) of paragraph (1)(B)) shall—

(i) develop in a timely manner, obtain the approval of the Secretary regarding, and implement a quality improvement plan that specifies—

(I) the deficiencies to be corrected;

(II) the actions to be taken to correct such deficiencies; and

(III) the timetable for accomplishment of the corrective actions specified; and

(ii) eliminate each deficiency identified, not later than the date for elimination of such deficiency specified in such plan (which shall not be later than 1 year after the date the agency received notice of the determination and of the specific deficiency to be corrected).

(B) Secretarial responsibility

Not later than 30 days after receiving from a Head Start agency a proposed quality improvement plan pursuant to subparagraph (A), the Secretary shall either approve such proposed plan or specify the reasons why the proposed plan cannot be approved.

(3) Training and technical assistance

The Secretary shall provide training and technical assistance to Head Start agencies with respect to the development or implementation of such quality improvement plans to the extent the Secretary finds such provision to be feasible and appropriate given available funding and other statutory responsibilities.

(e) Summaries of monitoring outcomes

Not later than 120 days after the end of each fiscal year, the Secretary shall publish a summary report on the findings of reviews conducted under subsection (c) of this section and on the outcomes of quality improvement plans implemented under subsection (d) of this section, during such fiscal year. Such report shall be widely disseminated and available for public review in both written and electronic formats.

(Pub. L. 97-35, title VI, § 641A, as added Pub. L. 103-252, title I, § 108, May 18, 1994, 108 Stat. 631; amended Pub. L. 105-285, title I, § 108, Oct. 27, 1998, 112 Stat. 2713.)

AMENDMENTS

1998—Subsec. (a)(1). Pub. L. 105-285, § 108(a)(1)(A), inserted “, including minimum levels of overall accomplishment,” after “regulation standards” in introductory provisions.

Subsec. (a)(1)(A). Pub. L. 105-285, § 108(a)(1)(B), struck out “education,” after “including health.”

Subsec. (a)(1)(B) to (E). Pub. L. 105-285, § 108(a)(1)(C), (D), added subpar. (B) and redesignated former subpars. (B) to (D) as (C) to (E), respectively.

Subsec. (a)(2). Pub. L. 105-285, § 108(a)(2), (3), redesignated par. (3) as (2) and struck out heading and text of former par. (2). Text read as follows: “The regulations

promulgated under this subsection shall establish the minimum levels of overall accomplishment that a Head Start agency shall achieve in order to meet the standards specified in paragraph (1).”

Subsec. (a)(2)(B)(iii). Pub. L. 105-285, § 108(a)(4)(A), substituted “early childhood education and” for “child”.

Subsec. (a)(2)(C)(i). Pub. L. 105-285, § 108(a)(4)(B)(i), struck out “not later than 1 year after May 18, 1994,” before “review” and substituted “this subsection; and” for “section 9846(b) of this title on the day before May 18, 1994; and”.

Subsec. (a)(2)(C)(ii). Pub. L. 105-285, § 108(a)(4)(B)(ii), substituted “October 27, 1998” for “November 2, 1978”.

Subsec. (a)(3). Pub. L. 105-285, § 108(a)(5), substituted “to a delegate agency” for “to an agency (referred to in this subchapter as the ‘delegate agency’)”.

Pub. L. 105-285, § 108(a)(3), redesignated par. (4) as (3). Former par. (3) redesignated (2).

Subsec. (a)(4). Pub. L. 105-285, § 108(a)(3), redesignated par. (4) as (3).

Subsec. (b). Pub. L. 105-285, § 108(b)(1), inserted “Results-based” in heading.

Subsec. (b)(1). Pub. L. 105-285, § 108(b)(2), substituted “The Secretary” for “Not later than 1 year after May 18, 1994, the Secretary”, “early childhood education and” for “child”, and “results-based performance measures” for “performance measures” and inserted “, and the impact of the services provided through the programs to children and their families” before “(referred)”.

Subsec. (b)(2). Pub. L. 105-285, § 108(b)(3)(A), (B), (F), substituted “Characteristics” for “Design” in heading and “shall—” for “shall be designed—” in introductory provisions and inserted concluding provisions.

Subsec. (b)(2)(A). Pub. L. 105-285, § 108(b)(3)(C), substituted “be used to assess the impact of” for “to assess”.

Subsec. (b)(2)(B). Pub. L. 105-285, § 108(b)(3)(D), substituted “be adaptable” for “to be adaptable” and “, peer review, and program evaluation” for “and peer review” and inserted “, not later than July 1, 1999” before semicolon.

Subsec. (b)(2)(C). Pub. L. 105-285, § 108(b)(3)(E), inserted “be developed” before “for other”.

Subsec. (b)(3)(A). Pub. L. 105-285, § 108(b)(4), substituted “, regionally, and locally” for “and by region”.

Subsec. (b)(4), (5). Pub. L. 105-285, § 108(b)(5), added pars. (4) and (5).

Subsec. (c)(1). Pub. L. 105-285, § 108(c)(1), inserted “and results-based performance measures developed by the Secretary under subsection (b) of this section” after “standards established under this subchapter”.

Subsec. (c)(2)(B). Pub. L. 105-285, § 108(c)(2)(A), struck out “and” at end.

Subsec. (c)(2)(C). Pub. L. 105-285, § 108(c)(2)(B), inserted “(including children with disabilities)” after “eligible children” and substituted semicolon for period at end.

Subsec. (c)(2)(D), (E). Pub. L. 105-285, § 108(c)(2)(C), added subpars. (D) and (E).

Subsec. (d)(1). Pub. L. 105-285, § 108(d)(1)(A), inserted “or results-based performance measures developed by the Secretary under subsection (b) of this section” after “subsection (a) of this section” in introductory provisions.

Subsec. (d)(1)(B). Pub. L. 105-285, § 108(d)(1)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “with respect to each identified deficiency, require the agency—

“(i) to correct the deficiency immediately; or

“(ii) at the discretion of the Secretary (taking into consideration the seriousness of the deficiency and the time reasonably required to correct the deficiency), to comply with the requirements of paragraph (2) concerning a quality improvement plan; and”.

Subsec. (d)(2)(A). Pub. L. 105-285, § 108(d)(2), substituted “required to correct a deficiency immediately

or during a 90-day period under clause (i) or (ii) of paragraph (1)(B)" for "able to correct a deficiency immediately" in introductory provisions.

Subsec. (e). Pub. L. 105-285, §108(e), inserted at end "Such report shall be widely disseminated and available for public review in both written and electronic formats."

EFFECTIVE DATE

Section effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103-252, set out as an Effective Date of 1994 Amendment note under section 9832 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9835, 9836, 9841, 9843, 9846 of this title; title 20 section 6312.

§ 9837. Powers and functions of Head Start agencies

(a) Receipt, administration, and transfer of funds; sponsorship of projects; delegation of authority, etc.

In order to be designated as a Head Start agency under this subchapter, an agency must have authority under its charter or applicable law to receive and administer funds under this subchapter, funds and contributions from private or local public sources which may be used in support of a Head Start program, and funds under any Federal or State assistance program pursuant to which a public or private nonprofit or for-profit agency (as the case may be) organized in accordance with this subchapter, could act as grantee, contractor, or sponsor of projects appropriate for inclusion in a Head Start program. Such an agency must also be empowered to transfer funds so received, and to delegate powers to other agencies, subject to the powers of its governing board and its overall program responsibilities. The power to transfer funds and delegate powers must include the power to make transfers and delegations covering component projects in all cases where this will contribute to efficiency and effectiveness or otherwise further program objectives.

(b) Participation of parents in decisionmaking, implementation, etc.

In order to be so designated, a Head Start agency shall also—

(1) establish effective procedures by which parents and area residents concerned will be enabled to directly participate in decisions that influence the character of programs affecting their interests;

(2) provide for their regular participation in the implementation of such programs;

(3) provide technical and other support needed to enable parents and area residents to secure on their own behalf available assistance from public and private sources;

(4) seek the involvement of parents of participating children in activities designed to help such parents become full partners in the education of their children, and to afford such parents the opportunity to participate in the development, conduct, and overall performance of the program at the local level;

(5) offer (directly or through referral to local entities, such as entities carrying out Even

Start programs under part B of chapter 1 of title I of the Elementary and Secondary Education Act of 1965¹ (20 U.S.C. 2741 et seq.)), to parents of participating children, family literacy services and parenting skills training;

(6) offer to parents of participating children substance abuse counseling (either directly or through referral to local entities), including information on drug-exposed infants and fetal alcohol syndrome;

(7) at the option of such agency, offer (directly or through referral to local entities), to such parents—

(A) training in basic child development;

(B) assistance in developing communication skills;

(C) opportunities to share experiences with other parents;

(D) regular in-home visitation; or

(E) any other activity designed to help such parents become full partners in the education of their children;

(8) provide, with respect to each participating family, a family needs assessment that includes consultation with such parents about the benefits of parent involvement and about the activities described in paragraphs (4) through (7) in which such parents may choose to be involved (taking into consideration their specific family needs, work schedules, and other responsibilities);

(9) consider providing services to assist younger siblings of children participating in its Head Start program to obtain health services from other sources;

(10) perform community outreach to encourage individuals previously unaffiliated with Head Start programs to participate in its Head Start program as volunteers; and

(11)(A) inform custodial parents in single-parent families that participate in programs, activities, or services carried out or provided under this subchapter about the availability of child support services for purposes of establishing paternity and acquiring child support; and

(B) refer eligible parents to the child support offices of State and local governments.

(c) Coordination with other agencies

The head of each Head Start agency shall coordinate and collaborate with the State agency responsible for administering the State program carried out under subchapter II-B of this chapter, and other early childhood education and development programs, including Even Start programs under part B of chapter 1 of title I of the Elementary and Secondary Education Act of 1965¹ (20 U.S.C. 2741 et seq.) and programs under part C and section 619 of the Individuals with Disabilities Education Act (20 U.S.C. 1431-1445, 1419), serving the children and families served by the Head Start agency to carry out the provisions of this subchapter.

(d) Transition coordination with schools

(1) Each Head Start agency shall take steps to ensure, to the maximum extent possible, that children maintain the developmental and edu-

¹ See References in Text note below.

cational gains achieved in Head Start programs and build upon such gains in further schooling.

(2) A Head Start agency may take steps to coordinate with the local educational agency serving the community involved and with schools in which children participating in a Head Start program operated by such agency will enroll following such program, including—

(A) collaborating on the shared use of transportation and facilities; and

(B) exchanging information on the provision of noneducational services to such children.

(3) In order to promote the continued involvement of the parents of children that participate in Head Start programs in the education of their children upon transition to school, the Head Start agency shall—

(A) provide training to the parents—

(i) to inform the parents about their rights and responsibilities concerning the education of their children; and

(ii) to enable the parents to understand and work with schools in order to communicate with teachers and other school personnel, to support the school work of their children, and to participate as appropriate in decisions relating to the education of their children; and

(B) take other actions, as appropriate and feasible, to support the active involvement of the parents with schools, school personnel, and school-related organizations.

(4) The Secretary, in cooperation with the Secretary of Education, shall—

(A) evaluate the effectiveness of the projects and activities funded under section 9837a of this title;

(B) disseminate to Head Start agencies information (including information from the evaluation required by subparagraph (A)) on effective policies and activities relating to the transition of children from Head Start programs to public schools; and

(C) provide technical assistance to such agencies to promote and assist such agencies to adopt and implement such effective policies and activities.

(e) Assessment when hiring or evaluating classroom teachers

Head Start agencies shall adopt, in consultation with experts in child development and with classroom teachers, an assessment to be used when hiring or evaluating any classroom teacher in a center-based Head Start program. Such assessment shall measure whether such teacher has mastered the functions described in section 9843a(a)(1) of this title.

(Pub. L. 97-35, title VI, § 642, Aug. 13, 1981, 95 Stat. 502; Pub. L. 99-425, title I, § 103, Sept. 30, 1986, 100 Stat. 966; Pub. L. 101-501, title I, § 109, Nov. 3, 1990, 104 Stat. 1231; Pub. L. 102-401, § 2(i), (k)(3), Oct. 7, 1992, 106 Stat. 1957, 1959; Pub. L. 103-252, title I, § 109, May 18, 1994, 108 Stat. 634; Pub. L. 105-285, title I, § 109, Oct. 27, 1998, 112 Stat. 2716.)

REFERENCES IN TEXT

Part B of chapter 1 of title I of the Elementary and Secondary Education Act of 1965, referred to in subsecs.

(b)(5) and (c), means part B of chapter 1 of title I of Pub. L. 89-10 which was classified generally to part B (§2741 et seq.) of division 1 of subchapter I of chapter 47 of Title 20, Education, prior to being omitted in the general amendment of Pub. L. 89-10 by Pub. L. 103-382, title I, § 101, Oct. 20, 1994, 108 Stat. 3519. See section 6381 et seq. of Title 20.

The Individuals with Disabilities Education Act, referred to in subsec. (c), is title VI of Pub. L. 91-230, Apr. 13, 1970, 84 Stat. 175, as amended. Part C of the Act is classified generally to subchapter III (§1431 et seq.) of chapter 33 of Title 20, Education. Section 619 of the Act is classified to section 1419 of Title 20. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-285, § 109(1), inserted “or for-profit” after “nonprofit”.

Subsec. (b)(6). Pub. L. 105-285, § 109(2)(E), added par. (6). Former par. (6) redesignated (7).

Subsec. (b)(6)(D) to (F). Pub. L. 105-285, § 109(2)(A), struck out subpar. (D) which read as follows: “substance abuse counseling;” and further directed the amendment of par. (6) “by redesignating subparagraphs (E) and (F) and subparagraphs (D) and (E), respectively”, which was executed by redesignating subpars. (E) and (F) as (D) and (E), respectively, to reflect the probable intent of Congress.

Subsec. (b)(7). Pub. L. 105-285, § 109(2)(D), redesignated par. (6) as (7). Former par. (7) redesignated (8).

Subsec. (b)(8). Pub. L. 105-285, § 109(2)(D), (F), redesignated par. (7) as (8) and substituted “paragraphs (4) through (7)” for “paragraphs (4) through (6)”. Former par. (8) redesignated (9).

Pub. L. 105-285, § 109(2)(B), struck out “and” at end.

Subsec. (b)(9). Pub. L. 105-285, § 109(2)(D), redesignated par. (8) as (9). Former par. (9) redesignated (10).

Pub. L. 105-285, § 109(2)(C), substituted “; and” for period at end.

Subsec. (b)(10). Pub. L. 105-285, § 109(2)(D), redesignated par. (9) as (10).

Subsec. (b)(11). Pub. L. 105-285, § 109(2)(G), added par. (11).

Subsec. (c). Pub. L. 105-285, § 109(3), inserted “and collaborate” after “shall coordinate” and “and programs under part C and section 619 of the Individuals with Disabilities Education Act (20 U.S.C. 1431-1445, 1419)” after “(20 U.S.C. 2741 et seq.)” and substituted “the State program carried out under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.), and other early childhood education and development” for “section 602(g) of this title, and other”.

Subsec. (d)(1). Pub. L. 105-285, § 109(4)(A), substituted “take steps to ensure, to the maximum extent possible, that children maintain” for “carry out the actions specified in this subsection, to the extent feasible and appropriate in the circumstances (including the extent to which such agency is able to secure the cooperation of parents and schools) to enable children to maintain” and “build” for “to build” and inserted “and educational” after “developmental”.

Subsec. (d)(2), (3). Pub. L. 105-285, § 109(4)(B), (C), redesignated pars. (3) and (4) as (2) and (3), respectively, and struck out former par. (2) which related to coordination between Head Start agency and local education agency and schools.

Subsec. (d)(4). Pub. L. 105-285, § 109(4)(C), redesignated par. (5) as (4). Former par. (4) redesignated (3).

Subsec. (d)(4)(A). Pub. L. 105-285, § 109(4)(D), substituted “section 9837a of this title” for “the Head Start Transition Project Act (42 U.S.C. 9855 et seq.)”.

Subsec. (d)(5). Pub. L. 105-285, § 109(4)(C), redesignated par. (5) as (4).

Subsec. (e). Pub. L. 105-285, § 109(5), added subsec. (e). 1994—Subsec. (b). Pub. L. 103-252, § 109(1), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “In order to be so designated, a Head Start agency must also (1) establish effective procedures by which parents and area residents concerned

will be enabled to directly participate in decisions that influence the character of programs affecting their interests; (2) provide for their regular participation in the implementation of such programs; (3) provide technical and other support needed to enable parents and area residents to secure on their own behalf available assistance from public and private sources; (4) involve parents of children participating in its Head Start program in appropriate educational services (in accordance with the performance standards in effect upon section 9846(b) of this title or through referral of such parents to educational services available in the community) in order to aid their children to attain their full potential; (5) establish procedures to seek reimbursement, to the extent feasible, from other agencies for services for which any such other agency is responsible, which are provided to a Head Start participant by the Head Start agency; (6) provide (directly or through referral to educational services available in the community) parents of children participating in its Head Start program with child development and literacy skills training in order to aid their children to attain their full potential; and (7) consider providing services to assist younger siblings of children participating in its Head Start program to obtain health services from other sources."

Subsec. (c). Pub. L. 103-252, §109(2), struck out "schools that will subsequently serve children in Head Start programs," after "coordinate with" and inserted ", including Even Start programs under part B of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2741 et seq.)." after "other programs".

Subsec. (d). Pub. L. 103-252, §109(3), added subsec. (d). 1992—Subsec. (b)(6), (7). Pub. L. 102-401, §2(i), added cls. (6) and (7).

Subsec. (c). Pub. L. 102-401, §2(k)(3), substituted "subchapter" for "subtitle".

1990—Subsec. (b)(4), (5). Pub. L. 101-501, §109(1), added cl. (4) and redesignated former cl. (4) as (5).

Subsec. (c). Pub. L. 101-501, §109(2), substituted "with schools that will subsequently serve children in Head Start programs, the State agency responsible for administering section 602(g) of this title, and other programs serving the children and families served by the Head Start agency to carry out the provisions of this subtitle" for "with other State and local programs serving the children in the Head Start agency to carry out the provisions of this subsection".

1986—Subsec. (c). Pub. L. 99-425 inserted "State and local" before "programs".

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-252 effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103-252, set out as a note under section 9832 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-401 effective Oct. 7, 1992, but not applicable with respect to fiscal years beginning before Oct. 1, 1992, see section 4 of Pub. L. 102-401, set out as a note under section 9835 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101-501, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-425 effective Oct. 1, 1986, see section 1001 of Pub. L. 99-425, set out as a note under section 8621 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9836, 9836a of this title.

§ 9837a. Head Start transition

Each Head Start agency shall take steps to coordinate with the local educational agency serving the community involved and with schools in which children participating in a Head Start program operated by such agency will enroll following such program, including—

(1) developing and implementing a systematic procedure for transferring, with parental consent, Head Start program records for each participating child to the school in which such child will enroll;

(2) establishing channels of communication between Head Start staff and their counterparts in the schools (including teachers, social workers, and health staff) to facilitate coordination of programs;

(3) conducting meetings involving parents, kindergarten or elementary school teachers, and Head Start program teachers to discuss the educational, developmental, and other needs of individual children;

(4) organizing and participating in joint transition-related training of school staff and Head Start staff;

(5) developing and implementing a family outreach and support program in cooperation with entities carrying out parental involvement efforts under title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.);

(6) assisting families, administrators, and teachers in enhancing educational and developmental continuity between Head Start services and elementary school classes; and

(7) linking the services provided in such Head Start program with the education services provided by such local educational agency.

(Pub. L. 97-35, title VI, §642A, as added Pub. L. 105-285, title I, §110, Oct. 27, 1998, 112 Stat. 2717.)

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in par. (5), is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27, as amended. Title I of the Act is classified generally to subchapter I (§6301 et seq.) of chapter 70 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9834, 9837 of this title.

§ 9838. Submission of plans to chief executive officer

In carrying out the provisions of this subchapter, no contract, agreement, grant, or other assistance shall be made for the purpose of carrying out a Head Start program within a State unless a plan setting forth such proposed contract, agreement, grant, or other assistance has been submitted to the chief executive officer of the State, and such plan has not been disapproved by such officer within 45 days of such submission, or, if disapproved (for reasons other than failure of the program to comply with State health, safety, and child care laws, including regulations applicable to comparable child care programs in the State), has been reconsid-

ered by the Secretary and found by the Secretary to be fully consistent with the provisions and in furtherance of the purposes of this subchapter, as evidenced by a written statement of the Secretary's findings that is transmitted to such officer. Funds to cover the costs of the proposed contract, agreement, grant, or other assistance shall be obligated from the appropriation which is current at the time the plan is submitted to such officer. This section shall not, however, apply to contracts, agreements, grants, loans, or other assistance to any institution of higher education in existence on August 13, 1981.

(Pub. L. 97-35, title VI, §643, Aug. 13, 1981, 95 Stat. 502; Pub. L. 101-501, title I, §110, Nov. 3, 1990, 104 Stat. 1231; Pub. L. 102-401, §2(k)(4), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 105-285, title I, §111, Oct. 27, 1998, 112 Stat. 2718.)

AMENDMENTS

1998—Pub. L. 105-285, in first sentence, substituted "45 days" for "30 days" and "disapproved (for reasons other than failure of the program to comply with State health, safety, and child care laws, including regulations applicable to comparable child care programs in the State)" for "so disapproved" and inserted ", as evidenced by a written statement of the Secretary's findings that is transmitted to such officer" before period.

1992—Pub. L. 102-401 substituted "such officer" for "the such officer" in two places.

1990—Pub. L. 101-501 substituted "chief executive officer" for first reference to "Governor" and "such officer" for second and third references to "Governor".

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-401 effective Oct. 7, 1992, but not applicable with respect to fiscal years beginning before Oct. 1, 1992, see section 4 of Pub. L. 102-401, set out as a note under section 9835 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101-501, set out as a note under section 8621 of this title.

§ 9839. Administrative requirements and standards

(a) Employment practices, nonpartisanship, staff accountability, public access to information, etc.

Each Head Start agency shall observe standards of organization, management, and administration which will assure, so far as reasonably possible, that all program activities are conducted in a manner consistent with the purposes of this subchapter and the objective of providing assistance effectively, efficiently, and free of any taint of partisan political bias or personal or family favoritism. Each such agency shall establish or adopt rules to carry out this section, which shall include rules to assure full staff accountability in matters governed by law, regulations, or agency policy. Each agency shall also provide for reasonable public access to information, including public hearings at the request of appropriate community groups and reasonable public access to books and records of the agency or other agencies engaged in program activities or operations involving the use of authority or funds for which it is responsible. Each such agency shall adopt for itself and other agencies using funds or exercising authority for which it

is responsible, rules designed to (1) establish specific standards governing salaries, salary increases, travel and per diem allowances, and other employee benefits; (2) assure that only persons capable of discharging their duties with competence and integrity are employed and that employees are promoted or advanced under impartial procedures calculated to improve agency performance and effectiveness; (3) guard against personal or financial conflicts of interest; and (4) define employee duties in an appropriate manner which will in any case preclude employees from participating, in connection with the performance of their duties, in any form of picketing, protest, or other direct action which is in violation of law.

(b) Development and administrative costs of programs

Except as provided in subsection (f) of this section, no financial assistance shall be extended under this subchapter in any case in which the Secretary determines that the costs of developing and administering a program assisted under this subchapter exceed 15 percent of the total costs, including the required non-Federal contributions to such costs, of such program. The Secretary shall establish by regulation, criteria for determining (1) the costs of developing and administering such program; and (2) the total costs of such program. In any case in which the Secretary determines that the cost of administering such program does not exceed 15 percent of such total costs but is, in the judgment of the Secretary, excessive, the Secretary shall forthwith require the recipient of such financial assistance to take such steps prescribed by the Secretary as will eliminate such excessive administrative cost, including the sharing by one or more Head Start agencies of a common director and other administrative personnel. The Secretary may waive the limitation prescribed by this subsection for specific periods of time not to exceed 12 months whenever the Secretary determines that such a waiver is necessary in order to carry out the purposes of this subchapter.

(c) Rules and regulations; special or simplified requirements for small agencies; common or joint use of facilities

The Secretary shall prescribe rules or regulations to supplement subsections (a) and (f) of this section, which shall be binding on all agencies carrying on Head Start program activities with financial assistance under this subchapter. The Secretary may, where appropriate, establish special or simplified requirements for smaller agencies or agencies operating in rural areas. Policies and procedures shall be established to ensure that indirect costs attributable to the common or joint use of facilities and services by programs assisted under this subchapter and other programs shall be fairly allocated among the various programs which utilize such facilities and services.

(d) Publication and notification of proposed rules, etc.

At least 30 days prior to their effective date, all rules, regulations, and application forms shall be published in the Federal Register and

shall be sent to each grantee with the notification that each such grantee has the right to submit comments pertaining thereto to the Secretary prior to the final adoption thereof.

(e) Neutrality concerning union organizing

Funds appropriated to carry out this subchapter shall not be used to assist, promote, or deter union organizing.

(f) Purchase of facility; approval requirements; financial assistance

(1) The Secretary shall establish uniform procedures for Head Start agencies to request approval to purchase facilities, or to request approval of the purchase (after December 31, 1986) of facilities, to be used to carry out Head Start programs. The Secretary shall suspend any proceedings pending against any Head Start agency to claim costs incurred in purchasing such facilities until the agency has been afforded an opportunity to apply for approval of the purchase and the Secretary has determined whether the purchase will be approved. The Secretary shall not be required to repay claims previously satisfied by Head Start agencies for costs incurred in the purchase of such facilities.

(2) Financial assistance provided under this subchapter may not be used by a Head Start agency to purchase a facility (including paying the cost of amortizing the principal, and paying interest on, loans) to be used to carry out a Head Start program unless the Secretary approves a request that is submitted by such agency and contains—

(A) a description of the site of the facility proposed to be purchased or that was previously purchased;

(B) the plans and specifications of such facility;

(C) information demonstrating that—

(i) the proposed purchase will result, or the previous purchase has resulted, in savings when compared to the costs that would be incurred to acquire the use of an alternative facility to carry out such program; or

(ii) the lack of alternative facilities will prevent, or would have prevented, the operation of such program;

(D) in the case of a request regarding a previously purchased facility, information demonstrating that the facility will be used principally as a Head Start center, or a direct support facility for a Head Start program; and

(E) such other information and assurances as the Secretary may require.

(3) Upon a determination by the Secretary that suitable facilities are not otherwise available to Indian tribes to carry out Head Start programs, and that the lack of suitable facilities will inhibit the operation of such programs, the Secretary, in the discretion of the Secretary, may authorize the use of financial assistance, from the amount reserved under section 9835(a)(2)(A) of this title, to make payments for the purchase of facilities owned by such tribes. The amount of such a payment for such a facility shall not exceed the fair market value of the facility.

(g) Payments for capital expenditures

(1) Upon a determination by the Secretary that suitable facilities (including public school

facilities) are not otherwise available to Indian tribes, rural communities, and other low-income communities to carry out Head Start programs, that the lack of suitable facilities will inhibit the operation of such programs, and that construction of such facilities is more cost effective than purchase of available facilities or renovation, the Secretary, in the discretion of the Secretary, may authorize the use of financial assistance under this subchapter to make payments for capital expenditures related to facilities that will be used to carry out such programs. The Secretary shall establish uniform procedures for Head Start agencies to request approval for such payments, and shall promote, to the extent practicable, the collocation of Head Start programs with other programs serving low-income children and families.

(2) Such payments may be used for capital expenditures (including paying the cost of amortizing the principal, and paying interest on, loans) such as expenditures for—

(A) construction of facilities that are not in existence on the date of the determination;

(B) major renovation of facilities in existence on such date; and

(C) purchase of vehicles used for programs conducted at the Head Start facilities.

(3) All laborers and mechanics employed by contractors or subcontractors in the construction or renovation of facilities to be used to carry out Head Start programs shall be paid wages at not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with the Act of March 3, 1931, as amended (40 U.S.C. 276a et seq., commonly known as the “Davis-Bacon Act”).

(h) Personnel preferences to Indian tribe members

In all personnel actions of the American Indian Programs Branch of the Head Start Bureau of the Administration for Children and Families, the Secretary shall give the same preference to individuals who are members of an Indian tribe as the Secretary gives to a disabled veteran, as defined in section 2108(3)(C) of title 5. The Secretary shall take such additional actions as may be necessary to promote recruitment of such individuals for employment in the Administration.

(Pub. L. 97-35, title VI, § 644, Aug. 13, 1981, 95 Stat. 502; Pub. L. 101-501, title I, §§ 111, 112, Nov. 3, 1990, 104 Stat. 1231; Pub. L. 102-401, § 2(j), Oct. 7, 1992, 106 Stat. 1958; Pub. L. 103-218, title IV, § 403, Mar. 9, 1994, 108 Stat. 96; Pub. L. 103-252, title I, § 110, May 18, 1994, 108 Stat. 636; Pub. L. 105-285, title I, § 106(e), Oct. 27, 1998, 112 Stat. 2712.)

REFERENCES IN TEXT

The Davis-Bacon Act, referred to in subsec. (g)(3), is act Mar. 3, 1931, ch. 411, 46 Stat. 1494, as amended, which is classified generally to sections 276a to 276a-5 of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 276a of Title 40 and Tables.

AMENDMENTS

1998—Subsec. (f)(2). Pub. L. 105-285 substituted “Financial assistance” for “Except as provided in section 9835(a)(3)(C)(v) of this title, financial assistance”.

1994—Subsec. (d). Pub. L. 103-252, §110(1), struck out “guidelines, instructions,” after “all rules, regulations,”.

Subsec. (f)(1). Pub. L. 103-218, §403(1), inserted “, or to request approval of the purchase (after December 31, 1986) of facilities,” after “to purchase facilities” and inserted at end “The Secretary shall suspend any proceedings pending against any Head Start agency to claim costs incurred in purchasing such facilities until the agency has been afforded an opportunity to apply for approval of the purchase and the Secretary has determined whether the purchase will be approved. The Secretary shall not be required to repay claims previously satisfied by Head Start agencies for costs incurred in the purchase of such facilities.”

Subsec. (f)(2). Pub. L. 103-252, §110(2)(A), substituted “section 9835(a)(3)(C)(v)” for “section 9835(a)(3)(A)(v)”.

Subsec. (f)(2)(A). Pub. L. 103-218, §403(2)(A), inserted before semicolon at end “or that was previously purchased”.

Subsec. (f)(2)(C)(i). Pub. L. 103-218, §403(2)(B)(i), inserted “, or the previous purchase has resulted,” after “purchase will result”.

Subsec. (f)(2)(C)(ii). Pub. L. 103-218, §403(2)(B)(ii), inserted “, or would have prevented,” after “will prevent” and struck out “and” after semicolon at end.

Subsec. (f)(2)(D), (E). Pub. L. 103-218, §403(2)(C), (D), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (f)(3). Pub. L. 103-252, §110(2)(B), added par. (3).

Subsecs. (g), (h). Pub. L. 103-252, §110(3), added subsecs. (g) and (h).

1992—Subsec. (b). Pub. L. 102-401, §2(j)(1), substituted “Except as provided in subsection (f) of this section, no” for “No”.

Subsec. (c). Pub. L. 102-401, §2(j)(2), substituted “subsections (a) and (f) of this section” for “subsection (a) of this section”.

Subsec. (f). Pub. L. 102-401, §2(j)(3), added subsec. (f).

1990—Subsec. (b). Pub. L. 101-501, §111, inserted “the required” before “non-Federal contributions”.

Subsec. (e). Pub. L. 101-501, §112, added subsec. (e).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-252 effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103-252, set out as a note under section 9832 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-401 effective Oct. 7, 1992, but not applicable with respect to fiscal years beginning before Oct. 1, 1992, see section 4 of Pub. L. 102-401, set out as a note under section 9835 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101-501, set out as a note under section 8621 of this title.

STUDY OF BENEFITS FOR HEAD START EMPLOYEES

Section 120 of Pub. L. 103-252 provided that:

“(a) STUDY.—The Secretary of Health and Human Services shall conduct a study regarding the benefits available to individuals employed by Head Start agencies under the Head Start Act (42 U.S.C. 9831 et seq.).

“(b) REPORT.—

“(1) PREPARATION.—The Secretary shall prepare a report, containing the results of the study, that—

“(A) describes the benefits, including health care benefits, family and medical leave, and retirement pension benefits, available to such individuals;

“(B) includes recommendations for increasing the access of the individuals to benefits, including access to a retirement pension program; and

“(C) addresses the feasibility of participation by such individuals in the Federal Employees’ Retirement System under chapter 84 of title 5, United States Code.

“(2) SUBMISSION.—The Secretary shall submit the report to the appropriate committees of Congress.”

§ 9840. Participation in Head Start programs

(a) Criteria for eligibility

(1) The Secretary shall by regulation prescribe eligibility for the participation of persons in Head Start programs assisted under this subchapter. Except as provided in paragraph (2), such criteria may provide—

(A) that children from low-income families shall be eligible for participation in programs assisted under this subchapter if their families’ incomes are below the poverty line, or if their families are eligible or, in the absence of child care, would potentially be eligible for public assistance; and

(B) pursuant to such regulations as the Secretary shall prescribe, that—

(i) programs assisted under this subchapter may include, to a reasonable extent, participation of children in the area served who would benefit from such programs but whose families do not meet the low-income criteria prescribed pursuant to subparagraph (A); and

(ii) a child who has been determined to meet the low-income criteria and who is participating in a Head Start program in a program year shall be considered to continue to meet the low-income criteria through the end of the succeeding program year.

In determining, for purposes of this paragraph, whether a child who has applied for enrollment in a Head Start program meets the low-income criteria, an entity may consider evidence of family income during the 12 months preceding the month in which the application is submitted, or during the calendar year preceding the calendar year in which the application is submitted, whichever more accurately reflects the needs of the family at the time of application.

(2) Whenever a Head Start program is operated in a community with a population of 1,000 or less individuals and—

(A) there is no other preschool program in the community;

(B) the community is located in a medically underserved area, as designated by the Secretary pursuant to section 254c(b)(3)¹ of this title and is located in a health professional shortage area, as designated by the Secretary pursuant to section 254e(a)(1) of this title;

(C) the community is in a location which, by reason of remoteness, does not permit reasonable access to the types of services described in clauses (A) and (B); and

(D) not less than 50 percent of the families to be served in the community are eligible under the eligibility criteria established by the Secretary under paragraph (1);

the Head Start program in each such locality shall establish the criteria for eligibility, except

¹ See References in Text note below.

that no child residing in such community whose family is eligible under such eligibility criteria shall, by virtue of such project's eligibility criteria, be denied an opportunity to participate in such program. During the period beginning on October 30, 1984, and ending on October 1, 1994, and unless specifically authorized in any statute of the United States enacted after October 30, 1984, the Secretary may not make any change in the method, as in effect on April 25, 1984, of calculating income used to prescribe eligibility for the participation of persons in the Head Start programs assisted under this subchapter if such change would result in any reduction in, or exclusion from, participation of persons in any of such programs.

(b) Establishment of fee schedule or charging of fees; payment by families willing and able to pay

The Secretary shall not prescribe any fee schedule or otherwise provide for the charging of any fees for participation in Head Start programs, unless such fees are authorized by legislation hereafter enacted. Nothing in this subsection shall be construed to prevent the families of children who participate in Head Start programs and who are willing and able to pay the full cost of such participation from doing so. A Head Start agency that provides a Head Start program with full-working-day services in collaboration with other agencies or entities may collect a family copayment to support extended day services if a copayment is required in conjunction with the collaborative. The copayment charged to families receiving services through the Head Start program shall not exceed the copayment charged to families with similar incomes and circumstances who are receiving the services through participation in a program carried out by another agency or entity.

(c) Availability of more than one year of services; children eligible

Each Head Start program operated in a community shall be permitted to provide more than 1 year of Head Start services to eligible children (age 3 to compulsory school attendance) in the State. Each Head Start program operated in a community shall be permitted to recruit and accept applications for enrollment of children throughout the year.

(d) Indian tribes

(1) An Indian tribe that—

(A) operates a Head Start program;

(B) enrolls as participants in the program all children in the community served by the tribe (including a community that is an off-reservation area, designated by an appropriate tribal government, in consultation with the Secretary) from families that meet the low-income criteria prescribed under subsection (a)(1)(A) of this section; and

(C) has the resources to enroll additional children in the community who do not meet the low-income criteria;

may enroll such additional children in a Head Start program, in accordance with this subsection, if the program predominantly serves children who meet the low-income criteria.

(2) The Indian tribe shall enroll the children in the Head Start program in accordance with such

requirements as the Secretary may specify by regulation promulgated after consultation with Indian tribes.

(3) In providing services through a Head Start program to such children, the Indian tribe may not use funds that the Secretary has determined, in accordance with section 9835(g)(3) of this title, are to be used for expanding Head Start programs under this subchapter.

(Pub. L. 97-35, title VI, § 645, Aug. 13, 1981, 95 Stat. 504; Pub. L. 98-558, title I, § 105, Oct. 30, 1984, 98 Stat. 2879; Pub. L. 99-425, title I, § 104, Sept. 30, 1986, 100 Stat. 966; Pub. L. 101-501, title I, §§ 113, 114, Nov. 3, 1990, 104 Stat. 1231; Pub. L. 101-597, title IV, § 401(e), Nov. 16, 1990, 104 Stat. 3035; Pub. L. 103-252, title I, § 111, May 18, 1994, 108 Stat. 637; Pub. L. 105-285, title I, § 112, Oct. 27, 1998, 112 Stat. 2718.)

REFERENCES IN TEXT

Section 254c of this title, referred to in subsec. (a)(2)(B), was in the original a reference to section 330 of the Public Health Service Act, act July 1, 1944, which was omitted in the general amendment of subpart I (§ 254b et seq.) of part D of subchapter II of chapter 6A of this title by Pub. L. 104-299, § 2, Oct. 11, 1996, 110 Stat. 3626. Sections 2 and 3(a) of Pub. L. 104-299 enacted new sections 330 and 330A of act July 1, 1944, which are classified, respectively, to sections 254b and 254c of this title.

AMENDMENTS

1998—Subsec. (a)(1). Pub. L. 105-285, § 112(a), substituted “criteria may provide—” for “criteria may provide”, realigned margins of subpars. (A) and (B), in subpar. (B) substituted “shall prescribe, that—” for “shall prescribe, that”, inserted “(i)” before “programs assisted under this subchapter may”, and substituted “subparagraph (A); and”, cl. (ii), and concluding provisions for “clause (A).”

Subsec. (b). Pub. L. 105-285, § 112(b), inserted at end “A Head Start agency that provides a Head Start program with full-working-day services in collaboration with other agencies or entities may collect a family copayment to support extended day services if a copayment is required in conjunction with the collaborative. The copayment charged to families receiving services through the Head Start program shall not exceed the copayment charged to families with similar incomes and circumstances who are receiving the services through participation in a program carried out by another agency or entity.”

Subsec. (c). Pub. L. 105-285, § 112(c), inserted at end “Each Head Start program operated in a community shall be permitted to recruit and accept applications for enrollment of children throughout the year.”

Subsec. (d)(1)(B). Pub. L. 105-285, § 112(d), substituted “a community that is an off-reservation area, designated by an appropriate tribal government, in consultation with the Secretary” for “a community with a near-reservation designation, as defined by the Bureau of Indian Affairs”.

1994—Subsec. (c). Pub. L. 103-252, § 111(1), substituted “shall be permitted to provide more than 1 year of Head Start services to eligible children (age 3 to compulsory school attendance) in the State.” for “may provide more than one year of Head Start services to children from age 3 to the age of compulsory school attendance in the State in which the Head Start program is located. The Secretary may not issue or enforce any rule (as defined in section 551(4) of title 5) or guideline that forbids any Head Start agency to carry out a Head Start program in accordance with the authority described in the preceding sentence.”

Subsec. (d). Pub. L. 103-252, § 111(2), added subsec. (d). 1990—Subsec. (a)(2). Pub. L. 101-501, § 113, substituted “1994” for “1990” in closing provisions.

Subsec. (a)(2)(B). Pub. L. 101-597 substituted “health professional shortage area” for “health manpower shortage area”.

Subsec. (c). Pub. L. 101-501, §114, inserted at end “The Secretary may not issue or enforce any rule (as defined in section 551(4) of title 5) or guideline that forbids any Head Start agency to carry out a Head Start program in accordance with the authority described in the preceding sentence.”

1986—Subsec. (a)(2). Pub. L. 99-425 substituted “1990” for “1986” in closing provisions.

1984—Subsec. (a)(2). Pub. L. 98-558, §105(a), inserted at end “During the period beginning on October 30, 1984, and ending on October 1, 1986, and unless specifically authorized in any statute of the United States enacted after October 30, 1984, the Secretary may not make any change in the method, as in effect on April 25, 1984, of calculating income used to prescribe eligibility for the participation of persons in the Head Start programs assisted under this subchapter if such change would result in any reduction in, or exclusion from, participation of persons in any of such programs.”

Subsec. (c). Pub. L. 98-558, §105(b), added subsec. (c).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-252 effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103-252, set out as a note under section 9832 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101-501, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-425 effective Oct. 1, 1986, see section 1001 of Pub. L. 99-425, set out as a note under section 8621 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1758, 1766, 9835, 9840a of this title.

§ 9840a. Early Head Start programs for families with infants and toddlers

(a) In general

The Secretary shall make grants, in accordance with the provisions of this section for programs providing family-centered services for low-income families with very young children designed to promote the development of the children, and to enable their parents to fulfill their roles as parents and to move toward self-sufficiency.

(b) Scope and design of programs

In carrying out a program described in subsection (a) of this section, an entity receiving assistance under this section shall—

- (1) provide, either directly or through referral, early, continuous, intensive, and comprehensive child development and family support services that will enhance the physical, social, emotional, and intellectual development of participating children;
- (2) ensure that the level of services provided to families responds to their needs and circumstances;
- (3) promote positive parent-child interactions;
- (4) provide services to parents to support their role as parents and to help the families

move toward self-sufficiency (including educational and employment services as appropriate);

(5) coordinate services with services provided by programs in the State and programs in the community (including programs for infants and toddlers with disabilities) to ensure a comprehensive array of services (such as health and mental health services);

(6) ensure formal linkages with local Head Start programs in order to provide for continuity of services for children and families;

(7) in the case of a Head Start agency that operates a program and that also provides Head Start services through the age of mandatory school attendance, ensure that children and families participating in the program receive such services through such age;

(8) ensure formal linkages with the agencies and entities described in section 644(b) of the Individuals with Disabilities Education Act (20 U.S.C. 1444(b)) and providers of early intervention services for infants and toddlers with disabilities under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.); and

(9) meet such other requirements concerning design and operation of the program described in subsection (a) of this section as the Secretary may establish.

(c) Persons eligible to participate

Persons who may participate in programs described in subsection (a) of this section include—

- (1) pregnant women; and
- (2) families with children under age 3;

who meet the income criteria specified for families in section 9840(a)(1) of this title.

(d) Eligible service providers

To be eligible to receive assistance under this section, an entity shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require. Entities that may apply to carry out activities under this section include—

- (1) entities operating Head Start programs under this subchapter; and
- (2) other public entities, and nonprofit or for-profit private entities, capable of providing child and family services that meet the standards for participation in programs under this subchapter and meet such other appropriate requirements relating to the activities under this section as the Secretary may establish.

(e) Selection of grant recipients

From the portion specified in section 9835(a)(6) of this title, the Secretary shall award grants under this subsection on a competitive basis to applicants meeting the criteria specified in subsection (d) of this section (giving priority to entities with a record of providing early, continuous, and comprehensive childhood development and family services).

(f) Distribution

In awarding grants to eligible applicants under this section, the Secretary shall—

- (1) ensure an equitable national geographic distribution of the grants; and
- (2) award grants to applicants proposing to serve communities in rural areas and to appli-

cants proposing to serve communities in urban areas.

(g) Monitoring, training, technical assistance, and evaluation

(1) Requirement

In order to ensure the successful operation of programs assisted under this section, the Secretary shall use funds from the portion specified in section 9835(a)(6) of this title to monitor the operation of such programs, evaluate their effectiveness, and provide training and technical assistance tailored to the particular needs of such programs.

(2) Training and technical assistance account

(A) In general

Of the amount made available to carry out this section for any fiscal year, not less than 5 percent and not more than 10 percent shall be reserved to fund a training and technical assistance account.

(B) Activities

Funds in the account may be used by the Secretary for purposes including—

- (i) making grants to, and entering into contracts with, organizations with specialized expertise relating to infants, toddlers, and families and the capacity needed to provide direction and support to a national training and technical assistance system, in order to provide such direction and support;
- (ii) providing ongoing training and technical assistance for regional and program staff charged with monitoring and overseeing the administration of the program carried out under this section;
- (iii) providing ongoing training and technical assistance for existing recipients (as of the date of such training or assistance) of grants under subsection (a) of this section and support and program planning and implementation assistance for new recipients of such grants; and
- (iv) providing professional development and personnel enhancement activities, including the provision of funds to recipients of grants under subsection (a) of this section for the recruitment and retention of qualified staff with an appropriate level of education and experience.

(Pub. L. 97-35, title VI, § 645A, as added Pub. L. 103-252, title I, § 112(a), May 18, 1994, 108 Stat. 638; amended Pub. L. 105-285, title I, § 113, Oct. 27, 1998, 112 Stat. 2719.)

REFERENCES IN TEXT

The Individuals with Disabilities Education Act, referred to in subsec. (b)(8), is title VI of Pub. L. 91-230, Apr. 13, 1970, 84 Stat. 175, as amended, which is classified generally to chapter 33 (§1400 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

AMENDMENTS

1998—Pub. L. 105-285, § 113(1), inserted “Early Head Start” in section catchline.

Subsec. (a). Pub. L. 105-285, § 113(2), substituted “provisions of this section for” for “provisions of this section for—”, struck out par. (1) designation before “pro-

grams providing”, substituted “self-sufficiency.” for “self-sufficiency; and”, and struck out par. (2) which read as follows: “provision of training and technical assistance to entities carrying out programs, and evaluation of programs, that were supported under the Comprehensive Child Development Act (42 U.S.C. 9881 et seq.), as in effect on the day before May 18, 1994.”

Subsec. (b)(5). Pub. L. 105-285, § 113(3)(A), inserted “(including programs for infants and toddlers with disabilities)” after “community”.

Subsec. (b)(7). Pub. L. 105-285, § 113(3)(B), struck out “and” at end.

Subsec. (b)(8), (9). Pub. L. 105-285, § 113(3)(C), (D), added par. (8) and redesignated former par. (8) as (9).

Subsec. (c). Pub. L. 105-285, § 113(4)(A), substituted “subsection (a) of this section” for “subsection (a)(1) of this section” in introductory provisions.

Subsec. (c)(2). Pub. L. 105-285, § 113(4)(B), substituted “3;” for “3 (or under age 5, in the case of children served by an entity specified in subsection (e)(3) of this section);”.

Subsec. (d). Pub. L. 105-285, § 113(5), inserted “and” at end of par. (1), redesignated par. (3) as (2), inserted “or for-profit” after “nonprofit”, and struck out former par. (2) which read as follows: “entities that, on the day before the date of enactment of this section, were operating—

“(A) Parent-Child Centers receiving financial assistance under section 9835(a)(4) of this title, as in effect on such date; or

“(B) programs receiving financial assistance under the Comprehensive Child Development Act, as in effect on such date; and”.

Subsec. (e). Pub. L. 105-285, § 113(8), struck out “other” before “grant recipients” in heading and substituted “From the portion specified in section 9835(a)(6) of this title,” for “From the balance remaining of the portion specified in section 9835(a)(6) of this title, after making grants to the eligible entities specified in subsection (e) of this section,” in text.

Pub. L. 105-285, § 113(6), (7), redesignated subsec. (f) as (e) and struck out heading and text of former subsec. (e) which related to time-limited priority for certain entities.

Subsecs. (f), (g). Pub. L. 105-285, § 113(7), (10), added subsec. (g) and redesignated former subsec. (g) as (f). Former subsec. (f) redesignated (e).

Subsec. (h). Pub. L. 105-285, § 113(9), struck out heading and text of subsec. (h) which related to Secretarial responsibilities.

EFFECTIVE DATE

Section effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103-252, set out as an Effective Date of 1994 Amendment note under section 9832 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9835 of this title.

§ 9841. Appeals, notice, hearing, and mediation; alternative agency for Indian tribe

(a) Notice requirements; suspension or termination of assistance stayed pending hearing; mediation

The Secretary shall prescribe procedures to assure that—

- (1) special notice of and an opportunity for a timely and expeditious appeal to the Secretary will be provided for an agency or organization which desires to serve as a delegate agency under this subchapter and whose application to the Head Start agency has been wholly or substantially rejected or has not been acted upon within a period of time

deemed reasonable by the Secretary, in accordance with regulations which the Secretary shall prescribe;

(2) financial assistance under this subchapter shall not be suspended, except in emergency situations, unless the recipient agency has been given reasonable notice and opportunity to show cause why such action should not be taken;

(3) financial assistance under this subchapter shall not be terminated or reduced, an application for refunding shall not be denied, and a suspension of financial assistance shall not be continued for longer than 30 days, unless the recipient has been afforded reasonable notice and opportunity for a full and fair hearing; and

(4) the Secretary shall develop and publish procedures (including mediation procedures) to be used in order to—

(A) resolve in a timely manner conflicts potentially leading to adverse action between—

(i) recipients of financial assistance under this subchapter; and

(ii) delegate agencies or Head Start Parent Policy Councils; and

(B) avoid the need for an administrative hearing on an adverse action.

(b) Notification of conflict by Head Start agency to regional office

In prescribing procedures for the mediation described in subsection (a)(4) of this section, the Secretary shall specify—

(1) the date by which a Head Start agency engaged in a conflict described in subsection (a)(4) of this section will notify the appropriate regional office of the Department of the conflict; and

(2) a reasonable period for the mediation.

(c) Timeline for administrative hearing

The Secretary shall also specify—

(1) a timeline for an administrative hearing, if necessary, on an adverse action; and

(2) a timeline by which the person conducting the administrative hearing shall issue a decision based on the hearing.

(d) Termination of designation not stayed upon appeal

In any case in which a termination, reduction, or suspension of financial assistance under this subchapter is upheld in an administrative hearing under this section, such termination, reduction, or suspension shall not be stayed pending any judicial appeal of such administrative decision.

(e) Establishment of alternative agency by Indian tribe

(1) The Secretary shall by regulation specify a process by which an Indian tribe may identify and establish an alternative agency, and request that the alternative agency be designated under section 9836 of this title as the Head Start agency providing services to the tribe, if—

(A) the Secretary terminates financial assistance under this section to the only agency that was receiving financial assistance to provide Head Start services to the Indian tribe; and

(B) the tribe would otherwise be precluded from providing such services to the members of the tribe.

(2) The regulation required by this subsection shall prohibit such designation of an alternative agency that includes an employee who—

(A) served on the administrative staff or program staff of the agency described in paragraph (1)(A); and

(B) was responsible for a deficiency that—

(i) relates to the performance standards or financial management standards described in section 9836a(a)(1) of this title; and

(ii) was the basis for the termination of financial assistance described in paragraph (1)(A);

as determined by the Secretary after providing the notice and opportunity described in subsection (a)(3) of this section.

(Pub. L. 97-35, title VI, §646, Aug. 13, 1981, 95 Stat. 504; Pub. L. 101-501, title I, §115, Nov. 3, 1990, 104 Stat. 1232; Pub. L. 103-252, title I, §113, May 18, 1994, 108 Stat. 641.)

AMENDMENTS

1994—Subsec. (a)(4). Pub. L. 103-252, §113(a), added par. (4).

Subsecs. (b) to (e). Pub. L. 103-252, §113(b), added subsecs. (b) to (e) and struck out former subsec. (b) which read as follows: “The Secretary may not prescribe any procedure that would modify the operation of section 1303.21 or 1303.33, or any of subdivisions (a) through (f) of section 1303.35, of title 45 of the Code of Federal Regulations as in effect on April 1, 1990.”

1990—Subsec. (a). Pub. L. 101-501, §115(1), (2), designated existing provisions as subsec. (a) and inserted “or reduced” after “terminated” in par. (3).

Subsec. (b). Pub. L. 101-501, §115(3), added subsec. (b).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-252 effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103-252, set out as a note under section 9832 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 115(1), (2) of Pub. L. 101-501 effective Oct. 1, 1990, and amendment by section 115(3) of Pub. L. 101-501 effective Apr. 1, 1990, see section 1001(a), (b)(2) of Pub. L. 101-501, set out as a note under section 8621 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9836 of this title.

§ 9842. Records and audits

(a) Each recipient of financial assistance under this subchapter shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such financial assistance, the total cost of the project or undertaking in connection with which such financial assistance is given or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Secretary and the Comptroller General of the United States, or any of their duly au-

thorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients that are pertinent to the financial assistance received under this subchapter.

(Pub. L. 97-35, title VI, §647, Aug. 13, 1981, 95 Stat. 505.)

§ 9843. Technical assistance and training

(a) Technical assistance and personnel training

The Secretary shall provide, directly or through grants or other arrangements (1) technical assistance to communities in developing, conducting, and administering programs under this subchapter; and (2) training for specialized or other personnel needed in connection with Head Start programs, in accordance with the process, and the provisions for allocating resources, set forth in subsections (b) and (c) of this section.

(b) Consideration of local needs

The process for determining the technical assistance and training activities to be carried out under this section shall—

(1) ensure that the needs of local Head Start agencies and programs relating to improving program quality and to program expansion are addressed to the maximum extent feasible;

(2) incorporate mechanisms to ensure responsiveness to local needs, including an ongoing procedure for obtaining input from the individuals and agencies carrying out Head Start programs; and

(3) ensure the provision of technical assistance to assist Head Start agencies, entities carrying out other child care and early childhood programs, communities, and States in collaborative efforts to provide quality full-working-day, full calendar year services, including technical assistance related to identifying and assisting in resolving barriers to collaboration.

(c) Prioritization of resource allocation

In allocating resources for technical assistance and training under this section, the Secretary shall—

(1) give priority consideration to—

(A) activities to correct program and management deficiencies identified through reviews carried out pursuant to section 9836a(c) of this title (including the provision of assistance to local programs in the development of quality improvement plans under section 9836a(d)(2) of this title); and

(B) assisting Head Start agencies in—

(i) ensuring the school readiness of children; and

(ii) meeting the educational performance measures described in section 9836a(b)(4) of this title;

(2) supplement amounts provided under section 9835(a)(3)(C)(ii) of this title in order to address the training and career development needs of classroom staff (including instruction for providing services to children with disabilities) and nonclassroom staff, including home visitors and other staff working directly with families, including training relating to in-

creasing parent involvement and services designed to increase family literacy and improve parenting skills;

(3) assist Head Start agencies in the development of collaborative initiatives with States and other entities within the States, to foster effective early childhood professional development systems;

(4) provide technical assistance and training, either directly or through a grant, contract, or cooperative agreement with an entity that has experience in the development and operation of successful family literacy services programs, for the purpose of—

(A) assisting Head Start agencies providing family literacy services, in order to improve the quality of such family literacy services; and

(B) enabling those Head Start agencies that demonstrate effective provision of family literacy services, based on improved outcomes for children and their parents, to provide technical assistance and training to other Head Start agencies and to service providers that work in collaboration with such agencies to provide family literacy services;

(5) assist Head Start agencies and programs in conducting and participating in communitywide strategic planning and needs assessment;

(6) assist Head Start agencies and programs in developing and implementing full-working-day and full-calendar-year programs where community need is clearly identified and making the transition to such programs, with particular attention to involving parents and programming for children throughout the day, and assist the agencies and programs in expediting the sharing of information about innovative models for providing full-working-day, full calendar year services for children;

(7) assist Head Start agencies in better serving the needs of families with very young children;

(8) assist Head Start agencies and programs in the development of sound management practices, including financial management procedures;

(9) assist in efforts to secure and maintain adequate facilities for Head Start programs;

(10) assist Head Start agencies in developing innovative program models, including mobile and home-based programs; and

(11) provide support for Head Start agencies (including policy councils and policy committees, as defined in regulation) that meet the standards described in section 9836a(a) of this title but that have, as documented by the Secretary through reviews conducted pursuant to section 9836a(c) of this title, significant programmatic, quality, and fiscal issues to address.

(d) Training in performing and visual arts and electronic media

The Secretary may provide, either directly or through grants to public or private nonprofit entities, training for Head Start personnel in the use of the performing and visual arts and interactive programs using electronic media to en-

hance the learning experience of Head Start children. Special consideration shall be given to entities that have demonstrated effectiveness in educational programming for preschool children that includes components for parental involvement, care provider training, and developmentally appropriate related activities.

(e) Child development and assessment program

The Secretary shall provide, either directly or through grants or other arrangements, funds from programs authorized under this subchapter to support an organization to administer a centralized child development and national assessment program leading to recognized credentials for personnel working in early childhood development and child care programs, training for personnel providing services to non-English language background children (including services to promote the acquisition of the English language), training for personnel in helping children cope with community violence, and resource access projects for personnel working with disabled children.

(Pub. L. 97-35, title VI, § 648, Aug. 13, 1981, 95 Stat. 505; Pub. L. 98-558, title I, § 106, Oct. 30, 1984, 98 Stat. 2879; Pub. L. 101-501, title I, § 116(a), Nov. 3, 1990, 104 Stat. 1232; Pub. L. 102-586, § 7(b), Nov. 4, 1992, 106 Stat. 5035; Pub. L. 103-252, title I, § 114, May 18, 1994, 108 Stat. 642; Pub. L. 105-285, title I, § 114, Oct. 27, 1998, 112 Stat. 2721.)

AMENDMENTS

1998—Subsec. (b)(3). Pub. L. 105-285, § 114(a)(1), added par. (3).

Subsec. (c)(1). Pub. L. 105-285, § 114(a)(2)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “give priority consideration to activities to correct program and management deficiencies identified through reviews pursuant to section 9836a(c) of this title (including the provision of assistance to local programs in the development of quality improvement plans under section 9836a(d)(2) of this title);”.

Subsec. (c)(2). Pub. L. 105-285, § 114(a)(2)(B), inserted “supplement amounts provided under section 9835(a)(3)(C)(ii) of this title in order to” after “(2)”.

Subsec. (c)(3). Pub. L. 105-285, § 114(a)(2)(G), added par. (3). Former par. (3) redesignated (5).

Subsec. (c)(4). Pub. L. 105-285, § 114(a)(2)(G), added par. (4). Former par. (4) redesignated (6).

Pub. L. 105-285, § 114(a)(2)(C), inserted “and implementing” after “developing” and substituted “the day, and assist the agencies and programs in expediting the sharing of information about innovative models for providing full-working-day, full calendar year services for children” for “a longer day” before semicolon.

Subsec. (c)(5), (6). Pub. L. 105-285, § 114(a)(2)(F), redesignated pars. (3) and (4) as (5) and (6), respectively. Former pars. (5) and (6) redesignated (7) and (8), respectively.

Subsec. (c)(7). Pub. L. 105-285, § 114(a)(2)(F), redesignated par. (5) as (7). Former par. (7) redesignated (9).

Pub. L. 105-285, § 114(a)(2)(D), struck out “and” at end.

Subsec. (c)(8). Pub. L. 105-285, § 114(a)(2)(F), redesignated par. (6) as (8). Former par. (8) redesignated (10).

Pub. L. 105-285, § 114(a)(2)(E), substituted “; and” for period at end.

Subsec. (c)(9), (10). Pub. L. 105-285, § 114(a)(2)(F), redesignated pars. (7) and (8) as (9) and (10), respectively.

Subsec. (c)(11). Pub. L. 105-285, § 114(a)(2)(H), added par. (11).

Subsec. (e). Pub. L. 105-285, § 114(b), inserted “(including services to promote the acquisition of the English language)” after “non-English language background children”.

1994—Pub. L. 103-252, § 114(1), substituted “Technical assistance and training” for “Technical assistance, training, and staff qualifications” in section catchline.

Subsec. (a). Pub. L. 103-252, § 114(3)(A), redesignated as subsec. (e) the last sentence which read as follows: “The Secretary shall provide, either directly or through grants or other arrangements, funds from programs authorized under this subchapter to support an organization to administer a centralized child development and national assessment program leading to recognized credentials for personnel working in early childhood development and child care programs, training for personnel providing services to non-English language background children, training for personnel in helping children cope with community violence, and resource access projects for personnel working with disabled children.”

Pub. L. 103-252, § 114(2), substituted “(2) training for specialized or other personnel needed in connection with Head Start programs, in accordance with the process, and the provisions for allocating resources, set forth in subsections (b) and (c) of this section. The Secretary shall provide, either directly or through grants or other arrangements,” for “(2) training for specialized or other personnel needed in connection with Head Start programs, including”.

Subsec. (b). Pub. L. 103-252, § 114(4), (5), added subsec. (b) and struck out former subsec. (b) which related to teacher qualifications and waiver of same.

Subsec. (c). Pub. L. 103-252, § 114(4), (5), added subsec. (c) and struck out former subsec. (c) which related to Secretary developing systematic approach to training Head Start personnel and reporting on such approach to Congress.

Subsec. (d). Pub. L. 103-252, § 114(6), inserted at end “Special consideration shall be given to entities that have demonstrated effectiveness in educational programming for preschool children that includes components for parental involvement, care provider training, and developmentally appropriate related activities.”

Subsec. (e). Pub. L. 103-252, § 114(3), redesignated last sentence of subsec. (a) as (e).

1992—Subsec. (a)(2). Pub. L. 102-586, § 7(b)(1), substituted “funds from programs authorized under this subchapter to support an organization to administer a centralized child development and national assessment program leading to recognized credentials for personnel working in early childhood development and child care programs, training for personnel providing services to non-English language background children, training for personnel in helping children cope with community violence, and resource access projects for personnel working with disabled” for “a centralized child development training and national assessment program which may be administered at the State or local level leading to recognized credentials for such personnel, training for personnel providing services to non-English language background children, and resource access projects for personnel of handicapped”.

Subsecs. (c), (d). Pub. L. 102-586, § 7(b)(2), added subsecs. (c) and (d).

1990—Pub. L. 101-501 substituted “Technical assistance, training, and staff qualifications” for “Technical assistance and training” in section catchline, designated existing provisions as subsec. (a), inserted “training for personnel providing services to non-English language background children,” after “such personnel,” in cl. (2), and added subsec. (b).

1984—Pub. L. 98-558 substituted “shall” for “may” and inserted provision including a centralized child development training and national assessment program.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-252 effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103-252, set out as a note under section 9832 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101-501, set out as a note under section 8621 of this title.

HEAD START TRAINING IMPROVEMENT

Section 7(a) of Pub. L. 102-586 provided that: "It is the purpose of this section—

"(1) to promote continued access for Head Start and other early childhood staff to the Child Development Associate credential;

"(2) to increase the ability of Head Start staff to address the problems facing Head Start families;

"(3) to create a systematic approach to training, thereby improving the quality of Head Start instruction and using training funds more efficiently and effectively; and

"(4) to allow the use of training funds for creative approaches to learning for children."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9835 of this title.

§ 9843a. Staff qualifications and development**(a) Classroom teachers****(1) Professional requirements**

The Secretary shall ensure that each Head Start classroom in a center-based program is assigned one teacher who has demonstrated competency to perform functions that include—

(A) planning and implementing learning experiences that advance the intellectual and physical development of children, including improving the readiness of children for school by developing their literacy and phonemic, print, and numeracy awareness, their understanding and use of language, their understanding and use of increasingly complex and varied vocabulary, their appreciation of books, and their problem solving abilities;

(B) establishing and maintaining a safe, healthy learning environment;

(C) supporting the social and emotional development of children; and

(D) encouraging the involvement of the families of the children in a Head Start program and supporting the development of relationships between children and their families.

(2) Degree requirements**(A) In general**

The Secretary shall ensure that not later than September 30, 2003, at least 50 percent of all Head Start teachers nationwide in center-based programs have—

(i) an associate, baccalaureate, or advanced degree in early childhood education; or

(ii) an associate, baccalaureate, or advanced degree in a field related to early childhood education, with experience in teaching preschool children.

(B) Progress

The Secretary shall require Head Start agencies to demonstrate continuing progress each year to reach the result described in subparagraph (A).

(3) Alternative credentialing requirements

The Secretary shall ensure that, for center-based programs, each Head Start classroom that does not have a teacher that meets the requirements of clause (i) or (ii) of paragraph (2)(A) is assigned one teacher who has—

(A) a child development associate credential that is appropriate to the age of the children being served in center-based programs;

(B) a State-awarded certificate for preschool teachers that meets or exceeds the requirements for a child development associate credential; or

(C) a degree in a field related to early childhood education with experience in teaching preschool children and a State-awarded certificate to teach in a preschool program.

(4) Waiver**(A) In general**

On request, the Secretary shall grant a 180-day waiver of the requirements of paragraph (3), for a Head Start agency that can demonstrate that the agency has unsuccessfully attempted to recruit an individual who has a credential, certificate, or degree described in paragraph (3), with respect to an individual who—

(i) is enrolled in a program that grants any such credential, certificate, or degree; and

(ii) will receive such credential, certificate, or degree under the terms of such program not later than 180 days after beginning employment as a teacher with such agency.

(B) Limitation

The Secretary may not grant more than one such waiver with respect to such individual.

(b) Mentor teachers**(1) "Mentor teacher" defined; function**

For purposes of this subsection, the term "mentor teacher" means an individual responsible for observing and assessing the classroom activities of a Head Start program and providing on-the-job guidance and training to the Head Start program staff and volunteers, in order to improve the qualifications and training of classroom staff, to maintain high quality education services, and to promote career development, in Head Start programs.

(2) Requirement

In order to assist Head Start agencies in establishing positions for mentor teachers, the Secretary shall—

(A) provide technical assistance and training to enable Head Start agencies to establish such positions;

(B) give priority consideration, in providing assistance pursuant to subparagraph (A), to Head Start programs that have substantial numbers of new classroom staff or that are experiencing difficulty in meeting applicable education standards;

(C) encourage Head Start programs to give priority consideration for such positions to Head Start teachers at the appropriate level of career advancement in such programs; and

(D) promote the development of model curricula, designed to ensure the attainment of appropriate competencies of mentor teachers in Head Start programs.

(c) Family service workers

In order to improve the quality and effectiveness of staff providing in-home and other services (including needs assessment, development of service plans, family advocacy, and coordination of service delivery) to families of children participating in Head Start programs, the Secretary, in coordination with concerned public and private agencies and organizations examining the issues of standards and training for family service workers, shall—

- (1) review and, as necessary, revise or develop new qualification standards for Head Start staff providing such services;
- (2) promote the development of model curricula (on subjects including parenting training and family literacy) designed to ensure the attainment of appropriate competencies by individuals working or planning to work in the field of early childhood and family services; and
- (3) promote the establishment of a credential that indicates attainment of the competencies and that is accepted nationwide.

(d) Head Start Fellowships**(1) Authority**

The Secretary may establish a program of fellowships, to be known as “Head Start Fellowships”, in accordance with this subsection. The Secretary may award the fellowships to individuals, to be known as “Head Start Fellows”, who are staff in local Head Start programs or other individuals working in the field of child development and family services.

(2) Purpose

The fellowship program established under this subsection shall be designed to enhance the ability of Head Start Fellows to make significant contributions to programs authorized under this subchapter, by providing opportunities to expand their knowledge and experience through exposure to activities, issues, resources, and new approaches, in the field of child development and family services.

(3) Assignments of Fellows**(A) Placement sites**

Fellowship positions under the fellowship program may be located (subject to subparagraphs (B) and (C))—

- (i) in agencies of the Department of Health and Human Services administering programs authorized under this subchapter (in national or regional offices of such agencies);
- (ii) in local Head Start agencies and programs;
- (iii) in institutions of higher education;
- (iv) in public or private entities and organizations concerned with services to children and families; and
- (v) in other appropriate settings.

(B) Limitation for Fellows other than Head Start employees

A Head Start Fellow who is not an employee of a local Head Start agency or program may be placed only in a fellowship position located in an agency or program specified in clause (i) or (ii) of subparagraph (A).

(C) No placement in lobbying organizations

Head Start Fellowship positions may not be located in any agency whose primary purpose, or one of whose major purposes, is to influence Federal, State, or local legislation.

(4) Selection of Fellows

Head Start Fellowships shall be awarded on a competitive basis to individuals (other than Federal employees) selected from among applicants who are working, on the date of application, in local Head Start programs or otherwise working in the field of child development and children and family services.

(5) Duration

Head Start Fellowships shall be for terms of 1 year, and may be renewed for a term of 1 additional year.

(6) Authorized expenditures

From amounts appropriated under this subchapter and allotted under section 9835(a)(2)(D) of this title, the Secretary is authorized to make expenditures of not to exceed \$1,000,000 for any fiscal year, for stipends and other reasonable expenses of the fellowship program.

(7) Status of Fellows

Except as otherwise provided in this paragraph, Head Start Fellows shall not be considered to be employees or otherwise in the service or employment of the Federal Government. Head Start Fellows shall be considered to be employees for purposes of compensation for injuries under chapter 81 of title 5. Head Start Fellows assigned to positions located in agencies specified in paragraph (3)(A)(i) shall be considered employees in the executive branch of the Federal Government for the purposes of chapter 11 of title 18 and for purposes of any administrative standards of conduct applicable to the employees of the agency to which they are assigned.

(8) Regulations

The Secretary shall promulgate regulations to carry out this subsection.

(e) Model staffing plans

Not later than 1 year after May 18, 1994, the Secretary, in consultation with appropriate public agencies, private agencies, and organizations and with individuals with expertise in the field of children and family services, shall develop model staffing plans to provide guidance to local Head Start agencies and programs on the numbers, types, responsibilities, and qualifications of staff required to operate a Head Start program.

(Pub. L. 97-35, title VI, §648A, as added Pub. L. 103-252, title I, §115, May 18, 1994, 108 Stat. 643; amended Pub. L. 105-285, title I, §115, Oct. 27, 1998, 112 Stat. 2722.)

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-285, §115(1), amended heading and text of subsec. (a) generally. Prior to amendment, subsec. (a) required Secretary to ensure that not later than Sept. 30, 1996, each Head Start classroom in a center-based program was assigned a teacher with certain specified credentials and gave Secretary limited authority to waive that requirement.

Subsec. (b)(2)(B). Pub. L. 105-285, § 115(2), substituted “staff or that are” for “staff, that are” and struck out “, or that lack staff of a similar cultural background to that of the participating children and their families” before semicolon.

EFFECTIVE DATE

Section effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103-252, set out as an Effective Date of 1994 Amendment note under section 9832 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9835, 9837 of this title.

§ 9844. Research, demonstrations, and evaluation

(a) In general

(1) Requirement; general purposes

The Secretary shall carry out a continuing program of research, demonstration, and evaluation activities, in order to—

(A) foster continuous improvement in the quality of the Head Start programs under this subchapter and in their effectiveness in enabling participating children and their families to succeed in school and otherwise; and

(B) use the Head Start programs to develop, test, and disseminate new ideas and approaches for addressing the needs of low-income preschool children (including children with disabilities) and their families and communities (including demonstrations of innovative noncenter-based program models such as home-based and mobile programs), and otherwise to further the purposes of this subchapter.

(2) Plan

The Secretary shall develop, and periodically update, a plan governing the research, demonstration, and evaluation activities under this section.

(b) Conduct of research, demonstration, and evaluation activities

The Secretary, in order to conduct research, demonstration, and evaluation activities under this section—

(1) may carry out such activities directly, or through grants to, or contracts or cooperative agreements with, public or private entities;

(2) shall, to the extent appropriate, undertake such activities in collaboration with other Federal agencies, and with non-Federal agencies, conducting similar activities;

(3) shall ensure that evaluation of activities in a specific program or project is conducted by persons not directly involved in the operation of such program or project;

(4) may require Head Start agencies to provide for independent evaluations;

(5) may approve, in appropriate cases, community-based cooperative research and evaluation efforts to enable Head Start programs to collaborate with qualified researchers not directly involved in program administration or operation; and

(6) may collaborate with organizations with expertise in inclusive educational strategies for preschoolers with disabilities.

(c) Consultation and collaboration

In carrying out activities under this section, the Secretary shall—

(1) consult with—

(A) individuals from relevant academic disciplines;

(B) individuals who are involved in the operation of Head Start programs and individuals who are involved in the operation of other child and family service programs; and

(C) individuals from other Federal agencies, and individuals from organizations, involved with children and families, ensuring that the individuals described in this subparagraph reflect the multicultural nature of the children and families served by the Head Start programs and the multidisciplinary nature of the Head Start programs;

(2) whenever feasible and appropriate, obtain the views of persons participating in and served by programs and projects assisted under this subchapter with respect to activities under this section; and

(3) establish, to the extent appropriate, working relationships with the faculties of institutions of higher education, as defined in section 1001 of title 20, located in the area in which any evaluation under this section is being conducted, unless there is no such institution of higher education willing and able to participate in such evaluation.

(d) Specific objectives

The research, demonstration, and evaluation activities under this subchapter shall include components designed to—

(1) permit ongoing assessment of the quality and effectiveness of the programs under this subchapter;

(2) establish evaluation methods that measure the effectiveness and impact of family literacy services program models, including models for the integration of family literacy services with Head Start services;

(3) contribute to developing knowledge concerning factors associated with the quality and effectiveness of Head Start programs and in identifying ways in which services provided under this subchapter may be improved;

(4) assist in developing knowledge concerning the factors that promote or inhibit healthy development and effective functioning of children and their families both during and following participation in a Head Start program;

(5) permit comparisons of children and families participating in Head Start programs with children and families receiving other child care, early childhood education, or child development services and with other appropriate control groups;

(6) contribute to understanding the characteristics and needs of population groups eligible for services provided under this subchapter and the impact of such services on the individuals served and the communities in which such services are provided;

(7) provide for disseminating and promoting the use of the findings from such research, demonstration, and evaluation activities;

(8) promote exploration of areas in which knowledge is insufficient, and that will other-

wise contribute to fulfilling the purposes of this subchapter;

(9) study the experiences of small, medium, and large States with Head Start programs in order to permit comparisons of children participating in the programs with eligible children who did not participate in the programs, which study—

(A) may include the use of a data set that existed prior to the initiation of the study; and

(B) shall compare the educational achievement, social adaptation, and health status of the participating children and the eligible nonparticipating children; and

(10) provide for—

(A) using the Survey of Income and Program Participation to conduct an analysis of the different income levels of Head Start participants compared to comparable persons who did not attend Head Start programs;

(B) using the National Longitudinal Survey of Youth, which began gathering data in 1988 on children who attended Head Start programs, to examine the wide range of outcomes measured within the Survey, including outcomes related to cognitive, socio-emotional, behavioral, and academic development;

(C) using the Survey of Program Dynamics, the new longitudinal survey required by section 614 of this title, to begin annual reporting, through the duration of the Survey, on Head Start program attendees' academic readiness performance and improvements;

(D) ensuring that the Survey of Program Dynamics is linked with the National Longitudinal Survey of Youth at least once by the use of a common performance test, to be determined by the expert panel, for the greater national usefulness of the National Longitudinal Survey of Youth database; and

(E) disseminating the results of the analysis, examination, reporting, and linkage described in subparagraphs (A) through (D) to persons conducting other studies under this subchapter.

The Secretary shall ensure that an appropriate entity carries out a study described in paragraph (9), and prepares and submits to the appropriate committees of Congress a report containing the results of the study, not later than September 30, 2002.

(e) Longitudinal studies

In developing priorities for research, demonstration, and evaluation activities under this section, the Secretary shall give special consideration to longitudinal studies that—

(1) examine the developmental progress of children and their families both during and following participation in a Head Start program, including the examination of factors that contribute to or detract from such progress;

(2) examine factors related to improving the quality of the Head Start programs and the preparation the programs provide for children and their families to function effectively in

schools and other settings in the years following participation in such a program; and

(3) as appropriate, permit comparison of children and families participating in Head Start programs with children and families receiving other child care, early childhood education, or child development services, and with other appropriate control groups.

(f) Ownership of results

The Secretary shall take necessary steps to ensure that all studies, reports, proposals, and data produced or developed with Federal funds under this subchapter shall become the property of the United States.

(g) National Head Start impact research

(1) Expert panel

(A) In general

The Secretary shall appoint an independent panel consisting of experts in program evaluation and research, education, and early childhood programs—

(i) to review, and make recommendations on, the design and plan for the research (whether conducted as a single assessment or as a series of assessments) described in paragraph (2), within 1 year after October 27, 1998;

(ii) to maintain and advise the Secretary regarding the progress of the research; and

(iii) to comment, if the panel so desires, on the interim and final research reports submitted under paragraph (7).

(B) Travel expenses

The members of the panel shall not receive compensation for the performance of services for the panel, but shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, while away from their homes or regular places of business in the performance of services for the panel. Notwithstanding section 1342 of title 31, the Secretary may accept the voluntary and uncompensated services of members of the panel.

(2) General authority

After reviewing the recommendations of the expert panel, the Secretary shall make a grant to, or enter into a contract or cooperative agreement with, an organization to conduct independent research that provides a national analysis of the impact of Head Start programs. The Secretary shall ensure that the organization shall have expertise in program evaluation, and research, education, and early childhood programs.

(3) Designs and techniques

The Secretary shall ensure that the research uses rigorous methodological designs and techniques (based on the recommendations of the expert panel), including longitudinal designs, control groups, nationally recognized standardized measures, and random selection and assignment, as appropriate. The Secretary may provide that the research shall be conducted as a single comprehensive assessment or as a group of coordinated assessments de-

signed to provide, when taken together, a national analysis of the impact of Head Start programs.

(4) Programs

The Secretary shall ensure that the research focuses primarily on Head Start programs that operate in the 50 States, the Commonwealth of Puerto Rico, or the District of Columbia and that do not specifically target special populations.

(5) Analysis

The Secretary shall ensure that the organization conducting the research—

(A)(i) determines if, overall, the Head Start programs have impacts consistent with their primary goal of increasing the social competence of children, by increasing the everyday effectiveness of the children in dealing with their present environments and future responsibilities, and increasing their school readiness;

(ii) considers whether the Head Start programs—

(I) enhance the growth and development of children in cognitive, emotional, and physical health areas;

(II) strengthen families as the primary nurturers of their children; and

(III) ensure that children attain school readiness; and

(iii) examines—

(I) the impact of the Head Start programs on increasing access of children to such services as educational, health, and nutritional services, and linking children and families to needed community services; and

(II) how receipt of services described in subclause (I) enriches the lives of children and families participating in Head Start programs;

(B) examines the impact of Head Start programs on participants on the date the participants leave Head Start programs, at the end of kindergarten and at the end of first grade (whether in public or private school), by examining a variety of factors, including educational achievement, referrals for special education or remedial course work, and absenteeism;

(C) makes use of random selection from the population of all Head Start programs described in paragraph (4) in selecting programs for inclusion in the research; and

(D) includes comparisons of individuals who participate in Head Start programs with control groups (including comparison groups) composed of—

(i) individuals who participate in other early childhood programs (such as public or private preschool programs and day care); and

(ii) individuals who do not participate in any other early childhood program.

(6) Consideration of sources of variation

In designing the research, the Secretary shall, to the extent practicable, consider addressing possible sources of variation in im-

part of Head Start programs, including variations in impact related to such factors as—

(A) Head Start program operations;

(B) Head Start program quality;

(C) the length of time a child attends a Head Start program;

(D) the age of the child on entering the Head Start program;

(E) the type of organization (such as a local educational agency or a community action agency) providing services for the Head Start program;

(F) the number of hours and days of program operation of the Head Start program (such as whether the program is a full-working-day, full calendar year program, a part-day program, or a part-year program); and

(G) other characteristics and features of the Head Start program (such as geographic location, location in an urban or a rural service area, or participant characteristics), as appropriate.

(7) Reports

(A) Submission of interim reports

The organization shall prepare and submit to the Secretary two interim reports on the research. The first interim report shall describe the design of the research, and the rationale for the design, including a description of how potential sources of variation in impact of Head Start programs have been considered in designing the research. The second interim report shall describe the status of the research and preliminary findings of the research, as appropriate.

(B) Submission of final report

The organization shall prepare and submit to the Secretary a final report containing the findings of the research.

(C) Transmittal of reports to Congress

(i) In general

The Secretary shall transmit, to the committees described in clause (ii), the first interim report by September 30, 1999, the second interim report by September 30, 2001, and the final report by September 30, 2003.

(ii) Committees

The committees referred to in clause (i) are the Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate.

(8) Definition

In this subsection, the term “impact”, used with respect to a Head Start program, means a difference in an outcome for a participant in the program that would not have occurred without the participation in the program.

(h) Quality improvement study

(1) Study

The Secretary shall conduct a study regarding the use and effects of use of the quality improvement funds made available under section 9835(a)(3) of this title since fiscal year 1991.

(2) Report

The Secretary shall prepare and submit to Congress not later than September 2000 a report containing the results of the study, including information on—

(A) the types of activities funded with the quality improvement funds;

(B) the extent to which the use of the quality improvement funds has accomplished the goals of section 9835(a)(3)(B) of this title;

(C) the effect of use of the quality improvement funds on teacher training, salaries, benefits, recruitment, and retention; and

(D) the effect of use of the quality improvement funds on the development of children receiving services under this subchapter.

(Pub. L. 97-35, title VI, § 649, Aug. 13, 1981, 95 Stat. 505; Pub. L. 98-558, title I, § 107, Oct. 30, 1984, 98 Stat. 2880; Pub. L. 101-501, title I, § 117(a), Nov. 3, 1990, 104 Stat. 1233; Pub. L. 103-252, title I, § 116, May 18, 1994, 108 Stat. 646; Pub. L. 105-244, title I, § 102(a)(13)(G), Oct. 7, 1998, 112 Stat. 1621; Pub. L. 105-285, title I, § 116, Oct. 27, 1998, 112 Stat. 2723.)

AMENDMENTS

1998—Subsec. (c)(3). Pub. L. 105-244 substituted “section 1001” for “section 1141(a)”.

Subsec. (d). Pub. L. 105-285, § 116(1)(E), inserted concluding provisions.

Subsec. (d)(2) to (8). Pub. L. 105-285, § 116(1)(C), (D), added par. (2) and redesignated former pars. (2) to (7) as (3) to (8), respectively.

Subsec. (d)(9), (10). Pub. L. 105-285, § 116(1)(A), (B), (E), added pars. (9) and (10).

Subsecs. (g), (h). Pub. L. 105-285, § 116(2), added subsecs. (g) and (h).

1994—Pub. L. 103-252 substituted “Research, demonstrations, and evaluation” for “Research, demonstration, pilot projects, studies, and reports” in section catchline and amended text generally, substituting provisions requiring Secretary to conduct a research, demonstration, and evaluation program to continually improve Head Start programs and develop innovative ways to further purposes of this subchapter, consult with others on the program, consider longitudinal studies in developing priorities for program, and ensure all products of program become United States property and defining objectives of program, for provisions authorizing the Secretary to provide financial assistance through contracts and grants for research, demonstration or pilot projects to develop new approaches to further purposes of this subchapter, directing Secretary to establish plan for approval of such projects, restricting combination of funds appropriated under this subchapter with other appropriations to make a single grant, requiring Secretary to conduct study of approaches to provide early, continuous, and comprehensive intervention to low-income or at-risk children and study of family day care in compliance with performance standards and to report results of studies to Congress.

1990—Pub. L. 101-501, § 117(a)(1), substituted “Research, demonstration, pilot projects, studies, and reports” for “Research, demonstration, and pilot projects” in section catchline.

Subsecs. (d) to (f). Pub. L. 101-501, § 117(a)(2), added subsecs. (d) to (f).

1984—Subsec. (c). Pub. L. 98-558 added subsec. (c).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of Title 20, Education.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-252 effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103-252, set out as a note under section 9832 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101-501, set out as a note under section 8621 of this title.

STUDY OF FULL-DAY AND FULL-YEAR HEAD START PROGRAMS

Section 126 of Pub. L. 103-252 directed Secretary of Health and Human Services to conduct a study of extent to which Head Start programs address the need for Head Start services during a full working day or full calendar year among eligible low-income families with preschool children and to submit a report to Congress not later than Jan. 31, 1997.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9834, 9835, 9846 of this title.

§ 9845. Repealed. Pub. L. 103-252, title I, § 117, May 18, 1994, 108 Stat. 648

Section, Pub. L. 97-35, title VI, § 650, Aug. 13, 1981, 95 Stat. 505; Pub. L. 101-501, title I, § 117(c), Nov. 3, 1990, 104 Stat. 1233, directed Secretary to make public announcement concerning grants or contracts for research, demonstrations, pilot projects, studies, or reports under this subchapter.

EFFECTIVE DATE OF REPEAL

Repeal effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103-252, set out as an Effective Date of 1994 Amendment note under section 9832 of this title.

§ 9846. Reports**(a) Status of children**

At least once during every 2-year period, the Secretary shall prepare and submit, to the Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate, a report concerning the status of children (including disabled and non-English language background children) in Head Start programs, including the number of children and the services being provided to such children. Such report shall include—

(1) a statement for the then most recently concluded fiscal year specifying—

(A) the amount of funds received by Head Start agencies designated under section 9836 of this title to provide Head Start services in a period before such fiscal year; and

(B) the amount of funds received by Head Start agencies newly designated under section 9836 of this title to provide such services in such fiscal year;

(2) a description of the distribution of Head Start services relative to the distribution of children who are eligible to participate in

Head Start programs, including geographic distribution within States;

(3) a statement identifying how funds expended under section 9835(a)(2) of this title, and funds allotted under section 9835(a)(3) of this title, were distributed and used at national, regional, and local levels;

(4) a statement specifying the amount of funds provided by the State, and by local sources, to carry out Head Start programs;

(5) cost per child and how such cost varies by region;

(6) a description of the level and nature of participation of parents in Head Start programs as volunteers and in other capacities;

(7) information concerning Head Start staff, including salaries, education, training, experience, and staff turnover;

(8) information concerning children participating in programs that receive Head Start funding, including information on family income, racial and ethnic background, disability, and receipt of benefits under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.];

(9) the use and source of funds to extend Head Start services to operate full-day and year round;

(10) using data from the monitoring conducted under section 9836a(c) of this title—

(A) a description of the extent to which programs funded under this subchapter comply with performance standards and regulations in effect under this subchapter;

(B) a description of the types and condition of facilities in which such programs are located;

(C) the types of organizations that receive Head Start funds under such programs; and

(D) the number of children served under each program option;

(11) the information contained in the documents entitled “Program Information Report” and “Head Start Cost Analyses System” (or any document similar to either), prepared with respect to Head Start programs;

(12) a description of the types of services provided to children and their families, both on-site and through referrals, including health, mental health, dental care, parenting education, physical fitness, and literacy training;

(13) a summary of information concerning the research, demonstration, and evaluation activities conducted under section 9844 of this title, including—

(A) a status report on ongoing activities; and

(B) results, conclusions, and recommendations, not included in any previous report, based on completed activities; and

(14) a study of the delivery of Head Start programs to Indian children living on and near Indian reservations, to children of Alaskan Natives, and to children of migrant and seasonal farmworkers.

Promptly after submitting such report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Sen-

ate, the Secretary shall publish in the Federal Register a notice indicating that such report is available to the public and specifying how such report may be obtained.

(b) Facilities

At least once during every 5-year period, the Secretary shall prepare and submit, to the Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate, a report concerning the condition, location, and ownership of facilities used, or available to be used, by Indian Head Start agencies (including Native Alaskan Head Start agencies) and Native Hawaiian Head Start agencies.

(Pub. L. 97-35, title VI, § 650, formerly § 651, Aug. 13, 1981, 95 Stat. 506; Pub. L. 98-558, title I, § 108, Oct. 30, 1984, 98 Stat. 2880; Pub. L. 101-501, title I, §§ 118, 119, Nov. 3, 1990, 104 Stat. 1234; Pub. L. 102-401, § 2(k)(5), Oct. 7, 1992, 106 Stat. 1959; renumbered § 650 and amended Pub. L. 103-252, title I, § 118, May 18, 1994, 108 Stat. 648; Pub. L. 105-285, title I, § 117, Oct. 27, 1998, 112 Stat. 2727.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(8), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV of the Act is classified generally to part A (§ 601 et seq.) of subchapter IV of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

1998—Pub. L. 105-285 designated existing provisions as subsec. (a), inserted heading, substituted “Education and the Workforce” for “Education and Labor” in introductory and concluding provisions, and added subsec. (b).

1994—Pub. L. 103-252, § 118(a)(1), substituted “Reports” for “Evaluation” in section catchline.

Subsecs. (a) to (f). Pub. L. 103-252, § 118(a)(1), struck out subsecs. (a) to (f) which related to evaluations of programs under this subchapter to determine impact and effectiveness, adherence to Head Start performance standards, persons or entities assisting in evaluations, Secretary obtaining views of program participants, publication and submission of results to congressional committees, and all studies and evaluation material remaining property of the United States.

Subsec. (g). Pub. L. 103-252, § 118(a)(2)-(4), struck out subsec. (g) designation, substituted “monitoring conducted under section 9836a(c) of this title” for “evaluations conducted under section 9836(c)(2) of this title” in par. (10), and added pars. (13) and (14).

1992—Subsec. (g). Pub. L. 102-401 struck out “(1)” before “At least” at beginning of subsec. and substituted “physical” for “physicial” in par. (12).

1990—Subsec. (c)(2). Pub. L. 101-501, § 118, inserted at end “The Secretary is encouraged to provide funds for community-based cooperative research efforts to enable Head Start directors to conduct evaluations of their programs with the assistance of qualified researchers not directly involved in the administration of the program or project operation.”

Subsec. (g). Pub. L. 101-501, § 119, added subsec. (g).

1984—Subsec. (b). Pub. L. 98-558 substituted “not result in the elimination of nor any reduction in the scope or types of health, education, parental involvement, social or other services required to be provided under the standards” for “result in standards which are no less comprehensive than those” in second sentence.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-252 effective May 18, 1994, but not applicable to Head Start agencies and other re-

ipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103-252, set out as a note under section 9832 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-401 effective Oct. 7, 1992, but not applicable with respect to fiscal years beginning before Oct. 1, 1992, see section 4 of Pub. L. 102-401, set out as a note under section 9835 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101-501, set out as a note under section 8621 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which the 4th item on page 79 identifies a reporting provision which, as subsequently amended, is contained in subsec. (a) of this section), see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

§§ 9846a, 9847. Repealed. Pub. L. 103-252, title I, § 119, May 18, 1994, 108 Stat. 648

Section 9846a, Pub. L. 97-35, title VI, § 651A, as added Pub. L. 101-501, title I, § 120(a), Nov. 3, 1990, 104 Stat. 1235; amended Pub. L. 102-401, § 2(k)(6), Oct. 7, 1992, 106 Stat. 1959, related to longitudinal study of Head Start participants.

Section 9847, Pub. L. 97-35, title VI, § 652, Aug. 13, 1981, 95 Stat. 506; Pub. L. 101-501, title I, § 121(a), (c), Nov. 3, 1990, 104 Stat. 1237, directed Secretary to annually determine poverty line to be used as criterion of eligibility for participation in Head Start programs.

EFFECTIVE DATE OF REPEAL

Repeal effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103-252, set out as an Effective Date of 1994 Amendment note under section 9832 of this title.

§ 9848. Comparability of wages

The Secretary shall take such action as may be necessary to assure that persons employed in carrying out programs financed under this subchapter shall not receive compensation at a rate which is (1) in excess of the average rate of compensation paid in the area where the program is carried out to a substantial number of the persons providing substantially comparable services, or in excess of the average rate of compensation paid to a substantial number of the persons providing substantially comparable services in the area of the person's immediately preceding employment, whichever is higher; or (2) less than the minimum wage rate prescribed in section 206(a)(1) of title 29. The Secretary shall encourage Head Start agencies to provide compensation according to salary scales that are based on training and experience.

(Pub. L. 97-35, title VI, § 653, Aug. 13, 1981, 95 Stat. 507; Pub. L. 101-501, title I, § 122, Nov. 3, 1990, 104 Stat. 1237.)

AMENDMENTS

1990—Pub. L. 101-501 inserted at end “The Secretary shall encourage Head Start agencies to provide com-

pensation according to salary scales that are based on training and experience.”

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101-501, set out as a note under section 8621 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9835 of this title.

§ 9849. Nondiscrimination provisions

(a) Discrimination based on race, creed, color, etc., as basis for denial of financial assistance

The Secretary shall not provide financial assistance for any program, project, or activity under this subchapter unless the grant or contract with respect thereto specifically provides that no person with responsibilities in the operation thereof will discriminate with respect to any such program, project, or activity because of race, creed, color, national origin, sex, political affiliation, or beliefs.

(b) Sex discrimination; enforcement provisions applicable

No person in the United States shall on the ground of sex be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in connection with any program or activity receiving assistance under this subchapter. The Secretary shall enforce the provisions of the preceding sentence in accordance with section 2000d-1 of this title. Section 2000d-2 of this title shall apply with respect to any action taken by the Secretary to enforce such sentence. This section shall not be construed as affecting any other legal remedy that a person may have if such person is excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with, any program, project, or activity receiving assistance under this subchapter.

(c) Discrimination based on handicapping condition as basis for denial of financial assistance

The Secretary shall not provide financial assistance for any program, project, or activity under this subchapter unless the grant or contract relating to the financial assistance specifically provides that no person with responsibilities in the operation of the program, project, or activity will discriminate against any individual because of a handicapping condition in violation of section 794 of title 29.

(Pub. L. 97-35, title VI, § 654, Aug. 13, 1981, 95 Stat. 507.)

§ 9850. Limitation with respect to certain unlawful activities

No individual employed or assigned by any Head Start agency or other agency assisted under this subchapter shall, pursuant to or during the performance of services rendered in connection with any program or activity conducted or assisted under this subchapter by such Head Start agency or such other agency, plan, initiate, participate in, or otherwise aid or assist in the conduct of any unlawful demonstration, rioting, or civil disturbance.

(Pub. L. 97-35, title VI, § 655, Aug. 13, 1981, 95 Stat. 507.)

§ 9851. Political activities

(a) For purposes of chapter 15 of title 5, any agency which assumes responsibility for planning, developing, and coordinating Head Start programs and receives assistance under this subchapter shall be deemed to be a State or local agency. For purposes of clauses (1) and (2) of section 1502(a) of such title, any agency receiving assistance under this subchapter shall be deemed to be a State or local agency.

(b) Programs assisted under this subchapter shall not be carried on in a manner involving the use of program funds, the provision of services, or the employment or assignment of personnel in a manner supporting or resulting in the identification of such programs with (1) any partisan or nonpartisan political activity or any other political activity associated with a candidate, or contending faction or group, in an election for public or party office; (2) any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election; or (3) any voter registration activity. The Secretary, after consultation with the Office of Personnel Management, shall issue rules and regulations to provide for the enforcement of this section, which shall include provisions for summary suspension of assistance or other action necessary to permit enforcement on an emergency basis.

(Pub. L. 97-35, title VI, § 656, Aug. 13, 1981, 95 Stat. 508.)

§ 9852. Advance funding

For the purpose of affording adequate notice of funding available under this subchapter, appropriations for carrying out this subchapter are authorized to be included in an appropriation Act for the fiscal year preceding the fiscal year for which they are available for obligation.

(Pub. L. 97-35, title VI, § 657, Aug. 13, 1981, 95 Stat. 508.)

§ 9852a. Repealed. Pub. L. 105-285, title I, § 118, Oct. 27, 1998, 112 Stat. 2727

Section, Pub. L. 97-35, title VI, § 657A, as added Pub. L. 103-252, title I, § 123, May 18, 1994, 108 Stat. 650, related to consultation with Corporation for National and Community Service.

SUBCHAPTER II-A—HEAD START TRANSITION PROJECT

§§ 9855 to 9855g. Repealed. Pub. L. 105-285, title I, § 119, Oct. 27, 1998, 112 Stat. 2728

Section 9855, Pub. L. 101-501, title I, § 132, Nov. 3, 1990, 104 Stat. 1238; Pub. L. 103-382, title III, § 391(v)(1), Oct. 20, 1994, 108 Stat. 4025, defined terms used in this subchapter.

Section 9855a, Pub. L. 101-501, title I, § 133, Nov. 3, 1990, 104 Stat. 1238; Pub. L. 103-252, title I, § 125(a), May 18, 1994, 108 Stat. 650, related to Head Start transition grants.

Section 9855b, Pub. L. 101-501, title I, § 134, Nov. 3, 1990, 104 Stat. 1238; Pub. L. 103-382, title III, § 391(v)(2), (3), Oct. 20, 1994, 108 Stat. 4025, related to eligibility for Head Start transition grants.

Section 9855c, Pub. L. 101-501, title I, § 135, Nov. 3, 1990, 104 Stat. 1239; Pub. L. 103-382, title III, § 391(v)(4),

Oct. 20, 1994, 108 Stat. 4025, related to requirements for awarding Head Start transition grants.

Section 9855d, Pub. L. 101-501, title I, § 136, Nov. 3, 1990, 104 Stat. 1239; Pub. L. 102-119, § 26(d), Oct. 7, 1991, 105 Stat. 607; Pub. L. 103-382, title III, § 391(v)(5)-(7), Oct. 20, 1994, 108 Stat. 4025, related to applications for Head Start transition grants.

Section 9855e, Pub. L. 101-501, title I, § 137, Nov. 3, 1990, 104 Stat. 1241, related to evaluation of and report on programs assisted under Head Start transition project.

Section 9855f, Pub. L. 101-501, title I, § 138, Nov. 3, 1990, 104 Stat. 1242, related to payments and Federal share of payments under Head Start transition project.

Section 9855g, Pub. L. 101-501, title I, § 139, Nov. 3, 1990, 104 Stat. 1242, related to coordination with programs established under the Follow Through Act.

SUBCHAPTER II-B—CHILD CARE AND DEVELOPMENT BLOCK GRANT

CODIFICATION

Subchapter is based on subchapter C of chapter 8 of subtitle A of title VI of Pub. L. 97-35, as added by Pub. L. 101-508, title V, § 5082(2), Nov. 5, 1990, 104 Stat. 1388-236, and amended by Pub. L. 102-401, § 3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, § 8(c)(1), Nov. 4, 1992, 106 Stat. 5036.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 604, 618, 1396r-1a, 9835, 9837 of this title; title 15 section 636; title 20 sections 6651, 6775; title 31 section 6703.

§ 9858. Authorization of appropriations

There is authorized to be appropriated to carry out this subchapter \$1,000,000,000 for each of the fiscal years 1996 through 2002.

(Pub. L. 97-35, title VI, § 658B, as added Pub. L. 101-508, title V, § 5082(2), Nov. 5, 1990, 104 Stat. 1388-236; amended Pub. L. 102-401, § 3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, § 8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 104-193, title VI, § 603(a), Aug. 22, 1996, 110 Stat. 2279.)

AMENDMENTS

1996—Pub. L. 104-193 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows: "There are authorized to be appropriated to carry out this subchapter, \$750,000,000 for fiscal year 1991, \$825,000,000 for fiscal year 1992, \$925,000,000 for fiscal year 1993, and such sums as may be necessary for each of the fiscal years 1994 and 1995."

1992—Pub. L. 102-401 and Pub. L. 102-586 made identical technical corrections to directory language of Pub. L. 101-508, § 5082(2), which added this section.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 615 of title VI of Pub. L. 104-193 provided that:

"(a) IN GENERAL.—Except as provided in subsection (b), this title [see Short title of 1996 Amendment note set out under section 9801 of this title] and the amendments made by this title shall take effect on October 1, 1996.

"(b) EXCEPTION.—The amendment made by section 603(a) [amending this section] shall take effect on the date of enactment of this Act [Aug. 22, 1996]."

SHORT TITLE

For short title of this subchapter as the Child Care and Development Block Grant Act of 1990, see section 658A(a) of Pub. L. 97-35, as amended, set out as a note under section 9801 of this title.

GOALS OF SUBCHAPTER

Section 658A(b) of subchapter C (§ 658A et seq.) of chapter 8 of subtitle A of title VI of Pub. L. 97-35, as

added by Pub. L. 104-193, title VI, § 602(3), Aug. 22, 1996, 110 Stat. 2279, provided that: “The goals of this subchapter are—

“(1) to allow each State maximum flexibility in developing child care programs and policies that best suit the needs of children and parents within such State;

“(2) to promote parental choice to empower working parents to make their own decisions on the child care that best suits their family’s needs;

“(3) to encourage States to provide consumer education information to help parents make informed choices about child care;

“(4) to assist States to provide child care to parents trying to achieve independence from public assistance; and

“(5) to assist States in implementing the health, safety, licensing, and registration standards established in State regulations.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9858m, 9858n of this title.

§ 9858a. Establishment of block grant program

The Secretary is authorized to make grants to States in accordance with the provisions of this subchapter.

(Pub. L. 97-35, title VI, § 658C, as added Pub. L. 101-508, title V, § 5082(2), Nov. 5, 1990, 104 Stat. 1388-236; amended Pub. L. 102-401, § 3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, § 8(c)(1), Nov. 4, 1992, 106 Stat. 5036.)

AMENDMENTS

1992—Pub. L. 102-401 and Pub. L. 102-586 made identical technical corrections to directory language of Pub. L. 101-508, § 5082(2), which added this section.

§ 9858b. Lead agency

(a) Designation

The chief executive officer of a State desiring to receive a grant under this subchapter shall designate, in an application submitted to the Secretary under section 9858c of this title, an appropriate State agency that complies with the requirements of subsection (b) of this section to act as the lead agency.

(b) Duties

(1) In general

The lead agency shall—

(A) administer, directly or through other governmental or nongovernmental agencies, the financial assistance received under this subchapter by the State;

(B) develop the State plan to be submitted to the Secretary under section 9858c(a) of this title;

(C) in conjunction with the development of the State plan as required under subparagraph (B), hold at least one hearing in the State with sufficient time and Statewide distribution of the notice of such hearing, to provide to the public an opportunity to comment on the provision of child care services under the State plan; and

(D) coordinate the provision of services under this subchapter with other Federal, State and local child care and early childhood development programs.

(2) Development of plan

In the development of the State plan described in paragraph (1)(B), the lead agency

shall consult with appropriate representatives of units of general purpose local government.

(Pub. L. 97-35, title VI, § 658D, as added Pub. L. 101-508, title V, § 5082(2), Nov. 5, 1990, 104 Stat. 1388-236; amended Pub. L. 102-401, § 3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, § 8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 104-193, title VI, § 604, Aug. 22, 1996, 110 Stat. 2281.)

AMENDMENTS

1996—Subsec. (b)(1)(A), Pub. L. 104-193, § 604(1)(A), substituted “governmental or nongovernmental agencies” for “State agencies”.

Subsec. (b)(1)(C), Pub. L. 104-193, § 604(1)(B), inserted “with sufficient time and Statewide distribution of the notice of such hearing,” after “hearing in the State”.

Subsec. (b)(2), Pub. L. 104-193, § 604(2), struck out at end “Such consultations may include consideration of local child care needs and resources, the effectiveness of existing child care and early childhood development services, and the methods by which funds made available under this subchapter can be used to effectively address local shortages.”

1992—Pub. L. 102-401 and Pub. L. 102-586 made identical technical corrections to directory language of Pub. L. 101-508, § 5082(2), which added this section.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-193 effective Oct. 1, 1996, see section 615 of Pub. L. 104-193, set out as a note under section 9858 of this title

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9858a of this title.

§ 9858c. Application and plan

(a) Application

To be eligible to receive assistance under this subchapter, a State shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary shall by rule require, including—

(1) an assurance that the State will comply with the requirements of this subchapter; and

(2) a State plan that meets the requirements of subsection (c) of this section.

(b) Period covered by plan

The State plan contained in the application under subsection (a) of this section shall be designed to be implemented during a 2-year period.

(c) Requirements of a plan

(1) Lead agency

The State plan shall identify the lead agency designated under section 9858b of this title.

(2) Policies and procedures

The State plan shall:

(A) Parental choice of providers

Provide assurances that—

(i) the parent or parents of each eligible child within the State who receives or is offered child care services for which financial assistance is provided under this subchapter are given the option either—

(I) to enroll such child with a child care provider that has a grant or contract for the provision of such services; or

(II) to receive a child care certificate as defined in section 9858n(2) of this title;

(ii) in cases in which the parent selects the option described in clause (i)(I), the child will be enrolled with the eligible provider selected by the parent to the maximum extent practicable; and

(iii) child care certificates offered to parents selecting the option described in clause (i)(II) shall be of a value commensurate with the subsidy value of child care services provided under the option described in clause (i)(I);

and provide a detailed description of the procedures the State will implement to carry out the requirements of this subparagraph.

(B) Unlimited parental access

Certify that procedures are in effect within the State to ensure that child care providers who provide services for which assistance is made available under this subchapter afford parents unlimited access to their children and to the providers caring for their children, during the normal hours of operation of such providers and whenever such children are in the care of such providers and provide a detailed description of such procedures.

(C) Parental complaints

Certify that the State maintains a record of substantiated parental complaints and makes information regarding such parental complaints available to the public on request and provide a detailed description of how such record is maintained and is made available.

(D) Consumer education information

Certify that the State will collect and disseminate to parents of eligible children and the general public, consumer education information that will promote informed child care choices.

(E) Compliance with State licensing requirements

(i) In general

Certify that the State has in effect licensing requirements applicable to child care services provided within the State, and provide a detailed description of such requirements and of how such requirements are effectively enforced. Nothing in the preceding sentence shall be construed to require that licensing requirements be applied to specific types of providers of child care services.

(ii) Indian tribes and tribal organizations

In lieu of any licensing and regulatory requirements applicable under State and local law, the Secretary, in consultation with Indian tribes and tribal organizations, shall develop minimum child care standards (that appropriately reflect tribal needs and available resources) that shall be applicable to Indian tribes and tribal organizations receiving assistance under this subchapter.

(F) Establishment of health and safety requirements

Certify that there are in effect within the State, under State or local law, requirements designed to protect the health and safety of children that are applicable to child care providers that provide services for which assistance is made available under this subchapter. Such requirements shall include—

(i) the prevention and control of infectious diseases (including immunization);

(ii) building and physical premises safety; and

(iii) minimum health and safety training appropriate to the provider setting.

Nothing in this subparagraph shall be construed to require the establishment of additional health and safety requirements for child care providers that are subject to health and safety requirements in the categories described in this subparagraph on November 5, 1990, under State or local law.

(G) Compliance with State and local health and safety requirements

Certify that procedures are in effect to ensure that child care providers within the State that provide services for which assistance is provided under this subchapter comply with all applicable State or local health and safety requirements as described in subparagraph (F).

(H) Meeting the needs of certain populations

Demonstrate the manner in which the State will meet the specific child care needs of families who are receiving assistance under a State program under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.], families who are attempting through work activities to transition off of such assistance program, and families that are at risk of becoming dependent on such assistance program.

(3) Use of block grant funds

(A) General requirement

The State plan shall provide that the State will use the amounts provided to the State for each fiscal year under this subchapter as required under subparagraphs (B) through (D).

(B) Child care services and related activities

The State shall use amounts provided to the State for each fiscal year under this subchapter for child care services on a sliding fee scale basis, activities that improve the quality or availability of such services, and any other activity that the State deems appropriate to realize any of the goals specified in paragraphs (2) through (5) of section 658A(b),¹ with priority being given for services provided to children of families with very low family incomes (taking into consideration family size) and to children with special needs.

(C) Limitation on administrative costs

Not more than 5 percent of the aggregate amount of funds available to the State to

¹ See References in Text note below.

carry out this subchapter by a State in each fiscal year may be expended for administrative costs incurred by such State to carry out all of its functions and duties under this subchapter. As used in the preceding sentence, the term "administrative costs" shall not include the costs of providing direct services.

(D) Assistance for certain families

A State shall ensure that a substantial portion of the amounts available (after the State has complied with the requirement of section 418(b)(2) of the Social Security Act [42 U.S.C. 618(b)(2)] with respect to each of the fiscal years 1997 through 2002) to the State to carry out activities under this subchapter in each fiscal year is used to provide assistance to low-income working families other than families described in paragraph (2)(H).

(4) Payment rates

(A) In general

The State plan shall certify that payment rates for the provision of child care services for which assistance is provided under this subchapter are sufficient to ensure equal access for eligible children to comparable child care services in the State or substate area that are provided to children whose parents are not eligible to receive assistance under this subchapter or for child care assistance under any other Federal or State programs and shall provide a summary of the facts relied on by the State to determine that such rates are sufficient to ensure such access.

(B) Construction

Nothing in this paragraph shall be construed to create a private right of action.

(5) Sliding fee scale

The State plan shall provide that the State will establish and periodically revise, by rule, a sliding fee scale that provides for cost sharing by the families that receive child care services for which assistance is provided under this subchapter.

(d) Approval of application

The Secretary shall approve an application that satisfies the requirements of this section.

(Pub. L. 97-35, title VI, §658E, as added Pub. L. 101-508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388-237; amended Pub. L. 102-401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 104-193, title VI, §605, Aug. 22, 1996, 110 Stat. 2281; Pub. L. 105-33, title V, §5602(1), Aug. 5, 1997, 111 Stat. 645.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (c)(2)(H), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV of the Act is classified generally to part A (§601 et seq.) of subchapter IV of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

Paragraphs (2) through (5) of section 658A(b), referred to in subsec. (c)(3)(B), means pars. (2) through (5) of section 658A(b) of Pub. L. 97-35, which are set out as a note under section 9858 of this title.

AMENDMENTS

1997—Subsec. (c)(2)(E)(ii). Pub. L. 105-33 substituted "tribal organizations receiving" for "tribal organization receiving".

1996—Subsec. (b). Pub. L. 104-193, §605(1), substituted "implemented during a 2-year period" for "implemented—

"(1) during a 3-year period for the initial State plan; and

"(2) during a 2-year period for subsequent State plans".

Subsec. (c)(2)(A). Pub. L. 104-193, §605(2)(A)(i)(II), in closing provisions, substituted "and provide a detailed description of the procedures the State will implement to carry out the requirements of this subparagraph." for "except that nothing in this subparagraph shall require a State to have a child care certificate program in operation prior to October 1, 1992."

Subsec. (c)(2)(A)(i). Pub. L. 104-193, §605(2)(A)(i)(I), struck out " , other than through assistance provided under paragraph (3)(C)," after "provided under this subchapter" in introductory provisions.

Subsec. (c)(2)(B). Pub. L. 104-193, §605(2)(A)(ii), substituted "Certify that procedures are in effect" for "Provide assurances that procedures are in effect" and inserted before period at end "and provide a detailed description of such procedures".

Subsec. (c)(2)(C). Pub. L. 104-193, §605(2)(A)(iii), substituted "Certify that the State maintains" for "Provide assurances that the State maintains" and inserted before period at end "and provide a detailed description of how such record is maintained and is made available".

Subsec. (c)(2)(D). Pub. L. 104-193, §605(2)(A)(iv), amended heading and text of subpar. (D) generally. Prior to amendment, text read as follows: "Provide assurances that consumer education information will be made available to parents and the general public within the State concerning licensing and regulatory requirements, complaint procedures, and policies and practices relative to child care services within the State."

Subsec. (c)(2)(E). Pub. L. 104-193, §605(2)(A)(v), amended heading and text of subpar. (E) generally, substituting provisions relating to compliance with State licensing requirements for provisions relating to compliance with State and local regulatory requirements.

Subsec. (c)(2)(F), (G). Pub. L. 104-193, §605(2)(A)(vi), (vii), substituted "Certify" for "Provide assurances".

Subsec. (c)(2)(H). Pub. L. 104-193, §605(2)(A)(viii), added subpar. (H) and struck out heading and text of former subpar. (H). Text read as follows: "Provide assurances that if the State reduces the level of standards applicable to child care services provided in the State on November 5, 1990, the State shall inform the Secretary of the rationale for such reduction in the annual report of the State described in section 9858i of this title."

Subsec. (c)(2)(I). Pub. L. 104-193, §605(2)(A)(viii), struck out heading and text of subpar. (I). Text read as follows: "Provide assurances that not later than 18 months after the date of the submission of the application under this section, the State will complete a full review of the law applicable to, and the licensing and regulatory requirements and policies of, each licensing agency that regulates child care services and programs in the State unless the State has reviewed such law, requirements, and policies in the 3-year period ending on November 5, 1990."

Subsec. (c)(2)(J). Pub. L. 104-193, §605(2)(A)(viii), struck out heading and text of subpar. (J). Text read as follows: "Provide assurances that funds received under this subchapter by the State will be used only to supplement, not to supplant, the amount of Federal, State, and local funds otherwise expended for the support of child care services and related programs in the State."

Subsec. (c)(3)(A). Pub. L. 104-193, §605(2)(B)(i), substituted "subparagraphs (B) through (D)" for "subparagraphs (B) and (C)".

Subsec. (c)(3)(B). Pub. L. 104-193, §605(2)(B)(ii), inserted “and related activities” after “services” in heading, substituted “The” for “Subject to the reservation contained in subparagraph (C), the”, substituted “for child care services on a sliding fee scale basis, activities that improve the quality or availability of such services, and any other activity that the State deems appropriate to realize any of the goals specified in paragraphs (2) through (5) of section 658A(b)” for “for—

“(i) child care services, that meet the requirements of this subchapter, that are provided to eligible children in the State on a sliding fee scale basis using funding methods provided for in subsection (c)(2)(A) of this section”, substituted “special needs,” for “special needs; and”, and struck out cl. (ii) which read as follows: “activities designed to improve the availability and quality of child care.”

Subsec. (c)(3)(C). Pub. L. 104-193, §605(2)(B)(iii), amended heading and text of subpar. (C) generally. Prior to amendment, text read as follows: “The State shall reserve 25 percent of the amounts provided to the State for each fiscal year under this subchapter to carry out activities designed to improve the quality of child care (as described in section 9858e of this title) and to provide before- and after-school and early childhood development services (as described in section 9858f of this title).”

Subsec. (c)(3)(D). Pub. L. 104-193, §605(2)(B)(iv), added subpar. (D).

Subsec. (c)(4)(A). Pub. L. 104-193, §605(2)(C), substituted “State plan shall certify” for “State plan shall provide assurances”, inserted “and shall provide a summary of the facts relied on by the State to determine that such rates are sufficient to ensure such access” after “Federal or State programs”, and struck out at end “Such payment rates shall take into account the variations in the costs of providing child care in different settings and to children of different age groups, and the additional costs of providing child care for children with special needs.”

1992—Pub. L. 102-401 and Pub. L. 102-586 made identical technical corrections to directory language of Pub. L. 101-508, §5082(2), which added this section.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-33 effective as if included in the enactment of title VI of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, see section 5603 of Pub. L. 105-33, set out as a note under section 618 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-193 effective Oct. 1, 1996, see section 615 of Pub. L. 104-193, set out as a note under section 9858 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9858b, 9858d, 9858g, 9858h, 9858i, 9858k, 9858m, 9858n of this title.

§ 9858d. Limitations on State allotments

(a) No entitlement to contract or grant

Nothing in this subchapter shall be construed—

(1) to entitle any child care provider or recipient of a child care certificate to any contract, grant or benefit; or

(2) to limit the right of any State to impose additional limitations or conditions on contracts or grants funded under this subchapter.

(b) Construction of facilities

(1) In general

Except as provided for in section 9858m(c)(6) of this title, no funds made available under this subchapter shall be expended for the pur-

chase or improvement of land, or for the purchase, construction, or permanent improvement (other than minor remodeling) of any building or facility.

(2) Sectarian agency or organization

In the case of a sectarian agency or organization, no funds made available under this subchapter may be used for the purposes described in paragraph (1) except to the extent that renovation or repair is necessary to bring the facility of such agency or organization into compliance with health and safety requirements referred to in section 9858c(c)(2)(F) of this title.

(Pub. L. 97-35, title VI, §658F, as added Pub. L. 101-508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388-240; amended Pub. L. 102-401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 104-193, title VI, §606, Aug. 22, 1996, 110 Stat. 2283.)

AMENDMENTS

1996—Subsec. (b)(1). Pub. L. 104-193 substituted “Except as provided for in section 9858m(c)(6) of this title, no funds” for “No funds”.

1992—Pub. L. 102-401 and Pub. L. 102-586 made identical technical corrections to directory language of Pub. L. 101-508, §5082(2), which added this section.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-193 effective Oct. 1, 1996, see section 615 of Pub. L. 104-193, set out as a note under section 9858 of this title.

§ 9858e. Activities to improve quality of child care

A State that receives funds to carry out this subchapter for a fiscal year, shall use not less than 4 percent of the amount of such funds for activities that are designed to provide comprehensive consumer education to parents and the public, activities that increase parental choice, and activities designed to improve the quality and availability of child care (such as resource and referral services).

(Pub. L. 97-35, title VI, §658G, as added Pub. L. 101-508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388-241; amended Pub. L. 102-401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 104-193, title VI, §607, Aug. 22, 1996, 110 Stat. 2283.)

AMENDMENTS

1996—Pub. L. 104-193 reenacted section catchline without change and amended text generally, substituting current provisions for provisions requiring State receiving financial assistance under this subchapter to utilize not less than 20 percent of such assistance for one or more of following: resource and referral programs, grants or loans to assist in meeting State and local standards, monitoring of compliance with licensing and regulatory requirements, training, or improving salaries or other compensation to staff.

1992—Pub. L. 102-401 and Pub. L. 102-586 made identical technical corrections to directory language of Pub. L. 101-508, §5082(2), which added this section.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-193 effective Oct. 1, 1996, see section 615 of Pub. L. 104-193, set out as a note under section 9858 of this title.

§ 9858f. Repealed. Pub. L. 104-193, title VI, § 608, Aug. 22, 1996, 110 Stat. 2284

Section, Pub. L. 97-35, title VI, § 658H, as added Pub. L. 101-508, title V, § 5082(2), Nov. 5, 1990, 104 Stat. 1388-241; amended Pub. L. 102-401, § 3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, § 8(c)(1), Nov. 4, 1992, 106 Stat. 5036, related to early childhood development and before- and after-school services.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1996, see section 615 of Pub. L. 104-193, set out as an Effective Date of 1996 Amendment note under section 9858 of this title.

§ 9858g. Administration and enforcement

(a) Administration

The Secretary shall—

(1) coordinate all activities of the Department of Health and Human Services relating to child care, and, to the maximum extent practicable, coordinate such activities with similar activities of other Federal entities;

(2) collect, publish and make available to the public a listing of State child care standards at least once every 3 years; and

(3) provide technical assistance to assist States to carry out this subchapter, including assistance on a reimbursable basis.

(b) Enforcement

(1) Review of compliance with State plan

The Secretary shall review and monitor State compliance with this subchapter and the plan approved under section 9858c(c) of this title for the State.

(2) Noncompliance

(A) In general

If the Secretary, after reasonable notice to a State and opportunity for a hearing, finds that—

(i) there has been a failure by the State to comply substantially with any provision or requirement set forth in the plan approved under section 9858c(c) of this title for the State; or

(ii) in the operation of any program for which assistance is provided under this subchapter there is a failure by the State to comply substantially with any provision of this subchapter;

the Secretary shall notify the State of the finding and shall require that the State reimburse the Secretary for any funds that were improperly expended for purposes prohibited or not authorized by this subchapter, that the Secretary deduct from the administrative portion of the State allotment for the following fiscal year an amount that is less than or equal to any improperly expended funds, or a combination of such options.

(B) Additional sanctions

In the case of a finding of noncompliance made pursuant to subparagraph (A), the Secretary may, in addition to imposing the sanctions described in such subparagraph, impose other appropriate sanctions, including recoupment of money improperly expended for purposes prohibited or not au-

thorized by this subchapter, and disqualification from the receipt of financial assistance under this subchapter.

(C) Notice

The notice required under subparagraph (A) shall include a specific identification of any additional sanction being imposed under subparagraph (B).

(3) Issuance of rules

The Secretary shall establish by rule procedures for—

(A) receiving, processing, and determining the validity of complaints concerning any failure of a State to comply with the State plan or any requirement of this subchapter; and

(B) imposing sanctions under this section.

(Pub. L. 97-35, title VI, § 658I, as added Pub. L. 101-508, title V, § 5082(2), Nov. 5, 1990, 104 Stat. 1388-242; amended Pub. L. 102-401, § 3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, § 8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 104-193, title VI, § 609, Aug. 22, 1996, 110 Stat. 2284.)

AMENDMENTS

1996—Subsec. (b)(1). Pub. L. 104-193, § 609(1), struck out “, and shall have the power to terminate payments to the State in accordance with paragraph (2)” before period at end.

Subsec. (b)(2)(A). Pub. L. 104-193, § 609(2), in closing provisions, substituted before period at end “finding and shall require that the State reimburse the Secretary for any funds that were improperly expended for purposes prohibited or not authorized by this subchapter, that the Secretary deduct from the administrative portion of the State allotment for the following fiscal year an amount that is less than or equal to any improperly expended funds, or a combination of such options” for “finding and that no further payments may be made to such State under this subchapter (or, in the case of noncompliance in the operation of a program or activity, that no further payments to the State will be made with respect to such program or activity) until the Secretary is satisfied that there is no longer any such failure to comply or that the noncompliance will be promptly corrected”.

1992—Pub. L. 102-401 and Pub. L. 102-586 made identical technical corrections to directory language of Pub. L. 101-508, § 5082(2), which added this section.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-193 effective Oct. 1, 1996, see section 615 of Pub. L. 104-193, set out as a note under section 9858 of this title.

§ 9858h. Payments

(a) In general

Subject to the availability of appropriations, a State that has an application approved by the Secretary under section 9858c(d) of this title shall be entitled to a payment under this section for each fiscal year in an amount equal to its allotment under section 9858m of this title for such fiscal year.

(b) Method of payment

(1) In general

Subject to paragraph (2), the Secretary may make payments to a State in installments, and in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments, as the Secretary may determine.

(2) Limitation

The Secretary may not make such payments in a manner that prevents the State from complying with the requirement specified in section 9858c(c)(3) of this title.

(c) Spending of funds by State

Payments to a State from the allotment under section 9858m of this title for any fiscal year may be obligated by the State in that fiscal year or in the succeeding fiscal year.

(Pub. L. 97-35, title VI, §658J, as added Pub. L. 101-508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388-243; amended Pub. L. 102-27, title III, §310, Apr. 10, 1991, 105 Stat. 153; Pub. L. 102-401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, §8(a), (c)(1), Nov. 4, 1992, 106 Stat. 5035, 5036; Pub. L. 103-171, §8, Dec. 2, 1993, 107 Stat. 1994; Pub. L. 104-193, title VI, §610, Aug. 22, 1996, 110 Stat. 2284.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104-193 substituted “obligated” for “expended” and “succeeding fiscal year” for “succeeding 3 fiscal years”.

1993—Subsec. (c). Pub. L. 103-171 made technical correction to directory language of Pub. L. 102-586, §8(a). See 1992 Amendment note below.

1992—Pub. L. 102-401 and Pub. L. 102-586, §8(c)(1), made identical technical corrections to directory language of Pub. L. 101-508, §5082(2), which added this section.

Subsec. (c). Pub. L. 102-586, §8(a), as amended by Pub. L. 103-171, substituted “expended” for “obligated” and “succeeding 3 fiscal years” for “succeeding fiscal year”.

1991—Subsec. (c). Pub. L. 102-27 substituted “obligated” for “expended”.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-193 effective Oct. 1, 1996, see section 615 of Pub. L. 104-193, set out as a note under section 9858 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 8(d) of Pub. L. 102-586 provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting section 9858q of this title and amending this section and section 9858n of this title] shall take effect on the date of enactment of this Act [Nov. 4, 1992].

“(2) APPLICATION.—The amendments made by this section shall not apply with respect to fiscal years beginning before October 1, 1992.”

§ 9858i. Reports and audits**(a) Reports****(1) Collection of information by States****(A) In general**

A State that receives funds to carry out this subchapter shall collect the information described in subparagraph (B) on a monthly basis.

(B) Required information

The information required under this subparagraph shall include, with respect to a family unit receiving assistance under this subchapter information concerning—

- (i) family income;
- (ii) county of residence;
- (iii) the gender, race, and age of children receiving such assistance;

(iv) whether the head of the family unit is a single parent;

(v) the sources of family income, including—

(I) employment, including self-employment;

(II) cash or other assistance under—

(aa) the temporary assistance for needy families program under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.); and

(bb) a State program for which State spending is counted toward the maintenance of effort requirement under section 409(a)(7) of the Social Security Act (42 U.S.C. 609(a)(7));

(III) housing assistance;

(IV) assistance under the Food Stamp Act of 1977 [7 U.S.C. 2011 et seq.]; and

(V) other assistance programs;

(vi) the number of months the family has received benefits;

(vii) the type of child care in which the child was enrolled (such as family child care, home care, or center-based child care);

(viii) whether the child care provider involved was a relative;

(ix) the cost of child care for such families; and

(x) the average hours per month of such care;

during the period for which such information is required to be submitted.

(C) Submission to Secretary

A State described in subparagraph (A) shall, on a quarterly basis, submit the information required to be collected under subparagraph (B) to the Secretary.

(D) Use of samples**(i) Authority**

A State may comply with the requirement to collect the information described in subparagraph (B) through the use of disaggregated case record information on a sample of families selected through the use of scientifically acceptable sampling methods approved by the Secretary.

(ii) Sampling and other methods

The Secretary shall provide the States with such case sampling plans and data collection procedures as the Secretary deems necessary to produce statistically valid samples of the information described in subparagraph (B). The Secretary may develop and implement procedures for verifying the quality of data submitted by the States.

(2) Annual reports

Not later than December 31, 1997, and every 12 months thereafter, a State described in paragraph (1)(A) shall prepare and submit to the Secretary a report that includes aggregate data concerning—

(A) the number of child care providers that received funding under this subchapter as separately identified based on the types of

providers listed in section 9858n(5) of this title;

(B) the monthly cost of child care services, and the portion of such cost that is paid for with assistance provided under this subchapter, listed by the type of child care services provided;

(C) the number of payments made by the State through vouchers, contracts, cash, and disregards under public benefit programs, listed by the type of child care services provided;

(D) the manner in which consumer education information was provided to parents and the number of parents to whom such information was provided; and

(E) the total number (without duplication) of children and families served under this subchapter;

during the period for which such report is required to be submitted.

(b) Audits

(1) Requirement

A State shall, after the close of each program period covered by an application approved under section 9858c(d) of this title audit its expenditures during such program period from amounts received under this subchapter.

(2) Independent auditor

Audits under this subsection shall be conducted by an entity that is independent of the State that receives assistance under this subchapter and be in accordance with generally accepted auditing principles.

(3) Submission

Not later than 30 days after the completion of an audit under this subsection, the State shall submit a copy of the audit to the legislature of the State and to the Secretary.

(4) Repayment of amounts

Each State shall repay to the United States any amounts determined through an audit under this subsection not to have been expended in accordance with this subchapter, or the Secretary may offset such amounts against any other amount to which the State is or may be entitled under this subchapter.

(Pub. L. 97-35, title VI, § 658K, as added Pub. L. 101-508, title V, § 5082(2), Nov. 5, 1990, 104 Stat. 1388-243; amended Pub. L. 102-401, § 3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, § 8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 104-193, title VI, § 611, Aug. 22, 1996, 110 Stat. 2284; Pub. L. 105-33, title V, § 5602(2), Aug. 5, 1997, 111 Stat. 646.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(1)(B)(v)(II)(aa), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV of the Act is classified generally to part A (§ 601 et seq.) of subchapter IV of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Food Stamp Act of 1977, referred to in subsec. (a)(1)(B)(v)(IV), is Pub. L. 88-525, Aug. 31, 1964, 78 Stat. 703, as amended, 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.

AMENDMENTS

1997—Subsec. (a)(1)(B)(iv). Pub. L. 105-33, § 5602(2)(A)(i)(I), added cl. (iv) and struck out former cl. (iv) which read as follows: “whether the family includes only one parent;”.

Subsec. (a)(1)(B)(v). Pub. L. 105-33, § 5602(2)(A)(i)(II)(aa), substituted “including—” for “including the amount obtained from (and separately identified)—” in introductory provisions.

Subsec. (a)(1)(B)(v)(II). Pub. L. 105-33, § 5602(2)(A)(i)(II)(bb), added subcl. (II) and struck out former subcl. (II) which read as follows: “cash or other assistance under part A of title IV of the Social Security Act;”.

Subsec. (a)(1)(B)(x). Pub. L. 105-33, § 5602(2)(A)(i)(III), substituted “month” for “week”.

Subsec. (a)(1)(D). Pub. L. 105-33, § 5602(2)(A)(ii), added subpar. (D) and struck out heading and text of former subpar. (D). Text read as follows: “The Secretary may disapprove the information collected by a State under this paragraph if the State uses sampling methods to collect such information.”

Subsec. (a)(2). Pub. L. 105-33, § 5602(2)(B), substituted “Annual” for “Biannual” in heading and “12” for “6” in introductory provisions of text.

1996—Pub. L. 104-193, § 611(1), substituted “Reports” for “Annual report” in section catchline.

Subsec. (a). Pub. L. 104-193, § 611(2), amended heading and text of subsec. (a) generally. Prior to amendment, text related to requirement of reports by Dec. 31, 1992, and annually thereafter, which include specification of expenditures under section 9858c(c)(3) of this title, data on fulfillment of child care needs, description of improvements in affordability and availability, description of review of State licensing and regulatory requirements and policies and results of review, explanation of any reductions in child care standards, and description of standards and health and safety requirements applicable to providers.

Subsec. (b)(1). Pub. L. 104-193, § 611(2)(3)(A), substituted “an application approved” for “a application approved”.

Subsec. (b)(2). Pub. L. 104-193, § 611(2)(3)(B), substituted “the State that receives” for “any agency administering activities that receive”.

Subsec. (b)(4). Pub. L. 104-193, § 611(2)(3)(C), substituted “entitled under this subchapter” for “entitles under this subchapter”.

1992—Pub. L. 102-401 and Pub. L. 102-586 made identical technical corrections to directory language of Pub. L. 101-508, § 5082(2), which added this section.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-33 effective as if included in the enactment of title VI of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, see section 5603 of Pub. L. 105-33, set out as a note under section 618 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-193 effective Oct. 1, 1996, see section 615 of Pub. L. 104-193, set out as a note under section 9858 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9858j of this title.

§ 9858j. Report by Secretary

Not later than July 31, 1998, and biennially thereafter, the Secretary shall prepare and submit to the Committee on Economic and Educational Opportunities of the House of Representatives and the Committee on Labor and Human Resources of the Senate a report that

contains a summary and analysis of the data and information provided to the Secretary in the State reports submitted under section 9858i of this title. Such report shall include an assessment, and where appropriate, recommendations for the Congress concerning efforts that should be undertaken to improve the access of the public to quality and affordable child care in the United States.

(Pub. L. 97-35, title VI, § 658L, as added Pub. L. 101-508, title V, § 5082(2), Nov. 5, 1990, 104 Stat. 1388-244; amended Pub. L. 102-401, § 3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, § 8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 104-193, title VI, § 612, Aug. 22, 1996, 110 Stat. 2285; Pub. L. 105-33, title V, § 5602(3), Aug. 5, 1997, 111 Stat. 646.)

AMENDMENTS

1997—Pub. L. 105-33 substituted “1998” for “1997”.

1996—Pub. L. 104-193 substituted “July 31, 1997, and biennially thereafter” for “July 31, 1993, and annually thereafter” and “Committee on Economic and Educational Opportunities” for “Committee on Education and Labor”.

1992—Pub. L. 102-401 and Pub. L. 102-586 made identical technical corrections to directory language of Pub. L. 101-508, § 5082(2), which added this section.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-33 effective as if included in the enactment of title VI of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, see section 5603 of Pub. L. 105-33, set out as a note under section 618 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-193 effective Oct. 1, 1996, see section 615 of Pub. L. 104-193, set out as a note under section 9858 of this title.

§ 9858k. Limitations on use of financial assistance for certain purposes

(a) Sectarian purposes and activities

No financial assistance provided under this subchapter, pursuant to the choice of a parent under section 9858c(c)(2)(A)(i)(I) of this title or through any other grant or contract under the State plan, shall be expended for any sectarian purpose or activity, including sectarian worship or instruction.

(b) Tuition

With regard to services provided to students enrolled in grades 1 through 12, no financial assistance provided under this subchapter shall be expended for—

(1) any services provided to such students during the regular school day;

(2) any services for which such students receive academic credit toward graduation; or

(3) any instructional services which supplant or duplicate the academic program of any public or private school.

(Pub. L. 97-35, title VI, § 658M, as added Pub. L. 101-508, title V, § 5082(2), Nov. 5, 1990, 104 Stat. 1388-244; amended Pub. L. 102-401, § 3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, § 8(c)(1), Nov. 4, 1992, 106 Stat. 5036.)

AMENDMENTS

1992—Pub. L. 102-401 and Pub. L. 102-586 made identical technical corrections to directory language of Pub. L. 101-508, § 5082(2), which added this section.

§ 9858L. Nondiscrimination

(a) Religious nondiscrimination

(1) Construction

(A) In general

Except as provided in subparagraph (B), nothing in this section shall be construed to modify or affect the provisions of any other Federal law or regulation that relates to discrimination in employment on the basis of religion.

(B) Exception

A sectarian organization may require that employees adhere to the religious tenets and teachings of such organization, and such organization may require that employees adhere to rules forbidding the use of drugs or alcohol.

(2) Discrimination against child

(A) In general

A child care provider (other than a family child care provider) that receives assistance under this subchapter shall not discriminate against any child on the basis of religion in providing child care services.

(B) Non-funded child care slots

Nothing in this section shall prohibit a child care provider from selecting children for child care slots that are not funded directly with assistance provided under this subchapter because such children or their family members participate on a regular basis in other activities of the organization that owns or operates such provider.

(3) Employment in general

(A) Prohibition

A child care provider that receives assistance under this subchapter shall not discriminate in employment on the basis of the religion of the prospective employee if such employee's primary responsibility is or will be working directly with children in the provision of child care services.

(B) Qualified applicants

If two or more prospective employees are qualified for any position with a child care provider receiving assistance under this subchapter, nothing in this section shall prohibit such child care provider from employing a prospective employee who is already participating on a regular basis in other activities of the organization that owns or operates such provider.

(C) Present employees

This paragraph shall not apply to employees of child care providers receiving assistance under this subchapter if such employees are employed with the provider on November 5, 1990.

(4) Employment and admission practices

Notwithstanding paragraphs (1)(B), (2), and (3), if assistance provided under this subchapter, and any other Federal or State program, amounts to 80 percent or more of the operating budget of a child care provider that re-

ceives such assistance, the Secretary shall not permit such provider to receive any further assistance under this subchapter unless the grant or contract relating to the financial assistance, or the employment and admissions policies of the provider, specifically provides that no person with responsibilities in the operation of the child care program, project, or activity of the provider will discriminate against any individual in employment, if such employee's primary responsibility is or will be working directly with children in the provision of child care, or admissions because of the religion of such individual.

(b) Effect on State law

Nothing in this subchapter shall be construed to supersede or modify any provision of a State constitution or State law that prohibits the expenditure of public funds in or by sectarian institutions, except that no provision of a State constitution or State law shall be construed to prohibit the expenditure in or by sectarian institutions of any Federal funds provided under this subchapter.

(Pub. L. 97-35, title VI, § 658N, as added Pub. L. 101-508, title V, § 5082(2), Nov. 5, 1990, 104 Stat. 1388-245; amended Pub. L. 102-401, § 3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, § 8(c)(1), Nov. 4, 1992, 106 Stat. 5036.)

AMENDMENTS

1992—Pub. L. 102-401 and Pub. L. 102-586 made identical technical corrections to directory language of Pub. L. 101-508, § 5082(2), which added this section.

§ 9858m. Amounts reserved; allotments

(a) Amounts reserved

(1) Territories and possessions

The Secretary shall reserve not to exceed one half of 1 percent of the amount appropriated under this subchapter in each fiscal year for payments to Guam, American Samoa, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands to be allotted in accordance with their respective needs.

(2) Indians¹ tribes

The Secretary shall reserve not less than 1 percent, and not more than 2 percent, of the amount appropriated under section 9858 of this title in each fiscal year for payments to Indian tribes and tribal organizations with applications approved under subsection (c) of this section.

(b) State allotment

(1) General rule

From the amounts appropriated under section 9858 of this title for each fiscal year remaining after reservations under subsection (a) of this section, the Secretary shall allot to each State an amount equal to the sum of—

- (A) an amount that bears the same ratio to 50 percent of such remainder as the product of the young child factor of the State and the allotment percentage of the State bears

to the sum of the corresponding products for all States; and

- (B) an amount that bears the same ratio to 50 percent of such remainder as the product of the school lunch factor of the State and the allotment percentage of the State bears to the sum of the corresponding products for all States.

(2) Young child factor

The term “young child factor” means the ratio of the number of children in the State under 5 years of age to the number of such children in all States as provided by the most recent annual estimates of population in the States by the Census Bureau of the Department of Commerce.

(3) School lunch factor

The term “school lunch factor” means the ratio of the number of children in the State who are receiving free or reduced price lunches under the school lunch program established under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) to the number of such children in all the States as determined annually by the Department of Agriculture.

(4) Allotment percentage

(A) In general

The allotment percentage for a State is determined by dividing the per capita income of all individuals in the United States, by the per capita income of all individuals in the State.

(B) Limitations

If an allotment percentage determined under subparagraph (A)—

- (i) exceeds 1.2 percent, then the allotment percentage of that State shall be considered to be 1.2 percent; and
- (ii) is less than 0.8 percent, then the allotment percentage of the State shall be considered to be 0.8 percent.

(C) Per capita income

For purposes of subparagraph (A), per capita income shall be—

- (i) determined at 2-year intervals;
- (ii) applied for the 2-year period beginning on October 1 of the first fiscal year beginning on the date such determination is made; and
- (iii) equal to the average of the annual per capita incomes for the most recent period of 3 consecutive years for which satisfactory data are available from the Department of Commerce at the time such determination is made.

(c) Payments for benefit of Indian children

(1) General authority

From amounts reserved under subsection (a)(2) of this section, the Secretary may make grants to or enter into contracts with Indian tribes or tribal organizations that submit applications under this section, for the planning and carrying out of programs or activities consistent with the purposes of this subchapter.

¹ So in original. Probably should be “Indian”.

(2) Applications and requirements

An application for a grant or contract under this section shall provide that:

(A) Coordination

The applicant will coordinate, to the maximum extent feasible, with the lead agency in the State or States in which the applicant will carry out programs or activities under this section.

(B) Services on reservations

In the case of an applicant located in a State other than Alaska, California, or Oklahoma, programs and activities under this section will be carried out on the Indian reservation for the benefit of Indian children.

(C) Reports and audits

The applicant will make such reports on, and conduct such audits of, programs and activities under a grant or contract under this section as the Secretary may require.

(3) Consideration of secretarial approval

In determining whether to approve an application for a grant or contract under this section, the Secretary shall take into consideration—

(A) the availability of child care services provided in accordance with this subchapter by the State or States in which the applicant proposes to carry out a program to provide child care services; and

(B) whether the applicant has the ability (including skills, personnel, resources, community support, and other necessary components) to satisfactorily carry out the proposed program or activity.

(4) Three-year limit

Grants or contracts under this section shall be for periods not to exceed 3 years.

(5) Dual eligibility of Indian children

The awarding of a grant or contract under this section for programs or activities to be conducted in a State or States shall not affect the eligibility of any Indian child to receive services provided or to participate in programs and activities carried out under a grant to the State or States under this subchapter.

(6) Construction or renovation of facilities**(A) Request for use of funds**

An Indian tribe or tribal organization may submit to the Secretary a request to use amounts provided under this subsection for construction or renovation purposes.

(B) Determination

With respect to a request submitted under subparagraph (A), and except as provided in subparagraph (C), upon a determination by the Secretary that adequate facilities are not otherwise available to an Indian tribe or tribal organization to enable such tribe or organization to carry out child care programs in accordance with this subchapter, and that the lack of such facilities will inhibit the operation of such programs in the future, the Secretary may permit the tribe

or organization to use assistance provided under this subsection to make payments for the construction or renovation of facilities that will be used to carry out such programs.

(C) Limitation

The Secretary may not permit an Indian tribe or tribal organization to use amounts provided under this subsection for construction or renovation if such use will result in a decrease in the level of child care services provided by the tribe or organization as compared to the level of such services provided by the tribe or organization in the fiscal year preceding the year for which the determination under subparagraph (B) is being made.

(D) Uniform procedures

The Secretary shall develop and implement uniform procedures for the solicitation and consideration of requests under this paragraph.

(d) Data and information

The Secretary shall obtain from each appropriate Federal agency, the most recent data and information necessary to determine the allotments provided for in subsection (b) of this section.

(e) Reallotments**(1) In general**

Any portion of the allotment under subsection (b) of this section to a State that the Secretary determines is not required to carry out a State plan approved under section 9858c(d) of this title, in the period for which the allotment is made available, shall be reallotted by the Secretary to other States in proportion to the original allotments to the other States.

(2) Limitations**(A) Reduction**

The amount of any reallotment to which a State is entitled to under paragraph (1) shall be reduced to the extent that it exceeds the amount that the Secretary estimates will be used in the State to carry out a State plan approved under section 9858c(d) of this title.

(B) Reallotments

The amount of such reduction shall be similarly reallotted among States for which no reduction in an allotment or reallotment is required by this subsection.

(3) Amounts reallotted

For purposes of any other section of this subchapter, any amount reallotted to a State under this subsection shall be considered to be part of the allotment made under subsection (b) of this section to the State.

(4) Indian tribes or tribal organizations

Any portion of a grant or contract made to an Indian tribe or tribal organization under subsection (c) of this section that the Secretary determines is not being used in a manner consistent with the provision of this subchapter in the period for which the grant or

contract is made available, shall be allotted by the Secretary to other tribes or organizations that have submitted applications under subsection (c) of this section in accordance with their respective needs.

(f) "State" defined

For the purposes of this section, the term "State" includes only the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Pub. L. 97-35, title VI, §658O, as added Pub. L. 101-508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388-246; amended Pub. L. 102-401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 104-193, title VI, §613, Aug. 22, 1996, 110 Stat. 2286; Pub. L. 105-33, title V, §5602(4), Aug. 5, 1997, 111 Stat. 646; Pub. L. 106-78, title VII, §752(b)(17), Oct. 22, 1999, 113 Stat. 1170.)

REFERENCES IN TEXT

The Richard B. Russell National School Lunch Act, referred to in subsec. (b)(3), is act June 4, 1946, ch. 281, 60 Stat. 230, as amended, which is classified generally to chapter 13 (§1751 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1751 of this title and Tables.

AMENDMENTS

1999—Subsec. (b)(3). Pub. L. 106-78 substituted "Richard B. Russell National School Lunch Act" for "National School Lunch Act".

1997—Subsec. (c)(6)(C). Pub. L. 105-33 substituted "subparagraph (B)" for "subparagraph (A)".

1996—Subsec. (a)(1). Pub. L. 104-193, §613(1)(A), made technical amendment to heading, inserted "and" before "the Commonwealth of the Northern Marianna Islands", and struck out ", and the Trust Territory of the Pacific Islands" before "to be allotted in accordance".

Subsec. (a)(2). Pub. L. 104-193, §613(1)(B), substituted "less than 1 percent, and not more than 2 percent," for "more than 3 percent".

Subsec. (c)(5). Pub. L. 104-193, §613(2)(A), substituted "activities carried out" for "activities carried out".

Subsec. (c)(6). Pub. L. 104-193, §613(2)(B), added par. (6).

Subsec. (e)(4). Pub. L. 104-193, §613(3), added par. (4).
1992—Pub. L. 102-401 and Pub. L. 102-586 made identical technical corrections to directory language of Pub. L. 101-508, §5082(2), which added this section.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-33 effective as if included in the enactment of title VI of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, see section 5603 of Pub. L. 105-33, set out as a note under section 618 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-193 effective Oct. 1, 1996, see section 615 of Pub. L. 104-193, set out as a note under section 9858 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9858d, 9858h of this title.

§ 9858n. Definitions

As used in this subchapter:

(1) Caregiver

The term "caregiver" means an individual who provides a service directly to an eligible child on a person-to-person basis.

(2) Child care certificate

The term "child care certificate" means a certificate (that may be a check or other disbursement) that is issued by a State or local government under this subchapter directly to a parent who may use such certificate only as payment for child care services or as a deposit for child care services if such a deposit is required of other children being cared for by the provider. Nothing in this subchapter shall preclude the use of such certificates for sectarian child care services if freely chosen by the parent. For purposes of this subchapter, child care certificates shall not be considered to be grants or contracts.

(3) Repealed. Pub. L. 104-193, title VI, §614(2), Aug. 22, 1996, 110 Stat. 2287

(4) Eligible child

The term "eligible child" means an individual—

- (A) who is less than 13 years of age;
- (B) whose family income does not exceed 85 percent of the State median income for a family of the same size; and
- (C) who—

(i) resides with a parent or parents who are working or attending a job training or educational program; or

(ii) is receiving, or needs to receive, protective services and resides with a parent or parents not described in clause (i).

(5) Eligible child care provider

The term "eligible child care provider" means—

(A) a center-based child care provider, a group home child care provider, a family child care provider, or other provider of child care services for compensation that—

(i) is licensed, regulated, or registered under State law as described in section 9858c(c)(2)(E) of this title; and

(ii) satisfies the State and local requirements, including those referred to in section 9858c(c)(2)(F) of this title;

applicable to the child care services it provides; or

(B) a child care provider that is 18 years of age or older who provides child care services only to eligible children who are, by affinity or consanguinity, or by court decree, the grandchild, great grandchild, sibling (if such provider lives in a separate residence), niece, or nephew of such provider, if such provider complies with any applicable requirements that govern child care provided by the relative involved.

(6) Family child care provider

The term "family child care provider" means one individual who provides child care services for fewer than 24 hours per day, as the sole caregiver, and in a private residence.

(7) Indian tribe

The term "Indian tribe" has the meaning given it in section 450b(e) of title 25.

(8) Lead agency

The term "lead agency" means the agency designated under section 9858(a)¹ of this title.

¹ See References in Text note below.

(9) Parent

The term “parent” includes a legal guardian or other person standing in loco parentis.

(10) Repealed. Pub. L. 104-193, title VI, § 614(5), Aug. 22, 1996, 110 Stat. 2287**(11) Secretary**

The term “Secretary” means the Secretary of Health and Human Services unless the context specifies otherwise.

(12) Sliding fee scale

The term “sliding fee scale” means a system of cost sharing by a family based on income and size of the family.

(13) State

The term “State” means any of the several States, the District of Columbia, the Virgin Islands of the United States, the Commonwealth of Puerto Rico, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(14) Tribal organization**(A) In general**

The term “tribal organization” has the meaning given it in section 450b(l) of title 25.

(B) Other organizations

Such term includes a Native Hawaiian Organization, as defined in section 4909(4)¹ of title 20 and a private nonprofit organization established for the purpose of serving youth who are Indians or Native Hawaiians.

(Pub. L. 97-35, title VI, § 658P, as added Pub. L. 101-508, title V, § 5082(2), Nov. 5, 1990, 104 Stat. 1388-248; amended Pub. L. 102-401, § 3, Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, § 8(c), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 103-171, § 8, Dec. 2, 1993, 107 Stat. 1994; Pub. L. 104-193, title VI, § 614, Aug. 22, 1996, 110 Stat. 2287; Pub. L. 105-33, title V, § 5602(5), Aug. 5, 1997, 111 Stat. 646.)

REFERENCES IN TEXT

Section 9858 of this title, referred to in par. (8), does not contain a subsec. (a) and does not relate to designation of lead agencies. For provisions relating to designation of a State agency to act as a lead agency, see section 9858b(a) of this title.

Section 4909 of title 20, referred to in par. (14)(B), was repealed by Pub. L. 103-382, title III, § 363, Oct. 20, 1994, 108 Stat. 3975.

AMENDMENTS

1997—Par. (13). Pub. L. 105-33 substituted “and” for “or” after “American Samoa.”

1996—Par. (2). Pub. L. 104-193, § 614(1), in first sentence, inserted “or as a deposit for child care services if such a deposit is required of other children being cared for by the provider” after “payment for child care services”.

Par. (3). Pub. L. 104-193, § 614(2), struck out heading and text of par. (3). Text read as follows: “The term ‘elementary school’ means a day or residential school that provides elementary education, as determined under State law.”

Par. (4)(B). Pub. L. 104-193, § 614(3), substituted “85 percent” for “75 percent”.

Par. (5)(B). Pub. L. 104-193, § 614(4), inserted “great grandchild, sibling (if such provider lives in a separate residence),” after “grandchild,” struck out “is registered and” after “such provider”, and substituted “any applicable requirements” for “any State requirements”.

Par. (10). Pub. L. 104-193, § 614(5), struck out heading and text of par. (10). Text read as follows: “The term ‘secondary school’ means a day or residential school which provides secondary education, as determined under State law.”

Par. (13). Pub. L. 104-193, § 614(6), inserted “or” after “Samoa,” and struck out “, and the Trust Territory of the Pacific Islands” after “Northern Mariana Islands”.

Par. (14). Pub. L. 104-193, § 614(7), designated existing text as subpar. (A), inserted heading, and added subpar. (B).

1993—Pars. (7), (14). Pub. L. 103-171 made technical correction to directory language of Pub. L. 102-586, § 8(c)(2). See 1992 Amendment note below.

1992—Pub. L. 102-401, § 3(a), and Pub. L. 102-586, § 8(c)(1), made identical technical corrections to directory language of Pub. L. 101-508, § 5082(2), which added this section.

Par. (7). Pub. L. 102-586, § 8(c)(2)(A), as amended by Pub. L. 103-171, which directed the amendment of par. (7) by substituting “section 450b(e) of title 25” for “section 450b(b) of title 25”, could not be executed because the words “section 450b(b) of title 25” did not appear subsequent to execution of the amendment by Pub. L. 102-401, § 3(b)(1). See below.

Pub. L. 102-401, § 3(b)(1), substituted “section 450b(e) of title 25” for “section 450b(b) of title 25”.

Par. (14). Pub. L. 102-586, § 8(c)(2)(B), as amended by Pub. L. 103-171, which directed the amendment of par. (14) by substituting “section 450b(l) of title 25” for “section 450b(c) of title 25”, could not be executed because the words “section 450b(c) of title 25” did not appear subsequent to execution of the amendment by Pub. L. 102-401, § 3(b)(2). See below.

Pub. L. 102-401, § 3(b)(2), substituted “section 450b(l) of title 25” for “section 450b(c) of title 25”.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-33 effective as if included in the enactment of title VI of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, see section 5603 of Pub. L. 105-33, set out as a note under section 618 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-193 effective Oct. 1, 1996, see section 615 of Pub. L. 104-193, set out as a note under section 9858 of this title.

EFFECTIVE DATE OF 1992 AMENDMENTS

Amendment by Pub. L. 102-586 effective Nov. 4, 1992, but not applicable with respect to fiscal years beginning before Oct. 1, 1992, see section 8(d) of Pub. L. 102-586, set out as a note under section 9858h of this title.

Amendment by Pub. L. 102-401 effective Oct. 7, 1992, but not applicable with respect to fiscal years beginning before Oct. 1, 1992, see section 4 of Pub. L. 102-401, set out as a note under section 9835 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9858a, 9858i of this title.

§ 9858o. Parental rights and responsibilities

Nothing in this subchapter shall be construed or applied in any manner to infringe on or usurp the moral and legal rights and responsibilities of parents or legal guardians.

(Pub. L. 97-35, title VI, § 658Q, as added Pub. L. 101-508, title V, § 5082(2), Nov. 5, 1990, 104 Stat. 1388-249; amended Pub. L. 102-401, § 3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, § 8(c)(1), Nov. 4, 1992, 106 Stat. 5036.)

AMENDMENTS

1992—Pub. L. 102-401 and Pub. L. 102-586 made identical technical corrections to directory language of Pub. L. 101-508, § 5082(2), which added this section.

§ 9858p. Severability

If any provision of this subchapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions of applications of this subchapter which can be given effect without regard to the invalid provision or application, and to this end the provisions of this subchapter shall be severable.

(Pub. L. 97-35, title VI, § 658R, as added Pub. L. 101-508, title V, § 5082(2), Nov. 5, 1990, 104 Stat. 1388-249; amended Pub. L. 102-401, § 3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, § 8(c)(1), Nov. 4, 1992, 106 Stat. 5036.)

AMENDMENTS

1992—Pub. L. 102-401 and Pub. L. 102-586 made identical technical corrections to directory language of Pub. L. 101-508, § 5082(2), which added this section.

§ 9858q. Miscellaneous provisions

Notwithstanding any other law, the value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under this subchapter shall not be treated as income for purposes of any other Federal or Federally-assisted program that bases eligibility, or the amount of benefits, on need.

(Pub. L. 97-35, title VI, § 658S, as added Pub. L. 102-586, § 8(b), Nov. 4, 1992, 106 Stat. 5035; amended Pub. L. 103-171, § 8, Dec. 2, 1993, 107 Stat. 1994.)

AMENDMENTS

1993—Pub. L. 103-171 made technical correction to directory language of Pub. L. 102-586, § 8(b), which added this section.

EFFECTIVE DATE

Section effective Nov. 4, 1992, but not applicable with respect to fiscal years beginning before Oct. 1, 1992, see section 8(d) of Pub. L. 102-586, set out as an Effective Date of 1992 Amendment note under section 9858h of this title.

SUBCHAPTER II-C—CHILD CARE SAFETY AND HEALTH GRANTS

CODIFICATION

This subchapter was enacted as part of title XIV of div. A of the Children's Health Act of 2000, and not as part of chapter 8 of subtitle A of title VI of Pub. L. 97-35 which comprises this chapter.

§ 9859. Definitions

In this subchapter:

(1) Child with a disability; infant or toddler with a disability

The terms "child with a disability" and "infant or toddler with a disability" have the meanings given the terms in sections 1401 and 1431 of title 20.

(2) Eligible child care provider

The term "eligible child care provider" means a provider of child care services for compensation, including a provider of care for a school-age child during non-school hours, that—

(A) is licensed, regulated, registered, or otherwise legally operating, under State and local law; and

(B) satisfies the State and local requirements,

applicable to the child care services the provider provides.

(3) Secretary

The term "Secretary" means the Secretary of Health and Human Services.

(4) State

The term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(Pub. L. 106-310, div. A, title XIV, § 1401, Oct. 17, 2000, 114 Stat. 1143.)

§ 9859a. Authorization of appropriations

There are authorized to be appropriated to carry out this subchapter \$200,000,000 for fiscal year 2001, and such sums as may be necessary for each subsequent fiscal year.

(Pub. L. 106-310, div. A, title XIV, § 1402, Oct. 17, 2000, 114 Stat. 1143.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9859c of this title.

§ 9859b. Programs

The Secretary shall make allotments to eligible States under section 9859c of this title. The Secretary shall make the allotments to enable the States to establish programs to improve the health and safety of children receiving child care outside the home, by preventing illnesses and injuries associated with that care and promoting the health and well-being of children receiving that care.

(Pub. L. 106-310, div. A, title XIV, § 1403, Oct. 17, 2000, 114 Stat. 1143.)

§ 9859c. Amounts reserved; allotments

(a) Amounts reserved

The Secretary shall reserve not more than one-half of 1 percent of the amount appropriated under section 9859a of this title for each fiscal year to make allotments to Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands to be allotted in accordance with their respective needs.

(b) State allotments

(1) General rule

From the amounts appropriated under section 9859a of this title for each fiscal year and remaining after reservations are made under subsection (a) of this section, the Secretary shall allot to each State an amount equal to the sum of—

(A) an amount that bears the same ratio to 50 percent of such remainder as the product of the young child factor of the State and the allotment percentage of the State bears to the sum of the corresponding products for all States; and

(B) an amount that bears the same ratio to 50 percent of such remainder as the product of the school lunch factor of the State and the allotment percentage of the State bears to the sum of the corresponding products for all States.

(2) Young child factor

In this subsection, the term “young child factor” means the ratio of the number of children under 5 years of age in a State to the number of such children in all States, as provided by the most recent annual estimates of population in the States by the Census Bureau of the Department of Commerce.

(3) School lunch factor

In this subsection, the term “school lunch factor” means the ratio of the number of children who are receiving free or reduced price lunches under the school lunch program established under the National School Lunch Act (42 U.S.C. 1751 et seq.) in the State to the number of such children in all States, as determined annually by the Department of Agriculture.

(4) Allotment percentage

(A) In general

For purposes of this subsection, the allotment percentage for a State shall be determined by dividing the per capita income of all individuals in the United States, by the per capita income of all individuals in the State.

(B) Limitations

If an allotment percentage determined under subparagraph (A) for a State—

- (i) is more than 1.2 percent, the allotment percentage of the State shall be considered to be 1.2 percent; and
- (ii) is less than 0.8 percent, the allotment percentage of the State shall be considered to be 0.8 percent.

(C) Per capita income

For purposes of subparagraph (A), per capita income shall be—

- (i) determined at 2-year intervals;
- (ii) applied for the 2-year period beginning on October 1 of the first fiscal year beginning after the date such determination is made; and
- (iii) equal to the average of the annual per capita incomes for the most recent period of 3 consecutive years for which satisfactory data are available from the Department of Commerce on the date such determination is made.

(c) Data and information

The Secretary shall obtain from each appropriate Federal agency, the most recent data and information necessary to determine the allotments provided for in subsection (b) of this section.

(d) Definition

In this section, the term “State” includes only the several States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Pub. L. 106–310, div. A, title XIV, § 1404, Oct. 17, 2000, 114 Stat. 1143.)

REFERENCES IN TEXT

The National School Lunch Act, referred to in subsec. (b)(3), probably means the Richard B. Russell National School Lunch Act, act June 4, 1946, ch. 281, 60 Stat. 230, as amended, which is classified generally to chapter 13 (§1751 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1751 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9859b, 9859d, 9859e, 9859f of this title.

§ 9859d. State applications

To be eligible to receive an allotment under section 9859c of this title, a State shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require. The application shall contain information assessing the needs of the State with regard to child care health and safety, the goals to be achieved through the program carried out by the State under this subchapter, and the measures to be used to assess the progress made by the State toward achieving the goals.

(Pub. L. 106–310, div. A, title XIV, § 1405, Oct. 17, 2000, 114 Stat. 1145.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9859f of this title.

§ 9859e. Use of funds

(a) In general

A State that receives an allotment under section 9859c of this title shall use the funds made available through the allotment to carry out two or more activities consisting of—

- (1) providing training and education to eligible child care providers on preventing injuries and illnesses in children, and promoting health-related practices;
- (2) strengthening licensing, regulation, or registration standards for eligible child care providers;
- (3) assisting eligible child care providers in meeting licensing, regulation, or registration standards, including rehabilitating the facilities of the providers, in order to bring the facilities into compliance with the standards;
- (4) enforcing licensing, regulation, or registration standards for eligible child care providers, including holding increased unannounced inspections of the facilities of those providers;
- (5) providing health consultants to provide advice to eligible child care providers;
- (6) assisting eligible child care providers in enhancing the ability of the providers to serve children with disabilities and infants and toddlers with disabilities;
- (7) conducting criminal background checks for eligible child care providers and other individuals who have contact with children in the facilities of the providers;
- (8) providing information to parents on what factors to consider in choosing a safe and healthy child care setting; or

(9) assisting in improving the safety of transportation practices for children enrolled in child care programs with eligible child care providers.

(b) Supplement, not supplant

Funds appropriated pursuant to the authority of this subchapter shall be used to supplement and not supplant other Federal, State, and local public funds expended to provide services for eligible individuals.

(Pub. L. 106-310, div. A, title XIV, §1406, Oct. 17, 2000, 114 Stat. 1145.)

§ 9859f. Reports

Each State that receives an allotment under section 9859c of this title shall annually prepare and submit to the Secretary a report that describes—

- (1) the activities carried out with funds made available through the allotment; and
- (2) the progress made by the State toward achieving the goals described in the application submitted by the State under section 9859d of this title.

(Pub. L. 106-310, div. A, title XIV, §1407, Oct. 17, 2000, 114 Stat. 1145.)

SUBCHAPTER III—FOLLOW THROUGH PROGRAMS

PART I—DIRECT SERVICES

§§ 9861, 9862. Repealed. Pub. L. 103-382, title III, § 391(w), Oct. 20, 1994, 108 Stat. 4025

Section 9861, Pub. L. 97-35, title VI, §662, Aug. 13, 1981, 95 Stat. 508; Pub. L. 101-501, title II, §202, Nov. 3, 1990, 104 Stat. 1243, authorized financial assistance for Follow Through programs.

Section 9862, Pub. L. 97-35, title VI, §663, as added Pub. L. 101-501, title II, §203, Nov. 3, 1990, 104 Stat. 1244; amended Pub. L. 102-119, §26(c), Oct. 7, 1991, 105 Stat. 607, related to consideration of applications.

A prior section 9862, Pub. L. 97-35, title VI, §663, Aug. 13, 1981, 95 Stat. 509; Pub. L. 98-558, title III, §301, Oct. 30, 1984, 98 Stat. 2887; Pub. L. 99-425, title II, §201(a), Sept. 30, 1986, 100 Stat. 966, related to funding requirements, prior to repeal by Pub. L. 101-501, title II, §203, Nov. 3, 1990, 104 Stat. 1244.

PART II—PROGRAM IMPROVEMENT

§§ 9863 to 9865. Repealed. Pub. L. 103-382, title III, § 391(w), Oct. 20, 1994, 108 Stat. 4025

Section 9863, Pub. L. 97-35, title VI, §664, as added Pub. L. 101-501, title II, §204(a), Nov. 3, 1990, 104 Stat. 1245, authorized financial assistance for research regarding Follow Through programs and approaches.

A prior section 9863, Pub. L. 97-35, title VI, §664, Aug. 13, 1981, 95 Stat. 509, related to grants or contracts for research, demonstration, and pilot projects, prior to repeal by Pub. L. 101-501, title II, §204(a), Nov. 3, 1990, 104 Stat. 1245.

Section 9863a, Pub. L. 97-35, title VI, §664A, as added Pub. L. 101-501, title II, §204(a), Nov. 3, 1990, 104 Stat. 1245, related to technical assistance and training.

Section 9863b, Pub. L. 97-35, title VI, §664B, as added Pub. L. 101-501, title II, §204(a), Nov. 3, 1990, 104 Stat. 1246, authorized grants to entities which operate, or previously operated, effective Follow Through programs.

Section 9863c, Pub. L. 97-35, title VI, §664C, as added Pub. L. 101-501, title II, §204(a), Nov. 3, 1990, 104 Stat. 1246, related to grant to establish national clearinghouse on Follow Through programs.

Section 9864, Pub. L. 97-35, title VI, §665, Aug. 13, 1981, 95 Stat. 510; Pub. L. 101-501, title II, §205, Nov. 3, 1990, 104 Stat. 1246, related to announcement of research and evaluation contracts.

Section 9865, Pub. L. 97-35, title VI, §666, Aug. 13, 1981, 95 Stat. 510; Pub. L. 101-501, title II, §206, Nov. 3, 1990, 104 Stat. 1247, related to continuing evaluation of programs under this subchapter.

PART III—GENERAL AND ADMINISTRATIVE PROVISIONS

§§ 9866 to 9869. Repealed. Pub. L. 103-382, title III, § 391(w), Oct. 20, 1994, 108 Stat. 4025

Section 9866, Pub. L. 97-35, title VI, §667, as added Pub. L. 101-501, title II, §207(a), Nov. 3, 1990, 104 Stat. 1247, related to authorization of appropriations to carry out this subchapter.

A prior section 9866, Pub. L. 97-35, title VI, §667, Aug. 13, 1981, 95 Stat. 511, provided for technical assistance and training, prior to repeal by Pub. L. 101-501, title II, §204(b), Nov. 3, 1990, 104 Stat. 1246.

Section 9867, Pub. L. 97-35, title VI, §668, Aug. 13, 1981, 95 Stat. 511; Pub. L. 99-425, title II, §201(b), Sept. 30, 1986, 100 Stat. 967; Pub. L. 101-501, title II, §201(2), 209, Nov. 3, 1990, 104 Stat. 1243, 1248, related to special conditions on financial assistance.

Section 9868, Pub. L. 97-35, title VI, §669, Aug. 13, 1981, 95 Stat. 511, related to applicability of other provisions to administration of this subchapter.

Section 9869, Pub. L. 97-35, title VI, §669A, as added Pub. L. 101-501, title II, §208, Nov. 3, 1990, 104 Stat. 1248, related to participation of entities that receive funds under this subchapter in other Federal educational activities and programs.

SUBCHAPTER IV—GRANTS TO STATES FOR PLANNING AND DEVELOPMENT OF DEPENDENT CARE PROGRAMS AND FOR OTHER PURPOSES

CODIFICATION

Subchapter is based on subchapter E, formerly D, of chapter 8 of subtitle A of title VI of Pub. L. 97-35, as added by Pub. L. 98-558, title I, §109, Oct. 30, 1984, 98 Stat. 2880, and amended and redesignated.

§ 9871. Authorization of appropriations

For the purpose of making allotments to States to carry out the activities described in section 9874 of this title, there is authorized to be appropriated \$13,000,000 for fiscal year 1995.

(Pub. L. 97-35, title VI, §670A, as added Pub. L. 98-558, title I, §109, Oct. 30, 1984, 98 Stat. 2880; amended Pub. L. 99-425, title III, §301, Sept. 30, 1986, 100 Stat. 967; Pub. L. 101-501, title III, §301, Nov. 3, 1990, 104 Stat. 1248; Pub. L. 103-252, title I, §122, May 18, 1994, 108 Stat. 650.)

AMENDMENTS

1994—Pub. L. 103-252 substituted “is authorized to be appropriated \$13,000,000 for fiscal year 1995” for “are authorized to be appropriated \$20,000,000 for each of the fiscal years 1990 and 1991, and such sums as may be necessary for fiscal years 1992, 1993, and 1994”.

1990—Pub. L. 101-501 substituted “are authorized” for “is authorized”, struck out “1987, 1988, 1989, and” before “1990”, and inserted “and 1991, and such sums as may be necessary for fiscal years 1992, 1993, and 1994” after “1990”.

1986—Pub. L. 99-425 amended section generally. Prior to amendment, section read as follows: “For the purpose of allotments to States to carry out the activities described in section 9874 of this title, there are authorized to be appropriated \$20,000,000 for each of the fiscal years 1985 and 1986.”

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-252 effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103-252, set out as a note under section 9832 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101-501, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-425 effective Oct. 1, 1986, see section 1001 of Pub. L. 99-425, set out as a note under section 8621 of this title.

SHORT TITLE

For short title of this subchapter as the "State Dependent Care Development Grants Act", see section 670H of Pub. L. 97-35, set out as a note under section 9801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9872, 9873 of this title.

§ 9872. Allotments

(a) From the amounts appropriated under section 9871 of this title for each fiscal year, the Secretary shall allot to each State an amount which bears the same ratio to the total amount appropriated under such section for such fiscal year as the population of the State bears to the population of all States, except that no State may receive less than \$50,000 in each fiscal year.

(b) For the purpose of the exception contained in subsection (a) of this section, the term "State" does not include Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

(Pub. L. 97-35, title VI, §670B, as added Pub. L. 98-558, title I, §109, Oct. 30, 1984, 98 Stat. 2880.)

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9873, 9874, 9875 of this title.

§ 9873. Payments under allotments to States

The Secretary shall make payments, as provided by section 6503(a) of title 31, to each State from its allotments under section 9872 of this title from amounts appropriated under section 9871 of this title.

(Pub. L. 97-35, title VI, §670C, as added Pub. L. 98-558, title I, §109, Oct. 30, 1984, 98 Stat. 2880.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9874, 9875 of this title.

§ 9874. Use of allotments**(a) Referral systems; information; contents**

(1) Subject to the provisions of subsections (c) and (d) of this section, amounts paid to a State

under section 9873 of this title from its allotment under section 9872 of this title may be used for the planning, development, establishment, operation, expansion, or improvement by the States, directly or by grant or contract with public or private entities, of State and local resource and referral systems to provide information concerning the availability, types, costs, and locations of dependent care services. The information provided by any such system may include—

(A) the types of dependent care services available, including services provided by individual homes, religious organizations, community organizations, employers, private industry, and public and private institutions;

(B) the costs of available dependent care services;

(C) the locations in which dependent care services are provided;

(D) the forms of transportation available to such locations;

(E) the hours during which such dependent care services are available;

(F) the dependents eligible to enroll for such dependent care services; and

(G) any resource and referral system planned, developed, established, expanded, or improved with amounts paid to a State under this subchapter.

(2) The State, with respect to the uses of funds described in paragraph (1) of this subsection shall—

(A) provide assurances that no information will be included with respect to any dependent care services which are not provided in compliance with the laws of the State and localities in which such services are provided; and

(B) provide assurances that the information provided will be the latest information available and will be kept up to date.

(b) School-age child care services; assurances; estimates

(1) Subject to the provisions of subsections (c) and (d) of this section, amounts paid to a State under section 9873 of this title from its allotment under section 9872 of this title may be used for the planning, development, establishment, operation, expansion, or improvement by the States, directly, or by grant or contract, with public agencies or private nonprofit organizations of programs to furnish school-age child care services before and after school. Amounts so paid to a State and used for the operation of such child care services shall be designed to enable children, whose families lack adequate financial resources, to participate in before or after school child care programs.

(2) The State, with respect to the uses of funds described in paragraph (1) of this subsection shall—

(A) provide assurances, in the case of an applicant that is not a State or local educational agency, that the applicant has or will enter into an agreement with the State or local educational agency, institution of higher education or community center containing provisions for—

(i) the use of facilities for the provision of before or after school child care services (in-

cluding such use during holidays and vacation periods),

(ii) the restrictions, if any, on the use of such space, and

(iii) the times when the space will be available for the use of the applicant;

(B) provide an estimate of the costs of the establishment of the child care service program in the facilities;

(C) provide assurances that the parents of school-age children will be involved in the development and implementation of the program for which assistance is sought under this Act;¹

(D) provide assurances that the applicant is able and willing to seek to enroll racially, ethnically, and economically diverse school-age children, as well as handicapped school-age children, in the child care service program for which assistance is sought under this Act;¹

(E) provide assurances that the child care program is in compliance with State and local child care licensing laws and regulations governing day care services for school-age children to the extent that such regulations are appropriate to the age group served; and

(F) provide such other assurances as the chief executive officer of the State may reasonably require to carry out this Act.¹

(c) Percentage of allotment; waiver

(1) Except as provided in paragraph (2), of the allotment to each State in each fiscal year—

(A) 40 percent shall be available for the activities described in subsection (a) of this section;

(B) 60 percent shall be available for the activities described in subsection (b) of this section.

(2) For any fiscal year the Secretary may waive the percentage requirements specified in paragraph (1) on the request of a State if such State demonstrates to the satisfaction of the Secretary—

(A) that the amount of funds available as a result of one of such percentage requirements is not needed in such fiscal year for the activities for which such amount is so made available; and

(B) the adequacy of the alternative percentages, relative to need, the State specifies the State will apply with respect to all of the activities referred to in paragraph (1) if such waiver is granted.

(d) Prohibition; use of amounts

A State may not use amounts paid to it under this subchapter to—

(1) make cash payments to intended recipients of dependent care services including child care services;

(2) pay for construction or renovation; or

(3) satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds.

(e) Federal share; cost of administration

(1) The Federal share of any project supported under this subchapter shall be not more than 75 percent.

(2) Not more than 10 percent of the allotment of each State under this subchapter may be available for the cost of administration.

(f) Duplication of services

Projects supported under this section to plan, develop, establish, expand, operate, or improve a State or local resource and referral system or before or after school child care program shall not duplicate any services which are provided before October 30, 1984, by the State or locality which will be served by such system.

(g) Technical assistance to States; planning and operational activities

The Secretary may provide technical assistance to States in planning and carrying out activities under this subchapter.

(Pub. L. 97-35, title VI, § 670D, as added Pub. L. 98-558, title I, § 109, Oct. 30, 1984, 98 Stat. 2880; amended Pub. L. 99-425, title III, § 302, Sept. 30, 1986, 100 Stat. 967; Pub. L. 101-501, title III, §§ 302, 303, 305(a), Nov. 3, 1990, 104 Stat. 1249, 1250.)

REFERENCES IN TEXT

This Act, referred to in subsec. (b)(2)(C), (D), (F), is Pub. L. 97-35, known as the Omnibus Budget Reconciliation Act of 1981, but probably should have been "this subchapter", meaning subchapter E of chapter 8 of title A of title VI of Pub. L. 97-35, known as the State Dependent Care Development Grants Act, which is classified to this subchapter.

AMENDMENTS

1990—Subsec. (a)(1). Pub. L. 101-501, §§ 303(a)(1), 305(a)(1), inserted "operation," after "establishment," and struck out "for fiscal year 1985 and fiscal year 1986" before "may be used".

Subsec. (b)(1). Pub. L. 101-501, §§ 303(a)(2), (3), 305(a)(2), struck out "for fiscal year 1985 and fiscal year 1986" before "may be used", inserted "operation," after "establishment," struck out "in public or private school facilities or in community centers in communities" after "before and after school", and inserted at end "Amounts so paid to a State and used for the operation of such child care services shall be designed to enable children, whose families lack adequate financial resources, to participate in before or after school child care programs."

Subsec. (b)(2)(D). Pub. L. 101-501, § 305(a)(3)(A), inserted "school-age children," after "diverse" and inserted comma after last reference to "children".

Subsec. (b)(2)(F). Pub. L. 101-501, § 305(a)(3)(B), substituted "chief executive officer of the State" for "Governor" and struck out "the provisions of" before "this Act".

Subsec. (c). Pub. L. 101-501, § 302, designated existing provision as par. (1), redesignated pars. (1) and (2) as subpars. (A) and (B), respectively, substituted "Except as provided in paragraph (2), of" for "Of", and added par. (2).

Subsec. (d). Pub. L. 101-501, § 303(b), redesignated pars. (2), (4), and (5) as (1), (2), and (3), respectively, and struck out former pars. (1) and (3) which read as follows:

"(1) pay the costs of operation of any resource and referral system or before or after school child care program established, expanded, or improved under subsection (a) of this section;

"(3) subsidize the direct provision of dependent care services including child care services;"

Subsec. (d)(1). Pub. L. 101-501, § 305(a)(4), which directed the substitution of "subsections (a) and (b) of this section" for "subsection (a) of this section", could not be executed because of the intervening amendment by Pub. L. 101-501, § 303(b), see above.

Subsec. (f). Pub. L. 101-501, §§ 303(a)(4), 305(a)(5), inserted "operate," after "expand," and substituted

¹ So in original. Probably should be "subchapter".

“which are provided before October 30, 1984,” for “, which prior to October 30, 1984, are provided”.

Subsec. (g). Pub. L. 101-501, §305(a)(6), substituted “carrying out activities” for “operating activities to be carried out”.

1986—Subsec. (a). Pub. L. 99-425, §302(a), designated existing provisions as par. (1), substituted “system may include” for “system shall include”, redesignated cls. (1) to (7) as (A) to (G), respectively, struck out last sentence which read as follows: “In carrying out clause (7) of the previous sentence, no information shall be included with respect to any dependent care services which are not provided in compliance with the laws of the State and localities in which such services are provided”, and added par. (2).

Subsec. (b)(1). Pub. L. 99-425, §302(b)(1), struck out “where school facilities are not available” after “centers in communities”.

Subsec. (b)(2)(E). Pub. L. 99-425, §302(b)(2), inserted “child care” before “licensing laws”.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101-501, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-425 effective Oct. 1, 1986, see section 1001 of Pub. L. 99-425, set out as a note under section 8621 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9871 of this title.

§ 9875. Application and description of activities; requirements

(a) Applications

(1) In order to receive an allotment under section 9872 of this title, each State shall submit an application to the Secretary. Each such application shall be in such form and submitted by such date as the Secretary shall require.

(2) Each application required under paragraph (1) for an allotment under section 9872 of this title shall contain assurances that the State will meet the requirements of subsection (b) of this section.

(b) Certifications

As part of the annual application required by subsection (a) of this section, the chief executive officer of each State shall—

(1) certify that the State agrees to use the funds allotted to it under section 9872 of this title in accordance with the requirements of this subchapter; and

(2) certify that the State agrees that Federal funds made available under section 9873 of this title for any period will be so used as to supplement and increase the level of State, local, and other non-Federal funds that would in the absence of such Federal funds be made available for the programs and activities for which funds are provided under that section and will in no event supplant such State, local, and other non-Federal funds.

The Secretary may not prescribe for a State the manner of compliance with the requirements of this subsection.

(c) Description; intended use of payments; comments; revision

(1) The chief executive officer of a State shall, as part of the application required by subsection

(a) of this section, also prepare and furnish the Secretary (in accordance with such form as the Secretary shall provide) with a description of the intended use of the payments the State will receive under section 9873 of this title, including information on the programs and activities to be supported. The description shall be made public within the State in such manner as to facilitate comment from any person (including any Federal or other public agency) during development of the description and after its transmittal. The description shall be revised (consistent with this section) until September 30, 1991, as may be necessary to reflect substantial changes in the programs and activities assisted by the State under this subchapter, and any revision shall be subject to the requirements of the preceding sentence.

(2) The chief executive officer of each State shall include in such a description of—

(A) the number of children who participated in before and after school child care programs assisted under this subchapter;

(B) the characteristics of the children so served including age levels, handicapped condition, income level of families in such programs;

(C) the salary level and benefits paid to employees in such child care programs; and

(D) the number of clients served in resource and referral systems assisted under this subchapter, and the types of assistance they requested.

(d) Application to Public Health Service Act

Except where inconsistent with the provisions of this subchapter, the provisions of section 1903(b) [42 U.S.C. 300w-2(b)], paragraphs (1) through (5) of section 1906(a)¹ [42 U.S.C. 300w-5(a)], and sections 1906(b), 1907, 1908, and 1909 [42 U.S.C. 300w-5(b), 300w-6, 300w-7, 300w-8] of the Public Health Service Act shall apply to this subchapter in the same manner as such provisions apply to part A of title XIX of such Act [42 U.S.C. 300w et seq.].

(Pub. L. 97-35, title VI, §670E, as added Pub. L. 98-558, title I, §109, Oct. 30, 1984, 98 Stat. 2882; amended Pub. L. 101-501, title III, §§304, 305(b), Nov. 3, 1990, 104 Stat. 1249, 1250.)

REFERENCES IN TEXT

The Public Health Service Act, referred to in subsec. (d), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Part A of title XIX of the Public Health Service Act is classified generally to part A (§300w et seq.) of subchapter XVII of chapter 6A of this title. Section 1906(a) of the Act, which is classified to section 300w-5(a) of this title, was amended generally by Pub. L. 102-531, title I, §104(a), Oct. 27, 1992, 106 Stat. 3473, and, as so amended, consists of pars. (1) to (4) rather than pars. (1) to (5). For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

AMENDMENTS

1990—Subsec. (c). Pub. L. 101-501, §305(b), which directed that “until September 30, 1987,” be struck out, could not be executed, because of the intervening amendment by Pub. L. 101-501, §304, see below.

Pub. L. 101-501, §304, designated existing provisions as par. (1), substituted “September 30, 1991” for “September 30, 1987”, and added par. (2).

¹ See References in Text note below.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101-501, set out as a note under section 8621 of this title.

§ 9876. Report

Within three years after October 30, 1984, the Secretary shall prepare and transmit to the Senate Committee on Labor and Human Resources and the House Committee on Education and Labor a report concerning the activities conducted by the States with amounts provided under this subchapter.

(Pub. L. 97-35, title VI, § 670F, as added Pub. L. 98-558, title I, § 109, Oct. 30, 1984, 98 Stat. 2883.)

CHANGE OF NAME

Committee on Education and Labor of House of Representatives treated as referring to Committee on Economic and Educational Opportunities of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Economic and Educational Opportunities of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Fifth Congress, Jan. 7, 1997.

§ 9877. Definitions

For purposes of this subchapter—

(1) the term “community center” means facilities operated by nonprofit community-based organizations for the provision of recreational, social, or educational services to the general public;

(2) the term “dependent” means—

(A) an individual who has not attained the age of 17 years;

(B) an individual who has attained the age of 55 years; or

(C) an individual with a developmental disability;

(3) the term “developmental disability” has the same meaning as in section 15002 of this title;

(4) the term “equipment” has the same meaning given that term by section 198(a)(8) of the Elementary and Secondary Education Act of 1965;¹

(5) the term “institution of higher education” has the same meaning given that term under section 1001 of title 20;

(6) the term “local educational agency” has the same meaning given that term under section 7801 of title 20;

(7) the term “school-age children” means children aged five through thirteen, except that in any State in which by State law children at an earlier age are provided free public education, the age provided in State law shall be substituted for age five;

(8) the term “school facilities” means classrooms and related facilities used for the provision of education;

(9) the term “Secretary” means the Secretary of Health and Human Services;

(10) the term “State” means each of the several States, the District of Columbia, the

Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, Palau, and the Commonwealth of the Northern Mariana Islands; and

(11) the term “State educational agency” has the meaning given that term under section 7801 of title 20.

(Pub. L. 97-35, title VI, § 670G, as added Pub. L. 98-558, title I, § 109, Oct. 30, 1984, 98 Stat. 2883; amended Pub. L. 99-425, title III, § 303, Sept. 30, 1986, 100 Stat. 967; Pub. L. 101-501, title III, § 305(c), Nov. 3, 1990, 104 Stat. 1250; Pub. L. 103-382, title III, § 394(l), Oct. 20, 1994, 108 Stat. 4029; Pub. L. 105-244, title I, § 102(a)(13)(H), Oct. 7, 1998, 112 Stat. 1621; Pub. L. 106-402, title IV, § 401(b)(12), Oct. 30, 2000, 114 Stat. 1739; Pub. L. 107-110, title X, § 1076(dd), Jan. 8, 2002, 115 Stat. 2093.)

REFERENCES IN TEXT

Section 198 of the Elementary and Secondary Education Act of 1965, referred to in par. (4), is section 198 of Pub. L. 89-10, title I, as added Pub. L. 95-561, title I, § 101(a), Nov. 1, 1978, 92 Stat. 2198, as amended, which was classified to section 2854 of Title 20, Education, prior to the general revision of Pub. L. 89-10 by Pub. L. 100-297, title I, § 1001, Apr. 28, 1988, 102 Stat. 140.

AMENDMENTS

2002—Pars. (6), (11). Pub. L. 107-110 substituted “7801” for “8801”.

2000—Par. (3). Pub. L. 106-402 substituted “section 15002 of this title” for “section 6001(7) of this title”.

1998—Par. (5). Pub. L. 105-244, which directed amendment of section 670G(5) of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9877(5)) by substituting “section 1001” for “section 1141(a)”, was executed to this section, which is section 670G(5) of subchapter E of chapter 8 of subtitle A of title VI of Pub. L. 97-35, known as the State Dependent Care Development Grants Act, to reflect the probable intent of Congress.

1994—Par. (6). Pub. L. 103-382, § 394(l)(1), substituted “section 8801 of title 20” for “section 198(a)(10) of the Elementary and Secondary Education Act of 1965”.

Par. (11). Pub. L. 103-382, § 394(l)(2), substituted “section 8801 of title 20” for “section 198(a)(17) of the Elementary and Secondary Education Act of 1965”.

1990—Par. (2)(C). Pub. L. 101-501, § 305(c)(1), substituted “an individual” for “a person”.

Par. (7). Pub. L. 101-501, § 305(c)(2), inserted “in” after first reference to “State”.

Par. (10). Pub. L. 101-501, § 305(c)(3), substituted “Federated States of Micronesia, the Republic of the Marshall Islands, Palau” for “Trust Territory of the Pacific Islands”.

1986—Par. (7). Pub. L. 99-425 inserted “, except that in any State which by State law children at an earlier age are provided free public education, the age provided in State law shall be substituted for age five”.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107-110, set out as an Effective Date note under section 6301 of Title 20, Education.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of Title 20, Education.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101-501, set out as a note under section 8621 of this title.

¹ See References in Text note below.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-425 effective Oct. 1, 1986, see section 1001 of Pub. L. 99-425, set out as a note under section 8621 of this title.

SUBCHAPTER V—COMPREHENSIVE CHILD DEVELOPMENT PROGRAM

§§ 9881 to 9887. Repealed. Pub. L. 103-252, title I, §§ 112(b)(1), (2)(B), May 18, 1994, 108 Stat. 640, 641

Section 9881, Pub. L. 97-35, title VI, §670N, as added Pub. L. 100-297, title II, §2503, Apr. 28, 1988, 102 Stat. 326, authorized Comprehensive Child Development Program for pre-school children. See section 9840a of this title.

Section 9882, Pub. L. 97-35, title VI, §670O, as added Pub. L. 100-297, title II, §2503, Apr. 28, 1988, 102 Stat. 328, proscribed Secretary from taking into consideration, when making a grant under former section 9881, whether the applicant had applied or received funds under subchapter II of this chapter, relating to the Head Start program.

Section 9883, Pub. L. 97-35, title VI, §670P, as added Pub. L. 100-297, title II, §2503, Apr. 28, 1988, 102 Stat. 329, related to applicability to this subchapter of rules and regulations prescribed to carry out subchapter II of this chapter to the extent that the services provided were similar.

Section 9884, Pub. L. 97-35, title VI, §670Q, as added Pub. L. 100-297, title II, §2503, Apr. 28, 1988, 102 Stat. 329, directed Secretary to continually evaluate projects under this subchapter.

Section 9885, Pub. L. 97-35, title VI, §670R, as added Pub. L. 100-297, title II, §2503, Apr. 28, 1988, 102 Stat. 329, directed Secretary to carry out this subchapter through the administrative entity used to carry out subchapter II of this chapter.

Section 9886, Pub. L. 97-35, title VI, §670S, as added Pub. L. 100-297, title II, §2503, Apr. 28, 1988, 102 Stat. 329; amended Pub. L. 102-119, §26(a), Oct. 7, 1991, 105 Stat. 607; Pub. L. 103-382, title III, §391(x), Oct. 20, 1994, 108 Stat. 4025, provided definitions for terms used in this subchapter.

Section 9887, Pub. L. 97-35, title VI, §670T, as added Pub. L. 100-297, title II, §2503, Apr. 28, 1988, 102 Stat. 330; amended Pub. L. 101-501, title VIII, §801, Nov. 3, 1990, 104 Stat. 1261, authorized appropriations to carry out this subchapter.

EFFECTIVE DATE OF REPEAL

Repeal effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103-252, set out as an Effective Date of 1994 Amendment note under section 9832 of this title.

COMPREHENSIVE CHILD DEVELOPMENT PROGRAM;
CONGRESSIONAL STATEMENT OF PURPOSE

Pub. L. 100-297, title II, part E, §2502, Apr. 28, 1988, 102 Stat. 325, provided that it is the purpose of part E of title II of Pub. L. 100-297 to provide financial assistance to projects that target and support infants and young children from low-income families, enhance their development, and provide support for their parents and other family members, prior to repeal by Pub. L. 103-252, title I, §112(b)(1), (2)(A), May 18, 1994, 108 Stat. 640, 641.

CONSOLIDATION OF CHILD DEVELOPMENT PROGRAMS

Section 112(b)(1) of Pub. L. 103-252 provided that: "In recognition that the Comprehensive Child Development Centers Act [enacting this subchapter, amending section 9833 of this title, and enacting provisions set out as notes under this section and section 9801 of this title] has demonstrated positive results, and that its purposes and functions have been consolidated into sec-

tion 645A of the Head Start Act [42 U.S.C. 9840a], the Comprehensive Child Development Centers Act of 1988 (42 U.S.C. 9801 note) and the Comprehensive Child Development Act (42 U.S.C. 9881 et seq.) are repealed."

CHAPTER 106—COMMUNITY SERVICES
BLOCK GRANT PROGRAM

Sec.	
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CODIFICATION

The Community Services Block Grant Act, comprising this chapter, was originally enacted by subtitle B of Pub. L. 97-35, title VI, Aug. 13, 1981, 95 Stat. 511, and amended by Pub. L. 97-115, Dec. 29, 1981, 95 Stat. 1595; Pub. L. 98-288, May 21, 1984, 98 Stat. 189; Pub. L. 98-558, Oct. 30, 1984, 98 Stat. 2878; Pub. L. 99-425, Sept. 30, 1986, 100 Stat. 966; Pub. L. 101-501, Nov. 3, 1990, 104 Stat. 1222; Pub. L. 101-624, Nov. 28, 1990, 104 Stat. 3359; Pub. L. 103-94, Oct. 6, 1993, 107 Stat. 1001; Pub. L. 103-171, Dec. 2, 1993, 107 Stat. 1988; Pub. L. 103-252, May 18, 1994, 108 Stat. 623. The Community Services Block Grant Act is shown herein, however, as having been added by Pub. L. 105-285, title II, §201, Oct. 27, 1998, 112 Stat. 2728, without reference to those intervening amendments because of the extensive revision of that Act by Pub. L. 105-285.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 3013, 3020d, 3056a, 4953, 8624, 9812, 9819, 9925, 12638 of this title; title

20 section 9271; title 29 sections 2822, 2841; title 31 section 6501.

§ 9901. Purposes and goals

The purposes of this chapter are—

(1) to provide assistance to States and local communities, working through a network of community action agencies and other neighborhood-based organizations, for the reduction of poverty, the revitalization of low-income communities, and the empowerment of low-income families and individuals in rural and urban areas to become fully self-sufficient (particularly families who are attempting to transition off a State program carried out under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.)); and

(2) to accomplish the goals described in paragraph (1) through—

(A) the strengthening of community capabilities for planning and coordinating the use of a broad range of Federal, State, local, and other assistance (including private resources) related to the elimination of poverty, so that this assistance can be used in a manner responsive to local needs and conditions;

(B) the organization of a range of services related to the needs of low-income families and individuals, so that these services may have a measurable and potentially major impact on the causes of poverty in the community and may help the families and individuals to achieve self-sufficiency;

(C) the greater use of innovative and effective community-based approaches to attacking the causes and effects of poverty and of community breakdown;

(D) the maximum participation of residents of the low-income communities and members of the groups served by programs assisted through the block grants made under this chapter to empower such residents and members to respond to the unique problems and needs within their communities; and

(E) the broadening of the resource base of programs directed to the elimination of poverty so as to secure a more active role in the provision of services for—

(i) private, religious, charitable, and neighborhood-based organizations; and

(ii) individual citizens, and business, labor, and professional groups, who are able to influence the quantity and quality of opportunities and services for the poor.

(Pub. L. 97-35, title VI, §672, as added Pub. L. 105-285, title II, §201, Oct. 27, 1998, 112 Stat. 2728.)

REFERENCES IN TEXT

The Social Security Act, referred to in par. (1), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV of the Act is classified generally to part A (§601 et seq.) of subchapter IV of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 9901, Pub. L. 97-35, title VI, §672, Aug. 13, 1981, 95 Stat. 511; Pub. L. 98-558, title II, §201, Oct. 30, 1984, 98 Stat. 2884; Pub. L. 99-425, title IV, §401, Sept.

30, 1986, 100 Stat. 968; Pub. L. 101-501, title IV, §401(a), Nov. 3, 1990, 104 Stat. 1251; Pub. L. 103-252, title II, §202(a), May 18, 1994, 108 Stat. 651, authorized the Secretary to make community service grants, prior to the general amendment of this chapter by Pub. L. 105-285.

SHORT TITLE OF 1994 AMENDMENT

Section 201(a) of title II of Pub. L. 103-252 provided that: "This title [enacting section 9910c of this title, amending this section and sections 9903, 9904, 9910, 9910a, 9910b, 9911, 9912, and 11464 of this title, and enacting provisions set out as a note under this section] may be cited as the 'Community Services Block Grant Amendments of 1994'."

SHORT TITLE

Pub. L. 97-35, title VI, §671, as added by Pub. L. 105-285, title II, §201, Oct. 27, 1998, 112 Stat. 2728, provided that: "This subtitle [subtitle B (§§671-683) of title VI of Pub. L. 97-35, enacting this chapter] may be cited as the 'Community Services Block Grant Act'."

A prior section 671 of Pub. L. 97-35 provided that subtitle B (§§671-683) of title VI of Pub. L. 97-35, which enacted prior chapter and repealed sections 2701, 2706, 2711 to 2716, 2771, 2781, 2790, 2791, 2795 to 2797, 2808 to 2815, 2823 to 2825, 2827, 2828, 2830, 2833 to 2837, 2841, 2851 to 2856, 2881, 2901 to 2906, 2921 to 2923, 2928 to 2928g, 2928h to 2928n, 2929 to 2929c, 2930 to 2930f, 2931 to 2933, 2941 to 2948, 2950, 2951, 2961 to 2970, 2971a to 2971g, 2972 to 2980, 2981 to 2981c, 2982 to 2982c, 2983 to 2983b, 2984, 2984a, 2985 to 2985c, 2985d to 2985g, and 2995 to 2995c of this title and provisions set out as a note under section 2701 of this title, could be cited as the "Community Services Block Grant Act", prior to the general amendment of this chapter by Pub. L. 105-285.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9907 of this title.

§ 9902. Definitions

In this chapter:

(1) **Eligible entity; family literacy services**

(A) **Eligible entity**

The term "eligible entity" means an entity—

(i) that is an eligible entity described in paragraph (1) of this section (as in effect on the day before October 27, 1998) as of the day before October 27, 1998, or is designated by the process described in section 9909 of this title (including an organization serving migrant or seasonal farmworkers that is so described or designated); and

(ii) that has a tripartite board or other mechanism described in subsection (a) or (b), as appropriate, of section 9910 of this title.

(B) **Family literacy services**

The term "family literacy services" has the meaning given the term in section 9832 of this title.

(2) **Poverty line**

The term "poverty line" means the official poverty line defined by the Office of Management and Budget based on the most recent data available from the Bureau of the Census. The Secretary shall revise annually (or at any shorter interval the Secretary determines to be feasible and desirable) the poverty line, which shall be used as a criterion of eligibility in the community services block grant program established under this chapter. The re-

quired revision shall be accomplished by multiplying the official poverty line by the percentage change in the Consumer Price Index for All Urban Consumers during the annual or other interval immediately preceding the time at which the revision is made. Whenever a State determines that it serves the objectives of the block grant program established under this chapter, the State may revise the poverty line to not to exceed 125 percent of the official poverty line otherwise applicable under this paragraph.

(3) **Private, nonprofit organization**

The term "private, nonprofit organization" includes a religious organization, to which the provisions of section 9920 of this title shall apply.

(4) **Secretary**

The term "Secretary" means the Secretary of Health and Human Services.

(5) **State**

The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(Pub. L. 97-35, title VI, §673, as added Pub. L. 105-285, title II, §201, Oct. 27, 1998, 112 Stat. 2729.)

PRIOR PROVISIONS

A prior section 9902, Pub. L. 97-35, title VI, §673, Aug. 13, 1981, 95 Stat. 511; Pub. L. 97-115, §17(a)(1), Dec. 29, 1981, 95 Stat. 1609; Pub. L. 98-288, §31(a), May 21, 1984, 98 Stat. 197; Pub. L. 98-558, title II, §202, Oct. 30, 1984, 98 Stat. 2884; Pub. L. 99-425, title IV, §402, Sept. 30, 1986, 100 Stat. 968; Pub. L. 101-501, title IV, §§402, 408, Nov. 3, 1990, 104 Stat. 1251, 1255; Pub. L. 103-171, §7(c)(1), Dec. 2, 1993, 107 Stat. 1994, defined terms used in this chapter, prior to the general amendment of this chapter by Pub. L. 105-285.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 247b-5, 247b-14, 247c-1, 254c-12, 290bb-1, 290ff-3, 297q, 300n, 300ff-76, 603, 604, 701, 1396a, 1396d, 1396o, 1396r-5, 1396r-6, 1397jj, 3002, 4955, 5011, 5061, 8622, 8626b, 9910, 9924, 9925, 9926, 12618, 13791 of this title; title 7 sections 1927, 2014, 3175, 7501; title 8 sections 1154, 1183a; title 15 section 6901; title 20 sections 1021, 1085, 2351, 7801, 9141, 9402; title 29 section 2801; title 40 section 484.

§ 9903. Authorization of appropriations

(a) **In general**

There are authorized to be appropriated such sums as may be necessary for each of fiscal years 1999 through 2003 to carry out the provisions of this chapter (other than sections 9922 and 9923 of this title).

(b) **Reservations**

Of the amounts appropriated under subsection (a) of this section for each fiscal year, the Secretary shall reserve—

(1) ½ of 1 percent for carrying out section 9905 of this title (relating to payments for territories);

(2) 1½ percent for activities authorized in sections 9913 through 9918 of this title, of which—

(A) not less than ½ of the amount reserved by the Secretary under this paragraph shall be distributed directly to eligible entities, organizations, or associations described in section 9913(c)(2) of this title for the purpose of carrying out activities described in section 9913(c) of this title; and

(B) ½ of the remainder of the amount reserved by the Secretary under this paragraph shall be used by the Secretary to carry out evaluation and to assist States in carrying out corrective action activities and monitoring (to correct programmatic deficiencies of eligible entities), as described in sections 9914(c) and 9913 of this title; and

(3) 9 percent for carrying out section 9921 of this title (relating to discretionary activities) and section 9917(b)(2) of this title.

(Pub. L. 97-35, title VI, §674, as added Pub. L. 105-285, title II, §201, Oct. 27, 1998, 112 Stat. 2730.)

PRIOR PROVISIONS

A prior section 9903, Pub. L. 97-35, title VI, §674, Aug. 13, 1981, 95 Stat. 512; Pub. L. 99-425, title IV, §405(c)(1), Sept. 30, 1986, 100 Stat. 970; Pub. L. 101-501, title IV, §403, Nov. 3, 1990, 104 Stat. 1251; Pub. L. 103-171, §7(c)(2), Dec. 2, 1993, 107 Stat. 1994; Pub. L. 103-252, title II, §202(b), May 18, 1994, 108 Stat. 651, related to State allocations for technical assistance and training, prior to the general amendment of this chapter by Pub. L. 105-285.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9905, 9906, 9913, 9917, 9918, 9921 of this title.

§ 9904. Establishment of block grant program

The Secretary is authorized to establish a community services block grant program and make grants through the program to States to ameliorate the causes of poverty in communities within the States.

(Pub. L. 97-35, title VI, §675, as added Pub. L. 105-285, title II, §201, Oct. 27, 1998, 112 Stat. 2730.)

PRIOR PROVISIONS

A prior section 9904, Pub. L. 97-35, title VI, §675, Aug. 13, 1981, 95 Stat. 513; Pub. L. 97-115, §17(a)(2), (b), Dec. 29, 1981, 95 Stat. 1609; Pub. L. 98-558, title II, §203(a)-(c), Oct. 30, 1984, 98 Stat. 2885; Pub. L. 99-425, title IV, §§403(a)(1), (b), 404(b), Sept. 30, 1986, 100 Stat. 968, 969; Pub. L. 101-501, title IV, §404(a), (b), Nov. 3, 1990, 104 Stat. 1252; Pub. L. 101-624, title XVII, §1772(h)(6), Nov. 28, 1990, 104 Stat. 3809; Pub. L. 103-94, §6, Oct. 6, 1993, 107 Stat. 1005; Pub. L. 103-252, title II, §202(c)-(g), May 18, 1994, 108 Stat. 652-654, related to applications and requirements for community block grant program, prior to the general amendment of this chapter by Pub. L. 105-285.

§ 9905. Distribution to territories

(a) Apportionment

The Secretary shall apportion the amount reserved under section 9903(b)(1) of this title for each fiscal year on the basis of need among Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(b) Application

Each jurisdiction to which subsection (a) of this section applies may receive a grant under

this section for the amount apportioned under subsection (a) of this section on submitting to the Secretary, and obtaining approval of, an application, containing provisions that describe the programs for which assistance is sought under this section, that is prepared in accordance with, and contains the information described in, section 9908 of this title.

(Pub. L. 97-35, title VI, §675A, as added Pub. L. 105-285, title II, §201, Oct. 27, 1998, 112 Stat. 2730.)

PRIOR PROVISIONS

Prior sections 9905 and 9905a were omitted in the general amendment of this chapter by Pub. L. 105-285.

Section 9905, Pub. L. 97-35, title VI, §676, Aug. 13, 1981, 95 Stat. 516, related to establishment and functions of the Office of Community Services.

Section 9905a, Pub. L. 97-35, title VI, §676A, as added Pub. L. 98-558, title II, §203(d), Oct. 30, 1984, 98 Stat. 2885; amended Pub. L. 99-425, title IV, §403(a)(2)-(4), Sept. 30, 1986, 100 Stat. 968, 969; Pub. L. 101-501, title IV, §404(c), Nov. 3, 1990, 104 Stat. 1252, related to procedures for review of termination or reduction of funding.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9903, 9907, 9908, 9915, 9916 of this title.

§ 9906. Allotments and payments to States

(a) Allotments in general

The Secretary shall, from the amount appropriated under section 9903(a) of this title for each fiscal year that remains after the Secretary makes the reservations required in section 9903(b) of this title, allot to each State (subject to section 9911 of this title) an amount that bears the same ratio to such remaining amount as the amount received by the State for fiscal year 1981 under section 2808¹ of this title bore to the total amount received by all States for fiscal year 1981 under such section, except—

(1) that no State shall receive less than ¼ of 1 percent of the amount appropriated under section 9903(a) of this title for such fiscal year; and

(2) as provided in subsection (b) of this section.

(b) Allotments in years with greater available funds

(1) Minimum allotments

Subject to paragraphs (2) and (3), if the amount appropriated under section 9903(a) of this title for a fiscal year that remains after the Secretary makes the reservations required in section 9903(b) of this title exceeds \$345,000,000, the Secretary shall allot to each State not less than ½ of 1 percent of the amount appropriated under section 9903(a) of this title for such fiscal year.

(2) Maintenance of fiscal year 1990 levels

Paragraph (1) shall not apply with respect to a fiscal year if the amount allotted under subsection (a) of this section to any State for that year is less than the amount allotted under section 9903(a)(1) of this title (as in effect on September 30, 1989) to such State for fiscal year 1990.

¹ See References in Text note below.

(3) Maximum allotments

The amount allotted under paragraph (1) to a State for a fiscal year shall be reduced, if necessary, so that the aggregate amount allotted to such State under such paragraph and subsection (a) of this section does not exceed 140 percent of the aggregate amount allotted to such State under the corresponding provisions of this chapter for the preceding fiscal year.

(c) Payments

The Secretary shall make grants to eligible States for the allotments described in subsections (a) and (b) of this section. The Secretary shall make payments for the grants in accordance with section 6503(a) of title 31.

(d) Definition

In this section, the term "State" does not include Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(Pub. L. 97-35, title VI, §675B, as added Pub. L. 105-285, title II, §201, Oct. 27, 1998, 112 Stat. 2730.)

REFERENCES IN TEXT

Section 2808 of this title, referred to in subsec. (a), was repealed by Pub. L. 97-35, title VI, §683(a), Aug. 13, 1981, 95 Stat. 519.

PRIOR PROVISIONS

A prior section 9906, Pub. L. 97-35, title VI, §677, Aug. 13, 1981, 95 Stat. 516, contained nondiscrimination provisions, prior to the general amendment of this chapter by Pub. L. 105-285.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9907, 9908, 9911, 9915, 9916 of this title.

§ 9907. Uses of funds**(a) Grants to eligible entities and other organizations****(1) In general**

Not less than 90 percent of the funds made available to a State under section 9905 or 9906 of this title shall be used by the State to make grants for the purposes described in section 9901 of this title to eligible entities.

(2) Obligational authority

Funds distributed to eligible entities through grants made in accordance with paragraph (1) for a fiscal year shall be available for obligation during that fiscal year and the succeeding fiscal year, subject to paragraph (3).

(3) Recapture and redistribution of unobligated funds**(A) Amount**

Beginning on October 1, 2000, a State may recapture and redistribute funds distributed to an eligible entity through a grant made under paragraph (1) that are unobligated at the end of a fiscal year if such unobligated funds exceed 20 percent of the amount so distributed to such eligible entity for such fiscal year.

(B) Redistribution

In redistributing funds recaptured in accordance with this paragraph, States shall

redistribute such funds to an eligible entity, or require the original recipient of the funds to redistribute the funds to a private, non-profit organization, located within the community served by the original recipient of the funds, for activities consistent with the purposes of this chapter.

(b) Statewide activities**(1) Use of remainder**

If a State uses less than 100 percent of the grant or allotment received under section 9905 or 9906 of this title to make grants under subsection (a) of this section, the State shall use the remainder of the grant or allotment under section 9905 or 9906 of this title (subject to paragraph (2)) for activities that may include—

(A) providing training and technical assistance to those entities in need of such training and assistance;

(B) coordinating State-operated programs and services, and at the option of the State, locally-operated programs and services, targeted to low-income children and families with services provided by eligible entities and other organizations funded under this chapter, including detailing appropriate employees of State or local agencies to entities funded under this chapter, to ensure increased access to services provided by such State or local agencies;

(C) supporting statewide coordination and communication among eligible entities;

(D) analyzing the distribution of funds made available under this chapter within the State to determine if such funds have been targeted to the areas of greatest need;

(E) supporting asset-building programs for low-income individuals, such as programs supporting individual development accounts;

(F) supporting innovative programs and activities conducted by community action agencies or other neighborhood-based organizations to eliminate poverty, promote self-sufficiency, and promote community revitalization;

(G) supporting State charity tax credits as described in subsection (c) of this section; and

(H) supporting other activities, consistent with the purposes of this chapter.

(2) Administrative cap

No State may spend more than the greater of \$55,000, or 5 percent, of the grant received under section 9905 of this title or State allotment received under section 9906 of this title for administrative expenses, including monitoring activities. Funds to be spent for such expenses shall be taken from the portion of the grant under section 9905 of this title or State allotment that remains after the State makes grants to eligible entities under subsection (a) of this section. The cost of activities conducted under paragraph (1)(A) shall not be considered to be administrative expenses. The startup cost and cost of administrative activities conducted under subsection (c) of this section shall be considered to be administrative expenses.

(c) Charity tax credit**(1) In general**

Subject to paragraph (2), if there is in effect under State law a charity tax credit, the State may use for any purpose the amount of the allotment that is available for expenditure under subsection (b) of this section.

(2) Limit

The aggregate amount a State may use under paragraph (1) during a fiscal year shall not exceed 100 percent of the revenue loss of the State during the fiscal year that is attributable to the charity tax credit, as determined by the Secretary of the Treasury without regard to any such revenue loss occurring before January 1, 1999.

(3) Definitions and rules

In this subsection:

(A) Charity tax credit

The term “charity tax credit” means a nonrefundable credit against State income tax (or, in the case of a State that does not impose an income tax, a comparable benefit) that is allowable for contributions, in cash or in kind, to qualified charities.

(B) Qualified charity**(i) In general**

The term “qualified charity” means any organization—

(I) that is—

(aa) described in section 501(c)(3) of title 26 and exempt from tax under section 501(a) of such title;

(bb) an eligible entity; or

(cc) a public housing agency as defined in section 1437a(b)(6) of this title;

(II) that is certified by the appropriate State authority as meeting the requirements of clauses (iii) and (iv); and

(III) if such organization is otherwise required to file a return under section 6033 of such title, that elects to treat the information required to be furnished by clause (v) as being specified in section 6033(b) of such title.

(ii) Certain contributions to collection organizations treated as contributions to qualified charity**(I) In general**

A contribution to a collection organization shall be treated as a contribution to a qualified charity if the donor designates in writing that the contribution is for the qualified charity.

(II) Collection organization

The term “collection organization” means an organization described in section 501(c)(3) of such title and exempt from tax under section 501(a) of such title—

(aa) that solicits and collects gifts and grants that, by agreement, are distributed to qualified charities;

(bb) that distributes to qualified charities at least 90 percent of the gifts

and grants the organization receives that are designated for such qualified charities; and

(cc) that meets the requirements of clause (vi).

(iii) Charity must primarily assist poor individuals**(I) In general**

An organization meets the requirements of this clause only if the appropriate State authority reasonably expects that the predominant activity of such organization will be the provision of direct services within the United States to individuals and families whose annual incomes generally do not exceed 185 percent of the poverty line in order to prevent or alleviate poverty among such individuals and families.

(II) No recordkeeping in certain cases

An organization shall not be required to establish or maintain records with respect to the incomes of individuals and families for purposes of subclause (I) if such individuals or families are members of groups that are generally recognized as including substantially only individuals and families described in subclause (I).

(III) Food aid and homeless shelters

Except as otherwise provided by the appropriate State authority, for purposes of subclause (I), services to individuals in the form of—

(aa) donations of food or meals; or

(bb) temporary shelter to homeless individuals;

shall be treated as provided to individuals described in subclause (I) if the location and provision of such services are such that the service provider may reasonably conclude that the beneficiaries of such services are predominantly individuals described in subclause (I).

(iv) Minimum expense requirement**(I) In general**

An organization meets the requirements of this clause only if the appropriate State authority reasonably expects that the annual poverty program expenses of such organization will not be less than 75 percent of the annual aggregate expenses of such organization.

(II) Poverty program expense

For purposes of subclause (I)—

(aa) In general

The term “poverty program expense” means any expense in providing direct services referred to in clause (iii).

(bb) Exceptions

Such term shall not include any management or general expense, any expense for the purpose of influencing legislation (as defined in section 4911(d) of title 26), any expense for the

purpose of fundraising, any expense for a legal service provided on behalf of any individual referred to in clause (iii), any expense for providing tuition assistance relating to compulsory school attendance, and any expense that consists of a payment to an affiliate of the organization.

(v) Reporting requirement

The information required to be furnished under this clause about an organization is—

(I) the percentages determined by dividing the following categories of the organization's expenses for the year by the total expenses of the organization for the year: expenses for direct services, management expenses, general expenses, fundraising expenses, and payments to affiliates; and

(II) the category or categories (including food, shelter, education, substance abuse prevention or treatment, job training, or other) of services that constitute predominant activities of the organization.

(vi) Additional requirements for collection organizations

The requirements of this clause are met if the organization—

(I) maintains separate accounting for revenues and expenses; and

(II) makes available to the public information on the administrative and fundraising costs of the organization, and information as to the organizations receiving funds from the organization and the amount of such funds.

(vii) Special rule for States requiring tax uniformity

In the case of a State—

(I) that has a constitutional requirement of tax uniformity; and

(II) that, as of December 31, 1997, imposed a tax on personal income with—

(aa) a single flat rate applicable to all earned and unearned income (except insofar as any amount is not taxed pursuant to tax forgiveness provisions); and

(bb) no generally available exemptions or deductions to individuals;

the requirement of paragraph (2) shall be treated as met if the amount of the credit described in paragraph (2) is limited to a uniform percentage (but not greater than 25 percent) of State personal income tax liability (determined without regard to credits).

(4) Limitation on use of funds for startup and administrative activities

Except to the extent provided in subsection (b)(2) of this section, no part of the aggregate amount a State uses under paragraph (1) may be used to pay for the cost of the startup and administrative activities conducted under this subsection.

(5) Prohibition on use of funds for legal services or tuition assistance

No part of the aggregate amount a State uses under paragraph (1) may be used to provide legal services or to provide tuition assistance related to compulsory education requirements (not including tuition assistance for tutoring, camps, skills development, or other supplemental services or training).

(6) Prohibition on supplanting funds

No part of the aggregate amount a State uses under paragraph (1) may be used to supplant non-Federal funds that would be available, in the absence of Federal funds, to offset a revenue loss of the State attributable to a charity tax credit.

(Pub. L. 97-35, title VI, § 675C, as added Pub. L. 105-285, title II, § 201, Oct. 27, 1998, 112 Stat. 2731.)

PRIOR PROVISIONS

A prior section 9907, Pub. L. 97-35, title VI, § 678, Aug. 13, 1981, 95 Stat. 516, related to payments to States, prior to the general amendment of this chapter by Pub. L. 105-285.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9908, 9919 of this title.

§ 9908. Application and plan

(a) Designation of lead agency

(1) Designation

The chief executive officer of a State desiring to receive a grant or allotment under section 9905 or 9906 of this title shall designate, in an application submitted to the Secretary under subsection (b) of this section, an appropriate State agency that complies with the requirements of paragraph (2) to act as a lead agency for purposes of carrying out State activities under this chapter.

(2) Duties

The lead agency shall—

(A) develop the State plan to be submitted to the Secretary under subsection (b) of this section;

(B) in conjunction with the development of the State plan as required under subsection (b) of this section, hold at least one hearing in the State with sufficient time and statewide distribution of notice of such hearing, to provide to the public an opportunity to comment on the proposed use and distribution of funds to be provided through the grant or allotment under section 9905 or 9906 of this title for the period covered by the State plan; and

(C) conduct reviews of eligible entities under section 9914 of this title.

(3) Legislative hearing

In order to be eligible to receive a grant or allotment under section 9905 or 9906 of this title, the State shall hold at least one legislative hearing every 3 years in conjunction with the development of the State plan.

(b) State application and plan

Beginning with fiscal year 2000, to be eligible to receive a grant or allotment under section

9905 or 9906 of this title, a State shall prepare and submit to the Secretary an application and State plan covering a period of not less than 1 fiscal year and not more than 2 fiscal years. The plan shall be submitted not later than 30 days prior to the beginning of the first fiscal year covered by the plan, and shall contain such information as the Secretary shall require, including—

(1) an assurance that funds made available through the grant or allotment will be used—

(A) to support activities that are designed to assist low-income families and individuals, including families and individuals receiving assistance under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), homeless families and individuals, migrant or seasonal farmworkers, and elderly low-income individuals and families, and a description of how such activities will enable the families and individuals—

(i) to remove obstacles and solve problems that block the achievement of self-sufficiency (including self-sufficiency for families and individuals who are attempting to transition off a State program carried out under part A of title IV of the Social Security Act);

(ii) to secure and retain meaningful employment;

(iii) to attain an adequate education, with particular attention toward improving literacy skills of the low-income families in the communities involved, which may include carrying out family literacy initiatives;

(iv) to make better use of available income;

(v) to obtain and maintain adequate housing and a suitable living environment;

(vi) to obtain emergency assistance through loans, grants, or other means to meet immediate and urgent family and individual needs; and

(vii) to achieve greater participation in the affairs of the communities involved, including the development of public and private grassroots partnerships with local law enforcement agencies, local housing authorities, private foundations, and other public and private partners to—

(I) document best practices based on successful grassroots intervention in urban areas, to develop methodologies for widespread replication; and

(II) strengthen and improve relationships with local law enforcement agencies, which may include participation in activities such as neighborhood or community policing efforts;

(B) to address the needs of youth in low-income communities through youth development programs that support the primary role of the family, give priority to the prevention of youth problems and crime, and promote increased community coordination and collaboration in meeting the needs of youth, and support development and expansion of innovative community-based youth development programs that have demonstrated success in preventing or reducing youth crime, such as—

(i) programs for the establishment of violence-free zones that would involve youth development and intervention models (such as models involving youth mediation, youth mentoring, life skills training, job creation, and entrepreneurship programs); and

(ii) after-school child care programs; and

(C) to make more effective use of, and to coordinate with, other programs related to the purposes of this chapter (including State welfare reform efforts);

(2) a description of how the State intends to use discretionary funds made available from the remainder of the grant or allotment described in section 9907(b) of this title in accordance with this chapter, including a description of how the State will support innovative community and neighborhood-based initiatives related to the purposes of this chapter;

(3) information provided by eligible entities in the State, containing—

(A) a description of the service delivery system, for services provided or coordinated with funds made available through grants made under section 9907(a) of this title, targeted to low-income individuals and families in communities within the State;

(B) a description of how linkages will be developed to fill identified gaps in the services, through the provision of information, referrals, case management, and followup consultations;

(C) a description of how funds made available through grants made under section 9907(a) of this title will be coordinated with other public and private resources; and

(D) a description of how the local entity will use the funds to support innovative community and neighborhood-based initiatives related to the purposes of this chapter, which may include fatherhood initiatives and other initiatives with the goal of strengthening families and encouraging effective parenting;

(4) an assurance that eligible entities in the State will provide, on an emergency basis, for the provision of such supplies and services, nutritious foods, and related services, as may be necessary to counteract conditions of starvation and malnutrition among low-income individuals;

(5) an assurance that the State and the eligible entities in the State will coordinate, and establish linkages between, governmental and other social services programs to assure the effective delivery of such services to low-income individuals and to avoid duplication of such services, and a description of how the State and the eligible entities will coordinate the provision of employment and training activities, as defined in section 101¹ of such Act [29 U.S.C. 2801], in the State and in communities with entities providing activities through statewide and local workforce invest-

¹ See References in Text note below.

ment systems under the Workforce Investment Act of 1998;

(6) an assurance that the State will ensure coordination between antipoverty programs in each community in the State, and ensure, where appropriate, that emergency energy crisis intervention programs under title XXVI [42 U.S.C. 8621 et seq.] (relating to low-income home energy assistance) are conducted in such community;

(7) an assurance that the State will permit and cooperate with Federal investigations undertaken in accordance with section 9916 of this title;

(8) an assurance that any eligible entity in the State that received funding in the previous fiscal year through a community services block grant made under this chapter will not have its funding terminated under this chapter, or reduced below the proportional share of funding the entity received in the previous fiscal year unless, after providing notice and an opportunity for a hearing on the record, the State determines that cause exists for such termination or such reduction, subject to review by the Secretary as provided in section 9915(b) of this title;

(9) an assurance that the State and eligible entities in the State will, to the maximum extent possible, coordinate programs with and form partnerships with other organizations serving low-income residents of the communities and members of the groups served by the State, including religious organizations, charitable groups, and community organizations;

(10) an assurance that the State will require each eligible entity in the State to establish procedures under which a low-income individual, community organization, or religious organization, or representative of low-income individuals that considers its organization, or low-income individuals, to be inadequately represented on the board (or other mechanism) of the eligible entity to petition for adequate representation;

(11) an assurance that the State will secure from each eligible entity in the State, as a condition to receipt of funding by the entity through a community services block grant made under this chapter for a program, a community action plan (which shall be submitted to the Secretary, at the request of the Secretary, with the State plan) that includes a community-needs assessment for the community served, which may be coordinated with community-needs assessments conducted for other programs;

(12) an assurance that the State and all eligible entities in the State will, not later than fiscal year 2001, participate in the Results Oriented Management and Accountability System, another performance measure system for which the Secretary facilitated development pursuant to section 9917(b) of this title, or an alternative system for measuring performance and results that meets the requirements of that section, and a description of outcome measures to be used to measure eligible entity performance in promoting self-sufficiency, family stability, and community revitalization; and

(13) information describing how the State will carry out the assurances described in this subsection.

(c) Funding termination or reductions

For purposes of making a determination in accordance with subsection (b)(8) of this section with respect to—

(1) a funding reduction, the term “cause” includes—

(A) a statewide redistribution of funds provided through a community services block grant under this chapter to respond to—

(i) the results of the most recently available census or other appropriate data;

(ii) the designation of a new eligible entity; or

(iii) severe economic dislocation; or

(B) the failure of an eligible entity to comply with the terms of an agreement or a State plan, or to meet a State requirement, as described in section 9915(a) of this title; and

(2) a termination, the term “cause” includes the failure of an eligible entity to comply with the terms of an agreement or a State plan, or to meet a State requirement, as described in section 9915(a) of this title.

(d) Procedures and information

The Secretary may prescribe procedures for the purpose of assessing the effectiveness of eligible entities in carrying out the purposes of this chapter.

(e) Revisions and inspection

(1) Revisions

The chief executive officer of each State may revise any plan prepared under this section and shall submit the revised plan to the Secretary.

(2) Public inspection

Each plan or revised plan prepared under this section shall be made available for public inspection within the State in such a manner as will facilitate review of, and comment on, the plan.

(f) Transition

For fiscal year 2000, to be eligible to receive a grant or allotment under section 9905 or 9906 of this title, a State shall prepare and submit to the Secretary an application and State plan in accordance with the provisions of this chapter (as in effect on the day before October 27, 1998), rather than the provisions of subsections (a) through (c) of this section relating to applications and plans.

(Pub. L. 97-35, title VI, §676, as added Pub. L. 105-285, title II, §201, Oct. 27, 1998, 112 Stat. 2735.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(1)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV of the Act is classified generally to part A (§601 et seq.) of subchapter IV of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

Section 101 of such Act, referred to in subsec. (b)(5), is probably a reference to section 101 of the Workforce

Investment Act of 1998, Pub. L. 105-220, which is classified to section 2801 of Title 29, Labor.

The Workforce Investment Act of 1998, referred to in subsec. (b)(5), is Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 936, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

Title XXVI, referred to in subsec. (b)(6), is title XXVI of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 893, as amended, known as the Low-Income Home Energy Assistance Act of 1981, which is classified generally to subchapter II (§8621 et seq.) of chapter 94 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 8621 of this title and Tables.

PRIOR PROVISIONS

A prior section 9908, Pub. L. 97-35, title VI, §679, Aug. 13, 1981, 95 Stat. 517; Pub. L. 98-558, title II, §205, Oct. 30, 1984, 98 Stat. 2886; Pub. L. 99-425, title IV, §404(a), Sept. 30, 1986, 100 Stat. 969, related to withholding of funds, prior to the general amendment of this chapter by Pub. L. 105-285.

A prior section 676 of Pub. L. 97-35 was classified to section 9905 of this title, prior to the general amendment of this chapter by Pub. L. 105-285.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9905, 9914, 9915, 9916, 9917 of this title.

§ 9909. Designation and redesignation of eligible entities in unserved areas

(a) Qualified organization in or near area

(1) In general

If any geographic area of a State is not, or ceases to be, served by an eligible entity under this chapter, and if the chief executive officer of the State decides to serve such area, the chief executive officer may solicit applications from, and designate as an eligible entity—

(A) a private nonprofit organization (which may include an eligible entity) that is geographically located in the unserved area, that is capable of providing a broad range of services designed to eliminate poverty and foster self-sufficiency, and that meets the requirements of this chapter; and

(B) a private nonprofit eligible entity that is geographically located in an area contiguous to or within reasonable proximity of the unserved area and that is already providing related services in the unserved area.

(2) Requirement

In order to serve as the eligible entity for the area, an entity described in paragraph (1)(B) shall agree to add additional members to the board of the entity to ensure adequate representation—

(A) in each of the three required categories described in subparagraphs (A), (B), and (C) of section 9910(a)(2) of this title, by members that reside in the community comprised by the unserved area; and

(B) in the category described in section 9910(a)(2)(B) of this title, by members that reside in the neighborhood to be served.

(b) Special consideration

In designating an eligible entity under subsection (a) of this section, the chief executive officer shall grant the designation to an organization of demonstrated effectiveness in meeting

the goals and purposes of this chapter and may give priority, in granting the designation, to eligible entities that are providing related services in the unserved area, consistent with the needs identified by a community-needs assessment.

(c) No qualified organization in or near area

If no private, nonprofit organization is identified or determined to be qualified under subsection (a) of this section to serve the unserved area as an eligible entity the chief executive officer may designate an appropriate political subdivision of the State to serve as an eligible entity for the area. In order to serve as the eligible entity for that area, the political subdivision shall have a board or other mechanism as required in section 9910(b) of this title.

(Pub. L. 97-35, title VI, §676A, as added Pub. L. 105-285, title II, §201, Oct. 27, 1998, 112 Stat. 2739.)

PRIOR PROVISIONS

A prior section 9909, Pub. L. 97-35, title VI, §680, Aug. 13, 1981, 95 Stat. 517; Pub. L. 99-425, title IV, §405(c)(2), Sept. 30, 1986, 100 Stat. 970; Pub. L. 103-171, §7(c)(3), Dec. 2, 1993, 107 Stat. 1994, related to limitation on use of grants for construction and waiver of such limitation, prior to the general amendment of this chapter by Pub. L. 105-285.

A prior section 676A of Pub. L. 97-35 was classified to section 9905a of this title, prior to the general amendment of this chapter by Pub. L. 105-285.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9902 of this title.

§ 9910. Tripartite boards

(a) Private nonprofit entities

(1) Board

In order for a private, nonprofit entity to be considered to be an eligible entity for purposes of section 9902(1) of this title, the entity shall administer the community services block grant program through a tripartite board described in paragraph (2) that fully participates in the development, planning, implementation, and evaluation of the program to serve low-income communities.

(2) Selection and composition of board

The members of the board referred to in paragraph (1) shall be selected by the entity and the board shall be composed so as to assure that—

(A) $\frac{1}{3}$ of the members of the board are elected public officials, holding office on the date of selection, or their representatives, except that if the number of such elected officials reasonably available and willing to serve on the board is less than $\frac{1}{3}$ of the membership of the board, membership on the board of appointive public officials or their representatives may be counted in meeting such $\frac{1}{3}$ requirement;

(B)(i) not fewer than $\frac{1}{3}$ of the members are persons chosen in accordance with democratic selection procedures adequate to assure that these members are representative of low-income individuals and families in the neighborhood served; and

(ii) each representative of low-income individuals and families selected to represent a

specific neighborhood within a community under clause (i) resides in the neighborhood represented by the member; and

(C) the remainder of the members are officials or members of business, industry, labor, religious, law enforcement, education, or other major groups and interests in the community served.

(b) Public organizations

In order for a public organization to be considered to be an eligible entity for purposes of section 9902(1) of this title, the entity shall administer the community services block grant program through—

(1) a tripartite board, which shall have members selected by the organization and shall be composed so as to assure that not fewer than ½ of the members are persons chosen in accordance with democratic selection procedures adequate to assure that these members—

(A) are representative of low-income individuals and families in the neighborhood served;

(B) reside in the neighborhood served; and

(C) are able to participate actively in the development, planning, implementation, and evaluation of programs funded under this chapter; or

(2) another mechanism specified by the State to assure decisionmaking and participation by low-income individuals in the development, planning, implementation, and evaluation of programs funded under this chapter.

(Pub. L. 97–35, title VI, §676B, as added Pub. L. 105–285, title II, §201, Oct. 27, 1998, 112 Stat. 2740.)

PRIOR PROVISIONS

Prior sections 9910 and 9910a were omitted in the general amendment of this chapter by Pub. L. 105–285.

Section 9910, Pub. L. 97–35, title VI, §681, Aug. 13, 1981, 95 Stat. 518; Pub. L. 98–558, title II, §204, Oct. 30, 1984, 98 Stat. 2886; Pub. L. 99–425, title IV, §405(a), (b), Sept. 30, 1986, 100 Stat. 969, 970; Pub. L. 101–501, title IV, §§405, 407(b), Nov. 3, 1990, 104 Stat. 1252, 1255; Pub. L. 103–171, §7(a), Dec. 2, 1993, 107 Stat. 1993; Pub. L. 103–252, title II, §203, May 18, 1994, 108 Stat. 654, related to the discretionary authority of the Secretary.

Section 9910a, Pub. L. 97–35, title VI, §681A, as added Pub. L. 98–558, title II, §206, Oct. 30, 1984, 98 Stat. 2886; amended Pub. L. 99–425, title IV, §406, Sept. 30, 1986, 100 Stat. 970; Pub. L. 101–501, title IV, §§401(b), 406, Nov. 3, 1990, 104 Stat. 1251, 1253; Pub. L. 103–171, §7(c)(4), Dec. 2, 1993, 107 Stat. 1994; Pub. L. 103–252, title II, §204, May 18, 1994, 108 Stat. 655, related to community food and nutrition.

A prior section 9910b, Pub. L. 99–425, title IV, §408, Sept. 30, 1986, 100 Stat. 972, as amended, which related to demonstration partnership agreements addressing needs of poor, was transferred to section 9925 of this title.

A prior section 9910c, Pub. L. 97–35, title VI, §682, as added Pub. L. 103–252, title II, §205(2), May 18, 1994, 108 Stat. 655; amended Pub. L. 105–244, title I, §102(a)(13)(I), Oct. 7, 1998, 112 Stat. 1621, related to national or regional programs designed to provide instructional activities for low-income youth, prior to the general amendment of this chapter by Pub. L. 105–285.

A prior section 9910d, Pub. L. 100–485, title V, §505, Oct. 13, 1988, 102 Stat. 2404, as amended, which related to demonstration partnership agreements addressing needs of poor, was transferred to section 9926 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3026, 9812a, 9902, 9909, 9920 of this title.

§ 9911. Payments to Indian tribes

(a) Reservation

If, with respect to any State, the Secretary—

(1) receives a request from the governing body of an Indian tribe or tribal organization within the State that assistance under this chapter be made directly to such tribe or organization; and

(2) determines that the members of such tribe or tribal organization would be better served by means of grants made directly to provide benefits under this chapter,

the Secretary shall reserve from amounts that would otherwise be allotted to such State under section 9906 of this title for the fiscal year the amount determined under subsection (b) of this section.

(b) Determination of reserved amount

The Secretary shall reserve for the purpose of subsection (a) of this section from amounts that would otherwise be allotted to such State, not less than 100 percent of an amount that bears the same ratio to the State allotment for the fiscal year involved as the population of all eligible Indians for whom a determination has been made under subsection (a) of this section bears to the population of all individuals eligible for assistance through a community services block grant made under this chapter in such State.

(c) Awards

The sums reserved by the Secretary on the basis of a determination made under subsection (a) of this section shall be made available by grant to the Indian tribe or tribal organization serving the individuals for whom such a determination has been made.

(d) Plan

In order for an Indian tribe or tribal organization to be eligible for a grant award for a fiscal year under this section, the tribe or organization shall submit to the Secretary a plan for such fiscal year that meets such criteria as the Secretary may prescribe by regulation.

(e) Definitions

In this section:

(1) Indian tribe; tribal organization

The terms “Indian tribe” and “tribal organization” mean a tribe, band, or other organized group recognized in the State in which the tribe, band, or group resides, or considered by the Secretary of the Interior, to be an Indian tribe or an Indian organization for any purpose.

(2) Indian

The term “Indian” means a member of an Indian tribe or of a tribal organization.

(Pub. L. 97–35, title VI, §677, as added Pub. L. 105–285, title II, §201, Oct. 27, 1998, 112 Stat. 2741.)

PRIOR PROVISIONS

A prior section 9911, Pub. L. 97–35, title VI, §683, formerly §682, as added Pub. L. 101–501, title IV, §407(a), Nov. 3, 1990, 104 Stat. 1254; amended Pub. L. 103–171, §7(b), Dec. 2, 1993, 107 Stat. 1993; renumbered §683, Pub. L. 103–252, title II, §205(1), May 18, 1994, 108 Stat. 655, related to annual reports by Secretary, prior to the general amendment of this chapter by Pub. L. 105–285.

Another prior section 9911, Pub. L. 97-35, title VI, § 682, Aug. 13, 1981, 95 Stat. 518; Pub. L. 97-115, § 17(c), Dec. 29, 1981, 95 Stat. 1609; Pub. L. 97-274, Sept. 30, 1982, 96 Stat. 1183, related to transition provisions, prior to repeal by Pub. L. 101-501, § 407(a).

A prior section 677 of Pub. L. 97-35 was classified to section 9906 of this title, prior to the general amendment of this chapter by Pub. L. 105-285.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9906, 9922 of this title.

§ 9912. Office of Community Services

(a) Office

The Secretary shall carry out the functions of this chapter through an Office of Community Services, which shall be established in the Department of Health and Human Services. The Office shall be headed by a Director.

(b) Grants, contracts, and cooperative agreements

The Secretary shall carry out functions of this chapter through grants, contracts, or cooperative agreements.

(Pub. L. 97-35, title VI, § 678, as added Pub. L. 105-285, title II, § 201, Oct. 27, 1998, 112 Stat. 2742.)

PRIOR PROVISIONS

A prior section 9912, Pub. L. 97-35, title VI, § 684, formerly § 683, Aug. 13, 1981, 95 Stat. 519; Pub. L. 98-288, § 31(b), May 21, 1984, 98 Stat. 198; renumbered § 684, Pub. L. 103-252, title II, § 205(1), May 18, 1994, 108 Stat. 655, contained provisions repealing certain other statutory provisions, reauthorizing appropriations, and conforming references, prior to general amendment of this chapter by Pub. L. 105-285.

A prior section 678 of Pub. L. 97-35 was classified to section 9907 of this title, prior to the general amendment of this chapter by Pub. L. 105-285.

§ 9913. Training, technical assistance, and other activities

(a) Activities

(1) In general

The Secretary shall use amounts reserved in section 9903(b)(2) of this title—

(A) for training, technical assistance, planning, evaluation, and performance measurement, to assist States in carrying out corrective action activities and monitoring (to correct programmatic deficiencies of eligible entities), and for reporting and data collection activities, related to programs carried out under this chapter; and

(B) to distribute amounts in accordance with subsection (c) of this section.

(2) Grants, contracts, and cooperative agreements

The activities described in paragraph (1)(A) may be carried out by the Secretary through grants, contracts, or cooperative agreements with appropriate entities.

(b) Terms and technical assistance process

The process for determining the training and technical assistance to be carried out under this section shall—

(1) ensure that the needs of eligible entities and programs relating to improving program

quality (including quality of financial management practices) are addressed to the maximum extent feasible; and

(2) incorporate mechanisms to ensure responsiveness to local needs, including an ongoing procedure for obtaining input from the national and State networks of eligible entities.

(c) Distribution requirement

(1) In general

The amounts reserved under section 9903(b)(2)(A) of this title for activities to be carried out under this subsection shall be distributed directly to eligible entities, organizations, or associations described in paragraph (2) for the purpose of improving program quality (including quality of financial management practices), management information and reporting systems, and measurement of program results, and for the purpose of ensuring responsiveness to identified local needs.

(2) Eligible entities, organizations, or associations

Eligible entities, organizations, or associations described in this paragraph shall be eligible entities, or statewide or local organizations or associations, with demonstrated expertise in providing training to individuals and organizations on methods of effectively addressing the needs of low-income families and communities.

(Pub. L. 97-35, title VI, § 678A, as added Pub. L. 105-285, title II, § 201, Oct. 27, 1998, 112 Stat. 2742.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9903 of this title.

§ 9914. Monitoring of eligible entities

(a) In general

In order to determine whether eligible entities meet the performance goals, administrative standards, financial management requirements, and other requirements of a State, the State shall conduct the following reviews of eligible entities:

(1) A full onsite review of each such entity at least once during each 3-year period.

(2) An onsite review of each newly designated entity immediately after the completion of the first year in which such entity receives funds through the community services block grant program.

(3) Followup reviews including prompt return visits to eligible entities, and their programs, that fail to meet the goals, standards, and requirements established by the State.

(4) Other reviews as appropriate, including reviews of entities with programs that have had other Federal, State, or local grants (other than assistance provided under this chapter) terminated for cause.

(b) Requests

The State may request training and technical assistance from the Secretary as needed to comply with the requirements of this section.

(c) Evaluations by the Secretary

The Secretary shall conduct in several States in each fiscal year evaluations (including inves-

tigations) of the use of funds received by the States under this chapter in order to evaluate compliance with the provisions of this chapter, and especially with respect to compliance with section 9908(b) of this title. The Secretary shall submit, to each State evaluated, a report containing the results of such evaluations, and recommendations of improvements designed to enhance the benefit and impact of the activities carried out with such funds for people in need. On receiving the report, the State shall submit to the Secretary a plan of action in response to the recommendations contained in the report. The results of the evaluations shall be submitted annually to the Chairperson of the Committee on Education and the Workforce of the House of Representatives and the Chairperson of the Committee on Labor and Human Resources of the Senate as part of the report submitted by the Secretary in accordance with section 9917(b)(2) of this title.

(Pub. L. 97-35, title VI, §678B, as added Pub. L. 105-285, title II, §201, Oct. 27, 1998, 112 Stat. 2743.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9903, 9908, 9915 of this title.

§ 9915. Corrective action; termination and reduction of funding

(a) Determination

If the State determines, on the basis of a final decision in a review pursuant to section 9914 of this title, that an eligible entity fails to comply with the terms of an agreement, or the State plan, to provide services under this chapter or to meet appropriate standards, goals, and other requirements established by the State (including performance objectives), the State shall—

(1) inform the entity of the deficiency to be corrected;

(2) require the entity to correct the deficiency;

(3)(A) offer training and technical assistance, if appropriate, to help correct the deficiency, and prepare and submit to the Secretary a report describing the training and technical assistance offered; or

(B) if the State determines that such training and technical assistance are not appropriate, prepare and submit to the Secretary a report stating the reasons for the determination;

(4)(A) at the discretion of the State (taking into account the seriousness of the deficiency and the time reasonably required to correct the deficiency), allow the entity to develop and implement, within 60 days after being informed of the deficiency, a quality improvement plan to correct such deficiency within a reasonable period of time, as determined by the State; and

(B) not later than 30 days after receiving from an eligible entity a proposed quality improvement plan pursuant to subparagraph (A), either approve such proposed plan or specify the reasons why the proposed plan cannot be approved; and

(5) after providing adequate notice and an opportunity for a hearing, initiate proceedings

to terminate the designation of or reduce the funding under this chapter of the eligible entity unless the entity corrects the deficiency.

(b) Review

A determination to terminate the designation or reduce the funding of an eligible entity is reviewable by the Secretary. The Secretary shall, upon request, review such a determination. The review shall be completed not later than 90 days after the Secretary receives from the State all necessary documentation relating to the determination to terminate the designation or reduce the funding. If the review is not completed within 90 days, the determination of the State shall become final at the end of the 90th day.

(c) Direct assistance

Whenever a State violates the assurances contained in section 9908(b)(3) of this title and terminates or reduces the funding of an eligible entity prior to the completion of the State hearing described in that section and the Secretary's review as required in subsection (b) of this section, the Secretary is authorized to provide financial assistance under this chapter to the eligible entity affected until the violation is corrected. In such a case, the grant or allotment for the State under section 9905 or 9906 of this title for the earliest appropriate fiscal year shall be reduced by an amount equal to the funds provided under this subsection to such eligible entity.

(Pub. L. 97-35, title VI, §678C, as added Pub. L. 105-285, title II, §201, Oct. 27, 1998, 112 Stat. 2743.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9903, 9908, 9917 of this title.

§ 9916. Fiscal controls, audits, and withholding

(a) Fiscal controls, procedures, audits, and inspections

(1) In general

A State that receives funds under this chapter shall—

(A) establish fiscal control and fund accounting procedures necessary to assure the proper disbursement of and accounting for Federal funds paid to the State under this chapter, including procedures for monitoring the funds provided under this chapter;

(B) ensure that cost and accounting standards of the Office of Management and Budget apply to a recipient of the funds under this chapter;

(C) subject to paragraph (2), prepare, at least every year, an audit of the expenditures of the State of amounts received under this chapter and amounts transferred to carry out the purposes of this chapter; and

(D) make appropriate books, documents, papers, and records available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for examination, copying, or mechanical reproduction on or off the premises of the appropriate entity upon a reasonable request for the items.

(2) Audits

(A) In general

Subject to subparagraph (B), each audit required by subsection (a)(1)(C) of this section

shall be conducted by an entity independent of any agency administering activities or services carried out under this chapter and shall be conducted in accordance with generally accepted accounting principles.

(B) Single audit requirements

Audits shall be conducted under this paragraph in the manner and to the extent provided in chapter 75 of title 31 (commonly known as the "Single Audit Act Amendments of 1996").

(C) Submission of copies

Within 30 days after the completion of each such audit in a State, the chief executive officer of the State shall submit a copy of such audit to any eligible entity that was the subject of the audit at no charge, to the legislature of the State, and to the Secretary.

(3) Repayments

The State shall repay to the United States amounts found not to have been expended in accordance with this chapter or the Secretary may offset such amounts against any other amount to which the State is or may become entitled under this chapter.

(b) Withholding

(1) In general

The Secretary shall, after providing adequate notice and an opportunity for a hearing conducted within the affected State, withhold funds from any State that does not utilize the grant or allotment under section 9905 or 9906 of this title in accordance with the provisions of this chapter, including the assurances such State provided under section 9908 of this title.

(2) Response to complaints

The Secretary shall respond in an expeditious and speedy manner to complaints of a substantial or serious nature that a State has failed to use funds in accordance with the provisions of this chapter, including the assurances provided by the State under section 9908 of this title. For purposes of this paragraph, a complaint of a failure to meet any one of the assurances provided under section 9908 of this title that constitutes disregarding that assurance shall be considered to be a complaint of a serious nature.

(3) Investigations

Whenever the Secretary determines that there is a pattern of complaints of failures described in paragraph (2) from any State in any fiscal year, the Secretary shall conduct an investigation of the use of funds received under this chapter by such State in order to ensure compliance with the provisions of this chapter.

(Pub. L. 97-35, title VI, §678D, as added Pub. L. 105-285, title II, §201, Oct. 27, 1998, 112 Stat. 2744.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9903, 9908 of this title.

§ 9917. Accountability and reporting requirements

(a) State accountability and reporting requirements

(1) Performance measurement

(A) In general

By October 1, 2001, each State that receives funds under this chapter shall participate, and shall ensure that all eligible entities in the State participate, in a performance measurement system, which may be a performance measurement system for which the Secretary facilitated development pursuant to subsection (b) of this section, or an alternative system that the Secretary is satisfied meets the requirements of subsection (b) of this section.

(B) Local agencies

The State may elect to have local agencies that are subcontractors of the eligible entities under this chapter participate in the performance measurement system. If the State makes that election, references in this section to eligible entities shall be considered to include the local agencies.

(2) Annual report

Each State shall annually prepare and submit to the Secretary a report on the measured performance of the State and the eligible entities in the State. Prior to the participation of the State in the performance measurement system, the State shall include in the report any information collected by the State relating to such performance. Each State shall also include in the report an accounting of the expenditure of funds received by the State through the community services block grant program, including an accounting of funds spent on administrative costs by the State and the eligible entities, and funds spent by eligible entities on the direct delivery of local services, and shall include information on the number of and characteristics of clients served under this chapter in the State, based on data collected from the eligible entities. The State shall also include in the report a summary describing the training and technical assistance offered by the State under section 9915(a)(3) of this title during the year covered by the report.

(b) Secretary's accountability and reporting requirements

(1) Performance measurement

The Secretary, in collaboration with the States and with eligible entities throughout the Nation, shall facilitate the development of one or more model performance measurement systems, which may be used by the States and by eligible entities to measure their performance in carrying out the requirements of this chapter and in achieving the goals of their community action plans. The Secretary shall provide technical assistance, including support for the enhancement of electronic data systems, to States and to eligible entities to enhance their capability to collect and report data for such a system and to aid in their participation in such a system.

(2) Reporting requirements

At the end of each fiscal year beginning after September 30, 1999, the Secretary shall, directly or by grant or contract, prepare a report containing—

(A) a summary of the planned use of funds by each State, and the eligible entities in the State, under the community services block grant program, as contained in each State plan submitted pursuant to section 9908 of this title;

(B) a description of how funds were actually spent by the State and eligible entities in the State, including a breakdown of funds spent on administrative costs and on the direct delivery of local services by eligible entities;

(C) information on the number of entities eligible for funds under this chapter, the number of low-income persons served under this chapter, and such demographic data on the low-income populations served by eligible entities as is determined by the Secretary to be feasible;

(D) a comparison of the planned uses of funds for each State and the actual uses of the funds;

(E) a summary of each State's performance results, and the results for the eligible entities, as collected and submitted by the States in accordance with subsection (a)(2) of this section; and

(F) any additional information that the Secretary considers to be appropriate to carry out this chapter, if the Secretary informs the States of the need for such additional information and allows a reasonable period of time for the States to collect and provide the information.

(3) Submission

The Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate the report described in paragraph (2), and any comments the Secretary may have with respect to such report. The report shall include definitions of direct and administrative costs used by the Department of Health and Human Services for programs funded under this chapter.

(4) Costs

Of the funds reserved under section 9903(b)(3) of this title, not more than \$350,000 shall be available to carry out the reporting requirements contained in paragraph (2).

(Pub. L. 97-35, title VI, §678E, as added Pub. L. 105-285, title II, §201, Oct. 27, 1998, 112 Stat. 2746.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9903, 9908, 9914 of this title.

§ 9918. Limitations on use of funds**(a) Construction of facilities****(1) Limitations**

Except as provided in paragraph (2), grants made under this chapter (other than amounts

reserved under section 9903(b)(3) of this title) may not be used by the State, or by any other person with which the State makes arrangements to carry out the purposes of this chapter, for the purchase or improvement of land, or the purchase, construction, or permanent improvement (other than low-cost residential weatherization or other energy-related home repairs) of any building or other facility.

(2) Waiver

The Secretary may waive the limitation contained in paragraph (1) upon a State request for such a waiver, if the Secretary finds that the request describes extraordinary circumstances to justify the purchase of land or the construction of facilities (or the making of permanent improvements) and that permitting the waiver will contribute to the ability of the State to carry out the purposes of this chapter.

(b) Political activities**(1) Treatment as a State or local agency**

For purposes of chapter 15 of title 5, any entity that assumes responsibility for planning, developing, and coordinating activities under this chapter and receives assistance under this chapter shall be deemed to be a State or local agency. For purposes of paragraphs (1) and (2) of section 1502(a) of such title, any entity receiving assistance under this chapter shall be deemed to be a State or local agency.

(2) Prohibitions

Programs assisted under this chapter shall not be carried on in a manner involving the use of program funds, the provision of services, or the employment or assignment of personnel, in a manner supporting or resulting in the identification of such programs with—

(A) any partisan or nonpartisan political activity or any political activity associated with a candidate, or contending faction or group, in an election for public or party office;

(B) any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election; or

(C) any voter registration activity.

(3) Rules and regulations

The Secretary, after consultation with the Office of Personnel Management, shall issue rules and regulations to provide for the enforcement of this subsection, which shall include provisions for summary suspension of assistance or other action necessary to permit enforcement on an emergency basis.

(c) Nondiscrimination**(1) In general**

No person shall, on the basis of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds made available under this chapter. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) or with respect

to an otherwise qualified individual with a disability as provided in section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), or title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131 et seq.) shall also apply to any such program or activity.

(2) Action of Secretary

Whenever the Secretary determines that a State that has received a payment under this chapter has failed to comply with paragraph (1) or an applicable regulation, the Secretary shall notify the chief executive officer of the State and shall request that the officer secure compliance. If within a reasonable period of time, not to exceed 60 days, the chief executive officer fails or refuses to secure compliance, the Secretary is authorized to—

(A) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;

(B) exercise the powers and functions provided by title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), or title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131 et seq.), as may be applicable; or

(C) take such other action as may be provided by law.

(3) Action of Attorney General

When a matter is referred to the Attorney General pursuant to paragraph (2), or whenever the Attorney General has reason to believe that the State is engaged in a pattern or practice of discrimination in violation of the provisions of this subsection, the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including injunctive relief.

(Pub. L. 97-35, title VI, §678F, as added Pub. L. 105-285, title II, §201, Oct. 27, 1998, 112 Stat. 2747.)

REFERENCES IN TEXT

The Age Discrimination Act of 1975, referred to in subsec. (c)(1), (2)(B), is title III of Pub. L. 94-135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

The Americans with Disabilities Act of 1990, referred to in subsec. (c)(1), (2)(B), is Pub. L. 101-336, July 26, 1990, 104 Stat. 327, as amended. Title II of the Act is classified generally to subchapter II (§12131 et seq.) of chapter 126 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (c)(2)(B), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9903 of this title.

§ 9919. Drug and child support services and referrals

(a) Drug testing and rehabilitation

(1) In general

Nothing in this chapter shall be construed to prohibit a State from testing participants in programs, activities, or services carried out or provided under this chapter for controlled substances. A State that conducts such testing shall inform the participants who test positive for any of such substances about the availability of treatment or rehabilitation services and refer such participants for appropriate treatment or rehabilitation services.

(2) Administrative expenses

Any funds provided under this chapter expended for such testing shall be considered to be expended for administrative expenses and shall be subject to the limitation specified in section 9907(b)(2) of this title.

(3) Definition

In this subsection, the term “controlled substance” has the meaning given the term in section 802 of title 21.

(b) Child support services and referrals

During each fiscal year for which an eligible entity receives a grant under section 9907 of this title, such entity shall—

(1) inform custodial parents in single-parent families that participate in programs, activities, or services carried out or provided under this chapter about the availability of child support services; and

(2) refer eligible parents to the child support offices of State and local governments.

(Pub. L. 97-35, title VI, §678G, as added Pub. L. 105-285, title II, §201, Oct. 27, 1998, 112 Stat. 2749.)

§ 9920. Operational rule

(a) Religious organizations included as non-governmental providers

For any program carried out by the Federal Government, or by a State or local government under this chapter, the government shall consider, on the same basis as other nongovernmental organizations, religious organizations to provide the assistance under the program, so long as the program is implemented in a manner consistent with the Establishment Clause of the first amendment to the Constitution. Neither the Federal Government nor a State or local government receiving funds under this chapter shall discriminate against an organization that provides assistance under, or applies to provide assistance under, this chapter, on the basis that the organization has a religious character.

(b) Religious character and independence

(1) In general

A religious organization that provides assistance under a program described in subsection (a) of this section shall retain its religious character and control over the definition, development, practice, and expression of its religious beliefs.

(2) Additional safeguards

Neither the Federal Government nor a State or local government shall require a religious organization—

(A) to alter its form of internal governance, except (for purposes of administration of the community services block grant program) as provided in section 9910 of this title; or

(B) to remove religious art, icons, scripture, or other symbols;

in order to be eligible to provide assistance under a program described in subsection (a) of this section.

(3) Employment practices

A religious organization's exemption provided under section 2000e-1 of this title regarding employment practices shall not be affected by its participation in, or receipt of funds from, programs described in subsection (a) of this section.

(c) Limitations on use of funds for certain purposes

No funds provided directly to a religious organization to provide assistance under any program described in subsection (a) of this section shall be expended for sectarian worship, instruction, or proselytization.

(d) Fiscal accountability

(1) In general

Except as provided in paragraph (2), any religious organization providing assistance under any program described in subsection (a) of this section shall be subject to the same regulations as other nongovernmental organizations to account in accord with generally accepted accounting principles for the use of such funds provided under such program.

(2) Limited audit

Such organization shall segregate government funds provided under such program into a separate account. Only the government funds shall be subject to audit by the government.

(e) Treatment of eligible entities and other intermediate organizations

If an eligible entity or other organization (referred to in this subsection as an "intermediate organization"), acting under a contract, or grant or other agreement, with the Federal Government or a State or local government, is given the authority under the contract or agreement to select nongovernmental organizations to provide assistance under the programs described in subsection (a) of this section, the intermediate organization shall have the same duties under this section as the government.

(Pub. L. 97-35, title VI, §679, as added Pub. L. 105-285, title II, §201, Oct. 27, 1998, 112 Stat. 2749.)

PRIOR PROVISIONS

A prior section 679 of Pub. L. 97-35 was classified to section 9908 of this title, prior to the general amendment of this chapter by Pub. L. 105-285.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9902 of this title.

§ 9921. Discretionary authority of Secretary

(a) Grants, contracts, arrangements, loans, and guarantees

(1) In general

The Secretary shall, from funds reserved under section 9903(b)(3) of this title, make grants, loans, or guarantees to States and public agencies and private, nonprofit organizations, or enter into contracts or jointly financed cooperative arrangements with States and public agencies and private, nonprofit organizations (and for-profit organizations, to the extent specified in paragraph (2)(E)) for each of the objectives described in paragraphs (2) through (4).

(2) Community economic development

(A) Economic development activities

The Secretary shall make grants described in paragraph (1) on a competitive basis to private, nonprofit organizations that are community development corporations to provide technical and financial assistance for economic development activities designed to address the economic needs of low-income individuals and families by creating employment and business development opportunities.

(B) Consultation

The Secretary shall exercise the authority provided under subparagraph (A) after consultation with other relevant Federal officials.

(C) Governing boards

For a community development corporation to receive funds to carry out this paragraph, the corporation shall be governed by a board that shall consist of residents of the community and business and civic leaders and shall have as a principal purpose planning, developing, or managing low-income housing or community development projects.

(D) Geographic distribution

In making grants to carry out this paragraph, the Secretary shall take into consideration the geographic distribution of funding among States and the relative proportion of funding among rural and urban areas.

(E) Reservation

Of the amounts made available to carry out this paragraph, the Secretary may reserve not more than 1 percent for each fiscal year to make grants to private, nonprofit organizations or to enter into contracts with private, nonprofit or for-profit organizations to provide technical assistance to aid community development corporations in developing or implementing activities funded to carry out this paragraph and to evaluate activities funded to carry out this paragraph.

(3) Rural community development activities

The Secretary shall provide the assistance described in paragraph (1) for rural community development activities, which shall include providing—

(A) grants to private, nonprofit corporations to enable the corporations to provide

assistance concerning home repair to rural low-income families and concerning planning and developing low-income rural rental housing units; and

(B) grants to multistate, regional, private, nonprofit organizations to enable the organizations to provide training and technical assistance to small, rural communities concerning meeting their community facility needs.

(4) Neighborhood innovation projects

The Secretary shall provide the assistance described in paragraph (1) for neighborhood innovation projects, which shall include providing grants to neighborhood-based private, nonprofit organizations to test or assist in the development of new approaches or methods that will aid in overcoming special problems identified by communities or neighborhoods or otherwise assist in furthering the purposes of this chapter, and which may include providing assistance for projects that are designed to serve low-income individuals and families who are not being effectively served by other programs.

(b) Evaluation

The Secretary shall require all activities receiving assistance under this section to be evaluated for their effectiveness. Funding for such evaluations shall be provided as a stated percentage of the assistance or through a separate grant awarded by the Secretary specifically for the purpose of evaluation of a particular activity or group of activities.

(c) Annual report

The Secretary shall compile an annual report containing a summary of the evaluations required in subsection (b) of this section and a listing of all activities assisted under this section. The Secretary shall annually submit the report to the Chairperson of the Committee on Education and the Workforce of the House of Representatives and the Chairperson of the Committee on Labor and Human Resources of the Senate.

(Pub. L. 97-35, title VI, § 680, as added Pub. L. 105-285, title II, § 201, Oct. 27, 1998, 112 Stat. 2750.)

PRIOR PROVISIONS

A prior section 680 of Pub. L. 97-35 was classified to section 9909 of this title, prior to the general amendment of this chapter by Pub. L. 105-285.

PROCEDURES TO PERMIT GRANT FUNDS OR INTANGIBLE PROPERTY ACQUIRED BY GRANT FUNDS TO BECOME SOLE PROPERTY OF GRANTEEES

Pub. L. 107-116, title II, Jan. 10, 2002, 115 Stat. 2196, provided in part: "That the Secretary shall establish procedures regarding the disposition of intangible property which permits grant funds, or intangible assets acquired with funds authorized under section 680 of the Community Services Block Grant Act, as amended [42 U.S.C. 9921], to become the sole property of such grantees after a period of not more than 12 years after the end of the grant for purposes and uses consistent with the original grant".

Similar provisions were contained in the following prior appropriation act:

Pub. L. 106-554, §1(a)(1) [title II], Dec. 21, 2000, 114 Stat. 2763, 2763A-23.

Pub. L. 106-113, div. B, §1000(a)(4) [title II], Nov. 29, 1999, 113 Stat. 1535, 1501A-235.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9903 of this title.

§ 9922. Community food and nutrition programs

(a) Grants

The Secretary may, through grants to public and private, nonprofit agencies, provide for community-based, local, statewide, and national programs—

(1) to coordinate private and public food assistance resources, wherever the grant recipient involved determines such coordination to be inadequate, to better serve low-income populations;

(2) to assist low-income communities to identify potential sponsors of child nutrition programs and to initiate such programs in underserved or unserved areas; and

(3) to develop innovative approaches at the State and local level to meet the nutrition needs of low-income individuals.

(b) Allotments and distribution of funds

(1) Not to exceed \$6,000,000 in appropriations

Of the amount appropriated for a fiscal year to carry out this section (but not to exceed \$6,000,000), the Secretary shall distribute funds for grants under subsection (a) of this section as follows:

(A) Allotments

From a portion equal to 60 percent of such amount (but not to exceed \$3,600,000), the Secretary shall allot for grants to eligible agencies for statewide programs in each State the amount that bears the same ratio to such portion as the low-income and unemployed population of such State bears to the low-income and unemployed population of all the States.

(B) Competitive grants

From a portion equal to 40 percent of such amount (but not to exceed \$2,400,000), the Secretary shall make grants on a competitive basis to eligible agencies for local and statewide programs.

(2) Greater available appropriations

Any amounts appropriated for a fiscal year to carry out this section in excess of \$6,000,000 shall be allotted as follows:

(A) Allotments

The Secretary shall use 40 percent of such excess to allot for grants under subsection (a) of this section to eligible agencies for statewide programs in each State an amount that bears the same ratio to 40 percent of such excess as the low-income and unemployed population of such State bears to the low-income and unemployed population of all the States.

(B) Competitive grants for local and statewide programs

The Secretary shall use 40 percent of such excess to make grants under subsection (a) of this section on a competitive basis to eligible agencies for local and statewide programs.

(C) Competitive grants for nationwide programs

The Secretary shall use the remaining 20 percent of such excess to make grants under subsection (a) of this section on a competitive basis to eligible agencies for nationwide programs, including programs benefiting Indians, as defined in section 9911 of this title, and migrant or seasonal farmworkers.

(3) Eligibility for allotments for statewide programs

To be eligible to receive an allotment under paragraph (1)(A) or (2)(A), an eligible agency shall demonstrate that the proposed program is statewide in scope and represents a comprehensive and coordinated effort to alleviate hunger within the State.

(4) Minimum allotments for statewide programs

(A) In general

From the amounts allotted under paragraphs (1)(A) and (2)(A), the minimum total allotment for each State for each fiscal year shall be—

- (i) \$15,000 if the total amount appropriated to carry out this section is not less than \$7,000,000 but less than \$10,000,000;
- (ii) \$20,000 if the total amount appropriated to carry out this section is not less than \$10,000,000 but less than \$15,000,000; or
- (iii) \$30,000 if the total amount appropriated to carry out this section is not less than \$15,000,000.

(B) Definition

In this paragraph, the term “State” does not include Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(5) Maximum grants

From funds made available under paragraphs (1)(B) and (2)(B) for any fiscal year, the Secretary may not make grants under subsection (a) of this section to an eligible agency in an aggregate amount exceeding \$50,000. From funds made available under paragraph (2)(C) for any fiscal year, the Secretary may not make grants under subsection (a) of this section to an eligible agency in an aggregate amount exceeding \$300,000.

(c) Report

For each fiscal year, the Secretary shall prepare and submit, to the Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate, a report concerning the grants made under this section. Such report shall include—

- (1) a list of grant recipients;
- (2) information on the amount of funding awarded to each grant recipient; and
- (3) a summary of the activities performed by the grant recipients with funding awarded under this section and a description of the manner in which such activities meet the objectives described in subsection (a) of this section.

(d) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for each of fiscal years 1999 through 2003. (Pub. L. 97-35, title VI, §681, as added Pub. L. 105-285, title II, §201, Oct. 27, 1998, 112 Stat. 2752.)

PRIOR PROVISIONS

A prior section 681 of Pub. L. 97-35 was classified to section 9910 of this title, prior to the general amendment of this chapter by Pub. L. 105-285.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9903 of this title.

§ 9923. National or regional programs designed to provide instructional activities for low-income youth

(a) General authority

The Secretary is authorized to make a grant to an eligible service provider to administer national or regional programs to provide instructional activities for low-income youth. In making such a grant, the Secretary shall give priority to eligible service providers that have a demonstrated ability to operate such a program.

(b) Program requirements

Any instructional activity carried out by an eligible service provider receiving a grant under this section shall be carried out on the campus of an institution of higher education (as defined in section 1141(a)¹ of title 20) and shall include—

- (1) access to the facilities and resources of such an institution;
- (2) an initial medical examination and follow-up referral or treatment, without charge, for youth during their participation in such activity;
- (3) at least one nutritious meal daily, without charge, for participating youth during each day of participation;
- (4) high quality instruction in a variety of sports (that shall include swimming and that may include dance and any other high quality recreational activity) provided by coaches and teachers from institutions of higher education and from elementary and secondary schools (as defined in section 7801 of title 20); and
- (5) enrichment instruction and information on matters relating to the well-being of youth, to include educational opportunities and information on study practices, education for the prevention of drug and alcohol abuse, and information on health and nutrition, career opportunities, and family and job responsibilities.

(5) enrichment instruction and information on matters relating to the well-being of youth, to include educational opportunities and information on study practices, education for the prevention of drug and alcohol abuse, and information on health and nutrition, career opportunities, and family and job responsibilities.

(c) Advisory committee; partnerships

The eligible service provider shall, in each community in which a program is funded under this section—

- (1) ensure that—
 - (A) a community-based advisory committee is established, with representatives from local youth, family, and social service organizations, schools, entities providing park and recreation services, and other community-based organizations serving high-risk youth; or

¹ See References in Text note below.

(B) an existing community-based advisory board, commission, or committee with similar membership is utilized to serve as the committee described in subparagraph (A); and

(2) enter into formal partnerships with youth-serving organizations or other appropriate social service entities in order to link program participants with year-round services in their home communities that support and continue the objectives of this chapter.

(d) Eligible providers

A service provider that is a national private, nonprofit organization, a coalition of such organizations, or a private, nonprofit organization applying jointly with a business concern shall be eligible to apply for a grant under this section if—

- (1) the applicant has demonstrated experience in operating a program providing instruction to low-income youth;
- (2) the applicant agrees to contribute an amount (in cash or in kind, fairly evaluated) of not less than 25 percent of the amount requested, for the program funded through the grant;
- (3) the applicant agrees to use no funds from a grant authorized under this section for administrative expenses; and
- (4) the applicant agrees to comply with the regulations or program guidelines promulgated by the Secretary for use of funds made available through the grant.

(e) Application process

To be eligible to receive a grant under this section, a service provider shall submit to the Secretary, for approval, an application at such time, in such manner, and containing such information as the Secretary may require.

(f) Promulgation of regulations or program guidelines

The Secretary shall promulgate regulations or program guidelines to ensure funds made available through a grant made under this section are used in accordance with the objectives of this chapter.

(g) Authorization of appropriations

There are authorized to be appropriated \$15,000,000 for each of fiscal years 1999 through 2003 for grants to carry out this section.

(Pub. L. 97-35, title VI, §682, as added Pub. L. 105-285, title II, §201, Oct. 27, 1998, 112 Stat. 2753; amended Pub. L. 107-110, title X, §1076(ee), Jan. 8, 2002, 115 Stat. 2093.)

REFERENCES IN TEXT

Section 1141(a) of title 20, referred to in subsec. (b), was repealed by Pub. L. 105-244, §3, title I, §101(b), title VII, §702, Oct. 7, 1998, 112 Stat. 1585, 1616, 1803, effective Oct. 1, 1998. However, the term “institution of higher education” is defined in section 1001 of Title 20, Education.

PRIOR PROVISIONS

A prior section 682 of Pub. L. 97-35 was classified to section 9910c of this title, prior to the general amendment of this chapter by Pub. L. 105-285.

Another prior section 682 of Pub. L. 97-35 was renumbered section 683 and was classified to section 9911 of

this title, prior to the general amendment of this chapter by Pub. L. 105-285.

Another prior section 682 of Pub. L. 97-35 was classified to section 9911 of this title, prior to repeal by Pub. L. 101-501.

AMENDMENTS

2002—Subsec. (b)(4). Pub. L. 107-110 substituted “7801” for “8801”.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107-110, set out as an Effective Date note under section 6301 of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9903 of this title.

§ 9924. References

Any reference in any provision of law to the poverty line set forth in section 624 or 625 of the Economic Opportunity Act of 1964 shall be construed to be a reference to the poverty line defined in section 9902 of this title. Except as otherwise provided, any reference in any provision of law to any community action agency designated under title II of the Economic Opportunity Act of 1964 shall be construed to be a reference to an entity eligible to receive funds under the community services block grant program.

(Pub. L. 97-35, title VI, §683, as added Pub. L. 105-285, title II, §201, Oct. 27, 1998, 112 Stat. 2755.)

REFERENCES IN TEXT

The Economic Opportunity Act of 1964, referred to in text, is Pub. L. 88-452, Aug. 20, 1964, 78 Stat. 508, as amended. Title II of the Act was classified generally to subchapter II (§2781 et seq.) of chapter 34 of this title prior to repeal by Pub. L. 97-35, title VI, §683(a), Aug. 13, 1981, 95 Stat. 519. Section 625 of the Act, which was subsequently renumbered section 624 of the Act and related to the poverty line, was classified to section 2971d of this title, prior to repeal by section 683(a) of Pub. L. 97-35. For complete classification of this Act to the Code, see Tables.

PRIOR PROVISIONS

A prior section 683 of Pub. L. 97-35 was classified to section 9911 of this title, prior to the general amendment of this chapter by Pub. L. 105-285.

Another prior section 683 of Pub. L. 97-35 was renumbered section 684, and was classified to section 9912 of this title, prior to the general amendment of this chapter by Pub. L. 105-285.

§ 9925. Demonstration partnership agreements addressing needs of poor

(a) General authority

(1) In order to stimulate the development of new approaches to provide for greater self-sufficiency of the poor, to test and evaluate such new approaches, to disseminate project results and evaluation findings so that such approaches can be replicated, and to strengthen the integration, coordination, and redirection of activities to promote maximum self-sufficiency among the poor, the Secretary may make grants from funds appropriated under subsection (e) of this section to eligible entities for the development and implementation of new and innovative ap-

proaches to deal with particularly critical needs or problems of the poor which are common to a number of communities. Grants may be made only with respect to applications which—

(A) involve activities which can be incorporated into or be closely coordinated with eligible entities' ongoing programs;

(B) involve significant new combinations of resources or new and innovative approaches involving partnership agreements;

(C) are structured in a way that will, within the limits of the type of assistance or activities contemplated, most fully and effectively promote the purposes of the Community Services Block Grant Act [42 U.S.C. 9901 et seq.]; and

(D) contain an assurance that the applicant for such grants will obtain an independent, methodologically sound evaluation of the effectiveness of the activities carried out with such grant and will submit such evaluation to the Secretary.

(2) No grant may be made under this section unless an application is submitted to the Secretary at such time, in such manner, and containing or accompanied by such information, as the Secretary may require.

(3) Initial and subsequent grant awards may fully fund projects for periods of up to 3 years.

(b) Federal share; limitations

(1)(A) Subject to subparagraph (B), grants awarded pursuant to this section shall be used for programs and shall not exceed 50 per centum of the cost of such programs.

(B) After the first funding period for which an eligible entity receives a grant under this section to carry out a program, the amount of a subsequent grant made under this section to such entity to carry out such program may not exceed 80 percent of the amount of the grant previously received by such entity under this section to carry out such program.

(2) Non-Federal contributions may be in cash or in kind, fairly evaluated, including but not limited to plant, equipment, or services.

(3) Not more than one grant in each fiscal year may be made to any eligible entity, and no grant may exceed \$350,000. Not more than 2 grants may be made under this section to an eligible entity to carry out a particular program.

(4) No application may be approved for assistance under this section unless the Secretary is satisfied that—

(A) the activities to be carried out under the application will be in addition to, and not in substitution for, activities previously carried on without Federal assistance; and

(B) funds or other resources devoted to programs designed to meet the needs of the poor within the community, area, or State will not be diminished in order to provide the matching contributions required under this section.

(c) Programs directed to special populations

(1) In addition to the grant programs described in subsection (a) of this section, the Secretary may make grants to community action agencies for the purpose of enabling such agencies to demonstrate new approaches to dealing with the problems caused by entrenched, chronic unem-

ployment and lack of economic opportunities for urban youth. Demonstrations shall include such activities as peer counseling, mentoring, development of job skills, assistance with social skills, community services, family literacy, parenting skills, opportunities for employment or entrepreneurship, and other services designed to assist such at-risk youth to continue their education, to secure meaningful employment, to perform community service, or to pursue other productive alternatives within the community.

(2) Such grants may be made only with respect to applications that—

(A) identify and describe the population to be served, the problems to be addressed, the overall approach and methods of outreach and recruitment to be used, and the services to be provided;

(B) describe how the approach to be used differs from other approaches used for the population to be served by the project;

(C) describe the objectives of the project and contain a plan for measuring progress toward meeting those objectives; and

(D) contain assurances that the grantee will report on the progress and results of the demonstration at such times and in such manner as the Secretary shall require.

(3) Notwithstanding subsection (b) of this section, such grants shall not exceed 80 percent of the cost of such programs.

(4) Such grants made under this subsection on a competitive basis shall be based on an annual competition determined by the Secretary. Grants made under this subsection shall not exceed \$500,000.

(d) Dissemination of results

As soon as practicable, but not later than 180 days after the end of the fiscal year in which a recipient of a grant under this section completes the expenditure of such grant, the Secretary shall prepare and make available to each State and each eligible entity a description of the program carried out with such grant, any relevant information developed and results achieved, and a summary of the evaluation of such program received under subsection (a)(1)(D) of this section so as to provide a model of innovative programs for other eligible entities.

(e) Replication of programs

(1) The Secretary shall annually identify programs that receive grants under this section that demonstrate a significant potential for dealing with particularly critical needs or problems of the poor that exist in a number of communities.

(2) Not less than 10 percent, and not more than 25 percent, of the funds appropriated for each fiscal year to carry out this section shall be available to make grants under this section to replicate in additional geographic areas programs identified under paragraph (1).

(f) Omitted

(g) Definitions

As used in this section—

(1) the term "eligible entity" has the same meaning given such term by section 673(1) of the Community Services Block Grant Act (42

U.S.C. 9902(1)), except that such term includes an organization that serves migrant and seasonal farm workers and that receives a grant under the Community Services Block Grant Act (42 U.S.C. 9901 et seq.) in the fiscal year preceding the fiscal year for which such organization requests a grant under this section; and

(2) the term "Secretary" means the Secretary of Health and Human Services.

(h) Authorization of appropriations

(1) There are authorized to be appropriated \$30,000,000 for fiscal year 1995, and such sums as may be necessary for fiscal years 1996, 1997, and 1998, to carry out this section.

(2) Of the amounts appropriated for this section, not less than 30 percent and not more than 40 percent shall be used to carry out the programs authorized under subsection (c) of this section.

(3) In addition to sums which are required to carry out the evaluation, reporting, and dissemination of results under subsections (a), (c), (d), and (f)¹ of this section, the Secretary is authorized to reserve up to 2 percent of the amounts appropriated pursuant to subparagraphs (1) and (2) for administration of the program as well as for planning and technical assistance.

(Pub. L. 99-425, title IV, § 408, Sept. 30, 1986, 100 Stat. 972; Pub. L. 101-204, title VII, § 705, Dec. 7, 1989, 103 Stat. 1821; Pub. L. 101-501, title VI, §§ 601, 602, Nov. 3, 1990, 104 Stat. 1257, 1258; Pub. L. 103-252, title II, § 207, May 18, 1994, 108 Stat. 656.)

REFERENCES IN TEXT

The Community Services Block Grant Act, referred to in subsecs. (a)(1)(C) and (g)(1), is subtitle B (§ 671 et seq.) of title VI of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 511, as amended, which is classified generally to this chapter (§ 9901 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 9901 of this title and Tables.

Subsection (f) of this section, referred to in subsec. (h)(3), was omitted from the Code.

CODIFICATION

Subsec. (f) of this section, which required the Secretary to submit to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate an annual report describing programs for which grants were made under this section in the most recently completed fiscal year and the evaluations received under subsec. (a)(1)(D) of this section in such fiscal year, describing the methods used by the Secretary to comply with subsec. (d) of this section, making recommendations regarding the suitability of carrying out such programs with funds made available under other Federal laws, and describing each program identified under subsec. (d)(1) of this section or replicated under subsec. (e)(2) of this section and identifying the geographical location where such program was carried out, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 4th item on page 98 of House Document No. 103-7.

Section was formerly classified to section 9910b of this title.

Section was enacted as part of the Human Services Reauthorization Act of 1986, and not as part of the

Community Services Block Grant Act which comprises this chapter.

AMENDMENTS

1994—Subsec. (a)(3). Pub. L. 103-252, § 207(1), added par. (3).

Subsec. (b)(1)(B). Pub. L. 103-252, § 207(2), substituted "After the first funding period" for "After the first fiscal year".

Subsec. (c)(1). Pub. L. 103-252, § 207(3)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "In addition to the grant programs described in subsection (a) of this section, the Secretary shall make grants to eligible entities for the purpose of demonstrating new and innovative approaches to addressing the problems of, and providing opportunities for leadership development, community involvement, and educational success to, disadvantaged persons between the ages of 14 and 25 from populations experiencing conditions such as a high poverty rate, high unemployment, high dropout rate, low labor force participation, low enrollment in college or participation in other post high school training classes, high incidence of involvement in violence, and a high rate of incarceration. Services provided through approaches funded by such grants may include assessment and development of employability plans, remedial education, motivational activities, life skills instruction, community service, mentoring, access to information on available financial aid, campus visits, career education, cultural enrichment, and employment training, placement, and follow-up."

Subsec. (c)(4). Pub. L. 103-252, § 207(3)(B), amended par. (4) generally. Prior to amendment, par. (4) read as follows: "Such grants shall be made annually on such terms and conditions as the Secretary shall specify to eligible entities that serve the populations described in paragraph (1) and that are located within those areas where such populations are concentrated."

Subsec. (h). Pub. L. 103-252, § 207(4), amended heading and text of subsec. (h) generally. Prior to amendment, text read as follows:

"(1) There are authorized to be appropriated \$10,000,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992, 1993, and 1994, to carry out this section (other than subsection (c) of this section).

"(2) There are authorized to be appropriated \$10,000,000 for fiscal year 1991 and such sums as may be necessary in each of the fiscal years 1992 through 1994, to carry out subsection (c) of this section."

1990—Subsecs. (c) to (e). Pub. L. 101-501, § 601(2), (3), added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively. Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 101-501, § 601(1), (2), redesignated subsec. (e) as (f) and substituted "subsection (d)" for "subsection (c)" in par. (2) and "subsection (e)(2)" for "subsection (d)(2)" in par. (4). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 101-501, § 601(2), redesignated subsec. (f) as (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 101-501, §§ 601(2), 602, redesignated subsec. (g) as (h), designated existing provisions as par. (1), substituted "\$10,000,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992, 1993, and 1994" for "\$5,000,000 for each of the fiscal years 1987, 1988, and 1989, and \$7,000,000 for fiscal year 1990", inserted "(other than subsection (c) of this section)" before period at end, and added par. (2).

1989—Subsec. (a)(1). Pub. L. 101-204, § 705(a)(1), substituted "stimulate the development of new approaches to provide for greater self-sufficiency of the poor, to test and evaluate such new approaches, to disseminate project results and evaluation findings so that such approaches can be replicated, and to strengthen the integration, coordination, and redirection of activities to promote maximum self-sufficiency among the poor" for "provide for the self-sufficiency of the Nation's poor".

Subsec. (a)(1)(D). Pub. L. 101-204, § 705(a)(2), added subpar. (D).

¹ See References in Text note below.

Subsec. (b)(1). Pub. L. 101-204, § 705(b)(1), designated existing provisions as subpar. (A), substituted "Subject to subparagraph (B), grants" for "Grants", struck out "new" before "programs" wherever appearing, and added subpar. (B).

Subsec. (b)(3). Pub. L. 101-204, § 705(b)(2), inserted "in each fiscal year" after "than one grant", substituted "\$350,000" for "\$250,000", and inserted at end "Not more than 2 grants may be made under this section to an eligible entity to carry out a particular program."

Subsec. (c). Pub. L. 101-204, § 705(c), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "As soon as practicable, but no later than 90 days after the expiration of the fiscal year for which any grant is awarded under this section, the Secretary shall prepare and make available upon request to each State and eligible entity descriptions of the demonstration programs assisted under this section, and any relevant information developed and results achieved, so as to provide models for innovative programs to other eligible entities."

Subsecs. (d), (e). Pub. L. 101-204, § 705(f)(2), added subsecs. (d) and (e). Former subsecs. (d) and (e) redesignated (f) and (g), respectively.

Subsec. (f). Pub. L. 101-204, § 705(d), (f)(1), redesignated subsec. (d) as (f) and inserted before semicolon in par. (1) ", except that such term includes an organization that serves migrant and seasonal farm workers and that receives a grant under the Community Services Block Grant Act (42 U.S.C. 9901 et seq.) in the fiscal year preceding the fiscal year for which such organization requests a grant under this section".

Subsec. (g). Pub. L. 101-204, § 705(e), (f)(1), redesignated subsec. (e) as (g), substituted "are" for "is", and inserted "and \$7,000,000 for fiscal year 1990," after "1989,".

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-252 effective Oct. 1, 1994, see section 208 of Pub. L. 103-252, set out as a note under section 9901 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101-501, set out as a note under section 8621 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1986, see section 1001 of Pub. L. 99-425, set out as an Effective Date of 1986 Amendment note under section 8621 of this title.

§ 9926. Projects to expand the number of job opportunities available to certain low-income individuals

(a) In general

The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall enter into agreements with nonprofit organizations (including community development corporations) submitting applications under this section for the purpose of conducting projects in accordance with subsection (b) of this section to create employment opportunities for certain low-income individuals.

(b) Nature of project

(1) Each nonprofit organization conducting a project under this section shall provide technical and financial assistance to private employers in the community to assist them in creating employment and business opportunities for those individuals eligible to participate in the projects as described in this subsection.

(2) For purposes of this section, a nonprofit organization is any organization (including a com-

munity development corporation) exempt from taxation under section 501(a) of title 26 by reason of paragraph (3) or (4) of section 501(c) of such title.

(3) A low-income individual eligible to participate in a project conducted under this section is any individual eligible to receive assistance under the program funded part¹ A of title IV of the Social Security Act [42 U.S.C. 601 et seq.] of the State in which the individual resides and any other individual whose income level does not exceed 100 percent of the official poverty line as defined by the Office of Management and Budget and revised in accordance with section 9902(2) of this title.

(c) Content of applications; selection priority

(1) Each nonprofit organization submitting an application under this section shall, as part of such application, describe—

(A) the technical and financial assistance that will be made available under the project conducted under this section;

(B) the geographic area to be served by the project;

(C) the percentage of low-income individuals (as described in subsection (b) of this section) and individuals receiving assistance under a State program funded under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.] in the area to be served by the project; and

(D) unemployment rates in the geographic areas to be served and (to the extent practicable) the jobs available and skills necessary to fill those vacancies in such areas.

(2) In approving applications under this section, the Secretary shall give priority to applications proposing to serve those areas containing the highest percentage of individuals receiving assistance under a State program funded under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.].

(d) Administration

Each nonprofit organization participating in a project conducted under this section shall provide assurances in its agreement with the Secretary that it has or will have a cooperative relationship with the agency responsible for administering the the² State program funded under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.] in the area served by the project.

(e) Authorization of appropriations

For the purpose of conducting projects under this section, there is authorized to be appropriated an amount not to exceed \$25,000,000 for any fiscal year.

(Pub. L. 100-485, title V, § 505, Oct. 13, 1988, 102 Stat. 2404; Pub. L. 101-508, title V, § 5063, Nov. 5, 1990, 104 Stat. 1388-232; Pub. L. 103-432, title II, § 261(a), Oct. 31, 1994, 108 Stat. 4467; Pub. L. 104-193, title I, § 112, Aug. 22, 1996, 110 Stat. 2176; Pub. L. 105-33, title V, § 5515, Aug. 5, 1997, 111 Stat. 620.)

¹ So in original. Probably should be "under part".

² So in original.

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (b)(3), (c)(1)(C), (2), and (d), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV of the Act is classified generally to part A (§601 et seq.) of subchapter IV of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

CODIFICATION

Section was formerly classified to section 9910d of this title. Prior to such classification, section was set out as a note under section 1315 of this title.

Section was enacted as part of the Family Support Act of 1988, and not as part of the Community Services Block Grant Act which comprises this chapter.

AMENDMENTS

1997—Subsec. (c)(1)(C), (2). Pub. L. 105-33 which directed the amendment of Pub. L. 104-193, §112(5), was executed to that section as if the amendment were retroactive to the effective date of the amendment by Pub. L. 104-193 to reflect the probable intent of Congress. See 1996 Amendment notes below.

1996—Pub. L. 104-193, §112(1), struck out “Demonstration” before “projects” in section catchline.

Subsec. (a). Pub. L. 104-193, §112(2), (3), substituted “shall enter into agreements with” for “in each of the fiscal years 1990, 1991, and 1992, shall enter into agreements with not less than 5 nor more than 10” and “conducting projects” for “conducting demonstration projects”.

Subsec. (b)(1). Pub. L. 104-193, §112(2), struck out “demonstration” after “organization conducting a”.

Subsec. (b)(3). Pub. L. 104-193, §112(4), substituted “assistance under the program funded part A of title IV of the Social Security Act of the State in which the individual resides” for “aid to families with dependent children under part A of title IV of the Social Security Act”.

Subsec. (c)(1)(C). Pub. L. 104-193, §112(5)(A), as amended by Pub. L. 105-33, substituted “assistance under a State program funded under part A of title IV of the Social Security Act” for “aid to families with dependent children under title IV of the Social Security Act”.

Subsec. (c)(2). Pub. L. 104-193, §112(5)(B), as amended by Pub. L. 105-33, substituted “assistance under a State program funded under part A of title IV of the Social Security Act” for “aid to families with dependent children under title IV of such Act”.

Subsec. (d). Pub. L. 104-193, §112(2), (6), struck out “demonstration” after “organization participating in a” and substituted “the State program funded under part A of title IV of the Social Security Act” for “job opportunities and basic skills training program (as provided for under title IV of the Social Security Act)”.

Subsecs. (e) to (g). Pub. L. 104-193, §112(7), added subsec. (e) and struck out former subsec. (e) which related to duration of demonstration projects under this section, subsec. (f) which required evaluation of the success of each demonstration project, and subsec. (g) which authorized appropriations for the conduct of demonstration projects for each of fiscal years 1990 to 1996.

1994—Subsec. (e). Pub. L. 103-432, §261(a)(1), substituted “6-year period” for “3-year period”.

Subsec. (f)(2). Pub. L. 103-432, §261(a)(2), substituted “January 1, 1995” for “January 1, 1993”.

Subsec. (g). Pub. L. 103-432, §261(a)(3), substituted “1991, 1992, 1993, 1994, 1995, and 1996” for “1991, and 1992”.

1990—Subsec. (a). Pub. L. 101-508, §5063(1), inserted “in each of the fiscal years 1990, 1991, and 1992,” before “shall”.

Subsec. (e). Pub. L. 101-508, §5063(2), substituted “September 30 of the fiscal year specified in the agreement described in subsection (a) of this section” for “September 30, 1989”.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-193 effective July 1, 1997, with transition rules relating to State options to accel-

erate 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, as amended, set out as an Effective Date note under section 601 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 261(b) of Pub. L. 103-432 provided that: “The amendments made by subsection (a) [amending this section] shall take effect on October 1, 1993.”

CHAPTER 107—CONSUMER-PATIENT RADIATION HEALTH AND SAFETY

Sec.	
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§ 10001. Statement of findings

The Congress finds that—

(1) it is in the interest of public health and safety to minimize unnecessary exposure to potentially hazardous radiation due to medical and dental radiologic procedures;

(2) it is in the interest of public health and safety to have a continuing supply of adequately educated persons and appropriate accreditation and certification programs administered by State governments;

(3) the protection of the public health and safety from unnecessary exposure to potentially hazardous radiation due to medical and dental radiologic procedures and the assurance of efficacious procedures are the responsibility of State and Federal governments;

(4) persons who administer radiologic procedures, including procedures at Federal facilities, should be required to demonstrate competence by reason of education, training, and experience; and

(5) the administration of radiologic procedures and the effect on individuals of such procedures have a substantial and direct effect upon United States interstate commerce.

(Pub. L. 97-35, title IX, §976, Aug. 13, 1981, 95 Stat. 598.)

SHORT TITLE

Section 975 of Pub. L. 97-35 provided that: “This subtitle [subtitle I (§§975-983) of title IX of Pub. L. 97-35, enacting this chapter] may be cited as the ‘Consumer-Patient Radiation Health and Safety Act of 1981.’”

§ 10002. Statement of purpose

It is the purpose of this chapter to—

(1) provide for the establishment of minimum standards by the Federal Government for

the accreditation of education programs for persons who administer radiologic procedures and for the certification of such persons; and

(2) insure that medical and dental radiologic procedures are consistent with rigorous safety precautions and standards.

(Pub. L. 97-35, title IX, §977, Aug. 13, 1981, 95 Stat. 599.)

§ 10003. Definitions

Unless otherwise expressly provided, for purposes of this chapter, the term—

(1) “radiation” means ionizing and nonionizing radiation in amounts beyond normal background levels from sources such as medical and dental radiologic procedures;

(2) “radiologic procedure” means any procedure or article intended for use in—

(A) the diagnosis of disease or other medical or dental conditions in humans (including diagnostic X-rays or nuclear medicine procedures); or

(B) the cure, mitigation, treatment, or prevention of disease in humans;

that achieves its intended purpose through the emission of radiation;

(3) “radiologic equipment” means any radiation electronic product which emits or detects radiation and which is used or intended for use to—

(A) diagnose disease or other medical or dental conditions (including diagnostic X-ray equipment); or

(B) cure, mitigate, treat, or prevent disease in humans;

that achieves its intended purpose through the emission or detection of radiation;

(4) “practitioner” means any licensed doctor of medicine, osteopathy, dentistry, podiatry, or chiropractic, who prescribes radiologic procedures for other persons;

(5) “persons who administer radiologic procedures” means any person, other than a practitioner, who intentionally administers radiation to other persons for medical purposes, and includes medical radiologic technologists (including dental hygienists and assistants), radiation therapy technologists, and nuclear medicine technologists;

(6) “Secretary” means the Secretary of Health and Human Services; and

(7) “State” means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(Pub. L. 97-35, title IX, §978, Aug. 13, 1981, 95 Stat. 599.)

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 10004. Promulgation of standards

(a) Within twelve months after August 13, 1981, the Secretary, in consultation with the Radi-

ation Policy Council, the Secretary of Veterans Affairs, the Administrator of the Environmental Protection Agency, appropriate agencies of the States, and appropriate professional organizations, shall by regulation promulgate minimum standards for the accreditation of educational programs to train individuals to perform radiologic procedures. Such standards shall distinguish between programs for the education of (1) medical radiologic technologists (including radiographers), (2) dental auxiliaries (including dental hygienists and assistants), (3) radiation therapy technologists, (4) nuclear medicine technologists, and (5) such other kinds of health auxiliaries who administer radiologic procedures as the Secretary determines appropriate. Such standards shall not be applicable to educational programs for practitioners.

(b) Within twelve months after August 13, 1981, the Secretary, in consultation with the Radiation Policy Council, the Secretary of Veterans Affairs, the Administrator of the Environmental Protection Agency, interested agencies of the States, and appropriate professional organizations, shall by regulation promulgate minimum standards for the certification of persons who administer radiologic procedures. Such standards shall distinguish between certification of (1) medical radiologic technologists (including radiographers), (2) dental auxiliaries (including dental hygienists and assistants), (3) radiation therapy technologists, (4) nuclear medicine technologists, and (5) such other kinds of health auxiliaries who administer radiologic procedures as the Secretary determines appropriate. Such standards shall include minimum certification criteria for individuals with regard to accredited education, practical experience, successful passage of required examinations, and such other criteria as the Secretary shall deem necessary for the adequate qualification of individuals to administer radiologic procedures. Such standards shall not apply to practitioners.

(Pub. L. 97-35, title IX, §979, Aug. 13, 1981, 95 Stat. 599; Pub. L. 102-54, §13(q)(13)(A), June 13, 1991, 105 Stat. 281.)

AMENDMENTS

1991—Subsecs. (a), (b). Pub. L. 102-54 substituted “Secretary of Veterans Affairs” for “Administrator of Veterans’ Affairs”.

§ 10005. Model statute

In order to encourage the administration of accreditation and certification programs by the States, the Secretary shall prepare and transmit to the States a model statute for radiologic procedure safety. Such model statute shall provide that—

(1) it shall be unlawful in a State for individuals to perform radiologic procedures unless such individuals are certified by the State to perform such procedures; and

(2) any educational requirements for certification of individuals to perform radiologic procedures shall be limited to educational programs accredited by the State.

(Pub. L. 97-35, title IX, §980, Aug. 13, 1981, 95 Stat. 600.)

§ 10006. Compliance**(a) Implementation by Secretary**

The Secretary shall take all actions consistent with law to effectuate the purposes of this chapter.

(b) Accreditation or certification program

A State may utilize an accreditation or certification program administered by a private entity if—

- (1) such State delegates the administration of the State accreditation or certification program to such private entity;
- (2) such program is approved by the State; and
- (3) such program is consistent with the minimum Federal standards promulgated under this chapter for such program.

(c) Noncompliance; proposed legislative changes

Absent compliance by the States with the provisions of this chapter within three years after August 13, 1981, the Secretary shall report to the Congress recommendations for legislative changes considered necessary to assure the States' compliance with this chapter.

(d) Repealed. Pub. L. 104-66, title I, § 1061(b), Dec. 21, 1995, 109 Stat. 719**(e) Existing standards and guidelines**

Notwithstanding any other provision of this section, in the case of a State which has, prior to the effective date of standards and guidelines promulgated pursuant to this chapter, established standards for the accreditation of educational programs and certification of radiologic technologists, such State shall be deemed to be in compliance with the conditions of this section unless the Secretary determines, after notice and hearing, that such State standards do not meet the minimum standards prescribed by the Secretary or are inconsistent with the purposes of this chapter.

(Pub. L. 97-35, title IX, § 981, Aug. 13, 1981, 95 Stat. 600; Pub. L. 104-66, title I, § 1061(b), Dec. 21, 1995, 109 Stat. 719.)

AMENDMENTS

1995—Subsec. (d). Pub. L. 104-66 struck out subsec. (d) which read as follows: “The Secretary shall be responsible for continued monitoring of compliance by the States with the applicable provisions of this chapter and shall report to the Senate and the House of Representatives by January 1, 1982, and January 1 of each succeeding year the status of the States' compliance with the purposes of this chapter.”

§ 10007. Federal radiation guidelines

The Secretary shall, in conjunction with the Radiation Policy Council, the Secretary of Veterans Affairs, the Administrator of the Environmental Protection Agency, appropriate agencies of the States, and appropriate professional organizations, promulgate Federal radiation guidelines with respect to radiologic procedures. Such guidelines shall—

- (1) determine the level of radiation exposure due to radiologic procedures which is unnecessary and specify the techniques, procedures, and methods to minimize such unnecessary exposure;

(2) provide for the elimination of the need for retakes of diagnostic radiologic procedures;

(3) provide for the elimination of unproductive screening programs;

(4) provide for the optimum diagnostic information with minimum radiologic exposure; and

(5) include the therapeutic application of radiation to individuals in the treatment of disease, including nuclear medicine applications.

(Pub. L. 97-35, title IX, § 982, Aug. 13, 1981, 95 Stat. 601; Pub. L. 102-54, § 13(q)(13)(B), June 13, 1991, 105 Stat. 281.)

AMENDMENTS

1991—Pub. L. 102-54 substituted “Secretary of Veterans Affairs” for “Administrator of Veterans Affairs” in introductory provisions.

§ 10008. Applicability to Federal agencies

(a) Except as provided in subsection (b) of this section, each department, agency, and instrumentality of the executive branch of the Federal Government shall comply with standards promulgated pursuant to this chapter.

(b) The Secretary of Veterans Affairs, through the Under Secretary for Health of the Department of Veterans Affairs, shall, to the maximum extent feasible consistent with the responsibilities of such Secretary and Under Secretary for Health under title 38, prescribe regulations making the standards promulgated pursuant to this chapter applicable to the provision of radiologic procedures in facilities over which that Secretary has jurisdiction. In prescribing and implementing regulations pursuant to this subsection, the Secretary of Veterans Affairs shall consult with the Secretary in order to achieve the maximum possible coordination of the regulations, standards, and guidelines, and the implementation thereof, which the Secretary and the Secretary of Veterans Affairs prescribe under this chapter.

(Pub. L. 97-35, title IX, § 983, Aug. 13, 1981, 95 Stat. 601; Pub. L. 102-54, § 13(q)(13)(C), June 13, 1991, 105 Stat. 282; Pub. L. 102-405, title III, § 302(e)(1), Oct. 9, 1992, 106 Stat. 1985.)

AMENDMENTS

1992—Subsec. (b). Pub. L. 102-405 substituted “Under Secretary for Health” for “Chief Medical Director” in two places.

1991—Subsec. (b). Pub. L. 102-54 substituted “The Secretary of Veterans Affairs, through the Chief Medical Director of the Department of Veterans Affairs, shall, to the maximum extent feasible consistent with the responsibilities of such Secretary and Chief Medical Director under title 38” for “(1) The Administrator of Veterans Affairs, through the Chief Medical Director of the Veterans Administration, shall, to the maximum extent feasible consistent with the responsibilities of such Administrator and Chief Medical Director under subtitle 38”, “over which that Secretary” for “over which the Administrator”, and “Secretary of Veterans Affairs” for “Administrator” wherever else appearing, and struck out pars. (2) and (3) which read as follows:

“(2) Not later than 180 days after standards are promulgated by the Secretary pursuant to this chapter, the Administrator of Veterans Affairs shall submit to the appropriate committees of Congress a full report with respect to the regulations (including guidelines,

policies, and procedures thereunder) prescribed pursuant to paragraph (1) of this subsection. Such report shall include—

“(A) an explanation of any inconsistency between standards made applicable by such regulations and the standards promulgated by the Secretary pursuant to this chapter;

“(B) an account of the extent, substance, and results of consultations with the Secretary respecting the prescription and implementation of regulations by the Administrator; and

“(C) such recommendations for legislation and administrative action as the Administrator determines are necessary and desirable.

“(3) The Administrator of Veterans' Affairs shall publish the report required by paragraph (2) in the Federal Register.”

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 2286g of this title.

§ 10101. Definitions

For purposes of this chapter:

(1) The term “Administrator” means the Administrator of the Environmental Protection Agency.

(2) The term “affected Indian tribe” means any Indian tribe—

(A) within whose reservation boundaries a monitored retrievable storage facility, test and evaluation facility, or a repository for high-level radioactive waste or spent fuel is proposed to be located;

(B) whose federally defined possessory or usage rights to other lands outside of the reservation’s boundaries arising out of congressionally ratified treaties may be substantially and adversely affected by the locating of such a facility: *Provided*, That the Secretary of the Interior finds, upon the petition of the appropriate governmental officials of the tribe, that such effects are both substantial and adverse to the tribe;¹

(3) The term “atomic energy defense activity” means any activity of the Secretary performed in whole or in part in carrying out any of the following functions:

(A) naval reactors development;

(B) weapons activities including defense inertial confinement fusion;

(C) verification and control technology;

(D) defense nuclear materials production;

(E) defense nuclear waste and materials by-products management;

(F) defense nuclear materials security and safeguards and security investigations; and

(G) defense research and development.

(4) The term “candidate site” means an area, within a geologic and hydrologic system, that is recommended by the Secretary under section 10132 of this title for site characterization, approved by the President under section 10132 of this title for site characterization, or undergoing site characterization under section 10133 of this title.

(5) The term “civilian nuclear activity” means any atomic energy activity other than an atomic energy defense activity.

(6) The term “civilian nuclear power reactor” means a civilian nuclear powerplant required to be licensed under section 2133 or 2134(b) of this title.

(7) The term “Commission” means the Nuclear Regulatory Commission.

(8) The term “Department” means the Department of Energy.

(9) The term “disposal” means the emplacement in a repository of high-level radioactive waste, spent nuclear fuel, or other highly radioactive material with no foreseeable intent of recovery, whether or not such emplacement permits the recovery of such waste.

(10) The terms “disposal package” and “package” mean the primary container that holds, and is in contact with, solidified high-level radioactive waste, spent nuclear fuel, or other radioactive materials, and any overpacks that are emplaced at a repository.

¹ So in original. The semicolon probably should be a period.

(11) The term “engineered barriers” means manmade components of a disposal system designed to prevent the release of radionuclides into the geologic medium involved. Such term includes the high-level radioactive waste form, high-level radioactive waste canisters, and other materials placed over and around such canisters.

(12) The term “high-level radioactive waste” means—

(A) the highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contains fission products in sufficient concentrations; and

(B) other highly radioactive material that the Commission, consistent with existing law, determines by rule requires permanent isolation.

(13) The term “Federal agency” means any Executive agency, as defined in section 105 of title 5.

(14) The term “Governor” means the chief executive officer of a State.

(15) The term “Indian tribe” means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska Native village, as defined in section 3(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(c)).

(16) The term “low-level radioactive waste” means radioactive material that—

(A) is not high-level radioactive waste, spent nuclear fuel, transuranic waste, or by-product material as defined in section 2014(e)(2) of this title; and

(B) the Commission, consistent with existing law, classifies as low-level radioactive waste.

(17) The term “Office” means the Office of Civilian Radioactive Waste Management established in section 10224² of this title.

(18) The term “repository” means any system licensed by the Commission that is intended to be used for, or may be used for, the permanent deep geologic disposal of high-level radioactive waste and spent nuclear fuel, whether or not such system is designed to permit the recovery, for a limited period during initial operation, of any materials placed in such system. Such term includes both surface and subsurface areas at which high-level radioactive waste and spent nuclear fuel handling activities are conducted.

(19) The term “reservation” means—

(A) any Indian reservation or dependent Indian community referred to in clause (a) or (b) of section 1151 of title 18; or

(B) any land selected by an Alaska Native village or regional corporation under the provisions of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

(20) The term “Secretary” means the Secretary of Energy.

(21) The term “site characterization” means—

(A) siting research activities with respect to a test and evaluation facility at a candidate site; and

(B) activities, whether in the laboratory or in the field, undertaken to establish the geologic condition and the ranges of the parameters of a candidate site relevant to the location of a repository, including borings, surface excavations, excavations of exploratory shafts, limited subsurface lateral excavations and borings, and in situ testing needed to evaluate the suitability of a candidate site for the location of a repository, but not including preliminary borings and geophysical testing needed to assess whether site characterization should be undertaken.

(22) The term “siting research” means activities, including borings, surface excavations, shaft excavations, subsurface lateral excavations and borings, and in situ testing, to determine the suitability of a site for a test and evaluation facility.

(23) The term “spent nuclear fuel” means fuel that has been withdrawn from a nuclear reactor following irradiation, the constituent elements of which have not been separated by reprocessing.

(24) The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(25) The term “storage” means retention of high-level radioactive waste, spent nuclear fuel, or transuranic waste with the intent to recover such waste or fuel for subsequent use, processing, or disposal.

(26) The term “Storage Fund” means the Interim Storage Fund established in section 10156(c)³ of this title.

(27) The term “test and evaluation facility” means an at-depth, prototypic, underground cavity with subsurface lateral excavations extending from a central shaft that is used for research and development purposes, including the development of data and experience for the safe handling and disposal of solidified high-level radioactive waste, transuranic waste, or spent nuclear fuel.

(28) The term “unit of general local government” means any borough, city, county, parish, town, township, village, or other general purpose political subdivision of a State.

(29) The term “Waste Fund” means the Nuclear Waste Fund established in section 10222(c) of this title.

(30) The term “Yucca Mountain site” means the candidate site in the State of Nevada recommended by the Secretary to the President under section 10132(b)(1)(B) of this title on May 27, 1986.

(31) The term “affected unit of local government” means the unit of local government with jurisdiction over the site of a repository

²See References in Text note below.

³See References in Text note below.

or a monitored retrievable storage facility. Such term may, at the discretion of the Secretary, include units of local government that are contiguous with such unit.

(32) The term “Negotiator” means the Nuclear Waste Negotiator.

(33) As used in subchapter IV of this chapter, the term “Office” means the Office of the Nuclear Waste Negotiator established under subchapter IV of this chapter.

(34) The term “monitored retrievable storage facility” means the storage facility described in section 10161(b)(1) of this title.

(Pub. L. 97-425, § 2, Jan. 7, 1983, 96 Stat. 2202; Pub. L. 100-202, § 101(d) [title III, § 300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, § 5002, Dec. 22, 1987, 101 Stat. 1330-227.)

REFERENCES IN TEXT

Section 10224 of this title, referred to in par. (17), was in the original a reference to section 305 of Pub. L. 97-425, which is classified to section 10225 of this title, and was translated as section 10224 of this title as the probable intent of Congress, in view of the Office of Civilian Radioactive Waste Management being established by section 10224 of this title.

The Alaska Native Claims Settlement Act, referred to in par. (19)(B), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

Section 10156(c) of this title, referred to in par. (26), was in the original a reference to section 137(c) of Pub. L. 97-425, which is classified to section 10157(c) of this title, and has been translated as section 10156(c) of this title as the probable intent of Congress, in view of the Interim Storage Fund being established by section 10156(c) of this title.

AMENDMENTS

1987—Pars. (30) to (34). Pub. L. 100-202 and Pub. L. 100-203 amended section identically adding pars. (30) to (34).

SHORT TITLE OF 1987 AMENDMENT

Section 101(d) [title III] of Pub. L. 100-202 and section 5001 of title V of Pub. L. 100-203 provided that: “This subtitle [subtitle A (§§ 5001-5065)] of title V, enacting sections 10162, 10163, 10164, 10165, 10166, 10167, 10168, 10169, 10172, 10172a, 10173, 10173a, 10173b, 10173c, 10174, 10174a, 10175, 10204, 10241, 10242, 10243, 10244, 10245, 10246, 10247, 10248, 10249, 10250, 10251, 10261, 10262, 10263, 10264, 10265, 10266, 10267, 10268, 10269, and 10270 of this title, amending this section and sections 10132, 10133, 10134, 10136, 10137, and 10138 of this title and enacting provisions set out as a note under section 5841 of this title] may be cited as the ‘Nuclear Waste Policy Amendments Act of 1987.’”

SHORT TITLE

Section 1 of Pub. L. 97-425 provided that: “This Act [enacting this chapter] may be cited as the ‘Nuclear Waste Policy Act of 1982.’”

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

NUCLEAR WASTE MANAGEMENT PLAN; REPORT

Pub. L. 102-486, title VIII, § 803, Oct. 24, 1992, 106 Stat. 2923, provided that:

“(a) PREPARATION AND SUBMISSION OF REPORT.—The Secretary of Energy, in consultation with the Nuclear

Regulatory Commission and the Environmental Protection Agency, shall prepare and submit to the Congress a report on whether current programs and plans for management of nuclear waste as mandated by the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101 et seq.) are adequate for management of any additional volumes or categories of nuclear waste that might be generated by any new nuclear power plants that might be constructed and licensed after the date of the enactment of this Act [Oct. 24, 1992]. The Secretary shall prepare the report for submission to the President and the Congress within 1 year after the date of the enactment of this Act. The report shall examine any new relevant issues related to management of spent nuclear fuel and high-level radioactive waste that might be raised by the addition of new nuclear-generated electric capacity, including anticipated increased volumes of spent nuclear fuel or high-level radioactive waste, any need for additional interim storage capacity prior to final disposal, transportation of additional volumes of waste, and any need for additional repositories for deep geologic disposal.

“(b) OPPORTUNITY FOR PUBLIC COMMENT.—In preparation of the report required under subsection (a), the Secretary of Energy shall offer members of the public an opportunity to provide information and comment and shall solicit the views of the Nuclear Regulatory Commission, the Environmental Protection Agency, and other interested parties.

“(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2014 of this title; title 18 sections 33, 1992; title 49 section 5105.

§ 10102. Separability

If any provision of this chapter, or the application of such provision to any person or circumstance, is held invalid, the remainder of this chapter, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

(Pub. L. 97-425, § 3, Jan. 7, 1983, 96 Stat. 2205.)

§ 10103. Territories and possessions

Nothing in this chapter shall be deemed to repeal, modify, or amend the provisions of section 1491 of title 48.

(Pub. L. 97-425, § 4, Jan. 7, 1983, 96 Stat. 2205.)

§ 10104. Ocean disposal

Nothing in this chapter shall be deemed to affect the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1401 et seq.).

(Pub. L. 97-425, § 5, Jan. 7, 1983, 96 Stat. 2205.)

REFERENCES IN TEXT

The Marine Protection, Research, and Sanctuaries Act of 1972, referred to in text, is Pub. L. 92-532, Oct. 23, 1972, 86 Stat. 1052, as amended, which enacted chapters 32 (§ 1431 et seq.) and 32A (§ 1447 et seq.) of Title 16, Conservation, and chapters 27 (§ 1401 et seq.) and 41 (§ 2801 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1401 of Title 33 and Tables.

§ 10105. Limitation on spending authority

The authority under this chapter to incur indebtedness, or enter into contracts, obligating

amounts to be expended by the Federal Government shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.

(Pub. L. 97-425, §6, Jan. 7, 1983, 96 Stat. 2205.)

§ 10106. Protection of classified national security information

Nothing in this chapter shall require the release or disclosure to any person or to the Commission of any classified national security information.

(Pub. L. 97-425, §7, Jan. 7, 1983, 96 Stat. 2205.)

§ 10107. Applicability to atomic energy defense activities

(a) Atomic energy defense activities

Subject to the provisions of subsection (c) of this section, the provisions of this chapter shall not apply with respect to any atomic energy defense activity or to any facility used in connection with any such activity.

(b) Evaluation by President

(1) Not later than 2 years after January 7, 1983, the President shall evaluate the use of disposal capacity at one or more repositories to be developed under part A of subchapter I of this chapter for the disposal of high-level radioactive waste resulting from atomic energy defense activities. Such evaluation shall take into consideration factors relating to cost efficiency, health and safety, regulation, transportation, public acceptability, and national security.

(2) Unless the President finds, after conducting the evaluation required in paragraph (1), that the development of a repository for the disposal of high-level radioactive waste resulting from atomic energy defense activities only is required, taking into account all of the factors described in such subsection, the Secretary shall proceed promptly with arrangement for the use of one or more of the repositories to be developed under part A of subchapter I of this chapter for the disposal of such waste. Such arrangements shall include the allocation of costs of developing, constructing, and operating this repository or repositories. The costs resulting from permanent disposal of high-level radioactive waste from atomic energy defense activities shall be paid by the Federal Government, into the special account established under section 10222 of this title.

(3) Any repository for the disposal of high-level radioactive waste resulting from atomic energy defense activities only shall (A) be subject to licensing under section 5842 of this title; and (B) comply with all requirements of the Commission for the siting, development, construction, and operation of a repository.

(c) Applicability to certain repositories

The provisions of this chapter shall apply with respect to any repository not used exclusively for the disposal of high-level radioactive waste or spent nuclear fuel resulting from atomic energy defense activities, research and development activities of the Secretary, or both.

(Pub. L. 97-425, §8, Jan. 7, 1983, 96 Stat. 2205.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10121, 10155, 10192 of this title.

§ 10108. Applicability to transportation

Nothing in this chapter shall be construed to affect Federal, State, or local laws pertaining to the transportation of spent nuclear fuel or high-level radioactive waste.

(Pub. L. 97-425, §9, Jan. 7, 1983, 96 Stat. 2206.)

SUBCHAPTER I—DISPOSAL AND STORAGE OF HIGH-LEVEL RADIOACTIVE WASTE, SPENT NUCLEAR FUEL, AND LOW-LEVEL RADIOACTIVE WASTE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 10222, 10225 of this title.

§ 10121. State and affected Indian tribe participation in development of proposed repositories for defense waste

(a) Notification to States and affected Indian tribes

Notwithstanding the provisions of section 10107 of this title, upon any decision by the Secretary or the President to develop a repository for the disposal of high-level radioactive waste or spent nuclear fuel resulting exclusively from atomic energy defense activities, research and development activities of the Secretary, or both, and before proceeding with any site-specific investigations with respect to such repository, the Secretary shall notify the Governor and legislature of the State in which such repository is proposed to be located, or the governing body of the affected Indian tribe on whose reservation such repository is proposed to be located, as the case may be, of such decision.

(b) Participation of States and affected Indian tribes

Following the receipt of any notification under subsection (a) of this section, the State or Indian tribe involved shall be entitled, with respect to the proposed repository involved, to rights of participation and consultation identical to those provided in sections 10135 through 10138 of this title, except that any financial assistance authorized to be provided to such State or affected Indian tribe under section 10136(c) or 10138(b) of this title shall be made from amounts appropriated to the Secretary for purposes of carrying out this section.

(Pub. L. 97-425, title I, §101, Jan. 7, 1983, 96 Stat. 2206.)

PART A—REPOSITORIES FOR DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTE AND SPENT NUCLEAR FUEL

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 10107, 10175 of this title.

§ 10131. Findings and purposes

(a) The Congress finds that—

(1) radioactive waste creates potential risks and requires safe and environmentally acceptable methods of disposal;

(2) a national problem has been created by the accumulation of (A) spent nuclear fuel from nuclear reactors; and (B) radioactive waste from (i) reprocessing of spent nuclear fuel; (ii) activities related to medical research, diagnosis, and treatment; and (iii) other sources;

(3) Federal efforts during the past 30 years to devise a permanent solution to the problems of civilian radioactive waste disposal have not been adequate;

(4) while the Federal Government has the responsibility to provide for the permanent disposal of high-level radioactive waste and such spent nuclear fuel as may be disposed of in order to protect the public health and safety and the environment, the costs of such disposal should be the responsibility of the generators and owners of such waste and spent fuel;

(5) the generators and owners of high-level radioactive waste and spent nuclear fuel have the primary responsibility to provide for, and the responsibility to pay the costs of, the interim storage of such waste and spent fuel until such waste and spent fuel is accepted by the Secretary of Energy in accordance with the provisions of this chapter;

(6) State and public participation in the planning and development of repositories is essential in order to promote public confidence in the safety of disposal of such waste and spent fuel; and

(7) high-level radioactive waste and spent nuclear fuel have become major subjects of public concern, and appropriate precautions must be taken to ensure that such waste and spent fuel do not adversely affect the public health and safety and the environment for this or future generations.

(b) The purposes of this part are—

(1) to establish a schedule for the siting, construction, and operation of repositories that will provide a reasonable assurance that the public and the environment will be adequately protected from the hazards posed by high-level radioactive waste and such spent nuclear fuel as may be disposed of in a repository;

(2) to establish the Federal responsibility, and a definite Federal policy, for the disposal of such waste and spent fuel;

(3) to define the relationship between the Federal Government and the State governments with respect to the disposal of such waste and spent fuel; and

(4) to establish a Nuclear Waste Fund, composed of payments made by the generators and owners of such waste and spent fuel, that will ensure that the costs of carrying out activities relating to the disposal of such waste and spent fuel will be borne by the persons responsible for generating such waste and spent fuel.

(Pub. L. 97-425, title I, § 111, Jan. 7, 1983, 96 Stat. 2207.)

§ 10132. Recommendation of candidate sites for site characterization

(a) Guidelines

Not later than 180 days after January 7, 1983, the Secretary, following consultation with the

Council on Environmental Quality, the Administrator of the Environmental Protection Agency, the Director of the United States Geological Survey, and interested Governors, and the concurrence of the Commission shall issue general guidelines for the recommendation of sites for repositories. Such guidelines shall specify detailed geologic considerations that shall be primary criteria for the selection of sites in various geologic media. Such guidelines shall specify factors that qualify or disqualify any site from development as a repository, including factors pertaining to the location of valuable natural resources, hydrology, geophysics, seismic activity, and atomic energy defense activities, proximity to water supplies, proximity to populations, the effect upon the rights of users of water, and proximity to components of the National Park System, the National Wildlife Refuge System, the National Wild and Scenic Rivers System, the National Wilderness Preservation System, or National Forest Lands. Such guidelines shall take into consideration the proximity to sites where high-level radioactive waste and spent nuclear fuel is generated or temporarily stored and the transportation and safety factors involved in moving such waste to a repository. Such guidelines shall specify population factors that will disqualify any site from development as a repository if any surface facility of such repository would be located (1) in a highly populated area; or (2) adjacent to an area 1 mile by 1 mile having a population of not less than 1,000 individuals. Such guidelines also shall require the Secretary to consider the cost and impact of transporting to the repository site the solidified high-level radioactive waste and spent fuel to be disposed of in the repository and the advantages of regional distribution in the siting of repositories. Such guidelines shall require the Secretary to consider the various geologic media in which sites for repositories may be located and, to the extent practicable, to recommend sites in different geologic media. The Secretary shall use guidelines established under this subsection in considering candidate sites for recommendation under subsection (b) of this section. The Secretary may revise such guidelines from time to time, consistent with the provisions of this subsection.

(b) Recommendation by Secretary to President

(1)(A) Following the issuance of guidelines under subsection (a) of this section and consultation with the Governors of affected States, the Secretary shall nominate at least 5 sites that he determines suitable for site characterization for selection of the first repository site.

(B) Subsequent to such nomination, the Secretary shall recommend to the President 3 of the nominated sites not later than January 1, 1985 for characterization as candidate sites.

(C) Such recommendations under subparagraph (B) shall be consistent with the provisions of section 10225 of this title.

(D) Each nomination of a site under this subsection shall be accompanied by an environmental assessment, which shall include a detailed statement of the basis for such recommendation and of the probable impacts of the site characterization activities planned for such

site, and a discussion of alternative activities relating to site characterization that may be undertaken to avoid such impacts. Such environmental assessment shall include—

(i) an evaluation by the Secretary as to whether such site is suitable for development under the guidelines established under subsection (a) of this section;

(ii) an evaluation by the Secretary as to whether such site is suitable for development as a repository under each such guideline that does not require site characterization as a prerequisite for application of such guideline;

(iii) an evaluation by the Secretary of the effects of the site characterization activities at such site on the public health and safety and the environment;

(iv) a reasonable comparative evaluation by the Secretary of such site with other sites and locations that have been considered;

(v) a description of the decision process by which such site was recommended; and

(vi) an assessment of the regional and local impacts of locating the proposed repository at such site.

(E)(i)¹ The issuance of any environmental assessment under this paragraph shall be considered to be a final agency action subject to judicial review in accordance with the provisions of chapter 7 of title 5 and section 10139 of this title. Such judicial review shall be limited to the sufficiency of such environmental assessment with respect to the items described in clauses (i) through (vi) of subparagraph (E).

(F) Each environmental assessment prepared under this paragraph shall be made available to the public.

(G) Before nominating a site, the Secretary shall notify the Governor and legislature of the State in which such site is located, or the governing body of the affected Indian tribe where such site is located, as the case may be, of such nomination and the basis for such nomination.

(2) Before nominating any site the Secretary shall hold public hearings in the vicinity of such site to inform the residents of the area in which such site is located of the proposed nomination of such site and to receive their comments. At such hearings, the Secretary shall also solicit and receive any recommendations of such residents with respect to issues that should be addressed in the environmental assessment described in paragraph (1) and the site characterization plan described in section 10133(b)(1) of this title.

(3) In evaluating the sites nominated under this section prior to any decision to recommend a site as a candidate site, the Secretary shall use available geophysical, geologic, geochemical and hydrologic, and other information and shall not conduct any preliminary borings or excavations at a site unless (i) such preliminary boring or excavation activities were in progress on January 7, 1983, or (ii) the Secretary certifies that such available information from other sources, in the absence of preliminary borings or excavations, will not be adequate to satisfy applicable requirements of this chapter or any

other law: *Provided*, That preliminary borings or excavations under this section shall not exceed a diameter of 6 inches.

(c) Presidential review of recommended candidate sites

(1) The President shall review each candidate site recommendation made by the Secretary under subsection (b) of this section. Not later than 60 days after the submission by the Secretary of a recommendation of a candidate site, the President, in his discretion, may either approve or disapprove such candidate site, and shall transmit any such decision to the Secretary and to either the Governor and legislature of the State in which such candidate site is located, or the governing body of the affected Indian tribe where such candidate site is located, as the case may be. If, during such 60-day period, the President fails to approve or disapprove such candidate site, or fails to invoke his authority under paragraph (2) to delay his decision, such candidate site shall be considered to be approved, and the Secretary shall notify such Governor and legislature, or governing body of the affected Indian tribe, of the approval of such candidate site by reason of the inaction of the President.

(2) The President may delay for not more than 6 months his decision under paragraph (1) to approve or disapprove a candidate site, upon determining that the information provided with the recommendation of the Secretary is insufficient to permit a decision within the 60-day period referred to in paragraph (1). The President may invoke his authority under this paragraph by submitting written notice to the Congress, within such 60-day period, of his intent to invoke such authority. If the President invokes such authority, but fails to approve or disapprove the candidate site involved by the end of such 6-month period, such candidate site shall be considered to be approved, and the Secretary shall notify such Governor and legislature, or governing body of the affected Indian tribe, of the approval of such candidate site by reason of the inaction of the President.

(d) Preliminary activities

Except as otherwise provided in this section, each activity of the President or the Secretary under this section shall be considered to be a preliminary decisionmaking activity. No such activity shall require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), or to require any environmental review under subparagraph (E) or (F) of section 102(2) of such Act.

(Pub. L. 97-425, title I, §112, Jan. 7, 1983, 96 Stat. 2208; Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5011(b)-(d), Dec. 22, 1987, 101 Stat. 1330-228; Pub. L. 102-154, title I, Nov. 13, 1991, 105 Stat. 1000.)

AMENDMENTS

1987—Subsec. (b)(1)(C) to (H). Pub. L. 100-202 and Pub. L. 100-203, §5011(b), amended par. (1) identically, redesignating subpars. (D) to (H) as (C) to (G), respectively, in subpar. (C) substituting “subparagraph (B)” for “subparagraphs (B) and (C)”, and striking out former

¹ So in original. There is no cl. (ii).

subpar. (C) which read as follows: "Not later than July 1, 1989, the Secretary shall nominate 5 sites, which shall include at least 3 additional sites not nominated under subparagraph (A), and recommend by such date to the President from such 5 nominated sites 3 candidate sites the Secretary determines suitable for site characterization for selection of the second repository. The Secretary may not nominate any site previously nominated under subparagraph (A), that was not recommended as a candidate site under subparagraph (B)."

Subsec. (d). Pub. L. 100-202 and Pub. L. 100-203, §5011(c), amended section identically, redesignating subsec. (e) as (d) and striking out former subsec (d) which read as follows: "After the required recommendation of candidate sites under subsection (b) of this section, the Secretary may continue, as he determines necessary, to identify and study other sites to determine their suitability for recommendation for site characterization, in accordance with the procedures described in this section."

Subsec. (e). Pub. L. 100-202 and Pub. L. 100-203, §5011(d), which contained identical amendments directing that subsec. (f) be struck out and all subsequent subsections be redesignated accordingly, was executed by striking out subsec. (e) as the probable intent of Congress because of the redesignation of former subsec. (f) as (e) by Pub. L. 100-202 and Pub. L. 100-203, §5011(c), and the absence of any subsections subsequent to former subsec. (f). Subsec. (e) read as follows: "Nothing in this section may be construed as prohibiting the Secretary from continuing ongoing or presently planned site characterization at any site on Department of Energy land for which the location of the principal borehole has been approved by the Secretary by August 1, 1982, except that (1) the environmental assessment described in subsection (b)(1) of this section shall be prepared and made available to the public before proceeding to sink shafts at any such site; and (2) the Secretary shall not continue site characterization at any such site unless such site is among the candidate sites recommended by the Secretary under the first sentence of subsection (b) of this section for site characterization and approved by the President under subsection (c) of this section; and (3) the Secretary shall conduct public hearings under section 10133(b)(2) of this title and comply with requirements under section 10137 of this title within one year of January 7, 1983."

Pub. L. 100-202 and Pub. L. 100-203, §5011(c), amended section identically, redesignating subsec. (f) as (e). Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 100-202 and Pub. L. 100-203, §5011(c), amended section identically, redesignating subsec. (f) as (e).

CHANGE OF NAME

"United States Geological Survey" substituted for "Geological Survey" in subsec. (a) pursuant to provision of title I of Pub. L. 102-154, set out as a note under section 31 of Title 43, Public Lands.

DELEGATION OF NOTIFICATION FUNCTION

Letter of the President of the United States, dated May 28, 1986, 51 F.R. 19531, provided:

Letter to the Honorable John S. Herrington, Secretary of Energy

Dear Mr. Secretary:

You are hereby authorized to perform the notification function vested in the President pursuant to Section 112(c)(1) of the Nuclear Waste Policy Act of 1982, 42 U.S.C. § 10132(c)(1).

This document shall be published in the Federal Register.

Sincerely,

RONALD REAGAN.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10101, 10133, 10137, 10138, 10139, 10161, 10172a, 10221 of this title.

§ 10133. Site characterization

(a) In general

The Secretary shall carry out, in accordance with the provisions of this section, appropriate site characterization activities at the Yucca Mountain site. The Secretary shall consider fully the comments received under subsection (b)(2) of this section and section 10132(b)(2) of this title and shall, to the maximum extent practicable and in consultation with the Governor of the State of Nevada, conduct site characterization activities in a manner that minimizes any significant adverse environmental impacts identified in such comments or in the environmental assessment submitted under subsection (b)(1) of this section.

(b) Commission and States

(1) Before proceeding to sink shafts at the Yucca Mountain site, the Secretary shall submit for such candidate site to the Commission and to the Governor or legislature of the State of Nevada, for their review and comment—

(A) a general plan for site characterization activities to be conducted at such candidate site, which plan shall include—

(i) a description of such candidate site;

(ii) a description of such site characterization activities, including the following: the extent of planned excavations, plans for any onsite testing with radioactive or nonradioactive material, plans for any investigation activities that may affect the capability of such candidate site to isolate high-level radioactive waste and spent nuclear fuel, and plans to control any adverse, safety-related impacts from such site characterization activities;

(iii) plans for the decontamination and decommissioning of such candidate site, and for the mitigation of any significant adverse environmental impacts caused by site characterization activities if it is determined unsuitable for application for a construction authorization for a repository;

(iv) criteria to be used to determine the suitability of such candidate site for the location of a repository, developed pursuant to section 10132(a) of this title; and

(v) any other information required by the Commission;

(B) a description of the possible form or packaging for the high-level radioactive waste and spent nuclear fuel to be emplaced in such repository, a description, to the extent practicable, of the relationship between such waste form or packaging and the geologic medium of such site, and a description of the activities being conducted by the Secretary with respect to such possible waste form or packaging or such relationship; and

(C) a conceptual repository design that takes into account likely site-specific requirements.

(2) Before proceeding to sink shafts at the Yucca Mountain site, the Secretary shall (A) make available to the public the site characterization plan described in paragraph (1); and (B) hold public hearings in the vicinity of such candidate site to inform the residents of the area in

which such candidate site is located of such plan, and to receive their comments.

(3) During the conduct of site characterization activities at the Yucca Mountain site, the Secretary shall report not less than once every 6 months to the Commission and to the Governor and legislature of the State of Nevada, on the nature and extent of such activities and the information developed from such activities.

(c) Restrictions

(1) The Secretary may conduct at the Yucca Mountain site only such site characterization activities as the Secretary considers necessary to provide the data required for evaluation of the suitability of such site for an application to be submitted to the Commission for a construction authorization for a repository at such site, and for compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(2) In conducting site characterization activities—

(A) the Secretary may not use any radioactive material at a site unless the Commission concurs that such use is necessary to provide data for the preparation of the required environmental reports and an application for a construction authorization for a repository at such site; and

(B) if any radioactive material is used at a site—

(i) the Secretary shall use the minimum quantity necessary to determine the suitability of such site for a repository, but in no event more than the curie equivalent of 10 metric tons of spent nuclear fuel; and

(ii) such radioactive material shall be fully retrievable.

(3) If the Secretary at any time determines the Yucca Mountain site to be unsuitable for development as a repository, the Secretary shall—

(A) terminate all site characterization activities at such site;

(B) notify the Congress, the Governor and legislature of Nevada of such termination and the reasons for such termination;

(C) remove any high-level radioactive waste, spent nuclear fuel, or other radioactive materials at or in such site as promptly as practicable;

(D) take reasonable and necessary steps to reclaim the site and to mitigate any significant adverse environmental impacts caused by site characterization activities at such site;

(E) suspend all future benefits payments under part F of this subchapter with respect to such site; and

(F) report to Congress not later than 6 months after such determination the Secretary's recommendations for further action to assure the safe, permanent disposal of spent nuclear fuel and high-level radioactive waste, including the need for new legislative authority.

(d) Preliminary activities

Each activity of the Secretary under this section that is in compliance with the provisions of subsection (c) of this section shall be considered a preliminary decisionmaking activity. No such activity shall require the preparation of an envi-

ronmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), or to¹ require any environmental review under subparagraph (E) or (F) of section 102(2) of such Act.

(Pub. L. 97-425, title I, §113, Jan. 7, 1983, 96 Stat. 2211; Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5011(e)-(g), Dec. 22, 1987, 101 Stat. 1330-228.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (c)(1), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

AMENDMENTS

1987—Subsec. (a). Pub. L. 100-202 and Pub. L. 100-203, §5011(e)(2), which contained identical amendments directing that “at the Yucca Mountain site” be substituted for “beginning” and all that follows through “geological media”, were executed by substituting “at the Yucca Mountain site” for “beginning with the candidate sites that have been approved under section 10132 of this title and are located in various geologic media” as the probable intent of Congress.

Pub. L. 100-202 and Pub. L. 100-203, §5011(e)(1), amended subsec. (a) identically, substituting “State of Nevada” for “State involved or the governing body of the affected Indian tribe involved”.

Subsec. (b)(1). Pub. L. 100-202 and Pub. L. 100-203, §5011(f)(1), amended par. (1) identically, substituting “the Yucca Mountain site” for “any candidate site” and “the Governor or legislature of the State of Nevada” for “either the Governor and legislature of the State in which such candidate site is located, or the governing body of the affected Indian tribe on whose reservation such candidate site is located, as the case may be”.

Subsec. (b)(2). Pub. L. 100-202 and Pub. L. 100-203, §5011(f)(2), amended par. (2) identically, substituting “the Yucca Mountain site” for “any candidate site”.

Subsec. (b)(3). Pub. L. 100-202 and Pub. L. 100-203, §5011(f)(3), amended par. (3) identically, substituting “the Yucca Mountain site” for “a candidate site”, striking “either” before “the Governor”, and substituting “the State of Nevada” for “the State in which such candidate site is located, or the governing body of the affected Indian tribe where such candidate site is located, as the case may be”.

Subsec. (c)(1). Pub. L. 100-202 and Pub. L. 100-203, §5011(g)(1), amended par. (1) identically, substituting “the Yucca Mountain site” for “any candidate site”, “suitability of such site” for “suitability of such candidate site”, and “repository at such site” for “repository at such candidate site”.

Subsec. (c)(2). Pub. L. 100-202 and Pub. L. 100-203, §5011(g)(2), amended par. (2) identically, striking out “candidate” before “site” in two places in subpar. (A) and in two places in subpar. (B).

Subsec. (c)(3), (4). Pub. L. 100-202 and Pub. L. 100-203, §5011(g)(3), amended subsec. (c) identically, adding par. (3) and striking out former pars. (3) and (4) which read as follows:

“(3) If site characterization activities are terminated at a candidate site for any reason, the Secretary shall (A) notify the Congress, the Governors and legislatures of all States in which candidate sites are located, and the governing bodies of all affected Indian tribes where candidate sites are located, of such termination and the reasons for such termination; and (B) remove any high-level radioactive waste, spent nuclear fuel, or other

¹ So in original. The word “to” probably should not appear.

radioactive materials at or in such candidate site as promptly as practicable.

“(4) If a site is determined to be unsuitable for application for a construction authorization for a repository, the Secretary shall take reasonable and necessary steps to reclaim the site and to mitigate any significant adverse environmental impacts caused by site characterization activities.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10101, 10132, 10134, 10136, 10244, 10245 of this title.

§ 10134. Site approval and construction authorization

(a) Hearings and Presidential recommendation

(1) The Secretary shall hold public hearings in the vicinity of the Yucca Mountain site, for the purposes of informing the residents of the area of such consideration and receiving their comments regarding the possible recommendation of such site. If, upon completion of such hearings and completion of site characterization activities at the Yucca Mountain site, under section 10133 of this title, the Secretary decides to recommend approval of such site to the President, the Secretary shall notify the Governor and legislature of the State of Nevada, of such decision. No sooner than the expiration of the 30-day period following such notification, the Secretary shall submit to the President a recommendation that the President approve such site for the development of a repository. Any such recommendation by the Secretary shall be based on the record of information developed by the Secretary under section 10133 of this title and this section, including the information described in subparagraph (A) through subparagraph (G). Together with any recommendation of a site under this paragraph, the Secretary shall make available to the public, and submit to the President, a comprehensive statement of the basis of such recommendation, including the following:

(A) a description of the proposed repository, including preliminary engineering specifications for the facility;

(B) a description of the waste form or packaging proposed for use at such repository, and an explanation of the relationship between such waste form or packaging and the geologic medium of such site;

(C) a discussion of data, obtained in site characterization activities, relating to the safety of such site;

(D) a final environmental impact statement prepared for the Yucca Mountain site pursuant to subsection (f) of this section and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), together with comments made concerning such environmental impact statement by the Secretary of the Interior, the Council on Environmental Quality, the Administrator, and the Commission, except that the Secretary shall not be required in any such environmental impact statement to consider the need for a repository, the alternatives to geological disposal, or alternative sites to the Yucca Mountain site;

(E) preliminary comments of the Commission concerning the extent to which the at-depth site characterization analysis and the

waste form proposal for such site seem to be sufficient for inclusion in any application to be submitted by the Secretary for licensing of such site as a repository;

(F) the views and comments of the Governor and legislature of any State, or the governing body of any affected Indian tribe, as determined by the Secretary, together with the response of the Secretary to such views;

(G) such other information as the Secretary considers appropriate; and

(H) any impact report submitted under section 10136(c)(2)(B) of this title by the State of Nevada.

(2)(A) If, after recommendation by the Secretary, the President considers the Yucca Mountain site qualified for application for a construction authorization for a repository, the President shall submit a recommendation of such site to Congress.

(B) The President shall submit with such recommendation a copy of the statement for such site prepared by the Secretary under paragraph (1).

(3)(A) The President may not recommend the approval of the Yucca Mountain site unless the Secretary has recommended to the President under paragraph (1) approval of such site and has submitted to the President a statement for such site as required under such paragraph.

(B) No recommendation of a site by the President under this subsection shall require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), or to¹ require any environmental review under subparagraph (E) or (F) of section 102(2) of such Act.

(b) Submission of application

If the President recommends to the Congress the Yucca Mountain site under subsection (a) of this section and the site designation is permitted to take effect under section 10135 of this title, the Secretary shall submit to the Commission an application for a construction authorization for a repository at such site not later than 90 days after the date on which the recommendation of the site designation is effective under such section and shall provide to the Governor and legislature of the State of Nevada a copy of such application.

(c) Status report on application

Not later than 1 year after the date on which an application for a construction authorization is submitted under subsection (b) of this section, and annually thereafter until the date on which such authorization is granted, the Commission shall submit a report to the Congress describing the proceedings undertaken through the date of such report with regard to such application, including a description of—

(1) any major unresolved safety issues, and the explanation of the Secretary with respect to design and operation plans for resolving such issues;

(2) any matters of contention regarding such application; and

¹ So in original. The word “to” probably should not appear.

(3) any Commission actions regarding the granting or denial of such authorization.

(d) Commission action

The Commission shall consider an application for a construction authorization for all or part of a repository in accordance with the laws applicable to such applications, except that the Commission shall issue a final decision approving or disapproving the issuance of a construction authorization not later than the expiration of 3 years after the date of the submission of such application, except that the Commission may extend such deadline by not more than 12 months if, not less than 30 days before such deadline, the Commission complies with the reporting requirements established in subsection (e)(2) of this section. The Commission decision approving the first such application shall prohibit the emplacement in the first repository of a quantity of spent fuel containing in excess of 70,000 metric tons of heavy metal or a quantity of solidified high-level radioactive waste resulting from the reprocessing of such a quantity of spent fuel until such time as a second repository is in operation. In the event that a monitored retrievable storage facility, approved pursuant to part C of this subchapter, shall be located, or is planned to be located, within 50 miles of the first repository, then the Commission decision approving the first such application shall prohibit the emplacement of a quantity of spent fuel containing in excess of 70,000 metric tons of heavy metal or a quantity of solidified high-level radioactive waste resulting from the reprocessing of spent fuel in both the repository and monitored retrievable storage facility until such time as a second repository is in operation.

(e) Project decision schedule

(1) The Secretary shall prepare and update, as appropriate, in cooperation with all affected Federal agencies, a project decision schedule that portrays the optimum way to attain the operation of the repository, within the time periods specified in this part. Such schedule shall include a description of objectives and a sequence of deadlines for all Federal agencies required to take action, including an identification of the activities in which a delay in the start, or completion, of such activities will cause a delay in beginning repository operation.

(2) Any Federal agency that determines that it cannot comply with any deadline in the project decision schedule, or fails to so comply, shall submit to the Secretary and to the Congress a written report explaining the reason for its failure or expected failure to meet such deadline, the reason why such agency could not reach an agreement with the Secretary, the estimated time for completion of the activity or activities involved, the associated effect on its other deadlines in the project decision schedule, and any recommendations it may have or actions it intends to take regarding any improvements in its operation or organization, or changes to its statutory directives or authority, so that it will be able to mitigate the delay involved. The Secretary, within 30 days after receiving any such report, shall file with the Congress his response to such report, including the reasons why the Secretary could not amend the project decision

schedule to accommodate the Federal agency involved.

(f) Environmental impact statement

(1) Any recommendation made by the Secretary under this section shall be considered a major Federal action significantly affecting the quality of the human environment for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). A final environmental impact statement prepared by the Secretary under such Act shall accompany any recommendation to the President to approve a site for a repository.

(2) With respect to the requirements imposed by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), compliance with the procedures and requirements of this chapter shall be deemed adequate consideration of the need for a repository, the time of the initial availability of a repository, and all alternatives to the isolation of high-level radioactive waste and spent nuclear fuel in a repository.

(3) For purposes of complying with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and this section, the Secretary need not consider alternate sites to the Yucca Mountain site for the repository to be developed under this part.

(4) Any environmental impact statement prepared in connection with a repository proposed to be constructed by the Secretary under this part shall, to the extent practicable, be adopted by the Commission in connection with the issuance by the Commission of a construction authorization and license for such repository. To the extent such statement is adopted by the Commission, such adoption shall be deemed to also satisfy the responsibilities of the Commission under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and no further consideration shall be required, except that nothing in this subsection shall affect any independent responsibilities of the Commission to protect the public health and safety under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

(5) Nothing in this chapter shall be construed to amend or otherwise detract from the licensing requirements of the Nuclear Regulatory Commission established in title II of the Energy Reorganization Act of 1974 (42 U.S.C. 5841 et seq.).

(6) In any such statement prepared with respect to the repository to be constructed under this part, the Nuclear Regulatory Commission need not consider the need for a repository, the time of initial availability of a repository, alternate sites to the Yucca Mountain site, or non-geologic alternatives to such site.

(Pub. L. 97-425, title I, § 114, Jan. 7, 1983, 96 Stat. 2213; Pub. L. 100-202, § 101(d) [title III, § 300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, § 5011(h)-(l), Dec. 22, 1987, 101 Stat. 1330-229, 1330-230.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsecs. (a)(1)(D) and (f), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of this title. For

complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

The Atomic Energy Act of 1954, referred to in subsec. (f)(4), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

The Energy Reorganization Act of 1974, referred to in subsec. (f)(5), is Pub. L. 93-438, Oct. 11, 1974, 88 Stat. 1233, as amended. Title II of the Energy Reorganization Act of 1974 is classified generally to subchapter II (§5841 et seq.) of chapter 73 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5801 of this title and Tables.

AMENDMENTS

1987—Subsec. (a)(1). Pub. L. 100-202 and Pub. L. 100-203, §5011(h)(1)(A)–(E), amended par. (1) identically, in introductory provisions substituting “vicinity of the Yucca Mountain site” for “vicinity of each site under consideration for recommendation to the President under this paragraph as a site for the development of a repository”, striking out “in which such site is located” after “residents of the area”, substituting “activities at the Yucca Mountain site” for “activities at not less than 3 candidate sites for the first proposed repository, or from all of the characterized sites for the development of subsequent repositories” [sic] and “of Nevada” for “in which such site is located, or the governing body of the affected Indian tribe where such site is located, as the case may be”, and struck out before last sentence “In making site recommendations and approvals subsequent to the first site recommendation, the Secretary and the President, respectively, shall also consider the need for regional distribution of repositories and the need to minimize, to the extent practicable, the impacts and cost of transporting spent fuel and solidified high-level radioactive waste.”

Subsec. (a)(1)(D). Pub. L. 100-202 and Pub. L. 100-203, §5011(h)(1)(F), generally amended subpar. (D) identically. Prior to amendment, subpar. (D) read as follows: “a final environmental impact statement prepared pursuant to subsection (f) of this section and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), including an analysis of the consideration given by the Secretary to not less than 3 candidate sites for the first proposed repository [sic] or to all of the characterized sites for the development of subsequent repositories, with respect to which site characterization is completed under section 10133 of this title, together with comments made concerning such environmental impact statement by the Secretary of the Interior, the Council on Environmental Quality, the Administrator, and the Commission, except that any such environmental impact statement concerning the first repository to be developed under this chapter shall not be required to consider the need for a repository or the alternatives to geologic disposal.”

Subsec. (a)(1)(H). Pub. L. 100-202 and Pub. L. 100-203, §5011(h)(1)(G), amended subpar. (H) identically, substituting “the State of Nevada” for “the State in which such site is located, or under section 10138(b)(3)(B) of this title by the affected Indian tribe where such site is located, as the case may be”.

Subsec. (a)(2). Pub. L. 100-202 and Pub. L. 100-203, §5011(h)(2), amended subsec. (a) identically, adding par. (2) and striking out former par. (2) which required submission of recommendation of one site for repository not later than Mar. 31, 1987, and recommendation of second site not later than Mar. 31, 1990, and permitted subsequent recommendations for other sites and extension of deadlines.

Subsec. (a)(3), (4). Pub. L. 100-202 and Pub. L. 100-203, §5011(h)(2), (3), amended subsec. (a) identically, redesignating par. (4) as (3), in subpar. (A), substituting “the Yucca Mountain site” for “any site under this subsection” and “statement” for “report”, and striking

out former par. (3) which read as follows: “If approval of any such site recommendation does not take effect as a result of a disapproval by the Governor or legislature of a State under section 10136 of this title or the governing body of an affected Indian tribe under section 10138 of this title, the President shall submit to the Congress, not later than 1 year after the disapproval of such recommendation, a recommendation of another site for the first or subsequent repository.”

Subsec. (b). Pub. L. 100-202 and Pub. L. 100-203, §5011(i), amended subsec. (b) identically, substituting “the Yucca Mountain site” for “a site for a repository” and “State of Nevada” for “State in which such site is located, or the governing body of the affected Indian tribe where such site is located, as the case may be.”.

Subsec. (d). Pub. L. 100-202 and Pub. L. 100-203, §5011(j), amended subsec. (d) identically, substituting “than the expiration” for “than— (1) January 1, 1989, for the first such application, and January 1, 1992 for the second such application; or (2) the expiration” and “subsection (e)(2) of this section” for “subsection (e)(2) of this section; whichever occurs later”.

Subsec. (e)(1). Pub. L. 100-202 and Pub. L. 100-203, §5011(k), amended par. (1) identically, substituting “operation of the repository” for “operation of the repository involved”.

Subsec. (f). Pub. L. 100-202 and Pub. L. 100-203, §5011(l), generally amended subsec. (f) identically, substituting provisions consisting of pars. (1) to (6) for former provisions consisting of single unnumbered par.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which a report required under subsec. (c) of this section is listed as the 17th item on page 186), see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

VIABILITY ASSESSMENT OF YUCCA MOUNTAIN SITE

Pub. L. 104-206, title III, Sept. 30, 1996, 110 Stat. 2995, provided in part: “That no later than September 30, 1998, the Secretary shall provide to the President and to the Congress a viability assessment of the Yucca Mountain site. The viability assessment shall include:

- “(1) the preliminary design concept for the critical elements for the repository and waste package;
- “(2) a total system performance assessment, based upon the design concept and the scientific data and analysis available by September 30, 1998, describing the probable behavior of the repository in the Yucca Mountain geological setting relative to the overall system performance standards;
- “(3) a plan and cost estimate for the remaining work required to complete a license application; and
- “(4) an estimate of the costs to construct and operate the repository in accordance with the design concept.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10135, 10136, 10138, 10142, 10165 of this title.

§ 10135. Review of repository site selection

(a) “Resolution of repository siting approval” defined

For purposes of this section, the term “resolution of repository siting approval” means a joint resolution of the Congress, the matter after the resolving clause of which is as follows: “That there hereby is approved the site at for a repository, with respect to which a notice of disapproval was submitted by on”. The first blank space in such resolution shall be filled with the name of the geographic location

of the proposed site of the repository to which such resolution pertains; the second blank space in such resolution shall be filled with the designation of the State Governor and legislature or Indian tribe governing body submitting the notice of disapproval to which such resolution pertains; and the last blank space in such resolution shall be filled with the date of such submission.

(b) State or Indian tribe petitions

The designation of a site as suitable for application for a construction authorization for a repository shall be effective at the end of the 60-day period beginning on the date that the President recommends such site to the Congress under section 10134 of this title, unless the Governor and legislature of the State in which such site is located, or the governing body of an Indian tribe on whose reservation such site is located, as the case may be, has submitted to the Congress a notice of disapproval under section 10136 or 10138 of this title. If any such notice of disapproval has been submitted, the designation of such site shall not be effective except as provided under subsection (c) of this section.

(c) Congressional review of petitions

If any notice of disapproval of a repository site designation has been submitted to the Congress under section 10136 or 10138 of this title after a recommendation for approval of such site is made by the President under section 10134 of this title, such site shall be disapproved unless, during the first period of 90 calendar days of continuous session of the Congress after the date of the receipt by the Congress of such notice of disapproval, the Congress passes a resolution of repository siting approval in accordance with this subsection approving such site, and such resolution thereafter becomes law.

(d) Procedures applicable to Senate

(1) The provisions of this subsection are enacted by the Congress—

(A) as an exercise of the rulemaking power of the Senate, and as such they are deemed a part of the rules of the Senate, but applicable only with respect to the procedure to be followed in the Senate in the case of resolutions of repository siting approval, and such provisions supersede other rules of the Senate only to the extent that they are inconsistent with such other rules; and

(B) with full recognition of the constitutional right of the Senate to change the rules (so far as relating to the procedure of the Senate) at any time, in the same manner and to the same extent as in the case of any other rule of the Senate.

(2)(A) Not later than the first day of session following the day on which any notice of disapproval of a repository site selection is submitted to the Congress under section 10136 or 10138 of this title, a resolution of repository siting approval shall be introduced (by request) in the Senate by the chairman of the committee to which such notice of disapproval is referred, or by a Member or Members of the Senate designated by such chairman.

(B) Upon introduction, a resolution of repository siting approval shall be referred to the ap-

propriate committee or committees of the Senate by the President of the Senate, and all such resolutions with respect to the same repository site shall be referred to the same committee or committees. Upon the expiration of 60 calendar days of continuous session after the introduction of the first resolution of repository siting approval with respect to any site, each committee to which such resolution was referred shall make its recommendations to the Senate.

(3) If any committee to which is referred a resolution of siting approval introduced under paragraph (2)(A), or, in the absence of such a resolution, any other resolution of siting approval introduced with respect to the site involved, has not reported such resolution at the end of 60 days of continuous session of Congress after introduction of such resolution, such committee shall be deemed to be discharged from further consideration of such resolution, and such resolution shall be placed on the appropriate calendar of the Senate.

(4)(A) When each committee to which a resolution of siting approval has been referred has reported, or has been deemed to be discharged from further consideration of, a resolution described in paragraph (3), it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) for any Member of the Senate to move to proceed to the consideration of such resolution. Such motion shall be highly privileged and shall not be debatable. Such motion shall not be subject to amendment, to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which such motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of such resolution is agreed to, such resolution shall remain the unfinished business of the Senate until disposed of.

(B) Debate on a resolution of siting approval, and on all debatable motions and appeals in connection with such resolution, shall be limited to not more than 10 hours, which shall be divided equally between Members favoring and Members opposing such resolution. A motion further to limit debate shall be in order and shall not be debatable. Such motion shall not be subject to amendment, to a motion to postpone, or to a motion to proceed to the consideration of other business, and a motion to recommit such resolution shall not be in order. A motion to reconsider the vote by which such resolution is agreed to or disagreed to shall not be in order.

(C) Immediately following the conclusion of the debate on a resolution of siting approval, and a single quorum call at the conclusion of such debate if requested in accordance with the rules of the Senate, the vote on final approval of such resolution shall occur.

(D) Appeals from the decisions of the Chair relating to the application of the rules of the Senate to the procedure relating to a resolution of siting approval shall be decided without debate.

(5) If the Senate receives from the House a resolution of repository siting approval with respect to any site, then the following procedure shall apply:

(A) The resolution of the House with respect to such site shall not be referred to a committee.

(B) With respect to the resolution of the Senate with respect to such site—

(i) the procedure with respect to that or other resolutions of the Senate with respect to such site shall be the same as if no resolution from the House with respect to such site had been received; but

(ii) on any vote on final passage of a resolution of the Senate with respect to such site, a resolution from the House with respect to such site where the text is identical shall be automatically substituted for the resolution of the Senate.

(e) Procedures applicable to House of Representatives

(1) The provisions of this section are enacted by the Congress—

(A) as an exercise of the rulemaking power of the House of Representatives, and as such they are deemed a part of the rules of the House, but applicable only with respect to the procedure to be followed in the House in the case of resolutions of repository siting approval, and such provisions supersede other rules of the House only to the extent that they are inconsistent with such other rules; and

(B) with full recognition of the constitutional right of the House to change the rules (so far as relating to the procedure of the House) at any time, in the same manner and to the same extent as in the case of any other rule of the House.

(2) Resolutions of repository siting approval shall upon introduction, be immediately referred by the Speaker of the House to the appropriate committee or committees of the House. Any such resolution received from the Senate shall be held at the Speaker's table.

(3) Upon the expiration of 60 days of continuous session after the introduction of the first resolution of repository siting approval with respect to any site, each committee to which such resolution was referred shall be discharged from further consideration of such resolution, and such resolution shall be referred to the appropriate calendar, unless such resolution or an identical resolution was previously reported by each committee to which it was referred.

(4) It shall be in order for the Speaker to recognize a Member favoring a resolution to call up a resolution of repository siting approval after it has been on the appropriate calendar for 5 legislative days. When any such resolution is called up, the House shall proceed to its immediate consideration and the Speaker shall recognize the Member calling up such resolution and a Member opposed to such resolution for 2 hours of debate in the House, to be equally divided and controlled by such Members. When such time has expired, the previous question shall be considered as ordered on the resolution to adoption without intervening motion. No amendment to any such resolution shall be in order, nor shall it be in order to move to reconsider the vote by which such resolution is agreed to or disagreed to.

(5) If the House receives from the Senate a resolution of repository siting approval with respect to any site, then the following procedure shall apply:

(A) The resolution of the Senate with respect to such site shall not be referred to a committee.

(B) With respect to the resolution of the House with respect to such site—

(i) the procedure with respect to that or other resolutions of the House with respect to such site shall be the same as if no resolution from the Senate with respect to such site had been received; but

(ii) on any vote on final passage of a resolution of the House with respect to such site, a resolution from the Senate with respect to such site where the text is identical shall be automatically substituted for the resolution of the House.

(f) Computation of days

For purposes of this section—

(1) continuity of session of Congress is broken only by an adjournment sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 90-day period referred to in subsection (c) of this section and the 60-day period referred to in subsections (d) and (e) of this section.

(g) Information provided to Congress

In considering any notice of disapproval submitted to the Congress under section 10136 or 10138 of this title, the Congress may obtain any comments of the Commission with respect to such notice of disapproval. The provision of such comments by the Commission shall not be construed as binding the Commission with respect to any licensing or authorization action concerning the repository involved.

(Pub. L. 97-425, title I, §115, Jan. 7, 1983, 96 Stat. 2217.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10121, 10134, 10136, 10138, 10155, 10161, 10166, 10168, 10225 of this title.

§ 10136. Participation of States

(a) Notification of States and affected tribes

The Secretary shall identify the States with one or more potentially acceptable sites for a repository within 90 days after January 7, 1983. Within 90 days of such identification, the Secretary shall notify the Governor, the State legislature, and the tribal council of any affected Indian tribe in any State of the potentially acceptable sites within such State. For the purposes of this subchapter, the term "potentially acceptable site" means any site at which, after geologic studies and field mapping but before detailed geologic data gathering, the Department undertakes preliminary drilling and geophysical testing for the definition of site location.

(b) State participation in repository siting decisions

(1) Unless otherwise provided by State law, the Governor or legislature of each State shall have authority to submit a notice of disapproval to the Congress under paragraph (2). In any case in which State law provides for submission of any such notice of disapproval by any other person

or entity, any reference in this part to the Governor or legislature of such State shall be considered to refer instead to such other person or entity.

(2) Upon the submission by the President to the Congress of a recommendation of a site for a repository, the Governor or legislature of the State in which such site is located may disapprove the site designation and submit to the Congress a notice of disapproval. Such Governor or legislature may submit such a notice of disapproval to the Congress not later than the 60 days after the date that the President recommends such site to the Congress under section 10134 of this title. A notice of disapproval shall be considered to be submitted to the Congress on the date of the transmittal of such notice of disapproval to the Speaker of the House and the President pro tempore of the Senate. Such notice of disapproval shall be accompanied by a statement of reasons explaining why such Governor or legislature disapproved the recommended repository site involved.

(3) The authority of the Governor or legislature of each State under this subsection shall not be applicable with respect to any site located on a reservation.

(c) Financial assistance

(1)(A) The Secretary shall make grants to the State of Nevada and any affected unit of local government for the purpose of participating in activities required by this section and section 10137 of this title or authorized by written agreement entered into pursuant to section 10137(c) of this title. Any salary or travel expense that would ordinarily be incurred by such State or affected unit of local government, may not be considered eligible for funding under this paragraph.

(B) The Secretary shall make grants to the State of Nevada and any affected unit of local government for purposes of enabling such State or affected unit of local government—

(i) to review activities taken under this part with respect to the Yucca Mountain site for purposes of determining any potential economic, social, public health and safety, and environmental impacts of a repository on such State, or affected unit of local government and its residents;

(ii) to develop a request for impact assistance under paragraph (2);

(iii) to engage in any monitoring, testing, or evaluation activities with respect to site characterization programs with regard to such site;

(iv) to provide information to Nevada residents regarding any activities of such State, the Secretary, or the Commission with respect to such site; and

(v) to request information from, and make comments and recommendations to, the Secretary regarding any activities taken under this part with respect to such site.

(C) Any salary or travel expense that would ordinarily be incurred by the State of Nevada or any affected unit of local government may not be considered eligible for funding under this paragraph.

(2)(A)(i) The Secretary shall provide financial and technical assistance to the State of Nevada,

and any affected unit of local government requesting such assistance.

(ii) Such assistance shall be designed to mitigate the impact on such State or affected unit of local government of the development of such repository and the characterization of such site.

(iii) Such assistance to such State or affected unit of local government of such State shall commence upon the initiation of site characterization activities.

(B) The State of Nevada and any affected unit of local government may request assistance under this subsection by preparing and submitting to the Secretary a report on the economic, social, public health and safety, and environmental impacts that are likely to result from site characterization activities at the Yucca Mountain site. Such report shall be submitted to the Secretary after the Secretary has submitted to the State a general plan for site characterization activities under section 10133(b) of this title.

(C) As soon as practicable after the Secretary has submitted such site characterization plan, the Secretary shall seek to enter into a binding agreement with the State of Nevada setting forth—

(i) the amount of assistance to be provided under this subsection to such State or affected unit of local government; and

(ii) the procedures to be followed in providing such assistance.

(3)(A) In addition to financial assistance provided under paragraphs (1) and (2), the Secretary shall grant to the State of Nevada and any affected unit of local government an amount each fiscal year equal to the amount such State or affected unit of local government, respectively, would receive if authorized to tax site characterization activities at such site, and the development and operation of such repository, as such State or affected unit of local government taxes the non-Federal real property and industrial activities occurring within such State or affected unit of local government.

(B) Such grants shall continue until such time as all such activities, development, and operation are terminated at such site.

(4)(A) The State of Nevada or any affected unit of local government may not receive any grant under paragraph (1) after the expiration of the 1-year period following—

(i) the date on which the Secretary notifies the Governor and legislature of the State of Nevada of the termination of site characterization activities at the site in such State;

(ii) the date on which the Yucca Mountain site is disapproved under section 10135 of this title; or

(iii) the date on which the Commission disapproves an application for a construction authorization for a repository at such site;

whichever occurs first.

(B) The State of Nevada or any affected unit of local government may not receive any further assistance under paragraph (2) with respect to a site if repository construction activities or site characterization activities at such site are terminated by the Secretary or if such activities are permanently enjoined by any court.

(C) At the end of the 2-year period beginning on the effective date of any license to receive and possess for a repository in a State, no Federal funds, shall be made available to such State or affected unit of local government under paragraph (1) or (2), except for—

(i) such funds as may be necessary to support activities related to any other repository located in, or proposed to be located in, such State, and for which a license to receive and possess has not been in effect for more than 1 year;

(ii) such funds as may be necessary to support State activities pursuant to agreements or contracts for impact assistance entered into, under paragraph (2), by such State with the Secretary during such 2-year period; and

(iii) such funds as may be provided under an agreement entered into under subchapter IV of this chapter.

(5) Financial assistance authorized in this subsection shall be made out of amounts held in the Waste Fund.

(6) No State, other than the State of Nevada, may receive financial assistance under this subsection after December 22, 1987.

(d) Additional notification and consultation

Whenever the Secretary is required under any provision of this chapter to notify or consult with the governing body of an affected Indian tribe where a site is located, the Secretary shall also notify or consult with, as the case may be, the Governor of the State in which such reservation is located.

(Pub. L. 97-425, title I, § 116, Jan. 7, 1983, 96 Stat. 2220; Pub. L. 100-202, § 101(d) [title III, § 300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, § 5032(a), Dec. 22, 1987, 101 Stat. 1330-241.)

AMENDMENTS

1987—Subsec. (c). Pub. L. 100-202 and Pub. L. 100-203 generally amended subsec. (c) identically, substituting provisions consisting of pars. (1) to (6) for former provisions consisting of pars. (1) to (5).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10121, 10134, 10135, 10137, 10138, 10161, 10166, 10169, 10173a, 10222, 10243 of this title.

§ 10137. Consultation with States and affected Indian tribes

(a) Provision of information

(1) The Secretary, the Commission, and other agencies involved in the construction, operation, or regulation of any aspect of a repository in a State shall provide to the Governor and legislature of such State, and to the governing body of any affected Indian tribe, timely and complete information regarding determinations or plans made with respect to the site characterization siting, development, design, licensing, construction, operation, regulation, or decommissioning of such repository.

(2) Upon written request for such information by the Governor or legislature of such State, or by the governing body of any affected Indian tribe, as the case may be, the Secretary shall provide a written response to such request with-

in 30 days of the receipt of such request. Such response shall provide the information requested or, in the alternative, the reasons why the information cannot be so provided. If the Secretary fails to so respond within such 30 days, the Governor or legislature of such State, or the governing body of any affected Indian tribe, as the case may be, may transmit a formal written objection to such failure to respond to the President. If the President or Secretary fails to respond to such written request within 30 days of the receipt by the President of such formal written objection, the Secretary shall immediately suspend all activities in such State authorized by this part, and shall not renew such activities until the Governor or legislature of such State, or the governing body of any affected Indian tribe, as the case may be, has received the written response to such written request required by this subsection.

(b) Consultation and cooperation

In performing any study of an area within a State for the purpose of determining the suitability of such area for a repository pursuant to section 10132(c) of this title, and in subsequently developing and loading¹ any repository within such State, the Secretary shall consult and cooperate with the Governor and legislature of such State and the governing body of any affected Indian tribe in an effort to resolve the concerns of such State and any affected Indian tribe regarding the public health and safety, environmental, and economic impacts of any such repository. In carrying out his duties under this part, the Secretary shall take such concerns into account to the maximum extent feasible and as specified in written agreements entered into under subsection (c) of this section.

(c) Written agreement

Not later than 60 days after (1) the approval of a site for site characterization for such a repository under section 10132(c) of this title, or (2) the written request of the State or Indian tribe in any affected State notified under section 10136(a) of this title to the Secretary, whichever² first occurs, the Secretary shall seek to enter into a binding written agreement, and shall begin negotiations, with such State and, where appropriate, to enter into a separate binding agreement with the governing body of any affected Indian tribe, setting forth (but not limited to) the procedures under which the requirements of subsections (a) and (b) of this section, and the provisions of such written agreement, shall be carried out. Any such written agreement shall not affect the authority of the Commission under existing law. Each such written agreement shall, to the maximum extent feasible, be completed not later than 6 months after such notification. Such written agreement shall specify procedures—

(1) by which such State or governing body of an affected Indian tribe, as the case may be, may study, determine, comment on, and make recommendations with regard to the possible public health and safety, environmental, social, and economic impacts of any such repository;

¹ So in original. Probably should be "locating".

² So in original. The comma probably should not appear.

(2) by which the Secretary shall consider and respond to comments and recommendations made by such State or governing body of an affected Indian tribe, including the period in which the Secretary shall so respond;

(3) by which the Secretary and such State or governing body of an affected Indian tribe may review or modify the agreement periodically;

(4) by which such State or governing body of an affected Indian tribe is to submit an impact report and request for impact assistance under section 10136(c) of this title or section 10138(b) of this title, as the case may be;

(5) by which the Secretary shall assist such State, and the units of general local government in the vicinity of the repository site, in resolving the offsite concerns of such State and units of general local government, including, but not limited to, questions of State liability arising from accidents, necessary road upgrading and access to the site, ongoing emergency preparedness and emergency response, monitoring of transportation of high-level radioactive waste and spent nuclear fuel through such State, conduct of baseline health studies of inhabitants in neighboring communities near the repository site and reasonable periodic monitoring thereafter, and monitoring of the repository site upon any decommissioning and decontamination;

(6) by which the Secretary shall consult and cooperate with such State on a regular, ongoing basis and provide for an orderly process and timely schedule for State review and evaluation, including identification in the agreement of key events, milestones, and decision points in the activities of the Secretary at the potential repository site;

(7) by which the Secretary shall notify such State prior to the transportation of any high-level radioactive waste and spent nuclear fuel into such State for disposal at the repository site;

(8) by which such State may conduct reasonable independent monitoring and testing of activities on the repository site, except that such monitoring and testing shall not unreasonably interfere with or delay onsite activities;

(9) for sharing, in accordance with applicable law, of all technical and licensing information, the utilization of available expertise, the facilitating of permit procedures, joint project review, and the formulation of joint surveillance and monitoring arrangements to carry out applicable Federal and State laws;

(10) for public notification of the procedures specified under the preceding paragraphs; and

(11) for resolving objections of a State and affected Indian tribes at any stage of the planning, siting, development, construction, operation, or closure of such a facility within such State through negotiation, arbitration, or other appropriate mechanisms.

(d) On-site representative

The Secretary shall offer to any State, Indian tribe or unit of local government within whose jurisdiction a site for a repository or monitored retrievable storage facility is located under this subchapter an opportunity to designate a rep-

resentative to conduct on-site oversight activities at such site. Reasonable expenses of such representatives shall be paid out of the Waste Fund.

(Pub. L. 97-425, title I, §117, Jan. 7, 1983, 96 Stat. 2222; Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5011(m), Dec. 22, 1987, 101 Stat. 1330-231; Pub. L. 104-66, title I, §1051(i), Dec. 21, 1995, 109 Stat. 716.)

AMENDMENTS

1995—Subsec. (c). Pub. L. 104-66 struck out after third sentence "If such written agreement is not completed within such period, the Secretary shall report to the Congress in writing within 30 days on the status of negotiations to develop such agreement and the reasons why such agreement has not been completed. Prior to submission of such report to the Congress, the Secretary shall transmit such report to the Governor of such State or the governing body of such affected Indian tribe, as the case may be, for their review and comments. Such comments shall be included in such report prior to submission to the Congress."

1987—Subsec. (d). Pub. L. 100-202 and Pub. L. 100-203 amended section identically, adding subsec. (d).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10121, 10136, 10138, 10161, 10243 of this title.

§ 10138. Participation of Indian tribes

(a) Participation of Indian tribes in repository siting decisions

Upon the submission by the President to the Congress of a recommendation of a site for a repository located on the reservation of an affected Indian tribe, the governing body of such Indian tribe may disapprove the site designation and submit to the Congress a notice of disapproval. The governing body of such Indian tribe may submit such a notice of disapproval to the Congress not later than the 60 days after the date that the President recommends such site to the Congress under section 10134 of this title. A notice of disapproval shall be considered to be submitted to the Congress on the date of the transmittal of such notice of disapproval to the Speaker of the House and the President pro tempore of the Senate. Such notice of disapproval shall be accompanied by a statement of reasons explaining why the governing body of such Indian tribe disapproved the recommended repository site involved.

(b) Financial assistance

(1) The Secretary shall make grants to each affected tribe notified under section 10136(a) of this title for the purpose of participating in activities required by section 10137 of this title or authorized by written agreement entered into pursuant to section 10137(c) of this title. Any salary or travel expense that would ordinarily be incurred by such tribe, may not be considered eligible for funding under this paragraph.

(2)(A) The Secretary shall make grants to each affected Indian tribe where a candidate site for a repository is approved under section 10132(c) of this title. Such grants may be made to each such Indian tribe only for purposes of enabling such Indian tribe—

(i) to review activities taken under this part with respect to such site for purposes of deter-

mining any potential economic, social, public health and safety, and environmental impacts of such repository on the reservation and its residents;

(ii) to develop a request for impact assistance under paragraph (2);

(iii) to engage in any monitoring, testing, or evaluation activities with respect to site characterization programs with regard to such site;

(iv) to provide information to the residents of its reservation regarding any activities of such Indian tribe, the Secretary, or the Commission with respect to such site; and

(v) to request information from, and make comments and recommendations to, the Secretary regarding any activities taken under this part with respect to such site.

(B) The amount of funds provided to any affected Indian tribe under this paragraph in any fiscal year may not exceed 100 percent of the costs incurred by such Indian tribe with respect to the activities described in clauses (i) through (v) of subparagraph (A). Any salary or travel expense that would ordinarily be incurred by such Indian tribe may not be considered eligible for funding under this paragraph.

(3)(A) The Secretary shall provide financial and technical assistance to any affected Indian tribe requesting such assistance and where there is a site with respect to which the Commission has authorized construction of a repository. Such assistance shall be designed to mitigate the impact on such Indian tribe of the development of such repository. Such assistance to such Indian tribe shall commence within 6 months following the granting by the Commission of a construction authorization for such repository and following the initiation of construction activities at such site.

(B) Any affected Indian tribe desiring assistance under this paragraph shall prepare and submit to the Secretary a report on any economic, social, public health and safety, and environmental impacts that are likely as a result of the development of a repository at a site on the reservation of such Indian tribe. Such report shall be submitted to the Secretary following the completion of site characterization activities at such site and before the recommendation of such site to the President by the Secretary for application for a construction authorization for a repository. As soon as practicable following the granting of a construction authorization for such repository, the Secretary shall seek to enter into a binding agreement with the Indian tribe involved setting forth the amount of assistance to be provided to such Indian tribe under this paragraph and the procedures to be followed in providing such assistance.

(4) The Secretary shall grant to each affected Indian tribe where a site for a repository is approved under section 10132(c) of this title an amount each fiscal year equal to the amount such Indian tribe would receive were it authorized to tax site characterization activities at such site, and the development and operation of such repository, as such Indian tribe taxes the other commercial activities occurring on such reservation. Such grants shall continue until such time as all such activities, development, and operation are terminated at such site.

(5)¹ An affected Indian tribe may not receive any grant under paragraph (1) after the expiration of the 1-year period following—

(i) the date on which the Secretary notifies such Indian tribe of the termination of site characterization activities at the candidate site involved on the reservation of such Indian tribe;

(ii) the date on which such site is disapproved under section 10135 of this title;

(iii) the date on which the Commission disapproves an application for a construction authorization for a repository at such site;²

(iv) December 22, 1987;

whichever occurs first, unless there is another candidate site on the reservation of such Indian tribe that is approved under section 10132(c) of this title and with respect to which the actions described in clauses (i), (ii), and (iii) have not been taken.

(B) An affected Indian tribe may not receive any further assistance under paragraph (2) with respect to a site if repository construction activities at such site are terminated by the Secretary or if such activities are permanently enjoined by any court.

(C) At the end of the 2-year period beginning on the effective date of any license to receive and possess for a repository at a site on the reservation of an affected Indian tribe, no Federal funds shall be made available under paragraph (1) or (2) to such Indian tribe, except for—

(i) such funds as may be necessary to support activities of such Indian tribe related to any other repository where a license to receive and possess has not been in effect for more than 1 year; and

(ii) such funds as may be necessary to support activities of such Indian tribe pursuant to agreements or contracts for impact assistance entered into, under paragraph (2), by such Indian tribe with the Secretary during such 2-year period.

(6) Financial assistance authorized in this subsection shall be made out of amounts held in the Nuclear Waste Fund established in section 10222 of this title.

(Pub. L. 97-425, title I, § 118, Jan. 7, 1983, 96 Stat. 2225; Pub. L. 100-202, § 101(d) [title III, § 300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, § 5033, Dec. 22, 1987, 101 Stat. 1330-243.)

AMENDMENTS

1987—Subsec. (b)(5)(iv). Pub. L. 100-202 and Pub. L. 100-203 amended par. (5) identically, adding cl. (iv).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10121, 10135, 10137, 10161, 10166, 10169, 10173a, 10222, 10243 of this title.

§ 10139. Judicial review of agency actions

(a) Jurisdiction of United States courts of appeals

(1) Except for review in the Supreme Court of the United States, the United States courts of

¹ So in original. Probably should be designated “(5)(A)”.

² So in original. Probably should be followed by “or”.

appeals shall have original and exclusive jurisdiction over any civil action—

(A) for review of any final decision or action of the Secretary, the President, or the Commission under this part;

(B) alleging the failure of the Secretary, the President, or the Commission to make any decision, or take any action, required under this part;

(C) challenging the constitutionality of any decision made, or action taken, under any provision of this part;

(D) for review of any environmental impact statement prepared pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to any action under this part, or as required under section 10155(c)(1) of this title, or alleging a failure to prepare such statement with respect to any such action;

(E) for review of any environmental assessment prepared under section 10132(b)(1) or 10155(c)(2) of this title; or

(F) for review of any research and development activity under subchapter II of this chapter.

(2) The venue of any proceeding under this section shall be in the judicial circuit in which the petitioner involved resides or has its principal office, or in the United States Court of Appeals for the District of Columbia.

(c)¹ Deadline for commencing action

A civil action for judicial review described under subsection (a)(1) of this section may be brought not later than the 180th day after the date of the decision or action or failure to act involved, as the case may be, except that if a party shows that he did not know of the decision or action complained of (or of the failure to act), and that a reasonable person acting under the circumstances would not have known, such party may bring a civil action not later than the 180th day after the date such party acquired actual or constructive knowledge of such decision, action, or failure to act.

(Pub. L. 97-425, title I, § 119, Jan. 7, 1983, 96 Stat. 2227.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (a)(1)(D), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10132, 10145, 10155, 10201, 10244 of this title.

§ 10140. Expedited authorizations

(a) Issuance of authorizations

(1) To the extent that the taking of any action related to the site characterization of a site or the construction or initial operation of a repository under this part requires a certificate, right-of-way, permit, lease, or other authorization

from a Federal agency or officer, such agency or officer shall issue or grant any such authorization at the earliest practicable date, to the extent permitted by the applicable provisions of law administered by such agency or officer. All actions of a Federal agency or officer with respect to consideration of applications or requests for the issuance or grant of any such authorization shall be expedited, and any such application or request shall take precedence over any similar applications or requests not related to such repositories.

(2) The provisions of paragraph (1) shall not apply to any certificate, right-of-way, permit, lease, or other authorization issued or granted by, or requested from, the Commission.

(b) Terms of authorizations

Any authorization issued or granted pursuant to subsection (a) of this section shall include such terms and conditions as may be required by law, and may include terms and conditions permitted by law.

(Pub. L. 97-425, title I, § 120, Jan. 7, 1983, 96 Stat. 2227.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10145 of this title.

§ 10141. Certain standards and criteria

(a) Environmental Protection Agency standards

Not later than 1 year after January 7, 1983, the Administrator, pursuant to authority under other provisions of law, shall, by rule, promulgate generally applicable standards for protection of the general environment from offsite releases from radioactive material in repositories.

(b) Commission requirements and criteria

(1)(A) Not later than January 1, 1984, the Commission, pursuant to authority under other provisions of law, shall, by rule, promulgate technical requirements and criteria that it will apply, under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) and the Energy Reorganization Act of 1974 (42 U.S.C. 5801 et seq.), in approving or disapproving—

(i) applications for authorization to construct repositories;

(ii) applications for licenses to receive and possess spent nuclear fuel and high-level radioactive waste in such repositories; and

(iii) applications for authorization for closure and decommissioning of such repositories.

(B) Such criteria shall provide for the use of a system of multiple barriers in the design of the repository and shall include such restrictions on the retrievability of the solidified high-level radioactive waste and spent fuel emplaced in the repository as the Commission deems appropriate.

(C) Such requirements and criteria shall not be inconsistent with any comparable standards promulgated by the Administrator under subsection (a) of this section.

(2) For purposes of this chapter, nothing in this section shall be construed to prohibit the Commission from promulgating requirements

¹ So in original. No subsec. (b) has been enacted.

and criteria under paragraph (1) before the Administrator promulgates standards under subsection (a) of this section. If the Administrator promulgates standards under subsection (a) of this section after requirements and criteria are promulgated by the Commission under paragraph (1), such requirements and criteria shall be revised by the Commission if necessary to comply with paragraph (1)(C).

(c) Environmental impact statement

The promulgation of standards or criteria in accordance with the provisions of this section shall not require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), or to require any environmental review under subparagraph (E) or (F) of section 102(2) of such Act.

(Pub. L. 97-425, title I, § 121, Jan. 7, 1983, 96 Stat. 2228.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in subsec. (b)(1)(A), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§ 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

The Energy Reorganization Act of 1974, referred to in subsec. (b)(1)(A), is Pub. L. 93-438, Oct. 11, 1974, 88 Stat. 1233, as amended, which is classified principally to chapter 73 (§ 5801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5801 of this title and Tables.

NUCLEAR WASTE STORAGE AND DISPOSAL AT YUCCA MOUNTAIN SITE

Pub. L. 102-486, title VIII, § 801, Oct. 24, 1992, 106 Stat. 2921, provided that:

“(a) ENVIRONMENTAL PROTECTION AGENCY STANDARDS.—

“(1) PROMULGATION.—Notwithstanding the provisions of section 121(a) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10141(a)), section 161 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2201(b)), and any other authority of the Administrator of the Environmental Protection Agency to set generally applicable standards for the Yucca Mountain site, the Administrator shall, based upon and consistent with the findings and recommendations of the National Academy of Sciences, promulgate, by rule, public health and safety standards for protection of the public from releases from radioactive materials stored or disposed of in the repository at the Yucca Mountain site. Such standards shall prescribe the maximum annual effective dose equivalent to individual members of the public from releases to the accessible environment from radioactive materials stored or disposed of in the repository. The standards shall be promulgated not later than 1 year after the Administrator receives the findings and recommendations of the National Academy of Sciences under paragraph (2) and shall be the only such standards applicable to the Yucca Mountain site.

“(2) STUDY BY NATIONAL ACADEMY OF SCIENCES.—Within 90 days after the date of the enactment of this Act [Oct. 24, 1992], the Administrator shall contract with the National Academy of Sciences to conduct a study to provide, by not later than December 31, 1993, findings and recommendations on reasonable standards for protection of the public health and safety, including—

“(A) whether a health-based standard based upon doses to individual members of the public from releases to the accessible environment (as that term

is defined in the regulations contained in subpart B of part 191 of title 40, Code of Federal Regulations, as in effect on November 18, 1985) will provide a reasonable standard for protection of the health and safety of the general public;

“(B) whether it is reasonable to assume that a system for post-closure oversight of the repository can be developed, based upon active institutional controls, that will prevent an unreasonable risk of breaching the repository’s engineered or geologic barriers or increasing the exposure of individual members of the public to radiation beyond allowable limits; and

“(C) whether it is possible to make scientifically supportable predictions of the probability that the repository’s engineered or geologic barriers will be breached as a result of human intrusion over a period of 10,000 years.

“(3) APPLICABILITY.—The provisions of this section shall apply to the Yucca Mountain site, rather than any other authority of the Administrator to set generally applicable standards for radiation protection.

“(b) NUCLEAR REGULATORY COMMISSION REQUIREMENTS AND CRITERIA.—

“(1) MODIFICATIONS.—Not later than 1 year after the Administrator promulgates standards under subsection (a), the Nuclear Regulatory Commission shall, by rule, modify its technical requirements and criteria under section 121(b) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10141(b)), as necessary, to be consistent with the Administrator’s standards promulgated under subsection (a).

“(2) REQUIRED ASSUMPTIONS.—The Commission’s requirements and criteria shall assume, to the extent consistent with the findings and recommendations of the National Academy of Sciences, that, following repository closure, the inclusion of engineered barriers and the Secretary’s post-closure oversight of the Yucca Mountain site, in accordance with subsection (c), shall be sufficient to—

“(A) prevent any activity at the site that poses an unreasonable risk of breaching the repository’s engineered or geologic barriers; and

“(B) prevent any increase in the exposure of individual members of the public to radiation beyond allowable limits.

“(c) POST-CLOSURE OVERSIGHT.—Following repository closure, the Secretary of Energy shall continue to oversee the Yucca Mountain site to prevent any activity at the site that poses an unreasonable risk of—

“(1) breaching the repository’s engineered or geologic barriers; or

“(2) increasing the exposure of individual members of the public to radiation beyond allowable limits.”

§ 10142. Disposal of spent nuclear fuel

Notwithstanding any other provision of this part, any repository constructed on a site approved under this part shall be designed and constructed to permit the retrieval of any spent nuclear fuel placed in such repository, during an appropriate period of operation of the facility, for any reason pertaining to the public health and safety, or the environment, or for the purpose of permitting the recovery of the economically valuable contents of such spent fuel. The Secretary shall specify the appropriate period of retrievability with respect to any repository at the time of design of such repository, and such aspect of such repository shall be subject to approval or disapproval by the Commission as part of the construction authorization process under subsections (b) through (d) of section 10134 of this title.

(Pub. L. 97-425, title I, § 122, Jan. 7, 1983, 96 Stat. 2228.)

§ 10143. Title to material

Delivery, and acceptance by the Secretary, of any high-level radioactive waste or spent nuclear fuel for a repository constructed under this part shall constitute a transfer to the Secretary of title to such waste or spent fuel.

(Pub. L. 97-425, title I, § 123, Jan. 7, 1983, 96 Stat. 2229.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10222 of this title.

§ 10144. Consideration of effect of acquisition of water rights

The Secretary shall give full consideration to whether the development, construction, and operation of a repository may require any purchase or other acquisition of water rights that will have a significant adverse effect on the present or future development of the area in which such repository is located. The Secretary shall mitigate any such adverse effects to the maximum extent practicable.

(Pub. L. 97-425, title I, § 124, Jan. 7, 1983, 96 Stat. 2229.)

§ 10145. Termination of certain provisions

Sections 10139 and 10140 of this title shall cease to have effect at such time as a repository developed under this part is licensed to receive and possess high-level radioactive waste and spent nuclear fuel.

(Pub. L. 97-425, title I, § 125, Jan. 7, 1983, 96 Stat. 2229.)

PART B—INTERIM STORAGE PROGRAM

§ 10151. Findings and purposes

(a) The Congress finds that—

(1) the persons owning and operating civilian nuclear power reactors have the primary responsibility for providing interim storage of spent nuclear fuel from such reactors, by maximizing, to the extent practical, the effective use of existing storage facilities at the site of each civilian nuclear power reactor, and by adding new onsite storage capacity in a timely manner where practical;

(2) the Federal Government has the responsibility to encourage and expedite the effective use of existing storage facilities and the addition of needed new storage capacity at the site of each civilian nuclear power reactor; and

(3) the Federal Government has the responsibility to provide, in accordance with the provisions of this part, not more than 1,900 metric tons of capacity for interim storage of spent nuclear fuel for civilian nuclear power reactors that cannot reasonably provide adequate storage capacity at the sites of such reactors when needed to assure the continued, orderly operation of such reactors.

(b) The purposes of this part are—

(1) to provide for the utilization of available spent nuclear fuel pools at the site of each civilian nuclear power reactor to the extent

practical and the addition of new spent nuclear fuel storage capacity where practical at the site of such reactor; and

(2) to provide, in accordance with the provisions of this part, for the establishment of a federally owned and operated system for the interim storage of spent nuclear fuel at one or more facilities owned by the Federal Government with not more than 1,900 metric tons of capacity to prevent disruptions in the orderly operation of any civilian nuclear power reactor that cannot reasonably provide adequate spent nuclear fuel storage capacity at the site of such reactor when needed.

(Pub. L. 97-425, title I, § 131, Jan. 7, 1983, 96 Stat. 2229.)

§ 10152. Available capacity for interim storage of spent nuclear fuel

The Secretary, the Commission, and other authorized Federal officials shall each take such actions as such official considers necessary to encourage and expedite the effective use of available storage, and necessary additional storage, at the site of each civilian nuclear power reactor consistent with—

- (1) the protection of the public health and safety, and the environment;
- (2) economic considerations;
- (3) continued operation of such reactor;
- (4) any applicable provisions of law; and
- (5) the views of the population surrounding such reactor.

(Pub. L. 97-425, title I, § 132, Jan. 7, 1983, 96 Stat. 2230.)

§ 10153. Interim at-reactor storage

The Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under section 10198(a)¹ of this title for use at the site of any civilian nuclear power reactor. The establishment of such procedures shall not preclude the licensing, under any applicable procedures or rules of the Commission in effect prior to such establishment, of any technology for the storage of civilian spent nuclear fuel at the site of any civilian nuclear power reactor.

(Pub. L. 97-425, title I, § 133, Jan. 7, 1983, 96 Stat. 2230.)

REFERENCES IN TEXT

Section 10198(a) of this title, referred to in text, was in the original a reference to section 219(a) of Pub. L. 97-425, which is classified to section 10199(a) of this title, and has been translated as section 10198(a) of this title as the probable intent of Congress in view of the subject matter of section 10198(a) which relates to development of technologies for storage of spent nuclear fuel, and the subject matter of section 10199(a) which relates to payments to States and Indian tribes.

§ 10154. Licensing of facility expansions and transshipments**(a) Oral argument**

In any Commission hearing under section 189 of the Atomic Energy Act of 1954 (42 U.S.C. 2239)

¹ See References in Text note below.

on an application for a license, or for an amendment to an existing license, filed after January 7, 1983, to expand the spent nuclear fuel storage capacity at the site of a civilian nuclear power reactor, through the use of high-density fuel storage racks, fuel rod compaction, the transshipment of spent nuclear fuel to another civilian nuclear power reactor within the same utility system, the construction of additional spent nuclear fuel pool capacity or dry storage capacity, or by other means, the Commission shall, at the request of any party, provide an opportunity for oral argument with respect to any matter which the Commission determines to be in controversy among the parties. The oral argument shall be preceded by such discovery procedures as the rules of the Commission shall provide. The Commission shall require each party, including the Commission staff, to submit in written form, at the time of the oral argument, a summary of the facts, data, and arguments upon which such party proposes to rely that are known at such time to such party. Only facts and data in the form of sworn testimony or written submission may be relied upon by the parties during oral argument. Of the materials that may be submitted by the parties during oral argument, the Commission shall only consider those facts and data that are submitted in the form of sworn testimony or written submission.

(b) Adjudicatory hearing

(1) At the conclusion of any oral argument under subsection (a) of this section, the Commission shall designate any disputed question of fact, together with any remaining questions of law, for resolution in an adjudicatory hearing only if it determines that—

(A) there is a genuine and substantial dispute of fact which can only be resolved with sufficient accuracy by the introduction of evidence in an adjudicatory hearing; and

(B) the decision of the Commission is likely to depend in whole or in part on the resolution of such dispute.

(2) In making a determination under this subsection, the Commission—

(A) shall designate in writing the specific facts that are in genuine and substantial dispute, the reason why the decision of the agency is likely to depend on the resolution of such facts, and the reason why an adjudicatory hearing is likely to resolve the dispute; and

(B) shall not consider—

(i) any issue relating to the design, construction, or operation of any civilian nuclear power reactor already licensed to operate at such site, or any civilian nuclear power reactor for which a construction permit has been granted at such site, unless the Commission determines that any such issue substantially affects the design, construction, or operation of the facility or activity for which such license application, authorization, or amendment is being considered; or

(ii) any siting or design issue fully considered and decided by the Commission in connection with the issuance of a construction permit or operating license for a civilian nuclear power reactor at such site, unless (I)

such issue results from any revision of siting or design criteria by the Commission following such decision; and (II) the Commission determines that such issue substantially affects the design, construction, or operation of the facility or activity for which such license application, authorization, or amendment is being considered.

(3) The provisions of paragraph (2)(B) shall apply only with respect to licenses, authorizations, or amendments to licenses or authorizations, applied for under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) before December 31, 2005.

(4) The provisions of this section shall not apply to the first application for a license or license amendment received by the Commission to expand onsite spent fuel storage capacity by the use of a new technology not previously approved for use at any nuclear powerplant by the Commission.

(c) Judicial review

No court shall hold unlawful or set aside a decision of the Commission in any proceeding described in subsection (a) of this section because of a failure by the Commission to use a particular procedure pursuant to this section unless—

(1) an objection to the procedure used was presented to the Commission in a timely fashion or there are extraordinary circumstances that excuse the failure to present a timely objection; and

(2) the court finds that such failure has precluded a fair consideration and informed resolution of a significant issue of the proceeding taken as a whole.

(Pub. L. 97-425, title I, § 134, Jan. 7, 1983, 96 Stat. 2230.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in subsection (b)(3), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§ 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

§ 10155. Storage of spent nuclear fuel

(a) Storage capacity

(1) Subject to section 10107 of this title, the Secretary shall provide, in accordance with paragraph (5), not more than 1,900 metric tons of capacity for the storage of spent nuclear fuel from civilian nuclear power reactors. Such storage capacity shall be provided through any one or more of the following methods, used in any combination determined by the Secretary to be appropriate:

(A) use of available capacity at one or more facilities owned by the Federal Government on January 7, 1983, including the modification and expansion of any such facilities, if the Commission determines that such use will adequately protect the public health and safety, except that such use shall not—

(i) render such facilities subject to licensing under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) or the Energy Reorganization Act of 1974 (42 U.S.C. 5801 et seq.); or

(ii) except as provided in subsection (c) of this section require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), such facility is already being used, or has previously been used, for such storage or for any similar purpose.

(B) acquisition of any modular or mobile spent nuclear fuel storage equipment, including spent nuclear fuel storage casks, and provision of such equipment, to any person generating or holding title to spent nuclear fuel, at the site of any civilian nuclear power reactor operated by such person or at any site owned by the Federal Government on January 7, 1983;

(C) construction of storage capacity at any site of a civilian nuclear power reactor.

(2) Storage capacity authorized by paragraph (1) shall not be provided at any Federal or non-Federal site within which there is a candidate site for a repository. The restriction in the preceding sentence shall only apply until such time as the Secretary decides that such candidate site is no longer a candidate site under consideration for development as a repository.

(3) In selecting methods of providing storage capacity under paragraph (1), the Secretary shall consider the timeliness of the availability of each such method and shall seek to minimize the transportation of spent nuclear fuel, the public health and safety impacts, and the costs of providing such storage capacity.

(4) In providing storage capacity through any method described in paragraph (1), the Secretary shall comply with any applicable requirements for licensing or authorization of such method, except as provided in paragraph (1)(A)(i).

(5) The Secretary shall ensure that storage capacity is made available under paragraph (1) when needed, as determined on the basis of the storage needs specified in contracts entered into under section 10156(a) of this title, and shall accept upon request any spent nuclear fuel as covered under such contracts.

(6) For purposes of paragraph (1)(A), the term "facility" means any building or structure.

(b) Contracts

(1) Subject to the capacity limitation established in subsections (a)(1) and (d) of this section, the Secretary shall offer to enter into, and may enter into, contracts under section 10156(a) of this title with any person generating or owning spent nuclear fuel for purposes of providing storage capacity for such spent fuel under this section only if the Commission determines that—

(A) adequate storage capacity to ensure the continued orderly operation of the civilian nuclear power reactor at which such spent nuclear fuel is generated cannot reasonably be provided by the person owning and operating such reactor at such site, or at the site of any other civilian nuclear power reactor operated by such person, and such capacity cannot be made available in a timely manner through any method described in subparagraph (B); and

(B) such person is diligently pursuing licensed alternatives to the use of Federal stor-

age capacity for the storage of spent nuclear fuel expected to be generated by such person in the future, including—

(i) expansion of storage facilities at the site of any civilian nuclear power reactor operated by such person;

(ii) construction of new or additional storage facilities at the site of any civilian nuclear power reactor operated by such person;

(iii) acquisition of modular or mobile spent nuclear fuel storage equipment, including spent nuclear fuel storage casks, for use at the site of any civilian nuclear power reactor operated by such person; and

(iv) transshipment to another civilian nuclear power reactor owned by such person.

(2) In making the determination described in paragraph (1)(A), the Commission shall ensure maintenance of a full core reserve storage capability at the site of the civilian nuclear power reactor involved unless the Commission determines that maintenance of such capability is not necessary for the continued orderly operation of such reactor.

(3) The Commission shall complete the determinations required in paragraph (1) with respect to any request for storage capacity not later than 6 months after receipt of such request by the Commission.

(c) Environmental review

(1) The provision of 300 or more metric tons of storage capacity at any one Federal site under subsection (a)(1)(A) of this section shall be considered to be a major Federal action requiring preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

(2)(A) The Secretary shall prepare, and make available to the public, an environmental assessment of the probable impacts of any provision of less than 300 metric tons of storage capacity at any one Federal site under subsection (a)(1)(A) of this section that requires the modification or expansion of any facility at the site, and a discussion of alternative activities that may be undertaken to avoid such impacts. Such environmental assessment shall include—

(i) an estimate of the amount of storage capacity to be made available at such site;

(ii) an evaluation as to whether the facilities to be used at such site are suitable for the provision of such storage capacity;

(iii) a description of activities planned by the Secretary with respect to the modification or expansion of the facilities to be used at such site;

(iv) an evaluation of the effects of the provision of such storage capacity at such site on the public health and safety, and the environment;

(v) a reasonable comparative evaluation of current information with respect to such site and facilities and other sites and facilities available for the provision of such storage capacity;

(vi) a description of any other sites and facilities that have been considered by the Secretary for the provision of such storage capacity; and

(vii) an assessment of the regional and local impacts of providing such storage capacity at such site, including the impacts on transportation.

(B) The issuance of any environmental assessment under this paragraph shall be considered to be a final agency action subject to judicial review in accordance with the provisions of chapter 7 of title 5. Such judicial review shall be limited to the sufficiency of such assessment with respect to the items described in clauses (i) through (vii) of subparagraph (A).

(3) Judicial review of any environmental impact statement or environmental assessment prepared pursuant to this subsection shall be conducted in accordance with the provisions of section 10139 of this title.

(d) Review of sites and State participation

(1) In carrying out the provisions of this part with regard to any interim storage of spent fuel from civilian nuclear power reactors which the Secretary is authorized by this section to provide, the Secretary shall, as soon as practicable, notify, in writing, the Governor and the State legislature of any State and the Tribal Council of any affected Indian tribe in such State in which is located a potentially acceptable site or facility for such interim storage of spent fuel of his intention to investigate that site or facility.

(2) During the course of investigation of such site or facility, the Secretary shall keep the Governor, State legislature, and affected Tribal Council currently informed of the progress of the work, and results of the investigation. At the time of selection by the Secretary of any site or existing facility, but prior to undertaking any site-specific work or alterations, the Secretary shall promptly notify the Governor, the legislature, and any affected Tribal Council in writing of such selection, and subject to the provisions of paragraph (6) of this subsection, shall promptly enter into negotiations with such State and affected Tribal Council to establish a cooperative agreement under which such State and Council shall have the right to participate in a process of consultation and cooperation, based on public health and safety and environmental concerns, in all stages of the planning, development, modification, expansion, operation, and closure of storage capacity at a site or facility within such State for the interim storage of spent fuel from civilian nuclear power reactors. Public participation in the negotiation of such an agreement shall be provided for and encouraged by the Secretary, the State, and the affected Tribal Council. The Secretary, in cooperation with the States and Indian tribes, shall develop and publish minimum guidelines for public participation in such negotiations, but the adequacy of such guidelines or any failure to comply with such guidelines shall not be a basis for judicial review.

(3) The cooperative agreement shall include, but need not be limited to, the sharing in accordance with applicable law of all technical and licensing information, the utilization of available expertise, the facilitating of permitting procedures, joint project review, and the formulation of joint surveillance and monitoring arrangements to carry out applicable Federal and

State laws. The cooperative agreement also shall include a detailed plan or schedule of milestones, decision points and opportunities for State or eligible Tribal Council review and objection. Such cooperative agreement shall provide procedures for negotiating and resolving objections of the State and affected Tribal Council in any stage of planning, development, modification, expansion, operation, or closure of storage capacity at a site or facility within such State. The terms of any cooperative agreement shall not affect the authority of the Nuclear Regulatory Commission under existing law.

(4) For the purpose of this subsection, "process of consultation and cooperation" means a methodology by which the Secretary (A) keeps the State and eligible Tribal Council fully and currently informed about the aspects of the project related to any potential impact on the public health and safety and environment; (B) solicits, receives, and evaluates concerns and objections of such State and Council with regard to such aspects of the project on an ongoing basis; and (C) works diligently and cooperatively to resolve, through arbitration or other appropriate mechanisms, such concerns and objections. The process of consultation and cooperation shall not include the grant of a right to any State or Tribal Council to exercise an absolute veto of any aspect of the planning, development, modification, expansion, or operation of the project.

(5) The Secretary and the State and affected Tribal Council shall seek to conclude the agreement required by paragraph (2) as soon as practicable, but not later than 180 days following the date of notification of the selection under paragraph (2). The Secretary shall periodically report to the Congress thereafter on the status of the agreements approved under paragraph (3). Any report to the Congress on the status of negotiations of such agreement by the Secretary shall be accompanied by comments solicited by the Secretary from the State and eligible Tribal Council.

(6)(A) Upon deciding to provide an aggregate of 300 or more metric tons of storage capacity under subsection (a)(1) of this section at any one site, the Secretary shall notify the Governor and legislature of the State where such site is located, or the governing body of the Indian tribe in whose reservation such site is located, as the case may be, of such decision. During the 60-day period following receipt of notification by the Secretary of his decision to provide an aggregate of 300 or more metric tons of storage capacity at any one site, the Governor or legislature of the State in which such site is located, or the governing body of the affected Indian tribe where such site is located, as the case may be, may disapprove the provision of 300 or more metric tons of storage capacity at the site involved and submit to the Congress a notice of such disapproval. A notice of disapproval shall be considered to be submitted to the Congress on the date of the transmittal of such notice of disapproval to the Speaker of the House and the President pro tempore of the Senate. Such notice of disapproval shall be accompanied by a statement of reasons explaining why the provision of such storage capacity at such site was disapproved by such Governor or legislature or the governing body of such Indian tribe.

(B) Unless otherwise provided by State law, the Governor or legislature of each State shall have authority to submit a notice of disapproval to the Congress under subparagraph (A). In any case in which State law provides for submission of any such notice of disapproval by any other person or entity, any reference in this part to the Governor or legislature of such State shall be considered to refer instead to such other person or entity.

(C) The authority of the Governor and legislature of each State under this paragraph shall not be applicable with respect to any site located on a reservation.

(D) If any notice of disapproval is submitted to the Congress under subparagraph (A), the proposed provision of 300 or more metric tons of storage capacity at the site involved shall be disapproved unless, during the first period of 90 calendar days of continuous session of the Congress following the date of the receipt by the Congress of such notice of disapproval, the Congress passes a resolution approving such proposed provision of storage capacity in accordance with the procedures established in this paragraph and subsections (d) through (f) of section 10135 of this title and such resolution thereafter becomes law. For purposes of this paragraph, the term "resolution" means a joint resolution of either House of the Congress, the matter after the resolving clause of which is as follows: "That there hereby is approved the provision of 300 or more metric tons of spent nuclear fuel storage capacity at the site located at _____, with respect to which a notice of disapproval was submitted by _____ on _____." The first blank space in such resolution shall be filled with the geographic location of the site involved; the second blank space in such resolution shall be filled with the designation of the State Governor and legislature or affected Indian tribe governing body submitting the notice of disapproval involved; and the last blank space in such resolution shall be filled with the date of submission of such notice of disapproval.

(E) For purposes of the consideration of any resolution described in subparagraph (D), each reference in subsections (d) and (e) of section 10135 of this title to a resolution of repository siting approval shall be considered to refer to the resolution described in such subparagraph.

(7) As used in this section, the term "affected Tribal Council" means the governing body of any Indian tribe within whose reservation boundaries there is located a potentially acceptable site for interim storage capacity of spent nuclear fuel from civilian nuclear power reactors, or within whose boundaries a site for such capacity is selected by the Secretary, or whose federally defined possessory or usage rights to other lands outside of the reservation's boundaries arising out of congressionally ratified treaties, as determined by the Secretary of the Interior pursuant to a petition filed with him by the appropriate governmental officials of such tribe, may be substantially and adversely affected by the establishment of any such storage capacity.

(e) Limitations

Any spent nuclear fuel stored under this section shall be removed from the storage site or

facility involved as soon as practicable, but in any event not later than 3 years following the date on which a repository or monitored retrievable storage facility developed under this chapter is available for disposal of such spent nuclear fuel.

(f) Report

The Secretary shall annually prepare and submit to the Congress a report on any plans of the Secretary for providing storage capacity under this section. Such report shall include a description of the specific manner of providing such storage selected by the Secretary, if any. The Secretary shall prepare and submit the first such report not later than 1 year after January 7, 1983.

(g) Criteria for determining adequacy of available storage capacity

Not later than 90 days after January 7, 1983, the Commission pursuant to section 553 of the Administrative Procedures Act [5 U.S.C. 553], shall propose, by rule, procedures and criteria for making the determination required by subsection (b) of this section that a person owning and operating a civilian nuclear power reactor cannot reasonably provide adequate spent nuclear fuel storage capacity at the civilian nuclear power reactor site when needed to ensure the continued orderly operation of such reactor. Such criteria shall ensure the maintenance of a full core reserve storage capability at the site of such reactor unless the Commission determines that maintenance of such capability is not necessary for the continued orderly operation of such reactor. Such criteria shall identify the feasibility of reasonably providing such adequate spent nuclear fuel storage capacity, taking into account economic, technical, regulatory, and public health and safety factors, through the use of high-density fuel storage racks, fuel rod compaction, transshipment of spent nuclear fuel to another civilian nuclear power reactor within the same utility system, construction of additional spent nuclear fuel pool capacity, or such other technologies as may be approved by the Commission.

(h) Application

Notwithstanding any other provision of law, nothing in this chapter shall be construed to encourage, authorize, or require the private or Federal use, purchase, lease, or other acquisition of any storage facility located away from the site of any civilian nuclear power reactor and not owned by the Federal Government on January 7, 1983.

(i) Coordination with research and development program

To the extent available, and consistent with the provisions of this section, the Secretary shall provide spent nuclear fuel for the research and development program authorized in section 10198¹ of this title from spent nuclear fuel received by the Secretary for storage under this section. Such spent nuclear fuel shall not be

¹ See References in Text note below.

subject to the provisions of subsection (e) of this section.

(Pub. L. 97-425, title I, § 135, Jan. 7, 1983, 96 Stat. 2232.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in subsec. (a)(1)(A)(i), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

The Energy Reorganization Act of 1974, referred to in subsec. (a)(1)(A)(i), is Pub. L. 93-438, Oct. 11, 1974, 88 Stat. 1233, as amended, which is classified principally to chapter 73 (§5801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5801 of this title and Tables.

Section 10198 of this title, referred to in subsec. (i), was in the original a reference to section 217 of Pub. L. 97-425, which is classified to section 10197 of this title, and has been translated as section 10198 of this title as the probable intent of Congress in view of section 10198(c)(2) which directs the Secretary to provide spent nuclear fuel for the research and development program authorized by section 10198(c) of this title from spent nuclear fuel received by the Secretary for storage under section 10155 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which reports required under subsecs. (d)(5) and (f) of this section are listed as the 12th and 13th items on page 83), see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10139, 10156, 10198 of this title.

§ 10156. Interim Storage Fund

(a) Contracts

(1) During the period following January 7, 1983, but not later than January 1, 1990, the Secretary is authorized to enter into contracts with persons who generate or own spent nuclear fuel resulting from civilian nuclear activities for the storage of such spent nuclear fuel in any storage capacity provided under this part: *Provided, however*, That the Secretary shall not enter into contracts for spent nuclear fuel in amounts in excess of the available storage capacity specified in section 10155(a) of this title. Those contracts shall provide that the Federal Government will (1) take title at the civilian nuclear power reactor site, to such amounts of spent nuclear fuel from the civilian nuclear power reactor as the Commission determines cannot be stored onsite, (2) transport the spent nuclear fuel to a federally owned and operated interim away-from-reactor storage facility, and (3) store such fuel in the facility pending further processing, storage, or disposal. Each such contract shall (A) provide for payment to the Secretary of fees determined in accordance with the provisions of this section; and (B) specify the amount of storage capacity to be provided for the person involved.

(2) The Secretary shall undertake a study and, not later than 180 days after January 7, 1983,

submit to the Congress a report, establishing payment charges that shall be calculated on an annual basis, commencing on or before January 1, 1984. Such payment charges and the calculation thereof shall be published in the Federal Register, and shall become effective not less than 30 days after publication. Each payment charge published in the Federal Register under this paragraph shall remain effective for a period of 12 months from the effective date as the charge for the cost of the interim storage of any spent nuclear fuel. The report of the Secretary shall specify the method and manner of collection (including the rates and manner of payment) and any legislative recommendations determined by the Secretary to be appropriate.

(3) Fees for storage under this part shall be established on a nondiscriminatory basis. The fees to be paid by each person entering into a contract with the Secretary under this subsection shall be based upon an estimate of the pro rata costs of storage and related activities under this part with respect to such person, including the acquisition, construction, operation, and maintenance of any facilities under this part.

(4) The Secretary shall establish in writing criteria setting forth the terms and conditions under which such storage services shall be made available.

(5) Except as provided in section 10157 of this title, nothing in this chapter or any other Act requires the Secretary, in carrying out the responsibilities of this section, to obtain a license or permit to possess or own spent nuclear fuel.

(b) Limitation

No spent nuclear fuel generated or owned by any department of the United States referred to in section 101 or 102 of title 5 may be stored by the Secretary in any storage capacity provided under this part unless such department transfers to the Secretary, for deposit in the Interim Storage Fund, amounts equivalent to the fees that would be paid to the Secretary under the contracts referred to in this section if such spent nuclear fuel were generated by any other person.

(c) Establishment of Interim Storage Fund

There hereby is established in the Treasury of the United States a separate fund, to be known as the Interim Storage Fund. The Storage Fund shall consist of—

(1) all receipts, proceeds, and recoveries realized by the Secretary under subsections (a), (b), and (e) of this section, which shall be deposited in the Storage Fund immediately upon their realization;

(2) any appropriations made by the Congress to the Storage Fund; and

(3) any unexpended balances available on January 7, 1983, for functions or activities necessary or incident to the interim storage of civilian spent nuclear fuel, which shall automatically be transferred to the Storage Fund on such date.

(d) Use of Storage Fund

The Secretary may make expenditures from the Storage Fund, subject to subsection (e) of this section, for any purpose necessary or appropriate to the conduct of the functions and ac-

tivities of the Secretary, or the provision or anticipated provision of services, under this part, including—

- (1) the identification, development, licensing, construction, operation, decommissioning, and post-decommissioning maintenance and monitoring of any interim storage facility provided under this part;
- (2) the administrative cost of the interim storage program;
- (3) the costs associated with acquisition, design, modification, replacement, operation, and construction of facilities at an interim storage site, consistent with the restrictions in section 10155 of this title;
- (4) the cost of transportation of spent nuclear fuel; and
- (5) impact assistance as described in subsection (e) of this section.

(e) Impact assistance

(1) Beginning the first fiscal year which commences after January 7, 1983, the Secretary shall make annual impact assistance payments to a State or appropriate unit of local government, or both, in order to mitigate social or economic impacts occasioned by the establishment and subsequent operation of any interim storage capacity within the jurisdictional¹ boundaries of such government or governments and authorized under this part: *Provided, however,* That such impact assistance payments shall not exceed (A) ten per centum of the costs incurred in paragraphs (1) and (2), or (B) \$15 per kilogram of spent fuel, whichever is less;

(2) Payments made available to States and units of local government pursuant to this section shall be—

(A) allocated in a fair and equitable manner with a priority to those States or units of local government suffering the most severe impacts; and

(B) utilized by States or units of local governments only for (i) planning, (ii) construction and maintenance of public services, (iii) provision of public services related to the providing of such interim storage authorized under this subchapter, and (iv) compensation for loss of taxable property equivalent to that if the storage had been provided under private ownership.

(3) Such payments shall be subject to such terms and conditions as the Secretary determines necessary to ensure that the purposes of this subsection shall be achieved. The Secretary shall issue such regulations as may be necessary to carry out the provisions of this subsection.

(4) Payments under this subsection shall be made available solely from the fees determined under subsection (a) of this section.

(5) The Secretary is authorized to consult with States and appropriate units of local government in advance of commencement of establishment of storage capacity authorized under this part in an effort to determine the level of the payment such government would be eligible to receive pursuant to this subsection.

(6) As used in this subsection, the term “unit of local government” means a county, parish,

township, municipality, and shall include a borough existing in the State of Alaska on January 7, 1983, and any other unit of government below the State level which is a unit of general government as determined by the Secretary.

(f) Administration of Storage Fund

(1) The Secretary of the Treasury shall hold the Storage Fund and, after consultation with the Secretary, annually report to the Congress on the financial condition and operations of the Storage Fund during the preceding fiscal year.

(2) The Secretary shall submit the budget of the Storage Fund to the Office of Management and Budget triennially along with the budget of the Department of Energy submitted at such time in accordance with chapter 11 of title 31. The budget of the Storage Fund shall consist of estimates made by the Secretary of expenditures from the Storage Fund and other relevant financial matters for the succeeding 3 fiscal years, and shall be included in the Budget of the United States Government. The Secretary may make expenditures from the Storage Fund, subject to appropriations which shall remain available until expended. Appropriations shall be subject to triennial authorization.

(3) If the Secretary determines that the Storage Fund contains at any time amounts in excess of current needs, the Secretary may request the Secretary of the Treasury to invest such amounts, or any portion of such amounts as the Secretary determines to be appropriate, in obligations of the United States—

(A) having maturities determined by the Secretary of the Treasury to be appropriate to the needs of the Storage Fund; and

(B) bearing interest at rates determined to be appropriate by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the maturities of such investments, except that the interest rate on such investments shall not exceed the average interest rate applicable to existing borrowings.

(4) Receipts, proceeds, and recoveries realized by the Secretary under this section, and expenditures of amounts from the Storage Fund, shall be exempt from annual apportionment under the provisions of subchapter II of chapter 15 of title 31.

(5) If at any time the moneys available in the Storage Fund are insufficient to enable the Secretary to discharge his responsibilities under this part, the Secretary shall issue to the Secretary of the Treasury obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be agreed to by the Secretary and the Secretary of the Treasury. The total of such obligations shall not exceed amounts provided in appropriation Acts. Redemption of such obligations shall be made by the Secretary from moneys available in the Storage Fund. Such obligations shall bear interest at a rate determined by the Secretary of the Treasury, which shall be not less than a rate determined by taking into consideration the average market yield on outstanding marketable obligations of the United States of com-

¹ So in original. Probably should be “jurisdictional”.

parable maturities during the month preceding the issuance of the obligations under this paragraph. The Secretary of the Treasury shall purchase any issued obligations, and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under such Act² are extended to include any purchase of such obligations. The Secretary of the Treasury may at any time sell any of the obligations acquired by him under this paragraph. All redemptions, purchases, and sales by the Secretary of the Treasury of obligations under this paragraph shall be treated as public debt transactions of the United States.

(6) Any appropriations made available to the Storage Fund for any purpose described in subsection (d) of this section shall be repaid into the general fund of the Treasury, together with interest from the date of availability of the appropriations until the date of repayment. Such interest shall be paid on the cumulative amount of appropriations available to the Storage Fund, less the average undisbursed cash balance in the Storage Fund account during the fiscal year involved. The rate of such interest shall be determined by the Secretary of the Treasury taking into consideration the average market yield during the month preceding each fiscal year on outstanding marketable obligations of the United States of comparable maturity. Interest payments may be deferred with the approval of the Secretary of the Treasury, but any interest payments so deferred shall themselves bear interest.

(Pub. L. 97-425, title I, § 136, Jan. 7, 1983, 96 Stat. 2237.)

REFERENCES IN TEXT

Such Act, referred to in subsec. (f)(5), probably means chapter 31 of Title 31, Money and Finance.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (f)(1) of this section relating to annual report to Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 1st item on page 140 of House Document No. 103-7.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10101, 10155, 10157, 10198 of this title.

§ 10157. Transportation

(a)(1)¹ Transportation of spent nuclear fuel under section 10156(a) of this title shall be subject to licensing and regulation by the Commission and by the Secretary of Transportation as provided for transportation of commercial spent nuclear fuel under existing law.

(2) The Secretary, in providing for the transportation of spent nuclear fuel under this chapter, shall utilize by contract private industry to the fullest extent possible in each aspect of such transportation. The Secretary shall use direct

Federal services for such transportation only upon a determination of the Secretary of Transportation, in consultation with the Secretary, that private industry is unable or unwilling to provide such transportation services at reasonable cost.

(Pub. L. 97-425, title I, § 137, Jan. 7, 1983, 96 Stat. 2241.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10156 of this title.

PART C—MONITORED RETRIEVABLE STORAGE

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 10134, 10175 of this title.

§ 10161. Monitored retrievable storage

(a) Findings

The Congress finds that—

(1) long-term storage of high-level radioactive waste or spent nuclear fuel in monitored retrievable storage facilities is an option for providing safe and reliable management of such waste or spent fuel;

(2) the executive branch and the Congress should proceed as expeditiously as possible to consider fully a proposal for construction of one or more monitored retrievable storage facilities to provide such long-term storage;

(3) the Federal Government has the responsibility to ensure that site-specific designs for such facilities are available as provided in this section;

(4) the generators and owners of the high-level radioactive waste and spent nuclear fuel to be stored in such facilities have the responsibility to pay the costs of the long-term storage of such waste and spent fuel; and

(5) disposal of high-level radioactive waste and spent nuclear fuel in a repository developed under this chapter should proceed regardless of any construction of a monitored retrievable storage facility pursuant to this section.

(b) Submission of proposal by Secretary

(1) On or before June 1, 1985, the Secretary shall complete a detailed study of the need for and feasibility of, and shall submit to the Congress a proposal for, the construction of one or more monitored retrievable storage facilities for high-level radioactive waste and spent nuclear fuel. Each such facility shall be designed—

(A) to accommodate spent nuclear fuel and high-level radioactive waste resulting from civilian nuclear activities;

(B) to permit continuous monitoring, management, and maintenance of such spent fuel and waste for the foreseeable future;

(C) to provide for the ready retrieval of such spent fuel and waste for further processing or disposal; and

(D) to safely store such spent fuel and waste as long as may be necessary by maintaining such facility through appropriate means, including any required replacement of such facility.

(2) Such proposal shall include—

² See References in Text note below.

¹ So in original. No subsec. (b) has been enacted.

(A) the establishment of a Federal program for the siting, development, construction, and operation of facilities capable of safely storing high-level radioactive waste and spent nuclear fuel, which facilities are to be licensed by the Commission;

(B) a plan for the funding of the construction and operation of such facilities, which plan shall provide that the costs of such activities shall be borne by the generators and owners of the high-level radioactive waste and spent nuclear fuel to be stored in such facilities;

(C) site-specific designs, specifications, and cost estimates sufficient to (i) solicit bids for the construction of the first such facility; (ii) support congressional authorization of the construction of such facility; and (iii) enable completion and operation of such facility as soon as practicable following congressional authorization of such facility; and

(D) a plan for integrating facilities constructed pursuant to this section with other storage and disposal facilities authorized in this chapter.

(3) In formulating such proposal, the Secretary shall consult with the Commission and the Administrator, and shall submit their comments on such proposal to the Congress at the time such proposal is submitted.

(4) The proposal shall include, for the first such facility, at least 3 alternative sites and at least 5 alternative combinations of such proposed sites and facility designs consistent with the criteria of paragraph (1). The Secretary shall recommend the combination among the alternatives that the Secretary deems preferable. The environmental assessment under subsection (c) of this section shall include a full analysis of the relative advantages and disadvantages of all 5 such alternative combinations of proposed sites and proposed facility designs.

(c) Environmental impact statements

(1) Preparation and submission to the Congress of the proposal required in this section shall not require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Secretary shall prepare, in accordance with regulations issued by the Secretary implementing such Act [42 U.S.C. 4321 et seq.], an environmental assessment with respect to such proposal. Such environmental assessment shall be based upon available information regarding alternative technologies for the storage of spent nuclear fuel and high-level radioactive waste. The Secretary shall submit such environmental assessment to the Congress at the time such proposal is submitted.

(2) If the Congress by law, after review of the proposal submitted by the Secretary under subsection (b) of this section, specifically authorizes construction of a monitored retrievable storage facility, the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall apply with respect to construction of such facility, except that any environmental impact statement prepared with respect to such facility shall not be required to consider the need for such facility or any alter-

native to the design criteria for such facility set forth in subsection (b)(1) of this section.

(d) Licensing

Any facility authorized pursuant to this section shall be subject to licensing under section 5842(3) of this title. In reviewing the application filed by the Secretary for licensing of the first such facility, the Commission may not consider the need for such facility or any alternative to the design criteria for such facility set forth in subsection (b)(1) of this section.

(e) Clarification

Nothing in this section limits the consideration of alternative facility designs consistent with the criteria of subsection (b)(1) of this section in any environmental impact statement, or in any licensing procedure of the Commission, with respect to any monitored, retrievable facility authorized pursuant to this section.

(f) Impact assistance

(1) Upon receipt by the Secretary of congressional authorization to construct a facility described in subsection (b) of this section, the Secretary shall commence making annual impact aid payments to appropriate units of general local government in order to mitigate any social or economic impacts resulting from the construction and subsequent operation of any such facility within the jurisdictional boundaries of any such unit.

(2) Payments made available to units of general local government under this subsection shall be—

(A) allocated in a fair and equitable manner, with priority given to units of general local government determined by the Secretary to be most severely affected; and

(B) utilized by units of general local government only for planning, construction, maintenance, and provision of public services related to the siting of such facility.

(3) Such payments shall be subject to such terms and conditions as the Secretary determines are necessary to ensure achievement of the purposes of this subsection. The Secretary shall issue such regulations as may be necessary to carry out the provisions of this subsection.

(4) Such payments shall be made available entirely from funds held in the Nuclear Waste Fund established in section 10222(c) of this title and shall be available only to the extent provided in advance in appropriation Acts.

(5) The Secretary may consult with appropriate units of general local government in advance of commencement of construction of any such facility in an effort to determine the level of payments each such unit is eligible to receive under this subsection.

(g) Limitation

No monitored retrievable storage facility developed pursuant to this section may be constructed in any State in which there is located any site approved for site characterization under section 10132 of this title. The restriction in the preceding sentence shall only apply until such time as the Secretary decides that such candidate site is no longer a candidate site under consideration for development as a reposi-

tory. Such restriction shall continue to apply to any site selected for construction as a repository.

(h) Participation of States and Indian tribes

Any facility authorized pursuant to this section shall be subject to the provisions of sections 10135, 10136(a), 10136(b), 10136(d), 10137, and 10138 of this title. For purposes of carrying out the provisions of this subsection, any reference in sections 10135 through 10138 of this title to a repository shall be considered to refer to a monitored retrievable storage facility.

(Pub. L. 97-425, title I, §141, Jan. 7, 1983, 96 Stat. 2241.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (c), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10101, 10168, 10200 of this title.

§ 10162. Authorization of monitored retrievable storage

(a) Nullification of Oak Ridge siting proposal

The proposal of the Secretary (EC-1022, 100th Congress) to locate a monitored retrievable storage facility at a site on the Clinch River in the Roane County portion of Oak Ridge, Tennessee, with alternative sites on the Oak Ridge Reservation of the Department of Energy and on the former site of a proposed nuclear powerplant in Hartsville, Tennessee, is annulled and revoked. In carrying out the provisions of sections 10164 and 10165 of this title, the Secretary shall make no presumption or preference to such sites by reason of their previous selection.

(b) Authorization

The Secretary is authorized to site, construct, and operate one monitored retrievable storage facility subject to the conditions described in sections 10163 through 10169 of this title.

(Pub. L. 97-425, title I, §142, as added Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5021, Dec. 22, 1987, 101 Stat. 1330-232.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10165, 10168 of this title.

§ 10163. Monitored Retrievable Storage Commission

(a)¹ Establishment

(1)(A) There is established a Monitored Retrievable Storage Review Commission (hereinafter in this section referred to as the "MRS Commission"), that shall consist of 3 members

¹ So in original. No subsec. (b) has been enacted.

who shall be appointed by and serve at the pleasure of the President pro tempore of the Senate and the Speaker of the House of Representatives.

(B) Members of the MRS Commission shall be appointed not later than 30 days after December 22, 1987, from among persons who as a result of training, experience and attainments are exceptionally well qualified to evaluate the need for a monitored retrievable storage facility as a part of the Nation's nuclear waste management system.

(C) The MRS Commission shall prepare a report on the need for a monitored retrievable storage facility as a part of a national nuclear waste management system that achieves the purposes of this chapter. In preparing the report under this subparagraph, the MRS Commission shall—

(i) review the status and adequacy of the Secretary's evaluation of the systems advantages and disadvantages of bringing such a facility into the national nuclear waste disposal system;

(ii) obtain comment and available data on monitored retrievable storage from affected parties, including States containing potentially acceptable sites;

(iii) evaluate the utility of a monitored retrievable storage facility from a technical perspective; and

(iv) make a recommendation to Congress as to whether such a facility should be included in the national nuclear waste management system in order to achieve the purposes of this chapter, including meeting needs for packaging and handling of spent nuclear fuel, improving the flexibility of the repository development schedule, and providing temporary storage of spent nuclear fuel accepted for disposal.

(2) In preparing the report and making its recommendation under paragraph (1) the MRS Commission shall compare such a facility to the alternative of at-reactor storage of spent nuclear fuel prior to disposal of such fuel in a repository under this chapter. Such comparison shall take into consideration the impact on—

(A) repository design and construction;

(B) waste package design, fabrication and standardization;

(C) waste preparation;

(D) waste transportation systems;

(E) the reliability of the national system for the disposal of radioactive waste;

(F) the ability of the Secretary to fulfill contractual commitments of the Department under this chapter to accept spent nuclear fuel for disposal; and

(G) economic factors, including the impact on the costs likely to be imposed on ratepayers of the Nation's electric utilities for temporary at-reactor storage of spent nuclear fuel prior to final disposal in a repository, as well as the costs likely to be imposed on ratepayers of the Nation's electric utilities in building and operating such a facility.

(3) The report under this subsection, together with the recommendation of the MRS Commission, shall be transmitted to Congress on November 1, 1989.

(4)(A)(i) Each member of the MRS Commission shall be paid at the rate provided for level III of the Executive Schedule for each day (including travel time) such member is engaged in the work of the MRS Commission, and shall receive travel expenses, including per diem in lieu of subsistence in the same manner as is permitted under sections 5702 and 5703 of title 5.

(ii) The MRS Commission may appoint and fix compensation, not to exceed the rate of basic pay payable for GS-18 of the General Schedule, for such staff as may be necessary to carry out its functions.

(B)(i) The MRS Commission may hold hearings, sit and act at such times and places, take such testimony and receive such evidence as the MRS Commission considers appropriate. Any member of the MRS Commission may administer oaths or affirmations to witnesses appearing before the MRS Commission.

(ii) The MRS Commission may request any Executive agency, including the Department, to furnish such assistance or information, including records, data, files, or documents, as the Commission considers necessary to carry out its functions. Unless prohibited by law, such agency shall promptly furnish such assistance or information.

(iii) To the extent permitted by law, the Administrator of the General Services Administration shall, upon request of the MRS Commission, provide the MRS Commission with necessary administrative services, facilities, and support on a reimbursable basis.

(iv) The MRS Commission may procure temporary and intermittent services from experts and consultants to the same extent as is authorized by section 3109(b) of title 5 at rates and under such rules as the MRS Commission considers reasonable.

(C) The MRS Commission shall cease to exist 60 days after the submission to Congress of the report required under this subsection.

(Pub. L. 97-425, title I, §143, as added Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5021, Dec. 22, 1987, 101 Stat. 1330-232; amended Pub. L. 100-507, §2, Oct. 18, 1988, 102 Stat. 2541.)

REFERENCES IN TEXT

Level III of the Executive Schedule, referred to in subsec. (a)(4)(A)(i), is set out in section 5314 of Title 5, Government Organization and Employees.

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

AMENDMENTS

1988—Subsec. (a)(3). Pub. L. 100-507 amended par. (3) generally. Prior to amendment, par. (3) read as follows: “The report under this subsection, together with the recommendation of the MRS Commission, shall be transmitted to Congress on June 1, 1989.”

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)]

of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10162, 10164 of this title.

§ 10164. Survey

After the MRS Commission submits its report to the Congress under section 10163 of this title, the Secretary may conduct a survey and evaluation of potentially suitable sites for a monitored retrievable storage facility. In conducting such survey and evaluation, the Secretary shall consider the extent to which siting a monitored retrievable storage facility at each site surveyed would—

(1) enhance the reliability and flexibility of the system for the disposal of spent nuclear fuel and high-level radioactive waste established under this chapter;

(2) minimize the impacts of transportation and handling of such fuel and waste;

(3) provide for public confidence in the ability of such system to safely dispose of the fuel and waste;

(4) impose minimal adverse effects on the local community and the local environment;

(5) provide a high probability that the facility will meet applicable environmental, health, and safety requirements in a timely fashion;

(6) provide such other benefits to the system for the disposal of spent nuclear fuel and high-level radioactive waste as the Secretary deems appropriate; and

(7) unduly burden a State in which significant volumes of high-level radioactive waste resulting from atomic energy defense activities are stored.

(Pub. L. 97-425, title I, §144, as added Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5021, Dec. 22, 1987, 101 Stat. 1330-234.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10162, 10165 of this title.

§ 10165. Site selection

(a) In general

The Secretary may select the site evaluated under section 10164 of this title that the Secretary determines on the basis of available information to be the most suitable for a monitored retrievable storage facility that is an integral part of the system for the disposal of spent nuclear fuel and high-level radioactive waste established under this chapter.

(b) Limitation

The Secretary may not select a site under subsection (a) of this section until the Secretary recommends to the President the approval of a site for development as a repository under section 10134(a) of this title.

(c) Site specific activities

The Secretary may conduct such site specific activities at each site surveyed under section

10164 of this title as he determines may be necessary to support an application to the Commission for a license to construct a monitored retrievable storage facility at such site.

(d) Environmental assessment

Site specific activities and selection of a site under this section shall not require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Secretary shall prepare an environmental assessment with respect to such selection in accordance with regulations issued by the Secretary implementing such Act [42 U.S.C. 4321 et seq.]. Such environmental assessment shall be based upon available information regarding alternative technologies for the storage of spent nuclear fuel and high-level radioactive waste. The Secretary shall submit such environmental assessment to the Congress at the time such site is selected.

(e) Notification before selection

(1) At least 6 months before selecting a site under subsection (a) of this section, the Secretary shall notify the Governor and legislature of the State in which such site is located, or the governing body of the affected Indian tribe where such site is located, as the case may be, of such potential selection and the basis for such selection.

(2) Before selecting any site under subsection (a) of this section, the Secretary shall hold at least one public hearing in the vicinity of such site to solicit any recommendations of interested parties with respect to issues raised by the selection of such site.

(f) Notification of selection

The Secretary shall promptly notify Congress and the appropriate State or Indian tribe of the selection under subsection (a) of this section.

(g) Limitation

No monitored retrievable storage facility authorized pursuant to section 10162(b) of this title may be constructed in the State of Nevada.

(Pub. L. 97-425, title I, §145, as added Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5021, Dec. 22, 1987, 101 Stat. 1330-234.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (d), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10162, 10166, 10167 of this title.

§ 10166. Notice of disapproval

(a) In general

The selection of a site under section 10165 of this title shall be effective at the end of the pe-

riod of 60 calendar days beginning on the date of notification under such subsection, unless the governing body of the Indian tribe on whose reservation such site is located, or, if the site is not on a reservation, the Governor and the legislature of the State in which the site is located, has submitted to Congress a notice of disapproval with respect to such site. If any such notice of disapproval has been submitted under this subsection, the selection of the site under section 10165 of this title shall not be effective except as provided under section 10135(c) of this title.

(b) References

For purposes of carrying out the provisions of this subsection, references in section 10135(c) of this title to a repository shall be considered to refer to a monitored retrievable storage facility and references to a notice of disapproval of a repository site designation under section 10136(b) or 10138(a) of this title shall be considered to refer to a notice of disapproval under this section.

(Pub. L. 97-425, title I, §146, as added Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5021, Dec. 22, 1987, 101 Stat. 1330-235.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10162, 10168 of this title.

§ 10167. Benefits agreement

Once selection of a site for a monitored retrievable storage facility is made by the Secretary under section 10165 of this title, the Indian tribe on whose reservation the site is located, or, in the case that the site is not located on a reservation, the State in which the site is located, shall be eligible to enter into a benefits agreement with the Secretary under section 10173 of this title.

(Pub. L. 97-425, title I, §147, as added Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5021, Dec. 22, 1987, 101 Stat. 1330-235.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10162 of this title.

§ 10168. Construction authorization

(a) Environmental impact statement

(1) Once the selection of a site is effective under section 10166 of this title, the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall apply with respect to construction of a monitored retrievable storage facility, except that any environmental impact statement prepared with respect to such facility shall not be required to

consider the need for such facility or any alternative to the design criteria for such facility set forth in section 10161(b)(1) of this title.

(2) Nothing in this section shall be construed to limit the consideration of alternative facility designs consistent with the criteria described in section 10161(b)(1) of this title in any environmental impact statement, or in any licensing procedure of the Commission, with respect to any monitored retrievable storage facility authorized under section 10162(b) of this title.

(b) Application for construction license

Once the selection of a site for a monitored retrievable storage facility is effective under section 10166 of this title, the Secretary may submit an application to the Commission for a license to construct such a facility as part of an integrated nuclear waste management system and in accordance with the provisions of this section and applicable agreements under this chapter affecting such facility.

(c) Licensing

Any monitored retrievable storage facility authorized pursuant to section 10162(b) of this title shall be subject to licensing under section 5842(3) of this title. In reviewing the application filed by the Secretary for licensing of such facility, the Commission may not consider the need for such facility or any alternative to the design criteria for such facility set forth in section 10161(b)(1) of this title.

(d) Licensing conditions

Any license issued by the Commission for a monitored retrievable storage facility under this section shall provide that—

(1) construction of such facility may not begin until the Commission has issued a license for the construction of a repository under section 10135(d) of this title;

(2) construction of such facility or acceptance of spent nuclear fuel or high-level radioactive waste shall be prohibited during such time as the repository license is revoked by the Commission or construction of the repository ceases;

(3) the quantity of spent nuclear fuel or high-level radioactive waste at the site of such facility at any one time may not exceed 10,000 metric tons of heavy metal until a repository under this chapter first accepts spent nuclear fuel or solidified high-level radioactive waste; and

(4) the quantity of spent nuclear fuel or high-level radioactive waste at the site of such facility at any one time may not exceed 15,000 metric tons of heavy metal.

(Pub. L. 97-425, title I, §148, as added Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5021, Dec. 22, 1987, 101 Stat. 1330-235.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (a)(1), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10162 of this title.

§ 10169. Financial assistance

The provisions of section 10136(c) or 10138(b) of this title with respect to grants, technical assistance, and other financial assistance shall apply to the State, to affected Indian tribes and to affected units of local government in the case of a monitored retrievable storage facility in the same manner as for a repository.

(Pub. L. 97-425, title I, §149, as added Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5021, Dec. 22, 1987, 101 Stat. 1330-236.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10162 of this title.

PART D—LOW-LEVEL RADIOACTIVE WASTE

§10171. Financial arrangements for low-level radioactive waste site closure

(a) Financial arrangements

(1) The Commission shall establish by rule, regulation, or order, after public notice, and in accordance with section 2231 of this title, such standards and instructions as the Commission may deem necessary or desirable to ensure in the case of each license for the disposal of low-level radioactive waste that an adequate bond, surety, or other financial arrangement (as determined by the Commission) will be provided by a licensee to permit completion of all requirements established by the Commission for the decontamination, decommissioning, site closure, and reclamation of sites, structures, and equipment used in conjunction with such low-level radioactive waste. Such financial arrangements shall be provided and approved by the Commission, or, in the case of sites within the boundaries of any agreement State under section 2021 of this title, by the appropriate State or State entity, prior to issuance of licenses for low-level radioactive waste disposal or, in the case of licenses in effect on January 7, 1983, prior to termination of such licenses.

(2) If the Commission determines that any long-term maintenance or monitoring, or both, will be necessary at a site described in paragraph (1), the Commission shall ensure before termination of the license involved that the licensee has made available such bonding, surety, or other financial arrangements as may be necessary to ensure that any necessary long-term maintenance or monitoring needed for such site will be carried out by the person having title and custody for such site following license termination.

(b) Title and custody

(1) The Secretary shall have authority to assume title and custody of low-level radioactive waste and the land on which such waste is dis-

posed of, upon request of the owner of such waste and land and following termination of the license issued by the Commission for such disposal, if the Commission determines that—

(A) the requirements of the Commission for site closure, decommissioning, and decontamination have been met by the licensee involved and that such licensee is in compliance with the provisions of subsection (a) of this section;

(B) such title and custody will be transferred to the Secretary without cost to the Federal Government; and

(C) Federal ownership and management of such site is necessary or desirable in order to protect the public health and safety, and the environment.

(2) If the Secretary assumes title and custody of any such waste and land under this subsection, the Secretary shall maintain such waste and land in a manner that will protect the public health and safety, and the environment.

(c) Special sites

If the low-level radioactive waste involved is the result of a licensed activity to recover zirconium, hafnium, and rare earths from source material, the Secretary, upon request of the owner of the site involved, shall assume title and custody of such waste and the land on which it is disposed when such site has been decontaminated and stabilized in accordance with the requirements established by the Commission and when such owner has made adequate financial arrangements approved by the Commission for the long-term maintenance and monitoring of such site.

(Pub. L. 97-425, title I, § 151, Jan. 7, 1983, 96 Stat. 2244.)

PART E—REDIRECTION OF NUCLEAR WASTE PROGRAM

§ 10172. Selection of Yucca Mountain site

(a) In general

(1) The Secretary shall provide for an orderly phase-out of site specific activities at all candidate sites other than the Yucca Mountain site.

(2) The Secretary shall terminate all site specific activities (other than reclamation activities) at all candidate sites, other than the Yucca Mountain site, within 90 days after December 22, 1987.

(b) Eligibility to enter into benefits agreement

Effective on December 22, 1987, the State of Nevada shall be eligible to enter into a benefits agreement with the Secretary under section 10173 of this title.

(Pub. L. 97-425, title I, § 160, as added Pub. L. 100-202, § 101(d) [title III, § 300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, § 5011(a), Dec. 22, 1987, 101 Stat. 1330-227.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

§ 10172a. Siting a second repository

(a) Congressional action required

The Secretary may not conduct site-specific activities with respect to a second repository

unless Congress has specifically authorized and appropriated funds for such activities.

(b) Report

The Secretary shall report to the President and to Congress on or after January 1, 2007, but not later than January 1, 2010, on the need for a second repository.

(c) Termination of granite research

Not later than 6 months after December 22, 1987, the Secretary shall phase out in an orderly manner funding for all research programs in existence on December 22, 1987, designed to evaluate the suitability of crystalline rock as a potential repository host medium.

(d) Additional siting criteria

In the event that the Secretary at any time after December 22, 1987, considers any sites in crystalline rock for characterization or selection as a repository, the Secretary shall consider (as a supplement to the siting guidelines under section 10132 of this title) such potentially disqualifying factors as—

(1) seasonal increases in population;

(2) proximity to public drinking water supplies, including those of metropolitan areas; and

(3) the impact that characterization or siting decisions would have on lands owned or placed in trust by the United States for Indian tribes.

(Pub. L. 97-425, title I, § 161, as added Pub. L. 100-202, § 101(d) [title III, § 300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, § 5012, Dec. 22, 1987, 101 Stat. 1330-231.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

PART F—BENEFITS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 10133 of this title.

§ 10173. Benefits agreements

(a) In general

(1) The Secretary may enter into a benefits agreement with the State of Nevada concerning a repository or with a State or an Indian tribe concerning a monitored retrievable storage facility for the acceptance of high-level radioactive waste or spent nuclear fuel in that State or on the reservation of that tribe, as appropriate.

(2) The State or Indian tribe may enter into such an agreement only if the State Attorney General or the appropriate governing authority of the Indian tribe or the Secretary of the Interior, in the absence of an appropriate governing authority, as appropriate, certifies to the satisfaction of the Secretary that the laws of the State or Indian tribe provide adequate authority for that entity to enter into the benefits agreement.

(3) Any benefits agreement with a State under this section shall be negotiated in consultation with affected units of local government in such State.

(4) Benefits and payments under this part may be made available only in accordance with a benefits agreement under this section.

(b) Amendment

A benefits agreement entered into under subsection (a) of this section may be amended only by the mutual consent of the parties to the agreement and terminated only in accordance with section 10173c of this title.

(c) Agreement with Nevada

The Secretary shall offer to enter into a benefits agreement with the Governor of Nevada. Any benefits agreement with a State under this subsection shall be negotiated in consultation with any affected units of local government in such State.

(d) Monitored retrievable storage

The Secretary shall offer to enter into a benefits agreement relating to a monitored retrievable storage facility with the governing body of the Indian tribe on whose reservation the site for such facility is located, or, if the site is not located on a reservation, with the Governor of the State in which the site is located and in consultation with affected units of local government in such State.

(e) Limitation

Only one benefits agreement for a repository and only one benefits agreement for a monitored retrievable storage facility may be in effect at any one time.

(f) Judicial review

Decisions of the Secretary under this section are not subject to judicial review.

(Pub. L. 97-425, title I, §170, as added Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5031, Dec. 22, 1987, 101 Stat. 1330-237.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10167, 10172, 10173a of this title.

§ 10173a. Content of agreements

(a) In general

(1) In addition to the benefits to which a State, an affected unit of local government or Indian tribe is entitled under this subchapter, the Secretary shall make payments to a State or Indian tribe that is a party to a benefits agreement under section 10173 of this title in accordance with the following schedule:

BENEFITS SCHEDULE

(amounts in \$ millions)

Event	MRS	Repository
(A) Annual payments prior to first spent fuel receipt	5	10
(B) Upon first spent fuel receipt ...	10	20
(C) Annual payments after first spent fuel receipt until closure of the facility	10	20

(2) For purposes of this section, the term—

(A) “MRS” means a monitored retrievable storage facility,

(B) “spent fuel” means high-level radioactive waste or spent nuclear fuel, and

(C) “first spent fuel receipt” does not include receipt of spent fuel or high-level radioactive waste for purposes of testing or operational demonstration.

(3) Annual payments prior to first spent fuel receipt under paragraph (1)(A) shall be made on the date of execution of the benefits agreement and thereafter on the anniversary date of such execution. Annual payments after the first spent fuel receipt until closure of the facility under paragraph (1)(C) shall be made on the anniversary date of such first spent fuel receipt.

(4) If the first spent fuel payment under paragraph (1)(B) is made within six months after the last annual payment prior to the receipt of spent fuel under paragraph (1)(A), such first spent fuel payment under paragraph (1)(B) shall be reduced by an amount equal to one-twelfth of such annual payment under paragraph (1)(A) for each full month less than six that has not elapsed since the last annual payment under paragraph (1)(A).

(5) Notwithstanding paragraph (1), (2), or (3), no payment under this section may be made before January 1, 1989, and any payment due under this subchapter before January 1, 1989, shall be made on or after such date.

(6) Except as provided in paragraph (7), the Secretary may not restrict the purposes for which the payments under this section may be used.

(7)(A) Any State receiving a payment under this section shall transfer an amount equal to not less than one-third of the amount of such payment to affected units of local government of such State.

(B) A plan for this transfer and appropriate allocation of such portion among such governments shall be included in the benefits agreement under section 10173 of this title covering such payments.

(C) In the event of a dispute concerning such plan, the Secretary shall resolve such dispute, consistent with this chapter and applicable State law.

(b) Contents

A benefits agreement under section 10173 of this title shall provide that—

(1) a Review Panel be established in accordance with section 10173b of this title;

(2) the State or Indian tribe that is party to such agreement waive its rights under this subchapter to disapprove the recommendation of a site for a repository;

(3) the parties to the agreement shall share with one another information relevant to the licensing process for the repository or monitored retrievable storage facility, as it becomes available;

(4) the State or Indian tribe that is party to such agreement participate in the design of the repository or monitored retrievable storage facility and in the preparation of documents required under law or regulation governing the effects of the facility on the public health and safety; and

(5) the State or Indian tribe waive its rights, if any, to impact assistance under sections 10136(c)(1)(B)(ii), 10136(c)(2), 10138(b)(2)(A)(ii), and 10138(b)(3) of this title.

(c) Payments by Secretary

The Secretary shall make payments to the States or affected Indian tribes under a benefits agreement under this section from the Waste Fund. The signature of the Secretary on a valid benefits agreement under section 10173 of this title shall constitute a commitment by the United States to make payments in accordance with such agreement.

(Pub. L. 97-425, title I, §171, as added Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5031, Dec. 22, 1987, 101 Stat. 1330-237.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10173b, 10174a of this title.

§ 10173b. Review Panel

(a) In general

The Review Panel required to be established by section 10173a(b)(1) of this title shall consist of a Chairman selected by the Secretary in consultation with the Governor of the State or governing body of the Indian tribe, as appropriate, that is party to such agreement and 6 other members as follows:

- (1) 2 members selected by the Governor of such State or governing body of such Indian tribe;
- (2) 2 members selected by units of local government affected by the repository or monitored retrievable storage facility;
- (3) 1 member to represent persons making payments into the Waste Fund, to be selected by the Secretary; and
- (4) 1 member to represent other public interests, to be selected by the Secretary.

(b) Terms

- (1) The members of the Review Panel shall serve for terms of 4 years each.
- (2) Members of the Review Panel who are not full-time employees of the Federal Government, shall receive a per diem compensation for each day spent conducting work of the Review Panel, including their necessary travel or other expenses while engaged in the work of the Review Panel.
- (3) Expenses of the Panel shall be paid by the Secretary from the Waste Fund.

(c) Duties

The Review Panel shall—

- (1) advise the Secretary on matters relating to the proposed repository or monitored retrievable storage facility, including issues relating to design, construction, operation, and decommissioning of the facility;
- (2) evaluate performance of the repository or monitored retrievable storage facility, as it considers appropriate;

(3) recommend corrective actions to the Secretary;

(4) assist in the presentation of State or affected Indian tribe and local perspectives to the Secretary; and

(5) participate in the planning for and the review of preoperational data on environmental, demographic, and socioeconomic conditions of the site and the local community.

(d) Information

The Secretary shall promptly¹ make available promptly¹ any information in the Secretary's possession requested by the Panel or its Chairman.

(e) Federal Advisory Committee Act

The requirements of the Federal Advisory Committee Act shall not apply to a Review Panel established under this subchapter.

(Pub. L. 97-425, title I, §172, as added Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5031, Dec. 22, 1987, 101 Stat. 1330-239.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (e), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10173a of this title.

§ 10173c. Termination

(a) In general

The Secretary may terminate a benefits agreement under this subchapter if—

- (1) the site under consideration is disqualified for its failure to comply with guidelines and technical requirements established by the Secretary in accordance with this chapter; or
- (2) the Secretary determines that the Commission cannot license the facility within a reasonable time.

(b) Termination by State or Indian tribe

A State or Indian tribe may terminate a benefits agreement under this subchapter only if the Secretary disqualifies the site under consideration for its failure to comply with technical requirements established by the Secretary in accordance with this chapter or the Secretary determines that the Commission cannot license the facility within a reasonable time.

(c) Decisions of Secretary

Decisions of the Secretary under this section shall be in writing, shall be available to Congress and the public, and are not subject to judicial review.

(Pub. L. 97-425, title I, §173, as added Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5031, Dec. 22, 1987, 101 Stat. 1330-240.)

¹ So in original.

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10173 of this title.

PART G—OTHER BENEFITS

§ 10174. Consideration in siting facilities

The Secretary, in siting Federal research projects, shall give special consideration to proposals from States where a repository is located.

(Pub. L. 97-425, title I, §174, as added Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5031, Dec. 22, 1987, 101 Stat. 1330-240.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

§ 10174a. Report**(a) In general**

Within one year of December 22, 1987, the Secretary shall report to Congress on the potential impacts of locating a repository at the Yucca Mountain site, including the recommendations of the Secretary for mitigation of such impacts and a statement of which impacts should be dealt with by the Federal Government, which should be dealt with by the State with State resources, including the benefits payments under section 10173a of this title, and which should be a joint Federal-State responsibility. The report under this subsection shall include the analysis of the Secretary of the authorities available to mitigate these impacts and the appropriate sources of funds for such mitigation.

(b) Impacts to be considered

Potential impacts to be addressed in the report under this¹ subsection (a) of this section shall include impacts on—

- (1) education, including facilities and personnel for elementary and secondary schools, community colleges, vocational and technical schools and universities;
- (2) public health, including the facilities and personnel for treatment and distribution of water, the treatment of sewage, the control of pests and the disposal of solid waste;
- (3) law enforcement, including facilities and personnel for the courts, police and sheriff's departments, district attorneys and public defenders and prisons;
- (4) fire protection, including personnel, the construction of fire stations, and the acquisition of equipment;
- (5) medical care, including emergency services and hospitals;
- (6) cultural and recreational needs, including facilities and personnel for libraries and museums and the acquisition and expansion of parks;
- (7) distribution of public lands to allow for the timely expansion of existing, or creation

¹ So in original. The word "this" probably should not appear.

of new, communities and the construction of necessary residential and commercial facilities;

(8) vocational training and employment services;

(9) social services, including public assistance programs, vocational and physical rehabilitation programs, mental health services, and programs relating to the abuse of alcohol and controlled substances;

(10) transportation, including any roads, terminals, airports, bridges, or railways associated with the facility and the repair and maintenance of roads, terminals, airports, bridges, or railways damaged as a result of the construction, operation, and closure of the facility;

(11) equipment and training for State and local personnel in the management of accidents involving high-level radioactive waste;

(12) availability of energy;

(13) tourism and economic development, including the potential loss of revenue and future economic growth; and

(14) other needs of the State and local governments that would not have arisen but for the characterization of the site and the construction, operation, and eventual closure of the repository facility.

(Pub. L. 97-425, title I, §175, as added Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5031, Dec. 22, 1987, 101 Stat. 1330-240.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

PART H—TRANSPORTATION

§ 10175. Transportation**(a) Packaging**

No spent nuclear fuel or high-level radioactive waste may be transported by or for the Secretary under part A of this subchapter or under part C of this subchapter except in packages that have been certified for such purpose by the Commission.

(b) Advance notification

The Secretary shall abide by regulations of the Commission regarding advance notification of State and local governments prior to transportation of spent nuclear fuel or high-level radioactive waste under part A of this subchapter or under part C of this subchapter.

(c) Training for public safety officials

The Secretary shall provide technical assistance and funds to States for training for public safety officials of appropriate units of local government and Indian tribes through whose jurisdiction the Secretary plans to transport spent nuclear fuel or high-level radioactive waste under part A of this subchapter or under part C of this subchapter. Training shall cover procedures required for safe routine transportation of these materials, as well as procedures for dealing with emergency response situations. The Waste Fund shall be the source of funds for work carried out under this subsection.

(Pub. L. 97-425, title I, §180, as added Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5061, Dec. 22, 1987, 101 Stat. 1330-251.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

SUBCHAPTER II—RESEARCH, DEVELOPMENT, AND DEMONSTRATION REGARDING DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTE AND SPENT NUCLEAR FUEL

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 10139, 10222 of this title.

§ 10191. Purpose

It is the purpose of this subchapter—

(1) to provide direction to the Secretary with respect to the disposal of high-level radioactive waste and spent nuclear fuel;

(2) to authorize the Secretary, pursuant to this subchapter—

(A) to provide for the construction, operation, and maintenance of a deep geologic test and evaluation facility; and

(B) to provide for a focused and integrated high-level radioactive waste and spent nuclear fuel research and development program, including the development of a test and evaluation facility to carry out research and provide an integrated demonstration of the technology for deep geologic disposal of high-level radioactive waste, and the development of the facilities to demonstrate dry storage of spent nuclear fuel; and

(3) to provide for an improved cooperative role between the Federal Government and States, affected Indian tribes, and units of general local government in the siting of a test and evaluation facility.

(Pub. L. 97-425, title II, §211, Jan. 7, 1983, 96 Stat. 2245.)

§ 10192. Applicability

The provisions of this subchapter are subject to section 10107 of this title and shall not apply to facilities that are used for the disposal of high-level radioactive waste, low-level radioactive waste, transuranic waste, or spent nuclear fuel resulting from atomic energy defense activities.

(Pub. L. 97-425, title II, §212, Jan. 7, 1983, 96 Stat. 2245.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10197 of this title.

§ 10193. Identification of sites

(a) Guidelines

Not later than 6 months after January 7, 1983, and notwithstanding the failure of other agencies to promulgate standards pursuant to applicable law, the Secretary, in consultation with the Commission, the Director of the United

States Geological Survey, the Administrator, the Council on Environmental Quality, and such other Federal agencies as the Secretary considers appropriate, is authorized to issue, pursuant to section 553 of title 5, general guidelines for the selection of a site for a test and evaluation facility. Under such guidelines the Secretary shall specify factors that qualify or disqualify a site for development as a test and evaluation facility, including factors pertaining to the location of valuable natural resources, hydrogeophysics, seismic activity, and atomic energy defense activities, proximity to water supplies, proximity to populations, the effect upon the rights of users of water, and proximity to components of the National Park System, the National Wildlife Refuge System, the National Wild and Scenic Rivers System, the National Wilderness Preservation System, or National Forest Lands. Such guidelines shall require the Secretary to consider the various geologic media in which the site for a test and evaluation facility may be located and, to the extent practicable, to identify sites in different geologic media. The Secretary shall use guidelines established under this subsection in considering and selecting sites under this subchapter.

(b) Site identification by Secretary

(1) Not later than 1 year after January 7, 1983, and following promulgation of guidelines under subsection (a) of this section, the Secretary is authorized to identify 3 or more sites, at least 2 of which shall be in different geologic media in the continental United States, and at least 1 of which shall be in media other than salt. Subject to Commission requirements, the Secretary shall give preference to sites for the test and evaluation facility in media possessing geochemical characteristics that retard aqueous transport of radionuclides. In order to provide a greater possible protection of public health and safety as operating experience is gained at the test and evaluation facility, and with the exception of the primary areas under review by the Secretary on January 7, 1983, for the location of a test and evaluation facility or repository, all sites identified under this subsection shall be more than 15 statute miles from towns having a population of greater than 1,000 persons as determined by the most recent census unless such sites contain high-level radioactive waste prior to identification under this subchapter. Each identification of a site shall be supported by an environmental assessment, which shall include a detailed statement of the basis for such identification and of the probable impacts of the siting research activities planned for such site, and a discussion of alternative activities relating to siting research that may be undertaken to avoid such impacts. Such environmental assessment shall include—

(A) an evaluation by the Secretary as to whether such site is suitable for siting research under the guidelines established under subsection (a) of this section;

(B) an evaluation by the Secretary of the effects of the siting research activities at such site on the public health and safety and the environment;

(C) a reasonable comparative evaluation by the Secretary of such site with other sites and locations that have been considered;

(D) a description of the decision process by which such site was recommended; and

(E) an assessment of the regional and local impacts of locating the proposed test and evaluation facility at such site.

(2) When the Secretary identifies a site, the Secretary shall as soon as possible notify the Governor of the State in which such site is located, or the governing body of the affected Indian tribe where such site is located, of such identification and the basis of such identification. Additional sites for the location of the test and evaluation facility authorized in section 10222(d) of this title may be identified after such 1 year period, following the same procedure as if such sites had been identified within such period.

(Pub. L. 97-425, title II, §213, Jan. 7, 1983, 96 Stat. 2245; Pub. L. 102-154, title I, Nov. 13, 1991, 105 Stat. 1000.)

CHANGE OF NAME

“United States Geological Survey” substituted for “Geological Survey” in subsec. (a) pursuant to provision of title I of Pub. L. 102-154, set out as a note under section 31 of Title 43, Public Lands.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10194, 10195, 10199 of this title.

§ 10194. Siting research and related activities

(a) In general

Not later than 30 months after the date on which the Secretary completes the identification of sites under section 10193 of this title, the Secretary is authorized to complete sufficient evaluation of 3 sites to select a site for expanded siting research activities and for other activities under section 10198 of this title. The Secretary is authorized to conduct such preconstruction activities relative to such site selection for the test and evaluation facility as he deems appropriate. Additional sites for the location of the test and evaluation facility authorized in section 10222(d) of this title may be evaluated after such 30-month period, following the same procedures as if such sites were to be evaluated within such period.

(b) Public meetings and environmental assessment

Not later than 6 months after the date on which the Secretary completes the identification of sites under section 10193 of this title, and before beginning siting research activities, the Secretary shall hold at least 1 public meeting in the vicinity of each site to inform the residents of the area of the activities to be conducted at such site and to receive their views.

(c) Restrictions

Except as provided in section 10198 of this title with respect to a test and evaluation facility, in conducting siting research activities pursuant to subsection (a) of this section—

(1) the Secretary shall use the minimum quantity of high-level radioactive waste or

other radioactive materials, if any, necessary to achieve the test or research objectives;

(2) the Secretary shall ensure that any radioactive material used or placed on a site shall be fully retrievable; and

(3) upon termination of siting research activities at a site for any reason, the Secretary shall remove any radioactive material at or in the site as promptly as practicable.

(d) Title to material

The Secretary may take title, in the name of the Federal Government, to the high-level radioactive waste, spent nuclear fuel, or other radioactive material emplaced in a test and evaluation facility. If the Secretary takes title to any such material, the Secretary shall enter into the appropriate financial arrangements described in subsection (a) or (b) of section 10222 of this title for the disposal of such material.

(Pub. L. 97-425, title II, §214, Jan. 7, 1983, 96 Stat. 2247.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10197, 10198 of this title.

§ 10195. Test and evaluation facility siting review and reports

(a) Consultation and cooperation

The Governor of a State, or the governing body of an affected Indian tribe, notified of a site identification under section 10193 of this title shall have the right to participate in a process of consultation and cooperation as soon as the site involved has been identified pursuant to such section and throughout the life of the test and evaluation facility. For purposes of this section, the term “process of consultation and cooperation” means a methodology—

(1) by which the Secretary—

(A) keeps the Governor or governing body involved fully and currently informed about any potential economic or public health and safety impacts in all stages of the siting, development, construction, and operation of a test and evaluation facility;

(B) solicits, receives, and evaluates concerns and objections of such Governor or governing body with regard to such test and evaluation facility on an ongoing basis; and

(C) works diligently and cooperatively to resolve such concerns and objections; and

(2) by which the State or affected Indian tribe involved can exercise reasonable independent monitoring and testing of onsite activities related to all stages of the siting, development, construction and operation of the test and evaluation facility, except that any such monitoring and testing shall not unreasonably interfere with onsite activities.

(b) Written agreements

The Secretary shall enter into written agreements with the Governor of the State in which an identified site is located or with the governing body of any affected Indian tribe where an identified site is located in order to expedite the consultation and cooperation process. Any such written agreement shall specify—

(1) procedures by which such Governor or governing body may study, determine, comment on, and make recommendations with regard to the possible health, safety, and economic impacts of the test and evaluation facility;

(2) procedures by which the Secretary shall consider and respond to comments and recommendations made by such Governor or governing body, including the period in which the Secretary shall so respond;

(3) the documents the Department is to submit to such Governor or governing body, the timing for such submissions, the timing for such Governor or governing body to identify public health and safety concerns and the process to be followed to try to eliminate those concerns;

(4) procedures by which the Secretary and either such Governor or governing body may review or modify the agreement periodically; and

(5) procedures for public notification of the procedures specified under subparagraphs (A) through (D).

(c) Limitation

Except as specifically provided in this section, nothing in this subchapter is intended to grant any State or affected Indian tribe any authority with respect to the siting, development, or loading of the test and evaluation facility.

(Pub. L. 97-425, title II, §215, Jan. 7, 1983, 96 Stat. 2247.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10199 of this title.

§ 10196. Federal agency actions

(a) Cooperation and coordination

Federal agencies shall assist the Secretary by cooperating and coordinating with the Secretary in the preparation of any necessary reports under this subchapter and the mission plan under section 10221 of this title.

(b) Environmental review

(1) No action of the Secretary or any other Federal agency required by this subchapter or section 10221 of this title with respect to a test and evaluation facility to be taken prior to the initiation of onsite construction of a test and evaluation facility shall require the preparation of an environmental impact statement under section 102(2)(C) of the Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), or to require the preparation of environmental reports, except as otherwise specifically provided for in this subchapter.

(2) The Secretary and the heads of all other Federal agencies shall, to the maximum extent possible, avoid duplication of efforts in the preparation of reports under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(Pub. L. 97-425, title II, §216, Jan. 7, 1983, 96 Stat. 2248.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (b)(2), is Pub. L. 91-190, Jan. 1, 1970,

83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

§ 10197. Research and development on disposal of high-level radioactive waste

(a) Purpose

Not later than 64 months after January 7, 1983, the Secretary is authorized to, to the extent practicable, begin at a site evaluated under section 10194 of this title, as part of and as an extension of siting research activities of such site under such section, the mining and construction of a test and evaluation facility. Prior to the mining and construction of such facility, the Secretary shall prepare an environmental assessment. The purpose of such facility shall be—

(1) to supplement and focus the repository site characterization process;

(2) to provide the conditions under which known technological components can be integrated to demonstrate a functioning repository-like system;

(3) to provide a means of identifying, evaluating, and resolving potential repository licensing issues that could not be resolved during the siting research program conducted under section 10192 of this title;

(4) to validate, under actual conditions, the scientific models used in the design of a repository;

(5) to refine the design and engineering of repository components and systems and to confirm the predicted behavior of such components and systems;

(6) to supplement the siting data, the generic and specific geological characteristics developed under section 10194 of this title relating to isolating disposal materials in the physical environment of a repository;

(7) to evaluate the design concepts for packaging, handling, and emplacement of high-level radioactive waste and spent nuclear fuel at the design rate; and

(8) to establish operating capability without exposing workers to excessive radiation.

(b) Design

The Secretary shall design each test and evaluation facility—

(1) to be capable of receiving not more than 100 full-sized canisters of solidified high-level radioactive waste (which canisters shall not exceed an aggregate weight of 100 metric tons), except that spent nuclear fuel may be used instead of such waste if such waste cannot be obtained under reasonable conditions;

(2) to permit full retrieval of solidified high-level radioactive waste, or other radioactive material used by the Secretary for testing, upon completion of the technology demonstration activities; and

(3) based upon the principle that the high-level radioactive waste, spent nuclear fuel, or other radioactive material involved shall be isolated from the biosphere in such a way that the initial isolation is provided by engineered barriers functioning as a system with the geologic environment.

(c) Operation

(1) Not later than 88 months after January 7, 1983, the Secretary shall begin an in situ testing

program at the test and evaluation facility in accordance with the mission plan developed under section 10221 of this title, for purposes of—

(A) conducting in situ tests of bore hole sealing, geologic media fracture sealing, and room closure to establish the techniques and performance for isolation of high-level radioactive waste, spent nuclear fuel, or other radioactive materials from the biosphere;

(B) conducting in situ tests with radioactive sources and materials to evaluate and improve reliable models for radionuclide migration, absorption, and containment within the engineered barriers and geologic media involved, if the Secretary finds there is reasonable assurance that such radioactive sources and materials will not threaten the use of such site as a repository;

(C) conducting in situ tests to evaluate and improve models for ground water or brine flow through fractured geologic media;

(D) conducting in situ tests under conditions representing the real time and the accelerated time behavior of the engineered barriers within the geologic environment involved;

(E) conducting in situ tests to evaluate the effects of heat and pressure on the geologic media involved, on the hydrology of the surrounding area, and on the integrity of the disposal packages;

(F) conducting in situ tests under both normal and abnormal repository conditions to establish safe design limits for disposal packages and to determine the effects of the gross release of radionuclides into surroundings, and the effects of various credible failure modes, including—

(i) seismic events leading to the coupling of aquifers through the test and evaluation facility;

(ii) thermal pulses significantly greater than the maximum calculated; and

(iii) human intrusion creating a direct pathway to the biosphere; and

(G) conducting such other research and development activities as the Secretary considers appropriate, including such activities necessary to obtain the use of high-level radioactive waste, spent nuclear fuel, or other radioactive materials (such as any highly radioactive material from the Three Mile Island nuclear powerplant or from the West Valley Demonstration Project) for test and evaluation purposes, if such other activities are reasonably necessary to support the repository program and if there is reasonable assurance that the radioactive sources involved will not threaten the use of such site as a repository.

(2) The in situ testing authorized in this subsection shall be designed to ensure that the suitability of the site involved for licensing by the Commission as a repository will not be adversely affected.

(d) Use of existing Department facilities

During the conducting of siting research activities under section 10194 of this title and for such period thereafter as the Secretary considers appropriate, the Secretary shall use Department facilities owned by the Federal Govern-

ment on January 7, 1983, for the conducting of generically applicable tests regarding packaging, handling, and emplacement technology for solidified high-level radioactive waste and spent nuclear fuel from civilian nuclear activities.

(e) Engineered barriers

The system of engineered barriers and selected geology used in a test and evaluation facility shall have a design life at least as long as that which the Commission requires by regulations issued under this chapter, or under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), for repositories.

(f) Role of Commission

(1)(A) Not later than 1 year after January 7, 1983, the Secretary and the Commission shall reach a written understanding establishing the procedures for review, consultation, and coordination in the planning, construction, and operation of the test and evaluation facility under this section. Such understanding shall establish a schedule, consistent with the deadlines set forth in this subchapter,¹ for submission by the Secretary of, and review by the Commission of and necessary action on—

(i) the mission plan prepared under section 10221 of this title; and

(ii) such reports and other information as the Commission may reasonably require to evaluate any health and safety impacts of the test and evaluation facility.

(B) Such understanding shall also establish the conditions under which the Commission may have access to the test and evaluation facility for the purpose of assessing any public health and safety concerns that it may have. No shafts may be excavated for the test and evaluation until the Secretary and the Commission enter into such understanding.

(2) Subject to section 10225 of this title, the test and evaluation facility, and the facilities authorized in this section, shall be constructed and operated as research, development, and demonstration facilities, and shall not be subject to licensing under section 5842 of this title.

(3)(A) The Commission shall carry out a continuing analysis of the activities undertaken under this section to evaluate the adequacy of the consideration of public health and safety issues.

(B) The Commission shall report to the President, the Secretary, and the Congress as the Commission considers appropriate with respect to the conduct of activities under this section.

(g) Environmental review

The Secretary shall prepare an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) prior to conducting tests with radioactive materials at the test and evaluation facility. Such environmental impact statement shall incorporate, to the extent practicable, the environmental assessment prepared under subsection (a) of this section. Nothing in this subsection may be construed to limit siting research activities conducted under section 10194

¹ See References in Text note below.

of this title. This subsection shall apply only to activities performed exclusively for a test and evaluation facility.

(h) Limitations

(1) If the test and evaluation facility is not located at the site of a repository, the Secretary shall obtain the concurrence of the Commission with respect to the decontamination and decommissioning of such facility.

(2) If the test and evaluation facility is not located at a candidate site or repository site, the Secretary shall conduct only the portion of the in situ testing program required in subsection (c) of this section determined by the Secretary to be useful in carrying out the purposes of this chapter.

(3) The operation of the test and evaluation facility shall terminate not later than—

(A) 5 years after the date on which the initial repository begins operation; or

(B) at such time as the Secretary determines that the continued operation of a test and evaluation facility is not necessary for research, development, and demonstration purposes;

whichever occurs sooner.

(4) Notwithstanding any other provisions of this subsection, as soon as practicable following any determination by the Secretary, with the concurrence of the Commission, that the test and evaluation facility is unsuitable for continued operation, the Secretary shall take such actions as are necessary to remove from such site any radioactive material placed on such site as a result of testing and evaluation activities conducted under this section. Such requirement may be waived if the Secretary, with the concurrence of the Commission, finds that short-term testing and evaluation activities using radioactive material will not endanger the public health and safety.

(Pub. L. 97-425, title II, §217, Jan. 7, 1983, 96 Stat. 2249.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in subsec. (e), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

This subchapter, referred to in subsec. (f)(1)(A), was in the original "this subtitle", and was translated as this subchapter to reflect the probable intent of Congress because title II of Pub. L. 97-425, which enacted this subchapter, does not contain subtitles.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10199 of this title.

§ 10198. Research and development on spent nuclear fuel

(a) Demonstration and cooperative programs

The Secretary shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies

that the Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission. Not later than 1 year after January 7, 1983, the Secretary shall select at least 1, but not more than 3, sites evaluated under section 10194 of this title at such power reactors. In selecting such site or sites, the Secretary shall give preference to civilian nuclear power reactors that will soon have a shortage of interim storage capacity for spent nuclear fuel. Subject to reaching agreement as provided in subsection (b) of this section, the Secretary shall undertake activities to assist such power reactors with demonstration projects at such sites, which may use one of the following types of alternate storage technologies: spent nuclear fuel storage casks, caissons, or silos. The Secretary shall also undertake a cooperative program with civilian nuclear power reactors to encourage the development of the technology for spent nuclear fuel rod consolidation in existing power reactor water storage basins.

(b) Cooperative agreements

To carry out the programs described in subsection (a) of this section, the Secretary shall enter into a cooperative agreement with each utility involved that specifies, at a minimum, that—

(1) such utility shall select the alternate storage technique to be used, make the land and spent nuclear fuel available for the dry storage demonstration, submit and provide site-specific documentation for a license application to the Commission, obtain a license relating to the facility involved, construct such facility, operate such facility after licensing, pay the costs required to construct such facility, and pay all costs associated with the operation and maintenance of such facility;

(2) the Secretary shall provide, on a cost-sharing basis, consultative and technical assistance, including design support and generic licensing documentation, to assist such utility in obtaining the construction authorization and appropriate license from the Commission; and

(3) the Secretary shall provide generic research and development of alternative spent nuclear fuel storage techniques to enhance utility-provided, at-reactor storage capabilities, if authorized in any other provision of this chapter or in any other provision of law.

(c) Dry storage research and development

(1) The consultative and technical assistance referred to in subsection (b)(2) of this section may include, but shall not be limited to, the establishment of a research and development program for the dry storage of not more than 300 metric tons of spent nuclear fuel at facilities owned by the Federal Government on January 7, 1983. The purpose of such program shall be to collect necessary data to assist the utilities involved in the licensing process.

(2) To the extent available, and consistent with the provisions of section 10155 of this title, the Secretary shall provide spent nuclear fuel for the research and development program au-

thorized in this subsection from spent nuclear fuel received by the Secretary for storage under section 10155 of this title. Such spent nuclear fuel shall not be subject to the provisions of section 10155(e) of this title.

(d) Funding

The total contribution from the Secretary from Federal funds and the use of Federal facilities or services shall not exceed 25 percent of the total costs of the demonstration program authorized in subsection (a) of this section, as estimated by the Secretary. All remaining costs of such program shall be paid by the utilities involved or shall be provided by the Secretary from the Interim Storage Fund established in section 10156 of this title.

(e) Relation to spent nuclear fuel storage program

The spent nuclear fuel storage program authorized in section 10155 of this title shall not be construed to authorize the use of research development or demonstration facilities owned by the Department unless—

(1) a period of 30 calendar days (not including any day in which either House of Congress is not in session because of adjournment of more than 3 calendar days to a day certain) has passed after the Secretary has transmitted to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a written report containing a full and complete statement concerning (A) the facility involved; (B) any necessary modifications; (C) the cost thereof; and (D) the impact on the authorized research and development program; or

(2) each such committee, before the expiration of such period, has transmitted to the Secretary a written notice to the effect that such committee has no objection to the proposed use of such facility.

(Pub. L. 97-425, title II, §218, Jan. 7, 1983, 96 Stat. 2252; Pub. L. 103-437, §15(c)(10), Nov. 2, 1994, 108 Stat. 4592.)

AMENDMENTS

1994—Subsec. (e)(1). Pub. L. 103-437 substituted “Committee on Science, Space, and Technology” for “Committee on Science and Technology”.

CHANGE OF NAME

Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10153, 10155, 10194 of this title.

§ 10199. Payments to States and Indian tribes

(a) Payments

Subject to subsection (b) of this section, the Secretary shall make payments to each State or affected Indian tribe that has entered into an agreement pursuant to section 10195 of this title. The Secretary shall pay an amount equal to 100 percent of the expenses incurred by such State

or Indian tribe in engaging in any monitoring, testing, evaluation, or other consultation and cooperation activity under section 10195 of this title with respect to any site. The amount paid by the Secretary under this paragraph shall not exceed \$3,000,000 per year from the date on which the site involved was identified to the date on which the decontamination and decommission of the facility is complete pursuant to section 10197(h) of this title. Any such payment may only be made to a State in which a potential site for a test and evaluation facility has been identified under section 10193 of this title, or to an affected Indian tribe where the potential site has been identified under such section.

(b) Limitation

The Secretary shall make any payment to a State under subsection (a) of this section only if such State agrees to provide, to each unit of general local government within the jurisdictional boundaries of which the potential site or effectively selected site involved is located, at least one-tenth of the payments made by the Secretary to such State under such subsection. A State or affected Indian tribe receiving any payment under subsection (a) of this section shall otherwise have discretion to use such payment for whatever purpose it deems necessary, including the State or tribal activities pursuant to agreements entered into in accordance with section 10195 of this title. Annual payments shall be prorated on a 365-day basis to the specified dates.

(Pub. L. 97-425, title II, §219, Jan. 7, 1983, 96 Stat. 2253.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10222 of this title.

§ 10200. Study of research and development needs for monitored retrievable storage proposal

Not later than 6 months after January 7, 1983, the Secretary shall submit to the Congress a report describing the research and development activities the Secretary considers necessary to develop the proposal required in section 10161(b) of this title with respect to a monitored retrievable storage facility.

(Pub. L. 97-425, title II, §220, Jan. 7, 1983, 96 Stat. 2254.)

§ 10201. Judicial review

Judicial review of research and development activities under this subchapter shall be in accordance with the provisions of section 10139 of this title.

(Pub. L. 97-425, title II, §221, Jan. 7, 1983, 96 Stat. 2254.)

§ 10202. Research on alternatives for permanent disposal of high-level radioactive waste

The Secretary shall continue and accelerate a program of research, development, and investigation of alternative means and technologies for the permanent disposal of high-level radioactive waste from civilian nuclear activities and

Federal research and development activities except that funding shall be made from amounts appropriated to the Secretary for purposes of carrying out this section. Such program shall include examination of various waste disposal options.

(Pub. L. 97-425, title II, § 222, Jan. 7, 1983, 96 Stat. 2254.)

§ 10203. Technical assistance to non-nuclear weapon states in field of spent fuel storage and disposal

(a) Statement of policy

It shall be the policy of the United States to cooperate with and provide technical assistance to non-nuclear weapon states in the field of spent fuel storage and disposal.

(b) Publication of joint notice; update

(1) Within 90 days of January 7, 1983, the Secretary and the Commission shall publish a joint notice in the Federal Register stating that the United States is prepared to cooperate with and provide technical assistance to non-nuclear weapon states in the fields of at-reactor spent fuel storage; away-from-reactor spent fuel storage; monitored, retrievable spent fuel storage; geologic disposal of spent fuel; and the health, safety, and environmental regulation of such activities. The notice shall summarize the resources that can be made available for international cooperation and assistance in these fields through existing programs of the Department and the Commission, including the availability of: (i) data from past or ongoing research and development projects; (ii) consultations with expert Department or Commission personnel or contractors; and (iii) liaison with private business entities and organizations working in these fields.

(2) The joint notice described in the preceding subparagraph shall be updated and reissued annually for 5 succeeding years.

(c) Notification to non-nuclear weapon states; expressions of interest

Following publication of the annual joint notice referred to in paragraph (2), the Secretary of State shall inform the governments of non-nuclear weapon states and, as feasible, the organizations operating nuclear powerplants in such states, that the United States is prepared to cooperate with and provide technical assistance to non-nuclear weapon states in the fields of spent fuel storage and disposal, as set forth in the joint notice. The Secretary of State shall also solicit expressions of interest from non-nuclear weapon state governments and non-nuclear weapon state nuclear power reactor operators concerning their participation in expanded United States cooperation and technical assistance programs in these fields. The Secretary of State shall transmit any such expressions of interest to the Department and the Commission.

(d) Funding requests

With his budget presentation materials for the Department and the Commission for fiscal years 1984 through 1989, the President shall include funding requests for an expanded program of cooperation and technical assistance with non-nu-

clear weapon states in the fields of spent fuel storage and disposal as appropriate in light of expressions of interest in such cooperation and assistance on the part of non-nuclear weapon state governments and non-nuclear weapon state nuclear power reactor operators.

(e) "Non-nuclear weapon state" defined

For the purposes of this subsection,¹ the term "non-nuclear weapon state" shall have the same meaning as that set forth in article IX of the Treaty on the Non-Proliferation of Nuclear Weapons (21 U.S.C.² 438).

(f) Unauthorized actions

Nothing in this subsection¹ shall authorize the Department or the Commission to take any action not authorized under existing law.

(Pub. L. 97-425, title II, § 223, Jan. 7, 1983, 96 Stat. 2254.)

REFERENCES IN TEXT

The Treaty on the Non-Proliferation of Nuclear Weapons, referred to in subsec. (e), is set out in 21 UST 483; TIAS 6839.

§ 10204. Subseabed disposal

(a) Repealed. Pub. L. 104-66, title I, § 1051(d), Dec. 21, 1995, 109 Stat. 716

(b) Office of Subseabed Disposal Research

(1) There is hereby established an Office of Subseabed Disposal Research within the Office of Science of the Department of Energy. The Office shall be headed by the Director, who shall be a member of the Senior Executive Service appointed by the Director of the Office of Science, and compensated at a rate determined by applicable law.

(2) The Director of the Office of Subseabed Disposal Research shall be responsible for carrying out research, development, and demonstration activities on all aspects of subseabed disposal of high-level radioactive waste and spent nuclear fuel, subject to the general supervision of the Secretary. The Director of the Office shall be directly responsible to the Director of the Office of Science, and the first such Director shall be appointed within 30 days of December 22, 1987.

(3) In carrying out his responsibilities under this chapter, the Secretary may make grants to, or enter into contracts with, the Subseabed Consortium described in subsection (d) of this section, and other persons.

(4)(A) Within 60 days of December 22, 1987, the Secretary shall establish a university-based Subseabed Consortium involving leading oceanographic universities and institutions, national laboratories, and other organizations to investigate the technical and institutional feasibility of subseabed disposal.

(B) The Subseabed Consortium shall develop a research plan and budget to achieve the following objectives by 1995:

(i) demonstrate the capacity to identify and characterize potential subseabed disposal sites;

(ii) develop conceptual designs for a subseabed disposal system, including estimated costs and institutional requirements; and

¹ So in original. Probably should be "section".

² So in original. Probably should be "UST".

(iii) identify and assess the potential impacts of subseabed disposal on the human and marine environment.

(C) In 1990, and again in 1995, the Subseabed Consortium shall report to Congress on the progress being made in achieving the objectives of paragraph (2).

(Pub. L. 97-425, title II, § 224, as added Pub. L. 100-202, § 101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, § 5063, Dec. 22, 1987, 101 Stat. 1330-253; amended Pub. L. 104-66, title I, § 1051(d), Dec. 21, 1995, 109 Stat. 716; Pub. L. 105-245, title III, § 309(b)(2)(E), Oct. 7, 1998, 112 Stat. 1853.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

AMENDMENTS

1998—Subsec. (b)(1). Pub. L. 105-245 which directed the substitution of “Science” for “Energy Research”, was executed by making the substitution in two places to reflect the probable intent of Congress.

Subsec. (b)(2). Pub. L. 105-245 substituted “Office of Science” for “Office of Energy Research”.

1995—Subsec. (a). Pub. L. 104-66 struck out subsec. (a) which required Secretary of Energy to report to Congress on subseabed disposal of spent nuclear fuel and high-level radioactive waste.

Subsec. (b)(5). Pub. L. 104-66 struck out par. (5) which read as follows: “The Director of the Office of Subseabed Disposal Research shall annually prepare and submit a report to the Congress on the activities and expenditures of the Office.”

SUBCHAPTER III—OTHER PROVISIONS RELATING TO RADIOACTIVE WASTE

§ 10221. Mission plan

(a) Contents of mission plan

The Secretary shall prepare a comprehensive report, to be known as the mission plan, which shall provide an informational basis sufficient to permit informed decisions to be made in carrying out the repository program and the research, development, and demonstration programs required under this chapter. The mission plan shall include—

(1) an identification of the primary scientific, engineering, and technical information, including any necessary demonstration of engineering or systems integration, with respect to the siting and construction of a test and evaluation facility and repositories;

(2) an identification of any information described in paragraph (1) that is not available because of any unresolved scientific, engineering, or technical questions, or undemonstrated engineering or systems integration, a schedule including specific major milestones for the research, development, and technology demonstration program required under this chapter and any additional activities to be undertaken to provide such information, a schedule for the activities necessary to achieve important programmatic milestones, and an estimate of the costs required to carry out such research, development, and demonstration programs;

(3) an evaluation of financial, political, legal, or institutional problems that may im-

pede the implementation of this chapter, the plans of the Secretary to resolve such problems, and recommendations for any necessary legislation to resolve such problems;

(4) any comments of the Secretary with respect to the purpose and program of the test and evaluation facility;

(5) a discussion of the significant results of research and development programs conducted and the implications for each of the different geologic media under consideration for the siting of repositories, and, on the basis of such information, a comparison of the advantages and disadvantages associated with the use of such media for repository sites;

(6) the guidelines issued under section 10132(a) of this title;

(7) a description of known sites at which site characterization activities should be undertaken, a description of such siting characterization activities, including the extent of planned excavations, plans for onsite testing with radioactive or nonradioactive material, plans for any investigations activities which may affect the capability of any such site to isolate high-level radioactive waste or spent nuclear fuel, plans to control any adverse, safety-related impacts from such site characterization activities, and plans for the decontamination and decommissioning of such site if it is determined unsuitable for licensing as a repository;

(8) an identification of the process for solidifying high-level radioactive waste or packaging spent nuclear fuel, including a summary and analysis of the data to support the selection of the solidification process and packaging techniques, an analysis of the requirements for the number of solidification packaging facilities needed, a description of the state of the art for the materials proposed to be used in packaging such waste or spent fuel and the availability of such materials including impacts on strategic supplies and any requirements for new or reactivated facilities to produce any such materials needed, and a description of a plan, and the schedule for implementing such plan, for an aggressive research and development program to provide when needed a high-integrity disposal package at a reasonable price;

(9) an estimate of (A) the total repository capacity required to safely accommodate the disposal of all high-level radioactive waste and spent nuclear fuel expected to be generated through December 31, 2020, in the event that no commercial reprocessing of spent nuclear fuel occurs, as well as the repository capacity that will be required if such reprocessing does occur; (B) the number and type of repositories required to be constructed to provide such disposal capacity; (C) a schedule for the construction of such repositories; and (D) an estimate of the period during which each repository listed in such schedule will be accepting high-level radioactive waste or spent nuclear fuel for disposal;

(10) an estimate, on an annual basis, of the costs required (A) to construct and operate the repositories anticipated to be needed under paragraph (9) based on each of the assumptions

referred to in such paragraph; (B) to construct and operate a test and evaluation facility, or any other facilities, other than repositories described in subparagraph (A), determined to be necessary; and (C) to carry out any other activities under this chapter; and

(11) an identification of the possible adverse economic and other impacts to the State or Indian tribe involved that may arise from the development of a test and evaluation facility or repository at a site.

(b) Submission of mission plan

(1) Not later than 15 months after January 7, 1983, the Secretary shall submit a draft mission plan to the States, the affected Indian tribes, the Commission, and other Government agencies as the Secretary deems appropriate for their comments.

(2) In preparing any comments on the mission plan, such agencies shall specify with precision any objections that they may have. Upon submission of the mission plan to such agencies, the Secretary shall publish a notice in the Federal Register of the submission of the mission plan and of its availability for public inspection, and, upon receipt of any comments of such agencies respecting the mission plan, the Secretary shall publish a notice in the Federal Register of the receipt of comments and of the availability of the comments for public inspection. If the Secretary does not revise the mission plan to meet objections specified in such comments, the Secretary shall publish in the Federal Register a detailed statement for not so revising the mission plan.

(3) The Secretary, after reviewing any other comments made by such agencies and revising the mission plan to the extent that the Secretary may consider to be appropriate, shall submit the mission plan to the appropriate committees of the Congress not later than 17 months after January 7, 1983. The mission plan shall be used by the Secretary at the end of the first period of 30 calendar days (not including any day on which either House of Congress is not in session because of adjournment of more than 3 calendar days to a day certain) following receipt of the mission plan by the Congress.

(Pub. L. 97-425, title III, §301, Jan. 7, 1983, 96 Stat. 2255.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10196, 10197 of this title.

§ 10222. Nuclear Waste Fund

(a) Contracts

(1) In the performance of his functions under this chapter, the Secretary is authorized to enter into contracts with any person who generates or holds title to high-level radioactive waste, or spent nuclear fuel, of domestic origin for the acceptance of title, subsequent transportation, and disposal of such waste or spent fuel. Such contracts shall provide for payment to the Secretary of fees pursuant to paragraphs (2) and (3) sufficient to offset expenditures described in subsection (d) of this section.

(2) For electricity generated by a civilian nuclear power reactor and sold on or after the date

90 days after January 7, 1983, the fee under paragraph (1) shall be equal to 1.0 mil per kilowatt-hour.

(3) For spent nuclear fuel, or solidified high-level radioactive waste derived from spent nuclear fuel, which fuel was used to generate electricity in a civilian nuclear power reactor prior to the application of the fee under paragraph (2) to such reactor, the Secretary shall, not later than 90 days after January 7, 1983, establish a 1 time fee per kilogram of heavy metal in spent nuclear fuel, or in solidified high-level radioactive waste. Such fee shall be in an amount equivalent to an average charge of 1.0 mil per kilowatt-hour for electricity generated by such spent nuclear fuel, or such solidified high-level waste derived therefrom, to be collected from any person delivering such spent nuclear fuel or high-level waste, pursuant to section 10143 of this title, to the Federal Government. Such fee shall be paid to the Treasury of the United States and shall be deposited in the separate fund established by subsection (c) of this section.¹ In paying such a fee, the person delivering spent fuel, or solidified high-level radioactive wastes derived therefrom, to the Federal Government shall have no further financial obligation to the Federal Government for the long-term storage and permanent disposal of such spent fuel, or the solidified high-level radioactive waste derived therefrom.

(4) Not later than 180 days after January 7, 1983, the Secretary shall establish procedures for the collection and payment of the fees established by paragraph (2) and paragraph (3). The Secretary shall annually review the amount of the fees established by paragraphs (2) and (3) above to evaluate whether collection of the fee will provide sufficient revenues to offset the costs as defined in subsection (d) of this section. In the event the Secretary determines that either insufficient or excess revenues are being collected, in order to recover the costs incurred by the Federal Government that are specified in subsection (d) of this section, the Secretary shall propose an adjustment to the fee to insure full cost recovery. The Secretary shall immediately transmit this proposal for such an adjustment to Congress. The adjusted fee proposed by the Secretary shall be effective after a period of 90 days of continuous session have elapsed following the receipt of such transmittal unless during such 90-day period either House of Congress adopts a resolution disapproving the Secretary's proposed adjustment in accordance with the procedures set forth for congressional review of an energy action under section 6421 of this title.

(5) Contracts entered into under this section shall provide that—

(A) following commencement of operation of a repository, the Secretary shall take title to the high-level radioactive waste or spent nuclear fuel involved as expeditiously as practicable upon the request of the generator or owner of such waste or spent fuel; and

(B) in return for the payment of fees established by this section, the Secretary, beginning not later than January 31, 1998, will dis-

¹ See References in Text note below.

pose of the high-level radioactive waste or spent nuclear fuel involved as provided in this subchapter.¹

(6) The Secretary shall establish in writing criteria setting forth the terms and conditions under which such disposal services shall be made available.

(b) Advance contracting requirement

(1)(A) The Commission shall not issue or renew a license to any person to use a utilization or production facility under the authority of section 2133 or 2134 of this title unless—

(i) such person has entered into a contract with the Secretary under this section; or

(ii) the Secretary affirms in writing that such person is actively and in good faith negotiating with the Secretary for a contract under this section.

(B) The Commission, as it deems necessary or appropriate, may require as a precondition to the issuance or renewal of a license under section 2133 or 2134 of this title that the applicant for such license shall have entered into an agreement with the Secretary for the disposal of high-level radioactive waste and spent nuclear fuel that may result from the use of such license.

(2) Except as provided in paragraph (1), no spent nuclear fuel or high-level radioactive waste generated or owned by any person (other than a department of the United States referred to in section 101 or 102 of title 5) may be disposed of by the Secretary in any repository constructed under this chapter unless the generator or owner of such spent fuel or waste has entered into a contract with the Secretary under this section by not later than—

(A) June 30, 1983; or

(B) the date on which such generator or owner commences generation of, or takes title to, such spent fuel or waste;

whichever occurs later.

(3) The rights and duties of a party to a contract entered into under this section may be assignable with transfer of title to the spent nuclear fuel or high-level radioactive waste involved.

(4) No high-level radioactive waste or spent nuclear fuel generated or owned by any department of the United States referred to in section 101 or 102 of title 5 may be disposed of by the Secretary in any repository constructed under this chapter unless such department transfers to the Secretary, for deposit in the Nuclear Waste Fund, amounts equivalent to the fees that would be paid to the Secretary under the contracts referred to in this section if such waste or spent fuel were generated by any other person.

(c) Establishment of Nuclear Waste Fund

There hereby is established in the Treasury of the United States a separate fund, to be known as the Nuclear Waste Fund. The Waste Fund shall consist of—

(1) all receipts, proceeds, and recoveries realized by the Secretary under subsections (a), (b), and (e) of this section, which shall be deposited in the Waste Fund immediately upon their realization;

(2) any appropriations made by the Congress to the Waste Fund; and

(3) any unexpended balances available on January 7, 1983, for functions or activities necessary or incident to the disposal of civilian high-level radioactive waste or civilian spent nuclear fuel, which shall automatically be transferred to the Waste Fund on such date.

(d) Use of Waste Fund

The Secretary may make expenditures from the Waste Fund, subject to subsection (e) of this section, only for purposes of radioactive waste disposal activities under subchapters I and II of this chapter, including—

(1) the identification, development, licensing, construction, operation, decommissioning, and post-decommissioning maintenance and monitoring of any repository, monitored,² retrievable storage facility³ or test and evaluation facility constructed under this chapter;

(2) the conducting of nongeneric research, development, and demonstration activities under this chapter;

(3) the administrative cost of the radioactive waste disposal program;

(4) any costs that may be incurred by the Secretary in connection with the transportation, treating, or packaging of spent nuclear fuel or high-level radioactive waste to be disposed of in a repository, to be stored in a monitored,² retrievable storage site³ or to be used in a test and evaluation facility;

(5) the costs associated with acquisition, design, modification, replacement, operation, and construction of facilities at a repository site, a monitored,² retrievable storage site³ or a test and evaluation facility site and necessary or incident to such repository, monitored,² retrievable storage facility³ or test and evaluation facility; and

(6) the provision of assistance to States, units of general local government, and Indian tribes under sections 10136, 10138, and 10199 of this title.

No amount may be expended by the Secretary under this subchapter⁴ for the construction or expansion of any facility unless such construction or expansion is expressly authorized by this or subsequent legislation. The Secretary hereby is authorized to construct one repository and one test and evaluation facility.

(e) Administration of Waste Fund

(1) The Secretary of the Treasury shall hold the Waste Fund and, after consultation with the Secretary, annually report to the Congress on the financial condition and operations of the Waste Fund during the preceding fiscal year.

(2) The Secretary shall submit the budget of the Waste Fund to the Office of Management and Budget triennially along with the budget of the Department of Energy submitted at such time in accordance with chapter 11 of title 31. The budget of the Waste Fund shall consist of the estimates made by the Secretary of expenditures from the Waste Fund and other relevant

²So in original. The comma probably should not appear.

³So in original. Probably should be followed by a comma.

⁴See References in Text note below.

financial matters for the succeeding 3 fiscal years, and shall be included in the Budget of the United States Government. The Secretary may make expenditures from the Waste Fund, subject to appropriations which shall remain available until expended. Appropriations shall be subject to triennial authorization.

(3) If the Secretary determines that the Waste Fund contains at any time amounts in excess of current needs, the Secretary may request the Secretary of the Treasury to invest such amounts, or any portion of such amounts as the Secretary determines to be appropriate, in obligations of the United States—

(A) having maturities determined by the Secretary of the Treasury to be appropriate to the needs of the Waste Fund; and

(B) bearing interest at rates determined to be appropriate by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the maturities of such investments, except that the interest rate on such investments shall not exceed the average interest rate applicable to existing borrowings.

(4) Receipts, proceeds, and recoveries realized by the Secretary under this section, and expenditures of amounts from the Waste Fund, shall be exempt from annual apportionment under the provisions of subchapter II of chapter 15 of title 31.

(5) If at any time the moneys available in the Waste Fund are insufficient to enable the Secretary to discharge his responsibilities under this subchapter,⁵ the Secretary shall issue to the Secretary of the Treasury obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be agreed to by the Secretary and the Secretary of the Treasury. The total of such obligations shall not exceed amounts provided in appropriation Acts. Redemption of such obligations shall be made by the Secretary from moneys available in the Waste Fund. Such obligations shall bear interest at a rate determined by the Secretary of the Treasury, which shall be not less than a rate determined by taking into consideration the average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the obligations under this paragraph. The Secretary of the Treasury shall purchase any issued obligations, and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under such Act⁵ are extended to include any purchase of such obligations. The Secretary of the Treasury may at any time sell any of the obligations acquired by him under this paragraph. All redemptions, purchases, and sales by the Secretary of the Treasury of obligations under this paragraph shall be treated as public debt transactions of the United States.

(6) Any appropriations made available to the Waste Fund for any purpose described in subsection (d) of this section shall be repaid into the general fund of the Treasury, together with interest from the date of availability of the appropriations until the date of repayment. Such interest shall be paid on the cumulative amount of appropriations available to the Waste Fund, less the average undisbursed cash balance in the Waste Fund account during the fiscal year involved. The rate of such interest shall be determined by the Secretary of the Treasury taking into consideration the average market yield during the month preceding each fiscal year on outstanding marketable obligations of the United States of comparable maturity. Interest payments may be deferred with the approval of the Secretary of the Treasury, but any interest payments so deferred shall themselves bear interest.

(Pub. L. 97-425, title III, §302, Jan. 7, 1983, 96 Stat. 2257.)

REFERENCES IN TEXT

Subsection (c) of this section, referred to in subsec. (a)(3), was in the original “subsection (c) 126(b)” and was translated as subsection (c) of this section as the probable intent of Congress in view of the establishment of the Nuclear Waste Fund by subsec. (c) of this section and the absence of a section 126 in Pub. L. 97-425.

This subchapter, referred to in subsecs. (a)(5)(B), (d), and (e)(5), was in the original “this subtitle”, and was translated as this subchapter to reflect the probable intent of Congress because title III of Pub. L. 97-425, which enacted this subchapter, does not contain subtitles.

Such Act, referred to in subsec. (e)(5), probably means chapter 31 of Title 31, Money and Finance.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (e)(1) of this section relating to annual report to Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 4th item on page 143 of House Document No. 103-7.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2210, 2214, 10101, 10107, 10138, 10161, 10193, 10194, 10251, 10269 of this title.

§ 10223. Alternative means of financing

The Secretary shall undertake a study with respect to alternative approaches to managing the construction and operation of all civilian radioactive waste management facilities, including the feasibility of establishing a private corporation for such purposes. In conducting such study, the Secretary shall consult with the Director of the Office of Management and Budget, the Chairman of the Commission, and such other Federal agency representatives as may be appropriate. Such study shall be completed, and a report containing the results of such study shall be submitted to the Congress, within 1 year after January 7, 1983.

(Pub. L. 97-425, title III, §303, Jan. 7, 1983, 96 Stat. 2261.)

⁵ See References in Text note below.

§ 10224. Office of Civilian Radioactive Waste Management

(a) Establishment

There hereby is established within the Department of Energy an Office of Civilian Radioactive Waste Management. The Office shall be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate payable for level IV of the Executive Schedule under section 5315 of title 5.

(b) Functions of Director

The Director of the Office shall be responsible for carrying out the functions of the Secretary under this chapter, subject to the general supervision of the Secretary. The Director of the Office shall be directly responsible to the Secretary.

(c) Annual report to Congress

The Director of the Office shall annually prepare and submit to the Congress a comprehensive report on the activities and expenditures of the Office.

(d) Audit by GAO

If requested by either House of the Congress (or any committee thereof) or if considered necessary by the Comptroller General, the General Accounting Office shall conduct an audit of the Office, in accord with such regulations as the Comptroller General may prescribe. The Comptroller General shall have access to such books, records, accounts, and other materials of the Office as the Comptroller General determines to be necessary for the preparation of such audit. The Comptroller General shall submit a report on the results of each audit conducted under this section.

(Pub. L. 97-425, title III, §304, Jan. 7, 1983, 96 Stat. 2261; Pub. L. 104-66, title I, §1052(l), Dec. 21, 1995, 109 Stat. 719.)

AMENDMENTS

1995—Subsec. (d). Pub. L. 104-66 amended heading and text of subsec. (d) generally. Prior to amendment, text read as follows: “The Comptroller General of the United States shall annually make an audit of the Office, in accordance with such regulations as the Comptroller General may prescribe. The Comptroller General shall have access to such books, records, accounts, and other materials of the Office as the Comptroller General determines to be necessary for the preparation of such audit. The Comptroller General shall submit to the Congress a report on the results of each audit conducted under this section.”

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (c) of this section relating to annual submital of report to Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 13th item on page 91 of House Document No. 103-7.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7267, 10101 of this title.

§ 10225. Location of test and evaluation facility

(a) Report to Congress

Not later than 1 year after January 7, 1983, the Secretary shall transmit to the Congress a re-

port setting forth whether the Secretary plans to locate the test and evaluation facility at the site of a repository.

(b) Procedures

(1) If the test and evaluation facility is to be located at any candidate site or repository site (A) site selection and development of such facility shall be conducted in accordance with the procedures and requirements established in subchapter I of this chapter with respect to the site selection and development of repositories; and (B) the Secretary may not commence construction of any surface facility for such test and evaluation facility prior to issuance by the Commission of a construction authorization for a repository at the site involved.

(2) No test and evaluation facility may be converted into a repository unless site selection and development of such facility was conducted in accordance with the procedures and requirements established in subchapter I of this chapter with respect to the site selection and development of repositories.¹

(3) The Secretary may not commence construction of a test and evaluation facility at a candidate site or site recommended as the location for a repository prior to the date on which the designation of such site is effective under section 10135 of this title.

(Pub. L. 97-425, title III, §305, Jan. 7, 1983, 96 Stat. 2262.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10132, 10197 of this title.

§ 10226. Nuclear Regulatory Commission training authorization

The Nuclear Regulatory Commission is authorized and directed to promulgate regulations, or other appropriate Commission regulatory guidance, for the training and qualifications of civilian nuclear powerplant operators, supervisors, technicians and other appropriate operating personnel. Such regulations or guidance shall establish simulator training requirements for applicants for civilian nuclear powerplant operator licenses and for operator requalification programs; requirements governing NRC administration of requalification examinations; requirements for operating tests at civilian nuclear powerplant simulators, and instructional requirements for civilian nuclear powerplant licensee personnel training programs. Such regulations or other regulatory guidance shall be promulgated by the Commission within the 12-month period following January 7, 1983, and the Commission within the 12-month period following January 7, 1983, shall submit a report to Congress setting forth the actions the Commission has taken with respect to fulfilling its obligations under this section.

(Pub. L. 97-425, title III, §306, Jan. 7, 1983, 96 Stat. 2262.)

¹ So in original. Probably should be “repositories.”

SUBCHAPTER IV—NUCLEAR WASTE
NEGOTIATOR

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 10101, 10136 of this title.

§ 10241. “State” defined

For purposes of this subchapter, the term “State” means each of the several States and the District of Columbia.

(Pub. L. 97-425, title IV, § 401, as added Pub. L. 100-202, § 101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, § 5041, Dec. 22, 1987, 101 Stat. 1330-243; amended Pub. L. 102-486, title VIII, § 802(b), Oct. 24, 1992, 106 Stat. 2923.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

AMENDMENTS

1992—Pub. L. 102-486 substituted “several States and the District of Columbia.” for “several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, any other territory or possession of the United States, and the Republic of the Marshall Islands.”

§ 10242. Office of Nuclear Waste Negotiator

(a) Establishment

There is established the Office of the Nuclear Waste Negotiator that shall be an independent establishment in the executive branch.

(b) Nuclear Waste Negotiator

(1) The Office shall be headed by a Nuclear Waste Negotiator who shall be appointed by the President, by and with the advice and consent of the Senate. The Negotiator shall hold office at the pleasure of the President, and shall be compensated at the rate provided for level III of the Executive Schedule in section 5314 of title 5.

(2) The Negotiator shall attempt to find a State or Indian tribe willing to host a repository or monitored retrievable storage facility at a technically qualified site on reasonable terms and shall negotiate with any State or Indian tribe which expresses an interest in hosting a repository or monitored retrievable storage facility.

(Pub. L. 97-425, title IV, § 402, as added Pub. L. 100-202, § 101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, § 5041, Dec. 22, 1987, 101 Stat. 1330-243; amended Pub. L. 100-507, § 1, Oct. 18, 1988, 102 Stat. 2541.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100-507 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “There is established within the Executive Office of the President the Office of the Nuclear Waste Negotiator.”

§ 10243. Duties of Negotiator

(a) Negotiations with potential hosts

(1) The Negotiator shall—

(A) seek to enter into negotiations on behalf of the United States, with—

(i) the Governor of any State in which a potential site is located; and

(ii) the governing body of any Indian tribe on whose reservation a potential site is located; and

(B) attempt to reach a proposed agreement between the United States and any such State or Indian tribe specifying the terms and conditions under which such State or tribe would agree to host a repository or monitored retrievable storage facility within such State or reservation.

(2) In any case in which State law authorizes any person or entity other than the Governor to negotiate a proposed agreement under this section on behalf of the State, any reference in this subchapter to the Governor shall be considered to refer instead to such other person or entity.

(b) Consultation with affected States, subdivisions of States, and tribes

In addition to entering into negotiations under subsection (a) of this section, the Negotiator shall consult with any State, affected unit of local government, or any Indian tribe that the Negotiator determines may be affected by the siting of a repository or monitored retrievable storage facility and may include in any proposed agreement such terms and conditions relating to the interest of such States, affected units of local government, or Indian tribes as the Negotiator determines to be reasonable and appropriate.

(c) Consultation with other Federal agencies

The Negotiator may solicit and consider the comments of the Secretary, the Nuclear Regulatory Commission, or any other Federal agency on the suitability of any potential site for site characterization. Nothing in this subsection shall be construed to require the Secretary, the Nuclear Regulatory Commission, or any other Federal agency to make a finding that any such site is suitable for site characterization.

(d) Proposed agreement

(1) The Negotiator shall submit to the Congress any proposed agreement between the United States and a State or Indian tribe negotiated under subsection (a) of this section and an environmental assessment prepared under section 10244(a) of this title for the site concerned.

(2) Any such proposed agreement shall contain such terms and conditions (including such financial and institutional arrangements) as the Negotiator and the host State or Indian tribe determine to be reasonable and appropriate and shall contain such provisions as are necessary to preserve any right to participation or compensation of such State, affected unit of local government, or Indian tribe under sections 10136(c), 10137, and 10138(b) of this title.

(3)(A) No proposed agreement entered into under this section shall have legal effect unless enacted into Federal law.

(B) A State or Indian tribe shall enter into an agreement under this section in accordance with the laws of such State or tribe. Nothing in this

section may be construed to prohibit the disapproval of a proposed agreement between a State and the United States under this section by a referendum or an act of the legislature of such State.

(4) Notwithstanding any proposed agreement under this section, the Secretary may construct a repository or monitored retrievable storage facility at a site agreed to under this subchapter only if authorized by the Nuclear Regulatory Commission in accordance with the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.], title II of the Energy Reorganization Act of 1982 (42 U.S.C. 5841 et seq.) and any other law applicable to authorization of such construction.

(Pub. L. 97-425, title IV, § 403, as added Pub. L. 100-202, § 101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, § 5041, Dec. 22, 1987, 101 Stat. 1330-244.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in subsec. (d)(4), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§ 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

The Energy Reorganization Act of 1982, referred to in subsec. (d)(4), probably means the Energy Reorganization Act of 1974, Pub. L. 93-438, Oct. 11, 1974, 88 Stat. 1233, as amended. Title II of the Energy Reorganization Act of 1974 is classified generally to subchapter II (§ 5841 et seq.) of chapter 73 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5801 of this title and Tables.

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10244, 10245, 10246 of this title.

§ 10244. Environmental assessment of sites

(a) In general

Upon the request of the Negotiator, the Secretary shall prepare an environmental assessment of any site that is the subject of negotiations under section 10243(a) of this title.

(b) Contents

(1) Each environmental assessment prepared for a repository site shall include a detailed statement of the probable impacts of characterizing such site and the construction and operation of a repository at such site.

(2) Each environmental assessment prepared for a monitored retrievable storage facility site shall include a detailed statement of the probable impacts of construction and operation of such a facility at such site.

(c) Judicial review

The issuance of an environmental assessment under subsection (a) of this section shall be considered to be a final agency action subject to judicial review in accordance with the provisions of chapter 7 of title 5 and section 10139 of this title.

(d) Public hearings

(1) In preparing an environmental assessment for any repository or monitored retrievable stor-

age facility site, the Secretary shall hold public hearings in the vicinity of such site to inform the residents of the area in which such site is located that such site is being considered and to receive their comments.

(2) At such hearings, the Secretary shall solicit and receive any recommendations of such residents with respect to issues that should be addressed in the environmental assessment required under subsection (a) of this section and the site characterization plan described in section 10133(b)(1) of this title.

(e) Public availability

Each environmental assessment prepared under subsection (a) of this section shall be made available to the public.

(f) Evaluation of sites

(1) In preparing an environmental assessment under subsection (a) of this section, the Secretary shall use available geophysical, geologic, geochemical and hydrologic, and other information and shall not conduct any preliminary borings or excavations at any site that is the subject of such assessment unless—

(A) such preliminary boring or excavation activities were in progress on or before December 22, 1987; or

(B) the Secretary certifies that, in the absence of preliminary borings or excavations, adequate information will not be available to satisfy the requirements of this chapter or any other law.

(2) No preliminary boring or excavation conducted under this section shall exceed a diameter of 40 inches.

(Pub. L. 97-425, title IV, § 404, as added Pub. L. 100-202, § 101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, § 5041, Dec. 22, 1987, 101 Stat. 1330-245.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10243 of this title.

§ 10245. Site characterization; licensing

(a) Site characterization

Upon enactment of legislation to implement an agreement to site a repository negotiated under section 10243(a) of this title, the Secretary shall conduct appropriate site characterization activities for the site that is the subject of such agreement subject to the conditions and terms of such agreement. Any such site characterization activities shall be conducted in accordance with section 10133 of this title, except that references in such section to the Yucca Mountain site and the State of Nevada shall be deemed to refer to the site that is the subject of the agreement and the State or Indian tribe entering into the agreement.

(b) Licensing

(1) Upon the completion of site characterization activities carried out under subsection (a) of this section, the Secretary shall submit to

the Nuclear Regulatory Commission an application for construction authorization for a repository at such site.

(2) The Nuclear Regulatory Commission shall consider an application for a construction authorization for a repository or monitored retrievable storage facility in accordance with the laws applicable to such applications, except that the Nuclear Regulatory Commission shall issue a final decision approving or disapproving the issuance of a construction authorization not later than 3 years after the date of the submission of such application.

(Pub. L. 97-425, title IV, § 405, as added Pub. L. 100-202, § 101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, § 5041, Dec. 22, 1987, 101 Stat. 1330-246.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10247 of this title.

§ 10246. Monitored retrievable storage

(a) Construction and operation

Upon enactment of legislation to implement an agreement negotiated under section 10243(a) of this title to site a monitored retrievable storage facility, the Secretary shall construct and operate such facility as part of an integrated nuclear waste management system in accordance with the terms and conditions of such agreement.

(b) Financial assistance

The Secretary may make grants to any State, Indian tribe, or affected unit of local government to assess the feasibility of siting a monitored retrievable storage facility under this section at a site under the jurisdiction of such State, tribe, or affected unit of local government.

(Pub. L. 97-425, title IV, § 406, as added Pub. L. 100-202, § 101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, § 5041, Dec. 22, 1987, 101 Stat. 1330-246.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

§ 10247. Environmental impact statement

(a) In general

Issuance of a construction authorization for a repository or monitored retrievable storage facility under section 10245(b) of this title shall be considered a major Federal action significantly affecting the quality of the human environment for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(b) Preparation

A final environmental impact statement shall be prepared by the Secretary under such Act and shall accompany any application to the Nuclear Regulatory Commission for a construction authorization.

(c) Adoption

(1) Any such environmental impact statement shall, to the extent practicable, be adopted by the Nuclear Regulatory Commission, in accordance with section 1506.3 of title 40, Code of Federal Regulations, in connection with the issuance by the Nuclear Regulatory Commission of a construction authorization and license for such repository or monitored retrievable storage facility.

(2)(A) In any such statement prepared with respect to a repository to be constructed under this subchapter at the Yucca Mountain site, the Nuclear Regulatory Commission need not consider the need for a repository, the time of initial availability of a repository, alternate sites to the Yucca Mountain site, or nongeologic alternatives to such site.

(B) In any such statement prepared with respect to a repository to be constructed under this subchapter at a site other than the Yucca Mountain site, the Nuclear Regulatory Commission need not consider the need for a repository, the time of initial availability of a repository, or nongeologic alternatives to such site but shall consider the Yucca Mountain site as an alternate to such site in the preparation of such statement.

(Pub. L. 97-425, title IV, § 407, as added Pub. L. 100-202, § 101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, § 5041, Dec. 22, 1987, 101 Stat. 1330-246.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsecs. (a) and (b), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

§ 10248. Administrative powers of Negotiator

In carrying out his functions under this subchapter, the Negotiator may—

(1) appoint such officers and employees as he determines to be necessary and prescribe their duties;

(2) obtain services as authorized by section 3109 of title 5, at rates not to exceed the rate prescribed for grade GS-18 of the General Schedule by section 5332 of title 5;

(3) promulgate such rules and regulations as may be necessary to carry out such functions;

(4) utilize the services, personnel, and facilities of other Federal agencies (subject to the consent of the head of any such agency);

(5) for purposes of performing administrative functions under this subchapter, and to the extent funds are appropriated, enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary and on such terms as the Negotiator determines to be appropriate, with any agency or instrumentality of the United States, or with any public or private person or entity;

(6) accept voluntary and uncompensated services, notwithstanding the provisions of section 1342 of title 31;

(7) adopt an official seal, which shall be judicially noticed;

(8) use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States;

(9) hold such hearings as are necessary to determine the views of interested parties and the general public; and

(10) appoint advisory committees under the Federal Advisory Committee Act (5 U.S.C. App.).

(Pub. L. 97-425, title IV, § 408, as added Pub. L. 100-202, § 101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, § 5041, Dec. 22, 1987, 101 Stat. 1330-247.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in par. (10), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

§ 10249. Cooperation of other departments and agencies

Each department, agency, and instrumentality of the United States, including any independent agency, may furnish the Negotiator such information as he determines to be necessary to carry out his functions under this subchapter.

(Pub. L. 97-425, title IV, § 409, as added Pub. L. 100-202, § 101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, § 5041, Dec. 22, 1987, 101 Stat. 1330-247.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

§ 10250. Termination of Office

The Office shall cease to exist not later than 30 days after the date 7 years after December 22, 1987.

(Pub. L. 97-425, title IV, § 410, as added Pub. L. 100-202, § 101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, § 5041, Dec. 22, 1987, 101 Stat. 1330-247; amended Pub. L. 102-486, title VIII, § 802(a), Oct. 24, 1992, 106 Stat. 2923.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

AMENDMENTS

1992—Pub. L. 102-486 substituted “7 years” for “5 years”.

§ 10251. Authorization of appropriations

Notwithstanding subsection (d) of section 10222 of this title, and subject to subsection (e) of such section, there are authorized to be appropriated for expenditures from amounts in the Waste Fund established in subsection (c) of such section, such sums as may be necessary to carry out the provisions of this subchapter.

(Pub. L. 97-425, title IV, § 411, as added Pub. L. 100-202, § 101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, § 5041, Dec. 22, 1987, 101 Stat. 1330-248.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

SUBCHAPTER V—NUCLEAR WASTE TECHNICAL REVIEW BOARD

§ 10261. Definitions

As used in this subchapter:

(1) The term “Chairman” means the Chairman of the Nuclear Waste Technical Review Board.

(2) The term “Board” means the Nuclear Waste Technical Review Board established under section 10262 of this title.

(Pub. L. 97-425, title V, § 501, as added Pub. L. 100-202, § 101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, § 5051, Dec. 22, 1987, 101 Stat. 1330-248.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

§ 10262. Nuclear Waste Technical Review Board

(a) Establishment

There is established a Nuclear Waste Technical Review Board that shall be an independent establishment within the executive branch.

(b) Members

(1) The Board shall consist of 11 members who shall be appointed by the President not later than 90 days after December 22, 1987, from among persons nominated by the National Academy of Sciences in accordance with paragraph (3).

(2) The President shall designate a member of the Board to serve as chairman.

(3)(A) The National Academy of Sciences shall, not later than 90 days after December 22, 1987, nominate not less than 22 persons for appointment to the Board from among persons who meet the qualifications described in subparagraph (C).

(B) The National Academy of Sciences shall nominate not less than 2 persons to fill any vacancy on the Board from among persons who meet the qualifications described in subparagraph (C).

(C)(i) Each person nominated for appointment to the Board shall be—

(I) eminent in a field of science or engineering, including environmental sciences; and

(II) selected solely on the basis of established records of distinguished service.

(ii) The membership of the Board shall be representative of the broad range of scientific and

engineering disciplines related to activities under this subchapter.

(iii) No person shall be nominated for appointment to the Board who is an employee of—

(I) the Department of Energy;

(II) a national laboratory under contract with the Department of Energy; or

(III) an entity performing high-level radioactive waste or spent nuclear fuel activities under contract with the Department of Energy.

(4) Any vacancy on the Board shall be filled by the nomination and appointment process described in paragraphs (1) and (3).

(5) Members of the Board shall be appointed for terms of 4 years, each such term to commence 120 days after December 22, 1987, except that of the 11 members first appointed to the Board, 5 shall serve for 2 years and 6 shall serve for 4 years, to be designated by the President at the time of appointment.

(Pub. L. 97-425, title V, § 502, as added Pub. L. 100-202, § 101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, § 5051, Dec. 22, 1987, 101 Stat. 1330-248.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

CONTINUED BOARD SERVICE AFTER EXPIRATION OF TERM

Pub. L. 104-46, title V, § 503, Nov. 13, 1995, 109 Stat. 419, provided that: "Without fiscal year limitation and notwithstanding section 502(b)(5) of the Nuclear Waste Policy Act, as amended [42 U.S.C. 10262(b)(5)], or any other provision of law, a member of the Nuclear Waste Technical Review Board whose term has expired may continue to serve as a member of the Board until such member's successor has taken office."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10261 of this title.

§ 10263. Functions

The Board shall evaluate the technical and scientific validity of activities undertaken by the Secretary after December 22, 1987, including—

(1) site characterization activities; and

(2) activities relating to the packaging or transportation of high-level radioactive waste or spent nuclear fuel.

(Pub. L. 97-425, title V, § 503, as added Pub. L. 100-202, § 101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, § 5051, Dec. 22, 1987, 101 Stat. 1330-249.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

§ 10264. Investigatory powers

(a) Hearings

Upon request of the Chairman or a majority of the members of the Board, the Board may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Board considers appropriate.

Any member of the Board may administer oaths or affirmations to witnesses appearing before the Board.

(b) Production of documents

(1) Upon the request of the Chairman or a majority of the members of the Board, and subject to existing law, the Secretary (or any contractor of the Secretary) shall provide the Board with such records, files, papers, data, or information as may be necessary to respond to any inquiry of the Board under this subchapter.

(2) Subject to existing law, information obtainable under paragraph (1) shall not be limited to final work products of the Secretary, but shall include drafts of such products and documentation of work in progress.

(Pub. L. 97-425, title V, § 504, as added Pub. L. 100-202, § 101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, § 5051, Dec. 22, 1987, 101 Stat. 1330-249.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

§ 10265. Compensation of members

(a) In general

Each member of the Board shall be paid at the rate of pay payable for level III of the Executive Schedule for each day (including travel time) such member is engaged in the work of the Board.

(b) Travel expenses

Each member of the Board may receive travel expenses, including per diem in lieu of subsistence, in the same manner as is permitted under sections 5702 and 5703 of title 5.

(Pub. L. 97-425, title V, § 505, as added Pub. L. 100-202, § 101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, § 5051, Dec. 22, 1987, 101 Stat. 1330-249.)

REFERENCES IN TEXT

Level III of the Executive Schedule, referred to in subsec. (a), is set out in section 5314 of Title 5, Government Organization and Employees.

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

§ 10266. Staff

(a) Clerical staff

(1) Subject to paragraph (2), the Chairman may appoint and fix the compensation of such clerical staff as may be necessary to discharge the responsibilities of the Board.

(2) Clerical staff shall be appointed subject to the provisions of title 5 governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(b) Professional staff

(1) Subject to paragraphs (2) and (3), the Chairman may appoint and fix the compensation of such professional staff as may be necessary to discharge the responsibilities of the Board.

(2) Not more than 10 professional staff members may be appointed under this subsection.

(3) Professional staff members may be appointed without regard to the provisions of title 5 governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS-18 of the General Schedule.

(Pub. L. 97-425, title V, § 506, as added Pub. L. 100-202, § 101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, § 5051, Dec. 22, 1987, 101 Stat. 1330-249.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsecs. (a)(2) and (b)(3), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

§ 10267. Support services

(a) General services

To the extent permitted by law and requested by the Chairman, the Administrator of General Services shall provide the Board with necessary administrative services, facilities, and support on a reimbursable basis.

(b) Accounting, research, and technology assessment services

The Comptroller General, the Librarian of Congress, and the Director of the Office of Technology Assessment shall, to the extent permitted by law and subject to the availability of funds, provide the Board with such facilities, support, funds and services, including staff, as may be necessary for the effective performance of the functions of the Board.

(c) Additional support

Upon the request of the Chairman, the Board may secure directly from the head of any department or agency of the United States information necessary to enable it to carry out this subchapter.

(d) Mails

The Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(e) Experts and consultants

Subject to such rules as may be prescribed by the Board, the Chairman may procure temporary and intermittent services under section

3109(b) of title 5, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for GS-18 of the General Schedule.

(Pub. L. 97-425, title V, § 507, as added Pub. L. 100-202, § 101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, § 5051, Dec. 22, 1987, 101 Stat. 1330-250.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

§ 10268. Report

The Board shall report not less than 2 times per year to Congress and the Secretary its findings, conclusions, and recommendations. The first such report shall be submitted not later than 12 months after December 22, 1987.

(Pub. L. 97-425, title V, § 508, as added Pub. L. 100-202, § 101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, § 5051, Dec. 22, 1987, 101 Stat. 1330-250.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of this section relating to reporting to Congress 2 times per year, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the last item on page 186 of House Document No. 103-7.

§ 10269. Authorization of appropriations

Notwithstanding subsection (d) of section 10222 of this title, and subject to subsection (e) of such section, there are authorized to be appropriated for expenditures from amounts in the Waste Fund established in subsection (c) of such section such sums as may be necessary to carry out the provisions of this subchapter.

(Pub. L. 97-425, title V, § 509, as added Pub. L. 100-202, § 101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, § 5051, Dec. 22, 1987, 101 Stat. 1330-251.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

§ 10270. Termination of Board

The Board shall cease to exist not later than 1 year after the date on which the Secretary begins disposal of high-level radioactive waste or spent nuclear fuel in a repository.

(Pub. L. 97-425, title V, § 510, as added Pub. L. 100-202, § 101(d) [title III], Dec. 22, 1987, 101 Stat.

1329–104, 1329–121; Pub. L. 100–203, title V, § 5051, Dec. 22, 1987, 101 Stat. 1330–251.)

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

**CHAPTER 109—WATER RESOURCES
RESEARCH**

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§ 10301. Congressional findings and declarations

The Congress finds and declares that—

(1) the existence of an adequate supply of water of good quality for the production of materials and energy for the Nation's needs and for the efficient use of the Nation's energy and water resources is essential to national economic stability and growth, and to the well-being of the people;

(2) the management of water resources is closely related to maintaining environmental quality, productivity of natural resources and agricultural systems, and social well-being;

(3) there is an increasing threat of impairment to the quantity and quality of surface and groundwater resources;

(4) the Nation's capabilities for technological assessment and planning and for policy formulation for water resources must be strengthened at the Federal, State, and local governmental levels;

(5) there should be a continuing national investment in water and related research and technology commensurate with growing national needs;

(6) it is necessary to provide for the research and development of technology for the conversion of saline and other impaired waters to a quality suitable for municipal, industrial, ag-

ricultural, recreational, and other beneficial uses;

(7) the Nation must provide programs to strengthen research and associated graduate education because the pool of scientists, engineers, and technicians trained in fields related to water resources constitutes an invaluable natural resource which should be increased, fully utilized, and regularly replenished; and¹

(8) long-term planning and policy development are essential to ensure the availability of an abundant supply of high quality water for domestic and other uses; and

(9) the States must have the research and problem-solving capacity necessary to effectively manage their water resources.

(Pub. L. 98–242, title I, § 102, Mar. 22, 1984, 98 Stat. 97; Pub. L. 104–147, § 1, May 24, 1996, 110 Stat. 1375.)

AMENDMENTS

1996—Par. (2). Pub. L. 104–147, § 1(1), inserted “, productivity of natural resources and agricultural systems,” after “environmental quality”.

Pars. (8), (9). Pub. L. 104–147, § 1(2)–(4), added pars. (8) and (9).

SHORT TITLE

Section 101 of Pub. L. 98–242 provided that: “This Act [enacting this chapter, repealing sections 7801, 7802, 7811 to 7819, 7831 to 7835, 7851 to 7853, and 7871 to 7883 of this title, and enacting provisions set out as a note under section 7801 of this title] may be cited as the ‘Water Resources Research Act of 1984.’”

SAVINGS PROVISION

Rules and regulations issued prior to Mar. 22, 1984, under Pub. L. 95–467 [chapter 87 of this title] to remain in full force and effect under this chapter until superseded by new rules and regulations promulgated under this chapter, see section 110(b) of Pub. L. 98–242, set out as a note under section 7801 of this title.

DESALINATION RESEARCH, STUDIES, AND
DEMONSTRATION PROJECTS

Pub. L. 104–298, Oct. 11, 1996, 110 Stat. 3622, provided that:

“SECTION 1. SHORT TITLE.

“This Act may be cited as the ‘Water Desalination Act of 1996’.

“SEC. 2. DEFINITIONS.

“As used in this Act:

“(1) DESALINATION OR DESALTING.—The terms ‘desalination’ or ‘desalting’ mean the use of any process or technique for the removal and, when feasible, adaptation to beneficial use, of organic and inorganic elements and compounds from saline or biologically impaired waters, by itself or in conjunction with other processes.

“(2) SALINE WATER.—The term ‘saline water’ means sea water, brackish water, and other mineralized or chemically impaired water.

“(3) UNITED STATES.—The term ‘United States’ means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

“(4) USABLE WATER.—The term ‘usable water’ means water of a high quality suitable for environmental enhancement, agricultural, industrial, municipal, and other beneficial consumptive or nonconsumptive uses.

“(5) SECRETARY.—The term ‘Secretary’ means the Secretary of the Interior.

¹ So in original. The word “and” probably should not appear.

“SEC. 3. AUTHORIZATION OF RESEARCH AND STUDIES.

“(a) IN GENERAL.—In order to determine the most cost-effective and technologically efficient means by which usable water can be produced from saline water or water otherwise impaired or contaminated, the Secretary is authorized to award grants and to enter into contracts, to the extent provided in advance in appropriation Acts, to conduct, encourage, and assist in the financing of research to develop processes for converting saline water into water suitable for beneficial uses. Awards of research grants and contracts under this section shall be made on the basis of a competitive, merit-reviewed process. Research and study topics authorized by this section include—

“(1) investigating desalination processes;

“(2) ascertaining the optimum mix of investment and operating costs;

“(3) determining the best designs for different conditions of operation;

“(4) investigating methods of increasing the economic efficiency of desalination processes through dual-purpose co-facilities with other processes involving the use of water;

“(5) conducting or contracting for technical work, including the design, construction, and testing of pilot systems and test beds, to develop desalting processes and concepts;

“(6) studying methods for the recovery of byproducts resulting from desalination to offset the costs of treatment and to reduce environmental impacts from those byproducts; and

“(7) salinity modeling and toxicity analysis of brine discharges, cost reduction strategies for constructing and operating desalination facilities, and the horticultural effects of desalinated water used for irrigation.

“(b) PROJECT RECOMMENDATIONS AND REPORTS TO THE CONGRESS.—As soon as practicable and within three years after the date of enactment of this Act [Oct. 11, 1996], the Secretary shall recommend to Congress desalination demonstration projects or full-scale desalination projects to carry out the purposes of this Act and to further evaluate and implement the results of research and studies conducted under the authority of this section. Recommendations for projects shall be accompanied by reports on the engineering and economic feasibility of proposed projects and their environmental impacts.

“(c) AUTHORITY TO ENGAGE OTHERS.—In carrying out research and studies authorized in this section, the Secretary may engage the necessary personnel, industrial or engineering firms, Federal laboratories, water resources research and technology institutes, other facilities, and educational institutions suitable to conduct investigations and studies authorized under this section.

“(d) ALTERNATIVE TECHNOLOGIES.—In carrying out the purposes of this Act, the Secretary shall ensure that at least three separate technologies are evaluated and demonstrated for the purposes of accomplishing desalination.

“SEC. 4. DESALINATION DEMONSTRATION AND DEVELOPMENT.

“(a) IN GENERAL.—In order to further demonstrate the feasibility of desalination processes investigated either independently or in research conducted pursuant to section 3, the Secretary shall administer and conduct a demonstration and development program for water desalination and related activities, including the following:

“(1) DESALINATION PLANTS AND MODULES.—Conduct or contract for technical work, including the design, construction, and testing of plants and modules to develop desalination processes and concepts.

“(2) BYPRODUCTS.—Study methods for the marketing of byproducts resulting from the desalting of water to offset the costs of treatment and to reduce environmental impacts of those byproducts.

“(3) ECONOMIC SURVEYS.—Conduct economic studies and surveys to determine present and prospective costs of producing water for beneficial purposes in various locations by desalination processes compared to other methods.

“(b) COOPERATIVE AGREEMENTS.—Federal participation in desalination activities may be conducted through cooperative agreements, including cost-sharing agreements, with non-Federal public utilities and State and local governmental agencies and other entities, in order to develop recommendations for Federal participation in processes and plants utilizing desalting technologies for the production of water.

“SEC. 5. AVAILABILITY OF INFORMATION.

“All information from studies sponsored or funded under authority of this Act shall be considered public information.

“SEC. 6. TECHNICAL AND ADMINISTRATIVE ASSISTANCE.

“The Secretary may—

“(1) accept technical and administrative assistance from States and public or private agencies in connection with studies, surveys, location, construction, operation, and other work relating to the desalting of water, and

“(2) enter into contracts or agreements stating the purposes for which the assistance is contributed and providing for the sharing of costs between the Secretary and any such agency.

“SEC. 7. COST SHARING.

“The Federal share of the cost of a research, study, or demonstration project or a desalination development project or activity carried out under this Act shall not exceed 50 percent of the total cost of the project or research or study activity. A Federal contribution in excess of 25 percent for a project carried out under this Act may not be made unless the Secretary determines that the project is not feasible without such increased Federal contribution. The Secretary shall prescribe appropriate procedures to implement the provisions of this section. Costs of operation, maintenance, repair, and rehabilitation of facilities funded under the authority of this Act shall be non-Federal responsibilities.

“SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

“(a) SECTION 3.—There are authorized to be appropriated to carry out section 3 of this Act \$5,000,000 per year for fiscal years 1997 through 2002. Of these amounts, up to \$1,000,000 in each fiscal year may be awarded to institutions of higher education, including United States-Mexico binational research foundations and interuniversity research programs established by the two countries, for research grants without any cost-sharing requirement.

“(b) SECTION 4.—There are authorized to be appropriated to carry out section 4 of this Act \$25,000,000 for fiscal years 1997 through 2002.

“SEC. 9. CONSULTATION.

“In carrying out the provisions of this Act, the Secretary shall consult with the heads of other Federal agencies, including the Secretary of the Army, which have experience in conducting desalination research or operating desalination facilities. The authorization provided for in this Act shall not prohibit other agencies from carrying out separately authorized programs for desalination research or operations.”

OGALLALA AQUIFER

Pub. L. 99-662, title XI, §1121, Nov. 17, 1986, 100 Stat. 4239, provided that:

“(a) The Congress finds that—

“(1) the Ogallala aquifer lies beneath, and provides needed water supplies to, the 8 States of the High Plains Region: Colorado, Kansas, Nebraska, New Mexico, Oklahoma, South Dakota, Texas, and Wyoming;

“(2) the High Plains region has become an important source of agricultural commodities and live-

stock for domestic and international markets, providing 15 percent of the Nation's supply of wheat, corn, feed grains, sorghum, and cotton, plus 38 percent of the value of livestock raised in the United States; and

"(3) annual precipitation in the High Plains region ranges from 15 to 22 inches, providing inadequate supplies of surface water and recharging of the Ogallala aquifer needed to sustain the agricultural productivity and economic vitality of the High Plains region.

"(b) It is, therefore, the purpose of this section to establish a comprehensive research and development program to assist those portions of the High Plains region dependent on water from the Ogallala aquifer to—

"(1) plan for the development of an adequate supply of water in the region;

"(2) develop and provide information and technical assistance concerning water-conservation management practices to agricultural producers in the region;

"(3) examine alternatives for the development of an adequate supply of water for the region; and

"(4) develop water-conservation management practices which are efficient for agricultural producers in the region.

"(c) The Water Resources Research Act [of 1984] (Public Law 98-242) [see Short Title note above] is amended by adding at the end thereof the following new title:

"TITLE III—OGALLALA AQUIFER RESEARCH AND DEVELOPMENT

"SEC. 301. (a) There is hereby established the High Plains Study Council composed of—

"(1) the Governor of each State of the High Plains region (defined for the purposes of this title as the States of Colorado, Kansas, Nebraska, New Mexico, Oklahoma, South Dakota, Texas, and Wyoming and referred to hereinafter in this title as the 'High Plains region'), or a designee of the Governor;

"(2) a representative of the Department of Agriculture; and

"(3) a representative of the Secretary.

"(b) The Council established pursuant to this section shall—

"(1) review research work being performed by each State committee established under section 302 of this Act; and

"(2) coordinate such research efforts to avoid duplication of research and to assist in the development of research plans within each State of the High Plains region that will benefit the research needs of the entire region.

"SEC. 302. (a) The Secretary shall establish within each State of the High Plains region an Ogallala aquifer technical advisory committee (hereinafter in this title referred to as the 'State committee'). Each State committee shall be composed of no more than seven members, including—

"(1) a representative of the United States Department of Agriculture;

"(2) a representative of the Secretary; and

"(3) at the appointment of the Governor of the State, five representatives from agencies of that State having jurisdiction over water resources, the agricultural community, the State Water Research Institute (as designated under this Act [see Short Title note above]), and others with a special interest or expertise in water resources.

"(b) The State committee established pursuant to subsection (a) of this section shall—

"(1) review existing State laws and institutions concerning water management and, where appropriate, recommend changes to improve State or local management capabilities and more efficiently use the waters of such State, if such a review is not already being undertaken by the State;

"(2) establish, in coordination with other State committees, State priorities for research and demonstration projects involving water resources; and

"(3) provide public information, education, extension, and technical assistance on the need for water

conservation and information on proven and cost-effective water management.

"(c) Each State committee established pursuant to this section shall elect a chairman, and shall meet at least once every three months at the call of the chairman, unless the chairman determines, after consultation with a majority of the members of the committee, that such a meeting is not necessary to achieve the purposes of this section.

"SEC. 303. The Secretary shall annually allocate among the States of the High Plains region funds authorized to be appropriated for this section for research in—

"(1) water-use efficiency;

"(2) cultural methods;

"(3) irrigation technologies;

"(4) water-efficient crops; and

"(5) water and soil conservation.

Funds distributed under this section shall be allocated to each State committee for use by institutions of higher education within each State. To qualify for funds under this section an institution of higher education shall submit a proposal to the State committee describing the costs, methods, and goals of the proposed research. Proposals shall be selected by the State committee on the basis of merit.

"SEC. 304. The Secretary shall annually divide funds authorized to be appropriated under this section among the States of the High Plains region for research into—

"(1) precipitation management;

"(2) weather modification;

"(3) aquifer recharge opportunities;

"(4) saline water uses;

"(5) desalinization technologies;

"(6) salt tolerant crops; and

"(7) ground water recovery.

Funds distributed under this section shall be allocated by the Secretary to the State committee for distribution to institutions of higher education within such State. To qualify for a grant under this section, an institution of higher education shall submit a research proposal to the State committee describing the costs, methods, and goals of the proposed research. Proposals shall be selected by the State committee on the basis of merit.

"SEC. 305. The Secretary shall annually allocate among the States of the High Plains region funds authorized to be appropriated under this section for grants to farmers for demonstration projects for—

"(1) water-efficient irrigation technologies and practices;

"(2) soil and water conservation management systems; and

"(3) the growing and marketing of more water-efficient crops.

Grants under this section shall be made by each State committee in amounts not to exceed 85 percent of the cost of each demonstration project. To qualify for a grant under this section, a farmer shall submit a proposal to the State committee describing the costs, methods, and goals of the proposed project. Proposals shall be selected by the State committee on the basis of merit. Each State committee shall monitor each demonstration project to assure proper implementation and make the results of the project available to other State committees.

"SEC. 306. The Secretary, acting through the United States Geological Survey and in cooperation with the States of the High Plains region, is authorized and directed to monitor the levels of the Ogallala aquifer, and report biennially to Congress. (As amended Pub. L. 104-66, title I, §1082(a)(1), Dec. 21, 1995, 109 Stat. 721.)

"SEC. 307. The amount of any allocation of funds to a State under this title shall not exceed 75 percent of the cost of carrying out the purposes for which the grant is made.

"SEC. 308. Not later than one year after the date of enactment of this title [Nov. 17, 1986], and at intervals of 2 years thereafter, the Secretary shall prepare and transmit to the Congress a report on activities under-

taken under this title. (As amended Pub. L. 104-66, title I, § 1082(a)(2), Dec. 21, 1995, 109 Stat. 721.)

“SEC. 309. (a) For each of the fiscal years ending September 30, 1987, through September 30, 1995, the following sums are authorized to be appropriated to the Secretary to implement the following sections of this title, and such sums shall remain available until expended:

- “(1) \$600,000 for the purposes of section 302;
- “(2) \$4,300,000 for the purposes of section 303;
- “(3) \$2,200,000 for the purposes of section 304;
- “(4) \$5,300,000 for the purposes of section 305; and
- “(5) \$600,000 for the purposes of section 306.

“(b) Funds made available under this title for distribution to the States of the High Plains region shall be distributed equally among the States.” (As amended Pub. L. 101-397, §1(o), Sept. 28, 1990, 104 Stat. 854.)

[For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which the 17th and 18th items on page 72 identify reporting provisions which, as subsequently amended, are contained in sections 306 and 308 of Pub. L. 98-242, set out in the note above), see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.]

DESALTING PLANTS

Pub. L. 95-84, §2, Aug. 2, 1977, 91 Stat. 400; Pub. L. 95-467, title II, §205(a), (b), Oct. 17, 1978, 92 Stat. 1311; Pub. L. 96-457, §3, Oct. 15, 1980, 94 Stat. 2032; Pub. L. 98-242, title I, §110(a), Mar. 22, 1984, 98 Stat. 101, provided that:

“(a) The Secretary of the Interior is authorized and directed to demonstrate the engineering and economic viability of membrane and phase-change desalting processes. Such demonstrations shall include the study, design, construction, operation, and maintenance of desalting plants at locations in the United States (which may include the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Virgin Islands, the Mariana Islands, and the Trust Territory of the Pacific Islands): *Provided*, That at least two such plants shall demonstrate desalting of brackish ground water: *And provided further*, That the plants constructed pursuant to this section shall be for the purpose of showing that the technology being demonstrated is ready for application; such plants shall be sufficient to demonstrate the specific application of the technology, and shall be significantly different in operation and process so as not to duplicate any other demonstration plant constructed pursuant to this section. The Secretary is further authorized to conduct such demonstrations or any portion thereof by means of cooperative agreements (as defined and authorized by 41 U.S.C. 504 et seq. (the Federal Grant and Cooperative Agreement Act of 1977; Public Law 95-224)) [31 U.S.C. 6301 et seq.] with duly authorized non-Federal public entities. Title to demonstration facilities constructed by the non-Federal public entity under a cooperative agreement shall vest in the non-Federal public entity.

“(b) Funds appropriated pursuant to the authority provided by this section [this note] may not be expended until thirty calendar days (excluding days on which either the House of Representatives or the Senate is not in session because of an adjournment of more than three calendar days to a day certain) have elapsed following transmittal of a report to the chairman of the Committee on Interior and Insular Affairs [now Committee on Resources] of the House of Representatives and the chairman of the Committee on Environment and Public Works of the United States Senate. Such report shall present information that includes, but is not limited to, how the plant being proposed differs from others, if any, already constructed under this section, the location of the demonstration plant, the characteristics of the water proposed to be desalted, the process to be utilized, the water supply problems confronting the area in which the plant will be located, alternative sources of water and their probable cost, the capacity of the plant, the initial investment cost of

the demonstration plant, the annual operating cost of the demonstration plant, the source of energy for the plant and its cost, the means of reject brine disposal and its environmental consequences, and the unit cost of product water, considering the amortization of all components of the demonstration plant and ancillary facilities. Such report shall be accompanied by a proposed contract (or cooperative agreement) between the Secretary and a duly authorized non-Federal entity, in which such entity shall agree to provide not less than 15 per centum and not more than 35 per centum of the total cost of the demonstration; such cost to include, without being limited to, necessary water rights, water supplies, rights-of-way, power source interconnections, brine disposal facilities, land, construction, ancillary facilities, and the operation and maintenance costs for a period of four years following final acceptance of the construction of the plant from the plant contractor. The contributions of the non-Federal entity under such proposed contract may be in-kind. During the participation by the Secretary in the construction and the operation and maintenance of such demonstration, access to the demonstration and its operating data will not be denied to the Secretary or his representatives. The period of participation by the Secretary in the operation and maintenance of any such demonstration shall be four years. The Secretary is authorized to include in the proposed contract a provision for conveying, as appropriate, and in such amounts as are appropriate, rights, title, and interest of the Federal Government in the demonstration project to the non-Federal public entity.

“(c) There is authorized to be appropriated, to remain available until expended, for the fiscal year ending September 30, 1978, and thereafter, the sum of \$50,000,000 to finance the total Federal share of the cost of the demonstration plants authorized by this section; such cost to include, without being limited to, necessary water rights, water supplies, rights-of-way, power source interconnections, brine disposal facilities, land, construction, ancillary facilities, and the operation and maintenance costs for the four-year period of Federal participation in such costs.

“(d) When appropriations have been made for the commencement or continuation of design, construction, or operation and maintenance of any demonstration plant authorized under this Act [this note], the Secretary may, in connection with such design, construction, or operation and maintenance, enter into contracts and cooperative agreements for miscellaneous services, for materials and supplies, as well as for construction, which may cover such periods of time as the Secretary may consider necessary but in which the liability of the United States shall be contingent upon appropriations being made therefor.”

[For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.]

§ 10302. Congressional declaration of purpose

It is the purpose of this chapter to assist the Nation and the States in augmenting their water resources science and technology as a way to—

- (1) assure supplies of water sufficient in quantity and quality to meet the Nation's expanding needs for the production of food, materials, and energy;
- (2) discover practical solutions to the Nation's water and water resources related problems, particularly those problems related to impaired water quality;
- (3) assure the protection and enhancement of environmental and social values in connection with water resources management and utilization;
- (4) promote the interest of State and local governments as well as private industry in re-

search and the development of technology that will reclaim waste water and to convert saline and other impaired waters to waters suitable for municipal, industrial, agricultural, recreational, and other beneficial uses;

(5) promote more effective coordination of the Nation's water resources research program;

(6) promote the development of a cadre of trained research scientists, engineers, and technicians for future water resources problems; and

(7) encourage long-term planning and research to meet future water management, quality, and supply challenges.

(Pub. L. 98-242, title I, §103, Mar. 22, 1984, 98 Stat. 97; Pub. L. 101-397, §1(a), Sept. 28, 1990, 104 Stat. 852; Pub. L. 104-147, §2, May 24, 1996, 110 Stat. 1375.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 98-242, Mar. 22, 1984, 98 Stat. 97, known as the Water Resources Research Act of 1984. For complete classification of this Act to the Code, see Short Title note set out under section 10301 of this title and Tables.

AMENDMENTS

1996—Par. (5). Pub. L. 104-147, §2(1), struck out "to" before "promote" and "and" after "program;".

Par. (6). Pub. L. 104-147, §2(2), substituted ";" and" for period at end.

Par. (7). Pub. L. 104-147, §2(3), added par. (7).

1990—Par. (5). Pub. L. 101-397 substituted "to promote more effective coordination of" for "coordinate more effectively".

§ 10303. Water resources research and technology institutes

(a) Establishment; designation of site by State legislature or Governor

Subject to the approval of the Secretary of the Interior (hereafter in this chapter referred to as the "Secretary") under this section, one water resources research and technology institute, center, or equivalent agency (hereafter in this chapter referred to as the "institute") may be established in each State (as used in this chapter, the term "State" includes the Commonwealth of Puerto Rico, the District of Columbia, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Mariana Islands and the Federated States of Micronesia) at a college or university which was established in accordance with the Act approved July 2, 1862 (12 Stat. 503) [7 U.S.C. 301 et seq.], or at some other institution designated by act of the legislature of the State concerned. If there is more than one such college or university in a State established in accordance with such Act of July 2, 1862, the institute in such State shall, in the absence of a designation to the contrary by act of the legislature of the State, be established at the one such college or university designated by the Governor of the State. Two or more States may cooperate in the establishment of a single institute or regional institute, in which event the sums otherwise allocated to institutes in each of the cooperating States shall be paid to such single or regional institute.

(b) Scope of research; other activities; cooperation and coordination

Each institute shall—

(1) plan, conduct, or otherwise arrange for competent research that fosters (A) the entry of new research scientists into the water resources fields, (B) the training and education of future water scientists, engineers, and technicians, (C) the preliminary exploration of new ideas that address water problems or expand understanding of water and water-related phenomena, and (D) the dissemination of research results to water managers and the public, and

(2) cooperate closely with other colleges and universities in the State that have demonstrated capabilities for research, information dissemination, and graduate training in order to develop a statewide program designed to resolve State and regional water and related land problems.

Each institute shall also cooperate closely with other institutes and other organizations in the region to increase the effectiveness of the institutes and for the purpose of promoting regional coordination.

(c) Grants; matching funds

From the sums appropriated pursuant to subsection (f) of this section, the Secretary shall make grants to each institute to be matched on a basis of no less than 2 non-Federal dollars for every 1 Federal dollar, such sums to be used only for the reimbursement of the direct cost expenditures incurred for the conduct of the water resources research program.

(d) Submission and approval of water research program; requisite assurances

Prior to and as a condition of the receipt each fiscal year of funds appropriated under subsection (f) of this section, each institute shall submit to the Secretary for his approval a water research program that includes assurances, satisfactory to the Secretary, that such program was developed in close consultation and collaboration with the director of that State's department of water resources or similar agency, other leading water resources officials within the State, and interested members of the public. The program described in the preceding sentence shall include plans to promote research, training, information dissemination, and other activities meeting the needs of the State and Nation, and shall encourage regional cooperation among institutes in research into areas of water management, development, and conservation that have a regional or national character.

(e) Evaluation of water resources research program

The Secretary shall conduct a careful and detailed evaluation of each institute at least once every 5 years to determine that the quality and relevance of its water resources research and its effectiveness as an institution for planning, conducting, and arranging for research warrants its continued support under this section. If, as a result of any such evaluation, the Secretary determines that an institute does not qualify for further support under this section, then no further grants to the institute may be made until the

institute's qualifications are reestablished to the satisfaction of the Secretary.

(f) Authorization of appropriations in general

(1) For the purpose of carrying out this section, there is authorized to be appropriated to the Secretary the sum of \$9,000,000 for fiscal year 2001, \$10,000,000 for each of fiscal years 2002 and 2003, and \$12,000,000 for each of fiscal years 2004 and 2005, such sums to remain available until expended.

(2) Any sums appropriated under this subsection but which fail to be obligated by the close of the fiscal year for which they were appropriated shall be transferred by the Secretary and available for obligation during the succeeding fiscal year under the terms of subsection (g) of this section.

(g) Additional appropriations where research focused on water problems of interstate nature

(1) There is further authorized to be appropriated to the Secretary of the Interior the sum of \$3,000,000 for fiscal year 2001, \$4,000,000 for each of fiscal years 2002 and 2003, and \$6,000,000 for each of fiscal years 2004 and 2005 only for reimbursement of the direct cost expenses of additional research or synthesis of the results of research by institutes which focuses on water problems and issues of a regional or interstate nature beyond those of concern only to a single State and which relate to specific program priorities identified jointly by the Secretary and the institutes. Such funds when appropriated shall be matched on a not less than dollar-for-dollar basis by funds made available to institutes or groups of institutes, by States or other non-Federal sources. Funds made available under this subsection shall remain available until expended.

(2) Research funds made available under this subsection shall be made on a competitive basis subject to the merit of the proposal, the need for the information to be produced, and the opportunity such funds will provide for training of water resources scientists or professionals.

(h) Coordination

(1) In general

To carry out this chapter, the Secretary—

(A) shall encourage other Federal departments, agencies (including agencies within the Department of the Interior), and instrumentalities to use and take advantage of the expertise and capabilities that are available through the institutes established by this section, on a cooperative or other basis;

(B) shall encourage cooperation and coordination with other Federal programs concerned with water resources problems and issues;

(C) may enter into contracts, cooperative agreements, and other transactions without regard to section 5 of title 41;

(D) may accept funds from other Federal departments, agencies (including agencies within the Department of the Interior), and instrumentalities to pay for and add to grants made, and contracts entered into, by the Secretary;

(E) may promulgate such regulations as the Secretary considers appropriate; and

(F) may support a program of internships for qualified individuals at the undergraduate and graduate levels to carry out the educational and training objectives of this chapter.

(2) Report

The Secretary shall report to Congress annually on coordination efforts with other Federal departments, agencies, and instrumentalities under paragraph (1).

(3) Relationship to State rights

Nothing in this chapter shall preempt the rights and authorities of any State with respect to its water resources or management of those resources.

(Pub. L. 98-242, title I, §104, Mar. 22, 1984, 98 Stat. 98; Pub. L. 101-397, §1(b)-(h), (m), Sept. 28, 1990, 104 Stat. 852, 853; Pub. L. 104-147, §§3-6, May 24, 1996, 110 Stat. 1376; Pub. L. 106-374, Oct. 27, 2000, 114 Stat. 1434.)

REFERENCES IN TEXT

Act approved July 2, 1862, referred to in subsec. (a), is act July 2, 1862, ch. 130, 12 Stat. 503, as amended, popularly known as the "Morrill Act" and also as the "First Morrill Act", which is classified generally to subchapter I (§301 et seq.) of chapter 13 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 301 of Title 7 and Tables.

AMENDMENTS

2000—Subsec. (f)(1). Pub. L. 106-374, §1, substituted "\$9,000,000 for fiscal year 2001, \$10,000,000 for each of fiscal years 2002 and 2003, and \$12,000,000 for each of fiscal years 2004 and 2005" for "\$5,000,000 for fiscal year 1996, \$7,000,000 for each of fiscal years 1997 and 1998, and \$9,000,000 for each of fiscal years 1999 and 2000".

Subsec. (g)(1). Pub. L. 106-374, §2, in first sentence, substituted "\$3,000,000 for fiscal year 2001, \$4,000,000 for each of fiscal years 2002 and 2003, and \$6,000,000 for each of fiscal years 2004 and 2005" for "\$3,000,000 for each of fiscal years 1996 through 2000".

1996—Subsec. (c). Pub. L. 104-147, §3, substituted "2 non-Federal dollars for every 1 Federal dollar" for "one non-Federal dollar for every Federal dollar during the fiscal years ending September 30, 1985, and September 30, 1986, one and one-half non-Federal dollars for each Federal dollar during the fiscal years ending September 30, 1987, and September 30, 1988, and two non-Federal dollars for each Federal dollar during the fiscal year ending September 30, 1989 and thereafter".

Subsec. (f)(1). Pub. L. 104-147, §4, substituted "of \$5,000,000 for fiscal year 1996, \$7,000,000 for each of fiscal years 1997 and 1998, and \$9,000,000 for each of fiscal years 1999 and 2000" for "of \$10,000,000 for each of the fiscal years ending September 30, 1989, through September 30, 1995,".

Subsec. (g)(1). Pub. L. 104-147, §5, substituted "of \$3,000,000 for each of fiscal years 1996 through 2000" for "of \$5,000,000 for each of the fiscal years 1991, 1992, 1993, 1994, and 1995".

Subsec. (h). Pub. L. 104-147, §6, added subsec. (h).

1990—Subsec. (a). Pub. L. 101-397, §1(b), substituted "Federated States of Micronesia" for "Trust Territory of the Pacific Islands".

Subsec. (b). Pub. L. 101-397, §1(c), inserted "promoting" after "for the purpose of" in last sentence.

Subsec. (b)(1). Pub. L. 101-397, §1(d), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "plan, conduct, or otherwise arrange for competent research with respect to water resources, including investigations and experiments of either a basic or practical nature, or both; promote the dissemination and application of the results of these efforts; and provide for

the training of scientists and engineers through such research, investigations, and experiments, and”.

Subsec. (c). Pub. L. 101-397, §1(e), substituted for period at end “and thereafter, such sums to be used only for the reimbursement of the direct cost expenditures incurred for the conduct of the water resources research program.”

Subsec. (e). Pub. L. 101-397, §1(f), amended subsec. (e) generally, substituting provisions directing that evaluation be conducted at least once every 5 years for provisions directing evaluation within two years after establishment of institute and at least once every four years thereafter and striking out provisions relating to composition and function of evaluation team and setting forth criteria for determination.

Subsec. (f)(1). Pub. L. 101-397, §1(g), substituted “September 30, 1989, through September 30, 1995,” for “September 30, 1985, through September 30, 1989”.

Subsec. (f)(2). Pub. L. 101-397, §1(h), substituted reference to subsec. (g) of this section for reference to section 10305 of this title.

Subsec. (g). Pub. L. 101-397, §1(m), added subsec. (g).

CONTRACTS OR COOPERATIVE AGREEMENTS WITH NATIONAL LABORATORIES

Section 2 of Pub. L. 101-397 provided that:

“(a) The Secretary of the Interior, in consultation with the Secretary of Agriculture and the Administrator of the Environmental Protection Agency, is authorized to enter into contracts or cooperative agreements, as the Secretary deems appropriate, with national laboratories (including Los Alamos National Laboratory) to carry out water resources research, development, and demonstration projects within the authorities of Public Law 98-242 [42 U.S.C. 10301 et seq.] (including the effects of potential climate changes on surface and ground water quality and quantity and the elimination of contamination of ground water aquifers).

“(b) The water resources research authorized in this section shall be undertaken under such rules and regulations as the Secretary deems appropriate and shall be carried out in close consultation and collaboration with the institutes established pursuant to Public Law 98-242 [42 U.S.C. 10301 et seq.], to the extent such research work affects the State in which the institute exists, and to the extent such institute agrees to consult and collaborate.

“(c) For the purposes of carrying out this section, there is authorized to be appropriated to the Secretary of the Interior the sum of \$10,000,000 for each of the fiscal years 1991 through 1995.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10304, 10305, 10307 of this title.

§ 10304. Research concerning water resource-related problems deemed to be in national interest

(a) Grants; matching funds

(1) In addition to the grants authorized by section 10303 of this title, the Secretary is authorized to make grants, on a dollar-for-dollar matching basis, to the institutes established under such section, as well as other qualified educational institutions, private foundations, private firms, individuals, and agencies of local or State government for research concerning any aspect of a water resource-related problem which the Secretary may deem to be in the national interest. Such grants shall be made with such advice and review by peer or other expert groups of appropriate interdisciplinary composition as the Secretary deems appropriate on the basis of the merits of the project and the need

for the knowledge such project is expected to produce upon completion.

(2) Research funded under this section should to the extent possible utilize the best qualified graduate students so the Nation profits from the education and training benefits resulting from the use of the latest in technological developments in solving water problems.

(b) Applications for grants

Each application for a grant under this section shall state the nature of the project to be undertaken, the period during which it will be pursued, the qualifications of the personnel who will direct and conduct it, the importance of the project to the Nation as well as to the region and State concerned, its relation to other research projects previously or currently being pursued, and the extent to which it will provide an opportunity for the training of water resources scientists.

(c) Authorization of appropriations

There is authorized to be appropriated to the Secretary the sum of \$10,000,000 for the purpose of carrying out this section for each of the fiscal years ending September 30, 1985, through September 30, 1995, such sums to remain available until expended.

(Pub. L. 98-242, title I, §105, Mar. 22, 1984, 98 Stat. 100; Pub. L. 101-397, §1(i), (j), Sept. 28, 1990, 104 Stat. 853.)

AMENDMENTS

1990—Subsec. (a)(3). Pub. L. 101-397, §1(i), struck out par. (3) which read as follows: “In cases where the Secretary determines, in accordance with criteria established by him, that research under this section is of a basic nature which would not otherwise be undertaken, the Secretary may approve grants under this section with a matching requirement other than that specified in paragraph (1) of this subsection.”

Subsec. (c). Pub. L. 101-397, §1(j), substituted “\$10,000,000” for “\$20,000,000” and “1995” for “1989”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10305, 10307 of this title.

§ 10305. Development of water-related technology

(a) Grants; matching funds

(1) The Secretary shall make grants in addition to those authorized under sections 10303 and 10304 of this title for technology development concerning any aspect of water resources including water-related technology which the Secretary may deem to be of State, regional, or national importance. Activities funded under this section may be carried out by educational institutions, private firms, foundations, individuals, or agencies of State or local government. Care shall be taken to protect proprietary information of private individuals or firms associated with the technology.

(2) The Secretary may establish any condition for the matching of funds by the recipient of any grant or contract under this section which the Secretary considers to be in the best interest of the Nation considering the information transfer and technology needs of the Nation. However, in the case of institutes established by section 10303 of this title no match greater than that re-

quired under section 10303 of this title may be required.

(b) Applications for grants

Each application for a grant under this section shall state the nature of the project to be undertaken, the qualifications of the personnel who will direct and conduct it, facilities of the organization performing any technology development, the importance of the project to the Nation, region, and State concerned, and the potential benefit to be accrued.

(c) Authorization of appropriations

There is authorized to be appropriated to the Secretary the sum of \$6,000,000 for the purpose of carrying out this section for each of the fiscal years ending September 30, 1990, through September 30, 1995; such sums to remain available until expended.

(Pub. L. 98-242, title I, §106, Mar. 22, 1984, 98 Stat. 100; Pub. L. 101-397, §1(n), Sept. 28, 1990, 104 Stat. 853.)

AMENDMENTS

1990—Pub. L. 101-397, in amending section generally, in subsec. (a)(1) struck out provision directing that grant be made on basis of merit and feasibility of project, in subsec. (a)(2) inserted provisions relating to match in the case of institutes established by section 10303 of this title, and in subsec. (c) substituted provisions authorizing \$6,000,000 appropriation for fiscal years 1990 through 1995, for provisions authorizing the same sum for fiscal years 1985 through 1989, and struck out provisions authorizing obligation of funds under this section and par. (1) and (2) designations.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10307 of this title.

§ 10306. Administrative costs

From the sums appropriated pursuant to this chapter, not more than 15 per centum shall be utilized for administrative costs.

(Pub. L. 98-242, title I, §107, Mar. 22, 1984, 98 Stat. 101.)

§ 10307. Types of research and development

The type of research and development to be undertaken under the authority of sections 10304 and 10305 of this title and to be encouraged by the institutes established under section 10303 of this title shall include the following:

- (1) Aspects of the hydrologic cycle;
- (2) Supply and demand for water;
- (3) Demineralization of saline and other impaired waters;
- (4) Conservation and best use of available supplies of water and methods of increasing such supplies;
- (5) Water reuse;
- (6) Depletion, contamination, and degradation of groundwater supplies;
- (7) Improvements in the productivity of water when used for agricultural, municipal, and commercial purposes;
- (8) The economic, legal, engineering, social, recreational, biological, geographic, ecological, and other aspects of water quality and quantity problems;
- (9) Scientific information dissemination activities, including identifying, assembling, and

interpreting the results of scientific and engineering research on water resources problems; and

(10) Providing means for improved communication of research results, having due regard for the varying conditions and needs for the respective States and regions.

(Pub. L. 98-242, title I, §108, Mar. 22, 1984, 98 Stat. 101; Pub. L. 101-397, §1(k), (l), Sept. 28, 1990, 104 Stat. 853.)

AMENDMENTS

1990—Par. (6). Pub. L. 101-397, §1(k), which directed that “, contamination,” be inserted after “depletion”, was executed by making the insertion after “Depletion” to reflect the probable intent of Congress.

Par. (8). Pub. L. 101-397, §1(l), inserted “quality and quantity” after “water”.

§ 10308. Patent policy

Notwithstanding any other provision of law, the Secretary shall be governed by the provisions of sections 5908 (except subsections (l) and (n)) and 5909 of this title with respect to patent policy and to the definition of title to and licensing of inventions made or conceived in the course of work performed, or under any contract or grant made, pursuant to this chapter. Subject to such patent policy, all research or development contracted for, sponsored, cosponsored, or authorized under authority of this chapter shall be provided in such manner that all information, data, and know-how, regardless of their nature or mediums, resulting from such research and development shall (with such exceptions and limitations, if any, as the Secretary may find to be necessary in the interest of national defense) be usefully available for practice by the general public.

(Pub. L. 98-242, title I, §109, Mar. 22, 1984, 98 Stat. 101.)

§ 10309. New spending authority; amounts provided in advance

Any new spending authority described in subsection (c)(2)(A) or (B) of section 651¹ of title 2 which is provided under this chapter shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriations Acts.

(Pub. L. 98-242, title I, §111, Mar. 22, 1984, 98 Stat. 101.)

REFERENCES IN TEXT

Section 651 of title 2, referred to in text, was amended by Pub. L. 105-33, title X, §10116(a)(3), (5), Aug. 5, 1997, 111 Stat. 691, by striking out subsec. (c) and redesignating former subsec. (d) as (c).

CHAPTER 109A—MEMBRANE PROCESSES RESEARCH

Sec.	
10341.	Findings.
10342.	Research program.
10343.	Goals of research program.
10344.	Coordination with other research.
10345.	Authorization of appropriations.

§ 10341. Findings

The Congress finds that—

¹ See References in Text note below.

(1) there is an increasing threat of impairment to the quantity and quality of the Nation's water resources due to, among other things, growing national needs, recurring drought in the Western States, point and nonpoint source pollution, and saltwater intrusion into existing groundwater supplies;

(2) many communities in the United States have water supplies containing high salinity levels or contaminants which pose health risks;

(3) the Nation needs to develop economical processes to treat existing water supplies that are contaminated;

(4) it is necessary to provide for research into new techniques to reclaim waste water and to convert saline and other contaminated waters to a quality suitable for municipal, industrial, agricultural, recreational, and other beneficial uses;

(5) there is very little Federal funding being applied to basic research in the field of treatment of contaminated water through membrane processes; and

(6) the treatment of contaminated water through membrane processes will solve a wide variety of water treatment problems, including compliance with the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.] and the Safe Drinking Water Act [42 U.S.C. 300f et seq.].

(Pub. L. 102-490, § 2, Oct. 24, 1992, 106 Stat. 3142.)

REFERENCES IN TEXT

The Federal Water Pollution Control Act, referred to in par. (6), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Safe Drinking Water Act, referred to in par. (6), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93-523, §2(a), 88 Stat. 1660, as amended, which is classified generally to subchapter XII (§300f et seq.) of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

SHORT TITLE

Section 1 of Pub. L. 102-490 provided that: "This Act [enacting this chapter] may be cited as the 'Membrane Processes Research Act of 1992'."

§ 10342. Research program

The Director of the National Science Foundation shall establish a basic research program on membranes and membrane processes. Such program may be carried out through awarding grants, entering into contracts or cooperative agreements, or direct research.

(Pub. L. 102-490, § 3, Oct. 24, 1992, 106 Stat. 3142.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10343, 10344 of this title.

§ 10343. Goals of research program

The goals of the research program established under section 10342 of this title shall be—

(1) the development of membranes resistant to degradation, bacterial or otherwise, thereby extending the life of such membranes;

(2) the development of membranes useful for the efficient and cost effective treatment of contaminated water; and

(3) the development of innovative technologies for membrane processes.

(Pub. L. 102-490, § 4, Oct. 24, 1992, 106 Stat. 3142.)

§ 10344. Coordination with other research

The research program established under section 10342 of this title shall be carried out in coordination with any other related Federal research efforts.

(Pub. L. 102-490, § 5, Oct. 24, 1992, 106 Stat. 3143.)

§ 10345. Authorization of appropriations

There are authorized to be appropriated to the Director of the National Science Foundation, from sums otherwise authorized to be appropriated, \$2,500,000 for fiscal year 1993, for carrying out this chapter.

(Pub. L. 102-490, § 6, Oct. 24, 1992, 106 Stat. 3143.)

CHAPTER 110—FAMILY VIOLENCE PREVENTION AND SERVICES

Sec.	
10401.	Declaration of purpose.
10402.	State grants authorized. <ul style="list-style-type: none"> (a) Authority of Secretary; application; requirements; approval. (b) Indian tribes and tribal organizations; application. (c) Direct payments to victims or dependents. (d) Income eligibility standards. (e) Grants to entities other than States; local share. (f) Shelter and related assistance.
10403.	Allotment of funds. <ul style="list-style-type: none"> (a) Proportionality of allotment; minimum allotment. (b) Determination of population of States. (c) Ratable reduction of amounts; increase on availability of additional funds. (d) Reallotment; continued availability of funds. (e) Exclusion from definition of "State".
10404.	Secretarial responsibilities.
10405.	Evaluation.
10406.	Discrimination prohibited. <ul style="list-style-type: none"> (a) Recipients of Federal financial assistance; types of discrimination prohibited. (b) Notification and request to secure compliance; referral to Attorney General or other action by Secretary. (c) Civil action by Attorney General.
10407.	Information and technical assistance centers. <ul style="list-style-type: none"> (a) Purpose and grants. (b) National resource center. (c) Special issue resource centers. (d) Eligibility. (e) Reporting. (f) "Indian tribal agency" defined. (g) Regulations.
10408.	Definitions.
10409.	Authorization of appropriations. <ul style="list-style-type: none"> (a) In general. (b) Section 10402(a) and (b). (c) Section 10407. (d) Grants for State coalitions. (e) Non-supplanting requirement.

- Sec.
10410. Grants for State domestic violence coalitions.
 (a) In general.
 (b) Eligibility.
 (c) Allotment of funds.
 (d) Prohibition on lobbying.
 (e) Reporting.
 (f) Definition.
 (g) Authorization of appropriations.
 (h) Regulations.
10411. Repealed.
10412. Authority of Secretary; construction with State and local law.
10413. Family member abuse information and documentation project.
10414. Grants for public information campaigns.
 (a) In general.
 (b) Application.
 (c) Requirements.
 (d) Use.
 (e) Criteria.
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10415. Model State leadership grants for domestic violence intervention.
 (a) In general.
 (b) Designation as model State.
 (c) Authorization of appropriations.
10416. National domestic violence hotline grant.
 (a) In general.
 (b) Duration.
 (c) Annual approval.
 (d) Activities.
 (e) Application.
 (f) Authorization of appropriations.
10417. Youth education and domestic violence.
 (a) General purpose.
 (b) Nature of program.
 (c) Review and dissemination.
 (d) Authorization of appropriations.
10418. Demonstration grants for community initiatives.
 (a) In general.
 (b) Eligibility.
 (c) Applications.
 (d) Term.
 (e) Conditions on payment.
 (f) Geographical dispersion.
 (g) Use of grant monies.
 (h) Authorization of appropriations.
 (i) Regulations.
10419. Transitional housing assistance.
 (a) In general.
 (b) Assistance described.
 (c) Term of assistance.
 (d) Reports.
 (e) Evaluation, monitoring, and administration.
 (f) Authorization of appropriations.
10420. Safe havens for children pilot program.
 (a) In general.
 (b) Considerations.
 (c) Applicant requirements.
 (d) Reporting.
 (e) Authorization of appropriations.
 (f) Allotment for Indian tribes.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 3796gg of this title; title 31 section 6703.

§ 10401. Declaration of purpose

It is the purpose of this chapter to—

- (1) assist States in efforts to increase public awareness about and prevent family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents; and

- (2) provide for technical assistance and training relating to family violence programs to States, local public agencies (including law enforcement agencies, courts, legal, social service, and health care professionals), nonprofit private organizations, and other persons seeking such assistance.

(Pub. L. 98-457, title III, §302, Oct. 9, 1984, 98 Stat. 1757; Pub. L. 102-295, title III, §302, May 28, 1992, 106 Stat. 201.)

AMENDMENTS

1992—Par. (1). Pub. L. 102-295, §302(1)(A), which directed the substitution of “assist” for “demonstration the effectiveness of assisting”, was executed by making the substitution for “demonstrate the effectiveness of assisting” to reflect the probable intent of Congress.

Pub. L. 102-295, §302(1)(B), substituted “to increase public awareness about and prevent” for “to prevent”.

Par. (2). Pub. L. 102-295, §302(2), inserted “, courts, legal, social service, and health care professionals” after “enforcement agencies”.

SHORT TITLE

Section 301 of title III of Pub. L. 98-457 provided that: “This title [enacting this chapter] may be cited as the ‘Family Violence Prevention and Services Act’.”

STUDY OF TRAINING NEEDS OF HEALTH PROFESSIONALS

Pub. L. 105-392, title IV, §407(b), Nov. 13, 1998, 112 Stat. 3589, provided that: “The Secretary of Health and Human Services shall request that the Institute of Medicine conduct a study concerning the training needs of health professionals with respect to the detection and referral of victims of family or acquaintance violence. Not later than 2 years after the date of enactment of this Act [Nov. 13, 1998], the Institute of Medicine shall prepare and submit to Congress a report concerning the study conducted under this subsection.”

§ 10402. State grants authorized

(a) Authority of Secretary; application; requirements; approval

(1) In order to assist in supporting the establishment, maintenance, and expansion of programs and projects to prevent incidents of family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents, the Secretary is authorized, in accordance with the provisions of this chapter, to make grants to States.

(2) No grant may be made under this subsection unless the chief executive officer of the State seeking such grant submits an application to the Secretary at such time and in such manner as the Secretary may reasonably require. Each such application shall—

(A) provide that funds provided under this subsection will be distributed in grants to local public agencies and nonprofit private organizations (including religious and charitable organizations, and voluntary associations) for programs and projects within such State to prevent incidents of family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents in order to prevent future violent incidents;

(B) provide, with respect to funds provided to a State under this subsection for any fiscal year, that—

- (i) not more than 5 percent of such funds will be used for State administrative costs; and

(ii) in the distribution of funds by the State under this subsection, the State will give special emphasis to the support of community-based projects of demonstrated effectiveness carried out by nonprofit private organizations, the primary purpose of which is to operate shelters for victims of family violence and their dependents, and those which provide counseling, advocacy, and self-help services to victims and their children.¹

(C) set forth procedures designed to involve State domestic violence coalitions² knowledgeable individuals² and interested organizations and assure an equitable distribution of grants and grant funds within the State and between urban and rural areas within such State and a plan to address the needs of underserved populations, including populations underserved because of ethnic, racial, cultural, language diversity or geographic isolation;

(D) specify the State agency to be designated as responsible for the administration of programs and activities relating to family violence which are carried out by the State under this chapter and for coordination of related programs within the State;

(E) provide documentation that procedures have been developed, and implemented including copies of the policies and procedure, to assure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services by any program assisted under this chapter and provide assurances that the address or location of any shelter-facility assisted under this chapter will, except with written authorization of the person or persons responsible for the operation of such shelter, not be made public;

(F) provide documentation to the Secretary that the State has a law or procedure that has been implemented for the eviction of an abusing spouse from a share household;

(G) meet such requirements as the Secretary reasonably determines are necessary to carry out the purposes and provisions of this chapter.

(3) The Secretary shall approve any application that meets the requirements of this subsection, and the Secretary shall not disapprove any such application except after reasonable notice of the Secretary's intention to disapprove and after a 6-month period providing an opportunity for correction of any deficiencies. The Secretary shall provide such notice within 45 days of the date of the application if any of the provisions of paragraph (2) have not been satisfied in such application. If the State has not corrected the deficiencies in such application within the 6-month period following the receipt of the Secretary's notice of intention to disapprove, the Secretary shall withhold payment of any grant funds to such State until the date that is 30 days prior to the end of the fiscal year for which such grant funds are appropriated or until such time as the State provides documentation that the deficiencies have been cor-

rected, whichever occurs first. State Domestic Violence Coalitions shall be permitted to participate in determining whether a grantee is in compliance with paragraph (2), except that no funds made available to State Domestic Violence Coalitions under section 10410 of this title shall be used to challenge a determination as to whether a grantee is in compliance with, or to seek the enforcement of, the eligibility requirements of such paragraph.

(4) Upon completion of the activities funded by a grant under this subpart,³ the State grantee shall file a performance report with the Director explaining the activities carried out together with an assessment of the effectiveness of those activities in achieving the purposes of this subpart.³ A section of this performance report shall be completed by each grantee or subgrantee that performed the direct services contemplated in the application certifying performance of direct services under the grant. The Director shall suspend funding for an approved application if an applicant fails to submit an annual performance report or if the funds are expended for purposes other than those set forth under this subpart,³ after following the procedures set forth in paragraph (3). Federal funds may be used only to supplement, not supplant, State funds.

(b) Indian tribes and tribal organizations; application

(1) The Secretary, from amounts appropriated to carry out this section, shall make available not less than 10 percent of such amounts to make grants to Indian tribes, tribal organizations⁴ and nonprofit private organizations approved by an Indian Tribe⁵ for the operation of a family violence shelter on a Reservation⁵ for projects designed to prevent family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents.

(2) No grant may be made under this subsection unless an application is made to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary deems essential to carry out the purposes and provisions of this chapter. Such application shall comply, as applicable, with the provisions of clauses (C) (with respect only to involving knowledgeable individuals and organizations), (D), (E) and (F) of subsection (a)(2) of this section. No entity eligible to submit an application under paragraph (1) shall be prohibited from making an application during any fiscal year for which funds are available because such entity has not previously applied or received funding under this section.

(3) In the case of a project for which the initial application for a demonstration grant under this subsection is made on or after May 28, 1992, the terms "Indian tribe" and "tribal organization", for purposes of this subsection, have the meaning given such terms in section 450b of title 25.

(c) Direct payments to victims or dependents

No funds provided through demonstration grants made under this section may be used as

¹ So in original. The period probably should be a semicolon.

² So in original. Probably should be followed by a comma.

³ See References in Text note below.

⁴ So in original. Probably should be followed by a comma.

⁵ So in original. Probably should not be capitalized.

direct payment to any victim of family violence or to any dependent of such victim.

(d) Income eligibility standards

No income eligibility standard may be imposed upon individuals with respect to eligibility for assistance or services supported with funds appropriated to carry out this chapter.

(e) Grants to entities other than States; local share

No grant may be made under this section to any entity other than a State or an Indian Tribe⁵ unless the entity provides for the following non-Federal matching local share as a proportion of the total amount of funds provided under this chapter to the project involved: with respect to an entity operating an existing program under this chapter, not less than 20 percent, and with respect to an entity intending to operate a new program under this chapter, not less than 35 percent. The local share required under this subsection may be in cash or in-kind. The local share may not include any Federal funds provided under any authority other than this chapter.

(f) Shelter and related assistance

The Secretary shall assure that not less than 70 percent of the funds distributed under subsection (a) or (b) of this section shall be distributed to entities for the purpose of providing immediate shelter and related assistance to victims of family violence and their dependents as defined in section 10408(4) of this title. Not less than 25 percent of the funds distributed under subsection (a) or (b) of this section shall be distributed for the purpose of providing related assistance as defined under section 10408(5)(A) of this title.

(Pub. L. 98-457, title III, §303, Oct. 9, 1984, 98 Stat. 1757; Pub. L. 100-294, title III, §302, Apr. 25, 1988, 102 Stat. 124; Pub. L. 102-295, title III, §§303-309(a), 310, 311(a), May 28, 1992, 106 Stat. 201-203; Pub. L. 103-322, title IV, §40271, Sept. 13, 1994, 108 Stat. 1937; Pub. L. 104-235, title II, §201, Oct. 3, 1996, 110 Stat. 3089.)

REFERENCES IN TEXT

This subpart, referred to in subsec. (a)(4), is unidentifiable in the original because title III of Pub. L. 98-457 does not contain subparts.

CODIFICATION

May 28, 1992, referred to in subsec. (b)(3), was in the original "the date of the enactment of the Child Abuse Programs, Adoption Opportunities, and Family Violence Prevention Amendments Act of 1992", which was translated as meaning the date of enactment of Pub. L. 102-295, known as the Child Abuse, Domestic Violence, Adoption and Family Services Act of 1992, which enacted subsec. (b)(3), to reflect the probable intent of Congress.

AMENDMENTS

1996—Subsec. (e). Pub. L. 104-235 substituted "following non-Federal matching local share" for "following local share" and "with respect to an entity operating an existing program under this chapter, not less than 20 percent, and with respect to an entity intending to operate a new program under this chapter, not less than 35 percent" for "20 percent in the first year such project receives a grant under this chapter, 35 percent in the second such year, and 50 percent in the third

such year and in any such year thereafter. Except in the case of a public entity, not less than 25 percent of the local share of such agency or organization shall be raised from private sources".

1994—Subsec. (a)(2)(C). Pub. L. 103-322, §40271(a), inserted "and a plan to address the needs of underserved populations, including populations underserved because of ethnic, racial, cultural, language diversity or geographic isolation" after "such State".

Subsec. (a)(4). Pub. L. 103-322, §40271(b), added par. (4). 1992—Subsec. (a)(1). Pub. L. 102-295, §303(1), substituted "grants" for "demonstration grants".

Subsec. (a)(2). Pub. L. 102-295, §303(2)(A), in introductory provisions substituted "grant" for "demonstration grant" after "No".

Subsec. (a)(2)(A). Pub. L. 102-295, §303(2)(B), which directed the substitution of "grant" for "demonstration grant" was executed by substituting "grants" for "demonstration grants", to reflect the probable intent of Congress.

Subsec. (a)(2)(B)(ii). Pub. L. 102-295, §303(2)(C), substituted "the primary purpose of which is to operate shelters for victims of family violence and their dependents, and those which provide counseling, advocacy, and self-help services to victims and their children." for "particularly those projects the primary purpose of which is to operate shelters for victims of family violence and their dependents, and those which provide counseling, alcohol and drug abuse treatment, and self-help services to abusers and victims;"

Subsec. (a)(2)(C). Pub. L. 102-295, §304, inserted "State domestic violence coalitions" after "involve".

Subsec. (a)(2)(E). Pub. L. 102-295, §305, substituted "documentation that procedures have been developed, and implemented including copies of the policies and procedure," for "assurances that procedures will be developed".

Subsec. (a)(2)(F). Pub. L. 102-295, §306, amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: "provide assurances that, within one year after receipt of funds under this subsection, the State will, provide assurances to the Secretary that the State has or has under consideration a procedure for the eviction of an abusing spouse from a shared residence; and".

Subsec. (a)(3). Pub. L. 102-295, §307, inserted "a 6-month period providing an" before "opportunity" and inserted at end "The Secretary shall provide such notice within 45 days of the date of the application if any of the provisions of paragraph (2) have not been satisfied in such application. If the State has not corrected the deficiencies in such application within the 6-month period following the receipt of the Secretary's notice of intention to disapprove, the Secretary shall withhold payment of any grant funds to such State until the date that is 30 days prior to the end of the fiscal year for which such grant funds are appropriated or until such time as the State provides documentation that the deficiencies have been corrected, whichever occurs first. State Domestic Violence Coalitions shall be permitted to participate in determining whether a grantee is in compliance with paragraph (2), except that no funds made available to State Domestic Violence Coalitions under section 10410 of this title shall be used to challenge a determination as to whether a grantee is in compliance with, or to seek the enforcement of, the eligibility requirements of such paragraph."

Subsec. (b)(1). Pub. L. 102-295, §308(1), substituted "The Secretary, from amounts appropriated to carry out this section, shall make available not less than 10 percent of such amounts to make grants to Indian tribes, tribal organizations and nonprofit private organizations approved by an Indian Tribe for the operation of a family violence shelter on a Reservation" for "The Secretary is authorized to make demonstration grants to Indian tribes and tribal organizations".

Subsec. (b)(2). Pub. L. 102-295, §308(2), substituted "grant" for "demonstration grant" and "(E) and (F)" for "and (E)" and inserted at end "No entity eligible to

submit an application under paragraph (1) shall be prohibited from making an application during any fiscal year for which funds are available because such entity has not previously applied or received funding under this section.”

Subsec. (b)(3). Pub. L. 102-295, §308(3), added par. (3).

Subsec. (c). Pub. L. 102-295, §309(a), redesignated subsec. (d) as (c) and struck out former subsec. (c) which read as follows: “No demonstration grant may be made under this section in any fiscal year to any single entity (other than to a State) for an amount in excess of \$50,000, and the total amount of such grants to any such single entity may not exceed \$150,000.”

Subsec. (d). Pub. L. 102-295, §309(a)(2), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 102-295, §§309(a)(2), 310, redesignated subsec. (f) as (e) and substituted “No grant” for “No demonstration grant”, “State or an Indian Tribe” for “State”, “20 percent” for “35 percent”, “35 percent” for “55 percent”, “and 50 percent in the third such year and in any such year thereafter” for “and 65 percent in the third such year”, and “25 percent” for “50 percent”. Former subsec. (e) redesignated (d).

Subsecs. (f), (g). Pub. L. 102-295, §§309(a)(2), 311(a), redesignated subsec. (g) as (f), substituted “70 percent” for “60 percent”, and inserted before period “as defined in section 10408(4) of this title. Not less than 25 percent of the funds distributed under subsection (a) or (b) of this section shall be distributed for the purpose of providing related assistance as defined under section 10408(5)(A) of this title”. Former subsec. (f) redesignated (e).

1988—Subsec. (c). Pub. L. 100-294 struck out provision that a single entity not be awarded demonstration grants under this section for a total period in excess of three fiscal years.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 309(b) of Pub. L. 102-295 provided that: “The amendments made by subsection (a) [amending this section] are effective in the case of amounts appropriated for fiscal year 1992 and subsequent fiscal years.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10403, 10405, 10409, 10410, 10412 of this title.

§ 10403. Allotment of funds

(a) Proportionality of allotment; minimum allotment

From the sums appropriated under section 10409 of this title and available for grants to States under this subsection for any fiscal year—

(1) Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands shall each be allotted not less than $\frac{1}{8}$ of 1 percent of the amounts available for grants under section 10402(a) of this title for the fiscal year for which the allotment is made; and

(2) each State shall be allotted for payment in a grant authorized under section 10402(a) of this title, \$600,000, with the remaining funds to be allotted to each State in an amount that bears the same ratio to such remaining funds as the population of such State bears to the population of all States.

(b) Determination of population of States

For the purpose of this section, the population of each State, and the total population of all the States, shall be determined by the Secretary on the basis of the most recent census data avail-

able to the Secretary, and the Secretary shall use for such purpose, if available, the annual interim current census data produced by the Secretary of Commerce pursuant to section 181 of title 13.

(c) Ratable reduction of amounts; increase on availability of additional funds

If the sums appropriated under section 10409 of this title for any fiscal year and available for grants to States authorized under section 10402(a) of this title are not sufficient to pay in full the total amounts which all States are entitled to receive under such section for such fiscal year, then the maximum amounts which all States are entitled to receive under such section for such fiscal year shall be ratably reduced. In the event that additional funds become available for making such grants for any fiscal year during which the preceding sentence is applicable, such reduced amounts shall be increased on the same basis as they were reduced.

(d) Reallotment; continued availability of funds

(1) If, at the end of the sixth month of any fiscal year for which sums are appropriated under section 10409 of this title, the amount allotted to a State has not been made available to such State in grants under section 10402(a) of this title because of the failure of such State to meet the requirements for a grant, then the Secretary shall reallot such amount to States which meet such requirements.

(2) Funds made available by the Secretary through reallotment under paragraph (1) shall remain available for expenditure until the end of the fiscal year following the fiscal year in which such funds become available for reallotment.

(e) Exclusion from definition of “State”

In subsection (a)(2) of this section, the term “State” does not include any jurisdiction specified in subsection (a)(1) of this section.

(Pub. L. 98-457, title III, §304, Oct. 9, 1984, 98 Stat. 1759; Pub. L. 102-295, title III, §312, May 28, 1992, 106 Stat. 204; Pub. L. 104-208, div. A, title I, §101(e) [title II, §213], Sept. 30, 1996, 110 Stat. 3009-233, 3009-254; Pub. L. 104-235, title II, §202, Oct. 3, 1996, 110 Stat. 3089; Pub. L. 106-386, div. B, title II, §1202(b), Oct. 28, 2000, 114 Stat. 1505.)

AMENDMENTS

2000—Subsec. (a). Pub. L. 106-386, §1202(b)(1), substituted “and available for grants to States under this subsection for any fiscal year—” and pars. (1) and (2) for “for grants to States for any fiscal year, each State shall be allotted for payment in a grant authorized under section 10402(a) of this title an amount which bears the same ratio to such sums as the population of such State bears to the population of all States, except that—

“(1) each State shall be allotted not less than 1 percent of the amounts available for grants under section 10402(a) of this title for the fiscal year for which the allotment is made, or \$400,000, whichever is the lesser amount; and

“(2) Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands shall each be allotted not less than one-eighth of 1 percent of the amounts available for grants under section 10402(a) of this title for the fiscal year for which the allotment is made.

For the purpose of the exception contained in clause (1) of the preceding sentence only, the term ‘State’ does

not include Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.”

Subsec. (c). Pub. L. 106-386, §1202(b)(2), in first sentence, inserted “and available” before “for grants”.

Subsec. (e). Pub. L. 106-386, §1202(b)(3), added subsec. (e).

1996—Subsec. (a)(1). Pub. L. 104-208 and Pub. L. 104-235 amended par. (1) identically, substituting “\$400,000” for “\$200,000”.

1992—Subsec. (a)(1). Pub. L. 102-295 struck out “whichever is the greater of the following amounts: one-half of” before “1 percent” and substituted “\$200,000, whichever is the lesser amount” for “\$50,000”.

§ 10404. Secretarial responsibilities

(a) The Secretary shall appoint an employee of the Department of Health and Human Services to carry out the provisions of this chapter. The individual appointed under this subsection shall, prior to such appointment, have had expertise in the field of family violence prevention and services.

(b) The Secretary shall—

(1) coordinate all programs within the Department of Health and Human Services, and seek to coordinate all other Federal programs, which involve the prevention of incidents of family violence and the provision of assistance for victims and potential victims of family violence and their dependents, and ensure that such activities as they relate to elderly persons are coordinated with the Administration on Aging and the National Institute on Aging within the Department of Health and Human Services;

(2)(A) provide for research, and into the most effective prevention, identification, and treatment thereof (such as research into (i) the effectiveness of reducing repeated incidents of family violence through a variety of sentencing alternatives, such as incarceration, fines, and counseling programs, individually or in combination, and through the use of civil protection orders removing the abuser from the family household, (ii) the necessity and impact of a mandatory reporting requirement relating to incidents of family violence, particularly abuse of elderly persons), (iii) the effectiveness of providing safety and support to maternal and child victims of family violence as a way to eliminate the abuse experienced by children in such situations, (iv) identification of intervention approaches to child abuse prevention services which appear to be successful in preventing child abuse where both mother and child are abused, (v) effective and appropriate treatment services for children where both mother and child are abused, and (vi) the individual and situational factors leading to the end of violent and abusive behavior by persons who commit acts of family violence, including such factors as history of previous violence and the legal and service interventions received, and (B) make a complete study and investigation (in consultation with the National Institute on Aging) of the national incidence of abuse, neglect, and exploitation of elderly persons, including a determination of the extent to which incidents of such abuse, neglect, and exploitation are increasing in number or severity; and

(3) provide for the training of personnel and provide technical assistance in the conduct of programs for the prevention and treatment of family violence.

(Pub. L. 98-457, title III, §305, Oct. 9, 1984, 98 Stat. 1760; Pub. L. 102-295, title III, §313, May 28, 1992, 106 Stat. 204.)

AMENDMENTS

1992—Subsec. (b)(2)(A). Pub. L. 102-295 struck out “into the causes of family violence” after “provide for research”, inserted “most effective” before “prevention”, and added cls. (iii) to (vi).

§ 10405. Evaluation

Not later than two years after the date on which funds are obligated under section 10402(a) of this title for the first time after October 9, 1984, and every two years thereafter, the Secretary shall review, evaluate, and report to the appropriate Committees of the Congress, as to the effectiveness of the programs administered and operated pursuant to this chapter, particularly in relation to repeated incidents of family violence. Such report shall also include a summary of the documentation provided to the Secretary under section 10402(a)(2)(B) through 10402(a)(2)(F) of this title.

(Pub. L. 98-457, title III, §306, Oct. 9, 1984, 98 Stat. 1760; Pub. L. 102-295, title III, §314, May 28, 1992, 106 Stat. 204.)

AMENDMENTS

1992—Pub. L. 102-295 inserted “and every two years thereafter,” and substituted “documentation” for “assurances” and “10402(a)(2)(B) through 10402(a)(2)(F)” for “10402(a)(2)(F)”.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of this section relating to biennial report to appropriate committees of Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 6th item on page 93 of House Document No. 103-7.

§ 10406. Discrimination prohibited

(a) Recipients of Federal financial assistance; types of discrimination prohibited

(1) For the purpose of applying the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], on the basis of handicap under section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], on the basis of sex under title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], or on the basis of race, color, or national origin under title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], programs and activities funded in whole or in part with funds made available under this part¹ are considered to be programs and activities receiving Federal financial assistance.

(2) No person shall on the ground of sex or religion be excluded from participation in, be denied the benefits of, or be subject to discrimination under, any program or activity funded in whole or in part with funds made available under this chapter. Nothing in this chapter shall

¹ See References in Text note below.

require any such program or activity to include any individual in any program or activity without taking into consideration that individual's sex in those certain instances where sex is a bona fide occupational qualification or programmatic factor reasonably necessary to the normal operation of that particular program or activity. The Secretary shall enforce the provisions of the preceding sentence in accordance with section 602 of the Civil Rights Act of 1964 [42 U.S.C. 2000d-1]. Section 603 of such Act [42 U.S.C. 2000d-2] shall apply with respect to any action taken by the Secretary to enforce such sentence. This paragraph shall not be construed as affecting any other legal remedy.

(b) Notification and request to secure compliance; referral to Attorney General or other action by Secretary

Whenever the Secretary finds that a State or other entity that has received financial assistance under this chapter has failed to comply with a provision of law referred to in subsection (a)(1) of this section, with subsection (a)(2) of this section, or with an applicable regulation (including one prescribed to carry out subsection (a)(2) of this section), the Secretary shall notify the chief executive officer of the State and shall request such officer to secure compliance. If, within a reasonable period of time, not to exceed sixty days, the chief executive officer fails or refuses to secure compliance, the Secretary may—

(1) refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted,

(2) exercise the powers and functions provided by title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], sections 504 and 505 of the Rehabilitation Act of 1973 [29 U.S.C. 794, 794a], or title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], as may be applicable, or

(3) take such other action as may be provided by law.

(c) Civil action by Attorney General

When a matter is referred to the Attorney General pursuant to subsection (b)(1) of this section, or whenever the Attorney General has reason to believe that a State or an entity is engaged in a pattern or practice in violation of a provision of law referred to in subsection (a)(1) of this section or in violation of subsection (a)(2) of this section, the Attorney General may bring a civil action in any appropriate district court of the United States for such relief as may be appropriate, including injunctive relief.

(Pub. L. 98-457, title III, §307, Oct. 9, 1984, 98 Stat. 1761.)

REFERENCES IN TEXT

The Age Discrimination Act of 1975, referred to in subssecs. (a)(1), (b)(2), is title III of Pub. L. 94-135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

The Education Amendments of 1972, referred to in subssecs. (a)(1), (b)(2), is Pub. L. 92-318, June 23, 1972, 86

Stat. 235, as amended. Title IX of the Education Amendments of 1972 is classified principally to chapter 38 (§1681 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

The Civil Rights Act of 1964, referred to in subssecs. (a)(1), (b)(2), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§2000d et seq.) of this title. For complete classification of this Act to the Code, see note set out under section 2000a of this title and Tables.

This part, referred to in subsec. (a)(1), probably was intended to be a reference to this title, meaning title III of Pub. L. 98-457 which enacted this chapter, because title III was not divided into parts and because similar references to programs or activities funded in whole or in part with funds made available, referred to "this title".

§10407. Information and technical assistance centers

(a) Purpose and grants

(1) Purpose

It is the purpose of this section to provide resource information, training, and technical assistance to Federal, State, and Indian tribal agencies, as well as to local domestic violence programs and to other professionals who provide services to victims of domestic violence.

(2) Grants

From the amounts appropriated under this chapter, the Secretary shall award grants to private nonprofit organizations for the establishment and maintenance of one national resource center (as provided for in subsection (b) of this section) and not to exceed seven special issue resource centers (as provided for in subsection (c) of this section) focusing on one or more issues of concern to domestic violence victims.

(b) National resource center

The national resource center established under subsection (a)(2) of this section shall offer resource, policy and training assistance to Federal, State, and local government agencies, to domestic violence service providers, and to other professionals and interested parties on issues pertaining to domestic violence, and shall maintain a central resource library in order to collect, prepare, analyze, and disseminate information and statistics and analyses thereof relating to the incidence and prevention of family violence (particularly the prevention of repeated incidents of violence) and the provision of immediate shelter and related assistance.

(c) Special issue resource centers

The special issue resource centers established under subsection (a)(2) of this section shall provide information, training and technical assistance to State and local domestic violence service providers, and shall specialize in at least one of the following areas of domestic violence service, prevention, or law:

(1) Criminal justice response to domestic violence, including court-mandated abuser treatment.

(2) Improving the response of Child Protective Service agencies to battered mothers of abused children.

(3) Child custody issues in domestic violence cases.

(4) The use of the self-defense plea by domestic violence victims.

(5) Improving interdisciplinary health care responses and access to health care resources for victims of domestic violence.

(6) Improving access to and the quality of legal representation for victims of domestic violence in civil litigation, including the issuance and enforcement of protection orders.

(7) Providing technical assistance and training to State domestic violence coalitions.

(d) Eligibility

To be eligible to receive a grant under this section an entity shall be a private nonprofit organization that—

(1) focuses primarily on domestic violence;

(2) provides documentation to the Secretary demonstrating experience working directly on issues of domestic violence, particularly in the specific subject area for which it is applying;

(3) include on its advisory boards representatives from domestic violence programs in the region who are geographically and culturally diverse; and

(4) demonstrate the strong support of domestic violence advocates from across the country and the region for their designation as the national or a special issue resource center.

(e) Reporting

Not later than 6 months after receiving a grant under this section, a grantee shall prepare and submit a report to the Secretary that evaluates the effectiveness of the use of amounts received under such grant by such grantee and containing such additional information as the Secretary may prescribe.

(f) “Indian tribal agency” defined

For purposes of this section, the term “Indian tribal agency” means an Indian tribe or tribal organization, as defined in section 450b of title 25.

(g) Regulations

Not later than 90 days after May 28, 1992, the Secretary shall publish proposed regulations implementing this section. Not later than 120 days after May 28, 1992, the Secretary shall publish final regulations.

(Pub. L. 98-457, title III, §308, Oct. 9, 1984, 98 Stat. 1761; Pub. L. 102-295, title III, §315, May 28, 1992, 106 Stat. 204; Pub. L. 103-322, title IV, §40272(b), Sept. 13, 1994, 108 Stat. 1937.)

CODIFICATION

May 28, 1992, referred to in subsec. (g), was in the original “the date of enactment of this section” and “such date of enactment”, which were translated as meaning the date of enactment of Pub. L. 102-295, which amended this section generally, to reflect the probable intent of Congress.

AMENDMENTS

1994—Subsec. (a)(2). Pub. L. 103-322, §40272(b)(1), substituted “seven” for “six” before “special issue resource centers”.

Subsec. (c)(6). Pub. L. 103-322, §40272(b)(2)(A), inserted before period at end “, including the issuance and enforcement of protection orders”.

Subsec. (c)(7). Pub. L. 103-322, §40272(b)(2)(B), added par. (7).

1992—Pub. L. 102-295 amended section generally, substituting provisions relating to information and technical assistance centers for provisions relating to operation of national information and research clearinghouse on prevention of family violence.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10409, 10412 of this title.

§ 10408. Definitions

As used in this chapter:

(1) The term “family violence” means any act or threatened act of violence, including any forceful detention of an individual, which—

(A) results or threatens to result in physical injury; and

(B) is committed by a person against another individual (including an elderly person) to whom such person is or was related by blood or marriage or otherwise legally related or with whom such person is or was lawfully residing.

(2) The terms “Indian tribe” and “tribal organization” have the same meanings given such terms in subsections (b) and (c), respectively, of section 450b¹ of title 25.

(3) The terms² “Secretary” means the Secretary of Health and Human Services.

(4) The terms² “shelter” means the provision of temporary refuge and related assistance in compliance with applicable State law and regulation governing the provision, on a regular basis, of shelter, safe homes, meals, and related assistance to victims of family violence and their dependents.

(5) The term “related assistance” means the provision of direct assistance to victims of family violence and their dependents for the purpose of preventing further violence, helping such victims to gain access to civil and criminal courts and other community services, facilitating the efforts of such victims to make decisions concerning their lives in the interest of safety, and assisting such victims in healing from the effects of the violence. Related assistance shall include—

(A) prevention services such as outreach and prevention services for victims and their children, employment training, parenting and other educational services for victims and their children, preventive health services within domestic violence programs (including nutrition, disease prevention, exercise, and prevention of substance abuse), domestic violence prevention programs for school age children, family violence public awareness campaigns, and violence prevention counseling services to abusers;

(B) counseling with respect to family violence, counseling or other supportive services by peers individually or in groups, and referral to community social services;

(C) transportation, technical assistance with respect to obtaining financial assist-

¹ See References in Text note below.

² So in original. Probably should be “term”.

ance under Federal and State programs, and referrals for appropriate health-care services (including alcohol and drug abuse treatment), but shall not include reimbursement for any health-care services;

(D) legal advocacy to provide victims with information and assistance through the civil and criminal courts, and legal assistance; or

(E) children's counseling and support services, and child care services for children who are victims of family violence or the dependents of such victims.

(6) The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, and, except as otherwise provided, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(Pub. L. 98-457, title III, §309, Oct. 9, 1984, 98 Stat. 1762; Pub. L. 102-295, title III, §311(b), May 28, 1992, 106 Stat. 203; Pub. L. 103-322, title IV, §40272(a), Sept. 13, 1994, 108 Stat. 1937.)

REFERENCES IN TEXT

Section 450b of title 25, referred to in par. (2), has been amended, and subssecs. (b) and (c) of section 450b no longer define the terms "Indian tribe" and "tribal organization". However, such terms are defined elsewhere in that section.

AMENDMENTS

1994—Par. (5)(B). Pub. L. 103-322 inserted "or other supportive services" before "by peers".

1992—Par. (5). Pub. L. 102-295 amended par. (5) generally. Prior to amendment, par. (5) read as follows: "The term 'related assistance'—

"(A) includes counseling and self-help services to abusers, victims, and dependents in family violence situations (which shall include counseling of all family members to the extent feasible) and referrals for appropriate health-care services (including alcohol and drug abuse treatment), and

"(B) may include food, clothing, child care, transportation, and emergency services (but not reimbursement for any health-care services) for victims of family violence and their dependents."

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3002, 10402 of this title.

§ 10409. Authorization of appropriations

(a) In general

There are authorized to be appropriated to carry out this chapter \$175,000,000 for each of fiscal years 2001 through 2005.

(b) Section 10402(a) and (b)

Of the amounts appropriated under subsection (a) of this section for each fiscal year, not less than 70 percent shall be used for making grants under subsection 10402(a) of this title, and not less than 10 percent shall be used for the purpose of carrying out section 10402(b) of this title.

(c) Section 10407

Of the amounts appropriated under subsection (a) of this section for each fiscal year, 5 percent

shall be used by the Secretary for making grants under section 10407 of this title.

(d) Grants for State coalitions

Of the amounts appropriated under subsection (a) of this section for each fiscal year, not less than 10 percent of such amounts shall be used by the Secretary for making grants under section 10410 of this title.

(e) Non-supplanting requirement

Federal funds made available to a State under this chapter shall be used to supplement and not supplant other Federal, State, and local public funds expended to provide services and activities that promote the purposes of this chapter.

(Pub. L. 98-457, title III, §310, Oct. 9, 1984, 98 Stat. 1763; Pub. L. 100-294, title III, §301, Apr. 25, 1988, 102 Stat. 124; Pub. L. 102-295, title III, §316, May 28, 1992, 106 Stat. 206; Pub. L. 103-322, title IV, §40241, Sept. 13, 1994, 108 Stat. 1934; Pub. L. 104-235, title II, §203, Oct. 3, 1996, 110 Stat. 3089; Pub. L. 106-386, div. B, title II, §1202(a), Oct. 28, 2000, 114 Stat. 1505.)

AMENDMENTS

2000—Subsec. (a). Pub. L. 106-386 reenacted heading without change and amended text of subsec. (a) generally. Prior to amendment, text read as follows: "There are authorized to be appropriated to carry out this chapter—

"(1) \$50,000,000 for fiscal year 1996;

"(2) \$60,000,000 for fiscal year 1997;

"(3) \$70,000,000 for fiscal year 1998;

"(4) \$72,500,000 for fiscal year 1999; and

"(5) \$72,500,000 for fiscal year 2000."

1996—Subsec. (b). Pub. L. 104-235, §203(1), substituted "70 percent" for "80 percent".

Subsecs. (d), (e). Pub. L. 104-235, §203(2), added subssecs. (d) and (e).

1994—Subsec. (a). Pub. L. 103-322 amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: "There are authorized to be appropriated to carry out the provisions of sections 10402 through 10408 of this title and section 10413 of this title, \$60,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 through 1995."

1992—Pub. L. 102-295 amended section generally. Prior to amendment, section read as follows:

"(a) There are authorized to be appropriated to carry out the provisions of this chapter \$11,000,000 for fiscal year 1985, \$26,000,000 for each of the fiscal years 1986 and 1987, \$26,000,000 for fiscal year 1988, and such sums as may be necessary for each of the fiscal years 1989, 1990, and 1991.

"(b) Of the sums appropriated under subsection (a) of this section for any fiscal year, not less than 85 percent shall be used by the Secretary for making grants under section 10402 of this title.

"(c) The Secretary shall ensure that funds appropriated pursuant to authorizations in this chapter shall remain available until expended for the purposes for which they were appropriated."

1988—Subsec. (a). Pub. L. 100-294, §301(a), substituted "1985," for "1985 and" and inserted ", \$26,000,000 for fiscal year 1988, and such sums as may be necessary for each of the fiscal years 1989, 1990, and 1991" after "1987" before period at end.

Subsec. (c). Pub. L. 100-294, §301(b), added subsec. (c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10403, 10415 of this title.

§ 10410. Grants for State domestic violence coalitions

(a) In general

The Secretary shall award grants for the funding of State domestic violence coalitions. Such coalitions shall further the purposes of domestic violence intervention and prevention through activities, including—

(1) working with local domestic violence programs and providers of direct services to encourage appropriate responses to domestic violence within the State, including—

(A) training and technical assistance for local programs and professionals working with victims of domestic violence;

(B) planning and conducting State needs assessments and planning for comprehensive services;

(C) serving as an information clearinghouse and resource center for the State; and

(D) collaborating with other governmental systems which affect battered women;

(2) working with judicial and law enforcement agencies to encourage appropriate responses to domestic violence cases and examine issues including—

(A) the inappropriateness of mutual protection orders;

(B) the prohibition of mediation when domestic violence is involved;

(C) the use of mandatory arrests of accused offenders;

(D) the discouragement of dual arrests;

(E) the adoption of aggressive and vertical prosecution policies and procedures;

(F) the use of mandatory requirements for presentence investigations;

(G) the length of time taken to prosecute cases or reach plea agreements;

(H) the use of plea agreements;

(I) the consistency of sentencing, including comparisons of domestic violence crimes with other violent crimes;

(J) the restitution of victims;

(K) the use of training and technical assistance to law enforcement, judges, court officers and other criminal justice professionals;¹

(L) the reporting practices of, and significance to be accorded to, prior convictions (both felony and misdemeanor) and protection orders;

(M) the use of interstate extradition in cases of domestic violence crimes;

(N) the use of statewide and regional planning; and

(O) any other matters as the Secretary and the State domestic violence coalitions believe merit investigations;

(3) work with family law judges,¹ criminal court judges, Child Protective Services agencies, and children's advocates to develop appropriate responses to child custody and visitation issues in domestic violence cases as well as cases where domestic violence and child abuse are both present, including—

(A) the inappropriateness of mutual protection orders;

(B) the prohibition of mediation where domestic violence is involved;

(C) the inappropriate use of marital or conjoint counseling in domestic violence cases;

(D) the use of training and technical assistance for family law judges, criminal court judges, and court personnel;

(E) the presumption of custody to domestic violence victims;

(F) the use of comprehensive protection orders to grant fullest protections possible to victims of domestic violence, including temporary custody support and maintenance;

(G) the development by Child Protective Service of supportive responses that enable victims to protect their children;

(H) the implementation of supervised visitations or denial of visitation to protect against danger to victims or their children; and

(I) the possibility of permitting domestic violence victims to remove children from the State when the safety of the children or the victim is at risk;

(4) conduct public education campaigns regarding domestic violence through the use of public service announcements and informative materials that are designed for print media, billboards, public transit advertising, electronic broadcast media, and other vehicles for information that shall inform the public concerning domestic violence, including information aimed at underserved racial, ethnic or language-minority populations; and

(5) participate in planning and monitoring of the distribution of grants and grant funds to their State under section 10402(a) of this title.

(b) Eligibility

To be eligible for a grant under this section, an entity shall be a statewide nonprofit State domestic violence coalition meeting the following conditions:

(1) The membership of the coalition includes representatives from a majority of the programs for victims of domestic violence in the State.

(2) The board membership of the coalition is representative of such programs.

(3) The purpose of the coalition is to provide services, community education, and technical assistance to such programs to establish and maintain shelter and related services for victims of domestic violence and their children.

(4) In the application submitted by the coalition for the grant, the coalition provides assurances satisfactory to the Secretary that the coalition—

(A) has actively sought and encouraged the participation of law enforcement agencies and other legal or judicial entities in the preparation of the application; and

(B) will actively seek and encourage the participation of such entities in the activities carried out with the grant.

(c) Allotment of funds

From amounts appropriated under this section for each fiscal year, the Secretary shall allot to

¹ So in original.

each State, the District of Columbia, the Commonwealth of Puerto Rico, and the combined U.S. Territories an amount equal to $\frac{1}{3}$ of the amount appropriated for such fiscal year. For purposes of this section, the term "combined U.S. Territories" means Guam, American Samoa, the U.S. Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands and shall not receive less than 1.5 percent of the funds appropriated for each fiscal year.

(d) Prohibition on lobbying

No funds made available to entities under this section shall be used, directly or indirectly, to influence the issuance, amendment, or revocation of any executive order or similar promulgation by any Federal, State or local agency, or to undertake to influence the passage or defeat of any legislation by Congress, or by any State or local legislative body, or State proposals by initiative petition, except that the representatives of the entity may testify or make other appropriate communication—

(1) when formally requested to do so by a legislative body, a committee, or a member thereof; or

(2) in connection with legislation or appropriations directly affecting the activities of the entity.

(e) Reporting

Each State domestic violence coalition receiving amounts under this section shall submit a report to the Secretary describing the coordination, training and technical assistance and public education services performed with such amounts and evaluating the effectiveness of those services.

(f) Definition

For purposes of this section, a State domestic violence coalition may include representatives of Indian tribes and tribal organizations, as defined in section 450b of title 25.

(g) Authorization of appropriations

There are authorized to be appropriated to be used to award grants under this section \$8,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 through 1995.

(h) Regulations

Not later than 90 days after May 28, 1992, the Secretary shall publish proposed regulations implementing this section. Not later than 120 days after May 28, 1992, the Secretary shall publish final regulations implementing this section.

(Pub. L. 98-457, title III, §311, Oct. 9, 1984, 98 Stat. 1763; Pub. L. 100-294, title III, §303(b), Apr. 25, 1988, 102 Stat. 125; Pub. L. 102-295, title III, §317, May 28, 1992, 106 Stat. 206; Pub. L. 103-322, title IV, §40272(c), Sept. 13, 1994, 108 Stat. 1938.)

CODIFICATION

May 28, 1992, referred to in subsec. (h), was in the original "the date of enactment of this section" and "such date of enactment", which were translated as meaning the date of enactment of Pub. L. 102-295, which amended this section generally, to reflect the probable intent of Congress.

AMENDMENTS

1994—Subsec. (a)(1). Pub. L. 103-322, §40272(c)(2), added par. (1). Former par. (1) redesignated (2).

Subsec. (a)(2). Pub. L. 103-322, §40272(c)(1), redesignated par. (1) as (2). Former par. (2) redesignated (3).

Subsec. (a)(2)(K). Pub. L. 103-322, §40272(c)(3), substituted ", judges, court officers and other criminal justice professionals," for "and court officials and other professionals".

Subsec. (a)(3). Pub. L. 103-322, §40272(c)(1), (4)(A), redesignated par. (2) as (3) and inserted ", criminal court judges," after "family law judges," in introductory provisions. Former par. (3) redesignated (4).

Subsec. (a)(3)(D). Pub. L. 103-322, §40272(c)(4)(A), which directed the amendment of par. (3) "by inserting ", criminal court judges," after "family law judges," each place it appears", was executed by making the insertion after "family law judges" in subpar. (D) to reflect the probable intent of Congress.

Subsec. (a)(3)(F). Pub. L. 103-322, §40272(c)(4)(B), substituted "temporary custody support" for "temporary support".

Subsec. (a)(3)(H). Pub. L. 103-322, §40272(c)(4)(C), which directed the substitution of "supervised visitations or denial of visitation to protect against danger to victims or their children" for "supervised visitations that do not endanger victims and their children," was executed by making the substitution for "supervised visitations that do not endanger victims and their children" to reflect the probable intent of Congress.

Subsec. (a)(4). Pub. L. 103-322, §40272(c)(1), (5), redesignated par. (3) as (4) and inserted before semicolon ", including information aimed at underserved racial, ethnic or language-minority populations". Former par. (4) redesignated (5).

Subsec. (a)(5). Pub. L. 103-322, §40272(c)(1), redesignated par. (4) as (5).

1992—Pub. L. 102-295 amended section generally, substituting provisions relating to grants for State domestic violence coalitions for provisions relating to law enforcement training and technical assistance grants and contracts.

1988—Subsec. (b)(2). Pub. L. 100-294 added par. (2).

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10402, 10409, 13951 of this title.

§ 10411. Repealed. Pub. L. 100-294, title III, § 303(a), Apr. 25, 1988, 102 Stat. 124

Section, Pub. L. 98-457, title III, §312, Oct. 9, 1984, 98 Stat. 1763, related to authority of Secretary to carry out provisions of this chapter, competitive awarding of grants and contracts, and delegation of authority and transfer of funds to Attorney General. See sections 10412(a) and 10410(b), (c) of this title.

§ 10412. Authority of Secretary; construction with State and local law

(a) In order to carry out the provisions of this chapter, the Secretary is authorized to—

(1) appoint and fix the compensation of such personnel as are necessary;

(2) procure, to the extent authorized by section 3109 of title 5, such temporary and intermittent services of experts and consultants as are necessary;

(3) make grants to public and nonprofit private entities or enter into contracts with public or private entities; and

(4) prescribe such regulations as are reasonably necessary in order to carry out the purposes and provisions of this chapter.

Not later than 90 days after May 28, 1992, the Secretary shall publish proposed regulations implementing sections 10402, 10407, and 10414 of this title. Not later than 120 days after May 28, 1992, the Secretary shall publish final regulations implementing such sections.

(b) Nothing in this chapter shall be construed to supersede the application of State or local requirements for the reporting of incidents of suspected child abuse to the appropriate State authorities.

(Pub. L. 98-457, title III, §312, Oct. 9, 1984, 98 Stat. 1764; Pub. L. 102-295, title III, §318, May 28, 1992, 106 Stat. 208.)

CODIFICATION

Another section 312 of Pub. L. 98-457, which was classified to section 10411 of this title, was repealed by section 303(a) of Pub. L. 100-294.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-295 inserted at end “Not later than 90 days after May 28, 1992, the Secretary shall publish proposed regulations implementing sections 10402, 10407, and 10414 of this title. Not later than 120 days after May 28, 1992, the Secretary shall publish final regulations implementing such sections.”

§ 10413. Family member abuse information and documentation project

The Secretary shall, directly or by grant or contract—

(1) develop data on the individual develop data on the number of victims of family violence and their dependents who are homeless or institutionalized as a result of the violence and abuse they have experienced;

(2) provide for the objective documentation of data on the victims of family violence and their dependents based on injuries that are brought to the attention of domestic violence shelter, hospital, social service, or law enforcement personnel, whether or not formal civil or criminal action is taken; and

(3) provide assurances that procedures will be developed to guarantee the confidentiality of records pertaining to any individual for whom data are compiled through this subsection.

(Pub. L. 98-457, title III, §313, as added Pub. L. 100-294, title III, §303(c), Apr. 25, 1988, 102 Stat. 125; amended Pub. L. 102-295, title III, §319, May 28, 1992, 106 Stat. 209.)

AMENDMENTS

1992—Par. (1). Pub. L. 102-295 substituted “develop data on the number of victims of family violence and their dependents who are homeless or institutionalized as a result of the violence and abuse they have experienced” for “characteristics relating to family violence”.

§ 10414. Grants for public information campaigns

(a) In general

The Secretary may make grants to public or private nonprofit entities to provide public information campaigns regarding domestic vio-

lence through the use of public service announcements and informative materials that are designed for print media, billboards, public transit advertising, electronic broadcast media, and other vehicles for information that shall inform the public concerning domestic violence.

(b) Application

No grant, contract, or cooperative agreement shall be made or entered into under this section unless an application that meets the requirements of subsection (c) of this section has been approved by the Secretary.

(c) Requirements

An application submitted under subsection (b) of this section shall—

(1) provide such agreements, assurances, and information, be in such form and be submitted in such manner as the Secretary shall prescribe through notice in the Federal Register, including a description of how the proposed public information campaign will target the population at risk, including pregnant women;

(2) include a complete description of the plan of the application for the development of a public information campaign;

(3) identify the specific audiences that will be educated, including communities and groups with the highest prevalence of domestic violence;

(4) identify the media to be used in the campaign and the geographic distribution of the campaign;

(5) describe plans to test market a development plan with a relevant population group and in a relevant geographic area and give assurance that effectiveness criteria will be implemented prior to the completion of the final plan that will include an evaluation component to measure the overall effectiveness of the campaign;

(6) describe the kind, amount, distribution, and timing of informational messages and such other information as the Secretary may require, with assurances that media organizations and other groups with which such messages are placed will not lower the current frequency of public service announcements; and

(7) contain such other information as the Secretary may require.

(d) Use

A grant, contract, or agreement made or entered into under this section shall be used for the development of a public information campaign that may include public service announcements, paid educational messages for print media, public transit advertising, electronic broadcast media, and any other mode of conveying information that the Secretary determines to be appropriate.

(e) Criteria

The criteria for awarding grants shall ensure that an applicant—

(1) will conduct activities that educate communities and groups at greatest risk;

(2) has a record of high quality campaigns of a comparable type; and

(3) has a record of high quality campaigns that educate the population groups identified as most at risk.

(f) Inclusion of representatives of Indians

For purposes of this section, the term “public or private nonprofit entity” includes an “Indian tribe” or “tribal organization”, as defined in section 450b of title 25.

(Pub. L. 98-457, title III, §314, as added Pub. L. 102-295, title III, §320, May 28, 1992, 106 Stat. 209.)

FEDERAL EMPLOYEE DOMESTIC VIOLENCE AWARENESS
CAMPAIGN

Memorandum of President of the United States, Oct. 2, 1995, 60 F.R. 52821, provided:

Memorandum for Heads of Executive Departments and Agencies

Domestic violence is not a private, family dispute that affects only the people involved. Domestic violence is violent criminal activity that affects us all, regardless of race, income, or age, in every community in this country. It means higher health care costs, increased absenteeism, and declining productivity. It destroys families, relationships, and lives. More importantly, it tears at the moral fabric of who we are and undermines the very institution that has been the cornerstone of our country: the family.

In passing the Violence Against Women Act [probably means the Violence Against Women Act of 1994, title IV of Pub. L. 103-322, see Tables for classification] as part of the Violent Crime Control Act (“VCCA”) [probably means the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322, see Tables for classification] last year, the Congress recognized the seriousness of the problem of domestic violence. This new law combines tough new penalties with programs to prosecute offenders and help women victims. In the last year, every State has received a down payment of \$426,000 in grants to help train prosecutors, police, and service providers in combatting the problem of domestic violence. Moreover, because of the VCCA, every State will now ensure that women who have been assaulted will not have to pay for their medical examinations resulting from rape and other acts of violence.

Throughout October, National Domestic Violence Awareness Month, business, labor, law enforcement, public health, and civic organizations will be working to increase our understanding of this problem and create solutions that can save lives. I believe the Federal Government has a responsibility to be a leader in this effort.

Today, I am directing that executive departments and agencies institute employee awareness campaigns on domestic violence. Within the next 6 months, you should implement a program to promote Federal employee awareness of the problem of domestic violence and the programs and resources that are available for victims. I support and encourage the initial plans made by the Justice Department, which include the production of a resource manual and a poster, and the scheduling of a Violence Against Women Information Fair on October 30, 1995. This fair will include speakers, artwork, and exhibits.

We have a responsibility to assist all victims of domestic violence and their families trapped in a cycle of violence with no sense of where to turn. Often, victims will not report their circumstances to the public, but they may turn to coworkers for help. Thus, by providing information to all Federal workers on the programs available, we can make a contribution to the effort to protect women from abuse and reduce the level of violence in America.

The Director of the Office Management and Budget is authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10412 of this title.

§ 10415. Model State leadership grants for domestic violence intervention**(a) In general**

The Secretary, in cooperation with the Attorney General, shall award grants to not more than 10 States to assist such States in becoming model demonstration States and in meeting the costs of improving State leadership concerning activities that will—

- (1) increase the number of prosecutions for domestic violence crimes;
- (2) encourage the reporting of incidences of domestic violence; and
- (3) facilitate “arrests and aggressive” prosecution policies.

(b) Designation as model State

To be designated as a model State under subsection (a) of this section, a State shall have in effect—

- (1) a law that requires mandatory arrest of a person that police have probable cause to believe has committed an act of domestic violence or probable cause to believe has violated an outstanding civil protection order;
- (2) a law or policy that discourages “dual” arrests;

(3) statewide prosecution policies that—

- (A) authorize and encourage prosecutors to pursue cases where a criminal case can be proved, including proceeding without the active involvement of the victim if necessary; and
- (B) implement model projects that include either—

- (i) a “no-drop” prosecution policy; or
- (ii) a vertical prosecution policy; and

- (C) limit diversion to extraordinary cases, and then only after an admission before a judicial officer has been entered;

(4) statewide guidelines for judges that—

- (A) reduce the automatic issuance of mutual restraining or protective orders in cases where only one spouse has sought a restraining or protective order;
- (B) discourage custody or joint custody orders by spouse abusers; and
- (C) encourage the understanding of domestic violence as a serious criminal offense and not a trivial dispute; and

- (5) develop and disseminate methods to improve the criminal justice system’s response to domestic violence to make existing remedies as easily available as possible to victims of domestic violence, including reducing delay, eliminating court fees, and providing easily understandable court forms.

(c) Authorization of appropriations**(1) In general**

In addition to the funds authorized to be appropriated under section 10409 of this title, there are authorized to be appropriated to make grants under this section \$25,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 through 1995.

(2) Limitation

A grant may not be made under this section in an amount less than \$2,000,000.

(3) Delegation and transfer

The Secretary shall delegate to the Attorney General the Secretary's responsibilities for carrying out this section and shall transfer to the Attorney General the funds appropriated under this section for the purpose of making grants under this section.

(Pub. L. 98-457, title III, §315, as added Pub. L. 102-295, title III, §321, May 28, 1992, 106 Stat. 210.)

§ 10416. National domestic violence hotline grant**(a) In general**

The Secretary may award a grant to a private, nonprofit entity to provide for the operation of a national, toll-free telephone hotline to provide information and assistance to victims of domestic violence.

(b) Duration

A grant under this section may extend over a period of not more than 5 years.

(c) Annual approval

The provision of payments under a grant under this section shall be subject to annual approval by the Secretary and subject to the availability of appropriations for each fiscal year to make the payments.

(d) Activities

Funds received by an entity under this section shall be used to establish and operate a national, toll-free telephone hotline to provide information and assistance to victims of domestic violence. In establishing and operating the hotline, a private, nonprofit entity shall—

- (1) contract with a carrier for the use of a toll-free telephone line;
- (2) employ, train, and supervise personnel to answer incoming calls and provide counseling and referral services to callers on a 24-hour-a-day basis;
- (3) assemble and maintain a current database of information relating to services for victims of domestic violence to which callers may be referred throughout the United States, including information on the availability of shelters that serve battered women; and
- (4) publicize the hotline to potential users throughout the United States.

(e) Application

A grant may not be made under this section unless an application for such grant has been approved by the Secretary. To be approved by the Secretary under this subsection an application shall—

- (1) contain such agreements, assurances, and information, be in such form and be submitted in such manner as the Secretary shall prescribe through notice in the Federal Register;
- (2) include a complete description of the applicant's plan for the operation of a national domestic violence hotline, including descriptions of—
 - (A) the training program for hotline personnel;
 - (B) the hiring criteria for hotline personnel;
 - (C) the methods for the creation, maintenance and updating of a resource database;

(D) a plan for publicizing the availability of the hotline;

(E) a plan for providing service to non-English speaking callers, including hotline personnel who speak Spanish; and

(F) a plan for facilitating access to the hotline by persons with hearing impairments;

(3) demonstrate that the applicant has nationally recognized expertise in the area of domestic violence and a record of high quality service to victims of domestic violence, including a demonstration of support from advocacy groups, such as domestic violence State coalitions or recognized national domestic violence groups;

(4) demonstrates that the applicant has a commitment to diversity, and to the provision of services to ethnic, racial, and non-English speaking minorities, in addition to older individuals and individuals with disabilities; and

(5) contain such other information as the Secretary may require.

(f) Authorization of appropriations**(1) In general**

There are authorized to be appropriated to carry out this section \$2,000,000 for each of fiscal years 2001 through 2005.

(2) Availability

Funds authorized to be appropriated under paragraph (1) shall remain available until expended.

(Pub. L. 98-457, title III, §316, as added Pub. L. 103-322, title IV, §40211, Sept. 13, 1994, 108 Stat. 1925; amended Pub. L. 106-386, div. B, title II, §1204, Oct. 28, 2000, 114 Stat. 1507.)

AMENDMENTS

2000—Subsec. (f)(1). Pub. L. 106-386 added par. (1) and struck out heading and text of former par. (1). Text read as follows: "There are authorized to be appropriated to carry out this section—

- “(A) \$1,000,000 for fiscal year 1995;
- “(B) \$400,000 for fiscal year 1996;
- “(C) \$400,000 for fiscal year 1997;
- “(D) \$400,000 for fiscal year 1998;
- “(E) \$400,000 for fiscal year 1999; and
- “(F) \$400,000 for fiscal year 2000.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 10417. Youth education and domestic violence**(a) General purpose**

For purposes of this section, the Secretary may, in consultation with the Secretary of Education, select, implement and evaluate 4 model programs for education of young people about domestic violence and violence among intimate partners.

(b) Nature of program

The Secretary shall select, implement and evaluate separate model programs for 4 different audiences: primary schools, middle schools, secondary schools, and institutions of higher education. The model programs shall be selected, implemented, and evaluated in consultation

with educational experts, legal and psychological experts on battering, and victim advocate organizations such as battered women's shelters, State coalitions and resource centers.

(c) Review and dissemination

Not later than 2 years after September 13, 1994, the Secretary shall transmit the design and evaluation of the model programs, along with a plan and cost estimate for nationwide distribution, to the relevant committees of Congress for review.

(d) Authorization of appropriations

There are authorized to be appropriated to carry out this section \$400,000 for fiscal year 1996.

(Pub. L. 98-457, title III, §317, as added Pub. L. 103-322, title IV, §40251, Sept. 13, 1994, 108 Stat. 1935.)

PRIOR PROVISIONS

Provisions similar to this section were contained in Pub. L. 102-295, title III, §322, May 28, 1992, 106 Stat. 211, which directed Secretary of Education, in consultation with Secretary of Health and Human Services, to develop three separate programs, one each for primary and middle schools, secondary schools, and institutions of higher learning, for the purpose of educating young people about domestic violence and violence among intimate partners, further provided that such programs would be developed with input from educational experts, law enforcement personnel, legal and psychological experts on battering, and victim advocate organizations, further provided that not later than 9 months after May 28, 1992, the Secretary was to transmit model programs, along with plan and cost estimate for nationwide distribution, to Congress for review, and further provided appropriation of \$200,000 for fiscal year 1992, to carry out these functions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 10418. Demonstration grants for community initiatives

(a) In general

The Secretary shall provide grants to nonprofit private organizations to establish projects in local communities involving many sectors of each community to coordinate intervention and prevention of domestic violence.

(b) Eligibility

To be eligible for a grant under this section, an entity—

(1) shall be a nonprofit organization organized for the purpose of coordinating community projects for the intervention in and prevention of domestic violence; and

(2) shall include representatives of pertinent sectors of the local community, which may include—

- (A) health care providers;
- (B) the education community;
- (C) the religious community;
- (D) the justice system;
- (E) domestic violence program advocates;
- (F) human service entities such as State child services divisions;
- (G) business and civic leaders; and
- (H) other pertinent sectors.

(c) Applications

An organization that desires to receive a grant under this section shall submit to the Secretary an application, in such form and in such manner as the Secretary shall prescribe through notice in the Federal Register, that—

(1) demonstrates that the applicant will serve a community leadership function, bringing together opinion leaders from each sector of the community to develop a coordinated community consensus opposing domestic violence;

(2) demonstrates a community action component to improve and expand current intervention and prevention strategies through increased communication and coordination among all affected sectors;

(3) includes a complete description of the applicant's plan for the establishment and operation of the community project, including a description of—

(A) the method for identification and selection of an administrative committee made up of persons knowledgeable in domestic violence to oversee the project, hire staff, assure compliance with the project outline, and secure annual evaluation of the project;

(B) the method for identification and selection of project staff and a project evaluator;

(C) the method for identification and selection of a project council consisting of representatives of the community sectors listed in subsection (b)(2) of this section;

(D) the method for identification and selection of a steering committee consisting of representatives of the various community sectors who will chair subcommittees of the project council focusing on each of the sectors; and

(E) a plan for developing outreach and public education campaigns regarding domestic violence; and

(4) contains such other information, agreements, and assurances as the Secretary may require.

(d) Term

A grant provided under this section may extend over a period of not more than 3 fiscal years.

(e) Conditions on payment

Payments under a grant under this section shall be subject to—

- (1) annual approval by the Secretary; and
- (2) availability of appropriations.

(f) Geographical dispersion

The Secretary shall award grants under this section to organizations in communities geographically dispersed throughout the country.

(g) Use of grant monies

(1) In general

A grant made under subsection (a) of this section shall be used to establish and operate a community project to coordinate intervention and prevention of domestic violence.

(2) Requirements

In establishing and operating a project, a nonprofit private organization shall—

(A) establish protocols to improve and expand domestic violence intervention and prevention strategies among all affected sectors;

(B) develop action plans to direct responses within each community sector that are in conjunction with development in all other sectors; and

(C) provide for periodic evaluation of the project with a written report and analysis to assist application of this concept in other communities.

(h) Authorization of appropriations

There are authorized to be appropriated to carry out this section \$6,000,000 for each of fiscal years 2001 through 2005.

(i) Regulations

Not later than 60 days after September 13, 1994, the Secretary shall publish proposed regulations implementing this section. Not later than 120 days after September 13, 1994, the Secretary shall publish final regulations implementing this section.

(Pub. L. 98-457, title III, §318, as added Pub. L. 103-322, title IV, §40261, Sept. 13, 1994, 108 Stat. 1935; amended Pub. L. 105-392, title IV, §407(a), Nov. 13, 1998, 112 Stat. 3589; Pub. L. 106-386, div. B, title IV, §1403, Oct. 28, 2000, 114 Stat. 1514.)

AMENDMENTS

2000—Subsec. (h). Pub. L. 106-386 added subsec. (h) and struck out heading and text of former subsec. (h). Text read as follows: “There are authorized to be appropriated to carry out this section—

“(1) \$4,000,000 for fiscal year 1996; and

“(2) \$6,000,000 for for each of the fiscal years 1997 through 2002.”

1998—Subsec. (h)(2). Pub. L. 105-392 substituted “for each of the fiscal years 1997 through 2002” for “fiscal year 1997”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 10419. Transitional housing assistance

(a) In general

The Secretary shall award grants under this section to carry out programs to provide assistance to individuals, and their dependents—

(1) who are homeless or in need of transitional housing or other housing assistance, as a result of fleeing a situation of domestic violence; and

(2) for whom emergency shelter services are unavailable or insufficient.

(b) Assistance described

Assistance provided under this section may include—

(1) short-term housing assistance, including rental or utilities payments assistance and assistance with related expenses, such as payment of security deposits and other costs incidental to relocation to transitional housing, in cases in which assistance described in this paragraph is necessary to prevent homelessness because an individual or dependent is fleeing a situation of domestic violence; and

(2) support services designed to enable an individual or dependent who is fleeing a situa-

tion of domestic violence to locate and secure permanent housing, and to integrate the individual or dependent into a community, such as transportation, counseling, child care services, case management, employment counseling, and other assistance.

(c) Term of assistance

(1) In general

Subject to paragraph (2), an individual or dependent assisted under this section may not receive assistance under this section for a total of more than 12 months.

(2) Waiver

The recipient of a grant under this section may waive the restrictions of paragraph (1) for up to an additional 6-month period with respect to any individual (and dependents of the individual) who has made a good-faith effort to acquire permanent housing and has been unable to acquire the housing.

(d) Reports

(1) Report to Secretary

(A) In general

An entity that receives a grant under this section shall annually prepare and submit to the Secretary a report describing the number of individuals and dependents assisted, and the types of housing assistance and support services provided, under this section.

(B) Contents

Each report shall include information on—

(i) the purpose and amount of housing assistance provided to each individual or dependent assisted under this section;

(ii) the number of months each individual or dependent received the assistance;

(iii) the number of individuals and dependents who were eligible to receive the assistance, and to whom the entity could not provide the assistance solely due to a lack of available housing; and

(iv) the type of support services provided to each individual or dependent assisted under this section.

(2) Report to Congress

The Secretary shall annually prepare and submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report that contains a compilation of the information contained in reports submitted under paragraph (1).

(e) Evaluation, monitoring, and administration

Of the amount appropriated under subsection (f) of this section for each fiscal year, not more than 1 percent shall be used by the Secretary for evaluation, monitoring, and administrative costs under this section.

(f) Authorization of appropriations

There are authorized to be appropriated to carry out this section \$25,000,000 for fiscal year 2001.

(Pub. L. 98-457, title III, §319, as added Pub. L. 106-386, div. B, title II, §1203, Oct. 28, 2000, 114 Stat. 1506.)

§ 10420. Safe havens for children pilot program

(a) In general

The Attorney General may award grants to States, units of local government, and Indian tribal governments that propose to enter into or expand the scope of existing contracts and cooperative agreements with public or private non-profit entities to provide supervised visitation and safe visitation exchange of children by and between parents in situations involving domestic violence, child abuse, sexual assault, or stalking.

(b) Considerations

In awarding grants under subsection (a) of this section, the Attorney General shall take into account—

- (1) the number of families to be served by the proposed visitation programs and services;
- (2) the extent to which the proposed supervised visitation programs and services serve underserved populations (as defined in section 3796gg-2 of this title);
- (3) with respect to an applicant for a contract or cooperative agreement, the extent to which the applicant demonstrates cooperation and collaboration with nonprofit, nongovernmental entities in the local community served, including the State or tribal domestic violence coalition, State or tribal sexual assault coalition, local shelters, and programs for domestic violence and sexual assault victims; and
- (4) the extent to which the applicant demonstrates coordination and collaboration with State and local court systems, including mechanisms for communication and referral.

(c) Applicant requirements

The Attorney General shall award grants for contracts and cooperative agreements to applicants that—

- (1) demonstrate expertise in the area of family violence, including the areas of domestic violence or sexual assault, as appropriate;
- (2) ensure that any fees charged to individuals for use of programs and services are based on the income of those individuals, unless otherwise provided by court order;
- (3) demonstrate that adequate security measures, including adequate facilities, procedures, and personnel capable of preventing violence, are in place for the operation of supervised visitation programs and services or safe visitation exchange; and
- (4) prescribe standards by which the supervised visitation or safe visitation exchange will occur.

(d) Reporting

(1) In general

Not later than 1 year after the last day of the first fiscal year commencing on or after October 28, 2000, and not later than 180 days after the last day of each fiscal year thereafter, the Attorney General shall submit to Congress a report that includes information concerning—

- (A) the number of—
 - (i) individuals served and the number of individuals turned away from visitation

programs and services and safe visitation exchange (categorized by State);

(ii) the number of individuals from underserved populations served and turned away from services; and

(iii) the type of problems that underlie the need for supervised visitation or safe visitation exchange, such as domestic violence, child abuse, sexual assault, other physical abuse, or a combination of such factors;

(B) the numbers of supervised visitations or safe visitation exchanges ordered under this section during custody determinations under a separation or divorce decree or protection order, through child protection services or other social services agencies, or by any other order of a civil, criminal, juvenile, or family court;

(C) the process by which children or abused partners are protected during visitations, temporary custody transfers, and other activities for which supervised visitation is established under this section;

(D) safety and security problems occurring during the reporting period during supervised visitation under this section, including the number of parental abduction cases; and

(E) the number of parental abduction cases in a judicial district using supervised visitation programs and services under this section, both as identified in criminal prosecution and custody violations.

(2) Guidelines

The Attorney General shall establish guidelines for the collection and reporting of data under this subsection.

(e) Authorization of appropriations

There is authorized to be appropriated to carry out this section \$15,000,000 for each of fiscal years 2001 and 2002.

(f) Allotment for Indian tribes

Not less than 5 percent of the total amount made available for each fiscal year to carry out this section shall be available for grants to Indian tribal governments.

(Pub. L. 106-386, div. B, title III, § 1301, Oct. 28, 2000, 114 Stat. 1509.)

CODIFICATION

Section was enacted as part of the Violence Against Women Act of 2000 and also as part of the Victims of Trafficking and Violence Protection Act of 2000, and not as part of the Family Violence Prevention and Services Act which comprises this chapter.

DEFINITIONS

For definitions of “domestic violence” and “sexual assault” used in this section, see section 1002 of Pub. L. 106-386, set out as a note under section 3796gg-2 of this title.

CHAPTER 111—EMERGENCY FEDERAL LAW ENFORCEMENT ASSISTANCE

Sec.
10501.

Application for assistance.

(a) State as applicant.

(b) Execution of application; period for action of Attorney General on application.

- Sec.
- 10502. (c) Criteria. Definitions.
 - 10503. Limitation on authority.
 - (a) Federal investigations.
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 - (d) Federal supplantation of State funds.
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 - 10504. Prohibition of discrimination.
 - (a) Federally assisted emergency assistance activities.
 - (b) Provisions of section 3789d(c)(3) and (4) of this title applicable to violations.
 - 10505. Confidentiality of information.
 - 10506. Prohibition of land acquisition.
 - 10507. Repayment.
 - (a) Violation of conditions; amount.
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 - 10508. Recordkeeping requirement.
 - 10509. Repealed.
 - 10510. Bureau of Justice Assistance.
 - 10511. Limitation on civil justice matters.
 - 10512. Issuance of rules.
 - 10513. Authorization of appropriations.
 - (a) Assistance in form of funds.
 - (b) Assistance other than funds.

§ 10501. Application for assistance

(a) State as applicant

In the event that a law enforcement emergency exists throughout a State or a part of a State, a State (on behalf of itself or another appropriate unit of government) may submit an application under this section for Federal law enforcement assistance.

(b) Execution of application; period for action of Attorney General on application

An application for assistance under this section shall be submitted in writing by the chief executive officer of a State to the Attorney General, in a form prescribed by rules issued by the Attorney General. The Attorney General shall, after consultation with the Director of the Office of Justice Assistance and appropriate members of the Federal law enforcement community, approve or disapprove such application not later than 10 days after receiving such application.

(c) Criteria

Federal law enforcement assistance may be provided if such assistance is necessary to provide an adequate response to a law enforcement emergency. In determining whether to approve or disapprove an application for assistance under this section, the Attorney General shall consider—

- (1) the nature and extent of such emergency throughout a State or in any part of a State,
- (2) the situation or extraordinary circumstances which produced such emergency,
- (3) the availability of State and local criminal justice resources to resolve the problem,
- (4) the cost associated with the increased Federal presence,
- (5) the need to avoid unnecessary Federal involvement and intervention in matters primarily of State and local concern, and
- (6) any assistance which the State or other appropriate unit of government has received, or could receive, under any provision of title I

of the Omnibus Crime Control and Safe Streets Act of 1968 [42 U.S.C. 3701 et seq.].

(Pub. L. 98-473, title II, §609M, Oct. 12, 1984, 98 Stat. 2103.)

REFERENCES IN TEXT

The Omnibus Crime Control and Safe Streets Act of 1968, referred to in subsec. (c)(6), is Pub. L. 90-351, June 19, 1968, 82 Stat. 197, as amended, title I of which is classified principally to chapter 46 (§3701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3701 of this title and Tables.

EFFECTIVE DATE

Chapter effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98-473, set out as a note under section 3711 of this title.

§ 10502. Definitions

For purposes of this chapter—

(1) the term “Federal law enforcement assistance” means funds, equipment, training, intelligence information, and personnel,

(2) the term “Federal law enforcement community” means the heads of the following departments or agencies:

- (A) the Federal Bureau of Investigation,
- (B) the Drug Enforcement Administration,
- (C) the Criminal Division of the Department of Justice,
- (D) the Internal Revenue Service,
- (E) the Customs Service,
- (F) the Immigration and Naturalization Service,
- (G) the United States Marshals Service,
- (H) the National Park Service,
- (I) the United States Postal Service,
- (J) the Secret Service,
- (K) the Coast Guard,
- (L) the Bureau of Alcohol, Tobacco, and Firearms, and

(M) other Federal agencies with specific statutory authority to investigate violations of Federal criminal laws,

(3) the term “law enforcement emergency” means an uncommon situation which requires law enforcement, which is or threatens to become of serious or epidemic proportions, and with respect to which State and local resources are inadequate to protect the lives and property of citizens or to enforce the criminal law, except that such term does not include—

- (A) the perceived need for planning or other activities related to crowd control for general public safety projects, or
- (B) a situation requiring the enforcement of laws associated with scheduled public events, including political conventions and sports events, and

(4) the term “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Commonwealth of the Northern Mariana Islands.

(Pub. L. 98-473, title II, §609N, Oct. 12, 1984, 98 Stat. 2104.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this subdivision” probably meaning subtitle B (that

probably should have been designated “subdivision” B) of division I of chapter VI of title II of Pub. L. 98–473, which enacted this chapter.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC
ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 10503. Limitation on authority

(a) Federal investigations

Nothing in this chapter authorizes the use of Federal law enforcement personnel to investigate violations of criminal law other than violations with respect to which investigation is authorized by other provisions of law.

(b) Federal supervision

Nothing in this chapter shall be construed to authorize the Attorney General or the Federal law enforcement community to exercise any direction, supervision, or control over any police force or other criminal justice agency of an applicant for Federal law enforcement assistance.

(c) Racial balance in criminal justice agencies

Nothing in this chapter shall be construed to authorize the Attorney General or the Federal law enforcement community—

(1) to condition the availability or amount of Federal law enforcement assistance upon the adoption by an applicant for such assistance of, or

(2) to deny or discontinue such assistance upon the failure of such applicant to adopt,

a percentage ratio, quota system, or other program to achieve racial balance in any criminal justice agency of such applicant.

(d) Federal supplantation of State funds

No funds provided under this chapter may be used to supplant State or local funds that would otherwise be made available for such purposes.

(e) Other authorities unaffected

Nothing in this chapter shall be construed to limit any authority to provide emergency assistance otherwise provided by law.

(Pub. L. 98–473, title II, §609O, Oct. 12, 1984, 98 Stat. 2105.)

§ 10504. Prohibition of discrimination

(a) Federally assisted emergency assistance activities

No person in any State shall, on the ground of race, color, religion, national origin, or sex, be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in connection with any activity for which Federal law enforcement assistance is provided under this chapter.

(b) Provisions of section 3789d(c)(3) and (4) of this title applicable to violations

Paragraph (3) and paragraph (4) of section 3789d(c) of this title shall apply with respect to a violation of subsection (a) of this section, except that the terms “this section” and “paragraph (1)”, as such terms appear in such paragraphs, shall be deemed to be references to sub-

section (a) of this section, and a reference to the Office of Justice Programs in such paragraphs shall be deemed to be a reference to the Attorney General.

(Pub. L. 98–473, title II, §609P, Oct. 12, 1984, 98 Stat. 2105.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10507 of this title.

§ 10505. Confidentiality of information

Section 3789g of this title shall apply with respect to—

(1) information furnished under this chapter,

(2) criminal history information collected, stored, or disseminated with the support of Federal law enforcement assistance provided under this chapter, and

(3) criminal intelligence systems operating with the support of Federal law enforcement assistance provided under this chapter,

except that the terms “this chapter” and “this section”, as such terms appear in such section 3789g of this title, shall be deemed to be references to this chapter and this section, respectively, and a reference to the Office of Justice Programs in such section 3789g shall be deemed to be a reference to the Attorney General.

(Pub. L. 98–473, title II, §609Q, Oct. 12, 1984, 98 Stat. 2105.)

§ 10506. Prohibition of land acquisition

No funds provided under this chapter shall be used for land acquisition.

(Pub. L. 98–473, title II, §609R, Oct. 12, 1984, 98 Stat. 2106.)

§ 10507. Repayment

(a) Violation of conditions; amount

If Federal law enforcement assistance provided under this chapter is used by the recipient of such assistance in violation of section 10504¹ of this title or for any purpose other than the purpose for which it is provided, then such recipient shall promptly repay to the Attorney General an amount equal to the value of such assistance.

(b) Civil action

The Attorney General may bring a civil action in an appropriate United States district court to recover any amount required to be repaid under subsection (a) of this section.

(Pub. L. 98–473, title II, §609S, Oct. 12, 1984, 98 Stat. 2106.)

REFERENCES IN TEXT

Section 10504 of this title, referred to in subsec. (a), was in the original a reference to “section 554”, and was translated as if it had been a reference to section 609P of Pub. L. 98–473, which is classified to section 10504 of this title to reflect the probable intent of Congress as manifested in earlier versions of Emergency Federal Law Enforcement Assistance provisions introduced in the Congress. Pub. L. 98–473 does not contain a section 554.

¹ See References in Text note below.

§ 10508. Recordkeeping requirement

(a) Each recipient of Federal law enforcement assistance provided under this chapter shall keep such records as the Attorney General may prescribe to facilitate an effective audit.

(b) The Attorney General and the Comptroller General of the United States shall have access, for the purpose of audit and examination, to any books, documents, and records of recipients of Federal law enforcement assistance provided under this chapter which, in the opinion of the Attorney General or the Comptroller General, are related to the receipt or use of such assistance.

(Pub. L. 98-473, title II, § 609T, Oct. 12, 1984, 98 Stat. 2106.)

§ 10509. Repealed. Pub. L. 105-362, title X, § 1001(a), Nov. 10, 1998, 112 Stat. 3291

Section, Pub. L. 98-473, title II, § 609U, Oct. 12, 1984, 98 Stat. 2106, related to Attorney General's annual report to Congress and the President on emergency Federal law enforcement assistance.

§ 10510. Bureau of Justice Assistance

The Director of the Bureau of Justice Assistance may assist the Attorney General in providing Federal law enforcement assistance under this chapter and in coordinating the activities authorized under this chapter.

(Pub. L. 98-473, title II, § 609V, Oct. 12, 1984, 98 Stat. 2106.)

TRANSFER OF FUNCTIONS

Effective Aug. 1, 2000, all functions of Director of Bureau of Justice Assistance, other than those enumerated in section 3742(3) to (6) of this title, transferred to Assistant Attorney General for Office of Justice Programs, see section 1000(a)(1) [title I, § 108(b)] of Pub. L. 106-113, set out as a note under section 3741 of this title.

§ 10511. Limitation on civil justice matters

Federal law enforcement assistance provided under this chapter may not be used with respect to civil justice matters except to the extent that such civil justice matters bear directly and substantially upon criminal justice matters or are inextricably intertwined with criminal justice matters.

(Pub. L. 98-473, title II, § 609W, Oct. 12, 1984, 98 Stat. 2106.)

§ 10512. Issuance of rules

The Attorney General, after consultation with appropriate members of the law enforcement community and with State and local officials, shall issue rules to carry out this chapter.

(Pub. L. 98-473, title II, § 609X, Oct. 12, 1984, 98 Stat. 2107.)

§ 10513. Authorization of appropriations

(a) Assistance in form of funds

There is authorized to be appropriated \$20,000,000 for each fiscal year ending after September 30, 1984, to provide under this chapter Federal law enforcement assistance in the form of funds.

(b) Assistance other than funds

There are authorized to be appropriated for each fiscal year ending after September 30, 1984,

such sums as may be necessary to provide under this chapter Federal law enforcement assistance other than funds.

(Pub. L. 98-473, title II, § 609Y, Oct. 12, 1984, 98 Stat. 2107.)

CHAPTER 112—VICTIM COMPENSATION AND ASSISTANCE

- Sec. 10601. Crime Victims Fund.
 - (a) Establishment.
 - (b) Fines deposited in Fund; penalties; forfeited appearance bonds.
 - § Retention of sums in Fund; availability for expenditure without fiscal year limitation.
 - (d) Availability for judicial branch administrative costs; grant program percentages.
 - (e) Amounts awarded and unspent.
 - (f) "Offenses against the United States" as excluding.
 - (g) Grants for Indian tribes; child abuse cases.
- 10602. Crime victim compensation.
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 - (b) Eligible crime victim compensation programs.
 - (c) Exclusion from income, resources, and assets for purposes of means tests.
 - (d) Definitions.
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- 10603. Crime victim assistance.
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 - (d) Revealing research or statistical information; prohibition; immunity from legal proceedings; permission; admission of information as evidence.
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 - (a) Office established within Department of Justice.
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10607. Services to victims.
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- (a) In general.
- (b) Limited access.
- (c) Restrictions.
- (d) Donations.
- (e) Construction.
- (f) "State" defined.
- (g) Rules.
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§ 10601. Crime Victims Fund

(a) Establishment

There is created in the Treasury a separate account to be known as the Crime Victims Fund (hereinafter in this chapter referred to as the "Fund").

(b) Fines deposited in Fund; penalties; forfeited appearance bonds

Except as limited by subsection (c) of this section, there shall be deposited in the Fund—

(1) all fines that are collected from persons convicted of offenses against the United States except—

(A) fines available for use by the Secretary of the Treasury pursuant to—

(i) section 11(d) of the Endangered Species Act (16 U.S.C. 1540(d)); and

(ii) section 6(d) of the Lacey Act Amendments of 1981 (16 U.S.C. 3375(d)); and

(B) fines to be paid into—

(i) the railroad unemployment insurance account pursuant to the Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.);

(ii) the Postal Service Fund pursuant to sections 2601(a)(2) and 2003 of title 39 and for the purposes set forth in section 404(a)(8) of title 39;

(iii) the navigable waters revolving fund pursuant to section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321); and

(iv) county public school funds pursuant to section 3613 of title 18;

(2) penalty assessments collected under section 3013 of title 18;¹

(3) the proceeds of forfeited appearance bonds, bail bonds, and collateral collected under section 3146 of title 18;

(4) any money ordered to be paid into the Fund under section 3671(c)(2) of title 18; and

(5) any gifts, bequests, or donations to the Fund from private entities or individuals.

(c) Retention of sums in Fund; availability for expenditure without fiscal year limitation

Sums deposited in the Fund shall remain in the Fund and be available for expenditure under

this chapter for grants under this chapter without fiscal year limitation. Notwithstanding subsection (d)(5) of this section, all sums deposited in the Fund in any fiscal year that are not made available for obligation by Congress in the subsequent fiscal year shall remain in the Fund for obligation in future fiscal years, without fiscal year limitation.

(d) Availability for judicial branch administrative costs; grant program percentages

The Fund shall be available as follows:

(1) Repealed. Pub. L. 105-119, title I, § 109(a)(1), Nov. 26, 1997, 111 Stat. 2457.

(2)(A) Except as provided in subparagraph (B), the first \$10,000,000 deposited in the Fund shall be available for grants under section 10603a of this title.

(B)(i) For any fiscal year for which the amount deposited in the Fund is greater than the amount deposited in the Fund for fiscal year 1998, the \$10,000,000 referred to in subparagraph (A) plus an amount equal to 50 percent of the increase in the amount from fiscal year 1998 shall be available for grants under section 10603a of this title.

(ii) Amounts available under this subparagraph for any fiscal year shall not exceed \$20,000,000.

(3) Of the sums remaining in the Fund in any particular fiscal year after compliance with paragraph (2), such sums as may be necessary shall be available for the United States Attorneys Offices and the Federal Bureau of Investigation to improve services for the benefit of crime victims in the Federal criminal justice system, and for a Victim Notification System.

(4) Of the remaining amount to be distributed from the Fund in a particular fiscal year—

(A) 47.5 percent shall be available for grants under section 10602 of this title;

(B) 47.5 percent shall be available for grants under section 10603(a) of this title; and

(C) 5 percent shall be available for grants under section 10603(c) of this title.

(5)(A) In addition to the amounts distributed under paragraphs (2), (3), and (4), the Director may set aside up to \$50,000,000 from the amounts transferred to the Fund in response to the airplane hijackings and terrorist acts that occurred on September 11, 2001, as an antiterrorism emergency reserve. The Director may replenish any amounts expended from such reserve in subsequent fiscal years by setting aside up to 5 percent of the amounts remaining in the Fund in any fiscal year after distributing amounts under paragraphs (2), (3) and (4). Such reserve shall not exceed \$50,000,000.

(B) The antiterrorism emergency reserve referred to in subparagraph (A) may be used for supplemental grants under section 10603b of this title and to provide compensation to victims of international terrorism under section 10603c of this title.

(C) Amounts in the antiterrorism emergency reserve established pursuant to subparagraph (A) may be carried over from fiscal year to fiscal year. Notwithstanding subsection (c) of

¹ See References in Text note below.

this section and section 619 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2001 (and any similar limitation on Fund obligations in any future Act, unless the same should expressly refer to this section), any such amounts carried over shall not be subject to any limitation on obligations from amounts deposited to or available in the Fund.

(e) Amounts awarded and unspent

Any amount awarded as part of a grant under this chapter that remains unspent at the end of a fiscal year in which the grant is made may be expended for the purpose for which the grant is made at any time during the 3 succeeding fiscal years, at the end of which period, any remaining unobligated sums shall be available for deposit into the emergency reserve fund referred to in subsection (d)(5) of this section at the discretion of the Director. Any remaining unobligated sums shall be returned to the Fund.

(f) "Offenses against the United States" as excluding

As used in this section, the term "offenses against the United States" does not include—

- (1) a criminal violation of the Uniform Code of Military Justice (10 U.S.C. 801 et seq.);
- (2) an offense against the laws of the District of Columbia; and
- (3) an offense triable by an Indian tribal court or Court of Indian Offenses.

(g) Grants for Indian tribes; child abuse cases

(1) The Attorney General, acting through the Director, shall use 15 percent of the funds available under subsection (d)(2) of this section to make grants for the purpose of assisting Native American Indian tribes in developing, establishing, and operating programs designed to improve—

- (A) the handling of child abuse cases, particularly cases of child sexual abuse, in a manner which limits additional trauma to the child victim; and
- (B) the investigation and prosecution of cases of child abuse, particularly child sexual abuse.

(2) As used in this subsection, the term "tribe"² has the meaning given that term in section 450b(b)³ of title 25.

(Pub. L. 98-473, title II, §1402, Oct. 12, 1984, 98 Stat. 2170; Pub. L. 99-401, title I, §102(b)(1), (2), Aug. 27, 1986, 100 Stat. 904; Pub. L. 99-646, §82, Nov. 10, 1986, 100 Stat. 3619; Pub. L. 100-690, title VII, §§7121, 7124, Nov. 18, 1988, 102 Stat. 4419, 4422; Pub. L. 101-647, title V, §504, Nov. 29, 1990, 104 Stat. 4822; Pub. L. 102-572, title X, §1001, Oct. 29, 1992, 106 Stat. 4520; Pub. L. 103-121, title I, §110(a), Oct. 27, 1993, 107 Stat. 1164; Pub. L. 103-322, title XXIII, §230201, title XXXIII, §330025(a), Sept. 13, 1994, 108 Stat. 2079, 2151; Pub. L. 104-132, title II, §§232(b), (c)(1), 236, Apr. 24, 1996, 110 Stat. 1243, 1244, 1247; Pub. L. 104-208, div. A, title I, §101(a) [title I, §112], Sept. 30, 1996, 110 Stat. 3009, 3009-21; Pub. L. 105-119, title I, §109(a), Nov. 26, 1997, 111 Stat. 2457; Pub. L. 106-113, div.

B, §1000(a)(1) [title I, §119], Nov. 29, 1999, 113 Stat. 1535, 1501A-22; Pub. L. 106-177, title I, §104(a), Mar. 10, 2000, 114 Stat. 36; Pub. L. 106-386, div. C, §2003(b), (c)(2), (d), Oct. 28, 2000, 114 Stat. 1544, 1546; Pub. L. 106-553, §1(a)(2) [title I, §113, formerly §114], Dec. 21, 2000, 114 Stat. 2762, 2762A-68, renumbered Pub. L. 106-554, §1(a)(4) [div. A, §213(a)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A-179; amended Pub. L. 107-56, title VI, §621(a)-(d), Oct. 26, 2001, 115 Stat. 370, 371; Pub. L. 107-77, title I, §111, Nov. 28, 2001, 115 Stat. 765.)

REFERENCES IN TEXT

The Railroad Unemployment Insurance Act, referred to in subsec. (b)(1)(B)(i), is act June 25, 1938, ch. 680, 52 Stat. 1094, as amended, which is classified principally to chapter 11 (§351 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 367 of Title 45 and Tables.

Section 3613 of title 18, referred to in subsec. (b)(1)(B)(iv), was repealed effective on the first day of the first calendar month beginning 36 months after Oct. 12, 1984 (Nov. 1, 1987), by Pub. L. 98-473, title II, §212(a)(2), 235(a)(1), Oct. 12, 1984, 98 Stat. 1987, 2031, as amended.

Section 3671(c)(2) of title 18, referred to in subsec. (b)(4), was renumbered section 3681(c)(2) by Pub. L. 99-646, §41(a), Nov. 10, 1986, 100 Stat. 3600.

Section 619 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2001, referred to in subsec. (d)(5)(C), is section 1(a)(2) [title VI, §619] of Pub. L. 106-553, which was formerly set out as a note below.

The Uniform Code of Military Justice, referred to in subsec. (f)(1), is classified generally to chapter 47 (§801 et seq.) of Title 10, Armed Forces.

Section 450b of title 25, referred to in subsec. (g)(2), has been amended, and subsec. (b) of section 450b no longer defines the term "Indian tribe". However, such term is defined elsewhere in that section.

AMENDMENTS

2001—Subsec. (b)(5). Pub. L. 107-56, §621(a), added par. (5).

Subsec. (c). Pub. L. 107-77, §111(b), amended heading and text of subsec. (c) to read as it did the day before enactment of amendment by Pub. L. 107-56. Text, as amended generally by Pub. L. 107-56, read as follows:

"(1) Subject to the availability of money in the Fund, in each fiscal year, beginning with fiscal year 2003, the Director shall distribute not less than 90 percent nor more than 110 percent of the amount distributed from the Fund in the previous fiscal year, except the Director may distribute up to 120 percent of the amount distributed in the previous fiscal year in any fiscal year that the total amount available in the Fund is more than 2 times the amount distributed in the previous fiscal year.

"(2) In each fiscal year, the Director shall distribute amounts from the Fund in accordance with subsection (d) of this section. All sums not distributed during a fiscal year shall remain in reserve in the Fund to be distributed during a subsequent fiscal year. Notwithstanding any other provision of law, all sums deposited in the Fund that are not distributed shall remain in reserve in the Fund for obligation in future fiscal years, without fiscal year limitation."

Pub. L. 107-56, §621(b), amended heading and text of subsec. (c) generally.

Subsec. (d)(3). Pub. L. 107-77, §111(a), inserted before period at end ", and for a Victim Notification System".

Subsec. (d)(4). Pub. L. 107-56, §621(c), substituted "to be distributed from" for "deposited in" in introductory provisions, "47.5 percent" for "48.5 percent" in subpars. (A) and (B), and "5 percent" for "3 percent" in subpar. (C).

Subsec. (d)(5). Pub. L. 107-56, §621(d), amended par. (5) generally. Prior to amendment, par. (5) read as follows:

²So in original. Probably should be "Indian tribe".

³See References in Text note below.

“(5)(A) If the sums available in the Fund are sufficient to fully provide grants to the States pursuant to section 10602(a)(1) of this title, the Director may retain any portion of the Fund that was deposited during a fiscal year that was in excess of 110 percent of the total amount deposited in the Fund during the preceding fiscal year as an emergency reserve. Such reserve shall not exceed \$100,000,000.

“(B) The emergency reserve referred to in subparagraph (A) may be used for supplemental grants under section 10603b of this title, to provide compensation to victims of international terrorism under the program under section 10603c of this title, and to supplement the funds available to provide grants to States for compensation and assistance in accordance with sections 10602 and 10603 of this title in years in which supplemental grants are needed.”

2000—Subsec. (c). Pub. L. 106-386, §2003(d), which directed insertion of “Notwithstanding subsection (d)(5) of this section, all sums deposited in the Fund in any fiscal year that are not made available for obligation by Congress in the subsequent fiscal year shall remain in the Fund for obligation in future fiscal years, without fiscal year limitation.” at the end of section 1402(c) of the Victims of Crime Act 1984, was executed by making the insertion at the end of subsec. (c) of this section, which is section 1402 of the Victims of Crime Act of 1984, to reflect the probable intent of Congress.

Subsec. (d)(2). Pub. L. 106-177 designated existing provisions as subpar. (A), substituted “Except as provided in subparagraph (B), the first \$10,000,000” for “The first \$10,000,000”, and added subpar. (B).

Subsec. (d)(3). Pub. L. 106-553, as renumbered by Pub. L. 106-554, inserted “and the Federal Bureau of Investigation” after “United States Attorneys Offices”.

Subsec. (d)(5)(A). Pub. L. 106-386, §2003(b)(1), substituted “\$100,000,000” for “\$50,000,000”.

Subsec. (d)(5)(B). Pub. L. 106-386, §2003(c)(2), inserted “, to provide compensation to victims of international terrorism under the program under section 10603c of this title,” after “section 10603b of this title”.

Subsec. (e). Pub. L. 106-386, §2003(b)(2), substituted “shall be available for deposit into the emergency reserve fund referred to in subsection (d)(5) of this section at the discretion of the Director. Any remaining unobligated sums” for “in excess of \$500,000 shall be returned to the Treasury. Any remaining unobligated sums in an amount less than \$500,000”.

1999—Subsec. (d)(3) to (5). Pub. L. 106-113 added par. (3), redesignated former pars. (3) and (4) as (4) and (5), respectively, and struck out former par. (5) which read as follows: “The Director may set aside up to \$500,000 of the reserve fund described in paragraph (4) to make supplemental grants to United States Attorneys Offices to provide necessary assistance to victims of the bombing of the Alfred P. Murrah Federal Building in Oklahoma City, to facilitate observation of and/or participation by such victims in trial proceedings arising therefrom, including, without limitation, provision of lodging and travel assistance, and to pay such other, related expenses determined to be necessary by the Director.”

1997—Subsec. (d)(1). Pub. L. 105-119, §109(a)(1), struck out par. (1) which read as follows: “The first \$6,200,000 deposited in the Fund in each of the fiscal years 1992 through 1995 and the first \$3,000,000 in each fiscal year thereafter shall be available to the judicial branch for administrative costs to carry out the functions of the judicial branch under sections 3611 and 3612 of title 18.”

Subsec. (d)(2). Pub. L. 105-119, §109(a)(2), substituted “The first” for “the next”.

1996—Subsec. (c). Pub. L. 104-132, §232(c)(1)(A), substituted “under this chapter” for “under this subsection”.

Subsec. (d)(3)(B). Pub. L. 104-132, §236, substituted “section 10603(a) of this title” for “section 10603a of this title”.

Subsec. (d)(4). Pub. L. 104-132, §232(b), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “The Director may retain any portion of the

Fund that was deposited during a fiscal year that is in excess of 110 percent of the total amount deposited in the Fund during the preceding fiscal year as a reserve for use in a year in which the Fund falls below the amount available in the previous year. Such reserve may not exceed \$20,000,000.”

Subsec. (d)(5). Pub. L. 104-208 added par. (5).

Subsec. (e). Pub. L. 104-208 substituted “3 succeeding fiscal years” for “2 succeeding fiscal years”.

Pub. L. 104-132, §232(c)(1)(B), reenacted heading without change and amended text generally. Prior to amendment, text read as follows:

“(1) Except as provided in paragraph (2), any sums awarded as part of a grant under this chapter that remain unspent at the end of a fiscal year in which such grant is made may be expended for the purpose for which such grant is made at any time during the next succeeding fiscal year, at the end of which year any remaining unobligated sums shall be returned to the general fund of the Treasury.

“(2) For the purposes of the application of paragraph (1) to any grant under this chapter with respect to fiscal year 1985, there shall be substituted in such paragraph ‘two succeeding fiscal years’ for ‘succeeding fiscal year’ and ‘which period’ for ‘which year.’”

1994—Subsec. (d)(2). Pub. L. 103-322, §230201(a)(1), added par. (2) and struck out former par. (2) which read as follows: “Of the next \$100,000,000 deposited in the Fund in a particular fiscal year—

“(A) 49.5 percent shall be available for grants under section 10602 of this title;

“(B) 45 percent shall be available for grants under section 10603(a) of this title;

“(C) 1 percent shall be available for grants under section 10603(c) of this title; and

“(D) 4.5 percent shall be available for grants as provided in section 10603a of this title.”

Subsec. (d)(3). Pub. L. 103-322, §330025(a), which directed amendment of par. (3) by substituting “section 10603a” for “section 10603(a)” was executed to subpar. (B).

Pub. L. 103-322, §230201(a)(2), added par. (3) and struck out former par. (3) which read as follows: “The next \$5,500,000 deposited in the Fund in a particular fiscal year shall be available for grants under section 10603a of this title.”

Subsec. (d)(4). Pub. L. 103-322, §230201(a)(3), added par. (4) and struck out former par. (4) which read as follows: “The next \$4,500,000 deposited in the Fund in a particular fiscal year shall be available for grants under section 10603(a) of this title.”

Subsec. (d)(5). Pub. L. 103-322, §230201(a)(4), struck out par. (5) which read as follows: “Any deposits in the Fund in a particular fiscal year that remain after the funds are distributed under paragraphs (1) through (4) shall be available as follows:

“(A) 47.5 percent shall be available for grants under section 10602 of this title.

“(B) 47.5 percent shall be available for grants under section 10603(a) of this title.

“(C) 5 percent shall be available for grants under section 10603(c) of this title.”

Subsec. (g)(1). Pub. L. 103-322, §230201(b), substituted “subsection (d)(2)” for “subsection (d)(2)(D)”.

1993—Subsec. (d)(2)(C), (D). Pub. L. 103-121, §110(a)(1), added subpars. (C) and (D).

Subsec. (d)(3). Pub. L. 103-121, §110(a)(2), substituted “section 10603a of this title” for “section 10603(a) of this title”.

Subsec. (g)(1). Pub. L. 103-121, §110(a)(3), substituted “subsection (d)(2)(D)” for “subsection (d)(2)(A)(iv)”.

1992—Subsec. (c). Pub. L. 102-572, §1001(1), added subsec. (c) and struck out former subsec. (c) which read as follows:

“(1)(A) If the total deposited in the Fund during a particular fiscal year reaches the ceiling sum described in subparagraph (B), the excess over the ceiling sum shall not be part of the Fund. The first \$2,200,000 of such excess shall be available to the judicial branch for administrative costs to carry out the functions of the ju-

dicial branch under sections 3611 and 3612 of title 18 and the remaining excess shall be deposited in the general fund of the Treasury.

“(B) The ceiling sum referred to in subparagraph (A) is—

“(i) \$125,000,000 through fiscal year 1990; and

“(ii) \$150,000,000 thereafter through fiscal year 1994.

“(2) No deposits shall be made in the Fund after September 30, 1994.”

Subsec. (d). Pub. L. 102-572, §1001(2), added subsec. (d) and struck out former subsec. (d) which read as follows:

“(1) Sums deposited in the Fund shall remain in the Fund and be available for expenditure under this subsection for grants under this chapter without fiscal year limitation.

“(2) The Fund shall be available as follows:

“(A) Of the first \$100,000,000 deposited in the Fund in a particular fiscal year—

“(i) 49.5 percent shall be available for grants under section 10602 of this title;

“(ii) 45 percent shall be available for grants under section 10603(a) of this title;

“(iii) 1 percent shall be available for grants under section 10603(c) of this title; and

“(iv) 4.5 percent shall be available for grants as provided in section 10603a of this title.

“(B) The next \$5,500,000 deposited in the Fund in a particular fiscal year shall be available for grants as provided in section 10603a of this title.

“(C) Any deposits in the Fund in a particular fiscal year in excess of \$105,500,000, but not in excess of \$110,000,000, shall be available for grants under section 10603(a) of this title.

“(D) Any deposits in the Fund in a particular fiscal year in excess of \$110,000,000 shall be available as follows:

“(i) 47.5 percent shall be available for grants under section 10602 of this title;

“(ii) 47.5 percent shall be available for grants under section 10603(a) of this title; and

“(iii) 5 percent shall be available for grants under section 10603(c)(1)(B) of this title.”

1990—Subsec. (c)(1)(B)(i). Pub. L. 101-647 substituted “1990” for “1991”.

1988—Subsec. (c). Pub. L. 100-690, §7121(a), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows:

“(1) If the total deposited in the Fund during a particular fiscal year reaches the sum of \$110 million, the excess over that sum shall be deposited in the general fund of the Treasury and shall not be a part of the Fund.

“(2) No deposits shall be made in the Fund after September 30, 1988.”

Subsec. (d)(2)(C). Pub. L. 100-690, §7121(b)(2), inserted “, but not in excess of \$110,000,000,” after “\$105,500,000”.

Subsec. (d)(2)(D). Pub. L. 100-690, §7121(b)(1), added subpar. (D).

Subsec. (g). Pub. L. 100-690, §7124, added subsec. (g).

1986—Subsec. (c)(1). Pub. L. 99-401, §102(b)(1), substituted “\$110 million” for “\$100 million”.

Subsec. (d)(2). Pub. L. 99-401, §102(b)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “Fifty percent of the total deposited in the Fund during a particular fiscal year shall be available for grants under section 10602 of this title and fifty percent shall be available for grants under section 10603 of this title.”

Subsec. (e). Pub. L. 99-646 designated existing provision as par. (1), substituted “Except as provided in paragraph (2), any” for “Any”, and added par. (2).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Jan. 1, 1993, see section 1101 of Pub. L. 102-572, set out as a note under section 905 of Title 2, The Congress.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 7129 of Pub. L. 100-690, as amended by Pub. L. 101-647, title V, §505, Nov. 29, 1990, 104 Stat. 4822, pro-

vided that: “The amendments made by this chapter [probably means this subtitle, subtitle D (§§7121-7130) of title VII of Pub. L. 100-690, enacting section 10605 of this title, amending this section and sections 10602 to 10604 of this title, and enacting provisions set out as a note under this section] shall not apply with respect to a State compensation program that was an eligible State crime victim compensation program on the date of the enactment of this Act [Nov. 18, 1988] until October 1, 1991.”

EFFECTIVE DATE

Section 1409 of chapter XIV of title II of Pub. L. 98-473 provided that:

“(a) Except as provided in subsection (b), this chapter [see Short Title note below] and the amendments made by this chapter shall take effect thirty days after the date of enactment of this joint resolution [Oct. 12, 1984].

“(b) Sections 1402, 1403, 1404, and 1407 of this chapter [enacting this chapter] shall take effect on October 1, 1984.”

SHORT TITLE OF 1996 AMENDMENT

Section 231 of title II of Pub. L. 104-132 provided that: “This subtitle [subtitle C (§§231-236) of title II of Pub. L. 104-132, enacting sections 10603b and 10608 of this title, amending this section and sections 10602 and 10603 of this title, and enacting provisions set out as notes under section 10602 of this title] may be cited as the ‘Justice for Victims of Terrorism Act of 1996.’”

SHORT TITLE OF 1990 AMENDMENT

Section 501 of title V of Pub. L. 101-647 provided that: “This title [enacting sections 10606 and 10607 of this title, amending this section, enacting provisions set out as a note under section 10606 of this title, and amending provisions set out as a note under this section] may be cited as the ‘Victims’ Rights and Restitution Act of 1990.’”

SHORT TITLE

Section 1401 of chapter XIV (§§1401-1411) of title II of Pub. L. 98-473 provided that: “This chapter [enacting this chapter and sections 3013, 3671 and 3672 of Title 18, Crimes and Criminal Procedure, and amending sections 3150a, 4207, and 4215 of Title 18 and provisions set out as a note under section 1512 of Title 18] may be cited as the ‘Victims of Crime Act of 1984.’”

VICTIMS OF SEPTEMBER 11, 2001

Pub. L. 107-56, title VI, §621(e), Oct. 26, 2001, 115 Stat. 371, provided that: “Amounts transferred to the Crime Victims Fund for use in responding to the airplane hijackings and terrorist acts (including any related search, rescue, relief, assistance, or other similar activities) that occurred on September 11, 2001, shall not be subject to any limitation on obligations from amounts deposited to or available in the Fund, notwithstanding—

“(1) section 619 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2001 [section 1(a)(2) [title VI, §619] of Pub. L. 106-553, formerly set out as a note below], and any similar limitation on Fund obligations in such Act for Fiscal Year 2002 [see Pub. L. 107-77, title VI, §619, Nov. 28, 2001, 115 Stat. 802, set out as a note below]; and

“(2) subsections (c) and (d) of section 1402 of the Victims of Crime Act of 1984 (42 U.S.C. 10601).”

LIMITATION ON AMOUNTS AVAILABLE FOR OBLIGATION

Pub. L. 107-77, title VI, §619, Nov. 28, 2001, 115 Stat. 802, provided that: “Notwithstanding any other provision of law, amounts deposited or available in the Fund established under 42 U.S.C. 10601 in any fiscal year in excess of \$550,000,000 shall not be available for obligation until the following fiscal year, with the exception

of emergency appropriations made available by Public Law 107-38 [115 Stat. 220] and transferred to the Fund.”

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 106-553, §1(a)(2) [title VI, §619], Dec. 21, 2000, 114 Stat. 2762, 2762A-107.

Pub. L. 106-113, div. B, §1000(a)(1) [title VI, §620], Nov. 29, 1999, 113 Stat. 1535, 1501A-55.

INTERACTION WITH ANY CAP

Pub. L. 106-177, title I, §104(b), Mar. 10, 2000, 114 Stat. 36, provided that: “Subsection (a) [amending this section] shall be implemented so that any increase in funding provided thereby shall operate notwithstanding any dollar limitation on the availability of the Crime Victims Fund established under the Victims of Crime Act of 1984 [42 U.S.C. 10601 et seq.]”

TRANSFER OF CERTAIN UNOBLIGATED FUNDS

Section 109(b) of Pub. L. 105-119 provided that: “Any unobligated sums hitherto available to the judicial branch pursuant to the paragraph repealed by subsection (a) [former 42 U.S.C. 10601(d)(1)] shall be deemed to be deposits into the Crime Victims Fund as of the effective date hereof [Nov. 26, 1997] and may be used by the Director of the Office for Victims of Crime to improve services for the benefit of crime victims, including the processing and tracking of criminal monetary penalties and related litigation activities, in the Federal criminal justice system.”

RETROACTIVE TRANSFER TO FUND

Section 7130 of Pub. L. 100-690 provided that: “An amount equivalent to those sums which would have been placed in the Fund under section 1402(b) of the Victims of Crime Act [subsec. (b) of this section], but for the effect of section 1402(c)(2) of such Act, is hereby transferred to the Fund from any sums not appropriated from the general treasury.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10603, 10603a, 10603b, 10603c, 10604, 10605 of this title; title 18 sections 798, 4048; title 50 section 783.

§ 10602. Crime victim compensation

(a) Authority of Director; grants

(1) Except as provided in paragraph (2), the Director shall make an annual grant from the Fund to an eligible crime victim compensation program of 40 percent in fiscal year 2002 and of 60 percent in subsequent fiscal years of the amounts awarded during the preceding fiscal year, other than amounts awarded for property damage. Except as provided in paragraph (3), a grant under this section shall be used by such program only for awards of compensation.

(2) If the sums available in the Fund for grants under this section are insufficient to provide grants of 40 percent in fiscal year 2002 and of 60 percent in subsequent fiscal years as provided in paragraph (1), the Director shall make, from the sums available, a grant to each eligible crime victim compensation program so that all such programs receive the same percentage of the amounts awarded by such program during the preceding fiscal year, other than amounts awarded for property damage.

(3) Not more than 5 percent of a grant made under this section may be used for the administration of the State crime victim compensation program receiving the grant.

(b) Eligible crime victim compensation programs

A crime victim compensation program is an eligible crime victim compensation program for the purposes of this section if—

(1) such program is operated by a State and offers compensation to victims and survivors of victims of criminal violence, including drunk driving and domestic violence for—

(A) medical expenses attributable to a physical injury resulting from compensable crime, including expenses for mental health counseling and care;

(B) loss of wages attributable to a physical injury resulting from a compensable crime; and

(C) funeral expenses attributable to a death resulting from a compensable crime;

(2) such program promotes victim cooperation with the reasonable requests of law enforcement authorities;

(3) such State certifies that grants received under this section will not be used to supplant State funds otherwise available to provide crime victim compensation;

(4) such program, as to compensable crimes occurring within the State, makes compensation awards to victims who are nonresidents of the State on the basis of the same criteria used to make awards to victims who are residents of such State;

(5) such program provides compensation to victims of Federal crimes occurring within the State on the same basis that such program provides compensation to victims of State crimes;

(6) such program provides compensation to residents of the State who are victims of crimes occurring outside the State if—

(A) the crimes would be compensable crimes had they occurred inside that State; and

(B) the places the crimes occurred in are States not having eligible crime victim compensation programs;

(7) such program does not, except pursuant to rules issued by the program to prevent unjust enrichment of the offender, deny compensation to any victim because of that victim's familial relationship to the offender, or because of the sharing of a residence by the victim and the offender;

(8) such program does not provide compensation to any person who has been convicted of an offense under Federal law with respect to any time period during which the person is delinquent in paying a fine, other monetary penalty, or restitution imposed for the offense; and

(9) such program provides such other information and assurances related to the purposes of this section as the Director may reasonably require.

(c) Exclusion from income, resources, and assets for purposes of means tests

Notwithstanding any other law (other than title IV of Public Law 107-42), for the purpose of any maximum allowed income, resource, or asset eligibility requirement in any Federal, State, or local government program using Federal funds that provides medical or other assistance (or payment or reimbursement of the cost of such assistance), any amount of crime victim compensation that the applicant receives

through a crime victim compensation program under this section shall not be included in the income, resources, or assets of the applicant, nor shall that amount reduce the amount of the assistance available to the applicant from Federal, State, or local government programs using Federal funds, unless the total amount of assistance that the applicant receives from all such programs is sufficient to fully compensate the applicant for losses suffered as a result of the crime.

(d) Definitions

As used in this section—

(1) the term “property damage” does not include damage to prosthetic devices, eyeglasses or other corrective lenses, or dental devices;

(2) the term “medical expenses” includes, to the extent provided under the eligible crime victim compensation program, expenses for eyeglasses or other corrective lenses, for dental services and devices and prosthetic devices, and for services rendered in accordance with a method of healing recognized by the law of the State;

(3) the term “compensable crime” means a crime the victims of which are eligible for compensation under the eligible crime victim compensation program, and includes crimes, whose victims suffer death or personal injury, that are described in section 247 of title 18, driving while intoxicated, and domestic violence; and

(4) the term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, and any other possession or territory of the United States.

(e) Relationship to certain Federal programs

Notwithstanding any other law, if the compensation paid by an eligible crime victim compensation program would cover costs that a Federal program, including the program established under title IV of Public Law 107-42, or a federally financed State or local program, would otherwise pay,—¹

(1) such crime victim compensation program shall not pay that compensation; and

(2) the other program shall make its payments without regard to the existence of the crime victim compensation program.

(Pub. L. 98-473, title II, §1403, Oct. 12, 1984, 98 Stat. 2171; Pub. L. 100-690, title VII, §§7123(b)(1)-(3), 7125, 7126, Nov. 18, 1988, 102 Stat. 4421-4423; Pub. L. 103-322, title XXIII, §§230202, 230203, title XXXIII, §330025(b), Sept. 13, 1994, 108 Stat. 2079, 2151; Pub. L. 104-132, title II, §§233(a), (b), 234(a)(1), (b), Apr. 24, 1996, 110 Stat. 1244, 1245; Pub. L. 104-155, §5, July 3, 1996, 110 Stat. 1394; Pub. L. 107-56, title VI, §622(a)-(e)(1), Oct. 26, 2001, 115 Stat. 371, 372.)

REFERENCES IN TEXT

Title IV of Public Law 107-42, referred to in subssecs. (c) and (e), is set out as a note under section 40101 of Title 49, Transportation.

AMENDMENTS

2001—Subsec. (a)(1), (2). Pub. L. 107-56, §622(a), inserted “in fiscal year 2002 and of 60 percent in subsequent fiscal years” after “40 percent”.

¹ So in original. The comma probably should not appear.

Subsec. (b)(6)(B). Pub. L. 107-56, §622(b), which directed striking out “are outside the United States (if the compensable crime is terrorism, as defined in section 2331 of title 18), or”, was executed by striking out “are outside of the United States (if the compensable crime is terrorism, as defined in section 2331 of title 18), or” after “the places the crimes occurred in” to reflect the probable intent of Congress.

Subsec. (c). Pub. L. 107-56, §622(c), added subsec. (c) and struck out heading and text of former subsec. (c). Text read as follows: “Notwithstanding any other law, for the purpose of any maximum allowed income eligibility requirement in any Federal, State, or local government program using Federal funds that provides medical or other assistance (or payment or reimbursement of the cost of such assistance) that becomes necessary to an applicant for such assistance in full or in part because of the commission of a crime against the applicant, as determined by the Director, any amount of crime victim compensation that the applicant receives through a crime victim compensation program under this section shall not be included in the income of the applicant until the total amount of assistance that the applicant receives from all such programs is sufficient to fully compensate the applicant for losses suffered as a result of the crime.”

Subsec. (d)(3). Pub. L. 107-56, §622(d)(1), struck out “crimes involving terrorism,” after “section 247 of title 18.”

Subsec. (d)(4). Pub. L. 107-56, §622(d)(2), inserted “the United States Virgin Islands,” after “the Commonwealth of Puerto Rico.”

Subsec. (e). Pub. L. 107-56, §622(e)(1), inserted “including the program established under title IV of Public Law 107-42,” after “Federal program,” in introductory provisions.

1996—Subsec. (b)(6)(B). Pub. L. 104-132, §233(b), inserted “are outside of the United States (if the compensable crime is terrorism, as defined in section 2331 of title 18), or” before “are States not having”.

Subsec. (b)(8), (9). Pub. L. 104-132, §234(a)(1), added par. (8) and redesignated former par. (8) as (9).

Subsec. (c). Pub. L. 104-132, §234(b), added subsec. (c). Subsec. (d)(3). Pub. L. 104-155 inserted “crimes, whose victims suffer death or personal injury, that are described in section 247 of title 18,” after “includes”.

Pub. L. 104-132, §233(a), substituted “crimes involving terrorism, driving while intoxicated,” for “driving while intoxicated”.

1994—Subsec. (a)(1). Pub. L. 103-322, §230203(a), substituted “Except as provided in paragraph (3), a grant” for “A grant” in last sentence.

Subsec. (a)(3). Pub. L. 103-322, §230203(b), added par. (3).

Subsec. (b)(1). Pub. L. 103-322, §330025(b), inserted before semicolon at end “for—” and subpars. (A) to (C).

Subsec. (e). Pub. L. 103-322, §230202, added subsec. (e). 1988—Subsec. (a). Pub. L. 100-690, §§7123(b)(1), (2), 7125(b), substituted “Director” for “Attorney General” and “40 percent” for “35 percent” in pars. (1) and (2).

Subsec. (b)(1). Pub. L. 100-690, §7125(c)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “such program is operated by a State and offers compensation to victims of crime and survivors of victims of crime for—

“(A) medical expenses attributable to a physical injury resulting from compensable crime, including expenses for mental health counseling and care;

“(B) loss of wages attributable to a physical injury resulting from a compensable crime; and

“(C) funeral expenses attributable to a death resulting from a compensable crime;”.

Subsec. (b)(5). Pub. L. 100-690, §7125(d), amended par. (5) generally. Prior to amendment, par. (5) read as follows: “such program provides compensation to victims of crimes occurring within such State that would be compensable crimes, but for the fact that such crimes are subject to Federal jurisdiction, on the same basis that such program provides compensation to victims of compensable crimes; and”.

Subsec. (b)(6), (7). Pub. L. 100-690, §7125(a)(1), added pars. (6) and (7). Former par. (6) redesignated (8).

Subsec. (b)(8). Pub. L. 100-690, §§7123(b)(3), 7125(a)(2), redesignated par. (6) as (8) and substituted "Director" for "Attorney General".

Subsec. (c). Pub. L. 100-690, §7125(e), struck out subsec. (c) which read as follows: "A State crime victim compensation program in effect on the date grants may first be made under this section shall be deemed an eligible crime victim compensation program for the purposes of this section until the day after the close of the first regular session of the legislature of that State that begins after such date."

Subsec. (d)(1). Pub. L. 100-690, §7126(a), inserted reference to eyeglasses or other corrective lenses.

Subsec. (d)(2). Pub. L. 100-690, §7126(b), inserted reference to eyeglasses or other corrective lenses and inserted comma after "prosthetic devices".

Subsec. (d)(3). Pub. L. 100-690, §7125(c)(2), inserted reference to driving while intoxicated and domestic violence.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 233(d) of Pub. L. 104-132, as amended by Pub. L. 105-119, title I, §120, Nov. 26, 1997, 111 Stat. 2468, provided that: "This section [amending this section] and the amendments made by this section shall take effect October 1, 1999."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-690 not applicable with respect to a State compensation program that was an eligible State crime victim compensation program on Nov. 18, 1988, until Oct. 1, 1991, see section 7129 of Pub. L. 100-690, as amended, set out as a note under section 10601 of this title.

APPLICATION OF AMENDMENT BY SECTION 234(a)(1) OF PUB. L. 104-132

Section 234(a)(2) of Pub. L. 104-132 provided that: "Section 1403(b)(8) of the Victims of Crime Act of 1984 [42 U.S.C. 10602(b)(8)], as added by paragraph (1) of this section, shall not be applied to deny victims compensation to any person until the date on which the Attorney General, in consultation with the Director of the Administrative Office of the United States Courts, issues a written determination that a cost-effective, readily available criminal debt payment tracking system operated by the agency responsible for the collection of criminal debt has established cost-effective, readily available communications links with entities that administer Federal victim compensation programs that are sufficient to ensure that victim compensation is not denied to any person except as authorized by law."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10601, 10603, 10605 of this title.

§ 10603. Crime victim assistance

(a) Grant authority of Director; chief executive of States; amount; insufficient funds

(1) Subject to the availability of money in the Fund, the Director shall make an annual grant from any portion of the Fund made available by section 10601(d)(2)¹ of this title for the purpose of grants under this subsection, or for the purpose of grants under section 10602 of this title but not used for that purpose, to the chief executive of each State for the financial support of eligible crime victim assistance programs.

(2) Such chief executive shall—

(A) certify that priority shall be given to eligible crime victim assistance programs pro-

viding assistance to victims of sexual assault, spousal abuse, or child abuse;

(B) certify that funds shall be made available for grants to programs which serve previously underserved populations of victims of violent crime. The Director, after consultation with State and local officials and representatives from private organizations, shall issue guidelines to implement this section that provide flexibility to the States in determining the populations of victims of violent crimes that may be underserved in their respective States;

(C) certify that funds awarded to eligible crime victim assistance programs will not be used to supplant State and local funds otherwise available for crime victim assistance; and

(D) provide such other information and assurances related to the purposes of this section as the Director may reasonably require.

(3) The amounts of grants under paragraph (1) shall be—

(A) the base amount to each State; and

(B) that portion of the then remaining available money to each State that results from a distribution among the States on the basis of each State's population in relation to the population of all States.

(4) If the amount available for grants under paragraph (1) is insufficient to provide the base amount to each State, the funds available shall be distributed equally among the States.

(5) As used in this subsection, the term "base amount" means—

(A) except as provided in subparagraph (B), \$500,000; and

(B) for the territories of the Northern Mariana Islands, Guam, American Samoa, and the Republic of Palau, \$200,000, with the Republic of Palau's share governed by the Compact of Free Association between the United States and the Republic of Palau.

(6) An agency of the Federal Government performing local law enforcement functions in and on behalf of the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, or any other territory or possession of the United States may qualify as an eligible crime victim assistance program for the purpose of grants under this subsection, or for the purpose of grants under subsection (c)(1) of this section.

(b) Eligibility of program; factors; limitation on expending of sums

(1) A victim assistance program is an eligible crime victim assistance program for the purposes of this section if such program—

(A) is operated by a public agency or a non-profit organization, or a combination of such agencies or organizations or of both such agencies and organizations, and provides services to victims of crime;

(B) demonstrates—

(i) a record of providing effective services to victims of crime and financial support from sources other than the Fund; or

(ii) substantial financial support from sources other than the Fund;

(C) utilizes volunteers in providing such services, unless and to the extent the chief ex-

¹ See References in Text note below.

ecutive determines that compelling reasons exist to waive this requirement;

(D) promotes within the community served coordinated public and private efforts to aid crime victims;

(E) assists potential recipients in seeking crime victim compensation benefits; and

(F) does not discriminate against victims because they disagree with the way the State is prosecuting the criminal case.

(2) Except as provided in paragraph (3), an eligible crime victim assistance program shall expend sums received under subsection (a) of this section only for providing services to victims of crime.

(3) Not more than 5 percent of sums received under subsection (a) of this section may be used for the administration of the State crime victim assistance program receiving such sums.

(c) Grants; purposes; distribution; duties of Director; reimbursement by Director

(1) The Director,² shall make grants—

(A) for demonstration projects, program evaluation, compliance efforts, and training and technical assistance services to eligible crime victim assistance programs; and

(B) for the financial support of services to victims of Federal crime by eligible crime victim assistance programs.

(2) Of the amount available for grants under this subsection—

(A) not less than 50 percent shall be used for grants under paragraph (1)(A); and

(B) not more than 50 percent shall be used for grants under paragraph (1)(B).

(3) The Director shall—

(A) be responsible for monitoring compliance with guidelines for fair treatment of crime victims and witnesses issued under section 6 of the Victim and Witness Protection Act of 1982 (Public Law 97-291) [18 U.S.C. 1512 note];

(B) consult with the heads of Federal law enforcement agencies that have responsibilities affecting victims of Federal crimes;

(C) coordinate victim services provided by the Federal Government with victim services offered by other public agencies and nonprofit organizations;

(D) perform such other functions related to the purposes of this title as the Director deems appropriate; and

(E) use funds made available to the Director under this subsection—

(i) for fellowships and clinical internships; and

(ii) to carry out programs of training and special workshops for the presentation and dissemination of information resulting from demonstrations, surveys, and special projects.

(4) The Director may reimburse other instrumentalities of the Federal Government and contract for the performance of functions authorized under this subsection.

(d) Definitions

As used in this section—

(1) the term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, and any other territory or possession of the United States; and

(2) the term “services to victims of crime” includes—

(A) crises intervention services;

(B) providing, in an emergency, transportation to court, short-term child care services, and temporary housing and security measures;

(C) assistance in participating in criminal justice proceedings; and

(D) payment of all reasonable costs for a forensic medical examination of a crime victim, to the extent that such costs are otherwise not reimbursed or paid;

(3) the term “services to victims of Federal crime” means services to victims of crime with respect to Federal crime, and includes—

(A) training of law enforcement personnel in the delivery of services to victims of Federal crime;

(B) preparation, publication, and distribution of informational materials—

(i) setting forth services offered to victims of crime; and

(ii) concerning services to victims of Federal crime for use by Federal law enforcement personnel; and

(C) salaries of personnel who provide services to victims of crime, to the extent that such personnel provide such services;

(4) the term “crises intervention services” means counseling to provide emotional support in crises arising from the occurrence of crime; and

(5) the term “chief executive” includes a person designated by a chief executive to perform the functions of the chief executive under this section.

(Pub. L. 98-473, title II, §1404, Oct. 12, 1984, 98 Stat. 2172; Pub. L. 99-401, title I, §102(b)(4), (5), Aug. 27, 1986, 100 Stat. 905; Pub. L. 99-646, §71, Nov. 10, 1986, 100 Stat. 3617; Pub. L. 100-690, title VII, §§7122, 7123(b)(4)-(9), 7127, 7128, title IX, §9306(a), Nov. 18, 1988, 102 Stat. 4420, 4421, 4423, 4537; Pub. L. 103-317, title I, §112, Aug. 26, 1994, 108 Stat. 1736; Pub. L. 103-322, title XXIII, §§230204, 230205, 230208, Sept. 13, 1994, 108 Stat. 2080; Pub. L. 104-132, title II, §232(c)(2), Apr. 24, 1996, 110 Stat. 1244; Pub. L. 107-56, title VI, §623, Oct. 26, 2001, 115 Stat. 372.)

REFERENCES IN TEXT

Section 10601(d)(2) of this title, referred to in subsec. (a)(1), was repealed and a new section 10601(d)(2) was added by Pub. L. 103-322, title XXIII, §230201(a)(1), Sept. 13, 1994, 108 Stat. 2079. The new section 10601(d)(2) does not contain provisions relating to availability of Fund money for grants under this section or section 10602 of this title. See section 10601(d)(4) of this title.

AMENDMENTS

2001—Subsec. (a)(6). Pub. L. 107-56, §623(a), added par. (6).

Subsec. (b)(1)(F). Pub. L. 107-56, §623(b), added subpar. (F).

Subsec. (c)(1)(A). Pub. L. 107-56, §623(c), inserted “, program evaluation, compliance efforts,” after “demonstration projects”.

²So in original. The comma probably should not appear.

Subsec. (c)(2)(A). Pub. L. 107-56, § 623(d)(1), substituted "not less than 50 percent" for "not more than 50 percent".

Subsec. (c)(2)(B). Pub. L. 107-56, § 623(d)(2), substituted "not more than 50 percent" for "not less than 50 percent".

Subsec. (c)(3)(E). Pub. L. 107-56, § 623(e), added subpar. (E).

1996—Subsec. (a)(5). Pub. L. 104-132 amended par. (5) generally. Prior to amendment, par. (5) read as follows: "As used in this subsection, the term 'base amount' means—

"(A) \$150,000 for fiscal years 1989 through 1991; and
"(B) \$200,000 thereafter."

1994—Subsec. (a)(5)(B). Pub. L. 103-322, § 230208, amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "\$200,000 thereafter through fiscal year 1995."

Pub. L. 103-317 substituted "1995" for "1994".

Subsec. (b)(2). Pub. L. 103-322, § 230205(a), substituted "Except as provided in paragraph (3), an eligible" for "An eligible".

Subsec. (b)(3). Pub. L. 103-322, § 230205(b), added par. (3).

Subsec. (c)(1)(A). Pub. L. 103-322, § 230204, inserted "demonstration projects and" before "training".

1988—Subsec. (a)(1). Pub. L. 100-690, § 7123(b)(4), substituted "Director" for "Attorney General".

Subsec. (a)(2)(B). Pub. L. 100-690, § 7122(1), added subpar. (B). Former subpar. (B) redesignated (C).

Subsec. (a)(2)(C). Pub. L. 100-690, § 7122(2), redesignated subpar. (B) as (C). Former subpar. (C) redesignated (D).

Subsec. (a)(2)(D). Pub. L. 100-690, § 7123(b)(5), which directed substitution of "Director" for "Attorney General" in subpar. (C), was executed by making substitution in subpar. (D) to reflect the probable intent of Congress and the intervening redesignation of subpar. (C) as (D), see below.

Pub. L. 100-690, § 7122(2), redesignated subpar. (C) as (D).

Subsec. (a)(3) to (5). Pub. L. 100-690, § 7128, substituted "the base amount" for "\$100,000" in pars. (3)(A) and (4) and added par. (5).

Subsec. (c)(1). Pub. L. 100-690, § 7123(b)(6), substituted "Director" for "Attorney General, acting through the Assistant Attorney General for the Office of Justice Programs".

Subsec. (c)(3). Pub. L. 100-690, § 7123(b)(7), (8), substituted "Director" for "Assistant Attorney General for the Office of Justice Programs" in introductory provisions and "Director deems appropriate" for "Attorney General may assign" in subpar. (D).

Subsec. (c)(4). Pub. L. 100-690, § 7123(b)(9), substituted "Director" for "Attorney General".

Subsec. (d)(1). Pub. L. 100-690, § 9306(a), struck out "except for the purposes of paragraphs (3)(A) and (4) of subsection (a) of this section," before "any other territory".

Pub. L. 100-690, § 7127, inserted reference to the United States Virgin Islands.

1986—Subsec. (a)(1). Pub. L. 99-401, § 102(b)(5), substituted "made available by section 10601(d)(2) of this title for the purpose of grants under this subsection, or for the purpose of grants under section 10602 of this title but not used for that purpose" for "not used for grants under section 10602 of this title with respect to a particular fiscal year, and after any deduction under subsection (c) of this section".

Subsec. (c)(1), (2). Pub. L. 99-401, § 102(b)(4), added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

"(1) The Attorney General may in any fiscal year deduct from amounts available under this section an amount not to exceed 5 percent of the amount in the Fund, and may expend the amount so deducted to provide services to victims of Federal crimes by the Department of Justice, or reimburse other instrumentalities of the Federal Government otherwise authorized to provide such services.

"(2) The Attorney General shall appoint or designate an official of the Department of Justice to be the Federal Crime Victim Assistance Administrator (hereinafter in this chapter referred to as the 'Federal Administrator') to exercise the responsibilities of the Attorney General under this subsection."

Subsec. (c)(2)(A). Pub. L. 99-646, § 71(1), substituted "not more than" for "not less than".

Subsec. (c)(2)(B). Pub. L. 99-646, § 71(2), substituted "not less than" for "not more than".

Subsec. (c)(3). Pub. L. 99-401, § 102(b)(4), substituted "The Assistant Attorney General for the Office of Justice Programs shall" for "The Federal Administrator shall".

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 7122, 7123(b)(4)-(9), 7127, and 7128 of Pub. L. 100-690 not applicable with respect to a State compensation program that was an eligible State crime victim compensation program on Nov. 18, 1988, until Oct. 1, 1991, see section 7129 of Pub. L. 100-690, as amended, set out as a note under section 10601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10601, 10603a, 10603b, 10605 of this title.

§ 10603a. Child abuse prevention and treatment grants

Amounts made available by section 10601(d)(2) of this title for the purposes of this section shall be obligated and expended by the Secretary of Health and Human Services for grants under section 5106c¹ of this title. Any portion of an amount which is not obligated by the Secretary by the end of the fiscal year in which funds are made available for allocation, shall be reallocated for award under section 10603(a) of this title, except that with respect to funds deposited during fiscal year 1986 and made available for obligation during fiscal year 1987, any unobligated portion of such amount shall remain available for obligation until September 30, 1988.

(Pub. L. 98-473, title II, § 1404A, as added Pub. L. 99-401, title I, § 102(b)(3), Aug. 27, 1986, 100 Stat. 905; amended Pub. L. 103-121, title I, § 110(b), Oct. 27, 1993, 107 Stat. 1164; Pub. L. 104-235, title I, § 113(b), Oct. 3, 1996, 110 Stat. 3079.)

REFERENCES IN TEXT

Section 5106c of this title, referred to in text, was in the original "section 109 of the Child Abuse Prevention and Treatment Act", meaning section 109 of Pub. L. 93-247, and was translated as reading section 107 of that act to reflect the probable intent of Congress and the renumbering of section 109 as section 107 by section 113(a)(1)(B) of Pub. L. 104-235, title I, Oct. 3, 1996, 110 Stat. 3079.

AMENDMENTS

1996—Pub. L. 104-235 substituted "section 10601(d)(2) of this title" for "section 10601(d)(2)(D) and (d)(3) of this title." and "section 5106c" for "section 5103(d)".

1993—Pub. L. 103-121 substituted "section 10601(d)(2)(D) and (d)(3) of this title." for "section 10601(d)(2) of this title".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5106c, 5106f, 10601 of this title.

¹ See References in Text note below.

§ 10603b. Compensation and assistance to victims of terrorism or mass violence

(a) Victims of acts of terrorism outside the United States

(1) In general

The Director may make supplemental grants as provided in 10601(d)(5)¹ of this title to States, victim service organizations, and public agencies (including Federal, State, or local governments) and nongovernmental organizations that provide assistance to victims of crime, which shall be used to provide emergency relief, including crisis response efforts, assistance, training, and technical assistance, and ongoing assistance, including during any investigation or prosecution, to victims of terrorist acts or mass violence occurring outside the United States.

(2) Victim defined

In this subsection, the term “victim”—

(A) means a person who is a national of the United States or an officer or employee of the United States Government who is injured or killed as a result of a terrorist act or mass violence occurring outside the United States; and

(B) in the case of a person described in subparagraph (A) who is less than 18 years of age, incompetent, incapacitated, or deceased, includes a family member or legal guardian of that person.

(3) Rule of construction

Nothing in this subsection shall be construed to allow the Director to make grants to any foreign power (as defined by section 1801(a) of title 50) or to any domestic or foreign organization operated for the purpose of engaging in any significant political or lobbying activities.

(b) Victims of terrorism within the United States

The Director may make supplemental grants as provided in section 10601(d)(5) of this title to States for eligible crime victim compensation and assistance programs, and to victim service organizations, public agencies (including Federal, State, or local governments) and nongovernmental organizations that provide assistance to victims of crime, which shall be used to provide emergency relief, including crisis response efforts, assistance, compensation, training and technical assistance, and ongoing assistance, including during any investigation or prosecution, to victims of terrorist acts or mass violence occurring within the United States.

(Pub. L. 98-473, title II, § 1404B, as added Pub. L. 104-132, title II, § 232(a), Apr. 24, 1996, 110 Stat. 1243; amended Pub. L. 106-386, div. C, § 2003(a)(1), (4), Oct. 28, 2000, 114 Stat. 1543, 1544; Pub. L. 107-56, title VI, § 624(a), (b), Oct. 26, 2001, 115 Stat. 373.)

AMENDMENTS

2001—Subsec. (a)(1). Pub. L. 107-56, § 624(b), struck out “who are not persons eligible for compensation under title VIII of the Omnibus Diplomatic Security and Antiterrorism Act of 1986” before period at end.

¹ So in original. Probably should be preceded by “section”.

Subsec. (b). Pub. L. 107-56, § 624(a), amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: “The Director may make supplemental grants as provided in section 10601(d)(5) of this title to States for eligible crime victim compensation and assistance programs to provide emergency relief, including crisis response efforts, assistance, training, and technical assistance, for the benefit of victims of terrorist acts or mass violence occurring within the United States and may provide funding to United States Attorney’s Offices for use in coordination with State victim compensation and assistance efforts in providing emergency relief.”

2000—Subsec. (a). Pub. L. 106-386, § 2003(a)(1), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: “The Director may make supplemental grants as provided in section 10603(a) of this title to States to provide compensation and assistance to the residents of such States who, while outside of the territorial boundaries of the United States, are victims of a terrorist act or mass violence and are not persons eligible for compensation under title VIII of the Omnibus Diplomatic Security and Antiterrorism Act of 1986.”

Subsec. (b). Pub. L. 106-386, § 2003(a)(4), substituted “10601(d)(5) of this title” for “10603(d)(4)(B) of this title”.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-386, div. C, § 2003(a)(2), Oct. 28, 2000, 114 Stat. 1544, provided that: “The amendment made by this subsection [amending this section] shall apply to any terrorist act or mass violence occurring on or after December 21, 1988, with respect to which an investigation or prosecution was ongoing after April 24, 1996.”

ADMINISTRATIVE GUIDELINES

Pub. L. 106-386, div. C, § 2003(a)(3), Oct. 28, 2000, 114 Stat. 1544, provided that: “Not later than 90 days after the date of the enactment of this Act [Oct. 28, 2000], the Director shall establish guidelines under section 1407(a) of the Victims of Crime Act of 1984 (42 U.S.C. 10604(a)) to specify the categories of organizations and agencies to which the Director may make grants under this subsection [amending this section and enacting provisions set out as a note under this section].”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10601 of this title.

§ 10603c. Compensation to victims of international terrorism

(a) Definitions

In this section:

(1) International terrorism

The term “international terrorism” has the meaning given the term in section 2331 of title 18.

(2) National of the United States

The term “national of the United States” has the meaning given the term in section 1101(a) of title 8.

(3) Victim

(A) In general

The term “victim” means a person who—

(i) suffered direct physical or emotional injury or death as a result of international terrorism occurring on or after December 21, 1988 with respect to which an investigation or prosecution was ongoing after April 24, 1996; and

(ii) as of the date on which the international terrorism occurred, was a na-

tional of the United States or an officer or employee of the United States Government.

(B) Incompetent, incapacitated, or deceased victims

In the case of a victim who is less than 18 years of age, incompetent, incapacitated, or deceased, a family member or legal guardian of the victim may receive the compensation under this section on behalf of the victim.

(C) Exception

Notwithstanding any other provision of this section, in no event shall an individual who is criminally culpable for the terrorist act or mass violence receive any compensation under this section, either directly or on behalf of a victim.

(b) Award of compensation

The Director may use the emergency reserve referred to in section 10601(d)(5)(A) of this title to carry out a program to compensate victims of acts of international terrorism that occur outside the United States for expenses associated with that victimization. The amount of compensation awarded to a victim under this subsection shall be reduced by any amount that the victim received in connection with the same act of international terrorism under title VIII of the Omnibus Diplomatic Security and Antiterrorism Act of 1986.

(c) Annual report

The Director shall annually submit to Congress a report on the status and activities of the program under this section, which report shall include—

- (1) an explanation of the procedures for filing and processing of applications for compensation;
- (2) a description of the procedures and policies instituted to promote public awareness about the program;
- (3) a complete statistical analysis of the victims assisted under the program, including—
 - (A) the number of applications for compensation submitted;
 - (B) the number of applications approved and the amount of each award;
 - (C) the number of applications denied and the reasons for the denial;
 - (D) the average length of time to process an application for compensation; and
 - (E) the number of applications for compensation pending and the estimated future liability of the program; and
- (4) an analysis of future program needs and suggested program improvements.

(Pub. L. 98-473, title II, §1404C, as added Pub. L. 106-386, div. C, §2003(c)(1), Oct. 28, 2000, 114 Stat. 1544; amended Pub. L. 107-56, title VI, §624(c), Oct. 26, 2001, 115 Stat. 373.)

REFERENCES IN TEXT

The Omnibus Diplomatic Security and Antiterrorism Act of 1986, referred to in subsec. (b), is Pub. L. 99-399, Aug. 27, 1986, 100 Stat. 853, as amended. Title VIII of the Act, known as the “Victims of Terrorism Compensation Act”, enacted sections 5569 and 5570 of Title 5, Government Organization and Employees, sections 1051,

1095, and 2181 to 2185 of Title 10, Armed Forces, and sections 559 and 1013 of Title 37, Pay and Allowances of the Uniformed Services, amended section 6325 of Title 5, and enacted provisions set out as notes under section 5569 of Title 5, sections 1051, 1095, and 2181 of Title 10, and section 559 of Title 37. For complete classification of title VIII to the Code, see Short Title of 1986 Amendment note set out under section 5569 of Title 5 and Tables.

AMENDMENTS

2001—Subsec. (b). Pub. L. 107-56 inserted at end “The amount of compensation awarded to a victim under this subsection shall be reduced by any amount that the victim received in connection with the same act of international terrorism under title VIII of the Omnibus Diplomatic Security and Antiterrorism Act of 1986.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10601 of this title.

§ 10604. Administrative provisions

(a) Authority of Director to establish rules and regulations

The Director may establish such rules, regulations, guidelines, and procedures as are necessary to carry out any function of the Director under this chapter.

(b) Recordkeeping

Each recipient of sums under this chapter shall keep such records as the Director shall prescribe, including records that fully disclose the amount and disposition by such recipient of such sums, the total cost of the undertaking for which such sums are used, and that portion of the cost of the undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(c) Access of Director to books and records for purpose of audit and examination

The Director shall have access, for purpose of audit and examination, to any books, documents, papers, and records of the recipient of sums under this chapter that, in the opinion of the Director, may be related to the expenditure of funds received under this chapter.

(d) Revealing research or statistical information; prohibition; immunity from legal proceedings; permission; admission of information as evidence

Except as otherwise provided by Federal law, no officer or employee of the Federal Government, and no recipient of sums under this chapter, shall use or reveal any research or statistical information furnished under this chapter by any person and identifiable to any specific private person for any purpose other than the purpose for which such information was obtained in accordance with this chapter. Such information, and any copy of such information, shall be immune from legal process and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceeding.

(e) Discrimination prohibited

No person shall on the ground of race, color, religion, national origin, handicap, or sex be ex-

cluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with, any undertaking funded in whole or in part with sums made available under this chapter.

(f) Failure to comply with provisions; notice and hearing; power of Director

If, after reasonable notice and opportunity for a hearing on the record, the Director finds that a State has failed to comply substantially with any provision of this chapter or a rule, regulation, guideline, or procedure issued under this chapter, or an application submitted in accordance with this chapter or the provisions of any other applicable law, the Director shall—

- (1) terminate payments to such State;
- (2) suspend payments to such State until the Director is satisfied that such noncompliance has ended; or
- (3) take such other action as the Director deems appropriate.

(g) Report

The Director shall, on December 31, 1990, and on June 30 every two years thereafter, report to the President and to the Congress on the revenue derived from each source described in section 10601 of this title and on the effectiveness of the activities supported under this chapter. The Director may include in such report recommendations for legislation to improve this chapter.

(h) Maintenance of effort

Each entity receiving sums made available under this chapter for administrative purposes shall certify that such sums will not be used to supplant State or local funds, but will be used to increase the amount of such funds that would, in the absence of Federal funds, be made available for these purposes.

(Pub. L. 98-473, title II, §1407, Oct. 12, 1984, 98 Stat. 2176; Pub. L. 99-646, §48, Nov. 10, 1986, 100 Stat. 3605; Pub. L. 100-690, title VII, §7123(b)(10)-(14), Nov. 18, 1988, 102 Stat. 4421, 4422; Pub. L. 103-322, title XXIII, §§230206, 230207, Sept. 13, 1994, 108 Stat. 2080; Pub. L. 104-294, title VI, §604(b)(9), Oct. 11, 1996, 110 Stat. 3507.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (h), was in the original "this Act", and was translated as reading "this chapter", meaning chapter XIV of title II of Pub. L. 98-473, to reflect the probable intent of Congress.

AMENDMENTS

1996—Subsec. (g). Pub. L. 104-294 amended directory language of Pub. L. 103-322, §230207. See 1994 Amendment note below.

1994—Subsec. (g). Pub. L. 103-322, §230207, as amended by Pub. L. 104-294, substituted "and on June 30 every two years thereafter" for "and on December 31 every 2 years thereafter".

Subsec. (h). Pub. L. 103-322, §230206, added subsec. (h).
1988—Subsec. (a). Pub. L. 100-690, §7123(b)(10), substituted "Director" for "Attorney General" in two places and "under this chapter" for "under this chapter and may delegate to any officer or employee of the Department of Justice any such function as the Attorney General deems appropriate".

Subsec. (b). Pub. L. 100-690, §7123(b)(11), substituted "Director" for "Attorney General".

Subsec. (c). Pub. L. 100-690, §7123(b)(12), which directed substitution of "Director" for "Attorney Gen-

eral or any duly authorized representative of the Attorney General", was executed by making substitution in two places.

Subsec. (f). Pub. L. 100-690, §7123(b)(13), substituted "Director" for "Attorney General" two places in introductory provisions and in pars. (2) and (3).

Subsec. (g). Pub. L. 100-690, §7123(b)(14), substituted "Director" for "Attorney General" in two places and "on December 31, 1990, and on December 31 every 2 years thereafter" for "no later than December 31, 1987".

1986—Subsecs. (g), (h). Pub. L. 99-646 redesignated subsec. (h) as (g) and substituted "1402", which was translated as "section 10601 of this title" for "1302", which had been editorially translated as "section 10601 of this title", thereby requiring no change in text.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104-294, set out as a note under section 13 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-690 not applicable with respect to a State compensation program that was an eligible State crime victim compensation program on Nov. 18, 1988, until Oct. 1, 1991, see section 7129 of Pub. L. 100-690, as amended, set out as a note under section 10601 of this title.

REPORTS ON AMOUNTS RECEIVED AND DISTRIBUTED FROM FINES FOR VIOLATIONS OF TRADE SECRETS PROVISIONS

Section 101(c) of Pub. L. 104-294 provided that: "Not later than 2 years and 4 years after the date of the enactment of this Act [Oct. 11, 1996], the Attorney General shall report to Congress on the amounts received and distributed from fines for offenses under this chapter [probably means chapter 90 of title 18, added by section 101(a) of Pub. L. 104-294] deposited in the Crime Victims Fund established by section 1402 of the Victims of Crime Act of 1984 (42 U.S.C. 10601)."

§ 10605. Establishment of Office for Victims of Crime

(a) Office established within Department of Justice

There is established within the Department of Justice an Office for Victims of Crime (hereinafter in this chapter referred to as the "Office").

(b) Appointment of Director; authority; restrictions

The Office shall be headed by a Director (referred to in this chapter as the "Director"), who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall report to the Attorney General through the Assistant Attorney General for the Office of Justice Programs and shall have final authority for all grants, cooperative agreements, and contracts awarded by the Office. The Director shall not engage in any employment other than that of serving as the Director, nor shall the Director hold any office in, or act in any capacity for, any organization, agency, or institution with which the Office makes any contract or other agreement under this chapter.¹

(c) Duties of Director

The Director shall have the following duties:

- (1) Administering funds made available by section 10601 of this title.

¹ See References in Text note below.

(2) Providing funds to eligible States pursuant to sections 10602 and 10603 of this title.

(3) Establishing programs in accordance with section 10603(c) of this title on terms and conditions determined by the Director to be consistent with that subsection.

(4) Cooperating with and providing technical assistance to States, units of local government, and other public and private organizations or international agencies involved in activities related to crime victims.

(5) Such other functions as the Attorney General may delegate.

(Pub. L. 98-473, title II, §1411, as added Pub. L. 100-690, title VII, §7123(a), Nov. 18, 1988, 102 Stat. 4420.)

REFERENCES IN TEXT

This chapter, the last place it appears in subsec. (b), was in the original “this part”, which has been translated as reading in the original “this chapter” meaning chapter XIV of title II of Pub. L. 98-473 to reflect the probable intent of Congress because chapter XIV of title II of Pub. L. 98-473 which comprises this chapter, does not contain parts.

EFFECTIVE DATE

Section not applicable with respect to a State compensation program that was an eligible State crime victim compensation program on Nov. 18, 1988, until Oct. 1, 1991, see section 7129 of Pub. L. 100-690, as amended, set out as an Effective Date of 1988 Amendment note under section 10601 of this title.

§ 10606. Victims’ rights

(a) Best efforts to accord rights

Officers and employees of the Department of Justice and other departments and agencies of the United States engaged in the detection, investigation, or prosecution of crime shall make their best efforts to see that victims of crime are accorded the rights described in subsection (b) of this section.

(b) Rights of crime victims

A crime victim has the following rights:

(1) The right to be treated with fairness and with respect for the victim’s dignity and privacy.

(2) The right to be reasonably protected from the accused offender.

(3) The right to be notified of court proceedings.

(4) The right to be present at all public court proceedings related to the offense, unless the court determines that testimony by the victim would be materially affected if the victim heard other testimony at trial.

(5) The right to confer with¹ attorney for the Government in the case.

(6) The right to restitution.

(7) The right to information about the conviction, sentencing, imprisonment, and release of the offender.

(c) No cause of action or defense

This section does not create a cause of action or defense in favor of any person arising out of the failure to accord to a victim the rights enumerated in subsection (b) of this section.

¹ So in original. Probably should be followed by “the”.

(Pub. L. 101-647, title V, §502, Nov. 29, 1990, 104 Stat. 4820.)

CODIFICATION

Section enacted as part of the Victims’ Rights and Restitution Act of 1990 and also as part of the Crime Control Act of 1990, and not as part of the Victims of Crime Act of 1984 which comprises this chapter.

SENSE OF CONGRESS WITH RESPECT TO VICTIMS OF CRIME

Section 506 of Pub. L. 101-647 provided that: “It is the sense of Congress that the States should make every effort to adopt the following goals of the Victims of Crime Bill of Rights:

“(1) Victims of crime should be treated with compassion, respect and dignity throughout the criminal justice process.

“(2) Victims of crime should be reasonably protected from the accused throughout the criminal justice process.

“(3) Victims of crime should have a statutorily designated advisory role in decisions involving prosecutorial discretion, such as the decision to plea-bargain.

“(4) Victims of crime should have the right to a reasonable assurance that the accused will be tried in an expeditious manner.

“(5) A victim of crime should have the right to be present at all proceedings related to the offense against him, unless the victim is to testify and the court determines that the victim’s testimony would be materially prejudiced by hearing other testimony at the trial.

“(6) Victims of crime should have the right to information about the conviction, sentencing and imprisonment of the person who committed the crime against them.

“(7) Victims of crime should be compensated for the damage resulting from the crime to the fullest extent possible by the person convicted of the crime.

“(8) Victims of crime should have a statutorily designated advisory role in deciding the early release status of the person convicted of the crime against them.

“(9) A victim of crime should never be forced to endure again the emotional and physical consequences of the original crime.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10607 of this title.

§ 10607. Services to victims

(a) Designation of responsible officials

The head of each department and agency of the United States engaged in the detection, investigation, or prosecution of crime shall designate by names and office titles the persons who will be responsible for identifying the victims of crime and performing the services described in subsection (c) of this section at each stage of a criminal case.

(b) Identification of victims

At the earliest opportunity after the detection of a crime at which it may be done without interfering with an investigation, a responsible official shall—

(1) identify the victim or victims of a crime;

(2) inform the victims of their right to receive, on request, the services described in subsection (c) of this section; and

(3) inform each victim of the name, title, and business address and telephone number of the responsible official to whom the victim

should address a request for each of the services described in subsection (c) of this section.

(c) Description of services

(1) A responsible official shall—

(A) inform a victim of the place where the victim may receive emergency medical and social services;

(B) inform a victim of any restitution or other relief to which the victim may be entitled under this or any other law and¹ manner in which such relief may be obtained;

(C) inform a victim of public and private programs that are available to provide counseling, treatment, and other support to the victim; and

(D) assist a victim in contacting the persons who are responsible for providing the services and relief described in subparagraphs (A), (B), and (C).

(2) A responsible official shall arrange for a victim to receive reasonable protection from a suspected offender and persons acting in concert with or at the behest of the suspected offender.

(3) During the investigation and prosecution of a crime, a responsible official shall provide a victim the earliest possible notice of—

(A) the status of the investigation of the crime, to the extent it is appropriate to inform the victim and to the extent that it will not interfere with the investigation;

(B) the arrest of a suspected offender;

(C) the filing of charges against a suspected offender;

(D) the scheduling of each court proceeding that the witness is either required to attend or, under section 10606(b)(4)² of this title, is entitled to attend;

(E) the release or detention status of an offender or suspected offender;

(F) the acceptance of a plea of guilty or nolo contendere or the rendering of a verdict after trial; and

(G) the sentence imposed on an offender, including the date on which the offender will be eligible for parole.

(4) During court proceedings, a responsible official shall ensure that a victim is provided a waiting area removed from and out of the sight and hearing of the defendant and defense witnesses.

(5) After trial, a responsible official shall provide a victim the earliest possible notice of—

(A) the scheduling of a parole hearing for the offender;

(B) the escape, work release, furlough, or any other form of release from custody of the offender; and

(C) the death of the offender, if the offender dies while in custody.

(6) At all times, a responsible official shall ensure that any property of a victim that is being held for evidentiary purposes be maintained in good condition and returned to the victim as soon as it is no longer needed for evidentiary purposes.

(7) The Attorney General or the head of another department or agency that conducts an in-

vestigation of a sexual assault shall pay, either directly or by reimbursement of payment by the victim, the cost of a physical examination of the victim which an investigating officer determines was necessary or useful for evidentiary purposes. The Attorney General shall provide for the payment of the cost of up to 2 anonymous and confidential tests of the victim for sexually transmitted diseases, including HIV, gonorrhea, herpes, chlamydia, and syphilis, during the 12 months following sexual assaults that pose a risk of transmission, and the cost of a counseling session by a medically trained professional on the accuracy of such tests and the risk of transmission of sexually transmitted diseases to the victim as the result of the assault. A victim may waive anonymity and confidentiality of any tests paid for under this section.

(8) A responsible official shall provide the victim with general information regarding the corrections process, including information about work release, furlough, probation, and eligibility for each.

(d) No cause of action or defense

This section does not create a cause of action or defense in favor of any person arising out of the failure of a responsible person to provide information as required by subsection (b) or (c) of this section.

(e) Definitions

For the purposes of this section—

(1) the term “responsible official” means a person designated pursuant to subsection (a) of this section to perform the functions of a responsible official under that section; and

(2) the term “victim” means a person that has suffered direct physical, emotional, or pecuniary harm as a result of the commission of a crime, including—

(A) in the case of a victim that is an institutional entity, an authorized representative of the entity; and

(B) in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, one of the following (in order of preference):

(i) a spouse;

(ii) a legal guardian;

(iii) a parent;

(iv) a child;

(v) a sibling;

(vi) another family member; or

(vii) another person designated by the court.

(Pub. L. 101-647, title V, § 503, Nov. 29, 1990, 104 Stat. 4820; Pub. L. 103-322, title IV, § 40503(a), Sept. 13, 1994, 108 Stat. 1946.)

REFERENCES IN TEXT

Section 10606(b)(4) of this title, referred to in subsection (c)(3)(D), was in the original “section 1102(b)(4)”, meaning section 1102(b)(4) of Pub. L. 101-647, which has been translated as reading section 502(b)(4) of Pub. L. 101-647 to reflect the probable intent of Congress because Pub. L. 101-647 does not contain a section 1102 and section 502(b)(4) relates to the right of crime victims to be present at public court proceedings.

CODIFICATION

Section enacted as part of the Victims’ Rights and Restitution Act of 1990 and also as part of the Crime

¹ So in original. Probably should be followed by “the”.

² See References in Text note below.

Control Act of 1990, and not as part of the Victims of Crime Act of 1984 which comprises this chapter.

AMENDMENTS

1994—Subsec. (c)(7). Pub. L. 103-322 inserted at end “The Attorney General shall provide for the payment of the cost of up to 2 anonymous and confidential tests of the victim for sexually transmitted diseases, including HIV, gonorrhea, herpes, chlamydia, and syphilis, during the 12 months following sexual assaults that pose a risk of transmission, and the cost of a counseling session by a medically trained professional on the accuracy of such tests and the risk of transmission of sexually transmitted diseases to the victim as the result of the assault. A victim may waive anonymity and confidentiality of any tests paid for under this section.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 3510.

§ 10608. Closed circuit televised court proceedings for victims of crime

(a) In general

Notwithstanding any provision of the Federal Rules of Criminal Procedure to the contrary, in order to permit victims of crime to watch criminal trial proceedings in cases where the venue of the trial is changed—

(1) out of the State in which the case was initially brought; and

(2) more than 350 miles from the location in which those proceedings originally would have taken place;

the trial court shall order closed circuit televising of the proceedings to that location, for viewing by such persons the court determines have a compelling interest in doing so and are otherwise unable to do so by reason of the inconvenience and expense caused by the change of venue.

(b) Limited access

(1) Generally

No other person, other than official court and security personnel, or other persons specifically designated by the court, shall be permitted to view the closed circuit televising of the proceedings.

(2) Exception

The court shall not designate a person under paragraph (1) if the presiding judge at the trial determines that testimony by that person would be materially affected if that person heard other testimony at the trial.

(c) Restrictions

(1) The signal transmitted pursuant to subsection (a) of this section shall be under the control of the court at all times and shall only be transmitted subject to the terms and conditions imposed by the court.

(2) No public broadcast or dissemination shall be made of the signal transmitted pursuant to subsection (a) of this section. In the event any tapes are produced in carrying out subsection (a) of this section, such tapes shall be the property of the court and kept under seal.

(3) Any violations of this subsection, or any rule or order made pursuant to this section, shall be punishable as contempt of court as described in section 402 of title 18.

(d) Donations

The Administrative Office of the United States Courts may accept donations to enable the courts to carry out subsection (a) of this section.

(e) Construction

(1)¹ Nothing in this section shall be construed—

(i) to create in favor of any person a cause of action against the United States or any officer or employees thereof, or

(ii) to provide any person with a defense in any action in which application of this section is made.

(f) “State” defined

As used in this section, the term “State” means any State, the District of Columbia, or any possession or territory of the United States.

(g) Rules

The Judicial Conference of the United States, pursuant to its rule making authority under section 331 of title 28, may promulgate and issue rules, or amend existing rules, to effectuate the policy addressed by this section. Upon the implementation of such rules, this section shall cease to be effective.

(h) Effective date

This section shall only apply to cases filed after January 1, 1995.

(Pub. L. 104-132, title II, §235, Apr. 24, 1996, 110 Stat. 1246.)

REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in subsec. (a), are set out in the Appendix to Title 18, Crimes and Criminal Procedure.

CODIFICATION

This section was enacted as part of the Justice for Victims of Terrorism Act of 1996, and also as part of the Antiterrorism and Effective Death Penalty Act of 1996, and not as part of the Victims of Crime Act of 1984 which comprises this chapter.

CHAPTER 113—STATE JUSTICE INSTITUTE

Sec.

10701.	Definitions.
10702.	Establishment of Institute; duties. <ol style="list-style-type: none"> (a) Establishment; purpose; incorporation; powers. (b) Duties. (c) Duplication of functions; responsibility of State agencies. (d) Maintenance of offices in State of incorporation; agent for receipt of service of process. (e) Tax status of Institute and programs assisted thereby. (f) Rules, regulations, etc.; notice and comment.
10703.	Board of Directors. <ol style="list-style-type: none"> (a) Appointment and membership. (b) Term of office. (c) Reappointment. (d) Compensation; reimbursement for expenses. (e) Status of members of Board as officers and employees of United States.

¹ So in original. No par. (2) has been enacted.

- Sec.
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- (a) Duties of Director; appointment and removal of employees; political tests or qualifications prohibited.
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- (a) Litigation; interference with independence of State judiciary; funding of State judicial system activities other than pursuant to this chapter; legislative lobbying.
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10708. Administrative provisions.
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10711. Audits.
- (a) Time and place of audits; standards; availability of books, accounts, facilities, etc., to auditors; filing of report and availability for public inspection.
 - (b) Additional audits; requirements; reports and recommendations to Congress and Attorney General.

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- (c) Annual audits by Institute or recipients; reports; submission of copies to Comptroller General; inspection of books, accounts, etc.; availability of audit reports for public inspection.
10712. Report by Attorney General.
10713. Authorization of appropriations.

§ 10701. Definitions

As used in this chapter, the term—

- (1) “Board” means the Board of Directors of the Institute;
- (2) “Director” means the Executive Director of the Institute;
- (3) “Governor” means the Chief Executive Officer of a State;
- (4) “Institute” means the State Justice Institute;
- (5) “recipient” means any grantee, contractor, or recipient of financial assistance under this chapter;
- (6) “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States;
- (7) “Supreme Court” means the highest appellate court within a State unless, for the purposes of this chapter, a constitutionally or legislatively established judicial council acts in place of that court; and
- (8) “domestic violence” means—
 - (A) any action that constitutes—
 - (i) attempting to cause or intentionally, knowingly, or recklessly causing bodily injury or physical illness;
 - (ii) rape, sexual assault, or causing involuntary deviate sexual intercourse;
 - (iii) placing by physical menace another in fear of imminent serious bodily injury; or
 - (iv) the infliction of false imprisonment; if such action is taken by one of 2 spouses, former spouses, or sexual or intimate partners against the other spouse, former spouse, or partner and the 2 of whom share biological parenthood of, have adopted, are legal custodians of, or are stepparents of a minor child; or
 - (B) physically or sexually abusing such minor child if such abuse is inflicted by either of such spouses, former spouses, or partners.

(Pub. L. 98-620, title II, §202, Nov. 8, 1984, 98 Stat. 3336; Pub. L. 102-528, §1, Oct. 27, 1992, 106 Stat. 3461.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this title” meaning title II of Pub. L. 98-620, Nov. 8, 1984, 98 Stat. 3336, which is classified principally to this chapter. For complete classification of title II to the Code, see Short Title note below and Tables.

AMENDMENTS

1992—Par. (8). Pub. L. 102-528 added par. (8).

EFFECTIVE DATE

Section 216 of title II of Pub. L. 98-620 provided that: “The provisions of this title [enacting this chapter and

amending section 620 of Title 28, Judiciary and Judicial Procedure] shall take effect on October 1, 1985.”

SHORT TITLE

Section 201 of title II of Pub. L. 98-620 provided that: “This title [enacting this chapter and amending section 620 of Title 28, Judiciary and Judicial Procedure] may be cited as the ‘State Justice Institute Act of 1984.’”

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13991, 14036 of this title.

§ 10702. Establishment of Institute; duties

(a) Establishment; purpose; incorporation; powers

There is established a private nonprofit corporation which shall be known as the State Justice Institute. The purpose of the Institute shall be to further the development and adoption of improved judicial administration in State courts in the United States. The Institute may be incorporated in any State pursuant to section 10703(a)(6) of this title. To the extent consistent with the provisions of this chapter, the Institute may exercise the powers conferred upon a nonprofit corporation by the laws of the State in which it is incorporated.

(b) Duties

The Institute shall—

(1) direct a national program of assistance designed to assure each person ready access to a fair and effective system of justice by providing funds to—

(A) State courts;

(B) national organizations which support and are supported by State courts; and

(C) any other nonprofit organization that will support and achieve the purposes of this chapter;

(2) foster coordination and cooperation with the Federal judiciary in areas of mutual concern;

(3) promote recognition of the importance of the separation of powers doctrine to an independent judiciary; and

(4) encourage education for judges and support personnel of State court systems through national and State organizations, including universities.

(c) Duplication of functions; responsibility of State agencies

The Institute shall not duplicate functions adequately performed by existing nonprofit organizations and shall promote, on the part of agencies of State judicial administration, responsibility for the success and effectiveness of State court improvement programs supported by Federal funding.

(d) Maintenance of offices in State of incorporation; agent for receipt of service of process

The Institute shall maintain its principal offices in the State in which it is incorporated and

shall maintain therein a designated agent to accept service of process for the Institute. Notice to or service upon the agent shall be deemed notice to or service upon the Institute.

(e) Tax status of Institute and programs assisted thereby

The Institute, and any program assisted by the Institute, shall be eligible to be treated as an organization described in section 170(c)(2)(B) of title 26 and as an organization described in section 501(c)(3) of title 26 which is exempt from taxation under section 501(a) of title 26. If such treatments are conferred in accordance with the provisions of title 26, the Institute, and programs assisted by the Institute, shall be subject to all provisions of title 26 relevant to the conduct of organizations exempt from taxation.

(f) Rules, regulations, etc.; notice and comment

The Institute shall afford notice and reasonable opportunity for comment to interested parties prior to issuing rules, regulations, guidelines, and instructions under this chapter, and it shall publish in the Federal Register all rules, regulations, guidelines, and instructions.

(Pub. L. 98-620, title II, § 203, Nov. 8, 1984, 98 Stat. 3336; Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100-690, title VII, § 7321(b)(1), Nov. 18, 1988, 102 Stat. 4466; Pub. L. 100-702, title VI, § 601, Nov. 19, 1988, 102 Stat. 4652; Pub. L. 102-528, § 3(1), Oct. 27, 1992, 106 Stat. 3462.)

AMENDMENTS

1992—Subsec. (f). Pub. L. 102-528 struck out at end “The publication of a substantive rule shall not be made less than thirty days before the effective date of such rule, except as otherwise provided by the Institute for good cause found and published with the rule.”

1988—Subsec. (f). Pub. L. 100-690 and Pub. L. 100-702 made substantially identical amendments, striking out “, at least thirty days prior to their effective date,” after “Federal Register” and inserting sentence at end relating to publication of a substantive rule.

1986—Subsec. (e). Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954” wherever appearing, which for purposes of codification was translated as “title 26” thus requiring no change in text.

BATTERED WOMEN’S TESTIMONY

Pub. L. 102-527, Oct. 27, 1992, 106 Stat. 3459, provided that:

“SECTION 1. SHORT TITLE.

“This Act may be cited as the ‘Battered Women’s Testimony Act of 1992’.

“SEC. 2. AUTHORITY OF STATE JUSTICE INSTITUTE.

“The State Justice Institute shall—

“(1) collect nationwide and analyze information regarding—

“(A) the admissibility and quality of expert testimony on the experiences of battered women offered as part of the defense in criminal cases under State law, and

“(B) sources of, and methods to obtain, funds to pay costs incurred to provide such testimony, particularly in cases involving indigent women defendants,

“(2) develop training materials to assist—

“(A) battered women, operators of domestic violence shelters, battered women’s advocates, and attorneys to use such expert testimony in appropriate cases, particularly appropriate cases involving indigent women defendants, and

“(B) individuals with expertise in the experiences of battered women to develop skills appropriate to providing such expert testimony, and

“(3) disseminate such information and such training materials, and provide related technical assistance, to battered women, such operators, such advocates, such attorneys, and such individuals.

“SEC. 3. ADMINISTRATIVE PROVISIONS.

“For purposes of this Act—

“(1) subsections (d) and (e) of section 206 of the State Justice Institute Act of 1984 [42 U.S.C. 10705(d), (e)], and

“(2) subsections (a) and (b) of section 207 of such Act [42 U.S.C. 10706(a), (b)], shall apply in the same manner as such subsections apply with respect to grants and contracts made under such Act [42 U.S.C. 10701 et seq.].

“SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

“There is authorized to be appropriated \$600,000 to carry out this Act.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10712 of this title.

§ 10703. Board of Directors

(a) Appointment and membership

(1) The Institute shall be supervised by a Board of Directors, consisting of eleven voting members to be appointed by the President, by and with the advice and consent of the Senate. The Board shall have both judicial and nonjudicial members, and shall, to the extent practicable, have a membership representing a variety of backgrounds and reflecting participation and interest in the administration of justice.

(2) The Board shall consist of—

(A) six judges, to be appointed in the manner provided in paragraph (3);

(B) one State court administrator, to be appointed in the manner provided in paragraph (3); and

(C) four members from the public sector, no more than two of whom shall be of the same political party, to be appointed in the manner provided in paragraph (4).

(3) The President shall appoint six judges and one State court administrator from a list of candidates submitted to the President by the Conference of Chief Justices. The Conference of Chief Justices shall submit a list of at least fourteen individuals, including judges and State court administrators, whom the Conference considers best qualified to serve on the Board. Whenever the term of any of the members of the Board described in subparagraphs (A) and (B) terminates and that member is not to be reappointed to a new term, and whenever a vacancy otherwise occurs among those members, the President shall appoint a new member from a list of three qualified individuals submitted to the President by the Conference of Chief Justices. The President may reject any list of individuals submitted by the Conference under this paragraph and, if such a list is so rejected, the President shall request the Conference to submit to him another list of qualified individuals. Prior to consulting with or submitting a list to the President, the Conference of Chief Justices shall obtain and consider the recommendations of all interested organizations and individuals

concerned with the administration of justice and the objectives of this chapter.

(4) In addition to those members appointed under paragraph (3), the President shall appoint four members from the public sector to serve on the Board.

(5) The President shall make the initial appointments of members of the Board under this subsection within ninety days after October 1, 1985. In the case of any other appointment of a member, the President shall make the appointment not later than ninety days after the previous term expires or the vacancy occurs, as the case may be. The Conference of Chief Justices shall submit lists of candidates under paragraph (3) in a timely manner so that the appointments can be made within the time periods specified in this paragraph.

(6) The initial members of the Board of Directors shall be the incorporators of the Institute and shall determine the State in which the Institute is to be incorporated.

(b) Term of office

(1) Except as provided in paragraph (2), the term of each voting member of the Board shall be three years. Each member of the Board shall continue to serve until the successor to such member has been appointed and qualified.

(2) Five of the members first appointed by the President shall serve for a term of two years. Any member appointed to serve an unexpired term which has arisen by virtue of the death, disability, retirement, or resignation of a member shall be appointed only for such unexpired term, but shall be eligible for reappointment.

(3) The term of initial members shall commence from the date of the first meeting of the Board, and the term of each member other than an initial member shall commence from the date of termination of the preceding term.

(c) Reappointment

No member shall be reappointed to more than two consecutive terms immediately following such member's initial term.

(d) Compensation; reimbursement for expenses

Members of the Board shall serve without compensation, but shall be reimbursed for actual and necessary expenses incurred in the performance of their official duties.

(e) Status of members of Board as officers and employees of United States

The members of the Board shall not, by reason of such membership, be considered officers or employees of the United States.

(f) Voting rights of Board members; quorum; action of Board on concurrence of majority

Each member of the Board shall be entitled to one vote. A simple majority of the membership shall constitute a quorum for the conduct of business. The Board shall act upon the concurrence of a simple majority of the membership present and voting.

(g) Chairman; initial selection and term of office; subsequent annual election

The Board shall select from among the voting members of the Board a chairman, the first of whom shall serve for a term of three years.

Thereafter, the Board shall annually elect a chairman from among its voting members.

(h) Grounds for removal of members

A member of the Board may be removed by a vote of seven members for malfeasance in office, persistent neglect of, or inability to discharge duties, or for any offense involving moral turpitude, but for no other cause.

(i) Quarterly meetings of Board; special meetings

Regular meetings of the Board shall be held quarterly. Special meetings shall be held from time to time upon the call of the chairman, acting at his own discretion or pursuant to the petition of any seven members.

(j) Open meetings

All meetings of the Board, any executive committee of the Board, and any council established in connection with this chapter, shall be open and subject to the requirements and provisions of section 552b of title 5 relating to open meetings.

(k) Duties and functions of Board

In its direction and supervision of the activities of the Institute, the Board shall—

(1) establish policies and develop such programs for the Institute that will further the achievement of its purpose and performance of its functions;

(2) establish policy and funding priorities and issue rules, regulations, guidelines, and instructions pursuant to such priorities;

(3) appoint and fix the duties of the Executive Director of the Institute, who shall serve at the pleasure of the Board and shall be a nonvoting ex officio member of the Board;

(4) present to other Government departments, agencies, and instrumentalities whose programs or activities relate to the administration of justice in the State judiciaries of the United States, the recommendations of the Institute for the improvement of such programs or activities;

(5) consider and recommend to both public and private agencies aspects of the operation of the State courts of the United States considered worthy of special study; and

(6) award grants and enter into cooperative agreements or contracts pursuant to section 10705(a) of this title.

(Pub. L. 98-620, title II, §204, Nov. 8, 1984, 98 Stat. 3337; Pub. L. 102-572, title VIII, §803(a), Oct. 29, 1992, 106 Stat. 4516.)

AMENDMENTS

1992—Subsec. (a)(3). Pub. L. 102-572 substituted “Conference” for “conference” after “whom the” in second sentence.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 804 of title VIII of Pub. L. 102-572 provided that: “The provisions of this title [amending this section and sections 10705 and 10713 of this title] shall take effect on the date of the enactment of this Act [Oct. 29, 1992].”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10702 of this title.

§ 10704. Officers and employees

(a) Duties of Director; appointment and removal of employees; political tests or qualifications prohibited

(1) The Director, subject to general policies established by the Board, shall supervise the activities of persons employed by the Institute and may appoint and remove such employees as he determines necessary to carry out the purposes of the Institute. The Director shall be responsible for the executive and administrative operations of the Institute, and shall perform such duties as are delegated to such Director by the Board and the Institute.

(2) No political test or political qualification shall be used in selecting, appointing, promoting, or taking any other personnel action with respect to any officer, agent, or employee of the Institute, or in selecting or monitoring any grantee, contractor, person, or entity receiving financial assistance under this chapter.

(b) Compensation

Officers and employees of the Institute shall be compensated at rates determined by the Board, but not in excess of the rate of level V of the Executive Schedule specified in section 5316 of title 5.

(c) Status of Institute as department, agency, or instrumentality of Federal Government; authority of Office of Management and Budget

(1) Except as otherwise specifically provided in this chapter, the Institute shall not be considered a department, agency, or instrumentality of the Federal Government.

(2) This chapter does not limit the authority of the Office of Management and Budget to review and submit comments upon the Institute's annual budget request at the time it is transmitted to the Congress.

(d) Status of officers and employees of Institute as officers and employees of United States

(1) Except as provided in paragraph (2), officers and employees of the Institute shall not be considered officers or employees of the United States.

(2) Officers and employees of the Institute shall be considered officers and employees of the United States solely for the purposes of the following provisions of title 5: Subchapter I of chapter 81 (relating to compensation for work injuries); chapters 83 and 84 (relating to civil service retirement); chapter 87 (relating to life insurance); and chapter 89 (relating to health insurance). The Institute shall make contributions under the provisions referred to in this subsection at the same rates applicable to agencies of the Federal Government.

(e) Freedom of information requirements

The Institute and its officers and employees shall be subject to the provisions of section 552 of title 5 relating to freedom of information.

(Pub. L. 98-620, title II, §205, Nov. 8, 1984, 98 Stat. 3339; Pub. L. 100-690, title VII, §7321(b)(2), Nov. 18, 1988, 102 Stat. 4466; Pub. L. 100-702, title VI, §602, Nov. 19, 1988, 102 Stat. 4653.)

AMENDMENTS

1988—Subsec. (d)(2). Pub. L. 100-690 and Pub. L. 100-702 amended par. (2) identically, substituting “chapters 83 and 84” for “chapter 83”.

§ 10705. Grants and contracts**(a) Authority of Institute; purposes of grants**

The Institute is authorized to award grants and enter into cooperative agreements or contracts, in a manner consistent with subsection (b) of this section, in order to—

- (1) conduct research, demonstrations, or special projects pertaining to the purposes described in this chapter, and provide technical assistance and training in support of tests, demonstrations, and special projects;
- (2) serve as a clearinghouse and information center, where not otherwise adequately provided, for the preparation, publication, and dissemination of information regarding State judicial systems;
- (3) participate in joint projects with other agencies, including the Federal Judicial Center, with respect to the purposes of this chapter;
- (4) evaluate, when appropriate, the programs and projects carried out under this chapter to determine their impact upon the quality of criminal, civil, and juvenile justice and the extent to which they have met or failed to meet the purposes and policies of this chapter;
- (5) encourage and assist in the furtherance of judicial education;
- (6) encourage, assist, and serve in a consulting capacity to State and local justice system agencies in the development, maintenance, and coordination of criminal, civil, and juvenile justice programs and services; and
- (7) be responsible for the certification of national programs that are intended to aid and improve State judicial systems.

(b) Priority in making awards; alternative recipients; approval of applications; receipt and administration of funds; accountability

The Institute is empowered to award grants and enter into cooperative agreements or contracts as follows:

- (1) The Institute may award grants to or enter into cooperative agreements or contracts with—
 - (A) State and local courts and their agencies;
 - (B) national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branches of State governments; and
 - (C) national nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments.
- (2) The Institute may, if the objective can better be served thereby, award grants to or enter into cooperative agreements or contracts with—
 - (A) other nonprofit organizations with expertise in judicial administration;
 - (B) institutions of higher education;
 - (C) individuals, partnerships, firms, or corporations; and
 - (D) private agencies with expertise in judicial administration.
- (3) Upon application by an appropriate State or local agency or institution and if the arrangements to be made by such agency or in-

stitution will provide services which could not be provided adequately through nongovernmental arrangements, the Institute may award a grant or enter into a cooperative agreement or contract with a unit of State or local government other than a court.

(4) The Institute may enter into contracts with Federal agencies to carry out the purposes of this chapter.

(5) Each application for funding by a State or local court shall be approved, consistent with State law, by the State's supreme court, or its designated agency or council, which shall receive, administer, and be accountable for all funds awarded by the Institute to such courts.

(c) Permissible uses of funds

Funds available pursuant to grants, cooperative agreements, or contracts awarded under this section may be used—

- (1) to assist State and local court systems in establishing appropriate procedures for the selection and removal of judges and other court personnel and in determining appropriate levels of compensation;
- (2) to support education and training programs for judges and other court personnel, for the performance of their general duties and for specialized functions, and to support national and regional conferences and seminars for the dissemination of information on new developments and innovative techniques;
- (3) to conduct research on alternative means for using judicial and nonjudicial personnel in court decisionmaking activities, to implement demonstration programs to test innovative approaches, and to conduct evaluations of their effectiveness;
- (4) to support studies of the appropriateness of¹ efficacy of court organization and financing structures in particular States, and to enable States to implement plans for improved court organization and finance;
- (5) to support State court planning and budgeting staffs and to provide technical assistance in resource allocation and service forecasting techniques;
- (6) to support studies of the adequacy of court management systems in State and local courts and to implement and evaluate innovative responses to problems of record management, data processing, court personnel management, reporting and transcription of court proceedings, and juror utilization and management;
- (7) to collect and compile statistical data and other information on the work of the courts and on the work of other agencies which relate to and affect the work of courts;
- (8) to conduct studies of the causes of trial and appellate court delay in resolving cases, and to establish and evaluate experimental programs for reducing case processing time;
- (9) to develop and test methods for measuring the performance of judges and courts and to conduct experiments in the use of such measures to improve the functioning of such judges and courts;

¹ So in original. Probably should be "and".

(10) to support studies of court rules and procedures, discovery devices, and evidentiary standards, to identify problems with the operation of such rules, procedures, devices, and standards, to devise alternative approaches to better reconcile the requirements of due process with the need for swift and certain justice, and to test the utility of those alternative approaches;

(11) to support studies of the outcomes of cases in selected subject matter areas to identify instances in which the substance of justice meted out by the courts diverges from public expectations of fairness, consistency, or equity, to propose alternative approaches to the resolving of cases in problem areas, and to test and evaluate those alternatives;

(12) to support programs to increase court responsiveness to the needs of citizens through citizen education, improvement of court treatment of witnesses, victims, and jurors, and development of procedures for obtaining and using measures of public satisfaction with court processes to improve court performance;

(13) to test and evaluate experimental approaches to providing increased citizen access to justice, including processes which reduce the cost of litigating common grievances and alternative techniques and mechanisms for resolving disputes between citizens;

(14) conduct² not more than 5 projects at an aggregate cost of not to exceed \$600,000—

(A) to investigate, and carry out research regarding State judicial decisions relating to child custody litigation involving domestic violence;

(B) to develop training curricula to assist State courts to develop an understanding of, and appropriate responses to, child custody litigation involving domestic violence; and

(C) to disseminate the results of the investigation and research carried out under subparagraph (A), and the curricula developed under subparagraph (B), to State courts; and

(15) to carry out such other programs, consistent with the purposes of this chapter, as may be deemed appropriate by the Institute.

(d) Matching fund requirements

The Institute shall incorporate in any grant, cooperative agreement, or contract awarded under this section in which a State or local court (or other unit of State or local government) is the recipient, the requirement that the recipient provide a match, from private or public sources, not less than 50 per centum of the total cost of such grant, cooperative agreement, or contract, except that such requirement may be waived in exceptionally rare circumstances upon the approval of the chief justice of the highest court of the State and a majority of the Board of Directors.

(e) Compliance monitoring and evaluation by Institute

The Institute shall monitor and evaluate, or provide for independent evaluations of, programs supported in whole or in part under this chapter to ensure that the provisions of this

chapter, the bylaws of the Institute, and the applicable rules, regulations, and guidelines promulgated pursuant to this chapter, are carried out.

(f) Independent study of financial and technical assistance programs

The Institute shall provide for an independent study of the financial and technical assistance programs under this chapter.

(Pub. L. 98-620, title II, § 206, Nov. 8, 1984, 98 Stat. 3340; Pub. L. 100-690, title VII, § 7321(b)(3), (4), Nov. 18, 1988, 102 Stat. 4466, 4467; Pub. L. 100-702, title VI, §§ 603, 604, Nov. 19, 1988, 102 Stat. 4653; Pub. L. 102-528, §§ 2, 3(2), Oct. 27, 1992, 106 Stat. 3461, 3462; Pub. L. 102-572, title VIII, §§ 802, 803(b), Oct. 29, 1992, 106 Stat. 4515, 4516.)

AMENDMENTS

1992—Subsec. (b)(1). Pub. L. 102-572, § 802(1), substituted “may award grants to or enter into cooperative agreements or contracts” for “shall give priority to grants, cooperative agreements, or contracts” in introductory provisions and substituted semicolon for comma in subpar. (A).

Subsec. (b)(2). Pub. L. 102-572, § 802(2), inserted “to” after “award grants”.

Subsec. (b)(3). Pub. L. 102-572, § 802(3), added par. (3) and struck out former par. (3) which read as follows: “Upon application by an appropriate Federal, State, or local agency or institution and if the arrangements to be made by such agency or institution will provide services which could not be provided adequately through nongovernmental arrangements, the Institute may award a grant or enter into a cooperative agreement or contract with a unit of Federal, State, or local government other than a court.”

Subsec. (b)(4), (5). Pub. L. 102-572, § 802(4), (5), added par. (4) and redesignated former par. (4) as (5).

Subsec. (c)(3). Pub. L. 102-528, § 3(2), struck out “judicial and” before “nonjudicial” the second place appearing.

Subsec. (c)(4) to (6). Pub. L. 102-528, § 3(2)(B), (C), added par. (4) and redesignated former pars. (4) and (5) as (5) and (6), respectively. Former par. (6) redesignated (7).

Subsec. (c)(7). Pub. L. 102-572, § 803(b), substituted “affect” for “effect”.

Pub. L. 102-528, § 3(2)(B), redesignated par. (6) as (7). Former par. (7) redesignated (8).

Subsec. (c)(8) to (12). Pub. L. 102-528, § 3(2)(B), redesignated pars. (7) to (11) as (8) to (12), respectively. Former par. (12) redesignated (13).

Subsec. (c)(13). Pub. L. 102-528, § 3(2)(B), redesignated par. (12) as (13). Former par. (13) redesignated (14).

Pub. L. 102-528, § 2, added par. (13) and redesignated former par. (13) as (14).

Subsec. (c)(14). Pub. L. 102-528, § 3(2)(B), redesignated par. (13) as (14). Former par. (14) redesignated (15).

Pub. L. 102-528, § 2, redesignated par. (13) as (14).

Subsec. (c)(15). Pub. L. 102-528, § 3(2)(B), redesignated par. (14) as (15).

1988—Subsec. (c)(3). Pub. L. 100-702, § 603(1), inserted “judicial and” before “nonjudicial”.

Pub. L. 100-690, § 7321(b)(3)(A), inserted “judicial and” before “nonjudicial”.

Subsec. (c)(4) to (15). Pub. L. 100-702, § 603(2), (3), which directed the striking out of par. (4) and redesignation of pars. (5) to (15) as (4) to (14), respectively, was executed by striking out par. (4) and redesignating pars. (5) to (14) as (4) to (13), respectively, in view of the intervening redesignation of pars. (5) to (15) as (4) to (14), respectively, by Pub. L. 100-690, § 7321(b)(3)(C). See below. Prior to amendment, par. (4) read as follows: “to support studies of the appropriateness and efficacy of court organizations and financing structures in particular States, and to enable States to implement plans for improved court organization and finance;”.

²So in original. Probably should be “to conduct”.

Pub. L. 100-690, §7321(b)(3)(B), (C), redesignated pars. (5) to (15) as (4) to (14), respectively, and struck out former par. (4) which read as follows: "to assist State and local courts in meeting requirements of Federal law applicable to recipients of Federal funds:".

Subsec. (d). Pub. L. 100-702, §604, which directed the substitution of "court (or other unit of State or local government)" for "judicial system", could not be executed due to prior amendment by Pub. L. 100-690, §7321(b)(4). See below.

Pub. L. 100-690, §7321(b)(4), substituted "court (or other unit of State or local government)" for "judicial system".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10703 of this title.

§ 10706. Limitations on grants and contracts

(a) Duties of Institute

With respect to grants made and contracts or cooperative agreements entered into under this chapter, the Institute shall—

(1) ensure that no funds made available to recipients by the Institute shall be used at any time, directly or indirectly, to influence the issuance, amendment, or revocation of any Executive order or similar promulgation by any Federal, State, or local agency, or to undertake to influence the passage or defeat of any legislation or constitutional amendment by the Congress of the United States, or by any State or local legislative body, or any State proposal by initiative petition, or of any referendum, unless a governmental agency, legislative body, a committee, or a member thereof—

(A) requests personnel of the recipients to testify, draft, or review measures or to make representations to such agency, body, committee, or member; or

(B) is considering a measure directly affecting the activities under this chapter of the recipient or the Institute; and

(2) ensure all personnel engaged in grant, cooperative agreement or contract assistance activities supported in whole or part by the Institute refrain, while so engaged, from any partisan political activity.

(b) Use of funds for training programs for advocacy of nonjudicial public policies or encouraging nonjudicial political activities

No funds made available by the Institute under this chapter, either by grant, cooperative agreement, or contract, may be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities.

(c) Authority coextensive with appropriation Acts

The authorization to enter into cooperative agreements, contracts or any other obligation under this chapter shall be effective only to the extent, and in such amounts, as are provided in advance in appropriation Acts.

(d) Prohibited uses of funds

To ensure that funds made available under this chapter are used to supplement and improve the operation of State courts, rather than to support basic court services, funds shall not be used—

(1) to supplant State or local funds currently supporting a program or activity; or

(2) to construct court facilities or structures, except to remodel existing facilities to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program.

(Pub. L. 98-620, title II, §207, Nov. 8, 1984, 98 Stat. 3342; Pub. L. 100-702, title VI, §605, Nov. 19, 1988, 102 Stat. 4653.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title", except in subsec. (d) where it was in the original "this Act", meaning title II of Pub. L. 98-620, Nov. 8, 1984, 98 Stat. 336, known as the State Justice Institute Act of 1984, which enacted this chapter and amended section 620 of Title 28, Judiciary and Judicial Procedure. For complete classification of title II to the Code, see Short Title note set out under section 17101 of this title and Tables.

AMENDMENTS

1988—Subsec. (a)(3). Pub. L. 100-702 struck out par. (3) which read as follows: "ensure that each recipient that files with the Institute a timely application for refunding is provided interim funding necessary to maintain its current level of activities until—

"(A) the application for refunding has been approved and funds pursuant thereto received; or

"(B) the application for refunding has been finally denied in accordance with section 10708 of this title."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10712 of this title.

§ 10707. Restrictions on activities of the Institute

(a) Litigation; interference with independence of State judiciary; funding of State judicial system activities other than pursuant to this chapter; legislative lobbying

The Institute shall not—

(1) participate in litigation unless the Institute or a recipient of the Institute is a party, and shall not participate on behalf of any client other than itself;

(2) interfere with the independent nature of any State judicial system or allow financial assistance to be used for the funding of regular judicial and administrative activities of any State judicial system other than pursuant to the terms of any grant, cooperative agreement, or contract with the Institute, consistent with the requirements of this chapter; or

(3) undertake to influence the passage or defeat of any legislation by the Congress of the United States or by any State or local legislative body, except that personnel of the Institute may testify or make other appropriate communication—

(A) when formally requested to do so by a legislative body, committee, or a member thereof;

(B) in connection with legislation or appropriations directly affecting the activities of the Institute; or

(C) in connection with legislation or appropriations dealing with improvements in the State judiciary, consistent with the provisions of this chapter.

(b) Issuance of shares of stock; declaration of dividends; compensation for services; reimbursement for expenses; political activities

(1) The Institute shall have no power to issue any shares of stock, or to declare or pay any dividends.

(2) No part of the income or assets of the Institute shall enure to the benefit of any director, officer, or employee, except as reasonable compensation for services or reimbursement for expenses.

(3) Neither the Institute nor any recipient shall contribute or make available Institute funds or program personnel or equipment to any political party or association, or the campaign of any candidate for public or party office.

(4) The Institute shall not contribute or make available Institute funds or program personnel or equipment for use in advocating or opposing any ballot measure, initiative, or referendum.

(c) Identification of Institute with political activities

Officers and employees of the Institute or of recipients shall not at any time intentionally identify the Institute or the recipient with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office.

(Pub. L. 98-620, title II, § 208, Nov. 8, 1984, 98 Stat. 3343.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10712 of this title.

§ 10708. Administrative provisions

(a) The Institute shall prescribe procedures to ensure that financial assistance under this chapter shall not be suspended unless the grantee, contractor, person, or entity receiving financial assistance under this chapter has been given reasonable notice and opportunity to show cause why such actions should not be taken.

(b) Except as provided by Federal law other than this chapter, no officer or employee of the Institute, and no recipient of assistance under this chapter, may use or reveal any research or statistical information furnished under this chapter by any person and identifiable to any specific private person for any purpose other than the purpose for which the information was obtained in accordance with this chapter. Such information and copies thereof shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceedings.

(Pub. L. 98-620, title II, § 209, Nov. 8, 1984, 98 Stat. 3344; Pub. L. 100-702, title VI, § 606, Nov. 19, 1988, 102 Stat. 4653.)

AMENDMENTS

1988—Pub. L. 100-702 substituted “Administrative provisions” for “Special procedures” in section catchline, and amended text generally, changing structure of section from a single unlettered paragraph to one consisting of subsecs. (a) and (b).

§ 10709. Presidential coordination

The President may, to the extent not inconsistent with any other applicable law, direct that appropriate support functions of the Federal Government may be made available to the Institute in carrying out its functions under this chapter.

(Pub. L. 98-620, title II, § 210, Nov. 8, 1984, 98 Stat. 3344.)

§ 10710. Records and reports

(a) Reports

The Institute is authorized to require such reports as it deems necessary from any recipient with respect to activities carried out pursuant to this chapter.

(b) Records

The Institute is authorized to prescribe the keeping of records with respect to funds provided by any grant, cooperative agreement, or contract under this chapter and shall have access to such records at all reasonable times for the purpose of ensuring compliance with such grant, cooperative agreement, or contract or the terms and conditions upon which financial assistance was provided.

(c) Submission of copies of reports to recipients; maintenance in principal office of Institute; availability for public inspection; furnishing of copies to interested parties

Copies of all reports pertinent to the evaluation, inspection, or monitoring of any recipient shall be submitted on a timely basis to such recipient, and shall be maintained in the principal office of the Institute for a period of at least five years after such evaluation, inspection, or monitoring. Such reports shall be available for public inspection during regular business hours, and copies shall be furnished, upon request, to interested parties upon payment of such reasonable fees as the Institute may establish.

(d) Funds accounted for and reported as receipts and disbursements separate and distinct from Federal funds

Non-Federal funds received by the Institute, and funds received for projects funded in part by the Institute or by any recipient from a source other than the Institute, shall be accounted for and reported as receipts and disbursements separate and distinct from Federal funds.

(Pub. L. 98-620, title II, § 211, Nov. 8, 1984, 98 Stat. 3344.)

§ 10711. Audits

(a) Time and place of audits; standards; availability of books, accounts, facilities, etc., to auditors; filing of report and availability for public inspection

(1) The accounts of the Institute shall be audited annually. Such audits shall be conducted in accordance with generally accepted auditing standards by independent certified public accountants who are certified by a regulatory authority of the jurisdiction in which the audit is undertaken.

(2) The audits shall be conducted at the place or places where the accounts of the Institute are

normally kept. All books, accounts, financial records, reports, files, and other papers or property belonging to or in use by the Institute and necessary to facilitate the audits shall be made available to the person or persons conducting the audits. The full facilities for verifying transactions with the balances and securities held by depositories, fiscal agents, and custodians shall be afforded to any such person.

(3) The report of the annual audit shall be filed with the General Accounting Office and shall be available for public inspection during business hours at the principal office of the Institute.

(b) Additional audits; requirements; reports and recommendations to Congress and Attorney General

(1) In addition to the annual audit, the financial transactions of the Institute for any fiscal year during which Federal funds are available to finance any portion of its operations may be audited by the General Accounting Office in accordance with such rules and regulations as may be prescribed by the Comptroller General of the United States.

(2) Any such audit shall be conducted at the place or places where accounts of the Institute are normally kept. The representatives of the General Accounting Office shall have access to all books, accounts, financial records, reports, files, and other papers or property belonging to or in use by the Institute and necessary to facilitate the audit. The full facilities for verifying transactions with the balances and securities held by depositories, fiscal agents, and custodians shall be afforded to such representatives. All such books, accounts, financial records, reports, files, and other papers or property of the Institute shall remain in the possession and custody of the Institute throughout the period beginning on the date such possession or custody commences and ending three years after such date, but the General Accounting Office may require the retention of such books, accounts, financial records, reports, files, and other papers or property for a longer period under section 3523(c) of title 31.

(3) A report of such audit shall be made by the Comptroller General to the Congress and to the Attorney General, together with such recommendations with respect thereto as the Comptroller General deems advisable.

(c) Annual audits by Institute or recipients; reports; submission of copies to Comptroller General; inspection of books, accounts, etc.; availability of audit reports for public inspection

(1) The Institute shall conduct, or require each recipient to provide for, an annual fiscal audit. The report of each such audit shall be maintained for a period of at least five years at the principal office of the Institute.

(2) The Institute shall submit to the Comptroller General of the United States copies of such reports, and the Comptroller General may, in addition, inspect the books, accounts, financial records, files, and other papers or property belonging to or in use by such grantee, contractor, person, or entity, which relate to the disposition or use of funds received from the Institute. Such audit reports shall be available for public in-

spection during regular business hours, at the principal office of the Institute.

(Pub. L. 98-620, title II, § 212, Nov. 8, 1984, 98 Stat. 3345.)

§ 10712. Report by Attorney General

On October 1, 1987, the Attorney General, in consultation with the Federal Judicial Center, shall transmit to the Committees on the Judiciary of the Senate and the House of Representatives a report on the effectiveness of the Institute in carrying out the duties specified in section 10702(b) of this title. Such report shall include an assessment of the cost effectiveness of the program as a whole and, to the extent practicable, of individual grants, an assessment of whether the restrictions and limitations specified in sections 10706 and 10707 of this title have been respected, and such recommendations as the Attorney General, in consultation with the Federal Judicial Center, deems appropriate.

(Pub. L. 98-620, title II, § 213, Nov. 8, 1984, 98 Stat. 3346.)

§ 10713. Authorization of appropriations

There are authorized to be appropriated to carry out the purposes of this chapter \$20,000,000 for fiscal year 1993, \$20,000,000 for fiscal year 1994, \$25,000,000 for fiscal year 1995, and \$25,000,000 for fiscal year 1996. Amounts appropriated for each such year are to remain available until expended.

(Pub. L. 98-620, title II, § 215, Nov. 8, 1984, 98 Stat. 3346; Pub. L. 100-690, title VII, § 7321(a), Nov. 18, 1988, 102 Stat. 4466; Pub. L. 100-702, title VI, § 607, Nov. 19, 1988, 102 Stat. 4654; Pub. L. 101-162, title V, Nov. 21, 1989, 103 Stat. 1028; Pub. L. 102-572, title VIII, § 801, Oct. 29, 1992, 106 Stat. 4515.)

AMENDMENTS

1992—Pub. L. 102-572 amended section generally. Prior to amendment, section authorized appropriations of \$15,000,000 for each of fiscal years 1989, 1990, 1991, and 1992.

1989—Pub. L. 101-162 repealed Pub. L. 100-702, § 607, and provided that Pub. L. 100-690, § 7321(a), is revived, see 1988 Amendment notes below.

1988—Pub. L. 100-702 amended section generally, substituting appropriations authorization of \$15,000,000 for fiscal years 1989 and 1990, such amounts to remain available until expended for authorization of \$15,000,000 for fiscal years 1989, 1990, 1991, and 1992.

Pub. L. 100-690 amended section generally, substituting appropriations authorization of \$15,000,000 for fiscal years 1989 through 1992 for authorization of \$13,000,000 for fiscal year 1986 and \$15,000,000 for fiscal years 1987 and 1988.

CHAPTER 114—PROTECTION AND ADVOCACY FOR MENTALLY ILL INDIVIDUALS

SUBCHAPTER I—PROTECTION AND ADVOCACY SYSTEMS

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 290bb-31, 290ii-1, 290ii-2, 1396r, 3032i, 3058g, 14404, 15043 of this title; title 29 sections 794e, 3002.

SUBCHAPTER I—PROTECTION AND ADVOCACY SYSTEMS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 10841, 10851 of this title.

PART A—ESTABLISHMENT OF SYSTEMS

§ 10801. Congressional findings and statement of purpose

- (a) The Congress finds that—
- (1) individuals with mental illness are vulnerable to abuse and serious injury;
 - (2) family members of individuals with mental illness play a crucial role in being advocates for the rights of individuals with mental illness where the individuals are minors, the individuals are legally competent and choose to involve the family members, and the individuals are legally incompetent and the legal guardians, conservators, or other legal representatives are members of the family;
 - (3) individuals with mental illness are subject to neglect, including lack of treatment, adequate nutrition, clothing, health care, and adequate discharge planning; and
 - (4) State systems for monitoring compliance with respect to the rights of individuals with

mental illness vary widely and are frequently inadequate.

(b) The purposes of this chapter are—

- (1) to ensure that the rights of individuals with mental illness are protected; and

(2) to assist States to establish and operate a protection and advocacy system for individuals with mental illness which will—

(A) protect and advocate the rights of such individuals through activities to ensure the enforcement of the Constitution and Federal and State statutes; and

(B) investigate incidents of abuse and neglect of individuals with mental illness if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred.

(Pub. L. 99-319, title I, §101, May 23, 1986, 100 Stat. 478; Pub. L. 102-173, §§ 3, 10(2), Nov. 27, 1991, 105 Stat. 1217, 1219.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original “this Act”, meaning Pub. L. 99-319, May 23, 1986, 100 Stat. 478, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note below and Tables.

AMENDMENTS

1991—Subsec. (a). Pub. L. 102-173, §10(2), substituted “individuals with mental illness” for “mentally ill individuals” in three places.

Subsec. (a)(2) to (4). Pub. L. 102-173, § 3, added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

Subsec. (b). Pub. L. 102-173, §10(2), substituted “individuals with mental illness” for “mentally ill individuals” in three places.

SHORT TITLE OF 1991 AMENDMENT

Section 1 of Pub. L. 102-173 provided that: “This Act [amending this section and sections 10802 to 10807, 10821, 10824, 10826, 10827, 10841, and 10851 of this title] may be cited as the ‘Protection and Advocacy for Mentally Ill Individuals Amendments Act of 1991.’”

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100-509, §1, Oct. 20, 1988, 102 Stat. 2543, provided that: “This Act [amending sections 10802, 10804 to 10806, 10821, 10822, 10825, and 10827 of this title and enacting a provision set out as a note under section 10827 of this title] may be cited as the ‘Protection and Advocacy for Mentally Ill Individuals Amendments Act of 1988.’”

SHORT TITLE

Pub. L. 99-319, §1, May 23, 1986, 100 Stat. 478, as amended by Pub. L. 106-310, div. B, title XXXII, §3206(a), Oct. 17, 2000, 114 Stat. 1193, provided that: “This Act [enacting this chapter and section 247a of this title and enacting provisions set out as a note below] may be cited as the ‘Protection and Advocacy for Individuals with Mental Illness Act.’”

SUPERSEDURE OF BALANCED BUDGET PROVISIONS

Section 402 of Pub. L. 99-319 provided that: “This Act [see Short Title note above] shall not be construed as superseding any of the balanced budget provisions set forth in section 3(7) of the Congressional Budget and Impoundment Control Act of 1974 [2 U.S.C. 622(7)].”

§ 10802. Definitions

For purposes of this subchapter:

- (1) The term “abuse” means any act or failure to act by an employee of a facility render-

ing care or treatment which was performed, or which was failed to be performed, knowingly, recklessly, or intentionally, and which caused, or may have caused, injury or death to a¹ individual with mental illness, and includes acts such as—

(A) the rape or sexual assault of a¹ individual with mental illness;

(B) the striking of a¹ individual with mental illness;

(C) the use of excessive force when placing a¹ individual with mental illness in bodily restraints; and

(D) the use of bodily or chemical restraints on a¹ individual with mental illness which is not in compliance with Federal and State laws and regulations.

(2) The term “eligible system” means the system established in a State to protect and advocate the rights of persons with developmental disabilities under subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 [42 U.S.C. 15041 et seq.].

(3) The term “facilities” may include, but need not be limited to, hospitals, nursing homes, community facilities for individuals with mental illness, board and care homes, homeless shelters, and jails and prisons.

(4) The term “individual with mental illness” means, except as provided in section 10804(d) of this title, an individual—

(A) who has a significant mental illness or emotional impairment, as determined by a mental health professional qualified under the laws and regulations of the State; and

(B)(i)(I) who is an inpatient or resident in a facility rendering care or treatment, even if the whereabouts of such inpatient or resident are unknown;

(II) who is in the process of being admitted to a facility rendering care or treatment, including persons being transported to such a facility; or²

(III) who is involuntarily confined in a municipal detention facility for reasons other than serving a sentence resulting from conviction for a criminal offense; or

(ii) who satisfies the requirements of subparagraph (A) and lives in a community setting, including their own home.

(5) The term “neglect” means a negligent act or omission by any individual responsible for providing services in a facility rendering care or treatment which caused or may have caused injury or death to a¹ individual with mental illness or which placed a¹ individual with mental illness at risk of injury or death, and includes an act or omission such as the failure to establish or carry out an appropriate individual program plan or treatment plan for a¹ individual with mental illness, the failure to provide adequate nutrition, clothing, or health care to a¹ individual with mental illness, or the failure to provide a safe environment for a¹ individual with mental illness, including the failure to maintain adequate numbers of appropriately trained staff.

(6) The term “Secretary” means the Secretary of Health and Human Services.

(7) The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(8) The term “American Indian consortium” means a consortium established under part C of the Developmental Disabilities Assistance and Bill of Rights Act³ (42 U.S.C. 6042 et seq.).

(Pub. L. 99-319, title I, §102, May 23, 1986, 100 Stat. 478; Pub. L. 100-509, §3, Oct. 20, 1988, 102 Stat. 2543; Pub. L. 102-173, §§4, 10(1), Nov. 27, 1991, 105 Stat. 1217, 1219; Pub. L. 106-310, div. B, title XXXII, §3206(b), Oct. 17, 2000, 114 Stat. 1194; Pub. L. 106-402, title IV, §401(b)(13)(A), Oct. 30, 2000, 114 Stat. 1739.)

REFERENCES IN TEXT

The Developmental Disabilities Assistance and Bill of Rights Act of 2000, referred to in par. (2), is Pub. L. 106-402, Oct. 30, 2000, 114 Stat. 1677. Subtitle C of the Act probably means subtitle C of title I of the Act, which is classified generally to part C (§15041 et seq.) of subchapter I of chapter 144 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 15001 of this title and Tables.

The Developmental Disabilities Assistance and Bill of Rights Act, referred to in par. (8), is title I of Pub. L. 88-164, as added by Pub. L. 98-527, §2, Oct. 19, 1984, 98 Stat. 2662, as amended, which was repealed by Pub. L. 106-402, title IV, §401(a), Oct. 30, 2000, 114 Stat. 1737. Part C of the Act was classified generally to subchapter III (§6041 et seq.) of chapter 75 of this title. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2000—Par. (2). Pub. L. 106-402 substituted “subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000” for “part C of the Developmental Disabilities Assistance and Bill of Rights Act”.

Par. (4). Pub. L. 106-310, §3206(b)(1)(A), inserted “, except as provided in section 10804(d) of this title,” after “means” in introductory provisions.

Par. (4)(B). Pub. L. 106-310, §3206(b)(1)(B), designated existing provisions as cl. (i), redesignated former cls. (i) to (iii) as subcls. (I) to (III), respectively, of cl. (i), and added cl. (ii).

Par. (8). Pub. L. 106-310, §3206(b)(2), added par. (8).

1991—Par. (1). Pub. L. 102-173, §10(1), substituted “individual with mental illness” for “mentally ill individual” wherever appearing.

Pars. (3) to (7). Pub. L. 102-173 added par. (3), redesignated former pars. (3) to (6) as (4) to (7), respectively, and substituted “individual with mental illness” for “mentally ill individual” wherever appearing in pars. (4) and (5).

1988—Par. (1). Pub. L. 100-509, §3(1), inserted “or death” after “caused, injury”.

Par. (3)(B). Pub. L. 100-509, §3(2), designated existing provisions as cl. (i), substituted “, even if the whereabouts of such inpatient or resident are unknown;” for period at end, and added cls. (ii) and (iii).

Par. (4). Pub. L. 100-509, §3(3), inserted “or death” after “injury” in two places and inserted before period at end “, including the failure to maintain adequate numbers of appropriately trained staff”.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

¹ So in original. Probably should be “an”.

² So in original.

³ See References in Text note below.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 290ii-1, 10804, 10851 of this title; title 29 section 794e.

§ 10803. Allotments

The Secretary shall make allotments under this subchapter to eligible systems to establish and administer systems—

- (1) which meet the requirements of section 10805 of this title; and
- (2) which are designed to—
 - (A) protect and advocate the rights of individuals with mental illness; and
 - (B) investigate incidents of abuse and neglect of individuals with mental illness if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred.

(Pub. L. 99-319, title I, §103, May 23, 1986, 100 Stat. 479; Pub. L. 102-173, §10(2), Nov. 27, 1991, 105 Stat. 1219.)

AMENDMENTS

1991—Par. (2). Pub. L. 102-173 substituted “individuals with mental illness” for “mentally ill individuals” in two places.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10805, 10822 of this title.

§ 10804. Use of allotments**(a) Contracts**

(1) An eligible system may use its allotment under this subchapter to enter into contracts with State agencies and nonprofit organizations which operate throughout the State. In order to be eligible for a contract under this paragraph—

- (A) such an agency shall be independent of any agency which provides treatment or services (other than advocacy services) to individuals with mental illness; and
- (B) such an agency or organization shall have the capacity to protect and advocate the rights of individuals with mental illness.

(2) In carrying out paragraph (1), an eligible system should consider entering into contracts with organizations including, in particular, groups run by individuals who have received or are receiving mental health services, or the family members of such individuals, which,¹ provide protection or advocacy services to individuals with mental illness.

(b) Obligation of allotments; technical assistance and training

(1) If an eligible system is a public entity, the government of the State in which the system is located may not require the system to obligate more than 5 percent of its allotment under this subchapter in any fiscal year for administrative expenses.

(2) An eligible system may not use more than 10 percent of any allotment under this subchapter for any fiscal year for the costs of providing technical assistance and training to carry out this subchapter.

¹ So in original. The comma probably should not appear.

(c) Representation of individuals with mental illness

An eligible system may use its allotment under this subchapter to provide representation to individuals with mental illness in Federal facilities who request representation by the eligible system. Representatives of such individuals from such system shall be accorded all the rights and authority accorded to other representatives of residents of such facilities pursuant to State law and other Federal laws.

(d) Definition for purposes of representation of individuals with mental illness; priority

The definition of “individual with a mental illness” contained in section 10802(4)(B)(iii) of this title shall apply, and thus an eligible system may use its allotment under this subchapter to provide representation to such individuals, only if the total allotment under this subchapter for any fiscal year is \$30,000,000 or more, and in such case, an eligible system must give priority to representing persons with mental illness as defined in subparagraphs (A) and (B)(i) of section 10802(4) of this title.

(Pub. L. 99-319, title I, §104, May 23, 1986, 100 Stat. 479; Pub. L. 100-509, §7(a), (b)(1), Oct. 20, 1988, 102 Stat. 2544; Pub. L. 102-173, §§5, 10(2), Nov. 27, 1991, 105 Stat. 1217, 1219; Pub. L. 106-310, div. B, title XXXII, §3206(c), Oct. 17, 2000, 114 Stat. 1194.)

AMENDMENTS

2000—Subsec. (d). Pub. L. 106-310 added subsec. (d).
1991—Subsec. (a). Pub. L. 102-173, §10(2), substituted “individuals with mental illness” for “mentally ill individuals” in three places.

Subsec. (c). Pub. L. 102-173, §5, added subsec. (c).
1988—Subsec. (a)(2). Pub. L. 100-509, §7(a), substituted “including, in particular, groups run by individuals who have received or are receiving mental health services, or the family members of such individuals, which” for “which, on May 23, 1986”.

Subsec. (b)(2). Pub. L. 100-509, §7(b)(1), substituted “10” for “5”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10802, 10807, 10821 of this title.

§ 10805. System requirements**(a) Authority; independent status; access to facilities and records; advisory council; annual report; grievance procedure**

A system established in a State under section 10803 of this title to protect and advocate the rights of individuals with mental illness shall—

- (1) have the authority to—
 - (A) investigate incidents of abuse and neglect of individuals with mental illness if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred;
 - (B) pursue administrative, legal, and other appropriate remedies to ensure the protection of individuals with mental illness who are receiving care or treatment in the State; and
 - (C) pursue administrative, legal, and other remedies on behalf of an individual who—
 - (i) was a¹ individual with mental illness; and

¹ So in original. Probably should be “an”.

- (ii) is a resident of the State, but only with respect to matters which occur within 90 days after the date of the discharge of such individual from a facility providing care or treatment;
- (2) be independent of any agency in the State which provides treatment or services (other than advocacy services) to individuals with mental illness;
- (3) have access to facilities in the State providing care or treatment;
- (4) in accordance with section 10806 of this title, have access to all records of—
 - (A) any individual who is a client of the system if such individual, or the legal guardian, conservator, or other legal representative of such individual, has authorized the system to have such access;
 - (B) any individual (including an individual who has died or whose whereabouts are unknown)—
 - (i) who by reason of the mental or physical condition of such individual is unable to authorize the system to have such access;
 - (ii) who does not have a legal guardian, conservator, or other legal representative, or for whom the legal guardian is the State; and
 - (iii) with respect to whom a complaint has been received by the system or with respect to whom as a result of monitoring or other activities (either of which result from a complaint or other evidence) there is probable cause to believe that such individual has been subject to abuse or neglect; and
 - (C) any individual with a mental illness, who has a legal guardian, conservator, or other legal representative, with respect to whom a complaint has been received by the system or with respect to whom there is probable cause to believe the health or safety of the individual is in serious and immediate jeopardy, whenever—
 - (i) such representative has been contacted by such system upon receipt of the name and address of such representative;
 - (ii) such system has offered assistance to such representative to resolve the situation; and
 - (iii) such representative has failed or refused to act on behalf of the individual;
- (5) have an arrangement with the Secretary and the agency of the State which administers the State plan under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] for the furnishing of the information required by subsection (b) of this section;
- (6) establish an advisory council—
 - (A) which will advise the system on policies and priorities to be carried out in protecting and advocating the rights of individuals with mental illness;
 - (B) which shall include attorneys, mental health professionals, individuals from the public who are knowledgeable about mental illness, a provider of mental health services, individuals who have received or are receiv-

ing mental health services, and family members of such individuals, and at least 60 percent the membership of which shall be comprised of individuals who have received or are receiving mental health services or who are family members of such individuals; and (C) which shall be chaired by an individual who has received or is receiving mental health services or who is a family member of such an individual;

(7) on January 1, 1987, and January 1 of each succeeding year, prepare and transmit to the Secretary and the head of the State mental health agency of the State in which the system is located a report describing the activities, accomplishments, and expenditures of the system during the most recently completed fiscal year, including a section prepared by the advisory council that describes the activities of the council and its assessment of the operations of the system;

(8) on an annual basis, provide the public with an opportunity to comment on the priorities established by, and the activities of, the system;

(9) establish a grievance procedure for clients or prospective clients of the system to assure that individuals with mental illness have full access to the services of the system and for individuals who have received or are receiving mental health services, family members of such individuals with mental illness, or representatives of such individuals or family members to assure that the eligible system is operating in compliance with the provisions of this subchapter and subchapter III of this chapter; and

(10) not use allotments provided to a system in a manner inconsistent with section 14404 of this title.

(b) Annual survey report; plan of corrections

The Secretary and the agency of a State which administers its State plan under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] shall provide the eligible system of the State with a copy of each annual survey report and plan of corrections for cited deficiencies made pursuant to titles XVIII and XIX of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq.] with respect to any facility rendering care or treatment to individuals with mental illness in the State in which such system is located. A report or plan shall be made available within 30 days after the completion of the report or plan.

(c) Governing authority

(1)(A) Each system established in a State, through allotments received under section 10803 of this title, to protect and advocate the rights of individuals with mental illness shall have a governing authority.

(B) In States in which the governing authority is organized as a private non-profit entity with a multi-member governing board, or a public system with a multi-member governing board, such governing board shall be selected according to the policies and procedures of the system. The governing board shall be composed of—

(i) members (to be selected no later than October 1, 1990) who broadly represent or are

knowledgeable about the needs of the clients served by the system; and

(ii) in the case of a governing authority organized as a private non-profit entity, members who broadly represent or are knowledgeable about the needs of the clients served by the system including the chairperson of the advisory council of such system.

As used in this subparagraph, the term "members who broadly represent or are knowledgeable about the needs of the clients served by the system" shall be construed to include individuals who have received or are receiving mental health services and family members of such individuals.

(2) The governing authority established under paragraph (1) shall—

(A) be responsible for the planning, design, implementation, and functioning of the system; and

(B) consistent with subparagraph (A), jointly develop the annual priorities of the system with the advisory council.

(Pub. L. 99-319, title I, §105, May 23, 1986, 100 Stat. 480; Pub. L. 100-509, §§4-6(a), 7(c), Oct. 20, 1988, 102 Stat. 2543-2545; Pub. L. 102-173, §§6, 10, Nov. 27, 1991, 105 Stat. 1218, 1219; Pub. L. 105-12, §9(m), Apr. 30, 1997, 111 Stat. 28.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a)(5) and (b), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII and XIX of the Social Security Act are classified generally to subchapters XVIII (§1395 et seq.) and XIX (§1396 et seq.) of chapter 7 of this title, respectively. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

1997—Subsec. (a)(10). Pub. L. 105-12 added par. (10).

1991—Subsec. (a). Pub. L. 102-173, §10, substituted "individual with mental illness" for "mentally ill individual" and "individuals with mental illness" for "mentally ill individuals" wherever appearing.

Subsec. (a)(4). Pub. L. 102-173, §6(a), inserted "as a result of monitoring or other activities (either of which result from a complaint or other evidence)" before "there is" in subpar. (B)(iii) and added subpar. (C).

Subsec. (a)(6). Pub. L. 102-173, §6(b), substituted "60 percent" for "one-half" in subpar. (B) and added subpar. (C).

Subsec. (a)(9). Pub. L. 102-173, §6(c), inserted before period at end "and for individuals who have received or are receiving mental health services, family members of such individuals with mental illness, or representatives of such individuals or family members to assure that the eligible system is operating in compliance with the provisions of this subchapter and subchapter III of this chapter".

Subsec. (b). Pub. L. 102-173, §10(2), substituted "individuals with mental illness" for "mentally ill individuals".

Subsec. (c)(1). Pub. L. 102-173, §§6(d), 10(2), substituted "individuals with mental illness" for "mentally ill individuals" in subpar. (A) and inserted at end of subpar. (B) "As used in this subparagraph, the term 'members who broadly represent or are knowledgeable about the needs of the clients served by the system' shall be construed to include individuals who have received or are receiving mental health services and family members of such individuals."

1988—Subsec. (a)(4)(B). Pub. L. 100-509, §6(a), inserted "(including an individual who has died or whose whereabouts are unknown)" after "any individual".

Subsec. (a)(6). Pub. L. 100-509, §4(1), substituted "an advisory council" for "a board".

Subsec. (a)(7). Pub. L. 100-509, §5, substituted "including a section prepared by the advisory council that describes the activities of the council and its assessment of the operations of the system;" for period at end.

Subsec. (a)(8), (9). Pub. L. 100-509, §7(c), added pars. (8) and (9).

Subsec. (c). Pub. L. 100-509, §4(2), added subsec. (c).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-12 effective Apr. 30, 1997, and applicable to Federal payments made pursuant to obligations incurred after Apr. 30, 1997, for items and services provided on or after such date, subject to also being applicable with respect to contracts entered into, renewed, or extended after Apr. 30, 1997, as well as contracts entered into before Apr. 30, 1997, to the extent permitted under such contracts, see section 11 of Pub. L. 105-12, set out as an Effective Date note under section 14401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10803, 10806, 10824 of this title.

§ 10806. Access to records

(a) An eligible system which, pursuant to section 10805(a)(4) of this title, has access to records which, under Federal or State law, are required to be maintained in a confidential manner by a provider of mental health services, shall, except as provided in subsection (b) of this section, maintain the confidentiality of such records to the same extent as is required of the provider of such services.

(b)(1) Except as provided in paragraph (2), an eligible system which has access to records pursuant to section 10805(a)(4) of this title may not disclose information from such records to the individual who is the subject of the information if the mental health professional responsible for supervising the provision of mental health services to such individual has provided the system with a written determination that disclosure of such information to such individual would be detrimental to such individual's health.

(2)(A) If disclosure of information has been denied under paragraph (1) to an individual—

(i) such individual;

(ii) the legal guardian, conservator, or other legal representative of such individual; or

(iii) an eligible system, acting on behalf of an individual described in subparagraph (B),

may select another mental health professional to review such information and to determine if disclosure of such information would be detrimental to such individual's health. If such mental health professional determines, based on professional judgment, that disclosure of such information would not be detrimental to the health of such individual, the system may disclose such information to such individual.

(B) An eligible system may select a mental health professional under subparagraph (A)(iii) on behalf of—

(i) an individual whose legal guardian is the State; or

(ii) an individual who has a legal guardian, conservator, or other legal representative other than the State if such guardian, conservator, or representative does not, within a reasonable time after such individual is denied

access to information under paragraph (1), select a mental health professional under subparagraph (A) to review such information.

(C) If the laws of a State prohibit an eligible system from obtaining access to the records of individuals with mental illness in accordance with section 10805(a)(4) of this title and this section, section 10805(a)(4) of this title and this section shall not apply to such system before—

- (i) the date such system is no longer subject to such a prohibition; or
- (ii) the expiration of the 2-year period beginning on May 23, 1986,

whichever occurs first.

(3)(A) As used in this section, the term “records” includes reports prepared by any staff of a facility rendering care and treatment or reports prepared by an agency charged with investigating reports of incidents of abuse, neglect, and injury occurring at such facility that describe incidents of abuse, neglect, and injury occurring at such facility and the steps taken to investigate such incidents, and discharge planning records.

(B) An eligible system shall have access to the type of records described in subparagraph (A) in accordance with the provisions of subsection (a) of this section and paragraphs (1) and (2) of subsection (b) of this section.

(Pub. L. 99-319, title I, §106, May 23, 1986, 100 Stat. 481; Pub. L. 100-509, §6(b), Oct. 20, 1988, 102 Stat. 2544; Pub. L. 102-173, §10(2), Nov. 27, 1991, 105 Stat. 1219.)

AMENDMENTS

1991—Subsec. (b)(2)(C). Pub. L. 102-173 substituted “individuals with mental illness” for “mentally ill individuals”.

1988—Subsec. (b)(3). Pub. L. 100-509 added par. (3).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10805 of this title.

§ 10807. Legal actions

(a) Prior to instituting any legal action in a Federal or State court on behalf of a¹ individual with mental illness, an eligible system, or a State agency or nonprofit organization which entered into a contract with an eligible system under section 10804(a) of this title, shall exhaust in a timely manner all administrative remedies where appropriate. If, in pursuing administrative remedies, the system, agency, or organization determines that any matter with respect to such individual will not be resolved within a reasonable time, the system, agency, or organization may pursue alternative remedies, including the initiation of a legal action.

(b) Subsection (a) of this section does not apply to any legal action instituted to prevent or eliminate imminent serious harm to a¹ individual with mental illness.

(Pub. L. 99-319, title I, §107, May 23, 1986, 100 Stat. 482; Pub. L. 102-173, §10(1), Nov. 27, 1991, 105 Stat. 1219.)

¹ So in original. Probably should be “an”.

AMENDMENTS

1991—Pub. L. 102-173 substituted “individual with mental illness” for “mentally ill individual” in subsecs. (a) and (b).

PART B—ADMINISTRATIVE PROVISIONS

§ 10821. Applications

(a) Submission for allotment; contents

No allotment may be made under this chapter to an eligible system unless an application therefor is submitted to the Secretary. Each such application shall contain—

(1) assurances that amounts paid to such system from an allotment under this subchapter will be used to supplement and not to supplant the level of non-Federal funds available in the State in which such system is established to protect and advocate the rights of individuals with mental illness;

(2) assurances that such system will have a staff which is trained or being trained to provide advocacy services to individuals with mental illness and to work with family members of clients served by the system where the individuals with mental illness are minors, legally competent and do not object, and legally incompetent and the legal guardians, conservators, or other legal representatives are family members;

(3) assurances that such system, and any State agency or nonprofit organization with which such system may enter into a contract under section 10804(a) of this title, will not, in the case of any individual who has a legal guardian, conservator, or representative other than the State, take actions which are duplicative of actions taken on behalf of such individual by such guardian, conservator, or representative unless such guardian, conservator, or representative requests the assistance of such system; and

(4) such other information as the Secretary may by regulation prescribe.

(b) Satisfaction of requirements regarding trained staff

The assurance required under subsection (a)(2) of this section regarding trained staff may be satisfied through the provision of training by individuals who have received or are receiving mental health services and family members of such individuals.

(c) Duration of applications and assurances

Applications submitted under this section shall remain in effect for a 4-year period, and the assurances required under this section shall be for the same 4-year period.

(Pub. L. 99-319, title I, §111, May 23, 1986, 100 Stat. 482; Pub. L. 100-509, §7(d), Oct. 20, 1988, 102 Stat. 2545; Pub. L. 102-173, §§7, 10(2), Nov. 27, 1991, 105 Stat. 1218, 1219; Pub. L. 102-321, title I, §163(c)(3)(A), July 10, 1992, 106 Stat. 377.)

AMENDMENTS

1992—Subsec. (c). Pub. L. 102-321 substituted “4-year” for “3-year” in two places.

1991—Subsec. (a)(1). Pub. L. 102-173, §10(2), substituted “individuals with mental illness” for “mentally ill individuals”.

Subsec. (a)(2). Pub. L. 102-173, §§ 7(1), 10(2), substituted "individuals with mental illness" for "mentally ill individuals" and inserted before semicolon at end "and to work with family members of clients served by the system where the individuals with mental illness are minors, legally competent and do not object, and legally incompetent and the legal guardians, conservators, or other legal representatives are family members".

Subsecs. (b), (c). Pub. L. 102-173, § 7(2), (3) added subsec. (b) and redesignated former subsec. (b) as (c).

1988—Pub. L. 100-509 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102-321, set out as a note under section 236 of this title.

§ 10822. Allotment formula and reallocations

(a)(1)(A) Except as provided in paragraph (2) and subject to the availability of appropriations under section 10827 of this title, the Secretary shall make allotments under section 10803 of this title from amounts appropriated under section 10827 of this title for a fiscal year to eligible systems on the basis of a formula prescribed by the Secretary which is based equally—

(i) on the population of each State in which there is an eligible system; and

(ii) on the population of each such State weighted by its relative per capita income.

(B) For purposes of subparagraph (A)(ii), the term "relative per capita income" means the quotient of the per capita income of the United States and the per capita income of the State, except that if the State is Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Marshall Islands, the Federated States of Micronesia, the Republic of Palau, or the Virgin Islands, the quotient shall be considered to be one.

(2)(A) The minimum amount of the allotment of an eligible system shall be the product (rounded to the nearest \$100) of the appropriate base amount determined under subparagraph (B) and the factor specified in subparagraph (C).

(B) For purposes of subparagraph (A), the appropriate base amount—

(i) for American Samoa, Guam, the Marshall Islands, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, and the Virgin Islands, is \$139,300; and

(ii) for any other State, is \$260,000.

(C) The factor specified in this subparagraph is the ratio of the amount appropriated under section 10827 of this title for the fiscal year for which the allotment is being made to the amount appropriated under such section for fiscal year 1995.

(D) If the total amount appropriated for a fiscal year is at least \$25,000,000, the Secretary shall make an allotment in accordance with subparagraph (A) to the eligible system serving the American Indian consortium.

(b)(1) To the extent that all the amounts appropriated under section 10827 of this title for a fiscal year are not allotted to eligible systems because—

(A) one or more eligible systems have not submitted an application for an allotment for such fiscal year; or

(B) one or more eligible systems have notified the Secretary that they do not intend to use the full amount of their allotment,

the amount which is not so allotted shall be reallocated among the remaining eligible systems.

(2) The amount of an allotment to an eligible system for a fiscal year which the Secretary determines will not be required by the system during the period for which it is available shall be available for reallocation by the Secretary to other eligible systems with respect to which such a determination has not been made.

(3) The Secretary shall make reallocations under paragraphs (1) and (2) on such date or dates as the Secretary may fix (but not earlier than 30 days after the Secretary has published notice of the intention of the Secretary to make such reallocation in the Federal Register). A reallocation to an eligible system shall be made in proportion to the original allotment of such system for such fiscal year, but with such proportionate amount for such system being reduced to the extent it exceeds the sum the Secretary estimates such system needs and will be able to use during such period. The total of such reductions shall be similarly reallocated among eligible systems whose proportionate amounts were not so reduced. Any amount so reallocated to an eligible system for a fiscal year shall be deemed to be a part of its allotment under subsection (a) of this section for such fiscal year.

(Pub. L. 99-319, title I, § 112, May 23, 1986, 100 Stat. 483; Pub. L. 100-509, § 7(e), Oct. 20, 1988, 102 Stat. 2545; Pub. L. 106-310, div. B, title XXXII, § 3206(d), (e), Oct. 17, 2000, 114 Stat. 1194, 1195.)

AMENDMENTS

2000—Subsec. (a)(1)(B). Pub. L. 106-310, § 3206(e)(1), substituted "Marshall Islands, the Federated States of Micronesia, the Republic of Palau" for "Trust Territory of the Pacific Islands".

Subsec. (a)(2). Pub. L. 106-310, § 3206(d), amended par. (2) generally. Prior to amendment, par. (2) specified minimum amounts of allotments to eligible systems of each State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands based on whether the total amount appropriated in a fiscal year was at least \$13,000,000 or less than \$13,000,000.

Subsec. (a)(3). Pub. L. 106-310, § 3206(e)(2), struck out par. (3) which read as follows: "In any case in which the total amount appropriated under section 10827 of this title for a fiscal year exceeds the total amount appropriated under such section, as in effect on October 19, 1988, for the preceding fiscal year by a percentage greater than the most recent percentage change in the Consumer Price Index published by the Secretary of Labor under section 720(c)(1) of title 29, the Secretary shall increase each of the allotments under clauses (i)(II) and (ii)(II) of subparagraph (A) and clauses (i) and (ii) of subparagraph (B) of paragraph (2) by an amount which bears the same ratio to the amount of such minimum allotment (including any increases in such minimum allotment under this paragraph for prior fiscal years) as the amount which is equal to the difference between—

"(A) the total amount appropriated under section 10827 of this title for the fiscal year for which the increase in minimum allotment is made, minus;

"(B) the total amount appropriated under section 10827 of this title for the immediately preceding fiscal year,

bears to the total amount appropriated under section 10827 of this title for such preceding fiscal year.”

1988—Subsec. (a)(2). Pub. L. 100-509, §7(e)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “Notwithstanding paragraph (1) and subject to the availability of appropriations under section 10827 of this title—

“(A) the amount of the allotment of the eligible system of each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico shall not be less than \$125,000; and

“(B) the amount of the allotment of the eligible system of Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands shall not be less than \$67,000.”

Subsec. (a)(3). Pub. L. 100-509, §7(e)(2), added par. (3).

§ 10823. Payments under allotments

For each fiscal year, the Secretary shall make payments to each eligible system from its allotment under this subchapter. Any amount paid to an eligible system for a fiscal year and remaining unobligated at the end of such year shall remain available to such system for the next fiscal year for the purposes for which it was made.

(Pub. L. 99-319, title I, §113, May 23, 1986, 100 Stat. 484.)

§ 10824. Reports by Secretary

(a) The Secretary shall include in each report required under section 15005 of this title a separate statement which contains—

(1) a description of the activities, accomplishments, and expenditures of systems to protect and advocate the rights of individuals with mental illness supported with payments from allotments under this subchapter, including—

(A) a specification of the total number of individuals with mental illness served by such systems;

(B) a description of the types of activities undertaken by such systems;

(C) a description of the types of facilities providing care or treatment with respect to which such activities are undertaken;

(D) a description of the manner in which such activities are initiated; and

(E) a description of the accomplishments resulting from such activities;

(2) a description of—

(A) systems to protect and advocate the rights of individuals with mental illness supported with payments from allotments under this subchapter;

(B) activities conducted by States to protect and advocate such rights;

(C) mechanisms established by residential facilities for individuals with mental illness to protect and advocate such rights; and

(D) the coordination among such systems, activities, and mechanisms;

(3) a specification of the number of systems established with allotments under this subchapter and of whether each such system was established by a public or nonprofit private entity; and

(4) recommendations for activities and services to improve the protection and advocacy of the rights of individuals with mental illness

and a description of needs for such activities and services which have not been met by systems established under this subchapter.

(b) In preparing each statement required by subsection (a) of this section, the Secretary shall use and include information submitted to the Secretary in the reports required under section 10805(a)(7) of this title.

(Pub. L. 99-319, title I, §114, May 23, 1986, 100 Stat. 484; Pub. L. 102-173, §10(2), Nov. 27, 1991, 105 Stat. 1219; Pub. L. 106-402, title IV, §401(b)(13)(B), Oct. 30, 2000, 114 Stat. 1739.)

AMENDMENTS

2000—Subsec. (a). Pub. L. 106-402 substituted “section 15005 of this title” for “section 6006(c) of this title” in introductory provisions.

1991—Subsec. (a). Pub. L. 102-173 substituted “individuals with mental illness” for “mentally ill individuals” wherever appearing.

§ 10825. Technical assistance

The Secretary shall use not more than 2 percent of the amounts appropriated under section 10827 of this title to provide technical assistance to eligible systems with respect to activities carried out under this subchapter, consistent with requests by such systems for such assistance.

(Pub. L. 99-319, title I, §115, May 23, 1986, 100 Stat. 484; Pub. L. 100-509, §7(b)(2), Oct. 20, 1988, 102 Stat. 2545.)

AMENDMENTS

1988—Pub. L. 100-509 amended section generally. Prior to amendment, section read as follows: “The Secretary shall provide technical assistance to eligible systems with respect to activities carried out under this subchapter.”

§ 10826. Administration

(a) In general

The Secretary shall carry out this subchapter through the Administrator of the Substance Abuse and Mental Health Services Administration.

(b) Regulations

Not later than 6 months after November 27, 1991, the Secretary shall promulgate final regulations to carry out this subchapter and subchapter III of this chapter.

(Pub. L. 99-319, title I, §116, May 23, 1986, 100 Stat. 485; Pub. L. 102-173, §9, Nov. 27, 1991, 105 Stat. 1219; Pub. L. 102-321, title I, §163(c)(3)(B), July 10, 1992, 106 Stat. 377.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-321 substituted “the Substance Abuse and Mental Health Services Administration” for “the Alcohol, Drug Abuse, and Mental Health Administration”.

1991—Pub. L. 102-173 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-321 effective Oct. 1, 1992, see section 801(c) of Pub. L. 102-321, set out as a note under section 236 of this title.

§ 10827. Authorization of appropriations

There are authorized to be appropriated for allotments under this subchapter, \$19,500,000 for

fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 through 2003.

(Pub. L. 99-319, title I, §117, May 23, 1986, 100 Stat. 485; Pub. L. 100-509, §7(f), Oct. 20, 1988, 102 Stat. 2546; Pub. L. 102-173, §8, Nov. 27, 1991, 105 Stat. 1219; Pub. L. 106-310, div. B, title XXXII, §3206(f), Oct. 17, 2000, 114 Stat. 1195.)

AMENDMENTS

2000—Pub. L. 106-310 substituted “2003” for “1995”.

1991—Pub. L. 102-173 amended section generally. Prior to amendment, section read as follows: “For allotments under this subchapter, there are authorized to be appropriated \$14,300,000 for fiscal year 1989, and such sums as may be necessary for fiscal year 1990 and fiscal year 1991.”

1988—Pub. L. 100-509 amended section generally. Prior to amendment, section read as follows: “For allotments under this subchapter, there are authorized to be appropriated \$10,000,000 for fiscal year 1986, \$10,500,000 for fiscal year 1987, and \$11,025,000 for fiscal year 1988.”

EFFECTIVE DATE OF 1988 AMENDMENT

Section 8 of Pub. L. 100-509 provided that:

“(a) IN GENERAL.—The amendments made by this Act [amending sections 10802, 10804 to 10806, 10821, 10822, and 10825 of this title], other than the amendment made by section 7(f) [amending this section], shall become effective on the date of the enactment of this Act [Oct. 20, 1988].

“(b) AUTHORIZATION OF APPROPRIATIONS.—The amendment made by section 7(f) [amending this section] shall become effective on October 1, 1988.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10822, 10825 of this title.

SUBCHAPTER II—RESTATEMENT OF BILL OF RIGHTS FOR MENTAL HEALTH PATIENTS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 10851 of this title.

§ 10841. Restatement of bill of rights

It is the sense of the Congress that, as previously stated in title V of the Mental Health Systems Act [42 U.S.C. 9501 et seq.], each State should review and revise, if necessary, its laws to ensure that mental health patients receive the protection and services they require, and that in making such review and revision, States should take into account the recommendations of the President’s Commission on Mental Health and the following:

(1) A person admitted to a program or facility for the purpose of receiving mental health services should be accorded the following:

(A) The right to appropriate treatment and related services in a setting and under conditions that—

(i) are the most supportive of such person’s personal liberty; and

(ii) restrict such liberty only to the extent necessary consistent with such person’s treatment needs, applicable requirements of law, and applicable judicial orders.

(B) The right to an individualized, written, treatment or service plan (such plan to be

developed promptly after admission of such person), the right to treatment based on such plan, the right to periodic review and reassessment of treatment and related service needs, and the right to appropriate revision of such plan, including any revision necessary to provide a description of mental health services that may be needed after such person is discharged from such program or facility.

(C) The right to ongoing participation, in a manner appropriate to such person’s capabilities, in the planning of mental health services to be provided such person (including the right to participate in the development and periodic revision of the plan described in subparagraph (B)), and, in connection with such participation, the right to be provided with a reasonable explanation, in terms and language appropriate to such person’s condition and ability to understand, of—

(i) such person’s general mental condition and, if such program or facility has provided a physical examination, such person’s general physical condition;

(ii) the objectives of treatment;

(iii) the nature and significant possible adverse effects of recommended treatments;

(iv) the reasons why a particular treatment is considered appropriate;

(v) the reasons why access to certain visitors may not be appropriate; and

(vi) any appropriate and available alternative treatments, services, and types of providers of mental health services.

(D) The right not to receive a mode or course of treatment, established pursuant to the treatment plan, in the absence of such person’s informed, voluntary, written consent to such mode or course of treatment, except treatment—

(i) during an emergency situation if such treatment is pursuant to or documented contemporaneously by the written order of a responsible mental health professional; or

(ii) as permitted under applicable law in the case of a person committed by a court to a treatment program or facility.

(E) The right not to participate in experimentation in the absence of such person’s informed, voluntary, written consent, the right to appropriate protections in connection with such participation, including the right to a reasonable explanation of the procedure to be followed, the benefits to be expected, the relative advantages of alternative treatments, and the potential discomforts and risks, and the right and opportunity to revoke such consent.

(F) The right to freedom from restraint or seclusion, other than as a mode or course of treatment or restraint or seclusion during an emergency situation if such restraint or seclusion is pursuant to or documented contemporaneously by the written order of a responsible mental health professional.

(G) The right to a humane treatment environment that affords reasonable protection

from harm and appropriate privacy to such person with regard to personal needs.

(H) The right to confidentiality of such person's records.

(I) The right to access, upon request, to such person's mental health care records, except such person may be refused access to—

(i) information in such records provided by a third party under assurance that such information shall remain confidential; and

(ii) specific material in such records if the health professional responsible for the mental health services concerned has made a determination in writing that such access would be detrimental to such person's health, except that such material may be made available to a similarly licensed health professional selected by such person and such health professional may, in the exercise of professional judgment, provide such person with access to any or all parts of such material or otherwise disclose the information contained in such material to such person.

(J) The right, in the case of a person admitted on a residential or inpatient care basis, to converse with others privately, to have convenient and reasonable access to the telephone and mails, and to see visitors during regularly scheduled hours, except that, if a mental health professional treating such person determines that denial of access to a particular visitor is necessary for treatment purposes, such mental health professional may, for a specific, limited, and reasonable period of time, deny such access if such mental health professional has ordered such denial in writing and such order has been incorporated in the treatment plan for such person. An order denying such access should include the reasons for such denial.

(K) The right to be informed promptly at the time of admission and periodically thereafter, in language and terms appropriate to such person's condition and ability to understand, of the rights described in this section.

(L) The right to assert grievances with respect to infringement of the rights described in this section, including the right to have such grievances considered in a fair, timely, and impartial grievance procedure provided for or by the program or facility.

(M) Notwithstanding subparagraph (J), the right of access to (including the opportunities and facilities for private communication with) any available—

(i) rights protection service within the program or facility;

(ii) rights protection service within the State mental health system designed to be available to such person;

(iii) system established under subchapter I of this chapter to protect and advocate the rights of individuals with mental illness; and

(iv) qualified advocate;

for the purpose of receiving assistance to understand, exercise, and protect the rights de-

scribed in this section and in other provisions of law.

(N) The right to exercise the rights described in this section without reprisal, including reprisal in the form of denial of any appropriate, available treatment.

(O) The right to referral as appropriate to other providers of mental health services upon discharge.

(2)(A) The rights described in this section should be in addition to and not in derogation of any other statutory or constitutional rights.

(B) The rights to confidentiality of and access to records as provided in subparagraphs (H) and (I) of paragraph (1) should remain applicable to records pertaining to a person after such person's discharge from a program or facility.

(3)(A) No otherwise eligible person should be denied admission to a program or facility for mental health services as a reprisal for the exercise of the rights described in this section.

(B) Nothing in this section should—

(i) obligate an individual mental health or health professional to administer treatment contrary to such professional's clinical judgment;

(ii) prevent any program or facility from discharging any person for whom the provision of appropriate treatment, consistent with the clinical judgment of the mental health professional primarily responsible for such person's treatment, is or has become impossible as a result of such person's refusal to consent to such treatment;

(iii) require a program or facility to admit any person who, while admitted on prior occasions to such program or facility, has repeatedly frustrated the purposes of such admissions by withholding consent to proposed treatment; or

(iv) obligate a program or facility to provide treatment services to any person who is admitted to such program or facility solely for diagnostic or evaluative purposes.

(C) In order to assist a person admitted to a program or facility in the exercise or protection of such person's rights, such person's attorney or legal representatives should have reasonable access to—

(i) such person;

(ii) the areas of the program or facility where such person has received treatment, resided, or had access; and

(iii) pursuant to the written authorization of such person, the records and information pertaining to such person's diagnosis, treatment, and related services described in paragraph (1)(I).

(D) Each program and facility should post a notice listing and describing, in language and terms appropriate to the ability of the persons to whom such notice is addressed to understand, the rights described in this section of all persons admitted to such program or facility. Each such notice should conform to the format and content for such notices, and should be posted in all appropriate locations.

(4)(A) In the case of a person adjudicated by a court of competent jurisdiction as being in-

competent to exercise the right to consent to treatment or experimentation described in subparagraph (D) or (E) of paragraph (1), or the right to confidentiality of or access to records described in subparagraph (H) or (I) of such paragraph, or to provide authorization as described in paragraph (3)(C)(iii), such right may be exercised or such authorization may be provided by the individual appointed by such court as such person's guardian or representative for the purpose of exercising such right or such authorization.

(B) In the case of a person who lacks capacity to exercise the right to consent to treatment or experimentation under subparagraph (D) or (E) of paragraph (1), or the right to confidentiality of or access to records described in subparagraph (H) or (I) of such paragraph, or to provide authorization as described in paragraph (3)(C)(iii), because such person has not attained an age considered sufficiently advanced under State law to permit the exercise of such right or such authorization to be legally binding, such right may be exercised or such authorization may be provided on behalf of such person by a parent or legal guardian of such person.

(C) Notwithstanding subparagraphs (A) and (B), in the case of a person admitted to a program or facility for the purpose of receiving mental health services, no individual employed by or receiving any remuneration from such program or facility should act as such person's guardian or representative.

(Pub. L. 99-319, title II, § 201, May 23, 1986, 100 Stat. 485; Pub. L. 102-173, § 10(2), Nov. 27, 1991, 105 Stat. 1219.)

REFERENCES IN TEXT

The Mental Health Systems Act, referred to in introductory text, is Pub. L. 96-398, Oct. 7, 1980, 94 Stat. 1564, as amended. Title V of the Mental Health Systems Act is classified generally to subchapter IV (§9501 et seq.) of chapter 102 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9401 of this title and Tables.

AMENDMENTS

1991—Par. (1)(M)(iii). Pub. L. 102-173 substituted “individuals with mental illness” for “mentally ill individuals”.

SUBCHAPTER III—CONSTRUCTION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 10805, 10826 of this title.

§ 10851. Construction of subchapters I and II; “individual with mental illness” defined

(a) Subchapters I and II of this chapter shall not be construed as establishing any new rights for individuals with mental illness.

(b) For purposes of this section, the term “individual with mental illness” has the same meaning as in section 10802(3)¹ of this title.

(Pub. L. 99-319, title III, § 301, May 23, 1986, 100 Stat. 489; Pub. L. 102-173, § 10, Nov. 27, 1991, 105 Stat. 1219.)

¹ See References in Text note below.

REFERENCES IN TEXT

Section 10802(3) of this title, referred to in subsec. (b), was redesignated section 10802(4) of this title by Pub. L. 102-173, § 4(1), Nov. 27, 1991, 105 Stat. 1217.

AMENDMENTS

1991—Pub. L. 102-173, substituted “individuals with mental illness” for “mentally ill individuals” in subsec. (a) and “individual with mental illness” for “mentally ill individual” in subsec. (b).

CHAPTER 115—CHILD DEVELOPMENT ASSOCIATE SCHOLARSHIP ASSISTANCE PROGRAM

Sec.	
10901.	Authority of Secretary to make grants.
10902.	Application for grants. <ol style="list-style-type: none"> (a) Application required. (b) Contents of Applications. (c) Equitable distribution.
10903.	Definitions.
10904.	Annual report by States; contents; manner of payments pursuant to grants. <ol style="list-style-type: none"> (a) Reporting. (b) Payments.
10905.	Authorization of appropriations.

§ 10901. Authority of Secretary to make grants

The Secretary is authorized to make a grant for any fiscal year to any State receiving a grant under title XX of the Social Security Act [42 U.S.C. 1397 et seq.] for such fiscal year to enable such State to award scholarships to eligible individuals within the State who are candidates for the Child Development Associate credential.

(Pub. L. 99-425, title VI, § 602, Sept. 30, 1986, 100 Stat. 976.)

REFERENCES IN TEXT

The Social Security Act, referred to in text, is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XX of the Social Security Act is classified principally to subchapter XX (§1397 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

EFFECTIVE DATE

Chapter effective Oct. 1, 1986, see section 1001 of Pub. L. 99-425, set out as an Effective Date of 1986 Amendment note under section 8621 of this title.

SHORT TITLE

Section 601 of title VI of Pub. L. 99-425 provided that: “This title [enacting this chapter] may be cited as the ‘Child Development Associate Scholarship Assistance Act of 1985’.”

§ 10902. Application for grants

(a) Application required

A State desiring to participate in the grant program established by this chapter shall submit an application to the Secretary in such form as the Secretary may require.

(b) Contents of applications

A State's application shall contain appropriate assurances that—

(1) scholarship assistance made available with funds provided under this chapter will be awarded—

(A) only to eligible individuals;

(B) on the basis of the financial need of such individuals; and

(C) in amounts sufficient to cover the cost of application, assessment, and credentialing (including, at the option of the State, any training necessary for credentialing) for the Child Development Associate credential for such individuals;

(2) not more than 35 percent of the funds received under this chapter by a State may be used to provide scholarship assistance under paragraph (1) to cover the cost of training described in paragraph (1)(C); and

(3) not more than 10 percent of the funds received by the State under this chapter will be used for the costs of administering the program established in such State to award such assistance.

(c) Equitable distribution

In making grants under this chapter, the Secretary shall—

(1) distribute such grants equitably among States; and

(2) ensure that the needs of rural and urban areas are appropriately addressed.

(Pub. L. 99-425, title VI, §603, Sept. 30, 1986, 100 Stat. 976; Pub. L. 101-501, title V, §501, Nov. 3, 1990, 104 Stat. 1256.)

AMENDMENTS

1990—Subsec. (b)(1)(C). Pub. L. 101-501, §501(a), (b)(1), inserted “(including, at the option of the State, any training necessary for credentialing)” after “credentialing” and struck out “and” at end.

Subsec. (b)(2), (3). Pub. L. 101-501, §501(b)(2), (3), added par. (2) and redesignated former par. (2) as (3).

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101-501, set out as a note under section 8621 of this title.

§ 10903. Definitions

For purposes of this chapter—

(1) the term “eligible individual” means a candidate for the Child Development Associate credential whose income does not exceed the¹ 130 percent of the lower living standard income level,² by more than 50 percent;

(2) the term “lower living standard income level” means that income level (adjusted for regional, metropolitan, urban, and rural differences and family size) determined annually by the Secretary of Labor and based on the most recent lower living family budget issued by the Secretary of Labor;

(3) the term “Secretary” means the Secretary of Health and Human Services; and

(4) the term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Marshall Islands, the Federated States of Micronesia, and Palau.

(Pub. L. 99-425, title VI, §604, Sept. 30, 1986, 100 Stat. 976; Pub. L. 101-501, title V, §502, Nov. 3, 1990, 104 Stat. 1256.)

¹ So in original. The word “the” probably should not appear.

² So in original. The comma probably should not appear.

AMENDMENTS

1990—Par. (1). Pub. L. 101-501, §502(1), substituted “130 percent of the lower living standard income level” for “poverty line, as defined in section 9902(2) of this title”.

Pars. (2) to (4). Pub. L. 101-501, §502(2), (3), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101-501, set out as a note under section 8621 of this title.

§ 10904. Annual report by States; contents; manner of payments pursuant to grants

(a) Reporting

Each State receiving grants under this chapter shall annually submit to the Secretary information on the number of eligible individuals assisted under the grant program, and their positions and salaries before and after receiving the Child Development Associate credential.

(b) Payments

Payments pursuant to grants made under this chapter may be made in installments, and in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments, as the Secretary may determine.

(Pub. L. 99-425, title VI, §605, Sept. 30, 1986, 100 Stat. 977.)

§ 10905. Authorization of appropriations

There are authorized to be appropriated to carry out this chapter such sums as may be necessary for fiscal year 1995.

(Pub. L. 99-425, title VI, §606, Sept. 30, 1986, 100 Stat. 977; Pub. L. 101-501, title V, §503, Nov. 3, 1990, 104 Stat. 1256; Pub. L. 103-252, title I, §124, May 18, 1994, 108 Stat. 650.)

AMENDMENTS

1994—Pub. L. 103-252 substituted “to carry out this chapter such sums as may be necessary for fiscal year 1995” for “\$1,500,000 for fiscal year 1990, \$3,000,000 for fiscal year 1991, and such sums as may be necessary for fiscal years 1992, 1993, and 1994 for carrying out this chapter”.

1990—Pub. L. 101-501 substituted “are authorized” for “is authorized”, inserted “, \$3,000,000 for fiscal year 1991, and such sums as may be necessary for fiscal years 1992, 1993, and 1994” after “1990”, and directed the substitution of “fiscal year” for “each of the fiscal years 1987, 1988, and 1989, and”, which was executed by making the substitution for “each of the fiscal years 1987, 1988, 1989, and” to reflect the probable intent of Congress.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-252 effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103-252, set out as a note under section 9832 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101-501, set out as a note under section 8621 of this title.

**CHAPTER 116—EMERGENCY PLANNING AND
COMMUNITY RIGHT-TO-KNOW**

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 7412, 9604, 9620, 13108 of this title; title 49 section 5116.

**SUBCHAPTER I—EMERGENCY PLANNING
AND NOTIFICATION**

**§ 11001. Establishment of State commissions,
planning districts, and local committees**

**(a) Establishment of State emergency response
commissions**

Not later than six months after October 17, 1986, the Governor of each State shall appoint a State emergency response commission. The Governor may designate as the State emergency response commission one or more existing emergency response organizations that are State-sponsored or appointed. The Governor shall, to the extent practicable, appoint persons to the State emergency response commission who have technical expertise in the emergency response field. The State emergency response commission shall appoint local emergency planning committees under subsection (c) of this section and

shall supervise and coordinate the activities of such committees. The State emergency response commission shall establish procedures for receiving and processing requests from the public for information under section 11044 of this title, including tier II information under section 11022 of this title. Such procedures shall include the designation of an official to serve as coordinator for information. If the Governor of any State does not designate a State emergency response commission within such period, the Governor shall operate as the State emergency response commission until the Governor makes such designation.

(b) Establishment of emergency planning districts

Not later than nine months after October 17, 1986, the State emergency response commission shall designate emergency planning districts in order to facilitate preparation and implementation of emergency plans. Where appropriate, the State emergency response commission may designate existing political subdivisions or multi-jurisdictional planning organizations as such districts. In emergency planning areas that involve more than one State, the State emergency response commissions of all potentially affected States may designate emergency planning districts and local emergency planning committees by agreement. In making such designation, the State emergency response commission shall indicate which facilities subject to the requirements of this subchapter are within such emergency planning district.

(c) Establishment of local emergency planning committees

Not later than 30 days after designation of emergency planning districts or 10 months after October 17, 1986, whichever is earlier, the State emergency response commission shall appoint members of a local emergency planning committee for each emergency planning district. Each committee shall include, at a minimum, representatives from each of the following groups or organizations: elected State and local officials; law enforcement, civil defense, firefighting, first aid, health, local environmental, hospital, and transportation personnel; broadcast and print media; community groups; and owners and operators of facilities subject to the requirements of this subchapter. Such committee shall appoint a chairperson and shall establish rules by which the committee shall function. Such rules shall include provisions for public notification of committee activities, public meetings to discuss the emergency plan, public comments, response to such comments by the committee, and distribution of the emergency plan. The local emergency planning committee shall establish procedures for receiving and processing requests from the public for information under section 11044 of this title, including tier II information under section 11022 of this title. Such procedures shall include the designation of an official to serve as coordinator for information.

(d) Revisions

A State emergency response commission may revise its designations and appointments under subsections (b) and (c) of this section as it deems

appropriate. Interested persons may petition the State emergency response commission to modify the membership of a local emergency planning committee.

(Pub. L. 99-499, title III, §301, Oct. 17, 1986, 100 Stat. 1729.)

EFFECTIVE DATE

Chapter effective Oct. 17, 1986, see section 4 of Pub. L. 99-499, set out as an Effective Date of 1986 Amendment note under section 9601 of this title.

SHORT TITLE

Section 300(a) of title III of Pub. L. 99-499 provided that: "This title [enacting this chapter] may be cited as the 'Emergency Planning and Community Right-To-Know Act of 1986'."

EXECUTIVE ORDER NO. 12856

Ex. Ord. No. 12856, Aug. 3, 1993, 58 F.R. 41981, which provided for Federal compliance with right-to-know laws and pollution prevention requirements, was revoked by Ex. Ord. No. 13148, §901, Apr. 21, 2000, 65 F.R. 24604, set out as a note under section 4321 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11004, 11042 of this title; title 49 sections 5115, 5116.

§ 11002. Substances and facilities covered and notification

(a) Substances covered

(1) In general

A substance is subject to the requirements of this subchapter if the substance is on the list published under paragraph (2).

(2) List of extremely hazardous substances

Within 30 days after October 17, 1986, the Administrator shall publish a list of extremely hazardous substances. The list shall be the same as the list of substances published in November 1985 by the Administrator in Appendix A of the "Chemical Emergency Preparedness Program Interim Guidance".

(3) Thresholds

(A) At the time the list referred to in paragraph (2) is published the Administrator shall—

(i) publish an interim final regulation establishing a threshold planning quantity for each substance on the list, taking into account the criteria described in paragraph (4), and

(ii) initiate a rulemaking in order to publish final regulations establishing a threshold planning quantity for each substance on the list.

(B) The threshold planning quantities may, at the Administrator's discretion, be based on classes of chemicals or categories of facilities.

(C) If the Administrator fails to publish an interim final regulation establishing a threshold planning quantity for a substance within 30 days after October 17, 1986, the threshold planning quantity for the substance shall be 2 pounds until such time as the Administrator publishes regulations establishing a threshold for the substance.

(4) Revisions

The Administrator may revise the list and thresholds under paragraphs (2) and (3) from

time to time. Any revisions to the list shall take into account the toxicity, reactivity, volatility, dispersability, combustability, or flammability of a substance. For purposes of the preceding sentence, the term "toxicity" shall include any short- or long-term health effect which may result from a short-term exposure to the substance.

(b) Facilities covered

(1) Except as provided in section 11004 of this title, a facility is subject to the requirements of this subchapter if a substance on the list referred to in subsection (a) of this section is present at the facility in an amount in excess of the threshold planning quantity established for such substance.

(2) For purposes of emergency planning, a Governor or a State emergency response commission may designate additional facilities which shall be subject to the requirements of this subchapter, if such designation is made after public notice and opportunity for comment. The Governor or State emergency response commission shall notify the facility concerned of any facility designation under this paragraph.

(c) Emergency planning notification

Not later than seven months after October 17, 1986, the owner or operator of each facility subject to the requirements of this subchapter by reason of subsection (b)(1) of this section shall notify the State emergency response commission for the State in which such facility is located that such facility is subject to the requirements of this subchapter. Thereafter, if a substance on the list of extremely hazardous substances referred to in subsection (a) of this section first becomes present at such facility in excess of the threshold planning quantity established for such substance, or if there is a revision of such list and the facility has present a substance on the revised list in excess of the threshold planning quantity established for such substance, the owner or operator of the facility shall notify the State emergency response commission and the local emergency planning committee within 60 days after such acquisition or revision that such facility is subject to the requirements of this subchapter.

(d) Notification of Administrator

The State emergency response commission shall notify the Administrator of facilities subject to the requirements of this subchapter by notifying the Administrator of—

- (1) each notification received from a facility under subsection (c) of this section, and
- (2) each facility designated by the Governor or State emergency response commission under subsection (b)(2) of this section.

(Pub. L. 99-499, title III, §302, Oct. 17, 1986, 100 Stat. 1730.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7413, 11003, 11004, 11005, 11045, 11046, 11049 of this title.

§ 11003. Comprehensive emergency response plans

(a) Plan required

Each local emergency planning committee shall complete preparation of an emergency plan

in accordance with this section not later than two years after October 17, 1986. The committee shall review such plan once a year, or more frequently as changed circumstances in the community or at any facility may require.

(b) Resources

Each local emergency planning committee shall evaluate the need for resources necessary to develop, implement, and exercise the emergency plan, and shall make recommendations with respect to additional resources that may be required and the means for providing such additional resources.

(c) Plan provisions

Each emergency plan shall include (but is not limited to) each of the following:

(1) Identification of facilities subject to the requirements of this subchapter that are within the emergency planning district, identification of routes likely to be used for the transportation of substances on the list of extremely hazardous substances referred to in section 11002(a) of this title, and identification of additional facilities contributing or subjected to additional risk due to their proximity to facilities subject to the requirements of this subchapter, such as hospitals or natural gas facilities.

(2) Methods and procedures to be followed by facility owners and operators and local emergency and medical personnel to respond to any release of such substances.

(3) Designation of a community emergency coordinator and facility emergency coordinators, who shall make determinations necessary to implement the plan.

(4) Procedures providing reliable, effective, and timely notification by the facility emergency coordinators and the community emergency coordinator to persons designated in the emergency plan, and to the public, that a release has occurred (consistent with the emergency notification requirements of section 11004 of this title).

(5) Methods for determining the occurrence of a release, and the area or population likely to be affected by such release.

(6) A description of emergency equipment and facilities in the community and at each facility in the community subject to the requirements of this subchapter, and an identification of the persons responsible for such equipment and facilities.

(7) Evacuation plans, including provisions for a precautionary evacuation and alternative traffic routes.

(8) Training programs, including schedules for training of local emergency response and medical personnel.

(9) Methods and schedules for exercising the emergency plan.

(d) Providing of information

For each facility subject to the requirements of this subchapter:

(1) Within 30 days after establishment of a local emergency planning committee for the emergency planning district in which such facility is located, or within 11 months after October 17, 1986, whichever is earlier, the owner

or operator of the facility shall notify the emergency planning committee (or the Governor if there is no committee) of a facility representative who will participate in the emergency planning process as a facility emergency coordinator.

(2) The owner or operator of the facility shall promptly inform the emergency planning committee of any relevant changes occurring at such facility as such changes occur or are expected to occur.

(3) Upon request from the emergency planning committee, the owner or operator of the facility shall promptly provide information to such committee necessary for developing and implementing the emergency plan.

(e) Review by State emergency response commission

After completion of an emergency plan under subsection (a) of this section for an emergency planning district, the local emergency planning committee shall submit a copy of the plan to the State emergency response commission of each State in which such district is located. The commission shall review the plan and make recommendations to the committee on revisions of the plan that may be necessary to ensure coordination of such plan with emergency response plans of other emergency planning districts. To the maximum extent practicable, such review shall not delay implementation of such plan.

(f) Guidance documents

The national response team, as established pursuant to the National Contingency Plan as established under section 9605 of this title, shall publish guidance documents for preparation and implementation of emergency plans. Such documents shall be published not later than five months after October 17, 1986.

(g) Review of plans by regional response teams

The regional response teams, as established pursuant to the National Contingency Plan as established under section 9605 of this title, may review and comment upon an emergency plan or other issues related to preparation, implementation, or exercise of such a plan upon request of a local emergency planning committee. Such review shall not delay implementation of the plan.

(Pub. L. 99-499, title III, §303, Oct. 17, 1986, 100 Stat. 1731.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11042, 11045, 11046 of this title; title 49 section 5116.

§ 11004. Emergency notification

(a) Types of releases

(1) 11002(a) substance which requires CERCLA notice

If a release of an extremely hazardous substance referred to in section 11002(a) of this title occurs from a facility at which a hazardous chemical is produced, used, or stored, and such release requires a notification under section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [42 U.S.C. 9603(a)] (hereafter in this section referred to as "CERCLA") (42 U.S.C.

9601 et seq.), the owner or operator of the facility shall immediately provide notice as described in subsection (b) of this section.

(2) Other 11002(a) substance

If a release of an extremely hazardous substance referred to in section 11002(a) of this title occurs from a facility at which a hazardous chemical is produced, used, or stored, and such release is not subject to the notification requirements under section 103(a) of CERCLA [42 U.S.C. 9603(a)], the owner or operator of the facility shall immediately provide notice as described in subsection (b) of this section, but only if the release—

(A) is not a federally permitted release as defined in section 101(10) of CERCLA [42 U.S.C. 9601(10)],

(B) is in an amount in excess of a quantity which the Administrator has determined (by regulation) requires notice, and

(C) occurs in a manner which would require notification under section 103(a) of CERCLA [42 U.S.C. 9603(a)].

Unless and until superseded by regulations establishing a quantity for an extremely hazardous substance described in this paragraph, a quantity of 1 pound shall be deemed that quantity the release of which requires notice as described in subsection (b) of this section.

(3) Non-11002(a) substance which requires CERCLA notice

If a release of a substance which is not on the list referred to in section 11002(a) of this title occurs at a facility at which a hazardous chemical is produced, used, or stored, and such release requires notification under section 103(a) of CERCLA [42 U.S.C. 9603(a)], the owner or operator shall provide notice as follows:

(A) If the substance is one for which a reportable quantity has been established under section 102(a) of CERCLA [42 U.S.C. 9602(a)], the owner or operator shall provide notice as described in subsection (b) of this section.

(B) If the substance is one for which a reportable quantity has not been established under section 102(a) of CERCLA [42 U.S.C. 9602(a)]—

(i) Until April 30, 1988, the owner or operator shall provide, for releases of one pound or more of the substance, the same notice to the community emergency coordinator for the local emergency planning committee, at the same time and in the same form, as notice is provided to the National Response Center under section 103(a) of CERCLA [42 U.S.C. 9603(a)].

(ii) On and after April 30, 1988, the owner or operator shall provide, for releases of one pound or more of the substance, the notice as described in subsection (b) of this section.

(4) Exempted releases

This section does not apply to any release which results in exposure to persons solely within the site or sites on which a facility is located.

(b) Notification

(1) Recipients of notice

Notice required under subsection (a) of this section shall be given immediately after the

release by the owner or operator of a facility (by such means as telephone, radio, or in person) to the community emergency coordinator for the local emergency planning committees, if established pursuant to section 11001(c) of this title, for any area likely to be affected by the release and to the State emergency planning commission of any State likely to be affected by the release. With respect to transportation of a substance subject to the requirements of this section, or storage incident to such transportation, the notice requirements of this section with respect to a release shall be satisfied by dialing 911 or, in the absence of a 911 emergency telephone number, calling the operator.

(2) Contents

Notice required under subsection (a) of this section shall include each of the following (to the extent known at the time of the notice and so long as no delay in responding to the emergency results):

(A) The chemical name or identity of any substance involved in the release.

(B) An indication of whether the substance is on the list referred to in section 11002(a) of this title.

(C) An estimate of the quantity of any such substance that was released into the environment.

(D) The time and duration of the release.

(E) The medium or media into which the release occurred.

(F) Any known or anticipated acute or chronic health risks associated with the emergency and, where appropriate, advice regarding medical attention necessary for exposed individuals.

(G) Proper precautions to take as a result of the release, including evacuation (unless such information is readily available to the community emergency coordinator pursuant to the emergency plan).

(H) The name and telephone number of the person or persons to be contacted for further information.

(c) Followup emergency notice

As soon as practicable after a release which requires notice under subsection (a) of this section, such owner or operator shall provide a written followup emergency notice (or notices, as more information becomes available) setting forth and updating the information required under subsection (b) of this section, and including additional information with respect to—

(1) actions taken to respond to and contain the release,

(2) any known or anticipated acute or chronic health risks associated with the release, and

(3) where appropriate, advice regarding medical attention necessary for exposed individuals.

(d) Transportation exemption not applicable

The exemption provided in section 11047 of this title (relating to transportation) does not apply to this section.

(Pub. L. 99-499, title III, §304, Oct. 17, 1986, 100 Stat. 1733.)

REFERENCES IN TEXT

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and CERCLA, referred to in subsec. (a)(1), (3), is Pub. L. 96-510, Dec. 11, 1980, 94 Stat. 2767, as amended, which is classified principally to chapter 103 (§9601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11002, 11003, 11045, 11046, 11047, 11049 of this title.

§ 11005. Emergency training and review of emergency systems

(a) Emergency training

(1) Programs

Officials of the United States Government carrying out existing Federal programs for emergency training are authorized to specifically provide training and education programs for Federal, State, and local personnel in hazard mitigation, emergency preparedness, fire prevention and control, disaster response, long-term disaster recovery, national security, technological and natural hazards, and emergency processes. Such programs shall provide special emphasis for such training and education with respect to hazardous chemicals.

(2) State and local program support

There is authorized to be appropriated to the Federal Emergency Management Agency for each of the fiscal years 1987, 1988, 1989, and 1990, \$5,000,000 for making grants to support programs of State and local governments, and to support university-sponsored programs, which are designed to improve emergency planning, preparedness, mitigation, response, and recovery capabilities. Such programs shall provide special emphasis with respect to emergencies associated with hazardous chemicals. Such grants may not exceed 80 percent of the cost of any such program. The remaining 20 percent of such costs shall be funded from non-Federal sources.

(3) Other programs

Nothing in this section shall affect the availability of appropriations to the Federal Emergency Management Agency for any programs carried out by such agency other than the programs referred to in paragraph (2).

(b) Review of emergency systems

(1) Review

The Administrator shall initiate, not later than 30 days after October 17, 1986, a review of emergency systems for monitoring, detecting, and preventing releases of extremely hazardous substances at representative domestic facilities that produce, use, or store extremely hazardous substances. The Administrator may select representative extremely hazardous substances from the substances on the list referred to in section 11002(a) of this title for the purposes of this review. The Administrator shall report interim findings to the Congress not later than seven months after October 17, 1986, and issue a final report of findings and

recommendations to the Congress not later than 18 months after October 17, 1986. Such report shall be prepared in consultation with the States and appropriate Federal agencies.

(2) Report

The report required by this subsection shall include the Administrator's findings regarding each of the following:

(A) The status of current technological capabilities to (i) monitor, detect, and prevent, in a timely manner, significant releases of extremely hazardous substances, (ii) determine the magnitude and direction of the hazard posed by each release, (iii) identify specific substances, (iv) provide data on the specific chemical composition of such releases, and (v) determine the relative concentrations of the constituent substances.

(B) The status of public emergency alert devices or systems for providing timely and effective public warning of an accidental release of extremely hazardous substances into the environment, including releases into the atmosphere, surface water, or groundwater from facilities that produce, store, or use significant quantities of such extremely hazardous substances.

(C) The technical and economic feasibility of establishing, maintaining, and operating perimeter alert systems for detecting releases of such extremely hazardous substances into the atmosphere, surface water, or groundwater, at facilities that manufacture, use, or store significant quantities of such substances.

(3) Recommendations

The report required by this subsection shall also include the Administrator's recommendations for—

(A) initiatives to support the development of new or improved technologies or systems that would facilitate the timely monitoring, detection, and prevention of releases of extremely hazardous substances, and

(B) improving devices or systems for effectively alerting the public in a timely manner, in the event of an accidental release of such extremely hazardous substances.

(Pub. L. 99-499, title III, §305, Oct. 17, 1986, 100 Stat. 1735.)

SUBCHAPTER II—REPORTING
REQUIREMENTS

§ 11021. Material safety data sheets

(a) Basic requirement

(1) Submission of MSDS or list

The owner or operator of any facility which is required to prepare or have available a material safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.] and regulations promulgated under that Act shall submit a material safety data sheet for each such chemical, or a list of such chemicals as described in paragraph (2), to each of the following:

(A) The appropriate local emergency planning committee.

(B) The State emergency response commission.

(C) The fire department with jurisdiction over the facility.

(2) Contents of list

(A) The list of chemicals referred to in paragraph (1) shall include each of the following:

(i) A list of the hazardous chemicals for which a material safety data sheet is required under the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.] and regulations promulgated under that Act, grouped in categories of health and physical hazards as set forth under such Act and regulations promulgated under such Act, or in such other categories as the Administrator may prescribe under subparagraph (B).

(ii) The chemical name or the common name of each such chemical as provided on the material safety data sheet.

(iii) Any hazardous component of each such chemical as provided on the material safety data sheet.

(B) For purposes of the list under this paragraph, the Administrator may modify the categories of health and physical hazards as set forth under the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.] and regulations promulgated under that Act by requiring information to be reported in terms of groups of hazardous chemicals which present similar hazards in an emergency.

(3) Treatment of mixtures

An owner or operator may meet the requirements of this section with respect to a hazardous chemical which is a mixture by doing one of the following:

(A) Submitting a material safety data sheet for, or identifying on a list, each element or compound in the mixture which is a hazardous chemical. If more than one mixture has the same element or compound, only one material safety data sheet, or one listing, of the element or compound is necessary.

(B) Submitting a material safety data sheet for, or identifying on a list, the mixture itself.

(b) Thresholds

The Administrator may establish threshold quantities for hazardous chemicals below which no facility shall be subject to the provisions of this section. The threshold quantities may, in the Administrator's discretion, be based on classes of chemicals or categories of facilities.

(c) Availability of MSDS on request

(1) To local emergency planning committee

If an owner or operator of a facility submits a list of chemicals under subsection (a)(1) of this section, the owner or operator, upon request by the local emergency planning committee, shall submit the material safety data sheet for any chemical on the list to such committee.

(2) To public

A local emergency planning committee, upon request by any person, shall make avail-

able a material safety data sheet to the person in accordance with section 11044 of this title. If the local emergency planning committee does not have the requested material safety data sheet, the committee shall request the sheet from the facility owner or operator and then make the sheet available to the person in accordance with section 11044 of this title.

(d) Initial submission and updating

(1) The initial material safety data sheet or list required under this section with respect to a hazardous chemical shall be provided before the later of—

(A) 12 months after October 17, 1986, or

(B) 3 months after the owner or operator of a facility is required to prepare or have available a material safety data sheet for the chemical under the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.] and regulations promulgated under that Act.

(2) Within 3 months following discovery by an owner or operator of significant new information concerning an aspect of a hazardous chemical for which a material safety data sheet was previously submitted to the local emergency planning committee under subsection (a) of this section, a revised sheet shall be provided to such person.

(e) "Hazardous chemical" defined

For purposes of this section, the term "hazardous chemical" has the meaning given such term by section 1910.1200(c) of title 29 of the Code of Federal Regulations, except that such term does not include the following:

(1) Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration.

(2) Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use.

(3) Any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public.

(4) Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual.

(5) Any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.

(Pub. L. 99-499, title III, §311, Oct. 17, 1986, 100 Stat. 1736.)

REFERENCES IN TEXT

The Occupational Safety and Health Act of 1970, referred to in subssecs. (a)(1), (2)(A)(i), (B) and (d)(1)(B), is Pub. L. 91-596, Dec. 29, 1970, 84 Stat. 1590, as amended, which is classified principally to chapter 15 (§651 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 651 of Title 29 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11022, 11041, 11042, 11043, 11044, 11045, 11046, 11049 of this title.

§ 11022. Emergency and hazardous chemical inventory forms

(a) Basic requirement

(1) The owner or operator of any facility which is required to prepare or have available a material safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.] and regulations promulgated under that Act shall prepare and submit an emergency and hazardous chemical inventory form (hereafter in this chapter referred to as an "inventory form") to each of the following:

(A) The appropriate local emergency planning committee.

(B) The State emergency response commission.

(C) The fire department with jurisdiction over the facility.

(2) The inventory form containing tier I information (as described in subsection (d)(1) of this section) shall be submitted on or before March 1, 1988, and annually thereafter on March 1, and shall contain data with respect to the preceding calendar year. The preceding sentence does not apply if an owner or operator provides, by the same deadline and with respect to the same calendar year, tier II information (as described in subsection (d)(2) of this section) to the recipients described in paragraph (1).

(3) An owner or operator may meet the requirements of this section with respect to a hazardous chemical which is a mixture by doing one of the following:

(A) Providing information on the inventory form on each element or compound in the mixture which is a hazardous chemical. If more than one mixture has the same element or compound, only one listing on the inventory form for the element or compound at the facility is necessary.

(B) Providing information on the inventory form on the mixture itself.

(b) Thresholds

The Administrator may establish threshold quantities for hazardous chemicals covered by this section below which no facility shall be subject to the provisions of this section. The threshold quantities may, in the Administrator's discretion, be based on classes of chemicals or categories of facilities.

(c) Hazardous chemicals covered

A hazardous chemical subject to the requirements of this section is any hazardous chemical for which a material safety data sheet or a listing is required under section 11021 of this title.

(d) Contents of form

(1) Tier I information

(A) Aggregate information by category

An inventory form shall provide the information described in subparagraph (B) in aggregate terms for hazardous chemicals in categories of health and physical hazards as set forth under the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.] and regulations promulgated under that Act.

(B) Required information

The information referred to in subparagraph (A) is the following:

(i) An estimate (in ranges) of the maximum amount of hazardous chemicals in each category present at the facility at any time during the preceding calendar year.

(ii) An estimate (in ranges) of the average daily amount of hazardous chemicals in each category present at the facility during the preceding calendar year.

(iii) The general location of hazardous chemicals in each category.

(C) Modifications

For purposes of reporting information under this paragraph, the Administrator may—

(i) modify the categories of health and physical hazards as set forth under the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.] and regulations promulgated under that Act by requiring information to be reported in terms of groups of hazardous chemicals which present similar hazards in an emergency, or

(ii) require reporting on individual hazardous chemicals of special concern to emergency response personnel.

(2) Tier II information

An inventory form shall provide the following additional information for each hazardous chemical present at the facility, but only upon request and in accordance with subsection (e) of this section:

(A) The chemical name or the common name of the chemical as provided on the material safety data sheet.

(B) An estimate (in ranges) of the maximum amount of the hazardous chemical present at the facility at any time during the preceding calendar year.

(C) An estimate (in ranges) of the average daily amount of the hazardous chemical present at the facility during the preceding calendar year.

(D) A brief description of the manner of storage of the hazardous chemical.

(E) The location at the facility of the hazardous chemical.

(F) An indication of whether the owner elects to withhold location information of a specific hazardous chemical from disclosure to the public under section 11044 of this title.

(e) Availability of tier II information

(1) Availability to State commissions, local committees, and fire departments

Upon request by a State emergency planning commission, a local emergency planning committee, or a fire department with jurisdiction over the facility, the owner or operator of a facility shall provide tier II information, as described in subsection (d) of this section, to the person making the request. Any such request shall be with respect to a specific facility.

(2) Availability to other State and local officials

A State or local official acting in his or her official capacity may have access to tier II information by submitting a request to the

State emergency response commission or the local emergency planning committee. Upon receipt of a request for tier II information, the State commission or local committee shall, pursuant to paragraph (1), request the facility owner or operator for the tier II information and make available such information to the official.

(3) Availability to public

(A) In general

Any person may request a State emergency response commission or local emergency planning committee for tier II information relating to the preceding calendar year with respect to a facility. Any such request shall be in writing and shall be with respect to a specific facility.

(B) Automatic provision of information to public

Any tier II information which a State emergency response commission or local emergency planning committee has in its possession shall be made available to a person making a request under this paragraph in accordance with section 11044 of this title. If the State emergency response commission or local emergency planning committee does not have the tier II information in its possession, upon a request for tier II information the State emergency response commission or local emergency planning committee shall, pursuant to paragraph (1), request the facility owner or operator for tier II information with respect to a hazardous chemical which a facility has stored in an amount in excess of 10,000 pounds present at the facility at any time during the preceding calendar year and make such information available in accordance with section 11044 of this title to the person making the request.

(C) Discretionary provision of information to public

In the case of tier II information which is not in the possession of a State emergency response commission or local emergency planning committee and which is with respect to a hazardous chemical which a facility has stored in an amount less than 10,000 pounds present at the facility at any time during the preceding calendar year, a request from a person must include the general need for the information. The State emergency response commission or local emergency planning committee may, pursuant to paragraph (1), request the facility owner or operator for the tier II information on behalf of the person making the request. Upon receipt of any information requested on behalf of such person, the State emergency response commission or local emergency planning committee shall make the information available in accordance with section 11044 of this title to the person.

(D) Response in 45 days

A State emergency response commission or local emergency planning committee shall respond to a request for tier II information under this paragraph no later than 45 days after the date of receipt of the request.

(f) Fire department access

Upon request to an owner or operator of a facility which files an inventory form under this section by the fire department with jurisdiction over the facility, the owner or operator of the facility shall allow the fire department to conduct an on-site inspection of the facility and shall provide to the fire department specific location information on hazardous chemicals at the facility.

(g) Format of forms

The Administrator shall publish a uniform format for inventory forms within three months after October 17, 1986. If the Administrator does not publish such forms, owners and operators of facilities subject to the requirements of this section shall provide the information required under this section by letter.

(Pub. L. 99-499, title III, §312, Oct. 17, 1986, 100 Stat. 1738.)

REFERENCES IN TEXT

The Occupational Safety and Health Act of 1970, referred to in subsecs. (a)(1) and (d)(1)(A), (C)(i), is Pub. L. 91-596, Dec. 29, 1970, 84 Stat. 1590, as amended, which is classified principally to chapter 15 (§651 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 651 of Title 29 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11001, 11042, 11043, 11044, 11045, 11046 of this title.

§ 11023. Toxic chemical release forms**(a) Basic requirement**

The owner or operator of a facility subject to the requirements of this section shall complete a toxic chemical release form as published under subsection (g) of this section for each toxic chemical listed under subsection (c) of this section that was manufactured, processed, or otherwise used in quantities exceeding the toxic chemical threshold quantity established by subsection (f) of this section during the preceding calendar year at such facility. Such form shall be submitted to the Administrator and to an official or officials of the State designated by the Governor on or before July 1, 1988, and annually thereafter on July 1 and shall contain data reflecting releases during the preceding calendar year.

(b) Covered owners and operators of facilities**(1) In general**

(A) The requirements of this section shall apply to owners and operators of facilities that have 10 or more full-time employees and that are in Standard Industrial Classification Codes 20 through 39 (as in effect on July 1, 1985) and that manufactured, processed, or otherwise used a toxic chemical listed under subsection (c) of this section in excess of the quantity of that toxic chemical established under subsection (f) of this section during the calendar year for which a release form is required under this section.

(B) The Administrator may add or delete Standard Industrial Classification Codes for purposes of subparagraph (A), but only to the

extent necessary to provide that each Standard Industrial Code to which this section applies is relevant to the purposes of this section.

(C) For purposes of this section—

(i) The term “manufacture” means to produce, prepare, import, or compound a toxic chemical.

(ii) The term “process” means the preparation of a toxic chemical, after its manufacture, for distribution in commerce—

(I) in the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing such chemical, or

(II) as part of an article containing the toxic chemical.

(2) Discretionary application to additional facilities

The Administrator, on his own motion or at the request of a Governor of a State (with regard to facilities located in that State), may apply the requirements of this section to the owners and operators of any particular facility that manufactures, processes, or otherwise uses a toxic chemical listed under subsection (c) of this section if the Administrator determines that such action is warranted on the basis of toxicity of the toxic chemical, proximity to other facilities that release the toxic chemical or to population centers, the history of releases of such chemical at such facility, or such other factors as the Administrator deems appropriate.

(c) Toxic chemicals covered

The toxic chemicals subject to the requirements of this section are those chemicals on the list in Committee Print Number 99-169 of the Senate Committee on Environment and Public Works, titled “Toxic Chemicals Subject to Section 313 of the Emergency Planning and Community Right-To-Know Act of 1986” [42 U.S.C. 11023] (including any revised version of the list as may be made pursuant to subsection (d) or (e) of this section).

(d) Revisions by Administrator**(1) In general**

The Administrator may by rule add or delete a chemical from the list described in subsection (c) of this section at any time.

(2) Additions

A chemical may be added if the Administrator determines, in his judgment, that there is sufficient evidence to establish any one of the following:

(A) The chemical is known to cause or can reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases.

(B) The chemical is known to cause or can reasonably be anticipated to cause in humans—

(i) cancer or teratogenic effects, or

(ii) serious or irreversible—

(I) reproductive dysfunctions,

- (II) neurological disorders,
- (III) heritable genetic mutations, or
- (IV) other chronic health effects.

(C) The chemical is known to cause or can reasonably be anticipated to cause, because of—

- (i) its toxicity,
- (ii) its toxicity and persistence in the environment, or
- (iii) its toxicity and tendency to bioaccumulate in the environment,

a significant adverse effect on the environment of sufficient seriousness, in the judgment of the Administrator, to warrant reporting under this section. The number of chemicals included on the list described in subsection (c) of this section on the basis of the preceding sentence may constitute in the aggregate no more than 25 percent of the total number of chemicals on the list.

A determination under this paragraph shall be based on generally accepted scientific principles or laboratory tests, or appropriately designed and conducted epidemiological or other population studies, available to the Administrator.

(3) Deletions

A chemical may be deleted if the Administrator determines there is not sufficient evidence to establish any of the criteria described in paragraph (2).

(4) Effective date

Any revision made on or after January 1 and before December 1 of any calendar year shall take effect beginning with the next calendar year. Any revision made on or after December 1 of any calendar year and before January 1 of the next calendar year shall take effect beginning with the calendar year following such next calendar year.

(e) Petitions

(1) In general

Any person may petition the Administrator to add or delete a chemical from the list described in subsection (c) of this section on the basis of the criteria in subparagraph (A) or (B) of subsection (d)(2) of this section. Within 180 days after receipt of a petition, the Administrator shall take one of the following actions:

- (A) Initiate a rulemaking to add or delete the chemical to the list, in accordance with subsection (d)(2) or (d)(3) of this section.
- (B) Publish an explanation of why the petition is denied.

(2) Governor petitions

A State Governor may petition the Administrator to add or delete a chemical from the list described in subsection (c) of this section on the basis of the criteria in subparagraph (A), (B), or (C) of subsection (d)(2) of this section. In the case of such a petition from a State Governor to delete a chemical, the petition shall be treated in the same manner as a petition received under paragraph (1) to delete a chemical. In the case of such a petition from a State Governor to add a chemical, the chemical will be added to the list within 180 days

after receipt of the petition, unless the Administrator—

(A) initiates a rulemaking to add the chemical to the list, in accordance with subsection (d)(2) of this section, or

(B) publishes an explanation of why the Administrator believes the petition does not meet the requirements of subsection (d)(2) of this section for adding a chemical to the list.

(f) Threshold for reporting

(1) Toxic chemical threshold amount

The threshold amounts for purposes of reporting toxic chemicals under this section are as follows:

(A) With respect to a toxic chemical used at a facility, 10,000 pounds of the toxic chemical per year.

(B) With respect to a toxic chemical manufactured or processed at a facility—

(i) For the toxic chemical release form required to be submitted under this section on or before July 1, 1988, 75,000 pounds of the toxic chemical per year.

(ii) For the form required to be submitted on or before July 1, 1989, 50,000 pounds of the toxic chemical per year.

(iii) For the form required to be submitted on or before July 1, 1990, and for each form thereafter, 25,000 pounds of the toxic chemical per year.

(2) Revisions

The Administrator may establish a threshold amount for a toxic chemical different from the amount established by paragraph (1). Such revised threshold shall obtain reporting on a substantial majority of total releases of the chemical at all facilities subject to the requirements of this section. The amounts established under this paragraph may, at the Administrator's discretion, be based on classes of chemicals or categories of facilities.

(g) Form

(1) Information required

Not later than June 1, 1987, the Administrator shall publish a uniform toxic chemical release form for facilities covered by this section. If the Administrator does not publish such a form, owners and operators of facilities subject to the requirements of this section shall provide the information required under this subsection by letter postmarked on or before the date on which the form is due. Such form shall—

(A) provide for the name and location of, and principal business activities at, the facility;

(B) include an appropriate certification, signed by a senior official with management responsibility for the person or persons completing the report, regarding the accuracy and completeness of the report; and

(C) provide for submission of each of the following items of information for each listed toxic chemical known to be present at the facility:

(i) Whether the toxic chemical at the facility is manufactured, processed, or

otherwise used, and the general category or categories of use of the chemical.

(ii) An estimate of the maximum amounts (in ranges) of the toxic chemical present at the facility at any time during the preceding calendar year.

(iii) For each wastestream, the waste treatment or disposal methods employed, and an estimate of the treatment efficiency typically achieved by such methods for that wastestream.

(iv) The annual quantity of the toxic chemical entering each environmental medium.

(2) Use of available data

In order to provide the information required under this section, the owner or operator of a facility may use readily available data (including monitoring data) collected pursuant to other provisions of law, or, where such data are not readily available, reasonable estimates of the amounts involved. Nothing in this section requires the monitoring or measurement of the quantities, concentration, or frequency of any toxic chemical released into the environment beyond that monitoring and measurement required under other provisions of law or regulation. In order to assure consistency, the Administrator shall require that data be expressed in common units.

(h) Use of release form

The release forms required under this section are intended to provide information to the Federal, State, and local governments and the public, including citizens of communities surrounding covered facilities. The release form shall be available, consistent with section 11044(a) of this title, to inform persons about releases of toxic chemicals to the environment; to assist governmental agencies, researchers, and other persons in the conduct of research and data gathering; to aid in the development of appropriate regulations, guidelines, and standards; and for other similar purposes.

(i) Modifications in reporting frequency

(1) In general

The Administrator may modify the frequency of submitting a report under this section, but the Administrator may not modify the frequency to be any more often than annually. A modification may apply, either nationally or in a specific geographic area, to the following:

(A) All toxic chemical release forms required under this section.

(B) A class of toxic chemicals or a category of facilities.

(C) A specific toxic chemical.

(D) A specific facility.

(2) Requirements

A modification may be made under paragraph (1) only if the Administrator—

(A) makes a finding that the modification is consistent with the provisions of subsection (h) of this section, based on—

(i) experience from previously submitted toxic chemical release forms, and

(ii) determinations made under paragraph (3), and

(B) the finding is made by a rulemaking in accordance with section 553 of title 5.

(3) Determinations

The Administrator shall make the following determinations with respect to a proposed modification before making a modification under paragraph (1):

(A) The extent to which information relating to the proposed modification provided on the toxic chemical release forms has been used by the Administrator or other agencies of the Federal Government, States, local governments, health professionals, and the public.

(B) The extent to which the information is (i) readily available to potential users from other sources, such as State reporting programs, and (ii) provided to the Administrator under another Federal law or through a State program.

(C) The extent to which the modification would impose additional and unreasonable burdens on facilities subject to the reporting requirements under this section.

(4) 5-year review

Any modification made under this subsection shall be reviewed at least once every 5 years. Such review shall examine the modification and ensure that the requirements of paragraphs (2) and (3) still justify continuation of the modification. Any change to a modification reviewed under this paragraph shall be made in accordance with this subsection.

(5) Notification to Congress

The Administrator shall notify Congress of an intention to initiate a rulemaking for a modification under this subsection. After such notification, the Administrator shall delay initiation of the rulemaking for at least 12 months, but no more than 24 months, after the date of such notification.

(6) Judicial review

In any judicial review of a rulemaking which establishes a modification under this subsection, a court may hold unlawful and set aside agency action, findings, and conclusions found to be unsupported by substantial evidence.

(7) Applicability

A modification under this subsection may apply to a calendar year or other reporting period beginning no earlier than January 1, 1993.

(8) Effective date

Any modification made on or after January 1 and before December 1 of any calendar year shall take effect beginning with the next calendar year. Any modification made on or after December 1 of any calendar year and before January 1 of the next calendar year shall take effect beginning with the calendar year following such next calendar year.

(j) EPA management of data

The Administrator shall establish and maintain in a computer data base a national toxic chemical inventory based on data submitted to

the Administrator under this section. The Administrator shall make these data accessible by computer telecommunication and other means to any person on a cost reimbursable basis.

(k) Report

Not later than June 30, 1991, the Comptroller General, in consultation with the Administrator and appropriate officials in the States, shall submit to the Congress a report including each of the following:

(1) A description of the steps taken by the Administrator and the States to implement the requirements of this section, including steps taken to make information collected under this section available to and accessible by the public.

(2) A description of the extent to which the information collected under this section has been used by the Environmental Protection Agency, other Federal agencies, the States, and the public, and the purposes for which the information has been used.

(3) An identification and evaluation of options for modifications to the requirements of this section for the purpose of making information collected under this section more useful.

(l) Mass balance study

(1) In general

The Administrator shall arrange for a mass balance study to be carried out by the National Academy of Sciences using mass balance information collected by the Administrator under paragraph (3). The Administrator shall submit to Congress a report on such study no later than 5 years after October 17, 1986.

(2) Purposes

The purposes of the study are as follows:

(A) To assess the value of mass balance analysis in determining the accuracy of information on toxic chemical releases.

(B) To assess the value of obtaining mass balance information, or portions thereof, to determine the waste reduction efficiency of different facilities, or categories of facilities, including the effectiveness of toxic chemical regulations promulgated under laws other than this chapter.

(C) To assess the utility of such information for evaluating toxic chemical management practices at facilities, or categories of facilities, covered by this section.

(D) To determine the implications of mass balance information collection on a national scale similar to the mass balance information collection carried out by the Administrator under paragraph (3), including implications of the use of such collection as part of a national annual quantity toxic chemical release program.

(3) Information collection

(A) The Administrator shall acquire available mass balance information from States which currently conduct (or during the 5 years after October 17, 1986 initiate) a mass balance-oriented annual quantity toxic chemical release program. If information from such

States provides an inadequate representation of industry classes and categories to carry out the purposes of the study, the Administrator also may acquire mass balance information necessary for the study from a representative number of facilities in other States.

(B) Any information acquired under this section shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that the information (or a particular part thereof) to which the Administrator or any officer, employee, or representative has access under this section if made public would divulge information entitled to protection under section 1905 of title 18, such information or part shall be considered confidential in accordance with the purposes of that section, except that such information or part may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this section.

(C) The Administrator may promulgate regulations prescribing procedures for collecting mass balance information under this paragraph.

(D) For purposes of collecting mass balance information under subparagraph (A), the Administrator may require the submission of information by a State or facility.

(4) Mass balance definition

For purposes of this subsection, the term "mass balance" means an accumulation of the annual quantities of chemicals transported to a facility, produced at a facility, consumed at a facility, used at a facility, accumulated at a facility, released from a facility, and transported from a facility as a waste or as a commercial product or byproduct or component of a commercial product or byproduct.

(Pub. L. 99-499, title III, §313, Oct. 17, 1986, 100 Stat. 1741.)

EXPEDITING COMMUNITY RIGHT-TO-KNOW INITIATIVES

Memorandum of President of the United States, Aug. 8, 1995, 60 F.R. 41791, provided:

Memorandum for the Administrator of the Environmental Protection Agency and the Heads of Executive Departments and Agencies

The Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001-11050) ("EPCRA") and the Pollution Prevention Act of 1990 (42 U.S.C. 13101-13109) provide an innovative approach to protecting public health and the environment by ensuring that communities are informed about the toxic chemicals being released into the air, land, and water by manufacturing facilities. I am committed to the effective implementation of this law, because Community Right-to-Know protections provide a basic informational tool to encourage informed community-based environmental decision making and provide a strong incentive for businesses to find their own ways of preventing pollution.

The laws provide the Environmental Protection Agency with substantial authority to add to the Toxics Release Inventory under EPCRA: (1) new chemicals; (2) new classes of industrial facilities; and (3) additional types of information concerning toxic chemical use at facilities. Community Right-to-Know should be enhanced wherever possible as appropriate. EPA currently is engaged in an on-going process to address potential facility expansion and the collection of use information. I am committed to a full and open process

on the policy issues posed by EPA's exercise of these authorities.

So that consideration of these issues can be fully accomplished during this Administration, I am directing the Administrator of the Environmental Protection Agency, in consultation with the Office of Management and Budget and appropriate Federal agencies with applicable technical and functional expertise, as necessary, to take the following actions:

(a) Continuation on an expedited basis of the public notice and comment rulemaking proceedings to consider whether, as appropriate and consistent with section 313(b) of EPCRA, 42 U.S.C. 11023(b), to add to the list of Standard Industrial Classification ("SIC") Code designations of 20 through 39 (as in effect on July 1, 1985). For SIC Code designations, see "Standard Industrial Classification Manual" published by the Office of Management and Budget. EPA shall complete the rule-making process on an accelerated schedule.

(b) Development and implementation of an expedited, open, and transparent process for consideration of reporting under EPCRA on information on the use of toxic chemicals at facilities, including information on mass balance, materials accounting, or other chemical use data [data], pursuant to section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A). EPA shall report on the progress of this effort by October 1, 1995, with a goal of obtaining sufficient information to be able to make informed judgments concerning implementation of any appropriate program.

These actions should continue unless specifically prohibited by law. The head of each executive department or agency shall assist the Environmental Protection Agency in implementing this directive as quickly as possible.

This directive is for the internal management of the executive branch and does not create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any person.

The Director of the Office of Management and Budget is authorized and directed to publish this Memorandum in the Federal Register.

WILLIAM J. CLINTON.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11042, 11043, 11045, 11046, 11049, 13102, 13106 of this title.

SUBCHAPTER III—GENERAL PROVISIONS

§ 11041. Relationship to other law

(a) In general

Nothing in this chapter shall—

- (1) preempt any State or local law,
- (2) except as provided in subsection (b) of this section, otherwise affect any State or local law or the authority of any State or local government to adopt or enforce any State or local law, or
- (3) affect or modify in any way the obligations or liabilities of any person under other Federal law.

(b) Effect on MSDS requirements

Any State or local law enacted after August 1, 1985, which requires the submission of a material safety data sheet from facility owners or operators shall require that the data sheet be identical in content and format to the data sheet required under subsection (a) of section 11021 of this title. In addition, a State or locality may require the submission of information which is supplemental to the information required on the data sheet (including information on the location and quantity of hazardous chemicals

present at the facility), through additional sheets attached to the data sheet or such other means as the State or locality considers appropriate.

(Pub. L. 99-499, title III, § 321, Oct. 17, 1986, 100 Stat. 1747.)

§ 11042. Trade secrets

(a) Authority to withhold information

(1) General authority

(A) With regard to a hazardous chemical, an extremely hazardous substance, or a toxic chemical, any person required under section 11003(d)(2), 11003(d)(3), 11021, 11022, or 11023 of this title to submit information to any other person may withhold from such submittal the specific chemical identity (including the chemical name and other specific identification), as defined in regulations prescribed by the Administrator under subsection (c) of this section, if the person complies with paragraph (2).

(B) Any person withholding the specific chemical identity shall, in the place on the submittal where the chemical identity would normally be included, include the generic class or category of the hazardous chemical, extremely hazardous substance, or toxic chemical (as the case may be).

(2) Requirements

(A) A person is entitled to withhold information under paragraph (1) if such person—

- (i) claims that such information is a trade secret, on the basis of the factors enumerated in subsection (b) of this section,
- (ii) includes in the submittal referred to in paragraph (1) an explanation of the reasons why such information is claimed to be a trade secret, based on the factors enumerated in subsection (b) of this section, including a specific description of why such factors apply, and
- (iii) submits to the Administrator a copy of such submittal, and the information withheld from such submittal.

(B) In submitting to the Administrator the information required by subparagraph (A)(iii), a person withholding information under this subsection may—

- (i) designate, in writing and in such manner as the Administrator may prescribe by regulation, the information which such person believes is entitled to be withheld under paragraph (1), and
- (ii) submit such designated information separately from other information submitted under this subsection.

(3) Limitation

The authority under this subsection to withhold information shall not apply to information which the Administrator has determined, in accordance with subsection (c) of this section, is not a trade secret.

(b) Trade secret factors

No person required to provide information under this chapter may claim that the information is entitled to protection as a trade secret

under subsection (a) of this section unless such person shows each of the following:

(1) Such person has not disclosed the information to any other person, other than a member of a local emergency planning committee, an officer or employee of the United States or a State or local government, an employee of such person, or a person who is bound by a confidentiality agreement, and such person has taken reasonable measures to protect the confidentiality of such information and intends to continue to take such measures.

(2) The information is not required to be disclosed, or otherwise made available, to the public under any other Federal or State law.

(3) Disclosure of the information is likely to cause substantial harm to the competitive position of such person.

(4) The chemical identity is not readily discoverable through reverse engineering.

(c) Trade secret regulations

As soon as practicable after October 17, 1986, the Administrator shall prescribe regulations to implement this section. With respect to subsection (b)(4) of this section, such regulations shall be equivalent to comparable provisions in the Occupational Safety and Health Administration Hazard Communication Standard (29 C.F.R. 1910.1200) and any revisions of such standard prescribed by the Secretary of Labor in accordance with the final ruling of the courts of the United States in *United Steelworkers of America, AFL-CIO-CLC v. Thorne G. Auchter*.

(d) Petition for review

(1) In general

Any person may petition the Administrator for the disclosure of the specific chemical identity of a hazardous chemical, an extremely hazardous substance, or a toxic chemical which is claimed as a trade secret under this section. The Administrator may, in the absence of a petition under this paragraph, initiate a determination, to be carried out in accordance with this subsection, as to whether information withheld constitutes a trade secret.

(2) Initial review

Within 30 days after the date of receipt of a petition under paragraph (1) (or upon the Administrator's initiative), the Administrator shall review the explanation filed by a trade secret claimant under subsection (a)(2) of this section and determine whether the explanation presents assertions which, if true, are sufficient to support a finding that the specific chemical identity is a trade secret.

(3) Finding of sufficient assertions

(A) If the Administrator determines pursuant to paragraph (2) that the explanation presents sufficient assertions to support a finding that the specific chemical identity is a trade secret, the Administrator shall notify the trade secret claimant that he has 30 days to supplement the explanation with detailed information to support the assertions.

(B) If the Administrator determines, after receipt of any supplemental supporting de-

tailed information under subparagraph (A), that the assertions in the explanation are true and that the specific chemical identity is a trade secret, the Administrator shall so notify the petitioner and the petitioner may seek judicial review of the determination.

(C) If the Administrator determines, after receipt of any supplemental supporting detailed information under subparagraph (A), that the assertions in the explanation are not true and that the specific chemical identity is not a trade secret, the Administrator shall notify the trade secret claimant that the Administrator intends to release the specific chemical identity. The trade secret claimant has 30 days in which he may appeal the Administrator's determination under this subparagraph to the Administrator. If the Administrator does not reverse his determination under this subparagraph in such an appeal by the trade secret claimant, the trade secret claimant¹ may seek judicial review of the determination.

(4) Finding of insufficient assertions

(A) If the Administrator determines pursuant to paragraph (2) that the explanation presents insufficient assertions to support a finding that the specific chemical identity is a trade secret, the Administrator shall notify the trade secret claimant that he has 30 days to appeal the determination to the Administrator, or, upon a showing of good cause, amend the original explanation by providing supplementary assertions to support the trade secret claim.

(B) If the Administrator does not reverse his determination under subparagraph (A) after an appeal or an examination of any supplementary assertions under subparagraph (A), the Administrator shall so notify the trade secret claimant and the trade secret claimant may seek judicial review of the determination.

(C) If the Administrator reverses his determination under subparagraph (A) after an appeal or an examination of any supplementary assertions under subparagraph (A), the procedures under paragraph (3) of this subsection apply.

(e) Exception for information provided to health professionals

Nothing in this section, or regulations adopted pursuant to this section, shall authorize any person to withhold information which is required to be provided to a health professional, a doctor, or a nurse in accordance with section 11043 of this title.

(f) Providing information to Administrator; availability to public

Any information submitted to the Administrator under subsection (a)(2) of this section or subsection (d)(3) of this section (except a specific chemical identity) shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that the information (or a particular part thereof) to which the Administrator has access under this section if made public would divulge information entitled to protection under section 1905 of title 18,

¹ So in original. Probably should be "claimant".

such information or part shall be considered confidential in accordance with the purposes of that section, except that such information or part may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter.

(g) Information provided to State

Upon request by a State, acting through the Governor of the State, the Administrator shall provide to the State any information obtained under subsection (a)(2) of this section and subsection (d)(3) of this section.

(h) Information on adverse effects

(1) In any case in which the identity of a hazardous chemical or an extremely hazardous substance is claimed as a trade secret, the Governor or State emergency response commission established under section 11001 of this title shall identify the adverse health effects associated with the hazardous chemical or extremely hazardous substance and shall assure that such information is provided to any person requesting information about such hazardous chemical or extremely hazardous substance.

(2) In any case in which the identity of a toxic chemical is claimed as a trade secret, the Administrator shall identify the adverse health and environmental effects associated with the toxic chemical and shall assure that such information is included in the computer database required by section 11023(j) of this title and is provided to any person requesting information about such toxic chemical.

(i) Information provided to Congress

Notwithstanding any limitation² contained in this section or any other provision of law, all information reported to or otherwise obtained by the Administrator (or any representative of the Administrator) under this chapter shall be made available to a duly authorized committee of the Congress upon written request by such a committee.

(Pub. L. 99-499, title III, §322, Oct. 17, 1986, 100 Stat. 1747.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11043, 11044, 11045, 11046, 13106 of this title.

§ 11043. Provision of information to health professionals, doctors, and nurses

(a) Diagnosis or treatment by health professional

An owner or operator of a facility which is subject to the requirements of section 11021, 11022, or 11023 of this title shall provide the specific chemical identity, if known, of a hazardous chemical, extremely hazardous substance, or a toxic chemical to any health professional who requests such information in writing if the health professional provides a written statement of need under this subsection and a written confidentiality agreement under subsection (d) of this section. The written statement of need shall be a statement that the health professional has a reasonable basis to suspect that—

(1) the information is needed for purposes of diagnosis or treatment of an individual,

(2) the individual or individuals being diagnosed or treated have been exposed to the chemical concerned, and

(3) knowledge of the specific chemical identity of such chemical will assist in diagnosis or treatment.

Following such a written request, the owner or operator to whom such request is made shall promptly provide the requested information to the health professional. The authority to withhold the specific chemical identity of a chemical under section 11042 of this title when such information is a trade secret shall not apply to information required to be provided under this subsection, subject to the provisions of subsection (d) of this section.

(b) Medical emergency

An owner or operator of a facility which is subject to the requirements of section 11021, 11022, or 11023 of this title shall provide a copy of a material safety data sheet, an inventory form, or a toxic chemical release form, including the specific chemical identity, if known, of a hazardous chemical, extremely hazardous substance, or a toxic chemical, to any treating physician or nurse who requests such information if such physician or nurse determines that—

(1) a medical emergency exists,

(2) the specific chemical identity of the chemical concerned is necessary for or will assist in emergency or first-aid diagnosis or treatment, and

(3) the individual or individuals being diagnosed or treated have been exposed to the chemical concerned.

Immediately following such a request, the owner or operator to whom such request is made shall provide the requested information to the physician or nurse. The authority to withhold the specific chemical identity of a chemical from a material safety data sheet, an inventory form, or a toxic chemical release form under section 11042 of this title when such information is a trade secret shall not apply to information required to be provided to a treating physician or nurse under this subsection. No written confidentiality agreement or statement of need shall be required as a precondition of such disclosure, but the owner or operator disclosing such information may require a written confidentiality agreement in accordance with subsection (d) of this section and a statement setting forth the items listed in paragraphs (1) through (3) as soon as circumstances permit.

(c) Preventive measures by local health professionals

(1) Provision of information

An owner or operator of a facility subject to the requirements of section 11021, 11022, or 11023 of this title shall provide the specific chemical identity, if known, of a hazardous chemical, an extremely hazardous substance, or a toxic chemical to any health professional (such as a physician, toxicologist, or epidemiologist)—

(A) who is a local government employee or a person under contract with the local government, and

²So in original. Probably should be "limitation".

(B) who requests such information in writing and provides a written statement of need under paragraph (2) and a written confidentiality agreement under subsection (d) of this section.

Following such a written request, the owner or operator to whom such request is made shall promptly provide the requested information to the local health professional. The authority to withhold the specific chemical identity of a chemical under section 11042 of this title when such information is a trade secret shall not apply to information required to be provided under this subsection, subject to the provisions of subsection (d) of this section.

(2) Written statement of need

The written statement of need shall be a statement that describes with reasonable detail one or more of the following health needs for the information:

(A) To assess exposure of persons living in a local community to the hazards of the chemical concerned.

(B) To conduct or assess sampling to determine exposure levels of various population groups.

(C) To conduct periodic medical surveillance of exposed population groups.

(D) To provide medical treatment to exposed individuals or population groups.

(E) To conduct studies to determine the health effects of exposure.

(F) To conduct studies to aid in the identification of a chemical that may reasonably be anticipated to cause an observed health effect.

(d) Confidentiality agreement

Any person obtaining information under subsection (a) or (c) of this section shall, in accordance with such subsection (a) or (c) of this section, be required to agree in a written confidentiality agreement that he will not use the information for any purpose other than the health needs asserted in the statement of need, except as may otherwise be authorized by the terms of the agreement or by the person providing such information. Nothing in this subsection shall preclude the parties to a confidentiality agreement from pursuing any remedies to the extent permitted by law.

(e) Regulations

As soon as practicable after October 17, 1986, the Administrator shall promulgate regulations describing criteria and parameters for the statement of need under subsection¹ (a) and (c) of this section and the confidentiality agreement under subsection (d) of this section.

(Pub. L. 99-499, title III, §323, Oct. 17, 1986, 100 Stat. 1750.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11042, 11045 of this title.

¹ So in original. Probably should be "subsections".

§ 11044. Public availability of plans, data sheets, forms, and followup notices

(a) Availability to public

Each emergency response plan, material safety data sheet, list described in section 11021(a)(2) of this title, inventory form, toxic chemical release form, and followup emergency notice shall be made available to the general public, consistent with section 11042 of this title, during normal working hours at the location or locations designated by the Administrator, Governor, State emergency response commission, or local emergency planning committee, as appropriate. Upon request by an owner or operator of a facility subject to the requirements of section 11022 of this title, the State emergency response commission and the appropriate local emergency planning committee shall withhold from disclosure under this section the location of any specific chemical required by section 11022(d)(2) of this title to be contained in an inventory form as tier II information.

(b) Notice of public availability

Each local emergency planning committee shall annually publish a notice in local newspapers that the emergency response plan, material safety data sheets, and inventory forms have been submitted under this section. The notice shall state that followup emergency notices may subsequently be issued. Such notice shall announce that members of the public who wish to review any such plan, sheet, form, or followup notice may do so at the location designated under subsection (a) of this section.

(Pub. L. 99-499, title III, §324, Oct. 17, 1986, 100 Stat. 1752.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11001, 11021, 11022, 11023, 11046 of this title.

§ 11045. Enforcement

(a) Civil penalties for emergency planning

The Administrator may order a facility owner or operator (except an owner or operator of a facility designated under section 11002(b)(2) of this title) to comply with section 11002(c) of this title and section 11003(d) of this title. The United States district court for the district in which the facility is located shall have jurisdiction to enforce the order, and any person who violates or fails to obey such an order shall be liable to the United States for a civil penalty of not more than \$25,000 for each day in which such violation occurs or such failure to comply continues.

(b) Civil, administrative, and criminal penalties for emergency notification

(1) Class I administrative penalty

(A) A civil penalty of not more than \$25,000 per violation may be assessed by the Administrator in the case of a violation of the requirements of section 11004 of this title.

(B) No civil penalty may be assessed under this subsection unless the person accused of the violation is given notice and opportunity for a hearing with respect to the violation.

(C) In determining the amount of any penalty assessed pursuant to this subsection, the

Administrator shall take into account the nature, circumstances, extent and gravity of the violation or violations and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.

(2) Class II administrative penalty

A civil penalty of not more than \$25,000 per day for each day during which the violation continues may be assessed by the Administrator in the case of a violation of the requirements of section 11004 of this title. In the case of a second or subsequent violation the amount of such penalty may be not more than \$75,000 for each day during which the violation continues. Any civil penalty under this subsection shall be assessed and collected in the same manner, and subject to the same provisions, as in the case of civil penalties assessed and collected under section 2615 of title 15. In any proceeding for the assessment of a civil penalty under this subsection the Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents and may promulgate rules for discovery procedures.

(3) Judicial assessment

The Administrator may bring an action in the United States District¹ court for the appropriate district to assess and collect a penalty of not more than \$25,000 per day for each day during which the violation continues in the case of a violation of the requirements of section 11004 of this title. In the case of a second or subsequent violation, the amount of such penalty may be not more than \$75,000 for each day during which the violation continues.

(4) Criminal penalties

Any person who knowingly and willfully fails to provide notice in accordance with section 11004 of this title shall, upon conviction, be fined not more than \$25,000 or imprisoned for not more than two years, or both (or in the case of a second or subsequent conviction, shall be fined not more than \$50,000 or imprisoned for not more than five years, or both).

(c) Civil and administrative penalties for reporting requirements

(1) Any person (other than a governmental entity) who violates any requirement of section 11022 or 11023 of this title shall be liable to the United States for a civil penalty in an amount not to exceed \$25,000 for each such violation.

(2) Any person (other than a governmental entity) who violates any requirement of section 11021 or 11043(b) of this title, and any person who fails to furnish to the Administrator information required under section 11042(a)(2) of this title shall be liable to the United States for a civil penalty in an amount not to exceed \$10,000 for each such violation.

(3) Each day a violation described in paragraph (1) or (2) continues shall, for purposes of this subsection, constitute a separate violation.

(4) The Administrator may assess any civil penalty for which a person is liable under this subsection by administrative order or may bring an action to assess and collect the penalty in the United States district court for the district in which the person from whom the penalty is sought resides or in which such person's principal place of business is located.

(d) Civil, administrative, and criminal penalties with respect to trade secrets

(1) Civil and administrative penalty for frivolous claims

If the Administrator determines—

(A)(i) under section 11042(d)(4) of this title that an explanation submitted by a trade secret claimant presents insufficient assertions to support a finding that a specific chemical identity is a trade secret, or (ii) after receiving supplemental supporting detailed information under section 11042(d)(3)(A) of this title, that the specific chemical identity is not a trade secret; and

(B) that the trade secret claim is frivolous,

the trade secret claimant is liable for a penalty of \$25,000 per claim. The Administrator may assess the penalty by administrative order or may bring an action in the appropriate district court of the United States to assess and collect the penalty.

(2) Criminal penalty for disclosure of trade secret information

Any person who knowingly and willfully divulges or discloses any information entitled to protection under section 11042 of this title shall, upon conviction, be subject to a fine of not more than \$20,000 or to imprisonment not to exceed one year, or both.

(e) Special enforcement provisions for section 11043

Whenever any facility owner or operator required to provide information under section 11043 of this title to a health professional who has requested such information fails or refuses to provide such information in accordance with such section, such health professional may bring an action in the appropriate United States district court to require such facility owner or operator to provide the information. Such court shall have jurisdiction to issue such orders and take such other action as may be necessary to enforce the requirements of section 11043 of this title.

(f) Procedures for administrative penalties

(1) Any person against whom a civil penalty is assessed under this section may obtain review thereof in the appropriate district court of the United States by filing a notice of appeal in such court within 30 days after the date of such order and by simultaneously sending a copy of such notice by certified mail to the Administrator. The Administrator shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed. If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order or after the appropriate court has entered final judgment in favor of the United States, the Administrator may re-

¹ So in original. Probably should not be capitalized.

quest the Attorney General of the United States to institute a civil action in an appropriate district court of the United States to collect the penalty, and such court shall have jurisdiction to hear and decide any such action. In hearing such action, the court shall have authority to review the violation and the assessment of the civil penalty on the record.

(2) The Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with hearings under this section. In case of contumacy or refusal to obey a subpoena issued pursuant to this paragraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the administrative law judge or to appear and produce documents before the administrative law judge, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(Pub. L. 99-499, title III, §325, Oct. 17, 1986, 100 Stat. 1753.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13106 of this title.

§ 11046. Civil actions

(a) Authority to bring civil actions

(1) Citizen suits

Except as provided in subsection (e) of this section, any person may commence a civil action on his own behalf against the following:

(A) An owner or operator of a facility for failure to do any of the following:

(i) Submit a followup emergency notice under section 11004(c) of this title.

(ii) Submit a material safety data sheet or a list under section 11021(a) of this title.

(iii) Complete and submit an inventory form under section 11022(a) of this title containing tier I information as described in section 11022(d)(1) of this title unless such requirement does not apply by reason of the second sentence of section 11022(a)(2) of this title.

(iv) Complete and submit a toxic chemical release form under section 11023(a) of this title.

(B) The Administrator for failure to do any of the following:

(i) Publish inventory forms under section 11022(g) of this title.

(ii) Respond to a petition to add or delete a chemical under section 11023(e)(1) of this title within 180 days after receipt of the petition.

(iii) Publish a toxic chemical release form under 11023(g)¹ of this title.

(iv) Establish a computer database in accordance with section 11023(j) of this title.

(v) Promulgate trade secret regulations under section 11042(c) of this title.

(vi) Render a decision in response to a petition under section 11042(d) of this title within 9 months after receipt of the petition.

(C) The Administrator, a State Governor, or a State emergency response commission, for failure to provide a mechanism for public availability of information in accordance with section 11044(a) of this title.

(D) A State Governor or a State emergency response commission for failure to respond to a request for tier II information under section 11022(e)(3) of this title within 120 days after the date of receipt of the request.

(2) State or local suits

(A) Any State or local government may commence a civil action against an owner or operator of a facility for failure to do any of the following:

(i) Provide notification to the emergency response commission in the State under section 11002(c) of this title.

(ii) Submit a material safety data sheet or a list under section 11021(a) of this title.

(iii) Make available information requested under section 11021(c) of this title.

(iv) Complete and submit an inventory form under section 11022(a) of this title containing tier I information unless such requirement does not apply by reason of the second sentence of section 11022(a)(2) of this title.

(B) Any State emergency response commission or local emergency planning committee may commence a civil action against an owner or operator of a facility for failure to provide information under section 11003(d) of this title or for failure to submit tier II information under section 11022(e)(1) of this title.

(C) Any State may commence a civil action against the Administrator for failure to provide information to the State under section 11042(g) of this title.

(b) Venue

(1) Any action under subsection (a) of this section against an owner or operator of a facility shall be brought in the district court for the district in which the alleged violation occurred.

(2) Any action under subsection (a) of this section against the Administrator may be brought in the United States District Court for the District of Columbia.

(c) Relief

The district court shall have jurisdiction in actions brought under subsection (a) of this section against an owner or operator of a facility to enforce the requirement concerned and to impose any civil penalty provided for violation of that requirement. The district court shall have jurisdiction in actions brought under subsection (a) of this section against the Administrator to order the Administrator to perform the act or duty concerned.

(d) Notice

(1) No action may be commenced under subsection (a)(1)(A) of this section prior to 60 days

¹ So in original. Probably should be preceded by "section".

after the plaintiff has given notice of the alleged violation to the Administrator, the State in which the alleged violation occurs, and the alleged violator. Notice under this paragraph shall be given in such manner as the Administrator shall prescribe by regulation.

(2) No action may be commenced under subsection (a)(1)(B) or (a)(1)(C) of this section prior to 60 days after the date on which the plaintiff gives notice to the Administrator, State Governor, or State emergency response commission (as the case may be) that the plaintiff will commence the action. Notice under this paragraph shall be given in such manner as the Administrator shall prescribe by regulation.

(e) Limitation

No action may be commenced under subsection (a) of this section against an owner or operator of a facility if the Administrator has commenced and is diligently pursuing an administrative order or civil action to enforce the requirement concerned or to impose a civil penalty under this Act with respect to the violation of the requirement.

(f) Costs

The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or the substantially prevailing party whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(g) Other rights

Nothing in this section shall restrict or expand any right which any person (or class of persons) may have under any Federal or State statute or common law to seek enforcement of any requirement or to seek any other relief (including relief against the Administrator or a State agency).

(h) Intervention

(1) By the United States

In any action under this section the United States or the State, or both, if not a party, may intervene as a matter of right.

(2) By persons

In any action under this section, any person may intervene as a matter of right when such person has a direct interest which is or may be adversely affected by the action and the disposition of the action may, as a practical matter, impair or impede the person's ability to protect that interest unless the Administrator or the State shows that the person's interest is adequately represented by existing parties in the action.

(Pub. L. 99-499, title III, §326, Oct. 17, 1986, 100 Stat. 1755.)

REFERENCES IN TEXT

This Act, referred to in subsec. (e), is Pub. L. 99-499, Oct. 17, 1986, 100 Stat. 1613, as amended, known as the Superfund Amendments and Reauthorization Act of

1986. For complete classification of this Act to the Code, see Short Title of 1986 Amendment note set out under section 9601 of this title and Tables.

The Federal Rules of Civil Procedure, referred to in subsec. (f), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13106 of this title.

§ 11047. Exemption

Except as provided in section 11004 of this title, this chapter does not apply to the transportation, including the storage incident to such transportation, of any substance or chemical subject to the requirements of this chapter, including the transportation and distribution of natural gas.

(Pub. L. 99-499, title III, §327, Oct. 17, 1986, 100 Stat. 1757.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11004 of this title.

§ 11048. Regulations

The Administrator may prescribe such regulations as may be necessary to carry out this chapter.

(Pub. L. 99-499, title III, §328, Oct. 17, 1986, 100 Stat. 1757.)

§ 11049. Definitions

For purposes of this chapter—

(1) Administrator

The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) Environment

The term "environment" includes water, air, and land and the interrelationship which exists among and between water, air, and land and all living things.

(3) Extremely hazardous substance

The term "extremely hazardous substance" means a substance on the list described in section 11002(a)(2) of this title.

(4) Facility

The term "facility" means all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person). For purposes of section 11004 of this title, the term includes motor vehicles, rolling stock, and aircraft.

(5) Hazardous chemical

The term "hazardous chemical" has the meaning given such term by section 11021(e) of this title.

(6) Material safety data sheet

The term "material safety data sheet" means the sheet required to be developed

under section 1910.1200(g) of title 29 of the Code of Federal Regulations, as that section may be amended from time to time.

(7) Person

The term “person” means any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or interstate body.

(8) Release

The term “release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles) of any hazardous chemical, extremely hazardous substance, or toxic chemical.

(9) State

The term “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction.

(10) Toxic chemical

The term “toxic chemical” means a substance on the list described in section 11023(c) of this title.

(Pub. L. 99-499, title III, §329, Oct. 17, 1986, 100 Stat. 1757.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13102 of this title.

§ 11050. Authorization of appropriations

There are authorized to be appropriated for fiscal years beginning after September 30, 1986, such sums as may be necessary to carry out this chapter.

(Pub. L. 99-499, title III, §330, Oct. 17, 1986, 100 Stat. 1758.)

CHAPTER 117—ENCOURAGING GOOD FAITH PROFESSIONAL REVIEW ACTIVITIES

Sec.

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SUBCHAPTER III—DEFINITIONS AND REPORTS

- 11151. Definitions.
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 - (a) Annual reports to Congress.
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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1320a-7e, 1396r-2 of this title.

§ 11101. Findings

The Congress finds the following:

- (1) The increasing occurrence of medical malpractice and the need to improve the quality of medical care have become nationwide problems that warrant greater efforts than those that can be undertaken by any individual State.
- (2) There is a national need to restrict the ability of incompetent physicians to move from State to State without disclosure or discovery of the physician’s previous damaging or incompetent performance.
- (3) This nationwide problem can be remedied through effective professional peer review.
- (4) The threat of private money damage liability under Federal laws, including treble damage liability under Federal antitrust law, unreasonably discourages physicians from participating in effective professional peer review.
- (5) There is an overriding national need to provide incentive and protection for physi-

cians engaging in effective professional peer review.

(Pub. L. 99-660, title IV, § 402, Nov. 14, 1986, 100 Stat. 3784.)

REFERENCES IN TEXT

The Federal antitrust laws, referred to in par. (4), are classified generally to chapter 1 (§1 et seq.) of Title 15, Commerce and Trade.

SHORT TITLE

Section 401 of title IV of Pub. L. 99-660 provided that: "This title [enacting this chapter and provisions set out as a note under section 11111 of this title] may be cited as the 'Health Care Quality Improvement Act of 1986'."

SUBCHAPTER I—PROMOTION OF PROFESSIONAL REVIEW ACTIVITIES

§ 11111. Professional review

(a) In general

(1) Limitation on damages for professional review actions

If a professional review action (as defined in section 11151(9) of this title) of a professional review body meets all the standards specified in section 11112(a) of this title, except as provided in subsection (b) of this section—

- (A) the professional review body,
- (B) any person acting as a member or staff to the body,
- (C) any person under a contract or other formal agreement with the body, and
- (D) any person who participates with or assists the body with respect to the action,

shall not be liable in damages under any law of the United States or of any State (or political subdivision thereof) with respect to the action. The preceding sentence shall not apply to damages under any law of the United States or any State relating to the civil rights of any person or persons, including the Civil Rights Act of 1964, 42 U.S.C. 2000e, et seq. and the Civil Rights Acts, 42 U.S.C. 1981, et seq. Nothing in this paragraph shall prevent the United States or any Attorney General of a State from bringing an action, including an action under section 15c of title 15, where such an action is otherwise authorized.

(2) Protection for those providing information to professional review bodies

Notwithstanding any other provision of law, no person (whether as a witness or otherwise) providing information to a professional review body regarding the competence or professional conduct of a physician shall be held, by reason of having provided such information, to be liable in damages under any law of the United States or of any State (or political subdivision thereof) unless such information is false and the person providing it knew that such information was false.

(b) Exception

If the Secretary has reason to believe that a health care entity has failed to report information in accordance with section 11133(a) of this title, the Secretary shall conduct an investigation. If, after providing notice of noncompliance,

an opportunity to correct the noncompliance, and an opportunity for a hearing, the Secretary determines that a health care entity has failed substantially to report information in accordance with section 11133(a) of this title, the Secretary shall publish the name of the entity in the Federal Register. The protections of subsection (a)(1) of this section shall not apply to an entity the name of which is published in the Federal Register under the previous sentence with respect to professional review actions of the entity commenced during the 3-year period beginning 30 days after the date of publication of the name.

(c) Treatment under State laws

(1) Professional review actions taken on or after October 14, 1989

Except as provided in paragraph (2), subsection (a) of this section shall apply to State laws in a State only for professional review actions commenced on or after October 14, 1989.

(2) Exceptions

(A) State early opt-in

Subsection (a) of this section shall apply to State laws in a State for actions commenced before October 14, 1989, if the State by legislation elects such treatment.

(B) Effective date of election

An election under State law is not effective, for purposes of,¹ for actions commenced before the effective date of the State law, which may not be earlier than the date of the enactment of that law.

(Pub. L. 99-660, title IV, § 411, Nov. 14, 1986, 100 Stat. 3784; Pub. L. 100-177, title IV, § 402(c), as added Pub. L. 101-239, title VI, § 6103(e)(6)(A), Dec. 19, 1989, 103 Stat. 2208.)

REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in subsec. (a)(1), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended, which is classified principally to subchapters II to IX (§2000a et seq.) of chapter 21 of this title. Title VII of this Act relates to equal employment opportunities, and is classified generally to subchapter VI (§2000e et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Civil Rights Acts, referred to in subsec. (a)(1), are classified generally to chapter 21 (§1981 et seq.) of this title.

AMENDMENTS

1989—Subsec. (c)(2)(B), (C). Pub. L. 101-239 added Pub. L. 100-177, § 402(c), see 1987 Amendment note below.

1987—Subsec. (c)(2)(B), (C). Pub. L. 100-177, § 402(c), as added by Pub. L. 101-239, redesignated subpar. (C) as (B), struck out "subparagraphs (A) and (B)" after "for purposes of", and struck out former subpar. (B) which read as follows: "Subsection (a) of this section shall not apply to State laws in a State for actions commenced on or after October 14, 1989, if the State by legislation elects such treatment."

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-177 effective Nov. 14, 1986, see section 402(d) of Pub. L. 100-177, as renumbered and amended, set out as a note under section 11137 of this title.

¹So in original. Probably should be "for purposes of subparagraph (A),".

EFFECTIVE DATE

Section 416 of Pub. L. 99-660 provided that: "This part [part A (§§ 411-416) of title IV of Pub. L. 99-660, enacting this subchapter] shall apply to professional review actions commenced on or after the date of the enactment of this Act [Nov. 14, 1986]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11112, 11133 of this title.

§ 11112. Standards for professional review actions

(a) In general

For purposes of the protection set forth in section 11111(a) of this title, a professional review action must be taken—

- (1) in the reasonable belief that the action was in the furtherance of quality health care,
- (2) after a reasonable effort to obtain the facts of the matter,
- (3) after adequate notice and hearing procedures are afforded to the physician involved or after such other procedures as are fair to the physician under the circumstances, and
- (4) in the reasonable belief that the action was warranted by the facts known after such reasonable effort to obtain facts and after meeting the requirement of paragraph (3).

A professional review action shall be presumed to have met the preceding standards necessary for the protection set out in section 11111(a) of this title unless the presumption is rebutted by a preponderance of the evidence.

(b) Adequate notice and hearing

A health care entity is deemed to have met the adequate notice and hearing requirement of subsection (a)(3) of this section with respect to a physician if the following conditions are met (or are waived voluntarily by the physician):

(1) Notice of proposed action

The physician has been given notice stating—

- (A)(i) that a professional review action has been proposed to be taken against the physician,
- (ii) reasons for the proposed action,
- (B)(i) that the physician has the right to request a hearing on the proposed action,
- (ii) any time limit (of not less than 30 days) within which to request such a hearing, and
- (C) a summary of the rights in the hearing under paragraph (3).

(2) Notice of hearing

If a hearing is requested on a timely basis under paragraph (1)(B), the physician involved must be given notice stating—

- (A) the place, time, and date, of the hearing, which date shall not be less than 30 days after the date of the notice, and
- (B) a list of the witnesses (if any) expected to testify at the hearing on behalf of the professional review body.

(3) Conduct of hearing and notice

If a hearing is requested on a timely basis under paragraph (1)(B)—

- (A) subject to subparagraph (B), the hearing shall be held (as determined by the health care entity)—

- (i) before an arbitrator mutually acceptable to the physician and the health care entity,

- (ii) before a hearing officer who is appointed by the entity and who is not in direct economic competition with the physician involved, or

- (iii) before a panel of individuals who are appointed by the entity and are not in direct economic competition with the physician involved;

(B) the right to the hearing may be forfeited if the physician fails, without good cause, to appear;

(C) in the hearing the physician involved has the right—

- (i) to representation by an attorney or other person of the physician's choice,
- (ii) to have a record made of the proceedings, copies of which may be obtained by the physician upon payment of any reasonable charges associated with the preparation thereof,
- (iii) to call, examine, and cross-examine witnesses,
- (iv) to present evidence determined to be relevant by the hearing officer, regardless of its admissibility in a court of law, and
- (v) to submit a written statement at the close of the hearing; and

(D) upon completion of the hearing, the physician involved has the right—

- (i) to receive the written recommendation of the arbitrator, officer, or panel, including a statement of the basis for the recommendations, and
- (ii) to receive a written decision of the health care entity, including a statement of the basis for the decision.

A professional review body's failure to meet the conditions described in this subsection shall not, in itself, constitute failure to meet the standards of subsection (a)(3) of this section.

(c) Adequate procedures in investigations or health emergencies

For purposes of section 11111(a) of this title, nothing in this section shall be construed as—

- (1) requiring the procedures referred to in subsection (a)(3) of this section—
 - (A) where there is no adverse professional review action taken, or
 - (B) in the case of a suspension or restriction of clinical privileges, for a period of not longer than 14 days, during which an investigation is being conducted to determine the need for a professional review action; or
- (2) precluding an immediate suspension or restriction of clinical privileges, subject to subsequent notice and hearing or other adequate procedures, where the failure to take such an action may result in an imminent danger to the health of any individual.

(Pub. L. 99-660, title IV, § 412, Nov. 14, 1986, 100 Stat. 3785.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11111, 11113, 11114 of this title.

§ 11113. Payment of reasonable attorneys' fees and costs in defense of suit

In any suit brought against a defendant, to the extent that a defendant has met the standards set forth under section 11112(a) of this title and the defendant substantially prevails, the court shall, at the conclusion of the action, award to a substantially prevailing party defending against any such claim the cost of the suit attributable to such claim, including a reasonable attorney's fee, if the claim, or the claimant's conduct during the litigation of the claim, was frivolous, unreasonable, without foundation, or in bad faith. For the purposes of this section, a defendant shall not be considered to have substantially prevailed when the plaintiff obtains an award for damages or permanent injunctive or declaratory relief.

(Pub. L. 99-660, title IV, § 413, Nov. 14, 1986, 100 Stat. 3787.)

§ 11114. Guidelines of Secretary

The Secretary may establish, after notice and opportunity for comment, such voluntary guidelines as may assist the professional review bodies in meeting the standards described in section 11112(a) of this title.

(Pub. L. 99-660, title IV, § 414, Nov. 14, 1986, 100 Stat. 3787.)

§ 11115. Construction

(a) In general

Except as specifically provided in this subchapter, nothing in this subchapter shall be construed as changing the liabilities or immunities under law or as preempting or overriding any State law which provides incentives, immunities, or protection for those engaged in a professional review action that is in addition to or greater than that provided by this subchapter.

(b) Scope of clinical privileges

Nothing in this subchapter shall be construed as requiring health care entities to provide clinical privileges to any or all classes or types of physicians or other licensed health care practitioners.

(c) Treatment of nurses and other practitioners

Nothing in this subchapter shall be construed as affecting, or modifying any provision of Federal or State law, with respect to activities of professional review bodies regarding nurses, other licensed health care practitioners, or other health professionals who are not physicians.

(d) Treatment of patient malpractice claims

Nothing in this chapter shall be construed as affecting in any manner the rights and remedies afforded patients under any provision of Federal or State law to seek redress for any harm or injury suffered as a result of negligent treatment or care by any physician, health care practitioner, or health care entity, or as limiting any defenses or immunities available to any physician, health care practitioner, or health care entity.

(Pub. L. 99-660, title IV, § 415, Nov. 14, 1986, 100 Stat. 3787; Pub. L. 100-177, title IV, § 402(c), as

added Pub. L. 101-239, title VI, § 6103(e)(6)(A), Dec. 19, 1989, 103 Stat. 2208.)

AMENDMENTS

1989—Subsec. (a). Pub. L. 101-239 added Pub. L. 100-177, § 402(c), see 1987 Amendment note below.

1987—Subsec. (a). Pub. L. 100-177, § 402(c), as added by Pub. L. 101-239, inserted before period at end "or as preempting or overriding any State law which provides incentives, immunities, or protection for those engaged in a professional review action that is in addition to or greater than that provided by this subchapter".

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-177 effective Nov. 14, 1986, see section 402(d) of Pub. L. 100-177, as renumbered and amended, set out as a note under section 11137 of this title.

SUBCHAPTER II—REPORTING OF INFORMATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 11152 of this title.

§ 11131. Requiring reports on medical malpractice payments

(a) In general

Each entity (including an insurance company) which makes payment under a policy of insurance, self-insurance, or otherwise in settlement (or partial settlement) of, or in satisfaction of a judgment in, a medical malpractice action or claim shall report, in accordance with section 11134 of this title, information respecting the payment and circumstances thereof.

(b) Information to be reported

The information to be reported under subsection (a) of this section includes—

- (1) the name of any physician or licensed health care practitioner for whose benefit the payment is made,
- (2) the amount of the payment,
- (3) the name (if known) of any hospital with which the physician or practitioner is affiliated or associated,
- (4) a description of the acts or omissions and injuries or illnesses upon which the action or claim was based, and
- (5) such other information as the Secretary determines is required for appropriate interpretation of information reported under this section.

(c) Sanctions for failure to report

Any entity that fails to report information on a payment required to be reported under this section shall be subject to a civil money penalty of not more than \$10,000 for each such payment involved. Such penalty shall be imposed and collected in the same manner as civil money penalties under subsection (a) of section 1320a-7a of this title are imposed and collected under that section.

(d) Report on treatment of small payments

The Secretary shall study and report to Congress, not later than two years after November 14, 1986, on whether information respecting small payments should continue to be required to be reported under subsection (a) of this sec-

tion and whether information respecting all claims made concerning a medical malpractice action should be required to be reported under such subsection.

(Pub. L. 99-660, title IV, § 421, Nov. 14, 1986, 100 Stat. 3788.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11134 of this title.

§ 11132. Reporting of sanctions taken by Boards of Medical Examiners

(a) In general

(1) Actions subject to reporting

Each Board of Medical Examiners—

(A) which revokes or suspends (or otherwise restricts) a physician's license or censures, reprimands, or places on probation a physician, for reasons relating to the physician's professional competence or professional conduct, or

(B) to which a physician's license is surrendered,

shall report, in accordance with section 11134 of this title, the information described in paragraph (2).

(2) Information to be reported

The information to be reported under paragraph (1) is—

(A) the name of the physician involved,

(B) a description of the acts or omissions or other reasons (if known) for the revocation, suspension, or surrender of license, and

(C) such other information respecting the circumstances of the action or surrender as the Secretary deems appropriate.

(b) Failure to report

If, after notice of noncompliance and providing opportunity to correct noncompliance, the Secretary determines that a Board of Medical Examiners has failed to report information in accordance with subsection (a) of this section, the Secretary shall designate another qualified entity for the reporting of information under section 11133 of this title.

(Pub. L. 99-660, title IV, § 422, Nov. 14, 1986, 100 Stat. 3789.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1396r-2, 11133, 11134 of this title.

§ 11133. Reporting of certain professional review actions taken by health care entities

(a) Reporting by health care entities

(1) On physicians

Each health care entity which—

(A) takes a professional review action that adversely affects the clinical privileges of a physician for a period longer than 30 days;

(B) accepts the surrender of clinical privileges of a physician—

(i) while the physician is under an investigation by the entity relating to possible incompetence or improper professional conduct, or

(ii) in return for not conducting such an investigation or proceeding; or

(C) in the case of such an entity which is a professional society, takes a professional review action which adversely affects the membership of a physician in the society,

shall report to the Board of Medical Examiners, in accordance with section 11134(a) of this title, the information described in paragraph (3).

(2) Permissive reporting on other licensed health care practitioners

A health care entity may report to the Board of Medical Examiners, in accordance with section 11134(a) of this title, the information described in paragraph (3) in the case of a licensed health care practitioner who is not a physician, if the entity would be required to report such information under paragraph (1) with respect to the practitioner if the practitioner were a physician.

(3) Information to be reported

The information to be reported under this subsection is—

(A) the name of the physician or practitioner involved,

(B) a description of the acts or omissions or other reasons for the action or, if known, for the surrender, and

(C) such other information respecting the circumstances of the action or surrender as the Secretary deems appropriate.

(b) Reporting by Board of Medical Examiners

Each Board of Medical Examiners shall report, in accordance with section 11134 of this title, the information reported to it under subsection (a) of this section and known instances of a health care entity's failure to report information under subsection (a)(1) of this section.

(c) Sanctions

(1) Health care entities

A health care entity that fails substantially to meet the requirement of subsection (a)(1) of this section shall lose the protections of section 11111(a)(1) of this title if the Secretary publishes the name of the entity under section 11111(b) of this title.

(2) Board of Medical Examiners

If, after notice of noncompliance and providing an opportunity to correct noncompliance, the Secretary determines that a Board of Medical Examiners has failed to report information in accordance with subsection (b) of this section, the Secretary shall designate another qualified entity for the reporting of information under subsection (b) of this section.

(d) References to Board of Medical Examiners

Any reference in this subchapter to a Board of Medical Examiners includes, in the case of a Board in a State that fails to meet the reporting requirements of section 11132(a) of this title or subsection (b) of this section, a reference to such other qualified entity as the Secretary designates.

(Pub. L. 99-660, title IV, § 423, Nov. 14, 1986, 100 Stat. 3789.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11111, 11132, 11134 of this title.

§ 11134. Form of reporting**(a) Timing and form**

The information required to be reported under sections 11131, 11132(a), and 11133 of this title shall be reported regularly (but not less often than monthly) and in such form and manner as the Secretary prescribes. Such information shall first be required to be reported on a date (not later than one year after November 14, 1986) specified by the Secretary.

(b) To whom reported

The information required to be reported under sections 11131, 11132(a), and 11133(b) of this title shall be reported to the Secretary, or, in the Secretary's discretion, to an appropriate private or public agency which has made suitable arrangements with the Secretary with respect to receipt, storage, protection of confidentiality, and dissemination of the information under this subchapter.

(c) Reporting to State licensing boards**(1) Malpractice payments**

Information required to be reported under section 11131 of this title shall also be reported to the appropriate State licensing board (or boards) in the State in which the medical malpractice claim arose.

(2) Reporting to other licensing boards

Information required to be reported under section 11133(b) of this title shall also be reported to the appropriate State licensing board in the State in which the health care entity is located if it is not otherwise reported to such board under subsection (b) of this section.

(Pub. L. 99-660, title IV, § 424, Nov. 14, 1986, 100 Stat. 3790.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11131, 11132, 11133, 11135, 11136, 11137 of this title.

§ 11135. Duty of hospitals to obtain information**(a) In general**

It is the duty of each hospital to request from the Secretary (or the agency designated under section 11134(b) of this title), on and after the date information is first required to be reported under section 11134(a) of this title—¹

(1) at the time a physician or licensed health care practitioner applies to be on the medical staff (courtesy or otherwise) of, or for clinical privileges at, the hospital, information reported under this subchapter concerning the physician or practitioner, and

(2) once every 2 years information reported under this subchapter concerning any physician or such practitioner who is on the medical staff (courtesy or otherwise) of, or has been granted clinical privileges at, the hospital.

¹ So in original. The closing parenthesis probably should not appear.

A hospital may request such information at other times.

(b) Failure to obtain information

With respect to a medical malpractice action, a hospital which does not request information respecting a physician or practitioner as required under subsection (a) of this section is presumed to have knowledge of any information reported under this subchapter to the Secretary with respect to the physician or practitioner.

(c) Reliance on information provided

Each hospital may rely upon information provided to the hospital under this chapter and shall not be held liable for such reliance in the absence of the hospital's knowledge that the information provided was false.

(Pub. L. 99-660, title IV, § 425, Nov. 14, 1986, 100 Stat. 3790.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11137 of this title.

§ 11136. Disclosure and correction of information

With respect to the information reported to the Secretary (or the agency designated under section 11134(b) of this title) under this subchapter respecting a physician or other licensed health care practitioner, the Secretary shall, by regulation, provide for—

- (1) disclosure of the information, upon request, to the physician or practitioner, and
- (2) procedures in the case of disputed accuracy of the information.

(Pub. L. 99-660, title IV, § 426, Nov. 14, 1986, 100 Stat. 3791.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11137 of this title.

§ 11137. Miscellaneous provisions**(a) Providing licensing boards and other health care entities with access to information**

The Secretary (or the agency designated under section 11134(b) of this title) shall, upon request, provide information reported under this subchapter with respect to a physician or other licensed health care practitioner to State licensing boards, to hospitals, and to other health care entities (including health maintenance organizations) that have entered (or may be entering) into an employment or affiliation relationship with the physician or practitioner or to which the physician or practitioner has applied for clinical privileges or appointment to the medical staff.

(b) Confidentiality of information**(1) In general**

Information reported under this subchapter is considered confidential and shall not be disclosed (other than to the physician or practitioner involved) except with respect to professional review activity, as necessary to carry out subsections (b) and (c) of section 11135 of this title (as specified in regulations by the Secretary), or in accordance with regulations

of the Secretary promulgated pursuant to subsection (a) of this section. Nothing in this subsection shall prevent the disclosure of such information by a party which is otherwise authorized, under applicable State law, to make such disclosure. Information reported under this subchapter that is in a form that does not permit the identification of any particular health care entity, physician, other health care practitioner, or patient shall not be considered confidential. The Secretary (or the agency designated under section 11134(b) of this title), on application by any person, shall prepare such information in such form and shall disclose such information in such form.

(2) Penalty for violations

Any person who violates paragraph (1) shall be subject to a civil money penalty of not more than \$10,000 for each such violation involved. Such penalty shall be imposed and collected in the same manner as civil money penalties under subsection (a) of section 1320a-7a of this title are imposed and collected under that section.

(3) Use of information

Subject to paragraph (1), information provided under section 11135 of this title and subsection (a) of this section is intended to be used solely with respect to activities in the furtherance of the quality of health care.

(4) Fees

The Secretary may establish or approve reasonable fees for the disclosure of information under this section or section 11136 of this title. The amount of such a fee may not exceed the costs of processing the requests for disclosure and of providing such information. Such fees shall be available to the Secretary (or, in the Secretary's discretion, to the agency designated under section 11134(b) of this title) to cover such costs.

(c) Relief from liability for reporting

No person or entity (including the agency designated under section 11134(b) of this title) shall be held liable in any civil action with respect to any report made under this subchapter (including information provided under subsection (a) of this section¹ without knowledge of the falsity of the information contained in the report.

(d) Interpretation of information

In interpreting information reported under this subchapter, a payment in settlement of a medical malpractice action or claim shall not be construed as creating a presumption that medical malpractice has occurred.

(Pub. L. 99-660, title IV, § 427, Nov. 14, 1986, 100 Stat. 3791; Pub. L. 100-177, title IV, § 402(a), (b), Dec. 1, 1987, 101 Stat. 1007.)

AMENDMENTS

1987—Subsec. (b)(1). Pub. L. 100-177, § 402(a)(1), substituted “as necessary to carry out subsections (b) and (c) of section 11135 of this title (as specified in regulations by the Secretary)” for “with respect to medical malpractice actions” and inserted at end “Information

¹So in original. Probably should be followed by a closing parenthesis.

reported under this subchapter that is in a form that does not permit the identification of any particular health care entity, physician, other health care practitioner, or patient shall not be considered confidential. The Secretary (or the agency designated under section 11134(b) of this title), on application by any person, shall prepare such information in such form and shall disclose such information in such form.”

Subsec. (b)(4). Pub. L. 100-177, § 402(b), added par. (4).

Subsec. (c). Pub. L. 100-177, § 402(a)(2), inserted “(including the agency designated under section 11134(b) of this title)” after “entity” and “(including information provided under subsection (a) of this section” after “subchapter”.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 402(d), formerly section 402(c), of Pub. L. 100-177, as renumbered and amended by Pub. L. 101-239, title VI, § 6103(e)(6), Dec. 19, 1989, 103 Stat. 2208, provided that:

“(1) IN GENERAL.—The amendments made by subsections (a) and (c) [amending this section and sections 1111 and 1115 of this title] shall become effective on November 14, 1986.

“(2) FEES.—The amendment made by subsection (b) [amending this section] shall become effective on the date of enactment of this Act [Dec. 1, 1987].”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1396r-2 of this title.

SUBCHAPTER III—DEFINITIONS AND REPORTS

§ 11151. Definitions

In this chapter:

(1) The term “adversely affecting” includes reducing, restricting, suspending, revoking, denying, or failing to renew clinical privileges or membership in a health care entity.

(2) The term “Board of Medical Examiners” includes a body comparable to such a Board (as determined by the State) with responsibility for the licensing of physicians and also includes a subdivision of such a Board or body.

(3) The term “clinical privileges” includes privileges, membership on the medical staff, and the other circumstances pertaining to the furnishing of medical care under which a physician or other licensed health care practitioner is permitted to furnish such care by a health care entity.

(4)(A) The term “health care entity” means—

(i) a hospital that is licensed to provide health care services by the State in which it is located,

(ii) an entity (including a health maintenance organization or group medical practice) that provides health care services and that follows a formal peer review process for the purpose of furthering quality health care (as determined under regulations of the Secretary), and

(iii) subject to subparagraph (B), a professional society (or committee thereof) of physicians or other licensed health care practitioners that follows a formal peer review process for the purpose of furthering quality health care (as determined under regulations of the Secretary).

(B) The term “health care entity” does not include a professional society (or committee

thereof) if, within the previous 5 years, the society has been found by the Federal Trade Commission or any court to have engaged in any anti-competitive practice which had the effect of restricting the practice of licensed health care practitioners.

(5) The term "hospital" means an entity described in paragraphs (1) and (7) of section 1395x(e) of this title.

(6) The terms "licensed health care practitioner" and "practitioner" mean, with respect to a State, an individual (other than a physician) who is licensed or otherwise authorized by the State to provide health care services.

(7) The term "medical malpractice action or claim" means a written claim or demand for payment based on a health care provider's furnishing (or failure to furnish) health care services, and includes the filing of a cause of action, based on the law of tort, brought in any court of any State or the United States seeking monetary damages.

(8) The term "physician" means a doctor of medicine or osteopathy or a doctor of dental surgery or medical dentistry legally authorized to practice medicine and surgery or dentistry by a State (or any individual who, without authority holds himself or herself out to be so authorized).

(9) The term "professional review action" means an action or recommendation of a professional review body which is taken or made in the conduct of professional review activity, which is based on the competence or professional conduct of an individual physician (which conduct affects or could affect adversely the health or welfare of a patient or patients), and which affects (or may affect) adversely the clinical privileges, or membership in a professional society, of the physician. Such term includes a formal decision of a professional review body not to take an action or make a recommendation described in the previous sentence and also includes professional review activities relating to a professional review action. In this chapter, an action is not considered to be based on the competence or professional conduct of a physician if the action is primarily based on—

(A) the physician's association, or lack of association, with a professional society or association,

(B) the physician's fees or the physician's advertising or engaging in other competitive acts intended to solicit or retain business,

(C) the physician's participation in prepaid group health plans, salaried employment, or any other manner of delivering health services whether on a fee-for-service or other basis,

(D) a physician's association with, supervision of, delegation of authority to, support for, training of, or participation in a private group practice with, a member or members of a particular class of health care practitioner or professional, or

(E) any other matter that does not relate to the competence or professional conduct of a physician.

(10) The term "professional review activity" means an activity of a health care entity with respect to an individual physician—

(A) to determine whether the physician may have clinical privileges with respect to, or membership in, the entity,

(B) to determine the scope or conditions of such privileges or membership, or

(C) to change or modify such privileges or membership.

(11) The term "professional review body" means a health care entity and the governing body or any committee of a health care entity which conducts professional review activity, and includes any committee of the medical staff of such an entity when assisting the governing body in a professional review activity.

(12) The term "Secretary" means the Secretary of Health and Human Services.

(13) The term "State" means the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

(14) The term "State licensing board" means, with respect to a physician or health care provider in a State, the agency of the State which is primarily responsible for the licensing of the physician or provider to furnish health care services.

(Pub. L. 99-660, title IV, § 431, Nov. 14, 1986, 100 Stat. 3792.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1396r-2, 11111 of this title.

§ 11152. Reports and memoranda of understanding

(a) Annual reports to Congress

The Secretary shall report to Congress, annually during the three years after November 14, 1986, on the implementation of this chapter.

(b) Memoranda of understanding

The Secretary of Health and Human Services shall seek to enter into memoranda of understanding with the Secretary of Defense and the Administrator of Veterans' Affairs to apply the provisions of subchapter II of this chapter to hospitals and other facilities and health care providers under the jurisdiction of the Secretary or Administrator, respectively. The Secretary shall report to Congress, not later than two years after November 14, 1986, on any such memoranda and on the cooperation among such officials in establishing such memoranda.

(c) Memorandum of understanding with Drug Enforcement Administration

The Secretary of Health and Human Services shall seek to enter into a memorandum of understanding with the Administrator of Drug Enforcement relating to providing for the reporting by the Administrator to the Secretary of information respecting physicians and other practitioners whose registration to dispense controlled substances has been suspended or revoked under section 824 of title 21. The Secretary shall report to Congress, not later than two years after November 14, 1986, on any such memorandum and on the cooperation between the Secretary and the Administrator in establishing such a memorandum.

(Pub. L. 99-660, title IV, § 432, Nov. 14, 1986, 100 Stat. 3794.)

CHANGE OF NAME

Reference to Administrator of Veterans' Affairs deemed to refer to Secretary of Veterans Affairs pursuant to section 10 of Pub. L. 100-527, set out as a Department of Veterans Affairs Act note under section 301 of Title 38, Veterans' Benefits.

CHAPTER 118—ALZHEIMER'S DISEASE AND RELATED DEMENTIAS RESEARCH

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 (a) Training models grants.
 (b) Educational grants.
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 (d) Application.
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11293. Education programs for safety and transportation personnel.

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SUBCHAPTER I—GENERAL PROVISIONS

§ 11201. Findings

The Congress finds that—

(1) best estimates indicate that between 2,000,000 and 3,000,000 Americans presently have Alzheimer's disease or related dementias;

(2) estimates of the number of individuals afflicted with Alzheimer's disease and related dementias are unreliable because current diagnostic procedures lack accuracy and sensitivity and because there is a need for epidemiological data on incidence and prevalence of such disease and dementias;

(3) studies estimate that between one-half and two-thirds of patients in nursing homes meet the clinical and mental status criteria for dementia;

(4) the cost of caring for individuals with Alzheimer's disease and related dementias is great, and conservative estimates range between \$38,000,000,000 and \$42,000,000,000 per year solely for direct costs;

(5) progress in the neurosciences and behavioral sciences has demonstrated the interdependence and mutual reinforcement of basic science, clinical research, and services research for Alzheimer's disease and related dementias;

(6) programs initiated as part of the Decade of the Brain are likely to provide significant progress in understanding the fundamental mechanisms underlying the causes of, and treatments for, Alzheimer's disease and related dementias;

(7) although substantial progress has been made in recent years in identifying possible leads to the causes of Alzheimer's disease and related dementias, and more progress can be expected in the near future, there is little likelihood of a breakthrough in the immediate future that would eliminate or substantially reduce—

(A) the number of individuals with the disease and dementias; or

(B) the difficulties of caring for the individuals;

(8) the responsibility for care of individuals with Alzheimer's disease and related dementias falls primarily on their families, and the care is financially and emotionally devastating;

(9) attempts to reduce the emotional and financial burden of caring for dementia patients is impeded by a lack of knowledge about such patients, how to care for such patients, the costs associated with such care, the effectiveness of various modes of care, the quality and type of care necessary at various stages of the

disease, and other appropriate services that are needed to provide quality care;

(10) the results of the little research that has been undertaken concerning dementia has been inadequate or the results have not been widely disseminated;

(11) more knowledge is needed concerning—

(A) the epidemiology of, and the identification of risk factors for, Alzheimer's disease and related dementias;

(B) the development of methods for early diagnosis, functional assessment, and psychological evaluation of individuals with Alzheimer's disease for the purpose of monitoring the course of the disease and developing strategies for improving the quality of life for such individuals;

(C) the understanding of the optimal range and cost-effectiveness of community and institutional services for individuals with Alzheimer's disease and related dementias and their families, particularly with respect to the design, delivery, staffing, and mix of such services and the coordination of such services with other services, and with respect to the relationship of formal to informal support services;

(D) the understanding of optimal methods to combine formal support services provided by health care professionals with informal support services provided by family, friends, and neighbors of individuals with Alzheimer's disease, and the identification of ways family caregivers can be sustained through interventions to reduce psychological and social problems and physical problems induced by stress;

(E) existing data that are relevant to Alzheimer's disease and related dementias; and

(F) the costs incurred in caring for individuals with Alzheimer's disease and related dementias;

(12) it is imperative to provide appropriate coordination of the efforts of the Federal Government in the provision of services for individuals with Alzheimer's disease and related dementias;

(13) it is important to increase the understanding of Alzheimer's disease and related dementias by the diverse range of personnel involved in the care of individuals with such disease and dementias; and

(14) it is imperative that the Social Security Administration be provided information pertaining to Alzheimer's disease and related dementias, particularly for personnel in such Administration involved in the establishment and updating of criteria for determining whether an individual is under a disability for purposes of titles II and XVI of the Social Security Act [42 U.S.C. 401 et seq., 1381 et seq.].

(Pub. L. 99-660, title IX, §902, Nov. 14, 1986, 100 Stat. 3802; Pub. L. 102-507, §4, Oct. 24, 1992, 106 Stat. 3281.)

REFERENCES IN TEXT

The Social Security Act, referred to in par. (14), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles II and XVI of the Act are classified generally to subchapters II (§401 et seq.) and XVI (§1381 et seq.), respectively, of chapter 7 of this title. For complete classi-

fication of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

1992—Pars. (4) to (14), Pub. L. 102-507 added pars. (4) to (8), redesignated former pars. (7) to (12) as (9) to (14), respectively, and struck out former pars. (4) to (6) which read as follows:

“(4) the care for individuals with Alzheimer's disease and related dementias falls primarily on their families, and such care is very often financially and emotionally devastating;

“(5) the cost of caring for individuals with Alzheimer's disease and related dementias is great, and conservative estimates range between \$38,000,000,000 and \$42,000,000,000 per year solely for direct costs;

“(6) although substantial progress has been made in recent years in identifying possible leads to the causes of Alzheimer's disease and related dementias and more progress can be expected in the near future, there is little likelihood of a breakthrough in the foreseeable future which would eliminate or substantially reduce the number of individuals with such disease and dementias or the difficulties of caring for such individuals;”.

SHORT TITLE OF 1992 AMENDMENT

Section 1 of Pub. L. 102-507 provided that: “This Act [enacting section 11261 of this title, amending this section and sections 285e-5, 11211, 11212, 11221, 11223, 11251, 11253, 11263, 11292, and 11294 of this title, repealing section 11261 of this title, and amending provisions set out as a note under this section] may be cited as the ‘Alzheimer's Disease Research, Training, and Education Amendments of 1992.’”

SHORT TITLE

Section 901 of title IX of Pub. L. 99-660, as amended by Pub. L. 102-507, §2(a), Oct. 24, 1992, 106 Stat. 3281, provided that: “This title [enacting this chapter] may be cited as the ‘Alzheimer's Disease and Related Dementias Research Act of 1992.’”

SUBCHAPTER II—COUNCIL ON ALZHEIMER'S DISEASE

§§ 11211, 11212. Repealed. Pub. L. 105-362, title VI, § 601(a)(2)(E), Nov. 10, 1998, 112 Stat. 3286

Section 11211, Pub. L. 99-660, title IX, §911, Nov. 14, 1986, 100 Stat. 3804; Pub. L. 102-54, §13(q)(14)(A), June 13, 1991, 105 Stat. 282; Pub. L. 102-507, §5(2)[(a)], Oct. 24, 1992, 106 Stat. 3282; Pub. L. 103-171, §3(b)(3), Dec. 2, 1993, 107 Stat. 1991, related to establishment of Council on Alzheimer's Disease in the Department of Health and Human Services.

Section 11212, Pub. L. 99-660, title IX, §912, Nov. 14, 1986, 100 Stat. 3804; Pub. L. 100-607, title I, §142(c)(1)(E), Nov. 4, 1988, 102 Stat. 3057; Pub. L. 102-507, §5(b), Oct. 24, 1992, 106 Stat. 3282, related to functions of Council on Alzheimer's Disease.

SUBCHAPTER III—ADVISORY PANEL ON ALZHEIMER'S DISEASE

§ 11221. Establishment of Panel

(a) Composition; nonvoting ex officio members

There is established in the Department the Advisory Panel on Alzheimer's Disease (hereinafter referred to as the “Panel”). The Panel shall be composed of—

(1) 15 voting members appointed by the Director of the Office of Technology Assessment, of which—

(A) 3 shall be individuals who are biomedical research scientists with demonstrated achievements in biomedical research relating to Alzheimer's disease, in-

cluding at least one individual who is a researcher at a center supported under section 285e-2 of this title;

(B) 3 shall be individuals with demonstrated achievements in research relevant to services for the care of individuals with Alzheimer's disease and related dementias;

(C) 3 shall be individuals who are providers of services, or administrators of organizations which provide services, for individuals with Alzheimer's disease and related dementias and their families;

(D) 3 shall be individuals who are experts in the financing of health care services and long-term care services, including one individual who is a representative of private health care services insurers; and

(E) 3 shall be representatives of national voluntary organizations which are concerned with the problems of individuals with Alzheimer's disease and related dementias and their families; and

(2) the Chairman of the Council, the Director of the National Institute on Aging, the Director of the National Institute of Mental Health, the Assistant Administrator of the Agency for Healthcare Research and Quality, and the Assistant Secretary for Aging, who shall be non-voting ex officio members.

(b) Appointment of members

The Director of the Office of Technology Assessment shall appoint members to the Panel under subsection (a)(1) of this section within 90 days after November 14, 1986.

(c) Chairman

The Secretary shall appoint a Chairman of the Panel from among the members appointed under subsection (a)(1) of this section.

(d) Term of office; vacancy

(1)(A) Except as provided in subparagraph (B), members of the Panel appointed under subsection (a)(1) of this section shall each serve for a term of 3 years.

(B) Of the members appointed under subsection (a)(1) of this section that are serving on the Panel on the day before October 24, 1992—

(i) five shall serve for a term that expires on October 24, 1992;

(ii) five shall serve for a term that expires 1 year after October 24, 1992; and

(iii) five shall serve for a term that expires 2 years after October 24, 1992.

(2) A vacancy on the Panel shall be filled in the same manner as the original appointment was made, and not later than 90 days after the date on which the vacancy first arises. A vacancy on the Panel shall not affect the powers of the Panel.

(e) Quorum; establishment of subcommittees

A majority of the members of the Panel appointed under subsection (a)(1) of this section shall constitute a quorum, but a lesser number may hold hearings. The Panel may establish such subcommittees as the Panel considers appropriate.

(f) Meetings

The Panel shall meet at the call of the Chairman, but not less than once per year.

(g) Executive Secretary; administrative staff and support

The Executive Secretary of the Council shall serve as Executive Secretary of the Panel. The Secretary shall provide the Panel with such additional administrative staff and support as may be necessary to enable the Panel to carry out its functions.

(h) Compensation; travel expenses

Each member of the Panel appointed under subsection (a)(1) of this section shall receive compensation at a rate at the daily equivalent of the maximum rate specified for GS-15 of the General Schedule under section 5332 of title 5 for each day, including travel time, that such member is engaged in duties as a member of the Panel. While away from their homes or regular places of business in the performance of duties as a member of the Panel, members of the Panel appointed under subsection (a)(1) of this section shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under section 5702 of title 5.

(i) Abolishment of Panel; termination

Notwithstanding section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) on September 30, 1996, the Panel shall be abolished and all programs established under this subchapter shall terminate.

(Pub. L. 99-660, title IX, §921, Nov. 14, 1986, 100 Stat. 3806; Pub. L. 102-507, §6(a), Oct. 24, 1992, 106 Stat. 3283; Pub. L. 103-171, §3(b)(3), Dec. 2, 1993, 107 Stat. 1991; Pub. L. 106-129, §2(b)(2), Dec. 6, 1999, 113 Stat. 1670.)

REFERENCES IN TEXT

Section 14 of the Federal Advisory Committee Act, referred to in subsec. (i), is section 14 of Pub. L. 92-463, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

October 24, 1992, referred to in subsec. (d)(1)(B), was in the original "the date of the enactment of this subsection" and "such date", which were translated as meaning the date of enactment of Pub. L. 102-507, which amended subsec. (d) generally, to reflect the probable intent of Congress.

AMENDMENTS

1999—Subsec. (a)(2). Pub. L. 106-129 substituted "Agency for Healthcare Research and Quality" for "Agency for Health Care Policy and Research".

1993—Subsec. (a)(2). Pub. L. 103-171, which directed the substitution of "Assistant Secretary for Aging" for "Commissioner on Aging" in section 921(a)(2) of the Alzheimer's Disease and Related Dementias Services Research Act of 1986, was executed to this section, which is section 921 of the Alzheimer's Disease and Related Dementias Research Act of 1992, to reflect the probable intent of Congress, and the change in the Short Title of that Act. See section 901 of Pub. L. 99-660, as amended, set out as a Short Title note under section 11201 of this title.

1992—Subsec. (a)(2). Pub. L. 102-507, §6(a)(1), substituted "the Administrator of the Agency for Health Care Policy and Research" for "the Director of the National Center for Health Services Research and Health Care Technology Assessment".

Subsec. (d). Pub. L. 102-507, §6(a)(2), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as

follows: "Members of the Panel shall serve for the life of the Panel. A vacancy on the Panel shall be filled in the same manner as the original appointment was made. A vacancy on the Panel shall not affect its powers."

Subsec. (f). Pub. L. 102-507, §6(a)(3), substituted "once" for "twice".

Subsec. (h). Pub. L. 102-507, §6(a)(4), substituted "at the daily equivalent of the maximum rate specified for GS-15 of the General Schedule under section 5332 of title 5" for "of \$100 per day".

Subsec. (i). Pub. L. 102-507, §6(a)(5), added subsec. (i).

§ 11222. Functions of Panel

(a) The Panel shall assist the Secretary and the Council in the identification of priorities and emerging issues with respect to Alzheimer's disease and related dementias and the care of individuals with such disease and dementias. The Panel shall advise the Secretary and the Council with respect to the identification of—

(1) emerging issues in, and promising areas of, biomedical research relating to Alzheimer's disease and related dementias;

(2) emerging issues in, and promising areas of, research relating to services for individuals with Alzheimer's disease and related dementias and their families;

(3) emerging issues and promising initiatives in home and community based services, and systems of such services, for individuals with Alzheimer's disease and related dementias and their families; and

(4) emerging issues in, and innovative financing mechanisms for, payment for health care services and social services for individuals with Alzheimer's disease and related dementias and their families, particularly financing mechanisms in the private sector.

(b) The Panel shall prepare and transmit to the Congress, the Secretary, and the Council, and make available to the public, an annual report. Such report shall contain such recommendations as the Panel considers appropriate for administrative and legislative actions to improve services for individuals with Alzheimer's disease and related dementias and their families and to provide for promising biomedical research relating to Alzheimer's disease and related dementias.

(Pub. L. 99-660, title IX, §922, Nov. 14, 1986, 100 Stat. 3807.)

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (b) of this section relating to the transmittal to Congress of an annual report, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the last item on page 99 of House Document No. 103-7.

§ 11223. Authorization of appropriations

There are authorized to be appropriated to carry out this subchapter such sums as may be necessary for each of the fiscal years 1992 through 1996.

(Pub. L. 99-660, title IX, §923, Nov. 14, 1986, 100 Stat. 3807; Pub. L. 102-507, §6(b), Oct. 24, 1992, 106 Stat. 3283.)

AMENDMENTS

1992—Pub. L. 102-507 amended section generally. Prior to amendment, section read as follows: "To carry out

this subchapter, there are authorized to be appropriated \$100,000 for each of the fiscal years 1988 through 1991."

SUBCHAPTER IV—RESEARCH RELATING TO SERVICES FOR INDIVIDUALS WITH ALZHEIMER'S DISEASE AND RELATED DEMENTIAS AND THEIR FAMILIES

AMENDMENTS

1988—Pub. L. 100-607, title I, §142(c)(1)(B), (D), (2)(C), Nov. 4, 1988, 102 Stat. 3057, redesignated former subchapter V as IV and struck out heading for subchapter IV "AWARDS FOR LEADERSHIP AND EXCELLENCE IN ALZHEIMER'S DISEASE AND RELATED DEMENTIAS", consisting of sections 11231 and 11232, and struck out heading for part 1 "RESPONSIBILITIES OF NATIONAL INSTITUTE ON AGING", consisting of sections 11241 to 11243.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 285e-7 of this title.

§ 11231. Transferred

Section, Pub. L. 99-660, title IX, §931, Nov. 14, 1986, 100 Stat. 3807, which provided for awards for biomedical research on Alzheimer's disease and related dementias, was redesignated section 445B of the Public Health Service Act by Pub. L. 100-607, title I, §142(a), Nov. 4, 1988, 102 Stat. 3057, and is classified to section 285e-4 of this title.

§ 11232. Repealed. Pub. L. 100-607, title I, § 142(c)(1)(A), Nov. 4, 1988, 102 Stat. 3057

Section, Pub. L. 99-660, title IX, §932, Nov. 14, 1986, 100 Stat. 3808, authorized appropriations for fiscal years 1988 through 1991 to carry out program of awards for research on Alzheimer's disease and related dementias.

§§ 11241, 11242. Transferred

Section 11241, Pub. L. 99-660, title IX, §941, Nov. 14, 1986, 100 Stat. 3808, which provided for Director of National Institute on Aging to conduct, or make grants for conduct of, research on services for individuals with Alzheimer's disease and related dementias and their families, was redesignated section 445C of the Public Health Service Act by Pub. L. 100-607, title I, §142(a), Nov. 4, 1988, 102 Stat. 3057, and is classified to section 285e-5 of this title.

Section 11242, Pub. L. 99-660, title IX, §942, Nov. 14, 1986, 100 Stat. 3809, which provided for Director to disseminate results of such research to professional entities and the public, was redesignated section 445D of the Public Health Service Act by Pub. L. 100-607, title I, §142(a), Nov. 4, 1988, 102 Stat. 3057, and is classified to section 285e-6 of this title.

§ 11243. Repealed. Pub. L. 100-607, title I, § 142(c)(2)(A), Nov. 4, 1988, 102 Stat. 3057

Section, Pub. L. 99-660, title IX, §943, Nov. 14, 1986, 100 Stat. 3809, authorized appropriations for fiscal years 1988 through 1991 to carry out programs of National Institute on Aging in research on services for individuals with Alzheimer's disease and related dementias and their families.

PART 1—RESPONSIBILITIES OF NATIONAL INSTITUTE OF MENTAL HEALTH

AMENDMENTS

1988—Pub. L. 100-607, title I, §142(c)(2)(C), (D), Nov. 4, 1988, 102 Stat. 3057, redesignated part 2 as 1 and struck out former part 1 heading "RESPONSIBILITIES OF NATIONAL INSTITUTE ON AGING".

§ 11251. Research program and plan

(a) Grants for research

The Director of the National Institute of Mental Health shall conduct, or make grants for the conduct of, research relevant to appropriate services and specialized care for individuals with Alzheimer's disease and related dementias and their families.

(b) Preparation of plan; contents; revision

The Director of the National Institute of Mental Health shall—

(1) ensure that the research conducted under subsection (a) of this section includes research concerning—

(A) mental health services and treatment modalities relevant to the mental, behavioral, and psychological problems associated with Alzheimer's disease and related dementias;

(B) the most effective methods for providing comprehensive multidimensional assessments to obtain information about the current functioning of, and needs for the care of, individuals with Alzheimer's disease and related dementias;

(C) the optimal range, types, and cost-effectiveness of services and specialized care for individuals with Alzheimer's disease and related dementias and for their families, in community and residential settings (including home care, day care, and respite care), and in institutional settings, particularly with respect to—

- (i) the design of the services and care;
- (ii) appropriate staffing for the provision of the services and care;
- (iii) the timing of the services and care during the progression of the disease or dementias; and
- (iv) the appropriate mix and coordination of the services and specialized care;

(D) the efficacy of various special care units in the United States for individuals with Alzheimer's disease, including an assessment of the costs incurred in operating such units, the evaluation of best practices for the development of appropriate standards to be used by such units, and the measurement of patient outcomes in such units;

(E) methods to combine formal support services provided by health care professionals for individuals with Alzheimer's disease and related dementias with informal support services provided for such individuals by their families, friends, and neighbors, including services such as day care services, respite care services, home care services, nursing home services, and other residential services and care, and an evaluation of the services actually used for such individuals and the sources of payment for such services;

(F) methods to sustain family members who provide care for individuals with Alzheimer's disease and related dementias through interventions to reduce psychological and social problems and physical problems induced by stress; and

(G) improved methods to deliver services for individuals with Alzheimer's disease and

related dementias and their families, including services such as outreach services, comprehensive assessment and care management services, outpatient treatment services, home care services, respite care services, adult day care services, partial hospitalization services, nursing home services, and other residential services and care; and

(2) ensure that the research is coordinated with, and uses, to the maximum extent feasible, resources of, other Federal programs relating to Alzheimer's disease and dementia, including centers supported under section 285e-2 of this title, centers supported by the National Institute of Mental Health on the psychopathology of the elderly, relevant activities of the Administration on Aging, other programs and centers involved in research on Alzheimer's disease and related dementias supported by the Department, and other programs relating to Alzheimer's disease and related dementias which are planned or conducted by Federal agencies other than the Department, State or local agencies, community organizations, or private foundations.

(Pub. L. 99-660, title IX, §931, formerly §944, Nov. 14, 1986, 100 Stat. 3809; renumbered §931, Pub. L. 100-607, title I, §142(c)(2)(B), Nov. 4, 1988, 102 Stat. 3057; Pub. L. 102-507, §7(a)(1), (2), Oct. 24, 1992, 106 Stat. 3284.)

PRIOR PROVISIONS

A prior section 931 of Pub. L. 99-660, which was classified to section 11231 of this title, was redesignated section 445B of the Public Health Service Act by section 142(a) of Pub. L. 100-607, and is classified to section 285e-4 of this title.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-507, §7(a)(1)(B), inserted “and specialized care” after “services”.

Subsec. (b). Pub. L. 102-507, §7(a)(2), designated par. (1) as entire subsec. and redesignated former par. (1)(A) as par. (1), former par. (1)(A)(i) to (vii) as par. (1)(A) to (G), respectively, former par. (1)(A)(iii)(I) to (IV) as par. (1)(C)(i) to (iv), respectively, and former par. (1)(B) as par. (2).

Subsec. (b)(1). Pub. L. 102-507, §7(a)(1)(C)(i), substituted “The Director of the National Institute of Mental Health shall” for “Within 6 months after November 14, 1986, the Director of the National Institute of Mental Health shall prepare and transmit to the Chairman of the Council a plan for the research to be conducted under subsection (a) of this section. The plan shall” in introductory provisions.

Subsec. (b)(1)(A). Pub. L. 102-507, §7(a)(1)(C)(ii)(I), substituted “ensure that the research conducted under subsection (a) of this section includes” for “provide for” in introductory provisions.

Subsec. (b)(1)(A)(iii). Pub. L. 102-507, §7(a)(1)(C)(ii)(II), added cl. (iii) and struck out former cl. (iii) which read as follows: “the optimal range and cost-effectiveness of community and institutional services for individuals with Alzheimer's disease and related dementias and their families, particularly with respect to the design of such services, appropriate staffing for the provision of such services, the timing of such services during the progression of such disease or dementias, and the appropriate mix and coordination of such services;”.

Subsec. (b)(1)(A)(iv). Pub. L. 102-507, §7(a)(1)(C)(ii)(III), inserted “the evaluation of best practices for the development of” before “appropriate”.

Subsec. (b)(1)(A)(v), (vii). Pub. L. 102-507, §7(a)(1)(C)(ii)(IV), substituted “nursing home services, and other residential services and care” for “and nursing home services”.

Subsec. (b)(1)(B). Pub. L. 102-507, §7(a)(1)(C)(iii), substituted “the research” for “research carried out under the plan”.

Subsec. (b)(2). Pub. L. 102-507, §7(a)(1)(A), struck out par. (2) which read as follows: “Within one year after transmitting the plan required under paragraph (1), and annually thereafter, the Director of the National Institute of Mental Health shall prepare and transmit to the Chairman of the Council such revisions of such plan as the Director considers appropriate.”

Subsec. (c). Pub. L. 102-507, §7(a)(1)(A), struck out subsec. (c) which read as follows: “In preparing and revising the plan required by subsection (b) of this section, the Director of the National Institute of Mental Health shall consult with the Chairman of the Council and the heads of agencies within the Department.”

§ 11252. Dissemination

The Director of the National Institute of Mental Health shall disseminate the results of research conducted under this part to appropriate professional entities and to the public.

(Pub. L. 99-660, title IX, §932, formerly §945, Nov. 14, 1986, 100 Stat. 3810; renumbered §932, Pub. L. 100-607, title I, §142(c)(2)(B), Nov. 4, 1988, 102 Stat. 3057.)

PRIOR PROVISIONS

A prior section 932 of Pub. L. 99-660 was classified to section 11232 of this title prior to repeal by section 142(c)(1)(A) of Pub. L. 100-607.

§ 11253. Authorization of appropriations

There are authorized to be appropriated to carry out this part such sums as may be necessary for each of the fiscal years 1992 through 1996.

(Pub. L. 99-660, title IX, §933, formerly §946, Nov. 14, 1986, 100 Stat. 3810; renumbered §933, Pub. L. 100-607, title I, §142(c)(2)(B), Nov. 4, 1988, 102 Stat. 3057; Pub. L. 102-507, §7(a)(3), Oct. 24, 1992, 106 Stat. 3284.)

AMENDMENTS

1992—Pub. L. 102-507 amended section generally. Prior to amendment, section read as follows: “To carry out this part, there are authorized to be appropriated \$2,000,000 for each of fiscal years 1988 through 1991.”

PART 2—RESPONSIBILITIES OF AGENCY FOR HEALTHCARE RESEARCH AND QUALITY

AMENDMENTS

1999—Pub. L. 106-129, §2(b)(2), Dec. 6, 1999, 113 Stat. 1670 substituted “Agency for Healthcare Research and Quality” for “Agency for Health Care Policy and Research” in part heading.

1992—Pub. L. 102-507, §7(b)(1)(A), Oct. 24, 1992, 106 Stat. 3285, substituted “AGENCY FOR HEALTH CARE POLICY AND RESEARCH” for “NATIONAL CENTER FOR HEALTH SERVICES RESEARCH AND HEALTH CARE TECHNOLOGY ASSESSMENT” in part heading.

1988—Pub. L. 100-607, title I, §142(c)(2)(D), Nov. 4, 1988, 102 Stat. 3057, redesignated part 3 as 2. Former part 2 redesignated 1.

§ 11261. Research program

(a) Grants for research

The Director of the Agency for Healthcare Research and Quality shall conduct, or make grants for the conduct of, research relevant to appropriate services for individuals with Alzheimer’s disease and related dementias and for their families.

(b) Research subjects

The Director of the Agency for Healthcare Research and Quality shall ensure that research conducted under subsection (a) of this section shall include research—

(1) concerning improving the organization, delivery, and financing of services for individuals with Alzheimer’s disease and related dementias and for their families, including research on—

(A) the design, staffing, and operation of special care units for the individuals in institutional settings, as well as individuals in institutional settings,¹ as well as individuals in home care, day care, and respite care; and

(B) the exploration and enhancement of services such as home care, day care, and respite care, that provide alternatives to institutional care;

(2) concerning the costs incurred by individuals with Alzheimer’s disease and related dementias and by their families in obtaining services, particularly services that are essential to the individuals and that are not generally required by other patients under long-term care programs;

(3) concerning the costs, cost-effectiveness, and effectiveness of various interventions to provide services for individuals with Alzheimer’s disease and related dementias and for their families;

(4) conducted in consultation with the Director of the National Institute on Aging and the Commissioner of the Administration on Aging, concerning the role of physicians in caring for persons with Alzheimer’s disease and related dementias and for their families, including the role of a physician in connecting such persons with appropriate health care and supportive services, including those supported through State and area agencies on aging designated under section 3025(a)(1) and (2)(A) of this title; and

(5) conducted in consultation with the Director of the National Institute on Aging and the Commissioner of the Administration on Aging, concerning legal and ethical issues, including issues associated with special care units, facing individuals with Alzheimer’s disease and related dementias and facing their families.

(Pub. L. 99-660, title IX, §934, as added Pub. L. 102-507, §7(b)(1)(B), Oct. 24, 1992, 106 Stat. 3285; amended Pub. L. 106-129, §2(b)(2), Dec. 6, 1999, 113 Stat. 1670.)

PRIOR PROVISIONS

A prior section 11261, Pub. L. 99-660, title IX, §934, formerly §947, Nov. 14, 1986, 100 Stat. 3811; renumbered §934, Pub. L. 100-607, title I, §142(c)(2)(B), Nov. 4, 1988, 102 Stat. 3057; Pub. L. 102-54, §13(q)(14)(B), June 13, 1991, 105 Stat. 282, related to research relevant to appropriate services for individuals with Alzheimer’s disease and related dementias, prior to repeal by Pub. L. 102-507, §7(b)(1)(B).

AMENDMENTS

1999—Subsecs. (a), (b). Pub. L. 106-129 substituted “Director of the Agency for Healthcare Research and Qual-

¹So in original. The words “as well as individuals in institutional settings,” probably should not appear.

ity” for “Administrator of the Agency for Health Care Policy and Research”.

§ 11262. Dissemination

The Director of the National Center for Health Services Research and Health Care Technology Assessment shall disseminate the results of research conducted under this part to appropriate professional entities and to the public.

(Pub. L. 99-660, title IX, § 935, formerly § 948, Nov. 14, 1986, 100 Stat. 3812; renumbered § 935, Pub. L. 100-607, title I, § 142(c)(2)(B), Nov. 4, 1988, 102 Stat. 3057.)

§ 11263. Authorization of appropriations

There are authorized to be appropriated to carry out this part such sums as may be necessary for each of the fiscal years 1992 through 1996.

(Pub. L. 99-660, title IX, § 936, formerly § 949, Nov. 14, 1986, 100 Stat. 3812; renumbered § 936, Pub. L. 100-607, title I, § 142(c)(2)(B), Nov. 4, 1988, 102 Stat. 3057; Pub. L. 102-507, § 7(b)(2), Oct. 24, 1992, 106 Stat. 3286.)

AMENDMENTS

1992—Pub. L. 102-507 amended section generally. Prior to amendment, section read as follows: “To carry out this part, there are authorized to be appropriated \$2,000,000 for each of fiscal years 1988 through 1991.”

PART 3—RESPONSIBILITIES OF HEALTH CARE FINANCING ADMINISTRATION

AMENDMENTS

1988—Pub. L. 100-607, title I, § 142(c)(2)(D), Nov. 4, 1988, 102 Stat. 3057, redesignated part 4 as 3. Former part 3 redesignated 2.

§ 11271. Research program and plan

(a) Grants for research

The Administrator of the National Health Care Financing Administration shall conduct, or make grants for the conduct of, research relevant to appropriate services for individuals with Alzheimer’s disease and related dementias and their families.

(b) Preparation of plan; contents; revision

(1) Within 6 months after November 14, 1986, the Administrator of the Health Care Financing Administration shall prepare and transmit to the Chairman of the Council a plan for research to be conducted under (a)¹ of this section. The plan shall—

(A) provide for a determination of the types of services required by individuals with Alzheimer’s disease and related dementias and their families to allow such individuals to remain living at home or in a community-based setting;

(B) provide for a determination of the costs of providing needed services to individuals with Alzheimer’s disease and related dementias and their families, including the expenditures for institutional, home, and community-based services and the source of payment for such expenditures;

(C) provide for an assessment of the adequacy of benefits provided through the Medicare and Medicaid programs and through private health insurance for needed services for individuals with Alzheimer’s disease and related dementias and their families; and

(D) provide for a determination of the costs to the Medicare and Medicaid programs and to private health insurers (if available) of providing covered benefits to individuals with Alzheimer’s disease and related dementias and their families.

(2) Within one year after transmitting the plan required under paragraph (1), and annually thereafter, the Administrator of the Health Care Financing Administration shall prepare and transmit to the Chairman of the Council such revisions of such plan as the Administrator considers appropriate.

(c) Consultation for preparation and revision of plan

In preparing and revising the plan required by subsection (b) of this section, the Administrator of the Health Care Financing Administration shall consult with the Chairman of the Council and the heads of agencies within the Department.

(Pub. L. 99-660, title IX, § 937, formerly § 949A, Nov. 14, 1986, 100 Stat. 3812; renumbered § 937, Pub. L. 100-607, title I, § 142(c)(2)(B), Nov. 4, 1988, 102 Stat. 3057.)

§ 11272. Dissemination

The Administrator of the Health Care Financing Administration shall disseminate the results of research conducted under this part to appropriate professional entities and to the public.

(Pub. L. 99-660, title IX, § 938, formerly § 949B, Nov. 14, 1986, 100 Stat. 3812; renumbered § 938, Pub. L. 100-607, title I, § 142(c)(2)(B), Nov. 4, 1988, 102 Stat. 3057.)

§ 11273. Authorization of appropriations

To carry out this part, there are authorized to be appropriated \$2,000,000 for each of fiscal years 1988 through 1991.

(Pub. L. 99-660, title IX, § 939, formerly § 949C, Nov. 14, 1986, 100 Stat. 3813; renumbered § 939, Pub. L. 100-607, title I, § 142(c)(2)(B), Nov. 4, 1988, 102 Stat. 3057.)

§§ 11281, 11282. Transferred

Section 11281, Pub. L. 99-660, title IX, § 951, Nov. 14, 1986, 100 Stat. 3813, which provided for establishment of Clearinghouse on Alzheimer’s Disease, was renumbered section 445E of the Public Health Service Act by Pub. L. 100-607, title I, § 142(a), Nov. 4, 1988, 102 Stat. 3057, and is classified to section 285e-7 of this title.

Section 11282, Pub. L. 99-660, title IX, § 952, Nov. 14, 1986, 100 Stat. 3813, which provided for dissemination project to be conducted by national organization representing individuals with Alzheimer’s disease and related dementias, was renumbered section 445F of the Public Health Service Act by Pub. L. 100-607, title I, § 142(a), Nov. 4, 1988, 102 Stat. 3057, and is classified to section 285e-8 of this title.

§ 11283. Repealed. Pub. L. 100-607, title I, § 142(c)(1)(A), Nov. 4, 1988, 102 Stat. 3057

Section, Pub. L. 99-660, title IX, § 953, Nov. 14, 1986, 100 Stat. 3814, authorized appropriations for fiscal years

¹ So in original. Probably should be preceded by “subsection”.

1988 through 1991 to carry out program of dissemination of information on Alzheimer's disease.

SUBCHAPTER V—EDUCATIONAL ACTIVITIES

AMENDMENTS

1988—Pub. L. 100-607, title I, §142(c)(1)(C), (D), Nov. 4, 1988, 102 Stat. 3057, redesignated subchapter VII as V, struck out heading for subchapter VI “DISSEMINATION”, consisting of sections 11281 to 11283 of this title, and redesignated former subchapter V as IV.

§ 11291. Providing information for personnel of Social Security Administration

(a) The Secretary shall develop a mechanism to ensure the prompt provision of the most current information concerning Alzheimer's disease and related dementias to the Commissioner of Social Security, particularly information which will increase the understanding of personnel of the Social Security Administration concerning such disease and dementias.

(b) The Commissioner of Social Security shall ensure that information received under subsection (a) of this section is provided to personnel of the Social Security Administration, particularly personnel involved in the process of determining, for purposes of titles II and XVI of the Social Security Act [42 U.S.C. 401 et seq., 1381 et seq.], whether an individual is under a disability.

(Pub. L. 99-660, title IX, §961, Nov. 14, 1986, 100 Stat. 3814.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles II and XVI of the Social Security Act are classified generally to subchapters II (§401 et seq.) and XVI (§1381 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11294 of this title.

§ 11292. Education of public, individuals with Alzheimer's disease and their families, and health and long-term care providers

(a) Training models grants

(1) Grants

The Director of the National Institute on Aging may award grants to eligible entities to assist the entities in developing and evaluating model training programs—

(A) for—

(i) health care professionals, including mental health professionals;

(ii) health care paraprofessionals;

(iii) personnel, including information and referral, case management, and in-home services personnel (including personnel receiving support under the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.)), providing supportive services to the elderly and the families of the elderly;

(iv) family caregivers providing care and treatment for individuals with Alzheimer's disease and related disorders; and

(v) personnel of local organizations (including community groups, business and labor groups, and religious, educational, and charitable organizations) that have traditionally not been involved in planning and developing long-term care services; and

(B) with attention to such variables as—

(i) curricula development for training and continuing education programs;

(ii) care setting; and

(iii) intervention technique.

(2) Eligible entity

To be eligible to receive grants under this subsection, an entity shall be—

(A) an educational institution providing training and education in medicine, psychology, nursing, social work, gerontology, or health care administration;

(B) an educational institution providing preparatory training and education of personnel for nursing homes, hospitals, and home or community settings; or

(C) an Alzheimer's Disease Research Center described in section 285e-2(a) of this title.

(b) Educational grants

The Director of the National Institute on Aging is authorized to make grants to public and nonprofit private entities to assist such entities in establishing programs, for educating health care providers and the families of individuals with Alzheimer's disease or related disorders, regarding—

(1) caring for individuals with such diseases or disorders; and

(2) the availability in the community of public and private sources of assistance, including financial assistance, for caring for such individuals.

(c) Award of grants

In awarding grants under this section, the Director of the National Institute on Aging shall—

(1) award the grants on the basis of merit;

(2) award the grants in a manner that will ensure access to the programs described in subsections (a) and (b) of this section by rural, minority, and underserved populations throughout the country; and

(3) ensure that the grants are distributed among the principal geographic regions of the United States.

(d) Application

To be eligible to receive a grant under this section, an entity shall submit an application to the Director of the National Institute on Aging at such time, in such manner, and containing or accompanied by such information, as the Director may reasonably require, including, at a minimum, an assurance that the entity will coordinate programs provided under this section with the State agency designated under section 305(a)(1) of the Older Americans Act of 1965 [42 U.S.C. 3025(a)(1)], in the State in which the entity will provide such programs.

(e) Coordination

The Director of the National Institute on Aging shall coordinate the award of grants

under this section with the heads of other appropriate agencies, including the Commissioner of the Administration on Aging.

(Pub. L. 99-660, title IX, §962, Nov. 14, 1986, 100 Stat. 3814; Pub. L. 102-507, §8(a), Oct. 24, 1992, 106 Stat. 3286.)

REFERENCES IN TEXT

The Older Americans Act of 1965, referred to in subsec. (a)(1)(A)(iii), is Pub. L. 89-73, July 14, 1965, 79 Stat. 218, as amended, which is classified generally to chapter 35 (§3001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

AMENDMENTS

1992—Pub. L. 102-507 amended section generally. Prior to amendment, section read as follows: “The Director of the National Institute on Aging, through centers supported under section 285e-2 of this title, professional associations, and continuing education programs, shall conduct education and information dissemination activities concerning the special problems of individuals with Alzheimer’s disease and their families. Such activities shall be designed to enhance the understanding of such problems by individuals who provide care for individuals with Alzheimer’s disease and related dementias, including physicians, nurses, psychologists, social workers, occupational therapists, nursing home administrators, nurses, and health care aides.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11294 of this title.

§ 11293. Education programs for safety and transportation personnel

The Director of the National Institute on Aging, through centers supported under section 285e-2 of this title, training academies, and continuing education programs, shall conduct education and information dissemination activities concerning Alzheimer’s disease and related dementias for personnel involved in ensuring the public safety and providing public transportation. Such activities shall be designed to enhance the ability of such personnel to respond appropriately to individuals with Alzheimer’s disease and related dementias whom such personnel may encounter in the course of their employment.

(Pub. L. 99-660, title IX, §963, Nov. 14, 1986, 100 Stat. 3815.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11294 of this title.

§ 11294. Authorization of appropriations

(a) To carry out sections 11291 and 11293 of this title, there are authorized to be appropriated \$1,000,000 for each of the fiscal years 1988 through 1991.

(b) There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1992 through 1996, to carry out section 11292 of this title.

(Pub. L. 99-660, title IX, §964, Nov. 14, 1986, 100 Stat. 3815; Pub. L. 102-507, §8(b), Oct. 24, 1992, 106 Stat. 3287.)

AMENDMENTS

1992—Pub. L. 102-507 designated existing provisions as subsec. (a), substituted “sections 11291 and 11293 of this title” for “this subchapter”, and added subsec. (b).

CHAPTER 119—HOMELESS ASSISTANCE

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PART C—JOB TRAINING FOR HOMELESS

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PART D—EMERGENCY COMMUNITY SERVICES HOMELESS GRANT PROGRAM

11461 to 11466. Repealed.

PART E—MISCELLANEOUS PROVISIONS

11471, 11472. Repealed.

PART F—FAMILY SUPPORT CENTERS

11481 to 11489. Repealed.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1437bbb-5, 12705, 12706 of this title; title 14 section 685; title 16 section 470w-7; title 20 sections 6311, 6312; title 26 section 42; title 35 section 2.

SUBCHAPTER I—GENERAL PROVISIONS

§ 11301. Findings and purpose

(a) Findings

The Congress finds that—

(1) the Nation faces an immediate and unprecedented crisis due to the lack of shelter for a growing number of individuals and families, including elderly persons, handicapped persons, families with children, Native Americans, and veterans;

(2) the problem of homelessness has become more severe and, in the absence of more effective efforts, is expected to become dramatically worse, endangering the lives and safety of the homeless;

(3) the causes of homelessness are many and complex, and homeless individuals have diverse needs;

(4) there is no single, simple solution to the problem of homelessness because of the different subpopulations of the homeless, the different causes of and reasons for homelessness, and the different needs of homeless individuals;

(5) due to the record increase in homelessness, States, units of local government, and private voluntary organizations have been unable to meet the basic human needs of all the homeless and, in the absence of greater Federal assistance, will be unable to protect the lives and safety of all the homeless in need of assistance; and

(6) the Federal Government has a clear responsibility and an existing capacity to fulfill a more effective and responsible role to meet the basic human needs and to engender respect for the human dignity of the homeless.

(b) Purpose

It is the purpose of this chapter—

(1) to establish an Interagency Council on the Homeless;

(2) to use public resources and programs in a more coordinated manner to meet the critically urgent needs of the homeless of the Nation; and

(3) to provide funds for programs to assist the homeless, with special emphasis on elderly persons, handicapped persons, families with children, Native Americans, and veterans.

(Pub. L. 100-77, title I, §102, July 22, 1987, 101 Stat. 484.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original “this Act”, meaning Pub. L. 100-77, July 22, 1987, 101 Stat. 482, as amended, known as the McKinney-Vento Homeless Assistance Act. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107-110, title X, §1031, Jan. 8, 2002, 115 Stat. 1989, provided that: “This part [part C (§§1031-1034) of title X of Pub. L. 107-110, enacting sections 11431 to 11435 of this title and provisions set out as a note below and amending provisions set out as a note below] may be cited as the ‘McKinney-Vento Homeless Education Assistance Improvements Act of 2001.’”

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103-421, §1, Oct. 25, 1994, 108 Stat. 4346, provided that: “This Act [amending section 11411 of this title and enacting and amending provisions set out as notes under section 2687 of Title 10, Armed Forces] may be cited as the ‘Base Closure Community Redevelopment and Homeless Assistance Act of 1994.’”

SHORT TITLE OF 1993 AMENDMENT

Pub. L. 103-120, §1, Oct. 27, 1993, 107 Stat. 1144, provided that: “This Act [amending sections 14900 and 12724 of this title and sections 1701z-11, 1721, and 1735f-9 of Title 12, Banks and Banking, enacting provisions set out as notes under this section and sections 1437f, 14900, and 9816 of this title, and amending a provision set out as a note under section 1437f of this title] may be cited as the ‘HUD Demonstration Act of 1993.’”

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102-550, title XIV, §1401, Oct. 28, 1992, 106 Stat. 4012, provided that: “This title [enacting sections 11381 to 11389, 11391 to 11399, 11403e-4, 11404, 11405 to 11405b, 11406 to 11406b, 11407 to 11407b, 11408, and 11408a of this title, transferring sections 11404c to 11404e of this title to sections 11403e-1 to 11403e-3 of this title, respectively, amending sections 11318, 11319, 11346, 11352, 11374, 11375, 11377, 11401, 11403a, 11403c to 11403e, 11403g, 11403h, 11404a, and 11404b of this title, repealing sections 11381 to 11388, 11391 to 11394, 11404, 11405 to 11405c, and 11406 to 11406c of this title, enacting provisions set out as notes preceding section 11361 and under sections 11361, 11381, and 11411 of this title, amending provisions set out as a note under this section, and repealing provisions set out as notes under sections 11361, 11391, and 11399 of this title] may be cited as the ‘Stewart B. McKinney Homeless Housing Assistance Amendments Act of 1992.’”

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101-645, §1(a), Nov. 29, 1990, 104 Stat. 4673, provided that: “This Act [enacting sections 5118 to 5118e, 11434a, 11465, 11466, and 11481 to 11489 of this title and section 1703a of Title 29, Labor, amending sections 256, 290bb-2, 290cc-21 to 290cc-35, 11302, 11312, 11318, 11319, 11332, 11352, 11411, 11421, 11431 to 11435, 11443, 11449, 11450, 11463, and 11464 of this title, enacting provisions set out as notes under this section, sections 5118, 11332, 11411, and 11463 of this title, and section 141 of Title 13, Census, and amending provisions set out as a note under section 290aa-3 of this title] may be cited as the ‘Stew-

art B. McKinney Homeless Assistance Amendments Act of 1990.”

Pub. L. 101-645, title VI, §601, Nov. 29, 1990, 104 Stat. 4734, provided that: “This title [enacting sections 5118 to 5118e, 11434a, 11465, 11466, and 11481 to 11489 of this title and section 1703a of Title 29, Labor, amending sections 11302, 11421, 11431 to 11435, 11443, 11449, 11450, 11463, and 11464 of this title, and enacting provisions set out as notes under sections 5118 and 11463 of this title] may be cited as the ‘Stewart B. McKinney Homeless Assistance Amendments Act of 1990.’”

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100-628, §1(a), Nov. 7, 1988, 102 Stat. 3224, provided that: “This Act [enacting sections 3544, 11320, and 11402 of this title and sections 1583, 1791 to 1791j of Title 29, Labor, amending sections 254e, 256, 290bb-2, 290cc-21, 290cc-28, 290cc-29, 290cc-35, 290cc-36, 290dd, 290ee, 290ee-1, 503, 504, 602, 1437d, 1437f, 1437n, 1437o, 1437r, 1472, 1480, 1484 to 1486, 1490o, 3002, 3015, 3021, 3025 to 3027, 3031, 3035a, 3056e, 4013, 4121, 4822, 5302, 5304, 5306, 5318, 8103, 11304, 11313, 11318, 11319, 11352, 11361, 11373 to 11375, 11377, 11382 to 11385, 11387, 11388, 11392, 11394, 11401, 11411, 11421, 11432, 11433, 11435, 11447, 11449, 11462 to 11464, and 11501 of this title, sections 1454, 1701x, 1701z-11, 1709, 1710, 1715z-1a, 1715z-12, 1715z-20, 1717, 2805, and 2806 of Title 12, Banks and Banking, sections 1701 and 1719 of Title 15, Commerce and Trade, and sections 49, 49a, 49b, 49d to 49j, 49l, 49l-1, 1502, 1504, 1505, 1514, 1516, 1531, and 1602 of Title 29, enacting provisions set out as notes under this section and sections 256, 1437d, 1437f, 1472, 11303, 11374, 11381, 11383, 11384, 11388, 11392, 11401, and 11501 of this title, sections 1710 and 1715z-1a of Title 12, section 2661 of Title 15, and section 1501 of Title 29, and amending provisions set out as notes under sections 290aa-3, 1472, 1490m, and 4822 of this title, sections 1701z-6, 1709, 1715l, and 2802 of Title 12, and section 49 of Title 29] may be cited as the ‘Stewart B. McKinney Homeless Assistance Amendments Act of 1988.’”

SHORT TITLE

Section 101(a) of Pub. L. 100-77, as amended by Pub. L. 106-400, §1, Oct. 30, 2000, 114 Stat. 1675; Pub. L. 107-110, title X, §1034(a), Jan. 8, 2002, 115 Stat. 2006; Pub. L. 107-116, title VI, §634(a), Jan. 10, 2002, 115 Stat. 2228, provided that: “This Act [enacting this chapter and sections 256 and 290cc-21 to 290cc-36 of this title, amending sections 254e, 290bb-1a, 290bb-2, and 5302 of this title, sections 2012, 2014, 2020, and 2025 of Title 7, Agriculture, sections 1205 and 1207a of Title 20, Education, sections 1503 and 1551 of Title 29, Labor, and section 484 of Title 40, Public Buildings, Property, and Works, repealing section 256a of this title, enacting provisions set out as notes under this section and section 290aa-3 of this title and sections 2012, 2014, and 2020 of Title 7, and amending provisions set out as notes under section 612c of Title 7 and section 1721 of Title 29] may be cited as the ‘McKinney-Vento Homeless Assistance Act.’”

[Pub. L. 107-110, title X, §1034(b), Jan. 8, 2002, 115 Stat. 2007, provided that: “The amendment made by subsection (a) [amending section 1 of Pub. L. 106-400, which amended section 101(a) of Pub. L. 100-77 set out above] shall be deemed to be effective on the date of enactment of Public Law 106-400.”]

[Pub. L. 107-116, title VI, §634(b), Jan. 10, 2002, 115 Stat. 2228, provided that: “The amendment made by subsection (a) of this section [which directed the amendment of section 101(a) of Pub. L. 100-77, set out above] is deemed to have taken effect immediately after the enactment of Public Law 106-400 [which was approved Oct. 30, 2000] (114 Stat. 1675).”]

REGULATIONS

Pub. L. 100-628, title IV, §485, Nov. 7, 1988, 102 Stat. 3239, provided that: “Not later than 60 days after the date of the enactment of this Act [Nov. 7, 1988], the Secretary of Housing and Urban Development or other Federal entity involved shall by notice establish such

requirements as may be necessary to carry out the amendments made by titles I through IV [see Tables for classification] and by section 501(2)(B) [amending section 11411 of this title]. The Secretary or other Federal entity involved shall issue regulations based on the notice not later than 12 months after the date of the enactment of this Act.”

REFERENCES TO STEWART B. MCKINNEY HOMELESS ASSISTANCE ACT

Pub. L. 106-400, §2, Oct. 30, 2000, 114 Stat. 1675, provided that: “Any reference in any law, regulation, document, paper, or other record of the United States to the Stewart B. McKinney Homeless Assistance Act shall be deemed to be a reference to the ‘McKinney-Vento Homeless Assistance Act.’”

INNOVATIVE HOMELESS INITIATIVES DEMONSTRATION PROGRAM

Pub. L. 103-120, §2, Oct. 27, 1993, 107 Stat. 1144, as amended by Pub. L. 104-330, title V, §506(b), Oct. 26, 1996, 110 Stat. 4045, directed Secretary of Housing and Urban Development, through cooperative efforts in partnership with other levels of government and the private sector, including nonprofit organizations, foundations, and communities, to demonstrate methods of undertaking comprehensive strategies for assisting homeless individuals and families (including homeless individuals who have AIDS or who are infected with HIV), through a variety of activities, including the coordination of efforts and the filling of gaps in available services and resources, directed Secretary to provide comprehensive homeless demonstration grants and innovative project funding, and provided for submission of reports and authorization of appropriations, prior to repeal by Pub. L. 103-120, §2(g), Oct. 27, 1993, 107 Stat. 1148.

STRATEGY TO ELIMINATE UNFIT TRANSIENT FACILITIES

Pub. L. 101-625, title VIII, §825, Nov. 28, 1990, 104 Stat. 4356, as amended by Pub. L. 102-550, title XIV, §1412, Oct. 28, 1992, 106 Stat. 4039, directed Secretary of Housing and Urban Development, not more than 9 months after Oct. 28, 1992, to identify the States and units of general local government using unfit transient facilities as housing for homeless families with children and develop and publish in the Federal Register a strategy to eliminate such use by July 1, 1994, and in developing such strategy, to consult with the Secretary of the Department of Health and Human Services, the Administrator of the Federal Emergency Management Agency, other appropriate Federal officials, appropriate States and units of general local government, major organizations representing homeless persons and other experts.

REPORT ON EFFECT OF RENT CONTROL ON HOMELESSNESS

Pub. L. 100-628, title IV, §483, Nov. 7, 1988, 102 Stat. 3238, directed Secretary of Housing and Urban Development, within 12 months after Nov. 7, 1988, to submit to Congress a report evaluating the impact of local housing rent controls and regulations on rate of homelessness, and on the development, supply, availability, and affordability of housing, in major cities in the United States, with report to include additional specified information.

REQUIREMENT OF CERTAIN STUDY WITH RESPECT TO HOMELESSNESS

Section 603 of Pub. L. 100-77 directed Secretary of Health and Human Services, not later than 18 months after July 22, 1987, to complete a study with respect to determining extent to which mental health deinstitutionalization policies of States are contributing to problem of homelessness, and submit to Congress the findings made as a result of such study, including any recommendations with respect to administrative and legislative initiatives that could reduce the number of chronically mentally ill individuals who are homeless.

§ 11302. General definition of homeless individual

(a) In general

For purposes of this chapter, the term “homeless” or “homeless individual or homeless person”¹ includes—

(1) an individual who lacks a fixed, regular, and adequate nighttime residence; and

(2) an individual who has a primary nighttime residence that is—

(A) a supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) an institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(b) Income eligibility

(1) In general

A homeless individual shall be eligible for assistance under any program provided by this chapter, only if the individual complies with the income eligibility requirements otherwise applicable to such program.

(2) Exception

Notwithstanding paragraph (1), a homeless individual shall be eligible for assistance under title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.].

(c) Exclusion

For purposes of this chapter, the term “homeless” or “homeless individual” does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(Pub. L. 100-77, title I, §103, July 22, 1987, 101 Stat. 485; Pub. L. 101-625, title VIII, §822, Nov. 28, 1990, 104 Stat. 4355; Pub. L. 101-645, title VI, §602, Nov. 29, 1990, 104 Stat. 4734; Pub. L. 105-277, div. A, §101(f) [title VIII, §405(d)(41), (f)(32)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-427, 2681-434.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 100-77, July 22, 1987, 101 Stat. 482, as amended, known as the McKinney-Vento Homeless Assistance Act. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of this title and Tables.

The Workforce Investment Act of 1998, referred to in subsec. (b)(2), is Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 936, as amended. Title I of the Act is classified principally to chapter 30 (§2801 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

AMENDMENTS

1998—Subsec. (b)(2). Pub. L. 105-277, §101(f) [title VIII, §405(f)(32)], struck out “the Job Training Partnership Act or” after “assistance under”.

Pub. L. 105-277, §101(f) [title VIII, §405(d)(41)], substituted “the Job Training Partnership Act or title I of

the Workforce Investment Act of 1998” for “the Job Training Partnership Act”.

1990—Subsec. (a). Pub. L. 101-625 inserted “or homeless person” after “homeless individual” in introductory provisions.

Subsec. (b). Pub. L. 101-645 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “A homeless individual shall be eligible for assistance under any program provided by this chapter, or by the amendments made by this Act, only if the individual complies with the income eligibility requirements otherwise applicable to such program.”

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 101(f) [title VIII, §405(d)(41)] of Pub. L. 105-277 effective Oct. 21, 1998, and amendment by section 101(f) [title VIII, §405(f)(32)] of Pub. L. 105-277 effective July 1, 2000, see section 101(f) [title VIII, §405(g)(1), (2)(B)] of Pub. L. 105-277, set out as a note under section 3502 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1486, 11362, 11403c, 11434a, 12899f of this title; title 12 sections 1441a, 1821; title 26 section 42; title 29 section 2801; title 38 section 2002.

§ 11303. Funding availability and limitations

(a) Calculation

The amounts authorized in this chapter shall be in addition to any amount appropriated for the programs involved before July 22, 1987.

(b) Availability until expended

Any amount appropriated under an authorization in this chapter shall remain available until expended.

(c) Limitation

Appropriations pursuant to the authorizations in this chapter shall be made in accordance with the provisions of the Congressional Budget and Impoundment Control Act of 1974, which prohibits the consideration of any bill that would cause the deficit to exceed the levels established by the Balanced Budget and Emergency Deficit Control Act of 1985, such that it shall not increase the deficit of the Federal Government for fiscal year 1987.

(Pub. L. 100-77, title I, §104, July 22, 1987, 101 Stat. 485.)

REFERENCES IN TEXT

The Congressional Budget and Impoundment Control Act of 1974, referred to in subsec. (c), is Pub. L. 93-344, July 12, 1974, 88 Stat. 297, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 621 of Title 2, The Congress, and Tables.

The Balanced Budget and Emergency Deficit Control Act of 1985, referred to in subsec. (c), is title II of Pub. L. 99-177, Dec. 12, 1985, 99 Stat. 1038, as amended, which enacted chapter 20 (§900 et seq.) and sections 654 to 656 of Title 2, amended section 911 of this title, sections 602, 622, 631 to 642, and 651 to 653 of Title 2, and sections 1104 to 1106, and 1109 of Title 31, Money and Finance, repealed section 661 of Title 2, enacted provisions set out as notes under section 911 of this title and section 900 of Title 2, and amended provisions set out as a note under section 621 of Title 2. For complete classification of this Act to the Code, see Short Title note set out under section 900 of Title 2 and Tables.

BUDGET COMPLIANCE

Pub. L. 100-628, title I, §101, Nov. 7, 1988, 102 Stat. 3227, provided that:

¹So in original. Probably should be “‘homeless individual’ or ‘homeless person’”.

“(a) IN GENERAL.—This Act and the amendments made by this Act [see Short Title of 1988 Amendment note set out under section 11301 of this title] may not be construed to provide for new budget authority, budget outlays, or new entitlement authority, for fiscal year 1989 or 1990 in excess of the appropriate aggregate levels established by the concurrent resolution on the budget for such fiscal year for the programs authorized by this Act and the amendments made by this Act.

“(b) DEFINITIONS.—For purposes of this section, the terms ‘budget authority’, ‘budget outlays’, ‘concurrent resolution on the budget’, and ‘entitlement authority’ have the meanings given such terms in section 3 of the Congressional Budget Act of 1974 (2 U.S.C. 622).”

§ 11304. Evaluation by Comptroller General

The Comptroller General of the United States may evaluate the disbursement and use of the amounts made available by appropriation Acts under the authorizations in subchapters III and IV of this chapter.

(Pub. L. 100-77, title I, §105, July 22, 1987, 101 Stat. 486; Pub. L. 100-628, title I, §102(a), (b)(1), Nov. 7, 1988, 102 Stat. 3227; Pub. L. 104-316, title I, §122(t), Oct. 19, 1996, 110 Stat. 3838.)

AMENDMENTS

1996—Pub. L. 104-316 substituted “may” for “shall annually” and struck out “, and submit to the Congress an annual summary of the status of each program authorized under this chapter” before period at end.

1988—Pub. L. 100-628 substituted “Annual program summary” for “Audits” in section catchline and, in text, substituted “shall annually evaluate” for “shall evaluate” and “submit to the Congress an annual summary of the status of each program authorized under this chapter” for “submit a report to the Congress setting forth the findings of such evaluation, upon the expiration of the 4-month and 12-month periods beginning on July 22, 1987”.

SUBCHAPTER II—INTERAGENCY COUNCIL ON THE HOMELESS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 38 section 2066.

§ 11311. Establishment

There is established in the executive branch an independent establishment to be known as the Interagency Council on the Homeless.

(Pub. L. 100-77, title II, §201, July 22, 1987, 101 Stat. 486.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 290aa-5, 11317 of this title.

§ 11312. Membership

(a) Members

The Council shall be composed of the following members:

- (1) The Secretary of Agriculture, or the designee of the Secretary.
- (2) The Secretary of Commerce, or the designee of the Secretary.
- (3) The Secretary of Defense, or the designee of the Secretary.
- (4) The Secretary of Education, or the designee of the Secretary.
- (5) The Secretary of Energy, or the designee of the Secretary.

(6) The Secretary of Health and Human Services, or the designee of the Secretary.

(7) The Secretary of Housing and Urban Development, or the designee of the Secretary.

(8) The Secretary of the Interior, or the designee of the Secretary.

(9) The Secretary of Labor, or the designee of the Secretary.

(10) The Secretary of Transportation, or the designee of the Secretary.

(11) The Secretary of Veterans Affairs, or the designee of the Secretary.

(12) The Chief Executive Officer of the Corporation for National and Community Service, or the designee of the Chief Executive Officer.

(13) The Director of the Federal Emergency Management Agency, or the designee of the Director.

(14) The Administrator of General Services, or the designee of the Administrator.

(15) The Postmaster General of the United States, or the designee of the Postmaster General.

(16) The heads of such other Federal agencies as the Council considers appropriate, or their designees.

(b) Chairperson

The Council shall elect a Chairperson and a Vice Chairperson from among its members. The positions of Chairperson and Vice Chairperson shall rotate among its members on an annual basis.

(c) Meetings

The Council shall meet at the call of its Chairperson or a majority of its members, but not less often than annually.

(d) Prohibition of additional pay

Members of the Council shall receive no additional pay, allowances, or benefits by reason of their service on the Council.

(Pub. L. 100-77, title II, §202, July 22, 1987, 101 Stat. 486; Pub. L. 101-645, title I, §101, Nov. 29, 1990, 104 Stat. 4674; Pub. L. 103-82, title IV, §405(m), Sept. 21, 1993, 107 Stat. 922; Pub. L. 106-377, §1(a)(1) [title II, §231(1)], Oct. 27, 2000, 114 Stat. 1441, 1441A-31; Pub. L. 107-95, §11, Dec. 21, 2001, 115 Stat. 920.)

AMENDMENTS

2001—Subsec. (c). Pub. L. 107-95 amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: “The Council shall meet at the call of its Chairperson or a majority of its members. The first meeting of the Council shall be held not later than 30 days after July 22, 1987.”

2000—Subsec. (b). Pub. L. 106-377 inserted at end “The positions of Chairperson and Vice Chairperson shall rotate among its members on an annual basis.”

1993—Subsec. (a)(12). Pub. L. 103-82 added par. (12) and struck out former par. (12) which read as follows: “The Director of the ACTION Agency, or the designee of the Director.”

1990—Subsec. (a)(11) to (15). Pub. L. 101-645 added par. (11), redesignated former pars. (11) to (14) as (12) to (15), respectively, and struck out former par. (15) which read as follows: “The Administrator of Veterans’ Affairs, or the designee of the Administrator.”

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Apr. 4, 1994, see section 406(b) of Pub. L. 103-82, set out as a note

under section 8332 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11314 of this title.

§ 11313. Functions

(a) Duties

The Council shall—

(1) review all Federal activities and programs to assist homeless individuals;

(2) take such actions as may be necessary to reduce duplication among programs and activities by Federal agencies to assist homeless individuals;

(3) monitor, evaluate, and recommend improvements in programs and activities to assist homeless individuals conducted by Federal agencies, State and local governments, and private voluntary organizations;

(4) provide professional and technical assistance (by at least 2, but in no case more than 5, regional coordinators employed by the Council, each having responsibility for interaction and coordination of the activities of the Council within the 10 standard Federal regions) to States, local governments, and other public and private nonprofit organizations, in order to enable such governments and organizations to—

(A) interpret regulations and assist in the application process for Federal assistance, including grants;

(B) provide assistance on the ways in which Federal programs, other than those authorized under this chapter, may best be coordinated to complement the objectives of this chapter;

(C) develop recommendations and program ideas based on regional specific issues in serving the homeless population; and

(D) establish a schedule for biennial regional workshops to be held by the Council in each of the 10 standard Federal regions to further carry out and provide the assistance described in subparagraphs (A), (B), and (C) and other appropriate assistance as necessary, of which—

(i) not less than 5 such workshops shall be held by September 30, 1989; and

(ii) at least 1 such workshop shall be held in each of the 10 Federal regions every 2 years, beginning on September 30, 1988;

(5) collect and disseminate information relating to homeless individuals;

(6) prepare the annual reports required in subsection (c)(2) of this section; and

(7) prepare and distribute to States (including State contact persons), local governments, and other public and private nonprofit organizations, a bimonthly bulletin that describes the Federal resources available to them to assist the homeless, including current information regarding application deadlines and appropriate persons to contact in each Federal agency providing the resources.

(b) Authority

In carrying out subsection (a) of this section, the Council may—

(1) arrange Federal, regional, State, and local conferences for the purpose of developing and coordinating effective programs and activities to assist homeless individuals; and

(2) publish a newsletter concerning Federal, State, and local programs that are effectively meeting the needs of homeless individuals.

(c) Reports

(1) Within 90 days after July 22, 1987, and annually thereafter, the head of each Federal agency that is a member of the Council shall prepare and transmit to the Congress and the Council a report that describes—

(A) each program to assist homeless individuals administered by such agency and the number of homeless individuals served by such program;

(B) impediments, including any statutory and regulatory restrictions, to the use by homeless individuals of each such program and to obtaining services or benefits under each such program; and

(C) efforts made by such agency to increase the opportunities for homeless individuals to obtain shelter, food, and supportive services.

(2) The Council shall prepare and transmit to the President and the Congress an annual report that—

(A) assesses the nature and extent of the problems relating to homelessness and the needs of homeless individuals;

(B) provides a comprehensive and detailed description of the activities and accomplishments of the Federal Government in resolving the problems and meeting the needs assessed pursuant to subparagraph (A);

(C) describes the accomplishments and activities of the Council, in working with Federal, State, and local agencies and public and private organizations in order to provide assistance to homeless individuals;

(D) assesses the level of Federal assistance necessary to adequately resolve the problems and meet the needs assessed pursuant to subparagraph (A); and

(E) specifies any recommendations of the Council for appropriate and necessary legislative and administrative actions to resolve such problems and meet such needs.

(d) Notification of other Federal agencies

If, in monitoring and evaluating programs and activities to assist homeless individuals conducted by other Federal agencies, the Council determines that any significant problem, abuse, or deficiency exists in the administration of the program or activity of any Federal agency, the Council shall submit a notice of the determination of the Council to the Inspector General of the Federal agency (or the head of the Federal agency, in the case of a Federal agency that has no Inspector General).

(e) Program timetables

Not later than 90 days after November 7, 1988, the head of each Federal agency that is a member of the Council and responsible for administering a program under this chapter shall provide to the Council a timetable regarding program funding availability and application deadlines. The Council shall furnish such informa-

tion to each State (including the State contact person).

(Pub. L. 100-77, title II, § 203, July 22, 1987, 101 Stat. 487; Pub. L. 100-628, title II, §§ 201-203, Nov. 7, 1988, 102 Stat. 3227, 3228.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(4)(B) and (e), was in the original "this Act", meaning Pub. L. 100-77, July 22, 1987, 101 Stat. 482, known as the Stewart B. McKinney Homeless Assistance Act. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of this title and Tables.

AMENDMENTS

1988—Subsec. (a)(4). Pub. L. 100-628, § 202(1), substituted "(by at least 2, but in no case more than 5, regional coordinators employed by the Council, each having responsibility for interaction and coordination of the activities of the Council within the 10 standard Federal regions)" for " , through personnel employed by the Council in each of the 10 standard Federal regions," in introductory provisions.

Subsec. (a)(4)(A) to (D). Pub. L. 100-628, § 202(2), added subpars. (A) to (D) and struck out former subpars. (A) and (B) which read as follows:

"(A) effectively coordinate and maximize resources of existing programs and activities to assist homeless individuals; and

"(B) develop new and innovative programs and activities to assist homeless individuals;"

Subsec. (a)(7). Pub. L. 100-628, § 201, added par. (7).

Subsec. (e). Pub. L. 100-628, § 203, added subsec. (e).

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (c)(2) of this section relating to transmittal to Congress of annual report, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 5th item on page 175 of House Document No. 103-7.

PERSONNEL FROM FEDERAL DEPARTMENTS AND AGENCIES

Pub. L. 102-389, title III, Oct. 6, 1992, 106 Stat. 1608, provided in part: "That the Council shall carry out its duties in the 10 standard Federal regions under section 203(a)(4) of such Act [42 U.S.C. 11313(a)(4)] only through detail, on a non-reimbursable basis, of employees of the departments and agencies represented on the Council pursuant to section 202(a) of such Act [42 U.S.C. 11312(a)]." Similar provisions were contained in the following prior appropriations acts:

Pub. L. 102-139, title III, Oct. 28, 1991, 105 Stat. 769.

Pub. L. 101-507, title III, Nov. 5, 1990, 104 Stat. 1377.

Pub. L. 101-144, title III, Nov. 9, 1989, 103 Stat. 861.

Pub. L. 100-404, title I, Aug. 19, 1988, 102 Stat. 1017.

NONIMPLEMENTATION OF SUBSECTION (a)(4)

Pub. L. 100-202, § 101(f) [title I], Dec. 22, 1987, 101 Stat. 1329-187, 1329-191, provided: "That the provision in section 203(a)(4) of such Act [Pub. L. 100-77, 42 U.S.C. 11313(a)(4)] that relates to employment of personnel in the regions shall not be implemented."

EX. ORD. NO. 12848. FEDERAL PLAN TO BREAK CYCLE OF HOMELESSNESS

Ex. Ord. No. 12848, May 19, 1993, 58 F.R. 29517, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including title II of the Stewart B. McKinney Homeless Assistance Act, as amended (42 U.S.C. 11311-11320), and section 301 of title 3, United States Code, and in order to provide for the streamlining and strengthening of the Nation's efforts to break the cycle of homelessness, it is hereby ordered as follows:

SECTION 1. Federal member agencies acting through the Interagency Council on the Homeless, established under title II of the Stewart B. McKinney Homeless Assistance Act [42 U.S.C. 11311 et seq.], shall develop a single coordinated Federal plan for breaking the cycle of existing homelessness and for preventing future homelessness.

SEC. 2. The plan shall recommend Federal administrative and legislative initiatives necessary to carry out the plan and shall include a proposed schedule for implementing administrative initiatives and transmitting any necessary legislative proposals to the Congress. These initiatives and legislative proposals shall identify ways to streamline and consolidate, when appropriate, existing programs designed to assist homeless individuals and families.

SEC. 3. The plan shall make recommendations on how current funding programs can be redirected, if necessary, to provide links between housing, support, and education services and to promote coordination and cooperation among grantees, local housing and support service providers, school districts, and advocates for homeless individuals and families. The plan shall also provide recommendations on ways to encourage and support creative approaches and cost-effective, local efforts to break the cycle of existing homelessness and prevent future homelessness, including tying current homeless assistance programs to permanent housing assistance, local housing affordability strategies, or employment opportunities.

SEC. 4. To the extent practicable, the Council shall consult with representatives of State and local governments (including education agencies), nonprofit providers of services and housing for homeless individuals and families, advocates for homeless individuals and families, currently and formerly homeless individuals and families, and other interested parties.

SEC. 5. The Council shall submit the plan to the President no later than 9 months after the date of this order.

WILLIAM J. CLINTON.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11320 of this title.

§ 11314. Director and staff

(a) Director

The Council shall appoint an Executive Director, who shall be compensated at a rate not to exceed the rate of basic pay payable for level V of the Executive Schedule under section 5316 of title 5. The Council shall appoint an Executive Director at the first meeting of the Council held under section 11312(c) of this title.

(b) Additional personnel

With the approval of the Council, the Executive Director of the Council may appoint and fix the compensation of such additional personnel as the Executive Director considers necessary to carry out the duties of the Council.

(c) Details from other agencies

Upon request of the Council, the head of any Federal agency may detail, on a reimbursable basis, any of the personnel of such agency to the Council to assist the Council in carrying out its duties under this subchapter. Upon request of the Council, the Secretary of Health and Human Services shall detail, on a reimbursable basis, any of the personnel of the Department of Health and Human Services who have served the Federal Task Force on the Homeless of the Department to assist the Council in carrying out its duties under this subchapter.

(d) Administrative support

The Secretary of Housing and Urban Development shall provide the Council with such administrative and support services as are necessary to ensure that the Council carries out its functions under this subchapter in an efficient and expeditious manner.

(e) Experts and consultants

With the approval of the Council, the Executive Director of the Council may procure temporary and intermittent services under section 3109(b) of title 5.

(Pub. L. 100-77, title II, §204, July 22, 1987, 101 Stat. 488.)

§ 11315. Powers**(a) Meetings**

For the purpose of carrying out this subchapter, the Council may hold such meetings, and sit and act at such times and places, as the Council considers appropriate.

(b) Delegation

Any member or employee of the Council may, if authorized by the Council, take any action that the Council is authorized to take in this subchapter.

(c) Information

The Council may secure directly from any Federal agency such information as may be necessary to enable the Council to carry out this subchapter. Upon request of the Chairperson of the Council, the head of such agency shall furnish such information to the Council.

(d) Donations

The Council may accept, use, and dispose of gifts or donations of services or property.

(e) Mails

The Council may use the United States mails in the same manner and under the same conditions as other Federal agencies.

(Pub. L. 100-77, title II, §205, July 22, 1987, 101 Stat. 488.)

§ 11316. Transfer of functions**(a) Transfers from HHS Task Force**

The Council shall be the successor to the Federal Task Force on the Homeless of the Department of Health and Human Services. The property, records, and undistributed program funds of the Task Force shall be transferred to the Council.

(b) Termination of HHS Task Force

The Secretary of Health and Human Services shall terminate the Federal Task Force on the Homeless of the Department of Health and Human Services as soon as practicable following the first meeting of the Council.

(Pub. L. 100-77, title II, §206, July 22, 1987, 101 Stat. 489.)

§ 11317. Definitions

For purposes of this subchapter:

(1) The term "Council" means the Interagency Council on the Homeless established in section 11311 of this title.

(2) The term "Federal agency" has the meaning given the term "agency" in section 551(1) of title 5.

(Pub. L. 100-77, title II, §207, July 22, 1987, 101 Stat. 489.)

§ 11318. Authorization of appropriations

There are authorized to be appropriated to carry out this subchapter \$1,500,000 for fiscal year 1993 and \$1,563,000 for fiscal year 1994.

(Pub. L. 100-77, title II, §208, July 22, 1987, 101 Stat. 489; Pub. L. 100-628, title II, §204, Nov. 7, 1988, 102 Stat. 3228; Pub. L. 101-645, title I, §102, Nov. 29, 1990, 104 Stat. 4674; Pub. L. 102-550, title XIV, §1421, Oct. 28, 1992, 106 Stat. 4043.)

AMENDMENTS

1992—Pub. L. 102-550 amended section generally. Prior to amendment, section read as follows: "There are authorized to be appropriated to carry out this subchapter \$1,200,000 for fiscal year 1991 and \$1,300,000 for fiscal year 1992."

1990—Pub. L. 101-645 amended section generally. Prior to amendment, section read as follows: "There are authorized to be appropriated to carry out this subchapter \$1,100,000 for fiscal year 1989 and \$1,200,000 for fiscal year 1990."

1988—Pub. L. 100-628 amended section generally, substituting "\$1,100,000 for fiscal year 1989 and \$1,200,000 for fiscal year 1990" for "\$200,000 for fiscal year 1987 and \$2,500,000 for fiscal year 1988".

§ 11319. Termination

The Council shall cease to exist, and the requirements of this subchapter shall terminate, on October 1, 2005.

(Pub. L. 100-77, title II, §209, July 22, 1987, 101 Stat. 489; Pub. L. 100-628, title II, §205, Nov. 7, 1988, 102 Stat. 3228; Pub. L. 101-402, §2, Oct. 1, 1990, 104 Stat. 866; Pub. L. 101-645, title I, §103, Nov. 29, 1990, 104 Stat. 4675; Pub. L. 102-550, title XIV, §1422, Oct. 28, 1992, 106 Stat. 4043; Pub. L. 106-377, §1(a)(1) [title II, §231(2)], Oct. 27, 2000, 114 Stat. 1441, 1441A-31.)

AMENDMENTS

2000—Pub. L. 106-377 substituted "2005" for "1994".

1992—Pub. L. 102-550 substituted "October 1, 1994" for "October 1, 1992".

1990—Pub. L. 101-645 substituted "October 1, 1992" for "October 31, 1990".

Pub. L. 101-402 substituted "October 31, 1990" for "October 1, 1990".

1988—Pub. L. 100-628 substituted "on October 1, 1990" for "upon the expiration of the 3-year period beginning on July 22, 1987".

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-402 deemed to have taken effect as if enacted Sept. 29, 1990, see section 1(a) of Pub. L. 101-494, set out as an Effective Date of Temporary Extension of Emergency Low Income Housing Preservation Act of 1987 and Correction of Any Repeal note under section 1715f of Title 12, Banks and Banking.

TEMPORARY EXTENSION OF COUNCIL

Pub. L. 101-494, §3, Oct. 31, 1990, 104 Stat. 1185, as amended by Pub. L. 106-400, §2, Oct. 30, 2000, 114 Stat. 1675, provided that:

"(a) EXTENSION.—If upon enactment of this Act [Oct. 31, 1990], section 209 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11319) provides for the termination of the Interagency Council on the Homeless on

October 31, 1990, then notwithstanding such section, the Interagency Council on the Homeless shall cease to exist, and the requirements of title II of the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11311 et seq.] shall terminate, on November 30, 1990.

“(b) LIMITATIONS.—If upon enactment of this Act [Oct. 31, 1990] such section 209 provides for termination of the Council (referred to in subsection (a)) on a date other than October 31, 1990, this section shall not apply. This section shall not apply with respect to any amendment to section 209 of the McKinney-Vento Homeless Assistance Act made after the date of the enactment of this Act.”

§ 11320. Encouragement of State involvement

(a) State contact persons

Each State shall designate an individual to serve as a State contact person for the purpose of receiving and disseminating information and communications received from the Council, including the bimonthly bulletin described in section 11313(a)(7) of this title.

(b) State interagency councils and lead agencies

Each State is encouraged to establish a State interagency council on the homeless or designate a lead agency for the State for the purpose of assuming primary responsibility for coordinating and interacting with the Council and State and local agencies as necessary.

(Pub. L. 100-77, title II, §210, as added Pub. L. 100-628, title II, §206(a), Nov. 7, 1988, 102 Stat. 3229.)

SUBCHAPTER III—FEDERAL EMERGENCY MANAGEMENT FOOD AND SHELTER PROGRAM

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 11304 of this title.

PART A—ADMINISTRATIVE PROVISIONS

§ 11331. Emergency Food and Shelter Program National Board

(a) Establishment

There is established to carry out the provisions of this subchapter the Emergency Food and Shelter Program National Board. The Director of the Federal Emergency Management Agency shall constitute the National Board in accordance with subsection (b) of this section in administering the program under this subchapter.

(b) Members

The National Board shall consist of the Director and 6 members appointed by the Director. The initial members of the National Board shall be appointed by the Director not later than 30 days after July 22, 1987. Each such member shall be appointed from among individuals nominated by 1 of the following organizations:

- (1) The United Way of America.
- (2) The Salvation Army.
- (3) The National Council of Churches of Christ in the U.S.A.
- (4) Catholic Charities U.S.A.
- (5) The Council of Jewish Federations, Inc.
- (6) The American Red Cross.

(c) Chairperson

The Director shall be the Chairperson of the National Board.

(d) Other activities

Except as otherwise specifically provided in this subchapter, the National Board shall establish its own procedures and policies for the conduct of its affairs.

(e) Transfers from previous national board

Upon the appointment of members to the National Board under subsection (b) of this section—

(1) the national board constituted under the emergency food and shelter program established pursuant to section 101(g) of Public Law 99-500 or Public Law 99-591 shall cease to exist; and

(2) the personnel, property, records, and undistributed program funds of such national board shall be transferred to the National Board.

(Pub. L. 100-77, title III, §301, July 22, 1987, 101 Stat. 489.)

REFERENCES IN TEXT

The emergency food and shelter program established pursuant to section 101(g) of Public Law 99-500 or Public Law 99-591, referred to in subsec. (e)(1), means the emergency food and shelter program authorized by title II of H.R. 5313 [Department of Housing and Urban Development—Independent Agencies Appropriations Act, 1987], as incorporated by reference by section 101(g) of Pub. L. 99-500, Oct. 18, 1986, 100 Stat. 1783-242, and Pub. L. 99-591, Oct. 30, 1986, 100 Stat. 3341-242, which is not classified to the Code.

§ 11332. Local boards

(a) Establishment

Each locality designated by the National Board shall constitute a local board for the purpose of determining how program funds allotted to the locality will be distributed. The local board shall consist, to the extent practicable, of representatives of the same organizations as the National Board, except that the mayor or other appropriate heads of government will replace the Federal members, and except that each local board administering program funds for a locality within which is located a reservation (as such term is defined in section 1452(d) of title 25,¹ or a portion thereof, shall include a board member who is a member of an Indian tribe (as such term is defined in section 5302(a)(17) of this title.¹ The chairperson of the local board shall be elected by a majority of the members of the local board. Local boards are encouraged to expand participation of other private nonprofit organizations on the local board.

(b) Responsibilities

Each local board shall—

(1) determine which private nonprofit organizations or public organizations of the local government in the individual locality shall receive grants to act as service providers;

(2) monitor recipient service providers for program compliance;

(3) reallocate funds among service providers;

(4) ensure proper reporting; and

(5) coordinate with other Federal, State, and local government assistance programs available in the locality.

¹So in original. A closing parenthesis probably should precede the punctuation.

(Pub. L. 100-77, title III, §302, July 22, 1987, 101 Stat. 490; Pub. L. 101-645, title II, §202(a), Nov. 29, 1990, 104 Stat. 4675.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101-645 inserted before period at end of second sentence “, and except that each local board administering program funds for a locality within which is located a reservation (as such term is defined in section 1452(d) of title 25, or a portion thereof, shall include a board member who is a member of an Indian tribe (as such term is defined in section 5302(a)(17) of this title”.

IMPLEMENTATION OF 1990 AMENDMENT

Section 202(b) of Pub. L. 101-645 provided that: “Each local board under the Emergency Food and Shelter Program whose membership shall include a member of an Indian tribe by reason of the amendment made by subsection (a) [amending this section] shall comply with the requirement made by such amendment not later than the expiration of the 30-day period beginning on the date of the enactment of this Act [Nov. 29, 1990].”

§ 11333. Role of Federal Emergency Management Agency

(a) In general

The Director shall provide the National Board with administrative support and act as Federal liaison to the National Board.

(b) Specific support activities

The Director shall—

(1) make available to the National Board, upon request, the services of the legal counsel and Inspector General of the Federal Emergency Management Agency;

(2) assign clerical personnel to the National Board on a temporary basis; and

(3) conduct audits of the National Board annually and at such other times as may be appropriate.

(Pub. L. 100-77, title III, §303, July 22, 1987, 101 Stat. 490.)

§ 11334. Records and audit of National Board and recipients of assistance

(a) Annual independent audit of National Board

(1) The accounts of the National Board shall be audited annually in accordance with generally accepted auditing standards by independent certified public accountants or independent licensed public accountants certified or licensed by a regulatory authority of a State or other political subdivision of the United States. The audits shall be conducted at the place or places where the accounts of the National Board are normally kept. All books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the National Board and necessary to facilitate the audits shall be made available to the person or persons conducting the audits, and full facilities for verifying transactions with any assets held by depositories, fiscal agents, and custodians shall be afforded to such person or persons.

(2) The report of each such independent audit shall be included in the annual report required in section 11335 of this title. Such report shall set forth the scope of the audit and include such statements as are necessary to present fairly

the assets and liabilities of the National Board, surplus or deficit, with an analysis of the changes during the year, supplemented in reasonable detail by a statement of the income and expenses of the National Board during the year, and a statement of the application of funds, together with the opinion of the independent auditor of such statements.

(b) Access to records of recipients of assistance

(1) Each recipient of assistance under this subchapter shall keep such records as may be reasonably necessary to fully disclose the amount and the disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(2) The National Board, or any of its duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient that are pertinent to assistance received under this subchapter.

(c) Authority of Comptroller General

The Comptroller General of the United States, or any of the duly authorized representatives of the Comptroller General, shall also have access to any books, documents, papers, and records of the National Board and recipients for such purpose.

(Pub. L. 100-77, title III, §304, July 22, 1987, 101 Stat. 491.)

§ 11335. Annual report

The National Board shall transmit to the Congress an annual report covering each year in which it conducts activities with funds made available under this subchapter.

(Pub. L. 100-77, title III, §305, July 22, 1987, 101 Stat. 491.)

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which a report required under this section is listed in the 4th item on page 169), see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11334 of this title.

PART B—EMERGENCY FOOD AND SHELTER GRANTS

§ 11341. Grants by Director

Not later than 30 days following the date on which appropriations become available to carry out this part, the Director shall award a grant for the full amount that the Congress appropriates for the program under this part to the National Board for the purpose of providing emergency food and shelter to needy individuals

through private nonprofit organizations and local governments in accordance with section 11343 of this title.

(Pub. L. 100-77, title III, §311, July 22, 1987, 101 Stat. 492.)

§ 11342. Retention of interest earned

Interest accrued on the balance of any grant to the National Board shall be available to the National Board for reallocation, and total administrative costs shall be determined based on total amount of funds available, including interest and any private contributions that are made to the National Board.

(Pub. L. 100-77, title III, §312, July 22, 1987, 101 Stat. 492.)

§ 11343. Purposes of grants

(a) Eligible activities

Grants to the National Board may be used—

(1) to supplement and expand ongoing efforts to provide shelter, food, and supportive services for homeless individuals with sensitivity to the transition from temporary shelter to permanent homes, and attention to the special needs of homeless individuals with mental and physical disabilities and illnesses, and to facilitate access for homeless individuals to other sources of services and benefits;

(2) to strengthen efforts to create more effective and innovative local programs by providing funding for them; and

(3) to conduct minimum rehabilitation of existing mass shelter or mass feeding facilities, but only to the extent necessary to make facilities safe, sanitary, and bring them into compliance with local building codes.

(b) Limitations on activities

(1) The National Board may only provide funding provided under this part for—

(A) programs undertaken by private nonprofit organizations and local governments; and

(B) programs that are consistent with the purposes of this subchapter.

(2) The National Board may not carry out programs directly.

(Pub. L. 100-77, title III, §313, July 22, 1987, 101 Stat. 492.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11341 of this title.

§ 11344. Limitation on certain costs

Not more than 5 percent of the total amount appropriated for the emergency food and shelter program for each fiscal year may be expended for the costs of administration.

(Pub. L. 100-77, title III, §314, July 22, 1987, 101 Stat. 492.)

§ 11345. Disbursement of funds

Any amount made available by appropriation Acts under this subchapter shall be disbursed by the National Board before the expiration of the 3-month period beginning on the date on which such amount becomes available.

(Pub. L. 100-77, title III, §315, July 22, 1987, 101 Stat. 492.)

§ 11346. Program guidelines

(a) Guidelines

The National Board shall establish written guidelines for carrying out the program under this part, including—

(1) methods for identifying localities with the highest need for emergency food and shelter assistance;

(2) methods for determining the amount and distribution to such localities;

(3) eligible program costs, including maximum flexibility in meeting currently existing needs;

(4) guidelines specifying the responsibilities and reporting requirements of the National Board, its recipients, and service providers;

(5) guidelines requiring each private nonprofit organization and local government carrying out a local emergency food and shelter program with amounts provided under this part, to the maximum extent practicable, to involve homeless individuals and families, through employment, volunteer services, or otherwise, in providing emergency food and shelter and in otherwise carrying out the local program; and

(6) guidelines requiring each private nonprofit organization and local government carrying out a local emergency food and shelter program with amounts provided under this part to provide for the participation of not less than 1 homeless individual or former homeless individual on the board of directors or other equivalent policy making entity of the organization or governmental agency to the extent that such entity considers and makes policies and decisions regarding the local program of the organization or locality; except that such guidelines may grant waivers to applicants unable to meet such requirement if the organization or government agrees to otherwise consult with homeless or formerly homeless individuals in considering and making such policies and decisions.

(b) Publication

Guidelines established under subsection (a) of this section shall be published annually, and whenever modified, in the Federal Register. The National Board shall not be subject to the procedural rulemaking requirements of subchapter II of chapter 5 of title 5.

(Pub. L. 100-77, title III, §316, July 22, 1987, 101 Stat. 493; Pub. L. 102-550, title XIV, §1432, Oct. 28, 1992, 106 Stat. 4043.)

AMENDMENTS

1992—Subsec. (a)(5), (6). Pub. L. 102-550 added pars. (5) and (6).

PART C—GENERAL PROVISIONS

§ 11351. Definitions

For purposes of this subchapter:

(1) The term “Director” means the Director of the Federal Emergency Management Agency.

(2) The term “emergency shelter” means a facility all or a part of which is used or designed to be used to provide temporary housing.

(3) The term “local government” means a unit of general purpose local government.

(4) The term “locality” means the geographical area within the jurisdiction of a local government.

(5) The term “National Board” means the Emergency Food and Shelter Program National Board.

(6) The term “private nonprofit organization” means an organization—

(A) no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual;

(B) that has a voluntary board;

(C) that has an accounting system, or has designated a fiscal agent in accordance with requirements established by the Director; and

(D) that practices nondiscrimination in the provision of assistance.

(7) The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(Pub. L. 100-77, title III, §321, July 22, 1987, 101 Stat. 493.)

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1766 of this title.

§ 11352. Authorization of appropriations

There are authorized to be appropriated to carry out this subchapter \$180,000,000 for fiscal year 1993 and \$187,560,000 for fiscal year 1994.

(Pub. L. 100-77, title III, §322, July 22, 1987, 101 Stat. 493; Pub. L. 100-628, title III, §302, Nov. 7, 1988, 102 Stat. 3229; Pub. L. 101-645, title II, §201, Nov. 29, 1990, 104 Stat. 4675; Pub. L. 102-550, title XIV, §1431, Oct. 28, 1992, 106 Stat. 4043.)

AMENDMENTS

1992—Pub. L. 102-550 amended section generally. Prior to amendment, section read as follows: “There are authorized to be appropriated to carry out this subchapter \$150,000,000 for each of fiscal years 1991 and 1992.”

1990—Pub. L. 101-645 amended section generally. Prior to amendment, section read as follows: “There are authorized to be appropriated to carry out this subchapter \$129,000,000 for fiscal year 1989 and \$134,000,000 for fiscal year 1990.”

1988—Pub. L. 100-628 amended section generally, substituting “\$129,000,000 for fiscal year 1989 and \$134,000,000 for fiscal year 1990” for “\$15,000,000 for fiscal year 1987 and \$124,000,000 for fiscal year 1988”.

SUBCHAPTER IV—HOUSING ASSISTANCE

CODIFICATION

Pub. L. 101-625, title VIII, §§821, 823, Nov. 28, 1990, 104 Stat. 4331, 4355, which provided for the amendment of

this subchapter generally and provided for implementation, transition, and a prospective effective date for the amendment, was repealed by Pub. L. 102-550, title XIV, §1410, Oct. 28, 1992, 106 Stat. 4038, which provided that: “The Cranston-Gonzalez National Affordable Housing Act is amended by striking sections 821 and 823 (42 U.S.C. 11361 note). The amendment made by such section 821 of such Act shall not take effect.”

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 3535, 11304, 12839, 12899d of this title; title 12 sections 1441a, 1831q; title 25 section 4183.

PART A—COMPREHENSIVE HOMELESS ASSISTANCE PLAN

§ 11361. Housing affordability strategy

Assistance may be made under this subchapter only if the grantee certifies that it is following—

(1) a current housing affordability strategy which has been approved by the Secretary in accordance with section 12705 of this title, or

(2) a comprehensive homeless assistance plan which was approved by the Secretary during the 180-day period beginning on November 28, 1990, or during such longer period as may be prescribed by the Secretary in any case for good cause.

(Pub. L. 100-77, title IV, §401, July 22, 1987, 101 Stat. 494; Pub. L. 100-628, title IV, §§401-404, Nov. 7, 1988, 102 Stat. 3230, 3231; Pub. L. 101-625, title VIII, §§831, 832(e)(3), 836(a), Nov. 28, 1990, 104 Stat. 4357, 4360, 4366.)

AMENDMENTS

1990—Pub. L. 101-625, §836(a), amended section generally, substituting present provisions for provisions requiring the annual submission of a comprehensive homeless assistance plan with requirements for contents of the plan, review of the plan, performance reviews under the plan, publication by notice, applications for assistance, coordination with State agencies, and consultation with other private and public groups and entities regarding the plan.

Subsec. (a). Pub. L. 101-625, §831(b)(1), inserted at end “Assistance authorized by this subchapter may be provided to any Indian tribe that is eligible to receive a grant under the emergency shelter grants program in any fiscal year, but only if the tribe submits biennially to the Secretary of Housing and Urban Development a comprehensive homeless assistance plan under this section.”

Subsec. (a)(1). Pub. L. 101-625, §831(c)(2)(A), substituted “biennially” for “annually”.

Subsec. (b)(2). Pub. L. 101-625, §831(c)(2)(B), substituted “, services, and programs” for “and services”.

Subsec. (b)(3). Pub. L. 101-625, §831(c)(2)(C), substituted “, services, and programs” for “and services” in cl. (A), struck out “and” before “(B)”, and added cls. (C) to (F).

Subsec. (b)(5). Pub. L. 101-625, §831(b)(2), inserted “Indian tribe,” after “State,”.

Subsec. (b)(7), (8). Pub. L. 101-625, §831(a), added pars. (7) and (8).

Subsec. (b)(9). Pub. L. 101-625, §832(e)(3), added par. (9).

Subsecs. (c)(1), (d). Pub. L. 101-625, §831(b)(3), (4), inserted “Indian tribe,” after “State,” wherever appearing.

Subsec. (g). Pub. L. 101-625, §831(b)(5), inserted “(or tribal agency or contact)” after “State contact person”, “(or tribe)” before comma, and “(or tribal agency or contact person)” after “or contact person”.

Subsec. (h). Pub. L. 101-625, §831(c)(1), added subsec. (h).

1988—Subsec. (a)(1). Pub. L. 100-628, §401(a), inserted “annually” after “submits”.

Subsec. (a)(2), (3). Pub. L. 100-628, §401(b), added par. (2) and redesignated former par. (2) as (3).

Subsec. (b)(3). Pub. L. 100-628, §402(1), inserted “facilities and” before “services” and struck out “and” at end.

Subsec. (b)(4). Pub. L. 100-628, §402(2), inserted “facilities and” before “services” and substituted a semicolon for period at end.

Subsec. (b)(5), (6). Pub. L. 100-628, §402(3), added pars. (5) and (6).

Subsec. (d)(3). Pub. L. 100-628, §403, inserted before period at end “or to respond to recommendations made in accordance with paragraph (2) that are received at least 60 days prior to the beginning of the fiscal year”.

Subsec. (g). Pub. L. 100-628, §404, added subsec. (g).

EFFECTIVE DATE OF 1990 AMENDMENT

Section 836(b) of Pub. L. 101-625 provided that: “The amendment made by subsection (a) [amending this section] shall take effect on October 1, 1991.”

EVALUATION OF PROGRAMS

Pub. L. 102-550, title XIV, §1409, Oct. 28, 1992, 106 Stat. 4038, as amended by Pub. L. 105-362, title VII, §701(c), Nov. 10, 1998, 112 Stat. 3287; Pub. L. 106-400, §2, Oct. 30, 2000, 114 Stat. 1675, provided that: “The Secretary of Housing and Urban Development shall conduct a comprehensive review and evaluation of the effectiveness of each program under title IV of the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11361 et seq.]. In conducting the review, the Secretary shall examine procedures of the Department in carrying out such programs, the procedures of recipients of assistance under such programs in carrying out such programs, and the effects and benefits of such programs; shall survey homeless individuals and families assisted under each program in various jurisdictions receiving assistance under each program; shall determine whether such programs are fulfilling the purposes for which they were established; and shall evaluate the usefulness and effectiveness of such programs.”

HOMELESS HOUSING ACT OF 1986

Pub. L. 99-500, §101(g) [H.R. 5313, title V], Oct. 18, 1986, 100 Stat. 1783-242, and Pub. L. 99-591, §101(g) [H.R. 5313, title V], Oct. 30, 1986, 100 Stat. 3341-242; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100-202, §106, Dec. 22, 1987, 101 Stat. 1329-433, provided that title V of H.R. 5315 be cited as the “Homeless Housing Act of 1986”, established a transitional housing demonstration program and directed Secretary of Housing and Urban Development to submit to Congress, not later than 3 months after the end of fiscal year 1987, an interim report summarizing activities under this program during such fiscal year and, not later than 6 months after the end of fiscal year 1988, a final report summarizing such activities, established an emergency shelter grants program to make grants to States, units of local government, and private nonprofit organizations providing assistance to the homeless, and appropriated \$15,000,000 for fiscal year 1987, to remain available until expended, to carry out both programs.

§ 11362. Discharge coordination policy

The Secretary may not provide a grant under this subchapter for any governmental entity serving as an applicant unless the applicant agrees to develop and implement, to the maximum extent practicable and where appropriate, policies and protocols for the discharge of persons from publicly funded institutions or systems of care (such as health care facilities, foster care or other youth facilities, or correction programs and institutions) in order to prevent such discharge from immediately resulting in homelessness for such persons.

(Pub. L. 100-77, title IV, §402, as added Pub. L. 106-377, §1(a)(1) [title II, §229(a)], Oct. 27, 2000, 114 Stat. 1441, 1441A-30.)

PART B—EMERGENCY SHELTER GRANTS PROGRAM

§ 11371. Definitions

For purposes of this part:

(1) The term “local government” means a unit of general purpose local government.

(2) The term “locality” means the geographical area within the jurisdiction of a local government.

(3) The term “metropolitan city” has the meaning given such term in section 5302 of this title.

(4) The term “operating costs” means expenses incurred by a recipient operating a facility assisted under this part with respect to—

(A) the administration, maintenance, repair, and security of such housing; and

(B) utilities, fuels, furnishings, and equipment for such housing.

(5) The term “private nonprofit organization” means a secular or religious organization described in section 501(c) of title 26 that is exempt from taxation under subtitle A of title 26, has an accounting system and a voluntary board, and practices nondiscrimination in the provision of assistance.

(6) The term “recipient” means any governmental or private nonprofit entity that is approved by the Secretary as to financial responsibility.

(7) The term “Secretary” means the Secretary of Housing and Urban Development.

(8) The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(9) The term “urban county” has the meaning given such term in section 5302 of this title.

(Pub. L. 100-77, title IV, §411, July 22, 1987, 101 Stat. 495; Pub. L. 101-625, title VIII, §832(f)(1), Nov. 28, 1990, 104 Stat. 4361; Pub. L. 104-330, title V, §506(a)(1), Oct. 26, 1996, 110 Stat. 4044.)

AMENDMENTS

1996—Par. (10). Pub. L. 104-330 struck out par. (10) which read as follows: “The term ‘Indian tribe’ has the meaning given such term in section 5302(a)(17) of this title.”

1990—Par. (10). Pub. L. 101-625 added par. (10).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as an Effective Date note under section 4101 of Title 25, Indians.

Section 506(c) of Pub. L. 104-330, as amended by Pub. L. 106-400, §2, Oct. 30, 2000, 114 Stat. 1675, provided that: “The amendments under subsections (a) [amending this section and sections 11372 to 11376, 11382, 11401, 11403g, and 11408 of this title] and (b) [amending provisions formerly set out as a note under section 11301 of this title] shall apply with respect to amounts made available for

assistance under title IV of the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11361 et seq.] and section 2 of the HUD Demonstration Act of 1993 [Pub. L. 103-120, former 42 U.S.C. 11301 note], respectively, for fiscal year 1998 and fiscal years thereafter.”

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 11372. Grant assistance

The Secretary of Housing and Urban Development shall, to the extent of amounts approved in appropriation Acts under section 11377 of this title, make grants to States and local governments (and to private nonprofit organizations providing assistance to homeless individuals, in the case of grants made with reallocated amounts) in order to carry out activities described in section 11374 of this title.

(Pub. L. 100-77, title IV, §412, July 22, 1987, 101 Stat. 496; Pub. L. 101-625, title VIII, §832(f)(2), Nov. 28, 1990, 104 Stat. 4361; Pub. L. 104-330, title V, §506(a)(2), Oct. 26, 1996, 110 Stat. 4044.)

AMENDMENTS

1996—Pub. L. 104-330 struck out “, and for Indian tribes,” after “local governments”.

1990—Pub. L. 101-625 substituted “States and local governments, and for Indian tribes,” for “States and local governments”.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as an Effective Date note under section 4101 of Title 25, Indians.

Amendment by Pub. L. 104-330 applicable with respect to amounts made available for assistance under this subchapter for fiscal year 1998 and fiscal years thereafter, see section 506(c) of Pub. L. 104-330, set out as a note under section 11371 of this title.

§ 11373. Allocation and distribution of assistance

(a) In general

The Secretary shall allocate assistance under this part to metropolitan cities, urban counties, and States (for distribution to local governments and private nonprofit organizations in the States) in a manner that ensures that the percentage of the total amount available under this part for any fiscal year that is allocated to any State, metropolitan city, or urban county is equal to the percentage of the total amount available for section 5306 of this title for such prior fiscal year that is allocated to such State, metropolitan city, or urban county.

(b) Minimum allocation requirement

If, under the allocation provisions applicable under this part, any metropolitan city or urban county would receive a grant of less than 0.05 percent of the amounts appropriated to carry out this part for any fiscal year, such amount shall instead be reallocated to the State, except that any city that is located in a State that does not have counties as local governments, that has a population greater than 40,000 but less than 50,000 as used in determining the fiscal year 1987 community development block grant pro-

gram allocation, and that was allocated in excess of \$1,000,000 in community development block grant funds in fiscal year 1987, shall receive directly the amount allocated to such city under subsection (a) of this section.

(c) Distributions to nonprofit organizations

Any local government receiving assistance under this part may distribute all or a portion of such assistance to private nonprofit organizations providing assistance to homeless individuals. Any State receiving assistance under this part may distribute all or a portion of such assistance to private nonprofit organizations providing assistance to homeless individuals, if the local government for the locality in which the project is located certifies that it approves of the project.

(d) Reallocation of funds

(1) The Secretary shall, not less than twice during each fiscal year, reallocate any assistance provided under this part that is unused or returned or that becomes available under subsection (b) of this section.

(2) If a city or county eligible for a grant under subsection (a) of this section fails to obtain approval of its comprehensive plan during the 90-day period following the date funds authorized by this part first become available for allocation during any fiscal year, the amount that the city or county would have received shall be available to the State in which the city or county is located if the State has obtained approval of its comprehensive plan. Any amounts that cannot be allocated to a State under the preceding sentence shall be reallocated to other States, counties, and cities that demonstrate extraordinary need or large numbers of homeless individuals, as determined by the Secretary.

(3) If a State fails to obtain approval of its comprehensive plan during the 90-day period following the date funds authorized by this part first become available for allocation during any fiscal year, the amount that the State would have received shall be reallocated to other States and to cities and counties as applicable, that demonstrate extraordinary need or large numbers of homeless individuals, as determined by the Secretary.

(e) Allocations to territories

In addition to the other allocations required in this section, the Secretary shall (for amounts appropriated after July 22, 1987) allocate assistance under this part to the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States, in accordance with an allocation formula established by the Secretary.

(Pub. L. 100-77, title IV, §413, July 22, 1987, 101 Stat. 496; Pub. L. 100-628, title IV, §421, Nov. 7, 1988, 102 Stat. 3231; Pub. L. 101-625, title VIII, §832(f)(3)-(5), Nov. 28, 1990, 104 Stat. 4361; Pub. L. 104-330, title V, §506(a)(3), Oct. 26, 1996, 110 Stat. 4044.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104-330, §506(a)(3)(A), struck out “, and to Indian tribes,” after “in the States)” and

“, or for Indian tribes” after “or urban county” in two places.

Subsec. (c). Pub. L. 104-330, § 506(a)(3)(B), struck out “or Indian tribe” after “Any local government”.

Subsec. (d)(3). Pub. L. 104-330, § 506(a)(3)(C)(ii), struck out “, or other Indian tribes,” after “cities and counties”.

Pub. L. 104-330, § 506(a)(3)(C)(i), which directed amendment of par. (3) by striking “, or Indian tribe” each place it appeared, was executed by striking “or Indian tribe” after “State” in two places to reflect the probable intent of Congress.

1990—Subsec. (a). Pub. L. 101-625, § 832(f)(3), inserted “, and to Indian tribes,” after “States)” and “, or for Indian tribes” after “urban county” in two places.

Subsec. (c). Pub. L. 101-625, § 832(f)(4), inserted “or Indian tribe” after “local government”.

Subsec. (d)(3). Pub. L. 101-625, § 832(f)(5), inserted “or Indian tribe” after “State” in two places and “, or other Indian tribes, as applicable,” after “counties”.

1988—Subsec. (a). Pub. L. 100-628, § 421(a), inserted “and private nonprofit organizations” after “local governments”.

Subsec. (c). Pub. L. 100-628, § 421(b), inserted at end “Any State receiving assistance under this part may distribute all or a portion of such assistance to private nonprofit organizations providing assistance to homeless individuals, if the local government for the locality in which the project is located certifies that it approves of the project.”

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as an Effective Date note under section 4101 of Title 25, Indians.

Amendment by Pub. L. 104-330 applicable with respect to amounts made available for assistance under this subchapter for fiscal year 1998 and fiscal years thereafter, see section 506(c) of Pub. L. 104-330, set out as a note under section 11371 of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 11374. Eligible activities

(a) In general

Assistance provided under this part may be used for the following activities relating to emergency shelter for homeless individuals:

(1) The renovation, major rehabilitation, or conversion of buildings to be used as emergency shelters.

(2) The provision of essential services, including services concerned with employment, health, drug abuse, or education, if—

(A) such services have not been provided by the local government during any part of the immediately preceding 12-month period, or the use of assistance under this part would complement those services; and

(B) not more than 30 percent of the aggregate amount of all assistance to a State or local government under this part is used for activities under this paragraph.

(3) Maintenance, operation, insurance, utilities, and furnishings, except that not more than 10 percent of the amount of any grant received under this part may be used for costs of staff.

(4) Efforts to prevent homelessness, such as financial assistance to families who have re-

ceived eviction notices or notices of termination of utility services if—

(A) the inability of the family to make the required payments is due to a sudden reduction in income;

(B) the assistance is necessary to avoid the eviction or termination of services;

(C) there is a reasonable prospect that the family will be able to resume payments within a reasonable period of time; and

(D) the assistance will not supplant funding for preexisting homelessness prevention activities from other sources.

Activities that are eligible for assistance under this paragraph shall include assistance to very low-income families who are discharged from publicly funded institutions or systems of care (such as health care facilities, foster care or other youth facilities, or correction programs and institutions). Not more than 30 percent of the aggregate amount of all assistance to a State or local government under this part may be used for activities under this paragraph.

(b) Waiver authority

The Secretary may waive the 20 percent limitation on the use of assistance for essential services contained in subsection (a)(2)(B) of this section, if the local government receiving the assistance demonstrates that the other eligible activities under the program are already being carried out in the locality with other resources.

(Pub. L. 100-77, title IV, § 414, July 22, 1987, 101 Stat. 497; Pub. L. 100-628, title IV, §§ 422, 423(a), Nov. 7, 1988, 102 Stat. 3231; Pub. L. 101-625, title VIII, § 832(c), (d), (f)(6), Nov. 28, 1990, 104 Stat. 4360, 4361; Pub. L. 102-550, title XIV, § 1402(e), Oct. 28, 1992, 106 Stat. 4013; Pub. L. 104-330, title V, § 506(a)(4), Oct. 26, 1996, 110 Stat. 4044; Pub. L. 106-377, § 1(a)(1) [title II, § 229(b)], Oct. 27, 2000, 114 Stat. 1441, 1441A-31.)

AMENDMENTS

2000—Subsec. (a)(4). Pub. L. 106-377 inserted comma after “homelessness” in introductory provisions and substituted “Activities that are eligible for assistance under this paragraph shall include assistance to very low-income families who are discharged from publicly funded institutions or systems of care (such as health care facilities, foster care or other youth facilities, or correction programs and institutions). Not” for “Not” in concluding provisions.

1996—Subsec. (a)(2). Pub. L. 104-330 struck out “or Indian tribe” after “local government” in subpar. (A) and substituted “or local government” for “, local government, or Indian tribe” in subpar. (B).

Subsec. (a)(4). Pub. L. 104-330 substituted “or local government” for “, local government, or Indian tribe” in concluding provisions.

1992—Subsec. (a)(3). Pub. L. 102-550 struck out “(other than staff)” after “operation” and inserted before period at end “, except that not more than 10 percent of the amount of any grant received under this part may be used for costs of staff”.

1990—Subsec. (a)(2)(A). Pub. L. 101-625, § 832(f)(6)(A), inserted “or Indian tribe” after “local government”.

Subsec. (a)(2)(B). Pub. L. 101-625, § 832(c), (f)(6)(B), substituted “30 percent” for “20 percent” and “, local government, or Indian tribe” for “or local government”.

Subsec. (a)(4). Pub. L. 101-625, § 832(d), substituted sentence at end for “Activities under this paragraph shall be treated as ‘essential services’ for the purpose of paragraph (2)(B).”

1988—Subsec. (a)(2)(A). Pub. L. 100-628, § 422(b), inserted before semicolon “, or the use of assistance under this part would complement those services”.

Subsec. (a)(2)(B). Pub. L. 100-628, § 422(a), substituted “20” for “15” and “the aggregate amount of all assistance to a State or” for “the amount of any assistance to a”.

Subsec. (a)(4). Pub. L. 100-628, § 423(a), added par. (4).

Subsec. (b). Pub. L. 100-628, § 422(a)(1), substituted “20” for “15”.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as an Effective Date note under section 4101 of Title 25, Indians.

Amendment by Pub. L. 104-330 applicable with respect to amounts made available for assistance under this subchapter for fiscal year 1998 and fiscal years thereafter, see section 506(c) of Pub. L. 104-330, set out as a note under section 11371 of this title.

REPORT BY COMPTROLLER GENERAL

Section 423(b) of Pub. L. 100-628 provided that: “The Comptroller General of the United States shall conduct a study and report to the Congress not later than 1 year after the date of the enactment of this Act [Nov. 7, 1988] on various programs to prevent homelessness implemented by grantees, with particular focus on the different methods employed by grantees to determine eligibility for homelessness prevention assistance and restrictions or limitations, if any, imposed under such programs. Such report shall include—

“(1) an examination of other homelessness prevention programs, including other Federal programs and State and local programs; and

“(2) recommendations for such legislation as the Comptroller General determines appropriate, including recommendations on how to prevent homelessness as a result of mortgage foreclosures.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11372, 11375 of this title.

§ 11375. Responsibilities of recipients

(a) Matching amounts

(1) Except as provided in paragraph (2), each recipient under this part shall be required to supplement the assistance provided under this part with an equal amount of funds from sources other than this part. Each recipient shall certify to the Secretary its compliance with this paragraph, and shall include with such certification a description of the sources and amounts of such supplemental funds.

(2) Each recipient under this part that is a State shall be required to supplement the assistance provided under this part with an amount of funds from sources other than this part equal to the difference between the amount received under this part and \$100,000. If the amount received by the State is \$100,000 or less, the State may not be required to supplement the assistance provided under this part.

(3) In calculating the amount of supplemental funds provided by a recipient under this part, a recipient may include the value of any donated material or building, the value of any lease on a building, any salary paid to staff to carry out the program of the recipient, and the value of the time and services contributed by volunteers to carry out the program of the recipient at a rate determined by the Secretary.

(b) Administration of assistance

Each recipient shall act as the fiscal agent of the Secretary with respect to assistance provided to such recipient.

(c) Certifications on use of assistance

Each recipient shall certify to the Secretary that—

(1) it will—

(A) in the case of assistance involving major rehabilitation or conversion, maintain any building for which assistance is used under this part as a shelter for homeless individuals and families for not less than a 10-year period;

(B) in the case of assistance involving rehabilitation (other than major rehabilitation or conversion), maintain any building for which assistance is used under this part as a shelter for homeless individuals and families for not less than a 3-year period; or

(C) in the case of assistance involving solely activities described in paragraphs (2) and (3) of section 11374(a) of this title, provide services or shelter to homeless individuals and families for the period during which such assistance is provided, without regard to a particular site or structure as long as the same general population is served;

(2) any renovation carried out with assistance under this part shall be sufficient to ensure that the building involved is safe and sanitary;

(3) it will assist homeless individuals in obtaining—

(A) appropriate supportive services, including permanent housing, medical and mental health treatment, counseling, supervision, and other services essential for achieving independent living; and

(B) other Federal, State, local, and private assistance available for such individuals;

(4) in the case of a recipient that is a State, it will obtain any matching amounts required under subsection (a) of this section in a manner so that local governments, agencies, and local nonprofit organizations receiving assistance from the grant that are least capable of providing the recipient State with such matching amounts receive the benefit of the \$100,000 subtrahend under subsection (a)(2) of this section;

(5) it will develop and implement procedures to ensure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services under any project assisted under this part and that the address or location of any family violence shelter project assisted under this part will, except with written authorization of the person or persons responsible for the operation of such shelter, not be made public;

(6) activities undertaken by the recipient with assistance under this part are consistent with any housing strategy submitted by the grantee in accordance with section 12705 of this title; and

(7) to the maximum extent practicable, it will involve, through employment, volunteer services, or otherwise, homeless individuals

and families in constructing, renovating, maintaining, and operating facilities assisted under this part, in providing services assisted under this part, and in providing services for occupants of facilities assisted under this part.

(d) Participation of homeless individuals

The Secretary shall, by regulation, require each recipient that is not a State to provide for the participation of not less than 1 homeless individual or former homeless individual on the board of directors or other equivalent policy-making entity of such recipient, to the extent that such entity considers and makes policies and decisions regarding any facility, services, or other assistance of the recipient assisted under this part. The Secretary may grant waivers to recipients unable to meet the requirement under the preceding sentence if the recipient agrees to otherwise consult with homeless or formerly homeless individuals in considering and making such policies and decisions.

(e) Termination of assistance

If an individual or family who receives assistance under this part from a recipient violates program requirements, the recipient may terminate assistance in accordance with a formal process established by the recipient that recognizes the rights of individuals affected, which may include a hearing.

(Pub. L. 100-77, title IV, § 415, July 22, 1987, 101 Stat. 497; Pub. L. 100-628, title IV, § 424, Nov. 7, 1988, 102 Stat. 3232; Pub. L. 101-625, title VIII, § 832(e)(1), (2), (h), Nov. 28, 1990, 104 Stat. 4360, 4362; Pub. L. 102-550, title XIV, § 1402(b)-(d), Oct. 28, 1992, 106 Stat. 4012, 4013; Pub. L. 104-330, title V, § 506(a)(5), Oct. 26, 1996, 110 Stat. 4044.)

AMENDMENTS

1996—Subsec. (c)(4). Pub. L. 104-330 struck out “Indian tribes,” after “local governments.”

1992—Subsec. (c). Pub. L. 102-550, § 1402(b), in par. (1), substituted a semicolon for period at end, in par. (3), struck out “and” at end, in par. (4), inserted “it will” after “State,” and struck out “and” at end, in par. (5), inserted “it will” before “develop” and substituted a semicolon for period at end, redesignated par. (4), relating to consistency of activities undertaken with assistance under this part, as (6) and substituted “; and” for period at end, and added par. (7).

Subsec. (d). Pub. L. 102-550, § 1402(c), added subsec. (d).

Subsec. (e). Pub. L. 102-550, § 1402(d), added subsec. (e).

1990—Subsec. (a)(1). Pub. L. 101-625, § 832(e)(1)(A), substituted “Except as provided in paragraph (2), each” for “Each”.

Subsec. (a)(2), (3). Pub. L. 101-625, § 832(e)(1)(B), (C), added par. (2) and redesignated former par. (2) as (3).

Subsec. (c)(2), (3). Pub. L. 101-625, § 832(e)(2)(A), (B), (h)(1), (2), amended subsec. (c) identically, striking “and” at end of par. (2) and substituting “; and” for period at end of par. (3).

Subsec. (c)(4). Pub. L. 101-625, § 832(h)(3), added (after par. (5)) par. (4) relating to consistency of activities undertaken with assistance under this part.

Pub. L. 101-625, § 832(e)(2)(C), added par. (4) relating to matching funds obtained by State recipients of assistance under this part.

Subsec. (c)(5). Pub. L. 101-625, § 832(e)(2)(C), added par. (5).

1988—Subsec. (c)(1). Pub. L. 100-628 amended par. (1) generally. Prior to amendment, par. (1) read as follows: “it will maintain any building for which assistance is used under this part as a shelter for homeless individuals for not less than a 3-year period or for not less

than a 10-year period if such assistance is used for the major rehabilitation or conversion of such building;”.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as an Effective Date note under section 4101 of Title 25, Indians.

Amendment by Pub. L. 104-330 applicable with respect to amounts made available for assistance under this subchapter for fiscal year 1998 and fiscal years thereafter, see section 506(c) of Pub. L. 104-330, set out as a note under section 11371 of this title.

§ 11376. Administrative provisions

(a) Regulations

Not later than 60 days after July 22, 1987, the Secretary shall by notice establish such requirements as may be necessary to carry out the provisions of this part. Such requirements shall be subject to section 553 of title 5. The Secretary shall issue requirements based on the initial notice before the expiration of the 12-month period following July 22, 1987. Prior to the issuance of such requirements in final form, the requirements established by the Secretary implementing the provisions of the emergency shelter grants program under the provisions made effective by section 101(g) of Public Law 99-500 or Public Law 99-591 shall govern the emergency shelter grants program under this part.

(b) Initial allocation of assistance

Not later than the expiration of the 60-day period following the date of enactment of a law providing appropriations to carry out this part, the Secretary shall notify each State, metropolitan city, and urban county that is to receive a direct grant of its allocation of assistance under this part. Such assistance shall be allocated and may be used notwithstanding any failure of the Secretary to issue requirements under subsection (a) of this section.

(c) Minimum standards of habitability

The Secretary shall prescribe such minimum standards of habitability as the Secretary determines to be appropriate to ensure that emergency shelters assisted under this section are environments that provide appropriate privacy, safety, and sanitary and other health-related conditions for homeless persons and families. Grantees are authorized to establish standards of habitability in addition to those prescribed by the Secretary.

(Pub. L. 100-77, title IV, § 416, July 22, 1987, 101 Stat. 498; Pub. L. 101-625, title VIII, § 832(f)(7), (g), Nov. 28, 1990, 104 Stat. 4361; Pub. L. 104-330, title V, § 506(a)(6), Oct. 26, 1996, 110 Stat. 4044.)

REFERENCES IN TEXT

The emergency shelter grants program under the provisions made effective by section 101(g) of Public Law 99-500 or Public Law 99-591, referred to in subsec. (a), means the emergency shelter grants program authorized by title V of H.R. 5313 [Department of Housing and Urban Development—Independent Agencies Appropriations Act, 1987], as incorporated by reference by section 101(g) of Pub. L. 99-500 and 99-591, and enacted into law by section 106 of Pub. L. 100-202, which is set out as a note under section 11361 of this title.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104-330 struck out “Indian tribe,” after “State,”.

1990—Subsec. (b). Pub. L. 101-625, § 832(f)(7), inserted “Indian tribe,” after “State.”

Subsec. (c). Pub. L. 101-625, § 832(g), added subsec. (c).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as an Effective Date note under section 4101 of Title 25, Indians.

Amendment by Pub. L. 104-330 applicable with respect to amounts made available for assistance under this subchapter for fiscal year 1998 and fiscal years thereafter, see section 506(c) of Pub. L. 104-330, set out as a note under section 11371 of this title.

§ 11377. Authorization of appropriations

There are authorized to be appropriated to carry out this part \$138,000,000 for fiscal year 1993 and \$143,796,000 for fiscal year 1994.

(Pub. L. 100-77, title IV, § 417, July 22, 1987, 101 Stat. 498; Pub. L. 100-628, title IV, § 425, Nov. 7, 1988, 102 Stat. 3232; Pub. L. 101-625, title VIII, § 832(a), Nov. 28, 1990, 104 Stat. 4359; Pub. L. 102-550, title XIV, § 1402(a), Oct. 28, 1992, 106 Stat. 4012.)

AMENDMENTS

1992—Pub. L. 102-550 amended section generally. Prior to amendment, section read as follows: “There are authorized to be appropriated to carry out this part \$125,000,000 for fiscal year 1991 and \$138,000,000 for fiscal year 1992.”

1990—Pub. L. 101-625, which directed the general amendment of the “first sentence” of this section, was executed by making the substitution for the only sentence of this section which read: “There are authorized to be appropriated to carry out this part \$120,000,000 for fiscal year 1989 and \$125,000,000 for fiscal year 1990.”

1988—Pub. L. 100-628 amended section generally. Prior to amendment, section read as follows: “In addition to other amounts authorized by law, there are authorized to be appropriated for the emergency shelter grants program \$100,000,000 for fiscal year 1987 and \$120,000,000 for fiscal year 1988.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11372 of this title.

§ 11378. Administrative costs

A recipient may use up to 5 percent of any annual grant received under this part for administrative purposes. A recipient State shall share the amount available for administrative purposes pursuant to the preceding sentence with local governments funded by the State.

(Pub. L. 100-77, title IV, § 418, as added Pub. L. 101-625, title VIII, § 832(b)(1), Nov. 28, 1990, 104 Stat. 4359.)

PART C—SUPPORTIVE HOUSING PROGRAM

§ 11381. Purpose

The purpose of the program under this part is to promote the development of supportive housing and supportive services, including innovative approaches to assist homeless persons in the transition from homelessness, and to promote the provision of supportive housing to homeless persons to enable them to live as independently as possible.

(Pub. L. 100-77, title IV, § 421, as added Pub. L. 102-550, title XIV, § 1403(a), Oct. 28, 1992, 106 Stat. 4013.)

PRIOR PROVISIONS

A prior section 11381, Pub. L. 100-77, title IV, § 421, July 22, 1987, 101 Stat. 498, related to establishment of a supportive housing demonstration program, prior to repeal by Pub. L. 102-550, title XIV, § 1403(a), Oct. 28, 1992, 106 Stat. 4013.

TRANSITIONAL PROVISION

Section 1403(b) of Pub. L. 102-550, as amended by Pub. L. 106-400, § 2, Oct. 30, 2000, 114 Stat. 1675, provided that: “Notwithstanding the amendment made by subsection (a) [adding part C and repealing former parts C and D of this subchapter], before the date of the effectiveness of the regulations issued under section 427 of the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11387] (as amended by subsection (a) of this section) the Secretary may make grants under the provisions of subtitles C and D of [title IV of] the McKinney-Vento Homeless Assistance Act [former parts C and D of this subchapter], as in effect immediately before the enactment of this Act [Oct. 28, 1992]. Any grants made before such effective date shall be subject to the provisions of such subtitles.”

DEMONSTRATION PROJECTS TO REDUCE NUMBER OF HOMELESS FAMILIES IN WELFARE HOTELS

Pub. L. 100-628, title IX, § 903, Nov. 7, 1988, 102 Stat. 3258, as amended by Pub. L. 104-193, title I, § 110(g), Aug. 22, 1996, 110 Stat. 2171, authorized Secretary of Health and Human Services to carry out 2 or 3 demonstration projects to provide housing in transitional facilities for homeless families who are recipients of assistance under a State program funded by part A of subchapter IV of chapter 7 of this title and who reside in commercial or similar transient facilities and authorized appropriations of not more than \$20,000,000 for the grants for fiscal year 1990.

§ 11382. Definitions

For purposes of this part:

(1) The term “applicant” means a State, metropolitan city, urban county, governmental entity, private nonprofit organization, or community mental health association that is a public nonprofit organization, that is eligible to receive assistance under this part and submits an application under section 11386(a) of this title.

(2) The term “disability” means—

(A) a disability as defined in section 423 of this title,

(B) to be determined to have, pursuant to regulations issued by the Secretary, a physical, mental, or emotional impairment which (i) is expected to be of long-continued and indefinite duration, (ii) substantially impedes an individual’s ability to live independently, and (iii) of such a nature that such ability could be improved by more suitable housing conditions,

(C) a developmental disability as defined in section 15002 of this title, or

(D) the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agency for acquired immunodeficiency syndrome.

Subparagraph (D) shall not be construed to limit eligibility under subparagraphs (A) through (C) or the provisions referred to in subparagraphs (A) through (C).

(3) Repealed. Pub. L. 104-330, title V, § 506(a)(7)(B), Oct. 26, 1996, 110 Stat. 4044.

(4) The term “metropolitan city” has the meaning given the term in section 5302 of this title.

(5) The term “operating costs” means expenses incurred by a recipient operating supportive housing under this part with respect to—

(A) the administration, maintenance, repair, and security of such housing;

(B) utilities, fuel, furnishings, and equipment for such housing; and

(C) the conducting of the assessment under section 11386(c)(2) of this title.

(6) The term “outpatient health services” means outpatient health care, outpatient mental health services, outpatient substance abuse services, and case management.

(7) The term “private nonprofit organization” means an organization—

(A) no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual;

(B) that has a voluntary board;

(C) that has an accounting system, or has designated a fiscal agent in accordance with requirements established by the Secretary; and

(D) that practices nondiscrimination in the provision of assistance.

(8) The term “project” means a structure or structures (or a portion of such structure or structures) that is acquired, rehabilitated, constructed, or leased with assistance provided under this part or with respect to which the Secretary provides technical assistance or annual payments for operating costs under this part, or supportive services.

(9) The term “recipient” means any governmental or nonprofit entity that receives assistance under this part.

(10) The term “Secretary” means the Secretary of Housing and Urban Development.

(11) The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and Palau.

(12) The term “supportive housing” means a project that meets the requirements of section 11384 of this title.

(13) The term “supportive services” means services under section 11385 of this title.

(14) The term “urban county” has the meaning given the term in section 5302 of this title.

(Pub. L. 100-77, title IV, § 422, as added Pub. L. 102-550, title XIV, § 1403(a), Oct. 28, 1992, 106 Stat. 4014; amended Pub. L. 104-330, title V, § 506(a)(7), Oct. 26, 1996, 110 Stat. 4044; Pub. L. 106-402, title IV, § 401(b)(14), Oct. 30, 2000, 114 Stat. 1740.)

PRIOR PROVISIONS

A prior section 11382, Pub. L. 100-77, title IV, § 422, July 22, 1987, 101 Stat. 499; Pub. L. 100-242, title V, § 570(i)(1), Feb. 5, 1988, 101 Stat. 1950; Pub. L. 100-628, title IV, §§ 441(a), 442(a), (b)(1), 443, 444, Nov. 7, 1988, 102 Stat. 3232, 3233; Pub. L. 101-625, title VIII, § 833(b), (k)(1), Nov. 28, 1990, 104 Stat. 4362, 4364, defined terms for purposes of the supportive housing demonstration program, prior to repeal by Pub. L. 102-550, § 1403(a).

AMENDMENTS

2000—Par. (2)(C). Pub. L. 106-402, which directed amendment of section 422(2)(C) of the Stewart B. McKinney Homeless Assistance Act by substituting “as

defined in section 15002 of this title, or” for “as defined in section 6001 of this title, or”, was executed to par. (2)(C) of this section, which is section 422 of the McKinney-Vento Homeless Assistance Act, to reflect the probable intent of Congress.

1996—Par. (1). Pub. L. 104-330, § 506(a)(7)(A), struck out “Indian tribe,” after “a State”.

Par. (3). Pub. L. 104-330, § 506(a)(7)(B), struck out par. (3) which read as follows: “The term ‘Indian tribe’ has the meaning given the term in section 5302(a) of this title.”

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as an Effective Date note under section 4101 of Title 25, Indians.

Amendment by Pub. L. 104-330 applicable with respect to amounts made available for assistance under this subchapter for fiscal year 1998 and fiscal years thereafter, see section 506(c) of Pub. L. 104-330, set out as a note under section 11371 of this title.

§ 11383. Eligible activities

(a) In general

The Secretary may provide any project with one or more of the following types of assistance under this part:

(1) Acquisition and rehabilitation

A grant, in an amount not to exceed \$200,000, for the acquisition, rehabilitation, or acquisition and rehabilitation, of an existing structure (including a small commercial property or office space) to provide supportive housing other than emergency shelter or to provide supportive services; except that the Secretary may increase the dollar limitation under this sentence to not more than \$400,000 for areas that the Secretary finds have high acquisition and rehabilitation costs. The repayment of any outstanding debt owed on a loan made to purchase an existing structure shall be considered to be a cost of acquisition eligible for a grant under this paragraph if the structure was not used as supportive housing, or to provide supportive services, before the receipt of assistance.

(2) New construction

A grant, in an amount not to exceed \$400,000, for new construction of a structure to provide supportive housing.

(3) Leasing

A grant for leasing of an existing structure or structures, or portions thereof, to provide supportive housing or supportive services during the period covered by the application. Grant recipients may reapply for such assistance as needed to continue the use of such structure for purposes of this part.

(4) Operating costs

Annual payments for operating costs of housing assisted under this part, not to exceed 75 percent of the annual operating costs of such housing. Grant recipients may reapply for such assistance as needed to continue the use of the housing for purposes of this part.

(5) Supportive services

A grant for costs of supportive services provided to homeless individuals. Any recipient,

including program recipients under this subchapter before October 28, 1992, may reapply for such assistance or for the renewal of such assistance to continue services funded under prior grants or to provide other services.

(6) Technical assistance

Technical assistance in carrying out the purposes of this part.

(7) Management information system

A grant for the costs of implementing and operating management information systems for purposes of collecting unduplicated counts of homeless people and analyzing patterns of use of assistance funded under this chapter.

(b) Use restrictions

(1) Acquisition, rehabilitation, and new construction

Projects assisted under subsection (a)(1) or (2) of this section shall be operated for not less than 20 years for the purpose specified in the application.

(2) Other assistance

Projects assisted under subsection (a)(3), (4), (5), or (6) of this section (but not under subsection (a)(1) or (2) of this section) shall be operated for the purposes specified in the application for the duration of the period covered by the grant.

(3) Conversion

If the Secretary determines that a project is no longer needed for use as supportive housing and approves the use of the project for the direct benefit of low-income persons pursuant to a request for such use by the recipient operating the project, the Secretary may authorize the recipient to convert the project to such use.

(c) Repayment of assistance and prevention of undue benefits

(1) Repayment

The Secretary shall require recipients to repay 100 percent of any assistance received under subsection (a)(1) or (2) of this section if the project ceases to be used as supportive housing within 10 years after the project is placed in service. If such project is used as supportive housing for more than 10 years, the Secretary shall reduce the percentage of the amount required to be repaid by 10 percentage points for each year in excess of 10 that the project is used as supportive housing.

(2) Prevention of undue benefits

Except as provided in paragraph (3), upon any sale or other disposition of a project assisted under subsection (a)(1) or (2) of this section occurring before the expiration of the 20-year period beginning on the date that the project is placed in service, the recipient shall comply with such terms and conditions as the Secretary may prescribe to prevent the recipient from unduly benefiting from such sale or disposition.

(3) Exception

A recipient shall not be required to comply with the terms and conditions prescribed

under paragraphs (1) and (2) if the sale or disposition of the project results in the use of the project for the direct benefit of very low-income persons or if all of the proceeds are used to provide supportive housing meeting the requirements of this part.

(Pub. L. 100-77, title IV, § 423, as added Pub. L. 102-550, title XIV, § 1403(a), Oct. 28, 1992, 106 Stat. 4015; amended Pub. L. 106-377, § 1(a)(1) [title II, § 226], Oct. 27, 2000, 114 Stat. 1441, 1441A-30.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(7), was in the original "this Act", meaning Pub. L. 100-77, July 22, 1987, 101 Stat. 482, as amended, known as the McKinney-Vento Homeless Assistance Act. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of this title and Tables.

PRIOR PROVISIONS

A prior section 11383, Pub. L. 100-77, title IV, § 423, July 22, 1987, 101 Stat. 501; Pub. L. 100-628, title IV, §§ 441(b), (c), 445(a), 446-448(a), 449, Nov. 7, 1988, 102 Stat. 3233, 3234; Pub. L. 101-625, title VIII, § 833(c)-(e), (g), Nov. 28, 1990, 104 Stat. 4362, 4363, outlined types of assistance provided under the supportive housing demonstration program, prior to repeal by Pub. L. 102-550, § 1403(a).

AMENDMENTS

2000—Subsec. (a)(7). Pub. L. 106-377 added par. (7).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11386, 11389 of this title.

§ 11384. Supportive housing

(a) In general

Housing providing supportive services for homeless individuals shall be considered supportive housing for purposes of this part if—

(1) the housing is safe and sanitary and meets any applicable State and local housing codes and licensing requirements in the jurisdiction in which the housing is located; and

(2) the housing—

(A) is transitional housing;

(B) is permanent housing for homeless persons with disabilities; or

(C) is, or is part of, a particularly innovative project for, or alternative methods of, meeting the immediate and long-term needs of homeless individuals and families.

(b) Transitional housing

For purposes of this section, the term "transitional housing" means housing, the purpose of which is to facilitate the movement of homeless individuals and families to permanent housing within 24 months or such longer period as the Secretary determines necessary. The Secretary may deny assistance for housing based on a violation of this subsection only if the Secretary determines that a substantial number of homeless individuals or families have remained in the housing longer than such period.

(c) Permanent housing for homeless persons with disabilities

For purposes of this section, the term "permanent housing for homeless persons with disabilities" means community-based housing for

homeless persons with disabilities that provides long-term housing and supportive services for not more than—

- (1) 8 such persons in a single structure or contiguous structures;
- (2) 16 such persons, but only if not more than 20 percent of the units in a structure are designated for such persons; or
- (3) more than 16 persons if the applicant demonstrates that local market conditions dictate the development of a large project and such development will achieve the neighborhood integration objectives of the program within the context of the affected community.

(d) Single room occupancy dwellings

A project may provide supportive housing or supportive services in dwelling units that do not contain bathrooms or kitchen facilities and are appropriate for use as supportive housing or in projects containing some or all such dwelling units.

(Pub. L. 100-77, title IV, § 424, as added Pub. L. 102-550, title XIV, § 1403(a), Oct. 28, 1992, 106 Stat. 4016.)

PRIOR PROVISIONS

A prior section 11384, Pub. L. 100-77, title IV, § 424, July 22, 1987, 101 Stat. 501; Pub. L. 100-628, title IV, §§ 442(b)(2), 448(b), 450(a)(1), (b), 451, Nov. 7, 1988, 102 Stat. 3233-3235; Pub. L. 101-625, title VIII, § 833(f), (h)-(j), (k)(2), Nov. 28, 1990, 104 Stat. 4363-4365, provided for applications, selection criteria, and other program requirements for assistance under the supportive housing demonstration program, prior to repeal by Pub. L. 102-550, § 1403(a).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11382 of this title.

§ 11385. Supportive services

(a) In general

To the extent practicable, each project shall provide supportive services for residents of the project and homeless persons using the project, which may be designed by the recipient or participants.

(b) Requirements

Supportive services provided in connection with a project shall address the special needs of individuals (such as homeless persons with disabilities and homeless families with children) intended to be served by a project.

(c) Services

Supportive services may include such activities as (A) establishing and operating a child care services program for homeless families, (B) establishing and operating an employment assistance program, (C) providing outpatient health services, food, and case management, (D) providing assistance in obtaining permanent housing, employment counseling, and nutritional counseling, (E) providing security arrangements necessary for the protection of residents of supportive housing and for homeless persons using the housing or project, (F) providing assistance in obtaining other Federal, State, and local assistance available for such residents (including mental health benefits, employment

counseling, and medical assistance, but not including major medical equipment), and (G) providing other appropriate services.

(d) Provision of services

Services provided pursuant to this section may be provided directly by the recipient or by contract with other public or private service providers. Such services may be provided to homeless individuals who do not reside in supportive housing.

(e) Coordination with Secretary of Health and Human Services

(1) Approval

Promptly upon receipt of any application for assistance under this part that includes the provision of outpatient health services, the Secretary of Housing and Urban Development shall consult with the Secretary of Health and Human Services with respect to the proposed outpatient health services. If, within 45 days of such consultation, the Secretary of Health and Human Services determines that the proposal for delivery of the outpatient health services does not meet guidelines for determining the appropriateness of such proposed services, the Secretary of Housing and Urban Development may require resubmission of the application, and the Secretary of Housing and Urban Development may not approve such portion of the application unless and until such portion has been resubmitted in a form that the Secretary of Health and Human Services determines meets such guidelines.

(2) Guidelines

The Secretary of Housing and Urban Development and the Secretary of Health and Human Services shall jointly establish guidelines for determining the appropriateness of proposed outpatient health services under this section. Such guidelines shall include any provisions necessary to enable the Secretary of Housing and Urban Development to meet the time limits under this part for the final selection of applications for assistance.

(Pub. L. 100-77, title IV, § 425, as added Pub. L. 102-550, title XIV, § 1403(a), Oct. 28, 1992, 106 Stat. 4017.)

PRIOR PROVISIONS

A prior section 11385, Pub. L. 100-77, title IV, § 425, July 22, 1987, 101 Stat. 503; Pub. L. 100-628, title IV, § 452, Nov. 7, 1988, 102 Stat. 3235; Pub. L. 101-625, title VIII, § 833(k)(3), Nov. 28, 1990, 104 Stat. 4365, required recipients of assistance under supportive housing demonstration program to obtain an equal amount of funding from non-Federal sources, prior to repeal by Pub. L. 102-550, § 1403(a).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11382, 11389 of this title.

§ 11386. Program requirements

(a) Applications

(1) Form and procedure

Applications for assistance under this part shall be submitted by applicants in the form and in accordance with the procedures estab-

lished by the Secretary. The Secretary may not give preference or priority to any application on the basis that the application was submitted by any particular type of applicant entity.

(2) Contents

The Secretary shall require that applications contain at a minimum—

(A) a description of the proposed project, including the activities to be undertaken;

(B) a description of the size and characteristics of the population that would occupy the supportive housing assisted under this part;

(C) a description of the public and private resources that are expected to be made available for the project;

(D) in the case of projects assisted under section 11383(a)(1) or (2) of this title, assurances satisfactory to the Secretary that the project will be operated for not less than 20 years for the purpose specified in the application;

(E) in the case of projects assisted under this subchapter that do not receive assistance under such sections, annual assurances during the period specified in the application that the project will be operated for the purpose specified in the application for such period;

(F) a certification from the public official responsible for submitting the comprehensive housing affordability strategy under section 12705 of this title for the State or unit of general local government within which the project is located that the proposed project is consistent with the approved housing strategy of such State or unit of general local government; and

(G) a certification that the applicant will comply with the requirements of the Fair Housing Act [42 U.S.C. 3601 et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], and the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], and will affirmatively further fair housing.

(3) Site control

The Secretary shall require that each application include reasonable assurances that the applicant will own or have control of a site for the proposed project not later than the expiration of the 12-month period beginning upon notification of an award for grant assistance, unless the application proposes providing supportive housing assisted under section 11383(a)(3) of this title or housing that will eventually be owned or controlled by the families and individuals served. An applicant may obtain ownership or control of a suitable site different from the site specified in the application. If any recipient fails to obtain ownership or control of the site within 12 months after notification of an award for grant assistance, the grant shall be recaptured and reallocated under this part.

(b) Selection criteria

The Secretary shall select applicants approved by the Secretary as to financial responsibility

to receive assistance under this part by a national competition based on criteria established by the Secretary, which shall include—

(1) the ability of the applicant to develop and operate a project;

(2) the innovative quality of the proposal in providing a project;

(3) the need for the type of project proposed by the applicant in the area to be served;

(4) the extent to which the amount of assistance to be provided under this part will be supplemented with resources from other public and private sources;

(5) the cost-effectiveness of the proposed project;

(6) the extent to which the applicant has demonstrated coordination with other Federal, State, local, private and other entities serving homeless persons in the planning and operation of the project, to the extent practicable; and

(7) such other factors as the Secretary determines to be appropriate to carry out this part in an effective and efficient manner.

(c) Required agreements

The Secretary may not provide assistance for any project under this part unless the applicant agrees—

(1) to operate the proposed project in accordance with the provisions of this part;

(2) to conduct an ongoing assessment of the supportive services required by homeless individuals served by the project and the availability of such services to such individuals;

(3) to provide such residential supervision as the Secretary determines is necessary to facilitate the adequate provision of supportive services to the residents and users of the project;

(4) to monitor and report to the Secretary on the progress of the project;

(5) to develop and implement procedures to ensure (A) the confidentiality of records pertaining to any individual provided family violence prevention or treatment services through any project assisted under this part, and (B) that the address or location of any family violence shelter project assisted under this part will not be made public, except with written authorization of the person or persons responsible for the operation of such project;

(6) to the maximum extent practicable, to involve homeless individuals and families, through employment, volunteer services, or otherwise, in constructing, rehabilitating, maintaining, and operating the project assisted under this part and in providing supportive services for the project; and

(7) to comply with such other terms and conditions as the Secretary may establish to carry out this part in an effective and efficient manner.

(d) Occupancy charge

Each homeless individual or family residing in a project providing supportive housing may be required to pay an occupancy charge in an amount determined by the recipient providing the project, which may not exceed the amount determined under section 1437a(a) of this title. Occupancy charges paid may be reserved, in

whole or in part, to assist residents in moving to permanent housing.

(e) Matching funding

Each recipient shall be required to supplement the amount of assistance provided under paragraphs (1) and (2) of section 11383(a) of this title with an equal amount of funds from sources other than this part.

(f) Flood protection standards

Flood protection standards applicable to housing acquired, rehabilitated, constructed, or assisted under this part shall be no more restrictive than the standards applicable under Executive Order No. 11988 (May 24, 1977) to the other programs under this subchapter.

(g) Participation of homeless individuals

The Secretary shall, by regulation, require each recipient to provide for the participation of not less than 1 homeless individual or former homeless individual on the board of directors or other equivalent policymaking entity of the recipient, to the extent that such entity considers and makes policies and decisions regarding any project, supportive services, or assistance provided under this part. The Secretary may grant waivers to applicants unable to meet the requirement under the preceding sentence if the applicant agrees to otherwise consult with homeless or formerly homeless individuals in considering and making such policies and decisions.

(h) Limitation on use of funds

No assistance received under this part (or any State or local government funds used to supplement such assistance) may be used to replace other State or local funds previously used, or designated for use, to assist homeless persons.

(i) Limitation on administrative expenses

No recipient may use more than 5 percent of a grant received under this part for administrative purposes.

(j) Termination of assistance

If an individual or family who receives assistance under this part (not including residents of an emergency shelter) from a recipient violates program requirements, the recipient may terminate assistance in accordance with a formal process established by the recipient that recognizes the rights of individuals receiving such assistance to due process of law, which may include a hearing.

(Pub. L. 100-77, title IV, § 426, as added Pub. L. 102-550, title XIV, § 1403(a), Oct. 28, 1992, 106 Stat. 4018.)

REFERENCES IN TEXT

The Fair Housing Act, referred to in subsec. (a)(2)(G), is title VIII of Pub. L. 90-284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I (§3601 et seq.) of chapter 45 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (a)(2)(G), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see

Short Title note set out under section 2000a of this title and Tables.

The Age Discrimination Act of 1975, referred to in subsec. (a)(2)(G), is title III of Pub. L. 94-135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

Executive Order No. 11988, referred to in subsec. (f), is set out as a note under section 4321 of this title.

PRIOR PROVISIONS

A prior section 11386, Pub. L. 100-77, title IV, § 426, July 22, 1987, 101 Stat. 503, related to establishment of guidelines for purposes of a supportive housing demonstration program, prior to repeal by Pub. L. 102-550, §1403(a).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11382 of this title.

§ 11387. Regulations

Not later than the expiration of the 90-day period beginning on October 28, 1992, the Secretary shall issue interim regulations to carry out this part, which shall take effect upon issuance. The Secretary shall issue final regulations to carry out this part after notice and opportunity for public comment regarding the interim regulations, pursuant to the provisions of section 553 of title 5 (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section). The duration of the period for public comment shall not be less than 60 days, and the final regulations shall be issued not later than the expiration of the 60-day period beginning upon the conclusion of the comment period and shall take effect upon issuance.

(Pub. L. 100-77, title IV, § 427, as added Pub. L. 102-550, title XIV, § 1403(a), Oct. 28, 1992, 106 Stat. 4021.)

PRIOR PROVISIONS

A prior section 11387, Pub. L. 100-77, title IV, § 427, July 22, 1987, 101 Stat. 504; Pub. L. 100-628, title IV, § 453, Nov. 7, 1988, 102 Stat. 3236, provided for reports to Congress summarizing the activities carried out under the supportive housing demonstration program, prior to repeal by Pub. L. 102-550, § 1403(a).

§ 11388. Reports to Congress

The Secretary shall submit a report to the Congress annually, summarizing the activities carried out under this part and setting forth the findings, conclusions, and recommendations of the Secretary as a result of the activities. The report shall be submitted not later than 4 months after the end of each fiscal year (except that, in the case of fiscal year 1993, the report shall be submitted not later than 6 months after the end of the fiscal year).

(Pub. L. 100-77, title IV, § 428, as added Pub. L. 102-550, title XIV, § 1403(a), Oct. 28, 1992, 106 Stat. 4021.)

PRIOR PROVISIONS

A prior section 11388, Pub. L. 100-77, title IV, § 428, July 22, 1987, 101 Stat. 504; Pub. L. 100-628, title IV, §§ 454, 455, Nov. 7, 1988, 102 Stat. 3236; Pub. L. 101-625, title VIII, § 833(a), Nov. 28, 1990, 104 Stat. 4362, authorized appropriations for the supportive housing dem-

onstration program, prior to repeal by Pub. L. 102-550, §1403(a).

§ 11389. Authorization of appropriations

(a) Authorization of appropriations

There are authorized to be appropriated to carry out this part \$204,000,000 for fiscal year 1993 and \$212,568,000 for fiscal year 1994.

(b) Set-asides

Of any amounts appropriated to carry out this part—

(1) not less than 25 percent shall be allocated to projects designed primarily to serve homeless families with children;

(2) not less than 25 percent shall be allocated to projects designed primarily to serve homeless persons with disabilities; and

(3) not less than 10 percent shall be allocated for use only for providing supportive services under sections 11383(a)(5) and 11385 of this title, not provided in conjunction with supportive housing.

(c) Reallocations

If, following the receipt of applications for the final funding round under this part for any fiscal year, any amount set aside for assistance pursuant to subsection (b) of this section will not be required to fund the approvable applications submitted for such assistance, the Secretary shall reallocate such amount for other assistance pursuant to this part.

(Pub. L. 100-77, title IV, § 429, as added Pub. L. 102-550, title XIV, § 1403(a), Oct. 28, 1992, 106 Stat. 4021.)

PART D—SAFE HAVENS FOR HOMELESS INDIVIDUALS DEMONSTRATION PROGRAM

§ 11391. Establishment of demonstration

(a) In general

The Secretary may make grants to applicants to demonstrate the desirability and feasibility of providing very low-cost housing, to be known as safe havens, to homeless persons who, at the time, are unwilling or unable to participate in mental health treatment programs or to receive other supportive services.

(b) Purposes

The demonstration program carried out under this part shall demonstrate—

(1) whether and on what basis eligible persons choose to reside in safe havens;

(2) the extent to which, after a period of residence in a safe haven, residents are willing to participate in mental health treatment programs, substance abuse treatment, or other treatment programs and to move toward a more traditional form of permanent housing and the availability in the community of such permanent housing and treatment programs;

(3) whether safe havens are cost-effective in comparison with other alternatives for eligible persons; and

(4) the various ways in which safe havens may be used to provide accommodations and low-demand services and referrals for eligible persons.

(Pub. L. 100-77, title IV, § 431, as added Pub. L. 102-550, title XIV, § 1404, Oct. 28, 1992, 106 Stat. 4022.)

PRIOR PROVISIONS

A prior section 11391, Pub. L. 100-77, title IV, § 431, July 22, 1987, 101 Stat. 504; Pub. L. 100-242, title V, § 570(i)(2), Feb. 5, 1988, 101 Stat. 1950, provided definitions for a program of supplemental assistance for facilities to assist the homeless, prior to repeal by Pub. L. 102-550, §1403(a).

§ 11392. Definitions

For purposes of this part:

(1) Applicant

The term “applicant” means a nonprofit corporation, public nonprofit organization, State, or unit of general local government.

(2) Eligible person

The term “eligible person” means an individual who—

(A) is seriously mentally ill and resides primarily in a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings, which may include occasional residence in an emergency shelter; and

(B) is currently unwilling or unable to participate in mental health or substance abuse treatment programs or to receive other supportive services.

Such term does not include a person whose sole impairment is substance abuse.

(3) Facility

The term “facility” means a structure or a clearly identifiable portion of a structure that is assisted under this part.

(4) Low-demand services and referrals

The term “low-demand services and referrals” means the provision of health care, mental health, substance abuse, and other supportive services and referrals for services in a non-coercive manner, which may include medication management, education, counseling, job training, and assistance in obtaining entitlement benefits and in obtaining other supportive services including mental health treatment and substance abuse treatment.

(5) Nonprofit organization

The term “nonprofit organization” means an organization—

(A) no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual;

(B) that has a voluntary board;

(C) that has an accounting system, or has designated a fiscal agent in accordance with requirements established by the Secretary; and

(D) that practices nondiscrimination in the provision of assistance.

(6) Operating costs

The term “operating costs” means expenses incurred by a recipient operating a safe haven under this part with respect to—

(A) the operation of the facility, including the cost of 24-hour management, and maintenance, repair, and security;

(B) utilities, fuel, furnishings, and equipment for such housing; and

(C) other reasonable costs necessary to the operation of the facility, which may include appropriate outreach and drop-in services.

(7) Recipient

The term “recipient” means an applicant that receives assistance under this part.

(8) Safe haven

The term “safe haven” means a facility—

(A) that provides 24-hour residence for eligible persons who may reside for an unspecified duration;

(B) that provides private or semiprivate accommodations;

(C) that may provide for the common use of kitchen facilities, dining rooms, and bathrooms;

(D) that may provide supportive services to eligible persons who are not residents on a drop-in basis; and

(E) in which overnight occupancy is limited to no more than 25 persons.

(9) Secretary

The term “Secretary” means the Secretary of Housing and Urban Development.

(10) Seriously mentally ill

The term “seriously mentally ill” means having a severe and persistent mental or emotional impairment that seriously limits a person’s ability to live independently.

(11) State

The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and Palau.

(12) Unit of general local government

The term “unit of general local government” has the meaning given the term in section 5302(a) of this title.

(Pub. L. 100-77, title IV, § 432, as added Pub. L. 102-550, title XIV, § 1404, Oct. 28, 1992, 106 Stat. 4022.)

PRIOR PROVISIONS

A prior section 11392, Pub. L. 100-77, title IV, § 432, July 22, 1987, 101 Stat. 505; Pub. L. 100-628, title IV, §§ 461-463(a), Nov. 7, 1988, 102 Stat. 3236, 3237; Pub. L. 101-625, title VIII, § 834(b)-(d), Nov. 28, 1990, 104 Stat. 4365, 4366, provided for supplemental assistance for facilities to assist the homeless, prior to repeal by Pub. L. 102-550, § 1403(a).

§ 11393. Program assistance**(a) In general****(1) Eligible activities**

The Secretary may provide assistance with respect to a program under this part for the following activities:

(A) The construction of a structure for use in providing a safe haven or the acquisition, rehabilitation, or acquisition and rehabilitation of an existing structure for use in providing a safe haven.

(B) The leasing of an existing structure for use in providing a safe haven.

(C) To cover the operating costs of a safe haven.

(D) To cover the costs of administering a safe haven program, not to exceed 10 percent of the amounts made available for activities under subparagraphs (A) through (C).

(E) Outreach activities designed to inform eligible persons about and attract them to a safe haven program.

(F) The provision of low-demand services and referrals for residents of a safe haven, except that grants under this part may not be used to cover more than 50 percent of the cost of such services and referrals.

(G) Other activities that further the purposes of this part, including the modification of an existing facility to use a portion of the facility to provide with a safe haven.

(2) Period of assistance

Assistance may be provided to any safe haven program for activities under subparagraphs (B) through (F) of paragraph (1) for a period of not more than 5 years, except that the Secretary may, upon application by the recipient, provide assistance for an additional period of time, not to exceed 5 years, subject to—

(A) the determination of the Secretary that the performance of the recipient under this part is satisfactory; and

(B) the availability of appropriations for such purpose.

(3) Limit on amount

The total amount of assistance provided to any recipient under this subsection may not exceed \$400,000 in any 5-year period.

(b) Matching funding**(1) In general**

Each recipient shall supplement a grant provided under this part with an equal amount of funds from sources other than this part. Each recipient shall certify to the Secretary that it has complied with this paragraph, and shall include with the certification a description of the sources and amounts of such supplemental funds.

(2) Calculation of amounts

In calculating the amount of supplemental funds required under paragraph (1), a recipient may include any funds derived from another source, the value of any lease on a building, any salary paid to staff to carry out the program of the recipient, and the value of the time and services contributed by volunteers, at a rate determined by the Secretary, to carry out the program of the recipient.

(Pub. L. 100-77, title IV, § 433, as added Pub. L. 102-550, title XIV, § 1404, Oct. 28, 1992, 106 Stat. 4024.)

PRIOR PROVISIONS

A prior section 11393, Pub. L. 100-77, title IV, § 433, July 22, 1987, 101 Stat. 507, related to establishment of regulations for program to provide supplemental assistance for facilities to assist the homeless, prior to repeal by Pub. L. 102-550, § 1403(a).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11394 of this title.

§ 11394. Program requirements**(a) Applications**

Applications for assistance under this part shall be submitted by an applicant in such form

and in accordance with such procedures as the Secretary shall establish, and such applications shall contain at a minimum—

- (1) a description of the proposed facility;
- (2) a description of the number and characteristics of the eligible persons expected to occupy the safe haven;
- (3) a plan for identifying and selecting eligible persons to participate;
- (4) a program plan, containing a description of the method—
 - (A) of operation of the facility, including staffing plans and facility rules;
 - (B) by which the applicant will secure supportive services for residents of the safe haven;
 - (C) by which the applicant will monitor the willingness of residents to engage in treatment programs and other supportive services;
 - (D) by which access to supportive services will be secured for residents willing to use them;
 - (E) by which access to permanent housing with appropriate services, such as the Shelter Plus Care program under part F of this subchapter, will be sought after residents are stabilized; and
 - (F) by which the applicant will conduct outreach activities to facilitate the entrance of eligible persons into the safe haven;
- (5) a plan to ensure that adequate security precautions are taken to make the facility safe for the residents;
- (6) an estimate of program costs;
- (7) a description of the resources that are expected to be made available in accordance with section 11393(b) of this title;
- (8) assurances satisfactory to the Secretary that the facility will have 24-hour, on-site management, if practicable;
- (9) assurances satisfactory to the Secretary that the facility will be operated for the purpose specified in the application for each year in which assistance is provided under this part;
- (10) a certification by the public official responsible for submitting the comprehensive housing affordability strategy under section 12705 of this title for the State or unit of general local government within which the facility is located that the proposed activities are consistent with the approved housing strategy for such jurisdiction;
- (11) a certification that the applicant will comply with the requirements of the Fair Housing Act [42 U.S.C. 3601 et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], and the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], and will affirmatively further fair housing;
- (12) a plan for program evaluation based on information that is collected on a periodic basis regarding the characteristics of the residents, including their movement in and out of the safe haven, their willingness to use low-demand services and referrals, the availability and quality of services used, and the movement of residents toward a more traditional form of permanent housing after a period of residency in the safe haven; and

(13) such other information as the Secretary may require.

(b) Site control

The Secretary shall require that an applicant furnish reasonable assurances that the applicant will have control of a site for the proposed facility not later than 1 year after notification of an award of assistance under this part. If an applicant fails to obtain control of the site within this period, the grant shall be recaptured by the Secretary and reallocated for use under this part.

(c) Selection criteria

The Secretary shall establish selection criteria for selecting applicants to receive assistance under this part pursuant to a national competition, which shall include—

- (1) the extent to which the applicant demonstrates the ability to develop and operate a safe haven;
- (2) the extent to which there is a need for a safe haven in the jurisdiction in which the facility will be located;
- (3) the extent to which the program would link eligible persons to permanent housing and supportive services after stabilization in a safe haven;
- (4) the cost-effectiveness of the proposed program;
- (5) providing for geographical diversity among applicants selected to receive assistance;
- (6) the extent to which the safe haven would meet the need of the eligible persons proposed to be served by the safe haven; and
- (7) such other factors as the Secretary determines to be appropriate for purposes of carrying out the program established under this part in an effective and efficient manner.

(d) Required agreements

The Secretary may not provide assistance under this part for any safe haven program unless the applicant agrees—

- (1) to develop and operate the proposed facility as a safe haven in accordance with the provisions of this part;
- (2) to ensure that the facility meets any standards of habitability established by the Secretary;
- (3) to provide low-demand services and referrals for the residents of the safe haven;
- (4) to prohibit the use of illegal drugs and alcohol in the facility;
- (5) to ensure that adequate security precautions are taken to make the facility safe for the residents;
- (6) not to establish limitations on the duration of residency;
- (7) not to require participation in low-demand services and referrals as a condition of occupancy;
- (8) to monitor and report to the Secretary on progress in carrying out the safe haven program;
- (9) to the maximum extent practicable, to involve eligible persons, through employment, volunteer services, or otherwise, in renovating, maintaining, and operating facilities assisted under this part and in providing services assisted under this part;

(10) to provide for the participation of not less than 1 homeless individual or former homeless individual on the board of directors or other equivalent policymaking entity of such recipient (in accordance with regulations that the Secretary shall issue), to the extent that such entity considers and makes policies and decisions regarding any facility or services assisted under this part, or to otherwise provide for the consultation and participation of such an individual in considering and making such policies and decisions; and

(11) to comply with such other terms and conditions as the Secretary may establish for purposes of carrying out the program established under this part in an effective and efficient manner.

The Secretary may waive the applicability of the requirement under paragraph (10) for an applicant that is unable to meet such requirement, if the applicant agrees to otherwise consult with homeless or formerly homeless individuals in considering and making such policies and decisions.

(Pub. L. 100-77, title IV, § 434, as added Pub. L. 102-550, title XIV, § 1404, Oct. 28, 1992, 106 Stat. 4025.)

REFERENCES IN TEXT

The Fair Housing Act, referred to in subsec. (a)(11), is title VIII of Pub. L. 90-284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I (§ 3601 et seq.) of chapter 45 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (a)(11), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Age Discrimination Act of 1975, referred to in subsec. (a)(11), is title III of Pub. L. 94-135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§ 6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

PRIOR PROVISIONS

A prior section 11394, Pub. L. 100-77, title IV, § 434, July 22, 1987, 101 Stat. 508; Pub. L. 100-628, title IV, § 464, Nov. 7, 1988, 102 Stat. 3237; Pub. L. 101-625, title VIII, § 834(a), Nov. 28, 1990, 104 Stat. 4365, authorized appropriations for supplemental assistance for facilities to assist the homeless, prior to repeal by Pub. L. 102-550, § 1403(a).

§ 11395. Occupancy charge

Each eligible person who resides in a facility assisted under this part shall pay an occupancy charge in an amount determined by the recipient, but not to exceed the amount determined under section 1437a(a) of this title. The occupancy charge may be phased in or reduced based on the type of living accommodations provided. The recipient may waive occupancy charges for limited periods of time for residents unwilling or unable to pay them. Occupancy charges paid may be reserved to assist residents in moving to a more traditional form of permanent housing.

(Pub. L. 100-77, title IV, § 435, as added Pub. L. 102-550, title XIV, § 1404, Oct. 28, 1992, 106 Stat. 4027.)

§ 11396. Termination of assistance

If an eligible person who resides in a safe haven or who receives low-demand services or referrals endangers the safety, welfare, or health of other residents, or repeatedly violates a condition of occupancy contained in the rules for the safe haven (as set forth in the application submitted under this part), the recipient may terminate such residency or assistance in accordance with a formal process established by the rules for the safe haven, which may include a hearing.

(Pub. L. 100-77, title IV, § 436, as added Pub. L. 102-550, title XIV, § 1404, Oct. 28, 1992, 106 Stat. 4027.)

§ 11397. Evaluation and report

The Secretary shall conduct an evaluation of the safe haven demonstration program under this part and shall submit a report to the Congress, not later than December 31, 1994, which shall set forth the findings of the Secretary as a result of the evaluation.

(Pub. L. 100-77, title IV, § 437, as added Pub. L. 102-550, title XIV, § 1404, Oct. 28, 1992, 106 Stat. 4027.)

§ 11398. Regulations

(a) In general

The Secretary shall, by notice published in the Federal Register, establish such requirements as may be necessary to carry out the amendments made by this part.

(b) Consultation

In establishing requirements to carry out the provisions of this part, and in considering applications under this part, the Secretary shall consult with officials of the appropriate agencies of the Department of Health and Human Services and with representative provider and public interest groups.

(c) Eligibility for SSI and medicaid

(1) Supplemental security income

All provisions of the Supplemental Security Income program under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.] and of State programs in supplementation thereof shall apply to participants in the safe havens demonstration program under this part, except that no individual living in a safe haven shall—

(A) be considered an inmate of a public institution (as provided in section 1611(e)(1)(A) of such Act [42 U.S.C. 1382(e)(1)(A)]); or

(B) have benefits under such title XVI [42 U.S.C. 1381 et seq.] reduced or terminated because of the receipt of support and maintenance (as provided in section 1612(a)(2)(A) of such Act [42 U.S.C. 1382a(a)(2)(A)]), to the extent such support and maintenance is received as a result of participation in the safe havens demonstration program.

(2) Medicaid

A safe haven shall not be considered a hospital, nursing facility, institution for mental disease as defined under section 1905(i) of the

Social Security Act [42 U.S.C. 1396d(i)], or any other inpatient facility, for purposes of the program under title XIX of such Act [42 U.S.C. 1396 et seq.], and individuals shall not be denied eligibility for medicaid because of residency in such residence.

(Pub. L. 100-77, title IV, § 438, as added Pub. L. 102-550, title XIV, § 1404, Oct. 28, 1992, 106 Stat. 4027.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (c), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVI and XIX of the Act are classified generally to subchapters XVI (§1381 et seq.) and XIX (§1396 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

§ 11399. Authorization of appropriations

There are authorized to be appropriated to carry out this part \$62,000,000 for fiscal year 1993 and \$64,604,000 for fiscal year 1994.

(Pub. L. 100-77, title IV, § 439, as added Pub. L. 102-550, title XIV, § 1404, Oct. 28, 1992, 106 Stat. 4028.)

PART E—MISCELLANEOUS PROVISIONS

§ 11401. Section 1437f assistance for single room occupancy dwellings

(a) Increase in budget authority

The budget authority available under section 1437c(c) of this title for assistance under section 1437f(e)(2)¹ of this title is authorized to be increased by \$105,000,000 on or after October 1, 1992, and by \$109,410,000 on or after October 1, 1993.

(b) Use of funds

The amounts made available under this section shall be used only in connection with the moderate rehabilitation of housing described in section 1437f(n)¹ of this title for occupancy by homeless individuals, except that amounts made available under this section may be used in connection with the moderate rehabilitation of efficiency units if the building owner agrees to pay the additional cost of rehabilitating and operating such units,² and except that the Secretary may provide amounts available under this section to private nonprofit organizations that submit applications for such assistance that are approved by the Secretary.

(c) Allocation

The amounts made available under this section shall be allocated by the Secretary of Housing and Urban Development on the basis of a national competition to the applicants that best demonstrate a need for the assistance under this section and the ability to undertake and carry out a program to be assisted under this section. To be considered for assistance under this section, an applicant shall submit to the Secretary of Housing and Urban Development a written proposal containing—

(1) a description of the size and characteristics of the population within the applicant's

jurisdiction that would occupy single room occupancy dwellings;

(2) a listing of additional commitments from public and private sources that the applicant might be able to provide in connection with the program;

(3) an inventory of suitable housing stock to be rehabilitated with such assistance;

(4) a description of the interest that has been expressed by builders, developers, and others (including profit and nonprofit organizations) in participating in the program; and

(5) assurances satisfactory to the Secretary that the applicant, to the maximum extent practicable, will involve homeless individuals and families, through employment, volunteer services, or otherwise, in rehabilitating and operating facilities assisted under this section and in providing services for occupants of such facilities.

No single city or urban county shall be eligible to receive more than 10 percent of the assistance made available under this section.

(d) Fire and safety improvements

Each contract for housing assistance payments entered into with the authority provided under this section shall require the installation of a sprinkler system that protects all major spaces, hard wired smoke detectors, and such other fire and safety improvements as may be required by State or local law. For purposes of this subsection, the term "major spaces" means hallways, large common areas, and other areas specified in local fire, building, or safety codes.

(e) Cost limitation

(1) The total cost of rehabilitation that may be compensated for in a contract for housing assistance payments entered into with the authority provided under this section shall not exceed \$14,000 per unit, plus the expenditures required by subsection (d) of this section.

(2) The Secretary of Housing and Urban Development shall increase the limitation contained in paragraph (1) by an amount the Secretary determines is reasonable and necessary to accommodate special local conditions, including—

(A) high construction costs; or

(B) stringent fire or building codes.

(3) The Secretary of Housing and Urban Development shall increase the limitation in paragraph (1) on October 1 of each year by an amount necessary to take into account increases in construction costs during the previous 12-month period.

(f) Contract requirements

Each contract for annual contributions entered into with a³ approved applicant to obligate the authority made available under this section shall—

(1) commit the Secretary of Housing and Urban Development to make such authority available to the approved applicant for an aggregate period of 10 years, and require that any amendments increasing such authority shall be available for the remainder of such 10-year period;

¹ See References in Text note below.

² So in original. The period before the comma probably should not appear.

³ So in original. Probably should be "an".

(2) provide the Secretary of Housing and Urban Development with the option to renew the contract for an additional period of 10 years, subject to the availability of appropriations; and

(3) provide that, notwithstanding any other provision of law, first priority for occupancy of housing rehabilitated under this section shall be given to homeless individuals.

(g) Repealed. Pub. L. 104-330, title V, § 506(a)(8)(A), Oct. 26, 1996, 110 Stat. 4044

(h) Participation of homeless individuals

The Secretary shall, by regulation, require each approved applicant receiving assistance under this section that is not a public housing agency to provide for the participation of not less than one homeless individual or former homeless individual on the board of directors or other equivalent policymaking entity of such applicant, to the extent that such entity considers and makes policies and decisions regarding the rehabilitation of any housing with assistance under this section. The Secretary may grant waivers to approved applicants unable to meet the requirements under the preceding sentence if the applicant agrees to otherwise consult with homeless or formerly homeless individuals in considering and making such policies and decisions.

(i) Termination of assistance

If an individual or family who receives assistance under this section violates program requirements, the recipient of amounts made available under this section may terminate assistance in accordance with a formal process established by the recipient that recognizes the rights of individuals receiving such assistance to due process of law.

(j) Definitions

For purposes of this section—

(1) the term “applicant” means a public housing agency, or private nonprofit organization that applies for assistance under this section; and

(2) the term “private nonprofit organization” means an organization—

(A) no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual;

(B) that has a voluntary board;

(C) that has an accounting system, or has designated a fiscal agent in accordance with requirements established by the Secretary; and

(D) that practices nondiscrimination in the provision of assistance.

(Pub. L. 100-77, title IV, § 441, July 22, 1987, 101 Stat. 508; Pub. L. 100-628, title IV, § 481(a)-(d)(1), Nov. 7, 1988, 102 Stat. 3237, 3238; Pub. L. 101-625, title VIII, § 835, Nov. 28, 1990, 104 Stat. 4366; Pub. L. 102-550, title XIV, § 1405(a)-(d), Oct. 28, 1992, 106 Stat. 4028, 4029; Pub. L. 104-330, title V, § 506(a)(8), Oct. 26, 1996, 110 Stat. 4044.)

REFERENCES IN TEXT

Section 1437f(e)(2) of this title, referred to in subsec. (a), was repealed effective Oct. 1, 1991, but to remain in effect with respect to single room occupancy dwellings

as authorized by this subchapter, see section 12839(b) of this title.

Section 1437f(n) of this title, referred to in subsec. (b), was repealed by Pub. L. 105-276, title V, § 550(a)(7), Oct. 21, 1998, 112 Stat. 2609.

AMENDMENTS

1996—Subsec. (g). Pub. L. 104-330, § 506(a)(8)(A), struck out heading and text of subsec. (g). Text read as follows: “Amounts made available for assistance under this section shall be available through contracts between the Secretary and Indian housing authorities, and the provisions of this section regarding public housing authorities shall include and apply to Indian housing authorities.”

Subsec. (h). Pub. L. 104-330, § 506(a)(8)(B), struck out “or Indian housing authority” after “public housing agency”.

Subsec. (j)(1). Pub. L. 104-330, § 506(a)(8)(C), struck out “, Indian housing authority” after “public housing agency”.

1992—Subsec. (a). Pub. L. 102-550, § 1405(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “The budget authority available under section 1437c(c) of this title for assistance under section 1437f(e)(2) of this title is authorized to be increased by \$79,000,000 on or after October 1, 1990, and by \$82,400,000 on or after October 1, 1991.”

Subsec. (b). Pub. L. 102-550, § 1405(b)(1), inserted before period at end “, and except that the Secretary may provide amounts available under this section to private nonprofit organizations that submit applications for such assistance that are approved by the Secretary”.

Subsec. (c)(5). Pub. L. 102-550, § 1405(c), added par. (5).

Subsec. (f). Pub. L. 102-550, § 1405(b)(2), substituted “approved applicant” for “public housing agency” in introductory provisions and par. (1).

Subsecs. (h), (i). Pub. L. 102-550, § 1405(d), added subsecs. (h) and (i).

Subsec. (j). Pub. L. 102-550, § 1405(b)(3), added subsec. (j).

1990—Subsec. (a). Pub. L. 101-625, § 835(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “The budget authority available under section 1437c(c) of this title for assistance under section 1437f(e)(2) of this title is authorized to be increased by \$50,000,000 on or after October 1, 1988, and by \$50,000,000 on or after October 1, 1989.”

Subsec. (g). Pub. L. 101-625, § 835(b), added subsec. (g).

1988—Subsec. (a). Pub. L. 100-628, § 481(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “The budget authority available under section 1437c(c) of this title for assistance under section 1437f(e)(2) of this title is authorized to be increased by \$35,000,000 on or after October 1, 1986, and by \$35,000,000 on or after October 1, 1987.”

Subsec. (b). Pub. L. 100-628, § 481(b), inserted before period at end “, except that amounts made available under this section may be used in connection with the moderate rehabilitation of efficiency units if the building owner agrees to pay the additional cost of rehabilitating and operating such units.”

Subsec. (d). Pub. L. 100-628, § 481(c), inserted sentence defining “major spaces”.

Subsec. (e)(3). Pub. L. 100-628, § 481(d)(1), added par. (3).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as an Effective Date note under section 4101 of Title 25, Indians.

Amendment by Pub. L. 104-330 applicable with respect to amounts made available for assistance under this subchapter for fiscal year 1998 and fiscal years thereafter, see section 506(c) of Pub. L. 104-330, set out as a note under section 11371 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 481(d)(2) of Pub. L. 100-628 provided that: “The first increase under the amendment made by

paragraph (1) [amending this section] shall be effective with respect to assistance provided on or after October 1, 1988.”

§ 11402. Environmental review

For purposes of environmental review, assistance and projects under this subchapter shall be treated as assistance for special projects that are subject to section 3547 of this title, and shall be subject to the regulations issued by the Secretary to implement such section.

(Pub. L. 100-77, title IV, § 443, as added Pub. L. 100-628, title IV, § 482(a), Nov. 7, 1988, 102 Stat. 3238; amended Pub. L. 106-377, § 1(a)(1) [title II, § 208], Oct. 27, 2000, 114 Stat. 1441, 1441A-25.)

AMENDMENTS

2000—Pub. L. 106-377 amended section catchline and text generally. Prior to amendment, text read as follows: “The provisions of, and regulations and procedures applicable under, section 5304(g) of this title shall apply to assistance and projects under this subchapter.”

PART F—SHELTER PLUS CARE PROGRAM

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 11394 of this title.

SUBPART I—GENERAL REQUIREMENTS

§ 11403. Purpose

The purpose of the program authorized under this part is to provide rental housing assistance, in connection with supportive services funded from sources other than this part, to homeless persons with disabilities (primarily persons who are seriously mentally ill, have chronic problems with alcohol, drugs, or both, or have acquired immunodeficiency syndrome and related diseases) and the families of such persons.

(Pub. L. 100-77, title IV, § 451, as added Pub. L. 101-625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4367.)

ESTABLISHMENT OF REQUIREMENTS BY NOTICE; ISSUANCE OF REGULATIONS

Section 837(b) of Pub. L. 101-625, as amended by Pub. L. 106-400, § 2, Oct. 30, 2000, 114 Stat. 1675, provided that: “Not later than 180 days after the date funds authorized under section 459 of the McKinney-Vento Homeless Assistance Act [section 11403h of this title], as amended by this section, first become available for obligation, the Secretary shall by notice establish such requirements as may be necessary to carry out the provisions of subtitle F of that Act [this part]. Such requirements shall be subject to section 553 of title 5, United States Code. The Secretary shall issue regulations based on the initial notice before the expiration of the eight-month period following the date of the notice. The Secretary shall issue regulations based on the initial notice before the expiration of the 8-month period following the date of the notice. In developing program guidelines and regulations to implement such subtitle, the Secretary of Housing and Urban Development may consult with the Secretary of Health and Human Services with respect to supportive services aspects of this subtitle [subtitle C (§§821-841) of title VIII of Pub. L. 101-625, see Tables for classification].”

§ 11403a. Rental housing assistance

(a) In general

The Secretary is authorized, in accordance with the provisions of this subpart, to provide

rental housing assistance under subparts II, III, IV, and V of this part.

(b) Funding limitations

To the maximum extent practicable, the Secretary shall reserve not less than 50 percent of all funds provided under this part for homeless individuals who are seriously mentally ill or have chronic problems with alcohol, drugs, or both.

(Pub. L. 100-77, title IV, § 452, as added Pub. L. 101-625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4367; amended Pub. L. 102-550, title XIV, § 1406(g)(2), Oct. 28, 1992, 106 Stat. 4034.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-550 substituted “IV, and V” for “and IV”.

§ 11403b. Supportive services requirements

(a) Matching funding

(1) In general

Each recipient shall be required to supplement the assistance provided under this part with an equal amount of funds for supportive services from sources other than this part. Each recipient shall certify to the Secretary its compliance with this paragraph, and shall include with the certification a description of the sources and amounts of such supplemental funds.

(2) Determination of matching amounts

In calculating the amount of supplemental funds provided under this part, a recipient may include the value of any lease on a building, any salary paid to staff to carry out the program of the recipient, and the value of the time and services contributed by volunteers to carry out the program of the recipient at a rate determined by the Secretary.

(b) Recapture

If the supportive services and funding for the supportive services required by this section are not provided, the Secretary may recapture any unexpended housing assistance.

(Pub. L. 100-77, title IV, § 453, as added Pub. L. 101-625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4367.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11403c of this title.

§ 11403c. Applications

(a) In general

An application for rental housing assistance under this part shall be submitted by an applicant in such forms and in accordance with such procedures as the Secretary shall establish.

(b) Minimum contents

The Secretary shall require that an application identify the need for the assistance in the community to be served and shall contain at a minimum—

(1) a request for housing assistance under subpart II, III, IV, or V of this part, or a combination, specifying the number of units re-

quested and the amount of necessary budget authority;

(2) a description of the size and characteristics of the population of eligible persons;

(3) an identification of the need for the program in the community to be served;

(4) the identity of the proposed service provider or providers (which may be, or include, the applicant) and a statement of the qualifications of the provider or providers;

(5) a description of the supportive services that the applicant proposes to assure will be available for eligible persons;

(6) a description of the resources that are expected to be made available to provide the supportive services required by section 11403b of this title;

(7) a description of the mechanisms for developing a housing and supportive services plan for each person and for monitoring each person's progress in meeting that plan;

(8) reasonable assurances satisfactory to the Secretary that the supportive services will be provided for the full term of the housing assistance under subpart II, III, IV, or V of this part, or a combination; and a certification from the applicant that it will fund the supportive services itself if the planned resources do not become available for any reason;

(9) a certification by the public official responsible for submitting the comprehensive housing affordability strategy under section 12705 of this title that the proposed activities are consistent with the approved housing strategy of the unit of general local government within which housing assistance under this part will be provided;

(10) a plan for—

(A) in the case of rental housing assistance under subpart II,¹ or III of this part, providing housing assistance;

(B) identifying and selecting eligible persons to participate, including a proposed definition of the term “chronic problems with alcohol, other drugs, or both”;

(C) coordinating the provision of housing assistance and supportive services;

(D) ensuring that the service providers are providing supportive services adequate to meet the needs of the persons served;

(E) obtaining participation of eligible persons who have previously not been assisted under programs designed to assist the homeless or have been considered not capable of participation in these programs; this plan shall specifically address how homeless persons, as defined in section 11302(a)(2)(C) of this title, (and the families of such persons) will be brought into the program;

(11) in the case of housing assistance under subpart V of this part, identification of the specific structures that the recipient is proposing for assistance; and

(12) in the case of housing assistance under subpart IV of this part, identification of the nonprofit entity that will be the owner or lessor of the property, and identification of the specific structures in which the nonprofit entity proposes to house eligible persons.

(Pub. L. 100-77, title IV, § 454, as added Pub. L. 101-625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4367; amended Pub. L. 102-550, title XIV, § 1406(g)(3), Oct. 28, 1992, 106 Stat. 4034.)

AMENDMENTS

1992—Subsec. (b)(1), (8). Pub. L. 102-550, § 1406(g)(3)(A), (B), substituted “IV, or V” for “or IV”.

Subsec. (b)(10)(A). Pub. L. 102-550, § 1406(g)(3)(C), inserted “, or III” after “subpart II”.

Subsec. (b)(11). Pub. L. 102-550, § 1406(g)(3)(D), substituted “subpart V of this part” for “subpart III of this part” and “proposing for assistance” for “proposing for rehabilitation and assistance”.

§ 11403d. Selection criteria

(a) In general

The Secretary shall establish selection criteria for a national competition for assistance under this part, which shall include—

(1) the ability of the applicant to develop and operate the proposed assisted housing and supportive services program, taking into account the quality of any ongoing program of the applicant;

(2) geographic diversity among the projects to be assisted;

(3) the need for a program providing housing assistance and supportive services for eligible persons in the area to be served;

(4) the quality of the proposed program for providing supportive services and housing assistance;

(5) the extent to which the proposed funding for the supportive services is or will be available;

(6) the extent to which the project would meet the needs of the homeless persons proposed to be served by the program;

(7) the extent to which the program integrates program recipients into the community served by the program;

(8) the cost-effectiveness of the proposed program; and

(9) such other factors as the Secretary specifies in regulations to be appropriate for purposes of carrying out the program established by this part in an effective and efficient manner.

(b) Funding limitation

No more than 10 percent of the assistance made available under this part for any fiscal year may be used for programs located within any one unit of general local government.

(c) Participation of homeless individuals

The Secretary shall, by regulation, require each recipient to provide for the consultation and participation of not less than one homeless individual or former homeless individual on the board of directors or other equivalent policymaking entity of the recipient, to the extent that such entity considers and makes policies and decisions regarding any housing assisted under this part or services for such housing. The Secretary may grant waivers to recipients unable to meet the requirement under the preceding sentence if the recipient agrees to otherwise consult with homeless or formerly homeless individuals in considering and making such policies and decisions.

¹ So in original. The comma probably should not appear.

(Pub. L. 100-77, title IV, § 455, as added Pub. L. 101-625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4369; amended Pub. L. 102-550, title XIV, § 1406(b), Oct. 28, 1992, 106 Stat. 4030.)

AMENDMENTS

1992—Subsec. (c). Pub. L. 102-550 added subsec. (c).

§ 11403e. Required agreements

The Secretary may not approve assistance under this part unless the applicant agrees—

- (1) to operate the proposed program in accordance with the provisions of this part;
- (2) to conduct an ongoing assessment of the housing assistance and supportive services required by the participants in the program;
- (3) to assure the adequate provision of supportive services to the participants in the program;
- (4) to comply with such other terms and conditions as the Secretary may establish for purposes of carrying out the program in an effective and efficient manner; and
- (5) to the maximum extent practicable, to involve homeless individuals and families, through employment volunteer services, or otherwise, in constructing or rehabilitating housing assisted under this part and in providing services required under this part.

(Pub. L. 100-77, title IV, § 456, as added Pub. L. 101-625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4369; amended Pub. L. 102-550, title XIV, § 1406(c), Oct. 28, 1992, 106 Stat. 4030.)

AMENDMENTS

1992—Par. (5). Pub. L. 102-550 added par. (5).

§ 11403e-1. Housing standards and rent reasonableness

(a) Standards required

The Secretary shall require that—

- (1) before any assistance may be provided to or on behalf of the person, each unit shall be inspected by the applicant directly or by another entity, including the local public housing agency, to determine that the unit meets the housing quality standards under section 1437f of this title and that the occupancy charge for the dwelling unit is reasonable; and
- (2) the recipient shall make at least annual inspections of each unit during the contract term.

(b) Prohibition

No assistance may be provided for a dwelling unit (1) for which the occupancy charge is not reasonable, or (2) which fails to meet the housing standards, unless the owner promptly corrects the deficiency and the recipient verifies the correction.

(Pub. L. 100-77, title IV, § 457, formerly § 464, as added Pub. L. 101-625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4371; renumbered § 457 and amended Pub. L. 102-550, title XIV, § 1406(e)(4), Oct. 28, 1992, 106 Stat. 4031.)

CODIFICATION

Section was formerly classified to section 11404c of this title prior to renumbering by Pub. L. 102-550.

AMENDMENTS

1992—Subsec. (a)(1). Pub. L. 102-550 struck out “(or if no such agency exists in the applicable area, an entity

selected by the Secretary)” after “public housing agency”.

§ 11403e-2. Tenant rent

Each tenant shall pay as rent an amount determined in accordance with the provisions of section 1437a(a)(1) of this title.

(Pub. L. 100-77, title IV, § 458, formerly § 465, as added Pub. L. 101-625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4372; renumbered § 458, Pub. L. 102-550, title XIV, § 1406(e)(5), Oct. 28, 1992, 106 Stat. 4031.)

CODIFICATION

Section was formerly classified to section 11404d of this title prior to renumbering by Pub. L. 102-550.

§ 11403e-3. Administrative fees

From amounts made available under appropriations Acts, the Secretary shall make amounts available to pay the entity administering the housing assistance an administrative fee in an amount determined appropriate by the Secretary for the costs of administering the housing assistance.

(Pub. L. 100-77, title IV, § 459, formerly § 466, as added Pub. L. 101-625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4372; renumbered § 459, Pub. L. 102-550, title XIV, § 1406(e)(5), Oct. 28, 1992, 106 Stat. 4031.)

CODIFICATION

Section was formerly classified to section 11404e of this title prior to renumbering by Pub. L. 102-550.

§ 11403e-4. Occupancy

(a) Occupancy agreement

The occupancy agreement between a tenant and an owner of a dwelling unit assisted under this part shall be for at least one month.

(b) Vacancy payments

If an eligible person vacates a dwelling unit assisted under this part before the expiration of the occupancy agreement, no assistance payment may be made with respect to the unit after the month that follows the month during which the unit was vacated, unless it is occupied by another eligible person.

(Pub. L. 100-77, title IV, § 460, as added Pub. L. 102-550, title XIV, § 1406(e)(6), Oct. 28, 1992, 106 Stat. 4031.)

§ 11403f. Termination of assistance

(a) Authority

If an eligible individual who receives assistance under this part violates program requirements, the recipient may terminate assistance in accordance with the process established pursuant to subsection (b) of this section.

(b) Procedure

In terminating assistance under this section, the recipient shall provide a formal process that recognizes the rights of individuals receiving such assistance to due process of law.

(Pub. L. 100-77, title IV, § 461, formerly § 457, as added Pub. L. 101-625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4369; renumbered § 461, Pub. L.

102-550, title XIV, §1406(e)(1), Oct. 28, 1992, 106 Stat. 4031.)

PRIOR PROVISIONS

A prior section 461 of Pub. L. 100-77 was classified to section 11404 of this title prior to repeal by Pub. L. 102-550.

§ 11403g. Definitions

For purposes of this part:

(1) The term “acquired immunodeficiency syndrome and related diseases” has the meaning given such term in section 12902 of this title.

(2) The term “applicant” means a State, unit of general local government or public housing agency.

(3) The term “eligible person” means a homeless person with disabilities (primarily persons who are seriously mentally ill, have chronic problems with alcohol, drugs, or both, or have acquired immunodeficiency syndrome and related diseases) and the family of such a person.

(4) Repealed. Pub. L. 104-330, title V, §506(a)(9)(B), Oct. 26, 1996, 110 Stat. 4045.

(5) The term “nonprofit organization” has the meaning given such term by section 12704 of this title, and includes community mental health centers established as public nonprofit organizations.

(6) The term “person with disabilities” has the same meaning given the term in section 8013 of this title.

(7) The term “public housing agency” has the meaning given such term in section 1437a(b)(6) of this title.

(8) The term “recipient” means an applicant approved for participation in the program authorized under this part.

(9) The term “Secretary” means the Secretary of Housing and Urban Development.

(10) The term “seriously mentally ill” means having a severe and persistent mental or emotional impairment that seriously limits a person’s ability to live independently.

(11) The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(12) The term “supportive services” means assistance that the Secretary determines (A) addresses the special needs of eligible persons; and (B) provides appropriate services or assists such persons in obtaining appropriate services, including health care, mental health services, substance and alcohol abuse services, child care services, case management services, counseling, supervision, education, job training, and other services essential for achieving and maintaining independent living. Inpatient acute hospital care shall not qualify as a supportive service.

(13) The term “unit of general local government” has the meaning given such term in section 5302 of this title.

(Pub. L. 100-77, title IV, §462, formerly §458, as added Pub. L. 101-625, title VIII, §837(a), Nov. 28,

1990, 104 Stat. 4369; renumbered §462 and amended Pub. L. 102-550, title XIV, §1406(e)(2), Oct. 28, 1992, 106 Stat. 4031; Pub. L. 104-330, title V, §506(a)(9), Oct. 26, 1996, 110 Stat. 4045.)

PRIOR PROVISIONS

A prior section 462 of Pub. L. 100-77 was renumbered section 472 and is classified to section 11404a of this title.

AMENDMENTS

1996—Par. (2). Pub. L. 104-330, §506(a)(9)(A), struck out “, Indian tribe,” after “local government”.

Par. (4). Pub. L. 104-330, §506(a)(9)(B), struck out par. (4) which read as follows: “The term ‘Indian tribe’ has the meaning given such term in section 5302 of this title.”

1992—Par. (2). Pub. L. 102-550, §1406(e)(2)(A), added par. (2) and struck out former par. (2) which read as follows: “The term ‘applicant’ means—

“(A) in the case of rental housing assistance under subparts II and IV of this part, a State, unit of general local government, or Indian tribe; and

“(B) in the case of single room occupancy housing under the section 8 moderate rehabilitation program under subpart III of this part (i) a State, unit of general local government, or Indian tribe (that shall be responsible for assuring the provision of supportive services and the overall administration of the program), and (ii) a public housing agency (that shall be primarily responsible for administering the housing assistance under subpart III of this part).”

Par. (5). Pub. L. 102-550, §1406(e)(2)(B), inserted before period at end “, and includes community mental health centers established as public nonprofit organizations”.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as an Effective Date note under section 4101 of Title 25, Indians.

Amendment by Pub. L. 104-330 applicable with respect to amounts made available for assistance under this subchapter for fiscal year 1998 and fiscal years thereafter, see section 506(c) of Pub. L. 104-330, set out as a note under section 11371 of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 11403h. Authorization of appropriations

(a) In general

For purposes of the housing programs under this part, there are authorized to be appropriated \$266,550,000 for fiscal year 1993 and \$277,745,100 for fiscal year 1994. Of any amount appropriated in any fiscal year to carry out this part—

(1) not less than 10 percent shall be available only for carrying out subpart II of this part;

(2) not less than 10 percent shall be available only for carrying out subpart III of this part;

(3) not less than 10 percent shall be available only for carrying out subpart IV of this part; and

(4) not less than 10 percent shall be available only for carrying out subpart V of this part.

(b) Availability

Sums appropriated under this section shall remain available until expended.

(Pub. L. 100-77, title IV, §463, formerly §459, as added Pub. L. 101-625, title VIII, §837(a), Nov. 28,

1990, 104 Stat. 4370; renumbered § 463 and amended Pub. L. 102-550, title XIV, § 1406(a), (e)(3), Oct. 28, 1992, 106 Stat. 4029, 4031.)

PRIOR PROVISIONS

A prior section 463 of Pub. L. 100-77 was renumbered section 473 and is classified to section 11404b of this title.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-550, § 1406(a)(1), added subsec. (a) and struck out former subsec. (a) which authorized appropriations for subpart II of this part for fiscal years 1991 and 1992.

Subsecs. (b) to (d). Pub. L. 102-550, § 1406(a)(2), (3), redesignated subsec. (d) as (b) and struck out former subsec. (b) which increased budget authority for the program under subpart III of this part for fiscal years 1991 and 1992 and former subsec. (c) which authorized appropriations for subpart IV of this part for fiscal years 1991 and 1992.

TRANSITIONAL PROVISIONS; AVAILABILITY OF APPROPRIATIONS

Section 837(c) of Pub. L. 101-625, as amended by Pub. L. 102-27, title II, Apr. 10, 1991, 105 Stat. 151, provided that amounts appropriated for use under part D of this subchapter as it existed before Nov. 28, 1990, were to be available for use under this part.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11404, 11405, 11406, 11407, 11407b of this title.

SUBPART II—TENANT-BASED RENTAL ASSISTANCE

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in sections 11403a, 11403c, 11403h of this title.

§ 11404. Authority

The Secretary may use amounts made available under section 11403h of this title to provide tenant-based rental housing assistance for eligible persons in accordance with this subpart.

(Pub. L. 100-77, title IV, § 471, as added Pub. L. 102-550, title XIV, § 1406(d)(3), Oct. 28, 1992, 106 Stat. 4030.)

PRIOR PROVISIONS

A prior section 11404, Pub. L. 100-77, title IV, § 461, as added Pub. L. 101-625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4371, authorized use of appropriations for provision of rental housing assistance to homeless in accordance with shelter plus care program, prior to repeal by Pub. L. 102-550, title XIV, § 1406(d)(3), Oct. 28, 1992, 106 Stat. 4030.

A prior section 471 of Pub. L. 100-77 was classified to section 11405 of this title prior to repeal by Pub. L. 102-550.

§ 11404a. Housing assistance

An eligible person on behalf of whom assistance is provided under this subpart shall select the unit in which such person will live using rental assistance under this subpart; except that where necessary to assure that the provision of supportive services to persons is feasible, a recipient may require that a person participating in the program live (1) in a particular structure or unit for up to the first year of participation, and (2) within a particular geographic area for the full period of participation or the period re-

maining after the period referred to in paragraph¹ (1).

(Pub. L. 100-77, title IV, § 472, formerly § 462, as added Pub. L. 101-625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4371; renumbered § 472 and amended Pub. L. 102-550, title XIV, § 1406(d)(4), Oct. 28, 1992, 106 Stat. 4031.)

PRIOR PROVISIONS

A prior section 472 of Pub. L. 100-77 was classified to section 11405a of this title prior to repeal by Pub. L. 102-550.

AMENDMENTS

1992—Pub. L. 102-550 substituted “An eligible person on behalf of whom assistance is provided under this subpart shall select the unit in which such person will live using rental assistance under this subpart; except that where” for “Where”.

§ 11404b. Amount of assistance

The contract with a recipient for assistance under this subpart shall be for a term of 5 years. Each contract shall provide that the recipient shall receive aggregate amounts not to exceed the appropriate existing housing fair market rent limitation under section 1437f(c) of this title in effect at the time the application is approved. At the option of the recipient and subject to the availability of such amounts, the recipient may receive in any year (1) up to 25 percent of such amounts or (2) such higher percentage as the Secretary may approve upon a demonstration satisfactory to the Secretary that the recipient has entered into firm financial commitments to ensure that the housing assistance described in the application will be provided for the full term of the contract. Any amounts not needed for a year may be used to increase the amount available in subsequent years.

(Pub. L. 100-77, title IV, § 473, formerly § 463, as added Pub. L. 101-625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4371; renumbered § 473 and amended Pub. L. 102-550, title XIV, § 1406(d)(5), Oct. 28, 1992, 106 Stat. 4031.)

PRIOR PROVISIONS

A prior section 473 of Pub. L. 100-77 was classified to section 11405b of this title prior to repeal by Pub. L. 102-550.

AMENDMENTS

1992—Pub. L. 102-550 struck out at end “Each recipient shall ensure that the assistance provided by the Secretary, and any amounts provided from other sources, are managed so that the housing assistance described in the application is provided for the full term of the assistance.”

§§ 11404c to 11404e. Transferred

CODIFICATION

Section 11404c, Pub. L. 100-77, title IV, § 464, as added Pub. L. 101-625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4371, which provided for housing standards and rent reasonableness, was renumbered section 457 of Pub. L. 100-77 and amended by Pub. L. 102-550, title XIV, § 1406(e)(4), Oct. 28, 1992, 106 Stat. 4031, and transferred to section 11403e-1 of this title.

Section 11404d, Pub. L. 100-77, title IV, § 465, as added Pub. L. 101-625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat.

¹ So in original. Probably should be “clause”.

4372, which provided for payment of rent by tenants, was renumbered section 458 of Pub. L. 100-77 by Pub. L. 102-550, title XIV, § 1406(e)(5), Oct. 28, 1992, 106 Stat. 4031, and transferred to section 11403e-2 of this title.

Section 11404e, Pub. L. 100-77, title IV, § 466, as added Pub. L. 101-625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4372, which provided for payment of administrative fees, was renumbered section 459 of Pub. L. 100-77 by Pub. L. 102-550, title XIV, § 1406(e)(5), Oct. 28, 1992, 106 Stat. 4031, and transferred to section 11403e-3 of this title.

SUBPART III—PROJECT-BASED RENTAL ASSISTANCE

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in sections 11403a, 11403c, 11403h of this title.

§ 11405. Authority

The Secretary may use amounts made available under section 11403h of this title to provide project-based rental housing assistance for eligible persons in accordance with this subpart.

(Pub. L. 100-77, title IV, § 476, as added Pub. L. 102-550, title XIV, § 1406(f), Oct. 28, 1992, 106 Stat. 4032.)

PRIOR PROVISIONS

A prior section 11405, Pub. L. 100-77, title IV, § 471, as added Pub. L. 101-625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4372, authorized use of appropriations in connection with moderate rehabilitation of single room occupancy housing, prior to repeal by Pub. L. 102-550, § 1406(d)(2).

§ 11405a. Housing assistance

Assistance under this subpart shall be provided pursuant to a contract between the recipient and an owner of an existing structure. The contract shall provide that rental assistance payments shall be made to the owner and that the units in the structure shall be occupied by eligible persons for not less than the term of the contract.

(Pub. L. 100-77, title IV, § 477, as added Pub. L. 102-550, title XIV, § 1406(f), Oct. 28, 1992, 106 Stat. 4032.)

PRIOR PROVISIONS

A prior section 11405a, Pub. L. 100-77, title IV, § 472, as added Pub. L. 101-625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4372, related to fire and safety improvements in connection with contracts for housing assistance payments, prior to repeal by Pub. L. 102-550, § 1406(d)(2).

§ 11405b. Term of contract and amount of assistance

(a) Term of contract

Each contract with a recipient for assistance under this subpart shall be for a term of 5 years, and the owner shall have an option to renew the assistance for an additional 5-year term, subject to the availability of amounts provided in appropriation Acts; except that if an expenditure of at least \$3,000 for each unit (including its prorated share of work on common areas or systems) is required to make the structure decent, safe, and sanitary, and the owner agrees to carry out the rehabilitation with resources other than assistance under this part within 12 months of notification of grant approval, the contract shall be for a term of 10 years.

(b) Amount of assistance

Each contract shall provide that the recipient shall receive aggregate amounts not to exceed the appropriate existing housing fair market rental under section 1437f(c)(1) of this title in effect at the time the application is approved. Any amounts not needed for a year may be used to increase the amount available in subsequent years.

(Pub. L. 100-77, title IV, § 478, as added Pub. L. 102-550, title XIV, § 1406(f), Oct. 28, 1992, 106 Stat. 4032.)

PRIOR PROVISIONS

Prior sections 11405b and 11405c were repealed by Pub. L. 102-550, title XIV, § 1406(d)(2), Oct. 28, 1992, 106 Stat. 4030.

Section 11405b, Pub. L. 100-77, title IV, § 473, as added Pub. L. 101-625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4372, listed provisions to be contained in contracts entered into by Secretary with public housing agencies under shelter plus care program.

Section 11405c, Pub. L. 100-77, title IV, § 474, as added Pub. L. 101-625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4373, related to term of occupancy agreements and issuance of vacancy payments under shelter plus care program.

SUBPART IV—SPONSOR-BASED RENTAL ASSISTANCE

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in sections 11403a, 11403c, 11403h of this title.

§ 11406. Authority

The Secretary may use amounts made available under section 11403h of this title to provide sponsor-based rental assistance for eligible persons in accordance with this subpart.

(Pub. L. 100-77, title IV, § 481, as added Pub. L. 102-550, title XIV, § 1406(f), Oct. 28, 1992, 106 Stat. 4032.)

PRIOR PROVISIONS

A prior section 11406, Pub. L. 100-77, title IV, § 481, as added Pub. L. 101-625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4373, authorized use of appropriations in connection with provision of rental housing assistance under section 1701q of Title 12, Banks and Banking, prior to repeal by Pub. L. 102-550, § 1406(d)(2).

§ 11406a. Housing assistance

Assistance under this subpart shall be provided pursuant to a contract between the recipient and a private nonprofit sponsor that owns or leases dwelling units. The contract shall provide that rental assistance payments shall be made to the sponsor and that such assisted units shall be occupied by eligible persons.

(Pub. L. 100-77, title IV, § 482, as added Pub. L. 102-550, title XIV, § 1406(f), Oct. 28, 1992, 106 Stat. 4032.)

PRIOR PROVISIONS

A prior section 11406a, Pub. L. 100-77, title IV, § 482, as added Pub. L. 101-625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4373, related to amount of rental housing assistance to be provided under shelter plus care program in connection with section 1701q of Title 12, Banks and Banking, prior to repeal by Pub. L. 102-550, § 1406(d)(2).

§ 11406b. Term of contract and amount of assistance

(a) Term of contract

The contract with a recipient of assistance under this subpart shall be for a term of 5 years.

(b) Amount of assistance

Each contract shall provide that the recipient shall receive aggregate amounts not to exceed the appropriate existing housing fair market rental under section 1437f(c)(1) of this title in effect at the time the application is approved. Any amounts not needed for a year may be used to increase the amount available in subsequent years.

(Pub. L. 100-77, title IV, § 483, as added Pub. L. 102-550, title XIV, § 1406(f), Oct. 28, 1992, 106 Stat. 4033.)

PRIOR PROVISIONS

Prior sections 11406b and 11406c were repealed by Pub. L. 102-550, title XIV, § 1406(d)(2), Oct. 28, 1992, 106 Stat. 4030.

Section 11406b, Pub. L. 100-77, title IV, § 483, as added Pub. L. 101-625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4373, required that certain housing standards be maintained and reasonable rent be charged prior to provision of rental housing assistance under shelter plus care program.

Section 11406c, Pub. L. 100-77, title IV, § 484, as added Pub. L. 101-625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4373, related to payment of administrative fees to non-profit entities for costs of administering rental housing assistance under shelter plus care program.

SUBPART V—SECTION 1437f MODERATE REHABILITATION ASSISTANCE FOR SINGLE-ROOM OCCUPANCY DWELLINGS

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in sections 11403a, 11403c, 11403h of this title.

§ 11407. Authority

The Secretary may use amounts made available under section 11403h of this title in connection with the moderate rehabilitation of single room occupancy housing described in section 1437f(n)¹ of this title for occupancy by eligible persons in accordance with this subpart. Amounts available under section 11403h of this title may be used in connection with the moderate rehabilitation of efficiency units if the building owner agrees to pay the additional cost of rehabilitating and operating the efficiency units.

(Pub. L. 100-77, title IV, § 486, as added Pub. L. 102-550, title XIV, § 1406(f), Oct. 28, 1992, 106 Stat. 4033.)

REFERENCES IN TEXT

Section 1437f(n) of this title, referred to in text, was repealed by Pub. L. 105-276, title V, § 550(a)(7), Oct. 21, 1998, 112 Stat. 2609.

§ 11407a. Fire and safety improvements

Each contract for housing assistance payments entered into under this subpart shall require the installation of a sprinkler system that

protects all major spaces, hard-wired smoke detectors, and any other fire safety improvements as may be required by State or local law. For purposes of this section, the term “major spaces” means hallways, large common areas, and other areas specified in local fire, building, or safety codes.

(Pub. L. 100-77, title IV, § 487, as added Pub. L. 102-550, title XIV, § 1406(f), Oct. 28, 1992, 106 Stat. 4033.)

§ 11407b. Contract requirements

Each contract for annual contributions entered into by the Secretary with a public housing agency to obligate the authority made available under section 11403h of this title for use under this subpart shall—

(1) commit the Secretary to make the authority available to the public housing agency for an aggregate period of 10 years, and require that any amendments increasing the authority shall be available for the remainder of such 10-year period;

(2) provide the Secretary with the option to renew the contract for an additional period of 10 years, subject to the availability of authority; and

(3) provide that, notwithstanding any other provision of law, first priority for occupancy of housing rehabilitated under this subpart shall be given to homeless persons.

(Pub. L. 100-77, title IV, § 488, as added Pub. L. 102-550, title XIV, § 1406(f), Oct. 28, 1992, 106 Stat. 4033.)

PART G—RURAL HOMELESS HOUSING ASSISTANCE

§ 11408. Rural homelessness grant program

(a) Establishment

The Secretary of Housing and Urban Development shall establish and carry out a rural homelessness grant program. In carrying out the program, the Secretary may award grants to eligible organizations in order to pay for the Federal share of the cost of—

(1) assisting programs providing direct emergency assistance to homeless individuals and families;

(2) providing homelessness prevention assistance to individuals and families at risk of becoming homeless; and

(3) assisting individuals and families in obtaining access to permanent housing and supportive services.

(b) Use of funds

(1) In general

An eligible organization may use a grant awarded under subsection (a) of this section to provide, in rural areas—

(A) rent, mortgage, or utility assistance after 2 months of nonpayment in order to prevent eviction, foreclosure, or loss of utility service;

(B) security deposits, rent for the first month of residence at a new location, and relocation assistance;

(C) short-term emergency lodging in motels or shelters, either directly or through vouchers;

¹ See References in Text note below.

(D) transitional housing;

(E) rehabilitation and repairs such as insulation, window repair, door repair, roof repair, and repairs that are necessary to make premises habitable;

(F) development of comprehensive and coordinated support services that use and supplement, as needed, community networks of services, including—

(i) outreach services to reach eligible recipients;

(ii) case management;

(iii) housing counseling;

(iv) budgeting;

(v) job training and placement;

(vi) primary health care;

(vii) mental health services;

(viii) substance abuse treatment;

(ix) child care;

(x) transportation;

(xi) emergency food and clothing;

(xii) family violence services;

(xiii) education services;

(xiv) moving services;

(xv) entitlement assistance; and

(xvi) referrals to veterans services and legal services; and

(G) costs associated with making use of Federal inventory property programs to house homeless families, including the program established under subchapter V of this chapter and the Single Family Property Disposition Program established pursuant to section 1710(g) of title 12.

(2) Capacity building activities

Not more than 20 percent of the funds appropriated under subsection (l)(1) of this section for a fiscal year may be used by eligible organizations for capacity building activities, including payment of operating costs and staff retention.

(c) Award of grants

(1) Communities with populations of less than 10,000

(A) Set aside

In awarding grants under subsection (a) of this section for a fiscal year, the Secretary shall make available not less than 50 percent of the funds appropriated under subsection (l)(1) of this section for the fiscal year for grants to eligible organizations serving communities that have populations of less than 10,000.

(B) Priority within set aside

In awarding grants in accordance with subparagraph (A), the Secretary shall give priority to eligible organizations serving communities with populations of less than 5,000.

(2) Communities without significant Federal assistance

In awarding grants under subsection (a) of this section, including grants awarded in accordance with paragraph (1), the Secretary shall give priority to eligible organizations serving communities not currently receiving significant Federal assistance under this chapter.

(3) State limit

In awarding grants under subsection (a) of this section for a fiscal year, the Secretary shall not award to eligible organizations within a State an aggregate sum of more than 10 percent of the funds appropriated under subsection (l)(1) of this section, for the fiscal year.

(d) Application

In order to be eligible to receive a grant under subsection (a) of this section, an organization shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require. The application shall include, at a minimum—

(1) a description of the target population and geographic area to be served;

(2) a description of the types of assistance to be provided;

(3) an assurance that the assistance to be provided is closely related to the identified needs of the target population;

(4) a description of the existing assistance available to the target population, including Federal, State, and local programs, and a description of the manner in which the organization will coordinate with and expand existing assistance or provide assistance not available in the immediate area;

(5) an agreement by the organization that the organization will collect data on the projects conducted by the organization, including assistance provided, number and characteristics of persons served, and causes of homelessness for persons served; and

(6) an agreement by the organization that, to the maximum extent practicable, the organization will involve homeless individuals and families through employment, volunteer services, and otherwise, in providing, operating, and rehabilitating housing assisted under this section and in providing services assisted under this section and services for occupants of housing assisted under this section.

(e) Eligible organizations

Organizations eligible to receive a grant under subsection (a) of this section shall include private nonprofit entities and county and local governments.

(f) Federal share

(1) In general

The Federal share of the costs of providing assistance under this section shall be 75 percent.

(2) Non-Federal share

The non-Federal share of the cost of providing the assistance shall be in cash or in kind, fairly evaluated, including plant, equipment, staff services, or services delivered by volunteers.

(g) Participation of homeless individuals

The Secretary shall, by regulation, require each eligible organization receiving a grant under this section to provide for the participation of not less than 1 homeless individual or former homeless individual on the board of directors or other equivalent policy making entity of the recipient, to the extent that such entity

considers and makes policies and decisions regarding any housing, services, or other assistance of the eligible organization receiving the grant under this section. The Secretary may grant waivers to recipients unable to meet the requirement under the preceding sentence if the recipient agrees to otherwise consult with homeless or formerly homeless individuals in considering and making such policies and decisions.

(h) Evaluation

(1) In general

The Secretary shall conduct an evaluation of the program to—

(A) determine the effectiveness of the program in providing housing and other assistance to homeless persons in the area served; and

(B) determine the types of assistance needed to address homelessness in rural areas.

(2) Report

The Secretary shall submit to Congress, not later than 18 months after the date on which the Secretary first makes grants under the program, the evaluation of the program conducted under paragraph (1), including recommendations for any Federal administrative or legislative changes that may be necessary to improve the ability of rural communities to prevent and respond to homelessness.

(i) Technical assistance

The Secretary shall provide technical assistance to eligible organizations in developing programs in accordance with this section, and in gaining access to other Federal resources that may be used to assist homeless persons in rural areas. Such assistance may be provided through regional workshops, and may be provided directly or through grants to, or contracts with, nongovernmental entities.

(j) Termination of assistance

If an individual or family who receives assistance under this section violates requirements of the assistance program provided by the organization receiving a grant under this section, the organization may terminate assistance in accordance with a formal process established by the organization that recognizes the rights of individuals receiving such assistance to due process of law, which may include a hearing.

(k) Definitions

For purposes of this section:

(1) Program

The term “program” means the rural homelessness grant program established under this section.

(2) Rural area; rural community

The terms “rural area” and “rural community” mean—

(A) any area or community, respectively, no part of which is within an area designated as a standard metropolitan statistical area by the Office of Management and Budget; or

(B) any area or community, respectively, that is—

(i) within an area designated as a metropolitan statistical area or considered as part of a metropolitan statistical area; and

(ii) located in a rural census tract.

(3) Secretary

The term “Secretary” means the Secretary of Housing and Urban Development.

(I) Authorization of appropriations

(1) In general

There are authorized to be appropriated to carry out this section \$30,000,000 for fiscal year 1993 and \$31,260,000 for fiscal year 1994.

(2) Availability

Any amount paid to a grant recipient for a fiscal year that remains unobligated at the end of the year shall remain available to the recipient for the purposes for which the payment was made for the next fiscal year. The Secretary shall take such action as may be necessary to recover any amount not obligated by the recipient at the end of the second fiscal year, and shall redistribute the amount to another eligible organization.

(Pub. L. 100-77, title IV, § 491, as added Pub. L. 102-550, title XIV, § 1408, Oct. 28, 1992, 106 Stat. 4035; amended Pub. L. 104-330, title V, § 506(a)(10), Oct. 26, 1996, 110 Stat. 4045.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c)(2), was in the original “this Act”, meaning Pub. L. 100-77, July 22, 1987, 101 Stat. 482, as amended, known as the McKinney-Vento Homeless Assistance Act. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of this title and Tables.

AMENDMENTS

1996—Subsec. (e). Pub. L. 104-330 struck out “, Indian tribes (as such term is defined in section 5302(a) of this title),” after “nonprofit entities”.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as an Effective Date note under section 4101 of Title 25, Indians.

Amendment by Pub. L. 104-330 applicable with respect to amounts made available for assistance under this subchapter for fiscal year 1998 and fiscal years thereafter, see section 506(c) of Pub. L. 104-330, set out as a note under section 11371 of this title.

§ 11408a. Use of FMHA inventory for transitional housing for homeless persons and for turnkey housing

(a) In general

The Secretary of Agriculture (in this section referred to as the “Secretary”) shall, on a priority basis, lease or sell program and nonprogram inventory properties held by the Secretary under title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.]—

(1) to provide transitional housing; and

(2) to provide turnkey housing for tenants of such transitional housing and for eligible families.

(b) Priority

The priority uses of inventory property under this section shall not have a higher priority than—

(1) the disposition of such property by sale to eligible families; or

(2) the disposition of such property by transfer for use as rental housing by eligible families.

(c) Transitional housing

(1) Leases authorized

The Secretary shall lease inventory properties to public agencies and nonprofit organizations to provide transitional housing for homeless families and individuals and to provide such agencies the option to provide turnkey housing opportunities for homeless persons and other inadequately housed families.

(2) Rental to eligible families

A public agency or nonprofit organization may rent housing leased to it under paragraph (1) to a family for up to 10 years and may, during that period, assist the tenant in obtaining a loan and credit assistance under title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.] to purchase the housing from the Secretary.

(d) Lease procedures

(1) Identification of property

Upon receipt by the Secretary of written notification from a public agency or nonprofit organization that it proposes to lease a property for the purpose of providing transitional housing or for the purpose of providing transitional housing and turnkey housing opportunities, the Secretary shall—

(A) withdraw the property from the market for not more than 30 days for the purpose of negotiations under subparagraph (B);

(B) negotiate a lease agreement with the organization or agency; and

(C) if a lease is agreed to, commence the repairs necessary to make the property meet standards for decent, safe, and sanitary housing.

(2) Lease terms

A lease of inventory property under this section shall—

(A) be for a period of not more than 10 years;

(B) provide for the payment of \$1 for the 10-year lease; and

(C) provide the nonprofit organization or public agency—

(i) the right to use the property for transitional housing; and

(ii) the option to arrange for the sale of the property to an eligible purchaser.

(e) Purchase procedures

(1) Identification of property

Upon receipt by the Secretary of written notification from a public agency or nonprofit organization that it proposes to purchase a property for the purpose of providing transitional housing or for the purpose of providing transitional housing and turnkey housing opportunities, the Secretary shall—

(A) withdraw the property from the market for not more than 30 days for the purpose of negotiations under subparagraph (B);

(B) negotiate a purchase agreement with the organization or agency; and

(C) if a purchase agreement is agreed to, commence the repairs necessary to make the

property meet standards for decent, safe, and sanitary housing.

(2) Purchase terms

A purchase of inventory property under this section shall provide for a purchase price equal to not more than the fair market value of the property minus 10 percent.

(f) Employment of homeless individuals

A public agency or nonprofit organization may lease or purchase property under this section only if the agency or organization, to the maximum extent practicable, involves homeless individuals and families, through employment, volunteer services, or otherwise, in maintaining, operating, and renovating any properties leased or acquired under this section and in providing any services for occupants of properties assisted under this section.

(g) Participation of homeless individuals

(1) In general

The Secretary shall, by regulation, require each public agency and nonprofit organization leasing or purchasing property under this section to provide for the participation of not less than 1 homeless individual or former homeless individual on the board of directors or other equivalent policy making entity of such agency or organization, to the extent that such organization or applicant considers and makes policies and decisions regarding any property acquired under this section.

(2) Waiver

The Secretary may grant a waiver to a public agency or nonprofit organization that is unable to meet the requirement of paragraph (1), if the agency or organization agrees to otherwise consult with homeless or formerly homeless individuals in considering and making such policies and decisions.

(h) Budget compliance

The authority provided to the Secretary under this section shall be effective only to the extent approved in advance in appropriations Acts.

(Pub. L. 100-77, title IV, §592[492], as added Pub. L. 102-550, title XIV, §1414, Oct. 28, 1992, 106 Stat. 4041.)

REFERENCES IN TEXT

The Housing Act of 1949, referred to in subsecs. (a) and (c)(2), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended. Title V of the Act is classified generally to subchapter III (§1471 et seq.) of chapter 8A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of this title and Tables.

SUBCHAPTER V—IDENTIFICATION AND USE OF SURPLUS FEDERAL PROPERTY

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 11408 of this title; title 10 sections 2814, 2854a.

§ 11411. Use of unutilized and underutilized public buildings and real property to assist the homeless

(a) Identification of suitable property

The Secretary of Housing and Urban Development shall, on a quarterly basis, request infor-

mation from each landholding agency regarding Federal public buildings and other Federal real properties (including fixtures) that are excess property or surplus property or that are described as unutilized or underutilized in surveys by the heads of landholding agencies under section 483(b)(2) of title 40. No later than 25 days after receiving a request from the Secretary, the head of each landholding agency shall transmit such information to the Secretary. No later than 30 days after receiving such information, the Secretary shall identify which of those buildings and other properties are suitable for use to assist the homeless.

(b) Availability of property

(1) The Secretary shall promptly notify each Federal agency with respect to any property of that agency that the Secretary has identified under subsection (a) of this section. No later than 45 days after receipt of such a notice, the head of the appropriate landholding agency shall transmit to the Secretary the agency's response to property identifications contained in such notification, which shall include—

(A) in the case of unutilized or underutilized property—

- (i) a statement of intention to determine the property excess to the agency's needs;
- (ii) a statement of intention to make the property available for use to assist the homeless; or
- (iii) a statement of the reasons (including a full explanation of the need) the property cannot be determined excess to the agency's needs or made available for use to assist the homeless; and

(B) in the case of excess property—

- (i) a statement that there is no other compelling Federal need for the property and, therefore, the property will be determined surplus; or
- (ii) a statement that there is further and compelling Federal need for the property (including a full explanation of such need) and that, therefore, the property is not presently available for use to assist the homeless.

(2)(A) All properties identified by the Secretary under subsection (a) of this section shall be available for application—

- (i) in the case of property other than surplus property, for use to assist the homeless in accordance with the provisions of this section; and
- (ii) in the case of surplus property, for use to assist the homeless either in accordance with this section or as a public health use in accordance with paragraphs (1) and (4) of section 484(k) of title 40.

(3) The Secretary shall maintain a written public record of—

- (A) the identification of buildings and other properties by the Secretary under this subsection and the reasons for such identifications; and
- (B) the responses of landholding agencies to such identifications.

(c) Publication of properties

(1)(A) No later than 15 days after the last day of the 45-day period provided for under sub-

section (b)(1) of this section, the Secretary shall publish in the Federal Register—

- (i) a list of all properties reviewed by the Secretary under subsection (a) of this section; and
- (ii) a list of all properties that are available under subsection (b)(2) of this section for application for use to assist the homeless.

(B) Each publication of properties shall include a description and the location of each property (including the address and zip code) and the current classification of each property as unutilized, underutilized, excess property, or surplus property.

(C) The Secretary shall make available to the public upon request all information in the possession of the Department of Housing and Urban Development (other than valuation information), regardless of format, about all properties reviewed and not identified as being suitable for use to assist the homeless, including the reasons such properties were not so identified.

(D) The Secretary shall publish separately, on an annual basis, all properties identified as being suitable for use to assist the homeless, but reported to be unavailable, and the reasons such properties were unavailable.

(2)(A) No later than 15 days after the last day of the 45-day period provided for under subsection (b)(1) of this section, the Secretary shall transmit a copy of the list of available properties published under paragraph (1)(A)(ii) to the Interagency Council on the Homeless. The Council shall immediately distribute to all State and regional homeless coordinators area-relevant portions of the list.

(B) The Secretary, the Administrator, and the Secretary of Health and Human Services shall make such efforts as are necessary to ensure the widest possible dissemination of the information on such list.

(C) The Secretary shall establish a toll-free number to provide the public with specific information about properties on such list.

(3) The Secretary shall make available to the public upon request all information (other than valuation information) regardless of format in the possession of the Department of Housing and Urban Development about the properties published under paragraph (1)(A), including environmental assessment data. The Secretary shall maintain a current list of agency contacts for making referrals of inquiries for information about specific properties.

(4)(A) On December 31 of each year, the head of each landholding agency shall report to the Secretary the current availability status and the current classification of each property controlled by the agency, that—

- (i) was included in a list published in that year by the Secretary under paragraph (1)(A)(ii); and
- (ii) remains available for application for use to assist the homeless or has become available for application during that year.

(B) No later than February 15 each year, the Secretary shall publish in the Federal Register a list of all properties reported under subparagraph (A) for the preceding year and the current classification of the properties.

(C) For purposes of subparagraph (A), property shall not be considered to remain available for application for use to assist the homeless after the 60-day holding period provided under subsection (d) of this section if—

- (i) an application for or written expression of interest in the property is made under any law for use of the property for any purpose; or
- (ii) the Administrator receives a bona fide offer to purchase the property or advertises for the sale of the property by public auction.

(d) Holding period

(1) Properties published under subsection (c)(1)(A)(ii) of this section as available for application for use to assist the homeless shall not be available for any other purpose for a period of 60 days beginning on the date of such publication.

(2) If written notice of intent to apply for such a property for use to assist the homeless is received by the Secretary of Health and Human Services within the 60-day period described under paragraph (1), such property may not be made available for any other purpose until the date the Secretary of Health and Human Services or other appropriate landholding agency has completed action on the application submitted under subsection (e) of this section with respect to that written notice of intent.

(3) Property that is reviewed by the Secretary under subsection (a) of this section and that is not identified by the Secretary as being suitable for use to assist the homeless may not be made available for any other purpose for 20 days after the determination of unsuitability to allow for review of the determination at the request of the representative of the homeless. The Secretary shall disseminate immediately this information to the regional offices of the Department of Housing and Urban Development and to the Interagency Council on the Homeless.

(4)(A) Written notice of intent to apply for a property published under subsection (c)(1)(A)(ii) of this section may be filed at any time after the 60-day period described in paragraph (1) has expired. In such case, an application submitted pursuant to the notice may be approved for disposal for use to assist the homeless only if the property remains available for application for use to assist the homeless. If the property remains available, the use to assist the homeless shall be given priority of consideration over other competing disposal opportunities under section 484 of title 40, except as provided in subsection (f)(3)(A) of this section.

(B) Surplus property for which an application has been approved shall be assigned promptly to the Secretary of Health and Human Services for disposition in accordance with and subject to subsection (f) of this section.

(e) Application for property

(1) A representative of the homeless may submit an application to the Secretary of Health and Human Services for any property that is published under subsection (c)(1)(A)(ii) of this section as available for application for use to assist the homeless.

(2) No later than 90 days after the submission of written notice of intent to apply for a property, an applicant shall submit a complete application to the Secretary of Health and Human

Services. The Secretary of Health and Human Services shall, with the concurrence of the appropriate landholding agency, grant reasonable extensions.

(3) No later than 25 days after receipt of a completed application, the Secretary of Health and Human Services shall review, make all determinations, and complete all actions on the application. The Secretary of Health and Human Services shall maintain a written public record of all actions taken in response to an application.

(f) Making property available to representatives of homeless

(1) Subject to the provisions of this subsection, property for which the Secretary of Health and Human Services has approved an application under subsection (e) of this section shall be made promptly available by permit or lease, or by deed as a public health use under paragraphs (1) and (4) of section 484(k) of title 40, to the representative of the homeless that submitted the application.

(2) Unutilized or underutilized property that is the subject of an agency's statement of intention under subsection (b)(1)(A)(ii) of this section shall be made promptly available by the appropriate landholding agency to the approved applicant by lease or permit for a term of not less than 1 year, unless the applicant requests a shorter term.

(3)(A) In disposing of surplus property by deed or lease under section 484 of title 40, the Administrator and the Secretary of Health and Human Services shall give priority of consideration to uses to assist the homeless, unless the Administrator or the Secretary of Health and Human Services determines that a competing request for the property under section 484(k) of title 40 is so meritorious and compelling as to outweigh the needs of the homeless.

(B) Whenever the Administrator or the Secretary of Health and Human Services makes a determination under subparagraph (A), the Administrator or the Secretary of Health and Human Services shall transmit to the appropriate committees of the Congress an explanatory statement detailing the need satisfied by conveyance of the surplus property and the reasons for determining that such need was so meritorious and compelling as to outweigh the needs of the homeless.

(4) For any property made available by lease to a representative of the homeless before November 29, 1990, the Secretary of Health and Human Services may, upon written request by the representative, convey such property by deed to the representative in accordance with, and subject to the requirements of, section 484(k) of title 40. The lease term shall not be affected if a deed is not granted.

(g) Records

The Secretary shall maintain a written public record of—

(1) the reasons for determinations of the Secretary under this section that property is suitable or unsuitable for use to assist the homeless; and

(2) the responses of landholding agencies under subsection (b)(1) of this section.

(h) Applicability to property under base closure process

(1) The provisions of this section shall not apply to buildings and property at military installations that are approved for closure under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note) after October 25, 1994.

(2) For provisions relating to the use to assist the homeless of buildings and property located at certain military installations approved for closure under such Act, or under title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note), before October 25, 1994, see section 2(e) of Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

(i) Definitions

For purposes of this section—

(1) the term “Administrator” means the Administrator of General Services;

(2) each of the terms “excess property” and “surplus property” has the meaning given that term under section 472 of title 40;

(3) the term “landholding agency” means a Federal department or agency with statutory authority to control real property;

(4) the term “representative of the homeless” means a State or local government agency, or private nonprofit organization, which provides services to the homeless; and

(5) the term “Secretary” means the Secretary of Housing and Urban Development, except as otherwise provided.

(Pub. L. 100-77, title V, §501, July 22, 1987, 101 Stat. 509; Pub. L. 100-628, title V, §501, Nov. 7, 1988, 102 Stat. 3240; Pub. L. 101-645, title IV, §401(a), Nov. 29, 1990, 104 Stat. 4719; Pub. L. 102-484, div. B, title XXVIII, §2824, Oct. 23, 1992, 106 Stat. 2608; Pub. L. 103-421, §2(d), Oct. 25, 1994, 108 Stat. 4352.)

REFERENCES IN TEXT

The Defense Base Closure and Realignment Act of 1990, referred to in subsec. (h), is part A of title XXIX of div. B of Pub. L. 101-510, Nov. 5, 1990, 104 Stat. 1808, as amended, which is set out as a note under section 2687 of Title 10, Armed Forces. For complete classification of this Act to the Code, see Tables.

Title II of the Defense Authorization Amendments and Base Closure and Realignment Act, referred to in subsec. (h)(2), is title II of Pub. L. 100-526, Oct. 24, 1988, 102 Stat. 2627, as amended, which is set out as a note under section 2687 of Title 10. For complete classification of this Act to the Code, see Short Title of 1988 Amendment note set out under section 2687 of Title 10 and Tables.

Section 2(e) of Base Closure Community Redevelopment and Homeless Assistance Act of 1994, referred to in subsec. (h)(2), is section 2(e) of Pub. L. 103-421, which is set out as a note under section 2687 of Title 10.

AMENDMENTS

1994—Subsecs. (h), (i). Pub. L. 103-421 added subsec. (h) and redesignated former subsec. (h) as (i).

1992—Subsec. (c)(4)(C). Pub. L. 102-484, §2824(a), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: “For purposes of subparagraph (A), property shall be considered to remain available for application for use to assist the homeless if, subsequent to the 60-day holding period provided under subsection (d) of this section—

“(i) no application or written expression of interest has been made under any law for use of the property for any purpose; and

“(ii) the Administrator has not received a bona fide offer to purchase the property or advertised for the sale of the property by public auction.”

Subsec. (f)(2). Pub. L. 102-484, §2824(b), inserted “or” after “Unutilized”.

1990—Pub. L. 101-645 amended section generally, substituting present provisions consisting of subsecs. (a) to (h) for former provisions consisting of subsecs. (a) to (e).

1988—Pub. L. 100-628, §501(1), substituted “unutilized and underutilized” for “underutilized” in section catchline.

Subsec. (a). Pub. L. 100-628, §501(2), substituted “unutilized or underutilized” for “underutilized” in heading and text and inserted “, within 2 months after collecting such information,” before “shall identify” in text.

Subsec. (b)(1). Pub. L. 100-628, §501(3)(A), inserted “or to make the property available, on an interim basis, for use as facilities to assist the homeless” after “agency’s need”.

Subsec. (b)(2). Pub. L. 100-628, §501(3)(B), inserted before period at end “or made available on an interim basis for use as facilities to assist the homeless”.

Subsec. (d). Pub. L. 100-628, §501(4)(A), struck out “by lease” after “property” in heading.

Subsec. (d)(1). Pub. L. 100-628, §501(4)(B), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “Federal buildings or property may be made available under this section only through the use of leases for at least 1 year. Ownership of the buildings and property shall not be transferred from the Federal Government.”

Subsec. (d)(2). Pub. L. 100-628, §501(4)(C), substituted “With respect to property identified under subsection (a) which has been designated as surplus property,” for “To permit leases of surplus Federal buildings and other real property under this section.”

EFFECTIVE DATE OF 1990 AMENDMENT

Section 401(b) of Pub. L. 101-645 provided that: “The amendment made by subsection (a) [amending this section] shall be effective 90 days after the date of the enactment of this Act [Nov. 29, 1990].”

REGULATIONS

Section 401(d) of Pub. L. 101-645 provided that: “No later than 90 days after the date of the enactment of this Act [Nov. 29, 1990], the Administrator of General Services, the Secretary of Health and Human Services, and the Secretary of Housing and Urban Development shall promulgate regulations implementing this section and the amendment made by this section [amending this section and enacting provisions set out as notes under this section].”

CONSULTATION AND REPORT REGARDING USE OF NATIONAL GUARD FACILITIES AS OVERNIGHT SHELTERS FOR HOMELESS INDIVIDUALS

Pub. L. 102-550, title XIV, §1411, Oct. 28, 1992, 106 Stat. 4039, provided that:

“(a) USE OF AVAILABLE SPACE AT NATIONAL GUARD FACILITIES.—The Secretary of Housing and Urban Development shall consult with the chief executive officers of the States and the Secretary of Defense to determine the availability of space at National Guard facilities for use by homeless organizations in providing overnight shelter for homeless persons and families. The Secretary of Housing and Urban Development shall determine the availability of only such space that can be used for shelter purposes during periods it is not actively being used for National Guard purposes. The Secretary of Housing and Urban Development shall also determine the availability of incidental services at such facilities, including utilities, bedding, security, transportation, renovation of facilities, minor repairs

undertaken specifically to make available space in a facility suitable for use as an overnight shelter for homeless individuals, and property liability insurance.

“(b) LIMITATIONS.—In consultations under this section, the Secretary of Housing and Urban Development shall determine—

“(1) the number and capacity of such facilities that may be made available for shelters for homeless persons and families without adversely affecting the military or emergency service preparedness of the State or the United States; and

“(2) whether any available space is suitable for use as an overnight shelter for homeless individuals or can, with minor repairs, be made suitable for that use.

“(c) REPORT.—The Secretary of Housing and Urban Development shall submit to the Congress, not later than the expiration of the 1-year period beginning on the date of the enactment of this Act [Oct. 28, 1992], a report regarding the consultations and determinations made by the Secretary under this section. The report shall include any recommendations of the Secretary regarding the need for, and feasibility of, using National Guard facilities for homeless shelters and any recommendations of the Secretary for administrative or legislative action to provide for such use.”

UNUTILIZED AND UNDERUTILIZED PROPERTY FOR PURPOSES OF 1990 AMENDMENT

Section 401(c) of Pub. L. 101-645, as amended by Pub. L. 106-400, § 2, Oct. 30, 2000, 114 Stat. 1675, provided that: “For purposes of section 501 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11411) (as amended by this Act) the terms ‘unutilized’ and ‘underutilized’ when used to describe property have the same meaning such terms had before the date of the enactment of this Act [Nov. 29, 1990] under such section 501.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 2878; title 20 section 7713; title 38 section 8162.

§ 11412. Making surplus personal property available to nonprofit agencies

(a) Omitted

(b) Requirement for notification

Within 90 days after July 22, 1987, the Administrator of General Services shall require each State agency administering a State plan under section 484(j) of title 40 to make generally available information about surplus personal property which may be used in the provision of food, shelter, or other services to homeless individuals.

(c) Costs

Surplus personal property identified pursuant to this section shall be made available to providers of assistance to homeless individuals by a State agency distributing such property at (1) a nominal cost to such organization or (2) at no cost when the Administrator agrees to reimburse the State agency for the costs of care and handling of such property.

(Pub. L. 100-77, title V, § 502, July 22, 1987, 101 Stat. 510.)

CODIFICATION

Section is comprised of section 502 of Pub. L. 100-77. Subsec. (a) of section 502 amended section 484(j)(3)(B) of Title 40, Public Buildings, Property, and Works.

SUBCHAPTER VI—EDUCATION AND TRAINING

PART A—ADULT EDUCATION FOR HOMELESS

§ 11421. Repealed. Pub. L. 105-220, title I, § 199(b)(1), Aug. 7, 1998, 112 Stat. 1059

Section, Pub. L. 100-77, title VII, § 701, as added Pub. L. 103-382, title III, § 322, Oct. 20, 1994, 108 Stat. 3956, related to State literacy initiatives.

A prior section 11421, Pub. L. 100-77, title VII, § 702, July 22, 1987, 101 Stat. 525; Pub. L. 100-297, title VI, § 6001, Apr. 28, 1988, 102 Stat. 423; Pub. L. 100-628, title VII, § 701, Nov. 7, 1988, 102 Stat. 3244; Pub. L. 101-645, title VI, § 611, Nov. 29, 1990, 104 Stat. 4734, related to State literacy initiatives, prior to the general amendment of this part by Pub. L. 103-382.

EFFECTIVE DATE OF REPEAL

Pub. L. 105-220, title I, § 199(c)(2)(A), Aug. 7, 1998, 112 Stat. 1059, provided that: “The repeal made by subsection (b)(1) [repealing sections 11421, 11461 to 11466, 11471, and 11472 of this title] shall take effect on July 1, 1999.”

PART B—EDUCATION FOR HOMELESS CHILDREN AND YOUTHS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in title 20 section 7824.

§ 11431. Statement of policy

The following is the policy of the Congress:

(1) Each State educational agency shall ensure that each child of a homeless individual and each homeless youth has equal access to the same free, appropriate public education, including a public preschool education, as provided to other children and youths.

(2) In any State that has a compulsory residency requirement as a component of the State’s compulsory school attendance laws or other laws, regulations, practices, or policies that may act as a barrier to the enrollment, attendance, or success in school of homeless children and youths, the State will review and undertake steps to revise such laws, regulations, practices, or policies to ensure that homeless children and youths are afforded the same free, appropriate public education as provided to other children and youths.

(3) Homelessness alone is not sufficient reason to separate students from the mainstream school environment.

(4) Homeless children and youths should have access to the education and other services that such children and youths need to ensure that such children and youths have an opportunity to meet the same challenging State student academic achievement standards to which all students are held.

(Pub. L. 100-77, title VII, § 721, as added Pub. L. 107-110, title X, § 1032, Jan. 8, 2002, 115 Stat. 1989.)

PRIOR PROVISIONS

A prior section 11431, Pub. L. 100-77, title VII, § 721, as added Pub. L. 103-382, title III, § 323, Oct. 20, 1994, 108 Stat. 3957, stated policy of Congress, prior to the general amendment of this part by Pub. L. 107-110.

Another prior section 11431, Pub. L. 100-77, title VII, § 721, July 22, 1987, 101 Stat. 525; Pub. L. 101-645, title VI, § 612(a), Nov. 29, 1990, 104 Stat. 4735, stated policy of Congress, prior to the general amendment of this part by Pub. L. 103-382.

EFFECTIVE DATE

Part effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107-110, set out as a note under section 6301 of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11432, 11434 of this title.

§ 11432. Grants for State and local activities for the education of homeless children and youths

(a) General authority

The Secretary is authorized to make grants to States in accordance with the provisions of this section to enable such States to carry out the activities described in subsections (d) through (g) of this section.

(b) Application

No State may receive a grant under this section unless the State educational agency submits an application to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require.

(c) Allocation and reservations

(1) Allocation

(A) Subject to subparagraph (B), the Secretary is authorized to allot to each State an amount that bears the same ratio to the amount appropriated for such year under section 11435 of this title that remains after the Secretary reserves funds under paragraph (2) and uses funds to carry out section 11434(d) and (h) of this title, as the amount allocated under section 1122 of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6332] to the State for that year bears to the total amount allocated under section 1122 of such Act to all States for that year, except that no State shall receive less than the greater of—

- (i) \$150,000;
- (ii) one-fourth of 1 percent of the amount appropriated under section 11435 of this title for that year; or
- (iii) the amount such State received under this section for fiscal year 2001.

(B) If there are insufficient funds in a fiscal year to allot to each State the minimum amount under subparagraph (A), the Secretary shall ratably reduce the allotments to all States based on the proportionate share that each State received under this subsection for the preceding fiscal year.

(2) Reservations

(A) The Secretary is authorized to reserve 0.1 percent of the amount appropriated for each fiscal year under section 11435 of this title to be allocated by the Secretary among the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, according to their respective need for assistance under this part, as determined by the Secretary.

(B)(i) The Secretary shall transfer 1 percent of the amount appropriated for each fiscal year under section 11435 of this title to the De-

partment of the Interior for programs for Indian students served by schools funded by the Secretary of the Interior, as determined under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), that are consistent with the purposes of the programs described in this part.

(ii) The Secretary and the Secretary of the Interior shall enter into an agreement, consistent with the requirements of this part, for the distribution and use of the funds described in clause (i) under terms that the Secretary determines best meet the purposes of the programs described in this part. Such agreement shall set forth the plans of the Secretary of the Interior for the use of the amounts transferred, including appropriate goals, objectives, and milestones.

(3) State defined

For purposes of this subsection, the term "State" does not include the United States Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands.

(d) Activities

Grants under this section shall be used for the following:

- (1) To carry out the policies set forth in section 11431 of this title in the State.
- (2) To provide activities for, and services to, homeless children, including preschool-aged homeless children, and youths that enable such children and youths to enroll in, attend, and succeed in school, or, if appropriate, in preschool programs.
- (3) To establish or designate an Office of Coordinator for Education of Homeless Children and Youths in the State educational agency in accordance with subsection (f) of this section.
- (4) To prepare and carry out the State plan described in subsection (g) of this section.
- (5) To develop and implement professional development programs for school personnel to heighten their awareness of, and capacity to respond to, specific problems in the education of homeless children and youths.

(e) State and local subgrants

(1) Minimum disbursements by States

From the sums made available each year to carry out this part, the State educational agency shall distribute not less than 75 percent in subgrants to local educational agencies for the purposes of carrying out section 11433 of this title, except that States funded at the minimum level set forth in subsection (c)(1) of this section shall distribute not less than 50 percent in subgrants to local educational agencies for the purposes of carrying out section 11433 of this title.

(2) Use by State educational agency

A State educational agency may use funds made available for State use under this part to conduct activities under subsection (f) of this section directly or through grants or contracts.

(3) Prohibition on segregating homeless students

(A) In general

Except as provided in subparagraph (B) and section 11433(a)(2)(B)(ii) of this title, in providing a free public education to a homeless child or youth, no State receiving funds under this part shall segregate such child or youth in a separate school, or in a separate program within a school, based on such child's or youth's status as homeless.

(B) Exception

Notwithstanding subparagraph (A), paragraphs (1)(J)(i) and (3) of subsection (g) of this section, section 11433(a)(2) of this title, and any other provision of this part relating to the placement of homeless children or youths in schools, a State that has a separate school for homeless children or youths that was operated in fiscal year 2000 in a covered county shall be eligible to receive funds under this part for programs carried out in such school if—

- (i) the school meets the requirements of subparagraph (C);
- (ii) any local educational agency serving a school that the homeless children and youths enrolled in the separate school are eligible to attend meets the requirements of subparagraph (E); and
- (iii) the State is otherwise eligible to receive funds under this part.

(C) School requirements

For the State to be eligible under subparagraph (B) to receive funds under this part, the school described in such subparagraph shall—

- (i) provide written notice, at the time any child or youth seeks enrollment in such school, and at least twice annually while the child or youth is enrolled in such school, to the parent or guardian of the child or youth (or, in the case of an unaccompanied youth, the youth) that—
 - (I) shall be signed by the parent or guardian (or, in the case of an unaccompanied youth, the youth);
 - (II) sets forth the general rights provided under this part;
 - (III) specifically states—
 - (aa) the choice of schools homeless children and youths are eligible to attend, as provided in subsection (g)(3)(A) of this section;
 - (bb) that no homeless child or youth is required to attend a separate school for homeless children or youths;
 - (cc) that homeless children and youths shall be provided comparable services described in subsection (g)(4) of this section, including transportation services, educational services, and meals through school meals programs; and
 - (dd) that homeless children and youths should not be stigmatized by school personnel; and
 - (IV) provides contact information for the local liaison for homeless children

and youths and the State Coordinator for Education of Homeless Children and Youths;

(ii)(I) provide assistance to the parent or guardian of each homeless child or youth (or, in the case of an unaccompanied youth, the youth) to exercise the right to attend the parent's or guardian's (or youth's) choice of schools, as provided in subsection (g)(3)(A) of this section; and

(II) coordinate with the local educational agency with jurisdiction for the school selected by the parent or guardian (or youth), to provide transportation and other necessary services;

(iii) ensure that the parent or guardian (or, in the case of an unaccompanied youth, the youth) shall receive the information required by this subparagraph in a manner and form understandable to such parent or guardian (or youth), including, if necessary and to the extent feasible, in the native language of such parent or guardian (or youth); and

(iv) demonstrate in the school's application for funds under this part that such school—

(I) is complying with clauses (i) and (ii); and

(II) is meeting (as of the date of submission of the application) the same Federal and State standards, regulations, and mandates as other public schools in the State (such as complying with sections 1111 and 1116 of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6311, 6316] and providing a full range of education and related services, including services applicable to students with disabilities).

(D) School ineligibility

A separate school described in subparagraph (B) that fails to meet the standards, regulations, and mandates described in subparagraph (C)(iv)(II) shall not be eligible to receive funds under this part for programs carried out in such school after the first date of such failure.

(E) Local educational agency requirements

For the State to be eligible to receive the funds described in subparagraph (B), the local educational agency described in subparagraph (B)(ii) shall—

(i) implement a coordinated system for ensuring that homeless children and youths—

(I) are advised of the choice of schools provided in subsection (g)(3)(A) of this section;

(II) are immediately enrolled, in accordance with subsection (g)(3)(C) of this section, in the school selected under subsection (g)(3)(A) of this section; and

(III) are promptly provided necessary services described in subsection (g)(4) of this section, including transportation, to allow homeless children and youths to exercise their choices of schools under subsection (g)(3)(A) of this section;

(ii) document that written notice has been provided—

(I) in accordance with subparagraph (C)(i) for each child or youth enrolled in a separate school under subparagraph (B); and

(II) in accordance with subsection (g)(6)(A)(v) of this section;

(iii) prohibit schools within the agency's jurisdiction from referring homeless children or youths to, or requiring homeless children and youths to enroll in or attend, a separate school described in subparagraph (B);

(iv) identify and remove any barriers that exist in schools within the agency's jurisdiction that may have contributed to the creation or existence of separate schools described in subparagraph (B); and

(v) not use funds received under this part to establish—

(I) new or additional separate schools for homeless children or youths; or

(II) new or additional sites for separate schools for homeless children or youths, other than the sites occupied by the schools described in subparagraph (B) in fiscal year 2000.

(F) Report

(i) Preparation

The Secretary shall prepare a report on the separate schools and local educational agencies described in subparagraph (B) that receive funds under this part in accordance with this paragraph. The report shall contain, at a minimum, information on—

(I) compliance with all requirements of this paragraph;

(II) barriers to school access in the school districts served by the local educational agencies; and

(III) the progress the separate schools are making in integrating homeless children and youths into the mainstream school environment, including the average length of student enrollment in such schools.

(ii) Compliance with information requests

For purposes of enabling the Secretary to prepare the report, the separate schools and local educational agencies shall cooperate with the Secretary and the State Coordinator for Education of Homeless Children and Youths established in the State under subsection (d)(3) of this section, and shall comply with any requests for information by the Secretary and State Coordinator for such State.

(iii) Submission

Not later than 2 years after January 8, 2002, the Secretary shall submit the report described in clause (i) to—

(I) the President;

(II) the Committee on Education and the Workforce of the House of Representatives; and

(III) the Committee on Health, Education, Labor, and Pensions of the Senate.

(G) Definition

For purposes of this paragraph, the term "covered county" means—

(i) San Joaquin County, California;

(ii) Orange County, California;

(iii) San Diego County, California; and

(iv) Maricopa County, Arizona.

(f) Functions of the Office of Coordinator

The Coordinator for Education of Homeless Children and Youths established in each State shall—

(1) gather reliable, valid, and comprehensive information on the nature and extent of the problems homeless children and youths have in gaining access to public preschool programs and to public elementary schools and secondary schools, the difficulties in identifying the special needs of such children and youths, any progress made by the State educational agency and local educational agencies in the State in addressing such problems and difficulties, and the success of the programs under this part in allowing homeless children and youths to enroll in, attend, and succeed in, school;

(2) develop and carry out the State plan described in subsection (g) of this section;

(3) collect and transmit to the Secretary, at such time and in such manner as the Secretary may require, a report containing such information as the Secretary determines is necessary to assess the educational needs of homeless children and youths within the State;

(4) facilitate coordination between the State educational agency, the State social services agency, and other agencies (including agencies providing mental health services) to provide services to homeless children, including preschool-aged homeless children, and youths, and to families of such children and youths;

(5) in order to improve the provision of comprehensive education and related services to homeless children and youths and their families, coordinate and collaborate with—

(A) educators, including child development and preschool program personnel;

(B) providers of services to homeless and runaway children and youths and homeless families (including domestic violence agencies, shelter operators, transitional housing facilities, runaway and homeless youth centers, and transitional living programs for homeless youths);

(C) local educational agency liaisons designated under subsection (g)(1)(J)(ii) of this section for homeless children and youths; and

(D) community organizations and groups representing homeless children and youths and their families; and

(6) provide technical assistance to local educational agencies in coordination with local educational agency liaisons designated under subsection (g)(1)(J)(ii) of this section, to ensure that local educational agencies comply with the requirements of subsection (e)(3) of this section and paragraphs (3) through (7) of subsection (g) of this section.

(g) State plan**(1) In general**

Each State shall submit to the Secretary a plan to provide for the education of homeless children and youths within the State. Such plan shall include the following:

(A) A description of how such children and youths are (or will be) given the opportunity to meet the same challenging State academic achievement standards all students are expected to meet.

(B) A description of the procedures the State educational agency will use to identify such children and youths in the State and to assess their special needs.

(C) A description of procedures for the prompt resolution of disputes regarding the educational placement of homeless children and youths.

(D) A description of programs for school personnel (including principals, attendance officers, teachers, enrollment personnel, and pupil services personnel) to heighten the awareness of such personnel of the specific needs of runaway and homeless youths.

(E) A description of procedures that ensure that homeless children and youths who meet the relevant eligibility criteria are able to participate in Federal, State, or local food programs.

(F) A description of procedures that ensure that—

(i) homeless children have equal access to the same public preschool programs, administered by the State agency, as provided to other children in the State;

(ii) homeless youths and youths separated from the public schools are identified and accorded equal access to appropriate secondary education and support services; and

(iii) homeless children and youths who meet the relevant eligibility criteria are able to participate in Federal, State, or local before- and after-school care programs.

(G) Strategies to address problems identified in the report provided to the Secretary under subsection (f)(3) of this section.

(H) Strategies to address other problems with respect to the education of homeless children and youths, including problems resulting from enrollment delays that are caused by—

(i) immunization and medical records requirements;

(ii) residency requirements;

(iii) lack of birth certificates, school records, or other documentation;

(iv) guardianship issues; or

(v) uniform or dress code requirements.

(I) A demonstration that the State educational agency and local educational agencies in the State have developed, and shall review and revise, policies to remove barriers to the enrollment and retention of homeless children and youths in schools in the State.

(J) Assurances that—

(i) the State educational agency and local educational agencies in the State will adopt policies and practices to ensure that homeless children and youths are not stigmatized or segregated on the basis of their status as homeless;

(ii) local educational agencies will designate an appropriate staff person, who may also be a coordinator for other Federal programs, as a local educational agency liaison for homeless children and youths, to carry out the duties described in paragraph (6)(A); and

(iii) the State and its local educational agencies will adopt policies and practices to ensure that transportation is provided, at the request of the parent or guardian (or in the case of an unaccompanied youth, the liaison), to and from the school of origin, as determined in paragraph (3)(A), in accordance with the following, as applicable:

(I) If the homeless child or youth continues to live in the area served by the local educational agency in which the school of origin is located, the child's or youth's transportation to and from the school of origin shall be provided or arranged by the local educational agency in which the school of origin is located.

(II) If the homeless child's or youth's living arrangements in the area served by the local educational agency of origin terminate and the child or youth, though continuing his or her education in the school of origin, begins living in an area served by another local educational agency, the local educational agency of origin and the local educational agency in which the homeless child or youth is living shall agree upon a method to apportion the responsibility and costs for providing the child with transportation to and from the school of origin. If the local educational agencies are unable to agree upon such method, the responsibility and costs for transportation shall be shared equally.

(2) Compliance**(A) In general**

Each plan adopted under this subsection shall also describe how the State will ensure that local educational agencies in the State will comply with the requirements of paragraphs (3) through (7).

(B) Coordination

Such plan shall indicate what technical assistance the State will furnish to local educational agencies and how compliance efforts will be coordinated with the local educational agency liaisons designated under paragraph (1)(J)(ii).

(3) Local educational agency requirements**(A) In general**

The local educational agency serving each child or youth to be assisted under this part shall, according to the child's or youth's best interest—

(i) continue the child's or youth's education in the school of origin for the duration of homelessness—

(I) in any case in which a family becomes homeless between academic years or during an academic year; or

(II) for the remainder of the academic year, if the child or youth becomes permanently housed during an academic year; or

(ii) enroll the child or youth in any public school that nonhomeless students who live in the attendance area in which the child or youth is actually living are eligible to attend.

(B) Best interest

In determining the best interest of the child or youth under subparagraph (A), the local educational agency shall—

(i) to the extent feasible, keep a homeless child or youth in the school of origin, except when doing so is contrary to the wishes of the child's or youth's parent or guardian;

(ii) provide a written explanation, including a statement regarding the right to appeal under subparagraph (E), to the homeless child's or youth's parent or guardian, if the local educational agency sends such child or youth to a school other than the school of origin or a school requested by the parent or guardian; and

(iii) in the case of an unaccompanied youth, ensure that the homeless liaison designated under paragraph (1)(J)(ii) assists in placement or enrollment decisions under this subparagraph, considers the views of such unaccompanied youth, and provides notice to such youth of the right to appeal under subparagraph (E).

(C) Enrollment

(i) The school selected in accordance with this paragraph shall immediately enroll the homeless child or youth, even if the child or youth is unable to produce records normally required for enrollment, such as previous academic records, medical records, proof of residency, or other documentation.

(ii) The enrolling school shall immediately contact the school last attended by the child or youth to obtain relevant academic and other records.

(iii) If the child or youth needs to obtain immunizations, or immunization or medical records, the enrolling school shall immediately refer the parent or guardian of the child or youth to the local educational agency liaison designated under paragraph (1)(J)(ii), who shall assist in obtaining necessary immunizations, or immunization or medical records, in accordance with subparagraph (D).

(D) Records

Any record ordinarily kept by the school, including immunization or medical records, academic records, birth certificates, guardianship records, and evaluations for special services or programs, regarding each homeless child or youth shall be maintained—

(i) so that the records are available, in a timely fashion, when a child or youth enters a new school or school district; and

(ii) in a manner consistent with section 1232g of title 20.

(E) Enrollment disputes

If a dispute arises over school selection or enrollment in a school—

(i) the child or youth shall be immediately admitted to the school in which enrollment is sought, pending resolution of the dispute;

(ii) the parent or guardian of the child or youth shall be provided with a written explanation of the school's decision regarding school selection or enrollment, including the rights of the parent, guardian, or youth to appeal the decision;

(iii) the child, youth, parent, or guardian shall be referred to the local educational agency liaison designated under paragraph (1)(J)(ii), who shall carry out the dispute resolution process as described in paragraph (1)(C) as expeditiously as possible after receiving notice of the dispute; and

(iv) in the case of an unaccompanied youth, the homeless liaison shall ensure that the youth is immediately enrolled in school pending resolution of the dispute.

(F) Placement choice

The choice regarding placement shall be made regardless of whether the child or youth lives with the homeless parents or has been temporarily placed elsewhere.

(G) School of origin defined

In this paragraph, the term "school of origin" means the school that the child or youth attended when permanently housed or the school in which the child or youth was last enrolled.

(H) Contact information

Nothing in this part shall prohibit a local educational agency from requiring a parent or guardian of a homeless child to submit contact information.

(4) Comparable services

Each homeless child or youth to be assisted under this part shall be provided services comparable to services offered to other students in the school selected under paragraph (3), including the following:

(A) Transportation services.

(B) Educational services for which the child or youth meets the eligibility criteria, such as services provided under title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.] or similar State or local programs, educational programs for children with disabilities, and educational programs for students with limited English proficiency.

(C) Programs in vocational and technical education.

(D) Programs for gifted and talented students.

(E) School nutrition programs.

(5) Coordination**(A) In general**

Each local educational agency serving homeless children and youths that receives assistance under this part shall coordinate—

(i) the provision of services under this part with local social services agencies and other agencies or programs providing services to homeless children and youths and their families, including services and programs funded under the Runaway and Homeless Youth Act (42 U.S.C. 5701 et seq.); and

(ii) with other local educational agencies on interdistrict issues, such as transportation or transfer of school records.

(B) Housing assistance

If applicable, each State educational agency and local educational agency that receives assistance under this part shall coordinate with State and local housing agencies responsible for developing the comprehensive housing affordability strategy described in section 12705 of this title to minimize educational disruption for children and youths who become homeless.

(C) Coordination purpose

The coordination required under subparagraphs (A) and (B) shall be designed to—

(i) ensure that homeless children and youths have access and reasonable proximity to available education and related support services; and

(ii) raise the awareness of school personnel and service providers of the effects of short-term stays in a shelter and other challenges associated with homelessness.

(6) Local educational agency liaison**(A) Duties**

Each local educational agency liaison for homeless children and youths, designated under paragraph (1)(J)(ii), shall ensure that—

(i) homeless children and youths are identified by school personnel and through coordination activities with other entities and agencies;

(ii) homeless children and youths enroll in, and have a full and equal opportunity to succeed in, schools of that local educational agency;

(iii) homeless families, children, and youths receive educational services for which such families, children, and youths are eligible, including Head Start and Even Start programs and preschool programs administered by the local educational agency, and referrals to health care services, dental services, mental health services, and other appropriate services;

(iv) the parents or guardians of homeless children and youths are informed of the educational and related opportunities available to their children and are provided with meaningful opportunities to participate in the education of their children;

(v) public notice of the educational rights of homeless children and youths is disseminated where such children and youths receive services under this chapter, such as schools, family shelters, and soup kitchens;

(vi) enrollment disputes are mediated in accordance with paragraph (3)(E); and

(vii) the parent or guardian of a homeless child or youth, and any unaccompanied youth, is fully informed of all transportation services, including transportation to the school of origin, as described in paragraph (1)(J)(iii), and is assisted in accessing transportation to the school that is selected under paragraph (3)(A).

(B) Notice

State coordinators established under subsection (d)(3) of this section and local educational agencies shall inform school personnel, service providers, and advocates working with homeless families of the duties of the local educational agency liaisons.

(C) Local and State coordination

Local educational agency liaisons for homeless children and youths shall, as a part of their duties, coordinate and collaborate with State coordinators and community and school personnel responsible for the provision of education and related services to homeless children and youths.

(7) Review and revisions**(A) In general**

Each State educational agency and local educational agency that receives assistance under this part shall review and revise any policies that may act as barriers to the enrollment of homeless children and youths in schools that are selected under paragraph (3).

(B) Consideration

In reviewing and revising such policies, consideration shall be given to issues concerning transportation, immunization, residency, birth certificates, school records and other documentation, and guardianship.

(C) Special attention

Special attention shall be given to ensuring the enrollment and attendance of homeless children and youths who are not currently attending school.

(Pub. L. 100-77, title VII, §722, as added Pub. L. 107-110, title X, §1032, Jan. 8, 2002, 115 Stat. 1990.)

REFERENCES IN TEXT

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (c)(2)(B)(i), is Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§450 et seq.) of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

The Elementary and Secondary Education Act of 1965, referred to in subsec. (g)(4)(B), is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27, as amended. Title I of the Act is classified generally to subchapter I (§6301 et seq.) of chapter 70 of Title 20, Education. For complete classi-

fication of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

The Runaway and Homeless Youth Act, referred to in subsec. (g)(5)(A)(i), is title III of Pub. L. 93-415, Sept. 7, 1974, 88 Stat. 1129, which is classified generally to subchapter III (§5701 et seq.) of chapter 72 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5601 of this title and Tables.

This chapter, referred to in subsec. (g)(6)(A)(v), was in the original "this Act", meaning Pub. L. 100-77, July 22, 1987, 101 Stat. 482, as amended, known as the McKinney-Vento Homeless Assistance Act. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of this title and Tables.

PRIOR PROVISIONS

A prior section 11432, Pub. L. 100-77, title VII, §722, as added Pub. L. 103-382, title III, §323, Oct. 20, 1994, 108 Stat. 3957, related to grants for State and local activities for education of homeless children and youth, prior to the general amendment of this part by Pub. L. 107-110.

Another prior section 11432, Pub. L. 100-77, title VII, §722, July 22, 1987, 101 Stat. 525; Pub. L. 100-628, title VII, §702(a), Nov. 7, 1988, 102 Stat. 3245; Pub. L. 101-645, title VI, §612(b), Nov. 29, 1990, 104 Stat. 4735, related to grants for State and local activities for education of homeless children and youth, prior to the general amendment of this part by Pub. L. 103-382.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11433, 11434 of this title.

§ 11433. Local educational agency subgrants for the education of homeless children and youths

(a) General authority

(1) In general

The State educational agency shall, in accordance with section 11432(e) of this title, and from amounts made available to such agency under section 11435 of this title, make subgrants to local educational agencies for the purpose of facilitating the enrollment, attendance, and success in school of homeless children and youths.

(2) Services

(A) In general

Services under paragraph (1)—

(i) may be provided through programs on school grounds or at other facilities;

(ii) shall, to the maximum extent practicable, be provided through existing programs and mechanisms that integrate homeless children and youths with non-homeless children and youths; and

(iii) shall be designed to expand or improve services provided as part of a school's regular academic program, but not to replace such services provided under such program.

(B) Services on school grounds

If services under paragraph (1) are provided on school grounds, schools—

(i) may use funds under this part to provide the same services to other children and youths who are determined by the local educational agency to be at risk of failing in, or dropping out of, school, subject to the requirements of clause (ii); and

(ii) except as otherwise provided in section 11432(e)(3)(B) of this title, shall not provide services in settings within a school that segregate homeless children and youths from other children and youths, except as necessary for short periods of time—

(I) for health and safety emergencies; or

(II) to provide temporary, special, and supplementary services to meet the unique needs of homeless children and youths.

(3) Requirement

Services provided under this section shall not replace the regular academic program and shall be designed to expand upon or improve services provided as part of the school's regular academic program.

(b) Application

A local educational agency that desires to receive a subgrant under this section shall submit an application to the State educational agency at such time, in such manner, and containing or accompanied by such information as the State educational agency may reasonably require. Such application shall include the following:

(1) An assessment of the educational and related needs of homeless children and youths in the area served by such agency (which may be undertaken as part of needs assessments for other disadvantaged groups).

(2) A description of the services and programs for which assistance is sought to address the needs identified in paragraph (1).

(3) An assurance that the local educational agency's combined fiscal effort per student, or the aggregate expenditures of that agency and the State with respect to the provision of free public education by such agency for the fiscal year preceding the fiscal year for which the determination is made, was not less than 90 percent of such combined fiscal effort or aggregate expenditures for the second fiscal year preceding the fiscal year for which the determination is made.

(4) An assurance that the applicant complies with, or will use requested funds to comply with, paragraphs (3) through (7) of section 11432(g) of this title.

(5) A description of policies and procedures, consistent with section 11432(e)(3) of this title, that the agency will implement to ensure that activities carried out by the agency will not isolate or stigmatize homeless children and youths.

(c) Awards

(1) In general

The State educational agency shall, in accordance with the requirements of this part and from amounts made available to it under section 11435 of this title, make competitive subgrants to local educational agencies that submit applications under subsection (b) of this section. Such subgrants shall be awarded on the basis of the need of such agencies for assistance under this part and the quality of the applications submitted.

(2) Need

In determining need under paragraph (1), the State educational agency may consider the number of homeless children and youths enrolled in preschool, elementary, and secondary schools within the area served by the local educational agency, and shall consider the needs of such children and youths and the ability of the local educational agency to meet such needs. The State educational agency may also consider the following:

(A) The extent to which the proposed use of funds will facilitate the enrollment, retention, and educational success of homeless children and youths.

(B) The extent to which the application—
(i) reflects coordination with other local and State agencies that serve homeless children and youths; and

(ii) describes how the applicant will meet the requirements of section 11432(g)(3) of this title.

(C) The extent to which the applicant exhibits in the application and in current practice a commitment to education for all homeless children and youths.

(D) Such other criteria as the State agency determines appropriate.

(3) Quality

In determining the quality of applications under paragraph (1), the State educational agency shall consider the following:

(A) The applicant's needs assessment under subsection (b)(1) of this section and the likelihood that the program presented in the application will meet such needs.

(B) The types, intensity, and coordination of the services to be provided under the program.

(C) The involvement of parents or guardians of homeless children or youths in the education of their children.

(D) The extent to which homeless children and youths will be integrated within the regular education program.

(E) The quality of the applicant's evaluation plan for the program.

(F) The extent to which services provided under this part will be coordinated with other services available to homeless children and youths and their families.

(G) Such other measures as the State educational agency considers indicative of a high-quality program, such as the extent to which the local educational agency will provide case management or related services to unaccompanied youths.

(4) Duration of grants

Grants awarded under this section shall be for terms not to exceed 3 years.

(d) Authorized activities

A local educational agency may use funds awarded under this section for activities that carry out the purpose of this part, including the following:

(1) The provision of tutoring, supplemental instruction, and enriched educational services that are linked to the achievement of the

same challenging State academic content standards and challenging State student academic achievement standards the State establishes for other children and youths.

(2) The provision of expedited evaluations of the strengths and needs of homeless children and youths, including needs and eligibility for programs and services (such as educational programs for gifted and talented students, children with disabilities, and students with limited English proficiency, services provided under title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.] or similar State or local programs, programs in vocational and technical education, and school nutrition programs).

(3) Professional development and other activities for educators and pupil services personnel that are designed to heighten the understanding and sensitivity of such personnel to the needs of homeless children and youths, the rights of such children and youths under this part, and the specific educational needs of runaway and homeless youths.

(4) The provision of referral services to homeless children and youths for medical, dental, mental, and other health services.

(5) The provision of assistance to defray the excess cost of transportation for students under section 11432(g)(4)(A) of this title, not otherwise provided through Federal, State, or local funding, where necessary to enable students to attend the school selected under section 11432(g)(3) of this title.

(6) The provision of developmentally appropriate early childhood education programs, not otherwise provided through Federal, State, or local funding, for preschool-aged homeless children.

(7) The provision of services and assistance to attract, engage, and retain homeless children and youths, and unaccompanied youths, in public school programs and services provided to nonhomeless children and youths.

(8) The provision for homeless children and youths of before- and after-school, mentoring, and summer programs in which a teacher or other qualified individual provides tutoring, homework assistance, and supervision of educational activities.

(9) If necessary, the payment of fees and other costs associated with tracking, obtaining, and transferring records necessary to enroll homeless children and youths in school, including birth certificates, immunization or medical records, academic records, guardianship records, and evaluations for special programs or services.

(10) The provision of education and training to the parents of homeless children and youths about the rights of, and resources available to, such children and youths.

(11) The development of coordination between schools and agencies providing services to homeless children and youths, as described in section 11432(g)(5) of this title.

(12) The provision of pupil services (including violence prevention counseling) and referrals for such services.

(13) Activities to address the particular needs of homeless children and youths that may arise from domestic violence.

(14) The adaptation of space and purchase of supplies for any nonschool facilities made available under subsection (a)(2) of this section to provide services under this subsection.

(15) The provision of school supplies, including those supplies to be distributed at shelters or temporary housing facilities, or other appropriate locations.

(16) The provision of other extraordinary or emergency assistance needed to enable homeless children and youths to attend school.

(Pub. L. 100-77, title VII, §723, as added Pub. L. 107-110, title X, §1032, Jan. 8, 2002, 115 Stat. 2001.)

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsec. (d)(2), is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27, as amended generally. Title I of the Act is classified generally to subchapter I (§6301 et seq.) of chapter 70 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

PRIOR PROVISIONS

A prior section 11433, Pub. L. 100-77, title VII, §723, as added Pub. L. 103-382, title III, §323, Oct. 20, 1994, 108 Stat. 3962, related to local educational agency grants for education of homeless children and youth, prior to the general amendment of this part by Pub. L. 107-110.

Another prior section 11433, Pub. L. 100-77, title VII, §723, July 22, 1987, 101 Stat. 527; Pub. L. 100-628, title VII, §702(b), Nov. 7, 1988, 102 Stat. 3245; Pub. L. 101-645, title VI, §612(c), Nov. 29, 1990, 104 Stat. 4739, related to local educational agency grants for education of homeless children and youth, prior to the general amendment of this part by Pub. L. 103-382.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11432 of this title.

§ 11434. Secretarial responsibilities

(a) Review of State plans

In reviewing the State plan submitted by a State educational agency under section 11432(g) of this title, the Secretary shall use a peer review process and shall evaluate whether State laws, policies, and practices described in such plan adequately address the problems of homeless children and youths relating to access to education and placement as described in such plan.

(b) Technical assistance

The Secretary shall provide support and technical assistance to a State educational agency to assist such agency in carrying out its responsibilities under this part, if requested by the State educational agency.

(c) Notice

The Secretary shall, before the next school year that begins after January 8, 2002, create and disseminate nationwide a public notice of the educational rights of homeless children and youths and disseminate such notice to other Federal agencies, programs, and grantees, including Head Start grantees, Health Care for the Homeless grantees, Emergency Food and Shelter grantees, and homeless assistance programs administered by the Department of Housing and Urban Development.

(d) Evaluation and dissemination

The Secretary shall conduct evaluation and dissemination activities of programs designed to

meet the educational needs of homeless elementary and secondary school students, and may use funds appropriated under section 11435 of this title to conduct such activities.

(e) Submission and distribution

The Secretary shall require applications for grants under this part to be submitted to the Secretary not later than the expiration of the 60-day period beginning on the date that funds are available for purposes of making such grants and shall make such grants not later than the expiration of the 120-day period beginning on such date.

(f) Determination by Secretary

The Secretary, based on the information received from the States and information gathered by the Secretary under subsection (h) of this section, shall determine the extent to which State educational agencies are ensuring that each homeless child and homeless youth has access to a free appropriate public education, as described in section 11431(1) of this title.

(g) Guidelines

The Secretary shall develop, issue, and publish in the Federal Register, not later than 60 days after January 8, 2002, school enrollment guidelines for States with respect to homeless children and youths. The guidelines shall describe—

(1) successful ways in which a State may assist local educational agencies to immediately enroll homeless children and youths in school; and

(2) how a State can review the State's requirements regarding immunization and medical or school records and make such revisions to the requirements as are appropriate and necessary in order to enroll homeless children and youths in school immediately.

(h) Information

(1) In general

From funds appropriated under section 11435 of this title, the Secretary shall, directly or through grants, contracts, or cooperative agreements, periodically collect and disseminate data and information regarding—

(A) the number and location of homeless children and youths;

(B) the education and related services such children and youths receive;

(C) the extent to which the needs of homeless children and youths are being met; and

(D) such other data and information as the Secretary determines to be necessary and relevant to carry out this part.

(2) Coordination

The Secretary shall coordinate such collection and dissemination with other agencies and entities that receive assistance and administer programs under this part.

(i) Report

Not later than 4 years after January 8, 2002, the Secretary shall prepare and submit to the President and the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a report on the status of education of homeless children and youths, which shall include information on—

(1) the education of homeless children and youths; and

(2) the actions of the Secretary and the effectiveness of the programs supported under this part.

(Pub. L. 100-77, title VII, §724, as added Pub. L. 107-110, title X, §1032, Jan. 8, 2002, 115 Stat. 2004.)

PRIOR PROVISIONS

A prior section 11434, Pub. L. 100-77, title VII, §724, as added Pub. L. 103-382, title III, §323, Oct. 20, 1994, 108 Stat. 3964, related to Secretarial responsibilities, prior to the general amendment of this part by Pub. L. 107-110.

Another prior section 11434, Pub. L. 100-77, title VII, §724, July 22, 1987, 101 Stat. 528; Pub. L. 101-645, title VI, §612(d), Nov. 29, 1990, 104 Stat. 4742, related to national responsibilities, prior to the general amendment of this part by Pub. L. 103-382.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11432 of this title.

§ 11434a. Definitions

For purposes of this part:

(1) The terms “enroll” and “enrollment” include attending classes and participating fully in school activities.

(2) The term “homeless children and youths”—

(A) means individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of section 11302(a)(1) of this title); and

(B) includes—

(i) children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;

(ii) children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of section 11302(a)(2)(C) of this title);

(iii) children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

(iv) migratory children (as such term is defined in section 6399 of title 20) who qualify as homeless for the purposes of this part because the children are living in circumstances described in clauses (i) through (iii).

(3) The terms “local educational agency” and “State educational agency” have the meanings given such terms in section 7801 of title 20.

(4) The term “Secretary” means the Secretary of Education.

(5) The term “State” means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(6) The term “unaccompanied youth” includes a youth not in the physical custody of a parent or guardian.

(Pub. L. 100-77, title VII, §725, as added Pub. L. 107-110, title X, §1032, Jan. 8, 2002, 115 Stat. 2005.)

PRIOR PROVISIONS

A prior section 11434a, Pub. L. 100-77, title VII, §725, as added Pub. L. 103-382, title III, §323, Oct. 20, 1994, 108 Stat. 3965, defined terms, prior to the general amendment of this part by Pub. L. 107-110.

Another prior section 11434a, Pub. L. 100-77, title VII, §725, as added Pub. L. 101-645, title VI, §613(2), Nov. 29, 1990, 104 Stat. 4743, related to reports by Comptroller General, prior to the general amendment of this part by Pub. L. 103-382.

A prior section 725 of Pub. L. 100-77 was renumbered section 726 and was classified to section 11435 of this title, prior to the general amendment of this part by Pub. L. 103-382.

§ 11435. Authorization of appropriations

For the purpose of carrying out this part, there are authorized to be appropriated \$70,000,000 for fiscal year 2002 and such sums as may be necessary for each of fiscal years 2003 through 2007.

(Pub. L. 100-77, title VII, §726, as added Pub. L. 107-110, title X, §1032, Jan. 8, 2002, 115 Stat. 2006.)

PRIOR PROVISIONS

A prior section 11435, Pub. L. 100-77, title VII, §726, as added Pub. L. 103-382, title III, §323, Oct. 20, 1994, 108 Stat. 3965, authorized appropriations, prior to the general amendment of this part by Pub. L. 107-110.

Another prior section 11435, Pub. L. 100-77, title VII, §726, formerly §725, July 22, 1987, 101 Stat. 528; Pub. L. 100-628, title VII, §702(c), Nov. 7, 1988, 102 Stat. 3245; renumbered §726, Pub. L. 101-645, title VI, §613(1), Nov. 29, 1990, 104 Stat. 4743, defined terms used in this part, prior to the general amendment of this part by Pub. L. 103-382.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11432, 11433, 11434 of this title.

PART C—JOB TRAINING FOR HOMELESS

§§ 11441 to 11447. Repealed. Pub. L. 105-220, title I, § 199(a)(5), Aug. 7, 1998, 112 Stat. 1059

Section 11441, Pub. L. 100-77, title VII, §731, July 22, 1987, 101 Stat. 528, authorized demonstration program for homeless individuals.

Section 11442, Pub. L. 100-77, title VII, §732, July 22, 1987, 101 Stat. 528, related to State coordination with demonstration grant recipients.

Section 11443, Pub. L. 100-77, title VII, §733, July 22, 1987, 101 Stat. 529; Pub. L. 101-645, title VI, §621(a), Nov. 29, 1990, 104 Stat. 4743, related to application for grants.

Section 11444, Pub. L. 100-77, title VII, §734, July 22, 1987, 101 Stat. 529, related to authorized activities.

Section 11445, Pub. L. 100-77, title VII, §735, July 22, 1987, 101 Stat. 529, related to payments, Federal share, and limitations.

Section 11446, Pub. L. 100-77, title VII, §736, July 22, 1987, 101 Stat. 530, related to evaluation of projects.

Section 11447, Pub. L. 100-77, title VII, §737, July 22, 1987, 101 Stat. 530; Pub. L. 100-628, title VII, §703(a), Nov. 7, 1988, 102 Stat. 3246, defined terms.

§ 11448. Repealed. Pub. L. 107-95, §5(e)(4), Dec. 21, 2001, 115 Stat. 918

Section, Pub. L. 100-77, title VII, §738, July 22, 1987, 101 Stat. 530; Pub. L. 102-590, §11(a), Nov. 10, 1992, 106 Stat. 5141; Pub. L. 104-110, title I, §102(d)(1), Feb. 13, 1996, 110 Stat. 769; Pub. L. 104-275, title VI, §601(b), Oct. 9, 1996, 110 Stat. 3344; Pub. L. 105-114, title II, §203(c)(1),

Nov. 21, 1997, 111 Stat. 2288, related to programs to expedite the reintegration of homeless veterans into the labor force.

§§ 11449, 11450. Repealed. Pub. L. 105-220, title I, § 199(a)(5), Aug. 7, 1998, 112 Stat. 1059

Section 11449, Pub. L. 100-77, title VII, § 739, July 22, 1987, 101 Stat. 531; Pub. L. 100-628, title VII, § 703(b), (c), Nov. 7, 1988, 102 Stat. 3246; Pub. L. 101-165, title IX, § 9119(a), Nov. 21, 1989, 103 Stat. 1157; Pub. L. 101-645, title VI, § 621(b), Nov. 29, 1990, 104 Stat. 4744; Pub. L. 102-590, § 11(b)(1), Nov. 10, 1992, 106 Stat. 5141; Pub. L. 103-239, title VII, § 701(a), May 4, 1994, 108 Stat. 605, authorized appropriations.

Section 11450, Pub. L. 100-77, title VII, § 741, July 22, 1987, 101 Stat. 532; Pub. L. 101-645, title VI, § 621(c), Nov. 29, 1990, 104 Stat. 4744; Pub. L. 102-590, § 11(b)(2), Nov. 10, 1992, 106 Stat. 5141; Pub. L. 103-239, title VII, § 701(b), May 4, 1994, 108 Stat. 606; Pub. L. 104-110, title I, § 102(d)(2), Feb. 13, 1996, 110 Stat. 769; Pub. L. 105-114, title II, § 203(c)(2), Nov. 21, 1997, 111 Stat. 2288, provided for termination of this part on Dec. 31, 1999.

**PART D—EMERGENCY COMMUNITY SERVICES
HOMELESS GRANT PROGRAM**

§§ 11461 to 11466. Repealed. Pub. L. 105-220, title I, § 199(b)(1), Aug. 7, 1998, 112 Stat. 1059

Section 11461, Pub. L. 100-77, title VII, § 751, July 22, 1987, 101 Stat. 532, established emergency community services homeless grant program.

Section 11462, Pub. L. 100-77, title VII, § 752, July 22, 1987, 101 Stat. 532; Pub. L. 100-628, title VII, § 704(a), Nov. 7, 1988, 102 Stat. 3246, related to allocation of grants.

Section 11463, Pub. L. 100-77, title VII, § 753, July 22, 1987, 101 Stat. 532; Pub. L. 100-628, title VII, § 704(b), (c), Nov. 7, 1988, 102 Stat. 3246; Pub. L. 101-645, title VI, § 631(a), (b), Nov. 29, 1990, 104 Stat. 4746, related to program requirements.

Section 11464, Pub. L. 100-77, title VII, § 754, July 22, 1987, 101 Stat. 533; Pub. L. 100-628, title VII, § 704(d), Nov. 7, 1988, 102 Stat. 3247; Pub. L. 101-645, title VI, § 631(c), Nov. 29, 1990, 104 Stat. 4746; Pub. L. 103-252, title II, § 206, May 18, 1994, 108 Stat. 656, authorized appropriations.

Section 11465, Pub. L. 100-77, title VII, § 755, as added Pub. L. 101-645, title VI, § 641, Nov. 29, 1990, 104 Stat. 4746, related to evaluation of services provided to homeless individuals.

Section 11466, Pub. L. 100-77, title VII, § 756, as added Pub. L. 101-645, title VI, § 641, Nov. 29, 1990, 104 Stat. 4747, required report by General Accounting Office.

EFFECTIVE DATE OF REPEAL

Repeal effective July 1, 1999, see section 199(c)(2)(A) of Pub. L. 105-220, set out as a note under section 11421 of this title.

PART E—MISCELLANEOUS PROVISIONS

§§ 11471, 11472. Repealed. Pub. L. 105-220, title I, § 199(b)(1), Aug. 7, 1998, 112 Stat. 1059

Section 11471, Pub. L. 100-77, title VII, § 761, July 22, 1987, 101 Stat. 533, authorized grant for study of causes of youth homelessness.

Section 11472, Pub. L. 100-77, title VII, § 762, July 22, 1987, 101 Stat. 533, related to set-asides for Native Americans.

EFFECTIVE DATE OF REPEAL

Repeal effective July 1, 1999, see section 199(c)(2)(A) of Pub. L. 105-220, set out as a note under section 11421 of this title.

PART F—FAMILY SUPPORT CENTERS

§§ 11481 to 11489. Repealed. Pub. L. 104-235, title I, § 142(b), Oct. 3, 1996, 110 Stat. 3089

Section 11481, Pub. L. 100-77, title VII, § 771, as added Pub. L. 101-645, title VI, § 651, Nov. 29, 1990, 104 Stat. 4747, related to definitions for this part.

Section 11482, Pub. L. 100-77, title VII, § 772, as added Pub. L. 101-645, title VI, § 651, Nov. 29, 1990, 104 Stat. 4749; amended Pub. L. 103-382, title III, § 370(a), Oct. 20, 1994, 108 Stat. 3976, related to general grants for demonstration programs to encourage provision of supportive services to low-income individuals and families.

Section 11483, Pub. L. 100-77, title VII, § 773, as added Pub. L. 101-645, title VI, § 651, Nov. 29, 1990, 104 Stat. 4752, related to requirement that family support grant recipients were to use not more than 7 percent of such grant to improve the retention and effectiveness of staff and volunteers.

Section 11484, Pub. L. 100-77, title VII, § 774, as added Pub. L. 101-645, title VI, § 651, Nov. 29, 1990, 104 Stat. 4752; amended Pub. L. 103-382, title III, § 370(d), Oct. 20, 1994, 108 Stat. 3977, related to family case managers.

Section 11485, Pub. L. 100-77, title VII, § 775, as added Pub. L. 101-645, title VI, § 651, Nov. 29, 1990, 104 Stat. 4752, related to Gateway programs.

Section 11486, Pub. L. 100-77, title VII, § 776, as added Pub. L. 101-645, title VI, § 651, Nov. 29, 1990, 104 Stat. 4754, related to evaluation of programs and entities that received assistance under this subchapter.

Section 11487, Pub. L. 100-77, title VII, § 777, as added Pub. L. 101-645, title VI, § 651, Nov. 29, 1990, 104 Stat. 4754; amended Pub. L. 103-382, title III, § 370(b), Oct. 20, 1994, 108 Stat. 3977, related to submission of reports to Congress by the Secretary.

Section 11488, Pub. L. 100-77, title VII, § 778, as added Pub. L. 101-645, title VI, § 651, Nov. 29, 1990, 104 Stat. 4755, provided that nothing in this part was to be construed to modify Federal selection preferences described in section 1437d of this title or authorized policies and procedures of governmental housing authorities operating under annual assistance contracts pursuant to section 1437 et seq. of this title with respect to admissions, tenant selection and evictions.

Section 11489, Pub. L. 100-77, title VII, § 779, as added Pub. L. 101-645, title VI, § 651, Nov. 29, 1990, 104 Stat. 4755; amended Pub. L. 103-382, title III, § 370(c), Oct. 20, 1994, 108 Stat. 3977, authorized appropriations to carry out this part.

**CHAPTER 120—ENTERPRISE ZONE
DEVELOPMENT**

- | | |
|--------|---|
| Sec. | |
| 11501. | Designation of enterprise zones. <ul style="list-style-type: none"> (a) Designation of zones. (b) Period for which designation is in effect. (c) Area and eligibility requirements. (d) Required State and local commitments. (e) Definitions. |
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Sec.

- (i) Expiration of waivers and modifications.
 - (j) Definitions.
11505. Coordination with CDBG and UDAG programs.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 25 section 941m.

§ 11501. Designation of enterprise zones

(a) Designation of zones

(1) "Enterprise zone" defined

For purposes of this section, the term "enterprise zone" means any area that—

(A) is nominated by one or more local governments and the State or States in which it is located for designation as an enterprise zone (in this section referred to as a "nominated area"); and

(B) the Secretary of Housing and Urban Development designates as an enterprise zone, after consultation with—

(i) the Secretaries of Agriculture, Commerce, Labor, and the Treasury, the Director of the Office of Management and Budget, and the Administrator of the Small Business Administration; and

(ii) in the case of an area on an Indian reservation, the Secretary of the Interior.

(2) Number of designations

(A) In general

The Secretary of Housing and Urban Development may designate not more than 100 nominated areas as enterprise zones.

(B) Minimum designation in rural areas

Of the areas designated under subparagraph (A), not less than $\frac{1}{3}$ shall be areas that—

(i) are within a local government jurisdiction or jurisdictions with a population of less than 50,000 (as determined under the most recent census data available);

(ii) are outside of a metropolitan statistical area (as designated by the Director of the Office of Management and Budget); or

(iii) that are determined by the Secretary, after consultation with the Secretary of Commerce, to be rural areas.

(3) Areas designated based solely on degree of poverty

(A) In general

Except as provided in subparagraph (B), the Secretary shall designate (i) the nominated areas with the highest average ranking with respect to the criteria set forth in subparagraphs (C) and (D) of subsection (c)(3) of this section, and the 1 criterion set forth in subparagraph (E)(i) or (E)(ii) of subsection (c)(3) of this section that gives an area a higher ranking; and (ii) for areas described in paragraph (2)(B), the nominated areas with the highest ranking with respect to the 1 criterion set forth in subparagraph (C), (D), (E)(i), or (E)(ii) of subsection (c)(3) of this section that gives an area a higher ranking. For purposes of the preceding sentence, an area shall be ranked within each

such criterion on the basis of the amount by which the area exceeds such criterion, with the area that exceeds such criterion by the greatest amount given the highest ranking.

(B) Exception where inadequate course of action, etc.

An area shall not be designated under subparagraph (A) if the Secretary determines that the course of action with respect to such area is inadequate.

(C) Separate application to rural and other areas

Subparagraph (A) shall be applied separately with respect to areas described in paragraph (2)(B) and to other areas.

(4) Limitation on designations

(A) Publication of regulations

Before designating any area as an enterprise zone, the Secretary shall prescribe by regulation not later than 4 months following February 5, 1988, after consultation with the officials described in paragraph (1)(B)—

(i) the procedures for nominating an area under paragraph (1)(A);

(ii) the parameters relating to the size and population characteristics of an enterprise zone; and

(iii) the manner in which nominated areas will be evaluated based on the criteria specified in subsection (d) of this section.

(B) Time limitations

The Secretary shall designate nominated areas as enterprise zones only during the 24-month period beginning on the 1st day of the 1st month following the month in which the date of the enactment of the Housing and Community Development Act of 1992 occurs.

(C) Procedural rules

The Secretary shall not make any designation under paragraph (1) unless—

(i) the local governments and the State in which the nominated area is located have the authority—

(I) to nominate such area for designation as an enterprise zone;

(II) to make the State and local commitments under subsection (d) of this section; and

(III) to provide assurances satisfactory to the Secretary that such commitments will be fulfilled;

(ii) a nomination therefor is submitted in such a manner and in such form, and contains such information, as the Secretary shall by regulation prescribe;

(iii) the Secretary determines that any information furnished is reasonably accurate; and

(iv) the State and local governments certify that no portion of the area nominated is already included in an enterprise zone or in an area otherwise nominated to be an enterprise zone.

(5) Nomination process for Indian reservations

In the case of a nominated area on an Indian reservation, the reservation governing body

(as determined by the Secretary of the Interior) shall be deemed to be both the State and local governments with respect to such area.

(b) Period for which designation is in effect

(1) In general

Any designation of an area as an enterprise zone shall remain in effect during the period beginning on the date of the designation and ending on the earliest of—

- (A) December 31 of the 24th calendar year following the calendar year in which such date occurs;
- (B) the termination date designated by the State and local governments as provided for in their nomination pursuant to subsection (a)(4)(C)(ii) of this section; or
- (C) the date the Secretary revokes such designation under paragraph (2).

(2) Revocation of designation

The Secretary, after consultation with the officials described in subsection (a)(1)(B) of this section and a hearing on the record involving officials of the State or local government involved, may revoke the designation of an area if the Secretary determines that the local government or the State in which it is located is not complying substantially with the State and local commitments pursuant to subsection (d) of this section.

(c) Area and eligibility requirements

(1) In general

The Secretary may make a designation of any nominated area under subsection (a)(1) of this section only if it meets the requirements of paragraphs (2) and (3).

(2) Area requirements

A nominated area meets the requirements of this paragraph if—

- (A) the area is within the jurisdiction of the local government;
- (B) the boundary of the area is continuous; and
- (C) the area—
 - (i) has a population, as determined by the most recent census data available, of not less than—
 - (I) 4,000 if any portion of such area (other than a rural area described in subsection (a)(2)(B)(i) of this section) is located within a metropolitan statistical area (as designated by the Director of the Office of Management and Budget) with a population of 50,000 or more; or
 - (II) 1,000 in any other case; or
 - (ii) is entirely within an Indian reservation (as determined by the Secretary of the Interior).

(3) Eligibility requirements

For purposes of paragraph (1), a nominated area meets the requirements of this paragraph if the State and local governments in which it is located certify and the Secretary, after such review of supporting data as he deems appropriate, accepts such certification, that—

- (A) the area is one of pervasive poverty, unemployment, and general distress;
- (B) the area is located wholly within the jurisdiction of a local government that is el-

igible for Federal assistance under section 5318 of this title, as in effect on October 28, 1992;

(C) the unemployment rate, as determined by the appropriate available data, was not less than 1.5 times the national unemployment rate for that period;

(D) the poverty rate (as determined by the most recent census data available) for each populous census tract (or where not tracted, the equivalent county division as defined by the Bureau of the Census for the purpose of defining poverty areas) within the area was not less than 20 percent for the period to which such data relate; and

(E) the area meets at least one of the following criteria:

- (i) Not less than 70 percent of the households living in the area have incomes below 80 percent of the median income of households of the local government (determined in the same manner as under section 5318 of this title).
- (ii) The population of the area decreased by 20 percent or more between 1970 and 1980 (as determined from the most recent census available).

(4) Eligibility requirements for rural areas

For purposes of paragraph (1), a nominated area that is a rural area described in subsection (a)(2)(B) of this section meets the requirements of paragraph (3) if the State and local governments in which it is located certify and the Secretary, after such review of supporting data as he deems appropriate, accepts such certification, that the area meets—

- (A) the criteria set forth in subparagraphs (A) and (B) of paragraph (3); and
- (B) not less than one of the criteria set forth in the other subparagraphs of paragraph (3).

(d) Required State and local commitments

(1) In general

No nominated area shall be designated as an enterprise zone unless the local government and the State in which it is located agree in writing that, during any period during which the area is an enterprise zone, such governments will follow a specified course of action designated to reduce the various burdens borne by employers or employees in such area. A course of action shall not be treated as meeting the requirements of this paragraph unless the course of action include provisions described in not less than 4 of the subparagraphs of paragraph (2).

(2) Course of action

The course of action under paragraph (1) may be implemented by both such governments and private nongovernmental entities, may be funded from proceeds of any program administered by the Secretary of Housing and Urban Development or of any program administered by the Secretary of Agriculture under title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.], and may include, but is not limited to—

- (A) a reduction of tax rates or fees applying within the enterprise zone;

(B) an increase in the level of public services, or in the efficiency of the delivery of public services, within the enterprise zone;

(C) actions to reduce, remove, simplify, or streamline paperwork requirements within the enterprise zone;

(D) involvement in the program by public authorities or private entities, organizations, neighborhood associations, and community groups, particularly those within the nominated area, including a written commitment to provide jobs and job training for, and technical, financial, or other assistance to, employers, employees, and residents of the nominated area;

(E) the giving of special preference to contractors owned and operated by members of any minority; and

(F) the gift (or sale at below fair market value) of surplus land in the enterprise zone to neighborhood organizations agreeing to operate a business on the land.

(3) Recognition of past efforts

In evaluating courses of action agreed to by any State or local government, the Secretary shall take into account the past efforts of such State or local government in reducing the various burdens borne by employers and employees in the area involved.

(4) Prohibition of assistance for business relocations

(A) In general

The course of action implemented under paragraph (1) may not include any action to assist—

(i) any establishment relocating from one area to another area; or

(ii) any subcontractor whose purpose is to divest, or whose economic success is dependent upon divesting, any other contractor or subcontractor of any contract customarily performed by such other contractor or subcontractor.

(B) Exception

The limitations established in subparagraph (A) shall not be construed to prohibit assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary if the Secretary—

(i) finds that the establishment of the new branch, affiliate, or subsidiary will not result in an increase in unemployment in the area of original location or in any other area where the existing business entity conducts business operations; and

(ii) has no reason to believe that the new branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where the existing business entity conducts business operations.

(e) Definitions

For purposes of this section:

(1) Government

If more than one government seeks to nominate an area as an enterprise zone, any ref-

erence to, or requirement of, this section shall apply to all such governments.

(2) Local government

The term “local government” means—

(A) any county, city, town, township, parish, village, or other general purpose political subdivision of a State;

(B) any combination of political subdivisions described in subparagraph (A) recognized by the Secretary; and

(C) the District of Columbia.

(3) Secretary

The term “Secretary” means the Secretary of Housing and Urban Development.

(4) State

The term “State” includes Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and any other possession of the United States.

(Pub. L. 100-242, title VII, § 701, Feb. 5, 1988, 101 Stat. 1957; Pub. L. 100-628, title X, § 1090(a), (b), Nov. 7, 1988, 102 Stat. 3283; Pub. L. 102-550, title VIII, § 834(a), Oct. 28, 1992, 106 Stat. 3855.)

REFERENCES IN TEXT

The date of the enactment of the Housing and Community Development Act of 1992, referred to in subsec. (a)(4)(B), is the date of enactment of Pub. L. 102-550, which was approved Oct. 28, 1992.

The Housing Act of 1949, referred to in subsec. (d)(2), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended. Title V of the Housing Act of 1949 is classified generally to subchapter III (§1471 et seq.) of chapter 8A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of this title and Tables.

AMENDMENTS

1992—Subsec. (a)(4)(B). Pub. L. 102-550, § 834(a)(1), substituted “the date of the enactment of the Housing and Community Development Act of 1992 occurs” for “the effective date of the regulations described in subparagraph (A) occurs”.

Subsec. (c)(3)(B). Pub. L. 102-550, § 834(a)(2), substituted “October 28, 1992” for “February 5, 1988”.

1988—Subsec. (a)(2)(B). Pub. L. 100-628, § 1090(b), substituted “under subparagraph (A)” for “under clause (i)” in introductory provisions.

Subsec. (a)(3)(A). Pub. L. 100-628, § 1090(a), amended first sentence generally. Prior to amendment, first sentence read as follows: “Except as provided in subparagraph (B), the Secretary shall designate the nominated areas with the highest average ranking with respect to the criteria set forth in subparagraphs (C), (D), and (E) of subsection (c)(3) of this section.”

REGULATIONS

Section 1090(c) of Pub. L. 100-628 provided that: “Not later than 30 days after the date of the enactment of this Act [Nov. 7, 1988], the Secretary of Housing and Urban Development shall revise the regulations issued by the Secretary to carry out title VII of the Housing and Community Development Act of 1987 (42 U.S.C. 11501 et seq.) by issuing a final regulation, effective upon the date of publication, that carries out the amendments made by this section [amending this section].”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3532, 11503, 11504 of this title.

§ 11502. Evaluation and reporting requirements

Not later than the close of the 4th calendar year after the year in which the Secretary of

Housing and Urban Development first designates areas as enterprise zones pursuant to the amendments made by section 834 of the Housing and Community Development Act of 1992, and at the close of each 4th calendar year thereafter, the Secretary shall prepare and submit to the Congress a report on the effects of such designation in accomplishing the purposes of this chapter.

(Pub. L. 100-242, title VII, § 702, Feb. 5, 1988, 101 Stat. 1961; Pub. L. 102-550, title VIII, § 834(b), Oct. 28, 1992, 106 Stat. 3855.)

REFERENCES IN TEXT

Section 834 of the Housing and Community Development Act of 1992, referred to in text, is section 834 of Pub. L. 102-550, which amended this section and section 11501 of this title.

AMENDMENTS

1992—Pub. L. 102-550 inserted “pursuant to the amendments made by section 834 of the Housing and Community Development Act of 1992” after “zones”.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of this section relating to quadriennial submittal of report to Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 10th item on page 106 of House Document No. 103-7.

§ 11503. Interaction with other Federal programs

(a) Coordination with relocation assistance

The designation of an enterprise zone under section 11501 of this title shall not—

(1) constitute approval of a Federal or federally assisted program or project (within the meaning of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.)); or

(2) entitle any person displaced from real property located in such zone to any rights or any benefits under such Act.

(b) Enterprise zones treated as labor surplus areas

Any area that is designated as an enterprise zone under section 11501 of this title shall be treated for all purposes under Federal law as a labor surplus area.

(Pub. L. 100-242, title VII, § 703, Feb. 5, 1988, 101 Stat. 1961.)

REFERENCES IN TEXT

The Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, referred to in subsec. (a), probably means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, Jan. 2, 1971, 84 Stat. 1894, as amended, which is classified principally to chapter 61 (§ 4601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4601 of this title and Tables.

§ 11504. Waiver or modification of housing and community development rules in enterprise zones

(a) In general

Upon the written request of the governments that designated and approved an area that has been designated as an enterprise zone under section 11501 of this title, the Secretary of Housing

and Urban Development (or, with respect to any rule issued under title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.], the Secretary of Agriculture) may, in order to further the job creation, community development, or economic revitalization objectives of the zone, waive or modify all or part of any rule that the Secretary has authority to promulgate, as such rule pertains to the carrying out of projects, activities, or undertakings within the zone.

(b) Limitation

No provision of this section may be construed to authorize the Secretary to waive or modify any rule adopted to carry out a statute or Executive order that prohibits, or the purpose of which is to protect persons against, discrimination on the basis of race, color, religion, sex, marital status, national origin, age, or handicap.

(c) Submission of requests

A request under subsection (a) of this section shall specify the rule or rules to be waived or modified and the change proposed, and shall briefly describe why the change would promote the achievement of the job creation, community development, or economic revitalization objectives of the enterprise zone. If a request is made to the Secretary of Agriculture, the requesting governments shall send a copy of the request to the Secretary of Housing and Urban Development at the time the request is made.

(d) Consideration of requests

In considering a request, the Secretary shall weigh the extent to which the proposed change is likely to further job creation, community development, or economic revitalization within the enterprise zone against the effect the change is likely to have on the underlying purposes of applicable statutes in the geographic area that would be affected by the change. The Secretary shall approve the request whenever the Secretary finds, in the discretion of the Secretary, that the public interest that the proposed change would serve in furthering such job creation, community development or economic revitalization outweighs the public interest that continuation of the rule unchanged would serve in furthering such underlying purposes. The Secretary shall not approve any request to waive or modify a rule if that waiver or modification would—

(1) directly violate a statutory requirement;

or

(2) be likely to present a significant risk to the public health, including environmental health or safety.

(e) Notice of disapproval

If a request is disapproved, the Secretary shall inform the requesting governments in writing of the reasons therefor and shall, to the maximum extent possible, work with such governments to develop an alternative, consistent with the standards contained in subsection (d) of this section.

(f) Period for determination

The Secretary shall discharge the responsibilities of the Secretary under this section in an expeditious manner, and shall make a deter-

mination on requests not later than 90 days after their receipt.

(g) Applicable procedures

A waiver or modification of a rule under subsection (a) of this section shall not be considered to be a rule, rulemaking, or regulation under chapter 5 of title 5. To facilitate reaching a decision on any requested waiver or modification, the Secretary may seek the views of interested parties and, if the views are to be sought, determine how they should be obtained and to what extent, if any, they should be taken into account in considering the request. The Secretary shall publish a notice in the Federal Register stating any waiver or modification of a rule under this section.

(h) Effect of subsequent amendment of rules

In the event that the Secretary proposes to amend a rule for which a waiver or modification under this section is in effect, the Secretary shall not change the waiver or modification to impose additional requirements unless the Secretary determines, consistent with standards contained in subsection (d) of this section, that such action is necessary.

(i) Expiration of waivers and modifications

No waiver or modification of a rule under this section shall remain in effect for a longer period than the period for which the enterprise zone designation remains in effect for the area in which the waiver or modification applies.

(j) Definitions

For purposes of this section:

(1) Rule

The term “rule” means—

- (A) any rule as defined in section 551(4) of title 5; or
- (B) any rulemaking conducted on the record after opportunity for an agency hearing pursuant to sections 556 and 557 of title 5.

(2) Secretary

The term “Secretary” means the Secretary of Housing and Urban Development or, with respect to any rule issued under title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.], the Secretary of Agriculture.

(Pub. L. 100-242, title VII, § 704, Feb. 5, 1988, 101 Stat. 1962.)

REFERENCES IN TEXT

The Housing Act of 1949, referred to in subsecs. (a) and (j)(2), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended. Title V of the Housing Act of 1949 is classified generally to subchapter III (§1471 et seq.) of chapter 8A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of this title and Tables.

§ 11505. Coordination with CDBG and UDAG programs

It is the policy of the Congress that amounts provided under the community development block grant and urban development action grant programs under title I of the Housing and Community Development Act of 1974 [42 U.S.C. 5301 et seq.] shall not be reduced in any fiscal year in

which the provisions of this chapter are in effect.

(Pub. L. 100-242, title VII, § 706, Feb. 5, 1988, 101 Stat. 1964.)

REFERENCES IN TEXT

The Housing and Community Development Act of 1974, referred to in text, is Pub. L. 93-383, Aug. 22, 1974, 88 Stat. 633, as amended. Title I of the Housing and Community Development Act of 1974 is classified principally to chapter 69 (§5301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

CHAPTER 121—INTERNATIONAL CHILD ABDUCTION REMEDIES

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§ 11601. Findings and declarations

(a) Findings

The Congress makes the following findings:

- (1) The international abduction or wrongful retention of children is harmful to their well-being.
- (2) Persons should not be permitted to obtain custody of children by virtue of their wrongful removal or retention.
- (3) International abductions and retentions of children are increasing, and only concerted cooperation pursuant to an international

agreement can effectively combat this problem.

(4) The Convention on the Civil Aspects of International Child Abduction, done at The Hague on October 25, 1980, establishes legal rights and procedures for the prompt return of children who have been wrongfully removed or retained, as well as for securing the exercise of visitation rights. Children who are wrongfully removed or retained within the meaning of the Convention are to be promptly returned unless one of the narrow exceptions set forth in the Convention applies. The Convention provides a sound treaty framework to help resolve the problem of international abduction and retention of children and will deter such wrongful removals and retentions.

(b) Declarations

The Congress makes the following declarations:

(1) It is the purpose of this chapter to establish procedures for the implementation of the Convention in the United States.

(2) The provisions of this chapter are in addition to and not in lieu of the provisions of the Convention.

(3) In enacting this chapter the Congress recognizes—

(A) the international character of the Convention; and

(B) the need for uniform international interpretation of the Convention.

(4) The Convention and this chapter empower courts in the United States to determine only rights under the Convention and not the merits of any underlying child custody claims.

(Pub. L. 100-300, § 2, Apr. 29, 1988, 102 Stat. 437.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original “this Act” meaning Pub. L. 100-300, Apr. 29, 1988, 102 Stat. 437, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note below and Tables.

SHORT TITLE

Section 1 of Pub. L. 100-300 provided that: “This Act [enacting this chapter and amending section 663 of this title] may be cited as the ‘International Child Abduction Remedies Act’.”

REPORT ON COMPLIANCE WITH THE HAGUE CONVENTION ON INTERNATIONAL CHILD ABDUCTION

Pub. L. 105-277, div. G, title XXVIII, § 2803, Oct. 21, 1998, 112 Stat. 2681-846, as amended by Pub. L. 106-113, div. B, § 1000(a)(7) [div. A, title II, § 202], Nov. 29, 1999, 113 Stat. 1536, 1501A-420, provided that:

“(a) IN GENERAL.—Beginning 6 months after the date of the enactment of this Act [Oct. 21, 1998] and every 12 months thereafter during the period ending September 30, 2001, the Secretary of State shall submit a report to the appropriate congressional committees on the compliance with the provisions of the Convention on the Civil Aspects of International Child Abduction, done at The Hague on October 25, 1980, by the signatory countries of the Convention. Each such report shall include the following information:

“(1) The number of applications for the return of children submitted by applicants in the United States to the Central Authority for the United States that remain unresolved more than 18 months after the date of filing.

“(2) A list of the countries to which children in unresolved applications described in paragraph (1) are alleged to have been abducted, are being wrongfully retained in violation of United States court orders, or which have failed to comply with any of their obligations under such convention with respect to applications for the return of children, access to children, or both, submitted by applicants in the United States.

“(3) A list of the countries that have demonstrated a pattern of noncompliance with the obligations of the Convention with respect to applications for the return of children, access to children, or both, submitted by applicants in the United States to the Central Authority for the United States.

“(4) Detailed information on each unresolved case described in paragraph (1) and on actions taken by the Department of State to resolve each such case, including the specific actions taken by the United States chief of mission in the country to which the child is alleged to have been abducted.

“(5) Information on efforts by the Department of State to encourage other countries to become signatories of the Convention.

“(6) A list of the countries that are parties to the Convention in which, during the reporting period, parents who have been left-behind in the United States have not been able to secure prompt enforcement of a final return or access order under a Hague proceeding, of a United States custody, access, or visitation order, or of an access or visitation order by authorities in the country concerned, due to the absence of a prompt and effective method for enforcement of civil court orders, the absence of a doctrine of comity, or other factors.

“(7) A description of the efforts of the Secretary of State to encourage the parties to the Convention to facilitate the work of nongovernmental organizations within their countries that assist parents seeking the return of children under the Convention.

“(b) DEFINITION.—In this section, the term ‘Central Authority for the United States’ has the meaning given the term in Article 6 of the Convention on the Civil Aspects of International Child Abduction, done at The Hague on October 25, 1980.”

§ 11602. Definitions

For the purposes of this chapter—

(1) the term “applicant” means any person who, pursuant to the Convention, files an application with the United States Central Authority or a Central Authority of any other party to the Convention for the return of a child alleged to have been wrongfully removed or retained or for arrangements for organizing or securing the effective exercise of rights of access pursuant to the Convention;

(2) the term “Convention” means the Convention on the Civil Aspects of International Child Abduction, done at The Hague on October 25, 1980;

(3) the term “Parent Locator Service” means the service established by the Secretary of Health and Human Services under section 653 of this title;

(4) the term “petitioner” means any person who, in accordance with this chapter, files a petition in court seeking relief under the Convention;

(5) the term “person” includes any individual, institution, or other legal entity or body;

(6) the term “respondent” means any person against whose interests a petition is filed in court, in accordance with this chapter, which seeks relief under the Convention;

(7) the term “rights of access” means visitation rights;

(8) the term “State” means any of the several States, the District of Columbia, and any commonwealth, territory, or possession of the United States; and

(9) the term “United States Central Authority” means the agency of the Federal Government designated by the President under section 11606(a) of this title.

(Pub. L. 100-300, §3, Apr. 29, 1988, 102 Stat. 437.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 663 of this title.

§ 11603. Judicial remedies

(a) Jurisdiction of courts

The courts of the States and the United States district courts shall have concurrent original jurisdiction of actions arising under the Convention.

(b) Petitions

Any person seeking to initiate judicial proceedings under the Convention for the return of a child or for arrangements for organizing or securing the effective exercise of rights of access to a child may do so by commencing a civil action by filing a petition for the relief sought in any court which has jurisdiction of such action and which is authorized to exercise its jurisdiction in the place where the child is located at the time the petition is filed.

(c) Notice

Notice of an action brought under subsection (b) of this section shall be given in accordance with the applicable law governing notice in interstate child custody proceedings.

(d) Determination of case

The court in which an action is brought under subsection (b) of this section shall decide the case in accordance with the Convention.

(e) Burdens of proof

(1) A petitioner in an action brought under subsection (b) of this section shall establish by a preponderance of the evidence—

(A) in the case of an action for the return of a child, that the child has been wrongfully removed or retained within the meaning of the Convention; and

(B) in the case of an action for arrangements for organizing or securing the effective exercise of rights of access, that the petitioner has such rights.

(2) In the case of an action for the return of a child, a respondent who opposes the return of the child has the burden of establishing—

(A) by clear and convincing evidence that one of the exceptions set forth in article 13b or 20 of the Convention applies; and

(B) by a preponderance of the evidence that any other exception set forth in article 12 or 13 of the Convention applies.

(f) Application of Convention

For purposes of any action brought under this chapter—

(1) the term “authorities”, as used in article 15 of the Convention to refer to the authorities of the state of the habitual residence of a

child, includes courts and appropriate government agencies;

(2) the terms “wrongful removal or retention” and “wrongfully removed or retained”, as used in the Convention, include a removal or retention of a child before the entry of a custody order regarding that child; and

(3) the term “commencement of proceedings”, as used in article 12 of the Convention, means, with respect to the return of a child located in the United States, the filing of a petition in accordance with subsection (b) of this section.

(g) Full faith and credit

Full faith and credit shall be accorded by the courts of the States and the courts of the United States to the judgment of any other such court ordering or denying the return of a child, pursuant to the Convention, in an action brought under this chapter.

(h) Remedies under Convention not exclusive

The remedies established by the Convention and this chapter shall be in addition to remedies available under other laws or international agreements.

(Pub. L. 100-300, §4, Apr. 29, 1988, 102 Stat. 438.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11604, 11605, 11607 of this title.

§ 11604. Provisional remedies

(a) Authority of courts

In furtherance of the objectives of article 7(b) and other provisions of the Convention, and subject to the provisions of subsection (b) of this section, any court exercising jurisdiction of an action brought under section 11603(b) of this title may take or cause to be taken measures under Federal or State law, as appropriate, to protect the well-being of the child involved or to prevent the child’s further removal or concealment before the final disposition of the petition.

(b) Limitation on authority

No court exercising jurisdiction of an action brought under section 11603(b) of this title may, under subsection (a) of this section, order a child removed from a person having physical control of the child unless the applicable requirements of State law are satisfied.

(Pub. L. 100-300, §5, Apr. 29, 1988, 102 Stat. 439.)

§ 11605. Admissibility of documents

With respect to any application to the United States Central Authority, or any petition to a court under section 11603 of this title, which seeks relief under the Convention, or any other documents or information included with such application or petition or provided after such submission which relates to the application or petition, as the case may be, no authentication of such application, petition, document, or information shall be required in order for the application, petition, document, or information to be admissible in court.

(Pub. L. 100-300, §6, Apr. 29, 1988, 102 Stat. 439.)

§ 11606. United States Central Authority

(a) Designation

The President shall designate a Federal agency to serve as the Central Authority for the United States under the Convention.

(b) Functions

The functions of the United States Central Authority are those ascribed to the Central Authority by the Convention and this chapter.

(c) Regulatory authority

The United States Central Authority is authorized to issue such regulations as may be necessary to carry out its functions under the Convention and this chapter.

(d) Obtaining information from Parent Locator Service

The United States Central Authority may, to the extent authorized by the Social Security Act [42 U.S.C. 301 et seq.], obtain information from the Parent Locator Service.

(e) Grant authority

The United States Central Authority is authorized to make grants to, or enter into contracts or agreements with, any individual, corporation, other Federal, State, or local agency, or private entity or organization in the United States for purposes of accomplishing its responsibilities under the Convention and this chapter.

(Pub. L. 100-300, § 7, Apr. 29, 1988, 102 Stat. 439; Pub. L. 105-277, div. G, title XXII, § 2213, Oct. 21, 1998, 112 Stat. 2681-812.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

1998—Subsec. (e). Pub. L. 105-277 added subsec. (e).

EX. ORD. NO. 12648. IMPLEMENTATION OF CONVENTION ON CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

Ex. Ord. No. 12648, Aug. 11, 1988, 53 F.R. 30637, provided:

The United States of America deposited its instrument of ratification of the Hague Convention on the Civil Aspects of International Child Abduction ("Convention") on April 29, 1988. The Convention entered into force for the United States on July 1, 1988. Article 6 of the Convention imposes upon Contracting States an obligation to designate a "Central Authority" for the purpose of discharging certain specified functions.

In order that the Government of the United States of America may give full and complete effect to the Convention, and pursuant to section 7 of the International Child Abduction Remedies Act, Public Law No. 100-300 (1988) [42 U.S.C. 11606], it is expedient and necessary that I designate a Central Authority within the Executive branch of said Government:

NOW, THEREFORE, by virtue of the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of Title 3 of the United States Code and section 7 of the International Child Abduction Remedies Act, it is ordered as follows:

SECTION 1. *Designation of Central Authority.* The Department of State is hereby designated as the Central Authority of the United States for purposes of the Hague Convention on the Civil Aspects of International Child Abduction. The Secretary of State is hereby au-

thorized and empowered, in accordance with such regulations as he may prescribe, to perform all lawful acts that may be necessary and proper in order to execute the functions of the Central Authority in a timely and efficient manner.

RONALD REAGAN.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 663, 11602 of this title.

§ 11607. Costs and fees

(a) Administrative costs

No department, agency, or instrumentality of the Federal Government or of any State or local government may impose on an applicant any fee in relation to the administrative processing of applications submitted under the Convention.

(b) Costs incurred in civil actions

(1) Petitioners may be required to bear the costs of legal counsel or advisors, court costs incurred in connection with their petitions, and travel costs for the return of the child involved and any accompanying persons, except as provided in paragraphs (2) and (3).

(2) Subject to paragraph (3), legal fees or court costs incurred in connection with an action brought under section 11603 of this title shall be borne by the petitioner unless they are covered by payments from Federal, State, or local legal assistance or other programs.

(3) Any court ordering the return of a child pursuant to an action brought under section 11603 of this title shall order the respondent to pay necessary expenses incurred by or on behalf of the petitioner, including court costs, legal fees, foster home or other care during the course of proceedings in the action, and transportation costs related to the return of the child, unless the respondent establishes that such order would be clearly inappropriate.

(Pub. L. 100-300, § 8, Apr. 29, 1988, 102 Stat. 440.)

§ 11608. Collection, maintenance, and dissemination of information

(a) In general

In performing its functions under the Convention, the United States Central Authority may, under such conditions as the Central Authority prescribes by regulation, but subject to subsection (c) of this section, receive from or transmit to any department, agency, or instrumentality of the Federal Government or of any State or foreign government, and receive from or transmit to any applicant, petitioner, or respondent, information necessary to locate a child or for the purpose of otherwise implementing the Convention with respect to a child, except that the United States Central Authority—

(1) may receive such information from a Federal or State department, agency, or instrumentality only pursuant to applicable Federal and State statutes; and

(2) may transmit any information received under this subsection notwithstanding any provision of law other than this chapter.

(b) Requests for information

Requests for information under this section shall be submitted in such manner and form as

the United States Central Authority may prescribe by regulation and shall be accompanied or supported by such documents as the United States Central Authority may require.

(c) Responsibility of government entities

Whenever any department, agency, or instrumentality of the United States or of any State receives a request from the United States Central Authority for information authorized to be provided to such Central Authority under subsection (a) of this section, the head of such department, agency, or instrumentality shall promptly cause a search to be made of the files and records maintained by such department, agency, or instrumentality in order to determine whether the information requested is contained in any such files or records. If such search discloses the information requested, the head of such department, agency, or instrumentality shall immediately transmit such information to the United States Central Authority, except that any such information the disclosure of which—

(1) would adversely affect the national security interests of the United States or the law enforcement interests of the United States or of any State; or

(2) would be prohibited by section 9 of title 13;

shall not be transmitted to the Central Authority. The head of such department, agency, or instrumentality shall, immediately upon completion of the requested search, notify the Central Authority of the results of the search, and whether an exception set forth in paragraph (1) or (2) applies. In the event that the United States Central Authority receives information and the appropriate Federal or State department, agency, or instrumentality thereafter notifies the Central Authority that an exception set forth in paragraph (1) or (2) applies to that information, the Central Authority may not disclose that information under subsection (a) of this section.

(d) Information available from Parent Locator Service

To the extent that information which the United States Central Authority is authorized to obtain under the provisions of subsection (c) of this section can be obtained through the Parent Locator Service, the United States Central Authority shall first seek to obtain such information from the Parent Locator Service, before requesting such information directly under the provisions of subsection (c) of this section.

(e) Recordkeeping

The United States Central Authority shall maintain appropriate records concerning its activities and the disposition of cases brought to its attention.

(Pub. L. 100-300, § 9, Apr. 29, 1988, 102 Stat. 440.)

§ 11608a. Office of Children's Issues

(a) Director requirements

The Secretary of State shall fill the position of Director of the Office of Children's Issues of the Department of State (in this section referred

to as the "Office") with an individual of senior rank who can ensure long-term continuity in the management and policy matters of the Office and has a strong background in consular affairs.

(b) Case officer staffing

Effective April 1, 2000, there shall be assigned to the Office of Children's Issues of the Department of State a sufficient number of case officers to ensure that the average caseload for each officer does not exceed 75.

(c) Embassy contact

The Secretary of State shall designate in each United States diplomatic mission an employee who shall serve as the point of contact for matters relating to international abductions of children by parents. The Director of the Office shall regularly inform the designated employee of children of United States citizens abducted by parents to that country.

(d) Reports to parents

(1) In general

Except as provided in paragraph (2), beginning 6 months after November 29, 1999, and at least once every 6 months thereafter, the Secretary of State shall report to each parent who has requested assistance regarding an abducted child overseas. Each such report shall include information on the current status of the abducted child's case and the efforts by the Department of State to resolve the case.

(2) Exception

The requirement in paragraph (1) shall not apply in a case of an abducted child if—

(A) the case has been closed and the Secretary of State has reported the reason the case was closed to the parent who requested assistance; or

(B) the parent seeking assistance requests that such reports not be provided.

(Pub. L. 106-113, div. B, §1000(a)(7) [div. A, title II, §201], Nov. 29, 1999, 113 Stat. 1536, 1501A-419).

CODIFICATION

Section was enacted as part of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001, and not as part of the International Child Abduction Remedies Act which comprises this chapter.

§ 11609. Interagency coordinating group

The Secretary of State, the Secretary of Health and Human Services, and the Attorney General shall designate Federal employees and may, from time to time, designate private citizens to serve on an interagency coordinating group to monitor the operation of the Convention and to provide advice on its implementation to the United States Central Authority and other Federal agencies. This group shall meet from time to time at the request of the United States Central Authority. The agency in which the United States Central Authority is located is authorized to reimburse such private citizens for travel and other expenses incurred in participating at meetings of the interagency coordinating group at rates not to exceed those authorized under subchapter I of chapter 57 of title 5 for employees of agencies.

(Pub. L. 100-300, §10, Apr. 29, 1988, 102 Stat. 441.)

§ 11610. Authorization of appropriations

There are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out the purposes of the Convention and this chapter.

(Pub. L. 100-300, §12, Apr. 29, 1988, 102 Stat. 442.)

CHAPTER 122—NATIVE HAWAIIAN HEALTH CARE

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§ 11701. Findings

The Congress finds that:

(1) Native Hawaiians comprise a distinct and unique indigenous people with a historical continuity to the original inhabitants of the Hawaiian archipelago whose society was organized as a Nation prior to the arrival of the first nonindigenous people in 1778.

(2) The Native Hawaiian people are determined to preserve, develop and transmit to fu-

ture generations their ancestral territory, and their cultural identity in accordance with their own spiritual and traditional beliefs, customs, practices, language, and social institutions.

(3) The constitution and statutes of the State of Hawaii:

(A) acknowledge the distinct land rights of Native Hawaiian people as beneficiaries of the public lands trust; and

(B) reaffirm and protect the unique right of the Native Hawaiian people to practice and perpetuate their cultural and religious customs, beliefs, practices, and language.

(4) At the time of the arrival of the first non-indigenous people in Hawaii in 1778, the Native Hawaiian people lived in a highly organized, self-sufficient, subsistence social system based on communal land tenure with a sophisticated language, culture, and religion.

(5) A unified monarchical government of the Hawaiian Islands was established in 1810 under Kamehameha I, the first King of Hawaii.

(6) Throughout the 19th century and until 1893, the United States: (A) recognized the independence of the Hawaiian Nation; (B) extended full and complete diplomatic recognition to the Hawaiian Government; and (C) entered into treaties and conventions with the Hawaiian monarchs to govern commerce and navigation in 1826, 1842, 1849, 1875 and 1887.

(7) In the year 1893, the United States Minister assigned to the sovereign and independent Kingdom of Hawaii, John L. Stevens, conspired with a small group of non-Hawaiian residents of the Kingdom, including citizens of the United States, to overthrow the indigenous and lawful Government of Hawaii.

(8) In pursuance of that conspiracy, the United States Minister and the naval representative of the United States caused armed naval forces of the United States to invade the sovereign Hawaiian Nation in support of the overthrow of the indigenous and lawful Government of Hawaii and the United States Minister thereupon extended diplomatic recognition of a provisional government formed by the conspirators without the consent of the native people of Hawaii or the lawful Government of Hawaii in violation of treaties between the two nations and of international law.

(9) In a message to Congress on December 18, 1893, then President Grover Cleveland reported fully and accurately on these illegal actions, and acknowledged that by these acts, described by the President as acts of war, the government of a peaceful and friendly people was overthrown, and the President concluded that a "substantial wrong has thus been done which a due regard for our national character as well as the rights of the injured people required that we should endeavor to repair".

(10) Queen Lili'uokalani, the lawful monarch of Hawaii, and the Hawaiian Patriotic League, representing the aboriginal citizens of Hawaii, promptly petitioned the United States for redress of these wrongs and for restoration of the indigenous government of the Hawaiian nation, but this petition was not acted upon.

(11) In 1898, the United States annexed Hawaii through the Newlands Resolution without

the consent of or compensation to the indigenous people of Hawaii or their sovereign government who were thereby denied the mechanism for expression of their inherent sovereignty through self-government and self-determination, their lands and ocean resources.

(12) Through the Newlands Resolution and the 1900 Organic Act, the United States Congress received 1.75 million acres of lands formerly owned by the Crown and Government of the Hawaiian Kingdom and exempted the lands from then existing public land laws of the United States by mandating that the revenue and proceeds from these lands be "used solely for the benefit of the inhabitants of the Hawaiian Islands for education and other public purposes", thereby establishing a special trust relationship between the United States and the inhabitants of Hawaii.

(13) In 1921, Congress enacted the Hawaiian Homes Commission Act, 1920 which designated 200,000 acres of the ceded public lands for exclusive homesteading by Native Hawaiians, thereby affirming the trust relationship between the United States and the Native Hawaiians, as expressed by then Secretary of the Interior Franklin K. Lane who was cited in the Committee Report of the United States House of Representatives Committee on Territories as stating, "One thing that impressed me . . . was the fact that the natives of the islands who are our wards, I should say, and for whom in a sense we are trustees, are falling off rapidly in numbers and many of them are in poverty."

(14) In 1938, the United States Congress again acknowledged the unique status of the Hawaiian people by including in the Act of June 20, 1938 (52 Stat. 781 et seq.), a provision to lease lands within the extension to Native Hawaiians and to permit fishing in the area "only by native Hawaiian residents of said area or of adjacent villages and by visitors under their guidance".

(15) Under the Act entitled "An Act to provide for the admission of the State of Hawaii into the Union", approved March 18, 1959 (73 Stat. 4), the United States transferred responsibility for the administration of the Hawaiian Home Lands to the State of Hawaii but reaffirmed the trust relationship which existed between the United States and the Hawaiian people by retaining the exclusive power to enforce the trust, including the power to approve land exchanges, and legislative amendments affecting the rights of beneficiaries under such Act.

(16) Under the Act entitled "An Act to provide for the admission of the State of Hawaii into the Union", approved March 18, 1959 (73 Stat. 4), the United States transferred responsibility for administration over portions of the ceded public lands trust not retained by the United States to the State of Hawaii but reaffirmed the trust relationship which existed between the United States and the Hawaiian people by retaining the legal responsibility of the State for the betterment of the conditions of Native Hawaiians under section 5(f) of the Act entitled "An Act to provide for the admission of the State of Hawaii into the Union", approved March 18, 1959 (73 Stat. 4, 6).

(17) The authority of the Congress under the United States Constitution to legislate in matters affecting the aboriginal or indigenous peoples of the United States includes the authority to legislate in matters affecting the native peoples of Alaska and Hawaii.

(18) In furtherance of the trust responsibility for the betterment of the conditions of Native Hawaiians, the United States has established a program for the provision of comprehensive health promotion and disease prevention services to maintain and improve the health status of the Hawaiian people.

(19) This historical and unique legal relationship has been consistently recognized and affirmed by the Congress through the enactment of Federal laws which extend to the Hawaiian people the same rights and privileges accorded to American Indian, Alaska Native, Eskimo, and Aleut communities, including the Native American Programs Act of 1974 [42 U.S.C. 2991 et seq.]; the American Indian Religious Freedom Act [42 U.S.C. 1996, 1996a]; the National Museum of the American Indian Act [20 U.S.C. 80q et seq.]; and the Native American Graves Protection and Repatriation Act [25 U.S.C. 3001 et seq.].

(20) The United States has also recognized and reaffirmed the trust relationship to the Hawaiian people through legislation which authorizes the provision of services to Native Hawaiians, specifically, the Older Americans Act of 1965 [42 U.S.C. 3001 et seq.], the Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1987, the Veterans' Benefits and Services Act of 1988, the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.], the Native Hawaiian Health Care Act of 1988, the Health Professions Reauthorization Act of 1988, the Nursing Shortage Reduction and Education Extension Act of 1988, the Handicapped Programs Technical Amendments Act of 1988, the Indian Health Care Amendments of 1988, and the Disadvantaged Minority Health Improvement Act of 1990.

(21) The United States has also affirmed the historical and unique legal relationship to the Hawaiian people by authorizing the provision of services to Native Hawaiians to address problems of alcohol and drug abuse under the Anti-Drug Abuse Act of 1986.

(22) Despite such services, the unmet health needs of the Native Hawaiian people are severe and the health status of Native Hawaiians continues to be far below that of the general population of the United States.

(Pub. L. 100-579, §2, Oct. 31, 1988, 102 Stat. 2916; Pub. L. 100-690, title II, §2302, Nov. 18, 1988, 102 Stat. 4223; Pub. L. 102-396, title IX, §9168, Oct. 6, 1992, 106 Stat. 1948.)

REFERENCES IN TEXT

The Newlands Resolution, referred to in pars. (11) and (12), is act July 7, 1898, No. 55, 30 Stat. 750. For complete classification of this act to the Code, see Tables.

The 1900 Organic Act, referred to in par. (12), probably means the Hawaiian Organic Act, act Apr. 30, 1900, ch. 339, 31 Stat. 141, as amended, which was classified principally to chapter 3 (§491 et seq.) of Title 48, Territories and Insular Possessions, and was omitted from the Code. For complete classification of this Act to the Code, see Tables.

The Hawaiian Homes Commission Act, 1920, referred to in par. (13), is act July 9, 1921, ch. 42, 42 Stat. 108, as amended, which was classified generally to sections 691 to 718 of Title 48 and was omitted from the Code.

Act of June 20, 1938, referred to in par. (14), is act June 20, 1938, ch. 530, 52 Stat. 781, which is classified to sections 391b, 391b-1, 392b, 392c, 396, and 396a of Title 16, Conservation. For complete classification of this Act to the Code, see Tables.

An Act to provide for the admission of the State of Hawaii into the Union, referred to in pars. (15) and (16), is Pub. L. 86-3, Mar. 18, 1959, 73 Stat. 4, as amended, popularly known as the Hawaii Statehood Admissions Act, which is set out as a note preceding former section 491 of Title 48, Territories and Insular Possessions. For complete classification of this Act to the Code, see Tables.

The Native American Programs Act of 1974, referred to in par. (19), is title VIII of Pub. L. 88-452, as added by Pub. L. 93-644, §11, Jan. 4, 1975, 88 Stat. 2324, which is classified generally to subchapter VIII (§2991 et seq.) of chapter 34 of this title. For complete classification of this Act to the Code, see section 2991 of this title and Tables.

The American Indian Religious Freedom Act, referred to in par. (19), is Pub. L. 95-341, Aug. 11, 1978, 92 Stat. 469, as amended, which is classified to sections 1996 and 1996a of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1996 of this title and Tables.

The National Museum of the American Indian Act, referred to in par. (19), is Pub. L. 101-185, Nov. 28, 1989, 103 Stat. 1336, which is classified generally to subchapter XIII (§80q et seq.) of chapter 3 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 80q of Title 20 and Tables.

The Native American Graves Protection and Repatriation Act, referred to in par. (19), is Pub. L. 101-601, Nov. 16, 1990, 104 Stat. 3048, which is classified principally to chapter 32 (§3001 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of Title 25 and Tables.

The Older Americans Act of 1965, referred to in par. (20), is Pub. L. 89-73, July 14, 1965, 79 Stat. 218, as amended, which is classified generally to chapter 35 (§3001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

The Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1987, referred to in par. (20), is Pub. L. 100-146, Oct. 29, 1987, 101 Stat. 840, as amended. For complete classification of this Act to the Code, see Short Title of 1987 Amendment note set out under section 6000 of this title and Tables.

The Veterans' Benefits and Services Act of 1988, referred to in par. (20), is Pub. L. 100-322, May 20, 1988, 102 Stat. 487, as amended. For complete classification of this Act to the Code, see Short Title of 1988 Amendments note set out under section 101 of Title 38, Veterans' Benefits, and Tables.

The Rehabilitation Act of 1973, referred to in par. (20), is Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 355, as amended, which is classified generally to chapter 16 (§701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

The Native Hawaiian Health Care Act of 1988, referred to in par. (20), was Pub. L. 100-579, Oct. 31, 1988, 102 Stat. 2916, and subtitle D of title II of Pub. L. 100-690, Nov. 18, 1988, 102 Stat. 4222, which were classified generally to this chapter prior to being amended generally and renamed the Native Hawaiian Health Care Improvement Act by Pub. L. 102-396. For complete classification of this Act to the Code, see Tables.

The Health Professions Reauthorization Act of 1988, referred to in par. (20), is title VI of Pub. L. 100-607, Nov. 4, 1988, 102 Stat. 3122, as amended. For complete classification of this Act to the Code, see Short Title of

1988 Amendments note set out under section 201 of this title and Tables.

The Nursing Shortage Reduction and Education Extension Act of 1988, referred to in par. (20), is title VII of Pub. L. 100-607, Nov. 4, 1988, 102 Stat. 3153. For complete classification of this Act to the Code, see Short Title of 1988 Amendments note set out under section 201 of this title and Tables.

The Handicapped Programs Technical Amendments Act of 1988, referred to in par. (20), is Pub. L. 100-630, Nov. 7, 1988, 102 Stat. 3289. For complete classification of this Act to the Code, see Short Title of 1988 Amendment note set out under section 1400 of Title 20, Education, and Tables.

The Indian Health Care Amendments of 1988, referred to in par. (20), is Pub. L. 100-713, Nov. 23, 1988, 102 Stat. 4784. For complete classification of this Act to the Code, see Short Title of 1988 Amendment note set out under section 1601 of Title 25, Indians, and Tables.

The Disadvantaged Minority Health Improvement Act of 1990, referred to in par. (20), is Pub. L. 101-527, Nov. 6, 1990, 104 Stat. 2311. For complete classification of this Act to the Code, see Short Title of 1990 Amendments note set out under section 201 of this title and Tables.

The Anti-Drug Abuse Act of 1986, referred to in par. (21), is Pub. L. 99-570, Oct. 27, 1986, 100 Stat. 3207, as amended. For complete classification of this Act to the Code, see Short Title of 1986 Amendment note set out under section 801 of Title 21, Food and Drugs, and Tables.

CODIFICATION

The 1992 amendment is based on section 1 of S. 2681, One Hundred Second Congress, as passed by the Senate on Aug. 7, 1992, and enacted into law by section 9168 of Pub. L. 102-396. Section 9168, which referred to S. 2681, as passed by the Senate on "September 12, 1992", has been treated as referring to S. 2681, as passed by the Senate on Aug. 7, 1992, to reflect the probable intent of Congress.

Pub. L. 100-579 and Pub. L. 100-690 enacted identical sections.

AMENDMENTS

1992—Pub. L. 102-396 amended section generally substituting pars. (1) to (22) for former pars. (1) to (3) which set forth findings of Congress.

SHORT TITLE

Section 1 of Pub. L. 100-579, and section 2301 of subtitle D of title II of Pub. L. 100-690, as amended by Pub. L. 102-396, title IX, §9168, Oct. 6, 1992, 106 Stat. 1948, provided that: "This Act [enacting this chapter and repealing section 1621d of Title 25, Indians] may be cited as the 'Native Hawaiian Health Care Improvement Act.'"

§ 11702. Declaration of policy

(a) Congress

The Congress hereby declares that it is the policy of the United States in fulfillment of its special responsibilities and legal obligations to the indigenous people of Hawaii resulting from the unique and historical relationship between the United States and the Government of the indigenous people of Hawaii—

(1) to raise the health status of Native Hawaiians to the highest possible health level; and

(2) to provide existing Native Hawaiian health care programs with all resources necessary to effectuate this policy.

(b) Intent of Congress

It is the intent of the Congress that the Nation meet the following health objectives with respect to Native Hawaiians by the year 2000:

- (1) Reduce coronary heart disease deaths to no more than 100 per 100,000.
- (2) Reduce stroke deaths to no more than 20 per 100,000.
- (3) Increase control of high blood pressure to at least 50 percent of people with high blood pressure.
- (4) Reduce blood cholesterol to an average of no more than 200 mg/dl.
- (5) Slow the rise in lung cancer deaths to achieve a rate of no more than 42 per 100,000.
- (6) Reduce breast cancer deaths to no more than 20.6 per 100,000 women.
- (7) Increase Pap tests every 1 to 3 years to at least 85 percent of women age 18 and older.
- (8) Increase fecal occult blood testing every 1 to 2 years to at least 50 percent of people age 50 and older.
- (9) Reduce diabetes-related deaths to no more than 34 per 100,000.
- (10) Reduce the most severe complications of diabetes as follows:
 - (A) end-stage renal disease to no more than 1.4 in 1,000;
 - (B) blindness to no more than 1.4 in 1,000;
 - (C) lower extremity amputation to no more than 4.9 in 1,000;
 - (D) perinatal mortality to no more than 2 percent; and
 - (E) major congenital malformations to no more than 4 percent.
- (11) Reduce infant mortality to no more than 7 deaths per 1,000 live births.
- (12) Reduce low birth weight to no more than 5 percent of live births.
- (13) Increase first trimester prenatal care to at least 90 percent of live births.
- (14) Reduce teenage pregnancies to no more than 50 per 1,000 girls age 17 and younger.
- (15) Reduce unintended pregnancies to no more than 30 percent of pregnancies.
- (16) Increase to at least 60 percent the proportion of primary care providers who provide age-appropriate preconception care and counseling.
- (17) Increase years of healthy life to at least 65 years.
- (18) Eliminate financial barriers to clinical preventive services.
- (19) Increase childhood immunization levels to at least 90 percent of 2-year-olds.
- (20) Reduce the prevalence of dental caries to no more than 35 percent of children by age 8.
- (21) Reduce untreated dental caries so that the proportion of children with untreated caries (in permanent or primary teeth) is no more than 20 percent among children age 6 through 8 and no more than 15 percent among adolescents age 15.
- (22) Reduce edentulism to no more than 20 percent in people age 65 and older.
- (23) Increase moderate daily physical activity to at least 30 percent of the population.
- (24) Reduce sedentary lifestyles to no more than 15 percent of the population.
- (25) Reduce overweight to a prevalence of no more than 20 percent of the population.
- (26) Reduce dietary fat intake to an average of 30 percent of calories or less.
- (27) Increase to at least 75 percent the proportion of primary care providers who provide

nutrition assessment and counseling or referral to qualified nutritionists or dietitians.

- (28) Reduce cigarette smoking prevalence to no more than 15 percent of adults.
- (29) Reduce initiation of smoking to no more than 15 percent by age 20.
- (30) Reduce alcohol-related motor vehicle crash deaths to no more than 8.5 per 100,000 adjusted for age.
- (31) Reduce alcohol use by school children age 12 to 17 to less than 13 percent.
- (32) Reduce marijuana use by youth age 18 to 25 to less than 8 percent.
- (33) Reduce cocaine use by youth aged¹ 18 to 25 to less than 3 percent.
- (34) Confine HIV infection to no more than 800 per 100,000.
- (35) Reduce gonorrhea infections to no more than 225 per 100,000.
- (36) Reduce syphilis infections to no more than 10 per 100,000.
- (37) Reduce significant hearing impairment to a prevalence² of no more than 82 per 1,000.
- (38) Reduce acute middle ear infections among children age 4 and younger, as measured by days of restricted activity or school absenteeism, to no more than 105 days per 100 children.
- (39) Reduce indigenous cases of vaccine-preventable diseases as follows:
 - (A) Diphtheria among individuals age 25 and younger to 0;
 - (B) Tetanus among individuals age 25 and younger to 0;
 - (C) Polio (wild-type virus) to 0;
 - (D) Measles to 0;
 - (E) Rubella to 0;
 - (F) Congenital Rubella Syndrome to 0;
 - (G) Mumps to 500; and
 - (H) Pertussis to 1,000; and³
- (40) Reduce significant visual impairment to a prevalence of no more than 30 per 1,000.

(c) Report

The Secretary shall submit to the President, for inclusion in each report required to be transmitted to the Congress under section 11710 of this title, a report on the progress made in each area toward meeting each of the objectives described in subsection (b) of this section.

(Pub. L. 100-579, §3, Oct. 31, 1988, 102 Stat. 2916; Pub. L. 100-690, title II, §2303, Nov. 18, 1988, 102 Stat. 4223; Pub. L. 102-396, title IX, §9168, Oct. 6, 1992, 106 Stat. 1948.)

CODIFICATION

The 1992 amendment is based on section 1 of S. 2681, One Hundred Second Congress, as passed by the Senate on Aug. 7, 1992, and enacted into law by section 9168 of Pub. L. 102-396. Section 9168, which referred to S. 2681, as passed by the Senate on "September 12, 1992", has been treated as referring to S. 2681, as passed by the Senate on Aug. 7, 1992, to reflect the probable intent of Congress.

Pub. L. 100-579 and Pub. L. 100-690 enacted identical sections.

AMENDMENTS

1992—Pub. L. 102-396 amended section generally. Prior to amendment, section related to comprehensive health care master plan for Native Hawaiians.

¹ So in original. Probably should be "age".

² So in original. Probably should be "prevalence".

³ So in original. The "and" probably should be a period.

§ 11703. Comprehensive health care master plan for Native Hawaiians

(a) Development

The Secretary may make a grant to, or enter into a contract with, Papa Ola Lokahi for the purpose of coordinating, implementing and updating a Native Hawaiian comprehensive health care master plan designed to promote comprehensive health promotion and disease prevention services and to maintain and improve the health status of Native Hawaiians. The master plan shall be based upon an assessment of the health care status and health care needs of Native Hawaiians. To the extent practicable, assessments made as of the date of such grant or contract shall be used by Papa Ola Lokahi, except that any such assessment shall be updated as appropriate.

(b) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out subsection (a) of this section.

(Pub. L. 100-579, §4, Oct. 31, 1988, 102 Stat. 2916; Pub. L. 100-690, title II, §2304, Nov. 18, 1988, 102 Stat. 4223; Pub. L. 102-396, title IX, §9168, Oct. 6, 1992, 106 Stat. 1948.)

CODIFICATION

The 1992 amendment is based on section 1 of S. 2681, One Hundred Second Congress, as passed by the Senate on Aug. 7, 1992, and enacted into law by section 9168 of Pub. L. 102-396. Section 9168, which referred to S. 2681, as passed by the Senate on "September 12, 1992", has been treated as referring to S. 2681, as passed by the Senate on Aug. 7, 1992, to reflect the probable intent of Congress.

Pub. L. 100-579 and Pub. L. 100-690 enacted identical sections.

AMENDMENTS

1992—Pub. L. 102-396 amended section generally. Prior to amendment, section related to Native Hawaiian health centers.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11704, 11706, 11709 of this title.

§ 11704. Functions of Papa Ola Lokahi

(a) Responsibility

Papa Ola Lokahi shall be responsible for the—

(1) coordination, implementation, and updating, as appropriate, of the comprehensive health care master plan developed pursuant to section 11703 of this title;

(2) training for the persons described in section 11705(c)(1)(B) of this title;

(3) identification of and research into the diseases that are most prevalent among Native Hawaiians, including behavioral, biomedical, epidemiological, and health services; and

(4) the development of an action plan outlining the contributions that each member organization of Papa Ola Lokahi will make in carrying out the policy of this chapter.

(b) Special project funds

Papa Ola Lokahi is authorized to receive special project funds that may be appropriated for

the purpose of research on the health status of Native Hawaiians or for the purpose of addressing the health care needs of Native Hawaiians.

(c) Clearinghouse

Papa Ola Lokahi shall serve as a clearinghouse for:

(1) the collection and maintenance of data associated with the health status of Native Hawaiians;

(2) the identification and research into diseases affecting Native Hawaiians;

(3) the availability of Native Hawaiian project funds, research projects and publications;

(4) the collaboration of research in the area of Native Hawaiian health; and

(5) the timely dissemination of information pertinent to the Native Hawaiian health care systems.

(d) Coordination of programs and services

Papa Ola Lokahi shall, to the maximum extent possible, coordinate and assist the health care programs and services provided to Native Hawaiians.

(e) Technical support

Papa Ola Lokahi shall act as a statewide infrastructure to provide technical support and coordination of training and technical assistance to the Native Hawaiian health care systems.

(f) Relationships with other agencies

Papa Ola Lokahi is authorized to enter into agreements or memoranda of understanding with relevant agencies or organizations that are capable of providing resources or services to the Native Hawaiian health care systems.

(Pub. L. 100-579, §5, Oct. 31, 1988, 102 Stat. 2919; Pub. L. 100-690, title II, §2305, Nov. 18, 1988, 102 Stat. 4225; Pub. L. 102-396, title IX, §9168, Oct. 6, 1992, 106 Stat. 1948.)

CODIFICATION

The 1992 amendment is based on section 1 of S. 2681, One Hundred Second Congress, as passed by the Senate on Aug. 7, 1992, and enacted into law by section 9168 of Pub. L. 102-396. Section 9168, which referred to S. 2681, as passed by the Senate on "September 12, 1992", has been treated as referring to S. 2681, as passed by the Senate on Aug. 7, 1992, to reflect the probable intent of Congress.

Pub. L. 100-579 and Pub. L. 100-690 enacted identical sections.

AMENDMENTS

1992—Pub. L. 102-396 amended section generally. Prior to amendment, section related to administrative grant for Papa Ola Lokahi.

§ 11705. Native Hawaiian health care systems

(a) Comprehensive health promotion, disease prevention, and primary health services

(1)(A) The Secretary, in consultation with Papa Ola Lokahi, may make grants to, or enter into contracts with, any qualified entity for the purpose of providing comprehensive health promotion and disease prevention services as well as primary health services to Native Hawaiians.

(B) In making grants and entering into contracts under this paragraph, the Secretary shall

give preference to Native Hawaiian health care systems and Native Hawaiian organizations and, to the extent feasible, health promotion and disease prevention services shall be performed through Native Hawaiian health care systems.

(2) In addition to paragraph (1), the Secretary may make a grant to, or enter into a contract with, Papa Ola Lokahi for the purpose of planning Native Hawaiian health care systems to serve the health needs of Native Hawaiian communities on each of the islands of O'ahu, Molo-ka'i, Maui, Hawai'i, Lana'i, Kaua'i, and Ni'ihau in the State of Hawaii.

(b) Qualified entity

An entity is a qualified entity for purposes of subsection (a)(1) of this section if the entity is a Native Hawaiian health care system.

(c) Services to be provided

(1) Each recipient of funds under subsection (a)(1) of this section shall provide the following services:

(A) outreach services to inform Native Hawaiians of the availability of health services;

(B) education in health promotion and disease prevention of the Native Hawaiian population by, wherever possible, Native Hawaiian health care practitioners, community outreach workers, counselors, and cultural educators;

(C) services of physicians, physicians' assistants, nurse practitioners or other health professionals;

(D) immunizations;

(E) prevention and control of diabetes, high blood pressure, and otitis media;

(F) pregnancy and infant care; and

(G) improvement of nutrition.

(2) In addition to the mandatory services under paragraph (1), the following services may be provided pursuant to subsection (a)(1) of this section:

(A) identification, treatment, control, and reduction of the incidence of preventable illnesses and conditions endemic to Native Hawaiians;

(B) collection of data related to the prevention of diseases and illnesses among Native Hawaiians; and

(C) services within the meaning of the terms "health promotion", "disease prevention", and "primary health services", as such terms are defined in section 11711 of this title, which are not specifically referred to in paragraph (1) of this subsection.

(3) The health care services referred to in paragraphs (1) and (2) which are provided under grants or contracts under subsection (a)(1) of this section may be provided by traditional Native Hawaiian healers.

(d) Limitation of number of entities

During a fiscal year, the Secretary under this chapter may make a grant to, or hold a contract with, not more than 5 Native Hawaiian health care systems.

(e) Matching funds

(1) The Secretary may not make a grant or provide funds pursuant to a contract under sub-

section (a)(1) of this section to a Native Hawaiian health care system—

(A) in an amount exceeding 83.3 percent of the costs of providing health services under the grant or contract; and

(B) unless the Native Hawaiian health care system agrees that the Native Hawaiian health care system or the State of Hawaii will make available, directly or through donations to the Native Hawaiian health care system, non-Federal contributions toward such costs in an amount equal to not less than \$1 (in cash or in kind under paragraph (2)) for each \$5 of Federal funds provided in such grant or contract.

(2) Non-Federal contributions required in paragraph (1) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government or services assisted or subsidized to any significant extent by the Federal Government may not be included in determining the amount of such non-Federal contributions.

(3) The Secretary may waive the requirement established in paragraph (1) if—

(A) the Native Hawaiian health care system involved is a nonprofit private entity described in subsection (b) of this section; and

(B) the Secretary, in consultation with Papa Ola Lokahi, determines that it is not feasible for the Native Hawaiian health care system to comply with such requirement.

(f) Restriction on use of grant and contract funds

The Secretary may not make a grant to, or enter into a contract with, any entity under subsection (a)(1) of this section unless the entity agrees that, amounts received pursuant to such subsection will not, directly or through contract, be expended—

(1) for any purpose other than the purposes described in subsection (c) of this section;

(2) to provide inpatient services;

(3) to make cash payments to intended recipients of health services; or

(4) to purchase or improve real property (other than minor remodeling of existing improvements to real property) or to purchase major medical equipment.

(g) Limitation on charges for services

The Secretary may not make a grant, or enter into a contract with, any entity under subsection (a)(1) of this section unless the entity agrees that, whether health services are provided directly or through contract—

(1) health services under the grant or contract will be provided without regard to ability to pay for the health services; and

(2) the entity will impose a charge for the delivery of health services, and such charge—

(A) will be made according to a schedule of charges that is made available to the public, and

(B) will be adjusted to reflect the income of the individual involved.

(h) Authorization of appropriations

(1) There are authorized to be appropriated such sums as may be necessary for fiscal years 1993 through 2001 to carry out subsection (a)(1) of this section.

(2) There are authorized to be appropriated such sums as may be necessary to carry out subsection (a)(2) of this section.

(Pub. L. 100-579, § 6, Oct. 31, 1988, 102 Stat. 2919; Pub. L. 100-690, title II, § 2306, Nov. 18, 1988, 102 Stat. 4226; Pub. L. 102-396, title IX, § 9168, Oct. 6, 1992, 106 Stat. 1948.)

CODIFICATION

The 1992 amendment is based on section 1 of S. 2681, One Hundred Second Congress, as passed by the Senate on Aug. 7, 1992, and enacted into law by section 9168 of Pub. L. 102-396. Section 9168, which referred to S. 2681, as passed by the Senate on "September 12, 1992", has been treated as referring to S. 2681, as passed by the Senate on Aug. 7, 1992, to reflect the probable intent of Congress.

Pub. L. 100-579 and Pub. L. 100-690 enacted identical sections.

AMENDMENTS

1992—Pub. L. 102-396 amended section generally. Prior to amendment, section related to administration of grants and contracts.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11704, 11706, 11707 of this title.

§ 11706. Administrative grant for Papa Ola Lokahi

(a) In general

In addition to any other grant or contract under this chapter, the Secretary may make grants to, or enter into contracts with, Papa Ola Lokahi for—

(1) coordination, implementation, and updating (as appropriate) of the comprehensive health care master plan developed pursuant to section 11703 of this title;

(2) training for the persons described in section 11705(c)(1)(B) of this title;

(3) identification of and research into the diseases that are most prevalent among Native Hawaiians, including behavioral, biomedical, epidemiological, and health services;

(4) the development of an action plan outlining the contributions that each member organization of Papa Ola Lokahi will make in carrying out the policy of this chapter;

(5) a clearinghouse function for—

(A) the collection and maintenance of data associated with the health status of Native Hawaiians;

(B) the identification and research into diseases affecting Native Hawaiians; and

(C) the availability of Native Hawaiian project funds, research projects and publications;

(6) the coordination of the health care programs and services provided to Native Hawaiians; and

(7) the administration of special project funds.

(b) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary for fiscal years 1993 through 2001 to carry out subsection (a) of this section.

(Pub. L. 100-579, § 7, Oct. 31, 1988, 102 Stat. 2921; Pub. L. 100-690, title II, § 2307, Nov. 18, 1988, 102

Stat. 4227; Pub. L. 102-396, title IX, § 9168, Oct. 6, 1992, 106 Stat. 1948.)

CODIFICATION

The 1992 amendment is based on section 1 of S. 2681, One Hundred Second Congress, as passed by the Senate on Aug. 7, 1992, and enacted into law by section 9168 of Pub. L. 102-396. Section 9168, which referred to S. 2681, as passed by the Senate on "September 12, 1992", has been treated as referring to S. 2681, as passed by the Senate on Aug. 7, 1992, to reflect the probable intent of Congress.

Pub. L. 100-579 and Pub. L. 100-690 enacted identical sections.

AMENDMENTS

1992—Pub. L. 102-396 amended section generally. Prior to amendment, section related to assignment of personnel.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11707 of this title.

§ 11707. Administration of grants and contracts

(a) Terms and conditions

The Secretary shall include in any grant made or contract entered into under this chapter such terms and conditions as the Secretary considers necessary or appropriate to ensure that the objectives of such grant or contract are achieved.

(b) Periodic review

The Secretary shall periodically evaluate the performance of, and compliance with, grants and contracts under this chapter.

(c) Administrative requirements

The Secretary may not make a grant or enter into a contract under this chapter with an entity unless the entity—

(1) agrees to establish such procedures for fiscal control and fund accounting as may be necessary to ensure proper disbursement and accounting with respect to the grant or contract;

(2) agrees to ensure the confidentiality of records maintained on individuals receiving health services under the grant or contract;

(3) with respect to providing health services to any population of Native Hawaiians, a substantial portion of which has a limited ability to speak the English language—

(A) has developed and has the ability to carry out a reasonable plan to provide health services under the grant or contract through individuals who are able to communicate with the population involved in the language and cultural context that is most appropriate; and

(B) has designated at least one individual, fluent in both English and the appropriate language, to assist in carrying out the plan;

(4) with respect to health services that are covered in the plan of the State of Hawaii approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.]—

(A) if the entity will provide under the grant or contract any such health services directly—

(i) the entity has entered into a participation agreement under such plans; and

(ii) the entity is qualified to receive payments under such plan; and

(B) if the entity will provide under the grant or contract any such health services through a contract with an organization—

(i) the organization has entered into a participation agreement under such plan; and

(ii) the organization is qualified to receive payments under such plan; and

(5) agrees to submit to the Secretary and to Papa Ola Lokahi an annual report that describes the utilization and costs of health services provided under the grant or contract (including the average cost of health services per user) and that provides such other information as the Secretary determines to be appropriate.

(d) Contract evaluation

(1) If, as a result of evaluations conducted by the Secretary, the Secretary determines that an entity has not complied with or satisfactorily performed a contract entered into under section 11705 of this title, the Secretary shall, prior to renewing such contract, attempt to resolve the areas of noncompliance or unsatisfactory performance and modify such contract to prevent future occurrences of such noncompliance or unsatisfactory performance. If the Secretary determines that such noncompliance or unsatisfactory performance cannot be resolved and prevented in the future, the Secretary shall not renew such contract with such entity and is authorized to enter into a contract under section 11705 of this title with another entity referred to in section 11705(b) of this title that provides services to the same population of Native Hawaiians which is served by the entity whose contract is not renewed by reason of this subsection.

(2) In determining whether to renew a contract entered into with an entity under this chapter, the Secretary shall consider the results of the evaluation under this section.

(3) All contracts entered into by the Secretary under this chapter shall be in accordance with all Federal contracting laws and regulations except that, in the discretion of the Secretary, such contracts may be negotiated without advertising and may be exempted from the provisions of the Act of August 24, 1935 (40 U.S.C. 270a et seq.).

(4) Payments made under any contract entered into under this chapter may be made in advance, by means of reimbursement, or in installments and shall be made on such conditions as the Secretary deems necessary to carry out the purposes of this chapter.

(e) Limitation on use of funds for administrative expenses

Except for grants and contracts under section 11706 of this title, the Secretary may not grant to, or enter into a contract with, an entity under this chapter unless the entity agrees that the entity will not expend more than 10 percent of amounts received pursuant to this chapter for the purpose of administering the grant or contract.

(f) Report

(1) For each fiscal year during which an entity receives or expends funds pursuant to a grant or contract under this chapter, such entity shall submit to the Secretary and to Papa Ola Lokahi a quarterly report on—

(A) activities conducted by the entity under the grant or contract;

(B) the amounts and purposes for which Federal funds were expended; and

(C) such other information as the Secretary may request.

(2) The reports and records of any entity which concern any grant or contract under this chapter shall be subject to audit by the Secretary, the Inspector General of the Department of Health and Human Services, and the Comptroller General of the United States.

(g) Annual private audit

The Secretary shall allow as a cost of any grant made or contract entered into under this chapter the cost of an annual private audit conducted by a certified public accountant.

(Pub. L. 100-579, §8, Oct. 31, 1988, 102 Stat. 2921; Pub. L. 100-690, title II, §2308, Nov. 18, 1988, 102 Stat. 4228; Pub. L. 102-396, title IX, §9168, Oct. 6, 1992, 106 Stat. 1948.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (c)(4), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XIX of the Act is classified generally to subchapter XIX (§1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

Act of August 24, 1935, referred to in subsec. (d)(3), is act Aug. 24, 1935, ch. 642, 49 Stat. 793, as amended, known as the Miller Act, which is classified generally to sections 270a to 270d-1 of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 270a of Title 40 and Tables.

CODIFICATION

The 1992 amendment is based on section 1 of S. 2681, One Hundred Second Congress, as passed by the Senate on Aug. 7, 1992, and enacted into law by section 9168 of Pub. L. 102-396. Section 9168, which referred to S. 2681, as passed by the Senate on "September 12, 1992", has been treated as referring to S. 2681, as passed by the Senate on Aug. 7, 1992, to reflect the probable intent of Congress.

Pub. L. 100-579 and Pub. L. 100-690 enacted identical sections.

AMENDMENTS

1992—Pub. L. 102-396 amended section generally. Prior to amendment, section defined terms for purposes of this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300x-63 of this title.

§ 11708. Assignment of personnel

(a) In general

The Secretary is authorized to enter into an agreement with any entity under which the Secretary is authorized to assign personnel of the Department of Health and Human Services with expertise identified by such entity to such entity on detail for the purposes of providing com-

prehensive health promotion and disease prevention services to Native Hawaiians.

(b) Applicable Federal personnel provisions

Any assignment of personnel made by the Secretary under any agreement entered into under the authority of subsection (a) of this section shall be treated as an assignment of Federal personnel to a local government that is made in accordance with subchapter VI of chapter 33 of title 5.

(Pub. L. 100-579, §9, Oct. 31, 1988, 102 Stat. 2923; Pub. L. 100-690, title II, §2309, Nov. 18, 1988, 102 Stat. 4229; Pub. L. 102-396, title IX, §9168, Oct. 6, 1992, 106 Stat. 1948.)

CODIFICATION

The 1992 amendment is based on section 1 of S. 2681, One Hundred Second Congress, as passed by the Senate on Aug. 7, 1992, and enacted into law by section 9168 of Pub. L. 102-396. Section 9168, which referred to S. 2681, as passed by the Senate on "September 12, 1992", has been treated as referring to S. 2681, as passed by the Senate on Aug. 7, 1992, to reflect the probable intent of Congress.

Pub. L. 100-579 and Pub. L. 100-690 enacted identical sections.

AMENDMENTS

1992—Pub. L. 102-396 amended section generally. Prior to amendment, section related to rule of construction.

§ 11709. Native Hawaiian health scholarships

(a) Eligibility

Subject to the availability of funds appropriated under the authority of subsection (c) of this section, the Secretary shall provide funds through a direct grant or a cooperative agreement to Papa Ola Lokahi for the purpose of providing scholarship assistance to students who—

- (1) meet the requirements of paragraphs (1), (3), and (4) of section 254l(b) of this title, and
- (2) are Native Hawaiians.

(b) Terms and conditions

(1) The scholarship assistance provided under subsection (a) of this section shall be provided under the same terms and subject to the same conditions, regulations, and rules that apply to scholarship assistance provided under section 254l of this title, provided that—

(A) the provision of scholarships in each type of health care profession training shall correspond to the need for each type of health care professional identified in the Native Hawaiian comprehensive health care master plan implemented under section 11703 of this title to serve the Native Hawaiian health care systems, as identified by Papa Ola Lokahi;

(B) the primary health services covered under the scholarship assistance program under this section shall be the services included under the definition of that term under section 11711(8) of this title;

(C) to the maximum extent practicable, the Secretary shall select scholarship recipients from a list of eligible applicants submitted by the Papa Ola Lokahi;

(D) the obligated service requirement for each scholarship recipient shall be fulfilled through the full-time clinical or nonclinical practice of the health profession of the schol-

arship recipient, in an order of priority that would provide for practice—

(i) first, in any one of the five Native Hawaiian health care systems; and

(ii) second, in—

(I) a health professional shortage area or medically underserved area located in the State of Hawaii; or

(II) a geographic area or facility that is—

(aa) located in the State of Hawaii; and

(bb) has a designation that is similar to a designation described in subclause (I) made by the Secretary, acting through the Public Health Service;

(E) the provision of counseling, retention and other support services shall not be limited to scholarship recipients, but shall also include recipients of other scholarship and financial aid programs enrolled in appropriate health professions training programs,¹

(F) the obligated service of a scholarship recipient shall not be performed by the recipient through membership in the National Health Service Corps; and

(G) the requirements of sections 254d through 254k of this title, section 254m of this title, other than subsection (b)(5) of that section, and section 254n of this title applicable to scholarship assistance provided under section 254l of this title shall not apply to the scholarship assistance provided under subsection (a) of this section.

(2) The Native Hawaiian Health Scholarship program shall not be administered by or through the Indian Health Service.

(c) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary for fiscal years 1993 through 2001 for the purpose of funding the scholarship assistance provided under subsection (a) of this section.

(Pub. L. 100-579, §10, as added Pub. L. 102-396, title IX, §9168, Oct. 6, 1992, 106 Stat. 1948; amended Pub. L. 105-256, §12, Oct. 14, 1998, 112 Stat. 1899; Pub. L. 107-116, title V, §514(a), Jan. 10, 2002, 115 Stat. 2219.)

CODIFICATION

Section enacted by section 1 of S. 2681, One Hundred Second Congress, as passed by the Senate on Aug. 7, 1992, which was enacted into law by section 9168 of Pub. L. 102-396. Section 9168, which referred to S. 2681, as passed by the Senate on "September 12, 1992", has been treated as referring to S. 2681, as passed by the Senate on Aug. 7, 1992, to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 11709, Pub. L. 100-579, §11, Oct. 31, 1988, 102 Stat. 2923; Pub. L. 100-690, title II, §2311, Nov. 18, 1988, 102 Stat. 4229, which related to compliance with Budget Act, was amended generally by Pub. L. 102-396, title IX, §9168, Oct. 6, 1992, 106 Stat. 1948, and transferred to section 11710 of this title.

A prior section 10 of Pub. L. 100-579 repealed section 1621d of Title 25, Indians.

¹ So in original. The comma probably should be a semicolon.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107-116, §514(a)(1), substituted “Papa Ola Lokahi” for “Kamehameha School/Bishop Estate” in introductory provisions.

Subsec. (b)(1)(C). Pub. L. 107-116, §514(a)(2), which directed the substitution of “Papa Ola Lokahi” for “Kamehameha School/Bishop Estate”, was executed by making the substitution for “Kamehameha Schools/Bishop Estate” to reflect the probable intent of Congress.

1998—Subsec. (a)(1). Pub. L. 105-256, §12(a), which directed amendment of subsec. (a)(1) by substituting “meet the requirements of paragraphs (1), (3), and (4) of section 254(b) of this title” for “meet the requirements of section 254 of this title”, was executed by making the substitution for “meet the requirements of section 254b of this title”, to reflect the probable intent of Congress.

Subsec. (b)(1)(A). Pub. L. 105-256, §12(b)(1), inserted “identified in the Native Hawaiian comprehensive health care master plan implemented under section 11703 of this title” after “health care professional”.

Subsec. (b)(1)(B). Pub. L. 105-256, §12(b)(2), (3), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (b)(1)(C). Pub. L. 105-256, §12(b)(2), redesignated subpar. (B) as (C). Former subpar. (C) redesignated (D).

Subsec. (b)(1)(D). Pub. L. 105-256, §12(b)(4), added subpar. (D) and struck out former subpar. (D) which read as follows: “the obligated service requirement for each scholarship recipient shall be fulfilled through service, in order of priority, in (i) any one of the five Native Hawaiian health care systems, or (ii) health professions shortage areas, medically underserved areas, or geographic areas or facilities similarly designated by the United States Public Health Service in the State of Hawaii; and”.

Pub. L. 105-256, §12(b)(2), redesignated subpar. (C) as (D). Former subpar. (D) redesignated (E).

Subsec. (b)(1)(E). Pub. L. 105-256, §12(b)(2), redesignated subpar. (D) as (E).

Subsec. (b)(1)(F), (G). Pub. L. 105-256, §12(b)(5), (6), added subpars. (F) and (G).

§ 11710. Report

The President shall, at the time the budget is submitted under section 1105 of title 31, for each fiscal year transmit to the Congress a report on the progress made in meeting the objectives of this chapter, including a review of programs established or assisted pursuant to this chapter and an assessment and recommendations of additional programs or additional assistance necessary to, at a minimum, provide health services to Native Hawaiians, and ensure a health status for Native Hawaiians, which are at a parity with the health services available to, and the health status of, the general population.

(Pub. L. 100-579, §11, Oct. 31, 1988, 102 Stat. 2923; Pub. L. 100-690, title II, §2311, Nov. 18, 1988, 102 Stat. 4229; Pub. L. 102-396, title IX, §9168, Oct. 6, 1992, 106 Stat. 1948.)

CODIFICATION

The 1992 amendment is based on section 1 of S. 2681, One Hundred Second Congress, as passed by the Senate on Aug. 7, 1992, and enacted into law by section 9168 of Pub. L. 102-396. Section 9168, which referred to S. 2681, as passed by the Senate on “September 12, 1992”, has been treated as referring to S. 2681, as passed by the Senate on Aug. 7, 1992, to reflect the probable intent of Congress.

Section was formerly classified to section 11709 of this title prior to the general amendment of this chapter by Pub. L. 102-396.

Pub. L. 100-579 and Pub. L. 100-690 enacted identical sections.

PRIOR PROVISIONS

A prior section 11710, Pub. L. 100-579, §12, Oct. 31, 1988, 102 Stat. 2923; Pub. L. 100-690, title II, §2312, Nov. 18, 1988, 102 Stat. 4230, which related to severability, was amended generally by Pub. L. 102-396, title IX, §9168, Oct. 6, 1992, 106 Stat. 1948, and transferred to section 11711 of this title.

AMENDMENTS

1992—Pub. L. 102-396 amended section generally. Prior to amendment, section related to compliance with Budget Act.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11702 of this title.

§ 11711. Definitions

For purposes of this chapter:

(1) Disease prevention

The term “disease prevention” includes—

- (A) immunizations,
- (B) control of high blood pressure,
- (C) control of sexually transmittable diseases,
- (D) prevention and control of diabetes,
- (E) control of toxic agents,
- (F) occupational safety and health,
- (G) accident prevention,
- (H) fluoridation of water,
- (I) control of infectious agents, and
- (J) provision of mental health care.

(2) Health promotion

The term “health promotion” includes—

- (A) pregnancy and infant care, including prevention of fetal alcohol syndrome,
- (B) cessation of tobacco smoking,
- (C) reduction in the misuse of alcohol and drugs,
- (D) improvement of nutrition,
- (E) improvement in physical fitness,
- (F) family planning, and
- (G) control of stress.

(3) Native Hawaiian

The term “Native Hawaiian” means any individual who is—

- (A) a citizen of the United States, and
- (B) a descendant of the aboriginal people, who prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii, as evidenced by—
 - (i) genealogical records,
 - (ii) Kupuna (elders) or Kama’aina (long-term community residents) verification, or
 - (iii) birth records of the State of Hawaii.

(4) Native Hawaiian health center

The term “Native Hawaiian health center” means an entity—

- (A) which is organized under the laws of the State of Hawaii,
- (B) which provides or arranges for health care services through practitioners licensed by the State of Hawaii, where licensure requirements are applicable,
- (C) which is a public or nonprofit private entity, and
- (D) in which Native Hawaiian health practitioners significantly participate in the planning, management, monitoring, and evaluation of health services.

(5) Native Hawaiian organization

The term “Native Hawaiian organization” means any organization—

(A) which serves the interests of Native Hawaiians,

(B) which is—

(i) recognized by Papa Ola Lokahi for the purpose of planning, conducting, or administering programs (or portions of programs) authorized under this chapter for the benefit of Native Hawaiians, and

(ii) certified by Papa Ola Lokahi as having the qualifications and capacity to provide the services, and meet the requirements, under the contract the organization enters into with, or grant the organization receives from, the Secretary under this chapter,

(C) in which Native Hawaiian health practitioners significantly participate in the planning, management, monitoring, and evaluation of health services, and

(D) which is a public or nonprofit private entity.

(6) Native Hawaiian health care system

The term “Native Hawaiian health care system” means an entity—

(A) which is organized under the laws of the State of Hawaii,

(B) which provides or arranges for health care services through practitioners licensed by the State of Hawaii, where licensure requirements are applicable,

(C) which is a public or nonprofit private entity,

(D) in which Native Hawaiian health practitioners significantly participate in the planning, management, monitoring, and evaluation of health care services,

(E) which may be composed of as many Native Hawaiian health centers as necessary to meet the health care needs of each island’s Native Hawaiians, and

(F) which is—

(i) recognized by Papa Ola Lokahi for the purpose of planning, conducting, or administering programs, or portions of programs, authorized by this chapter for the benefit of Native Hawaiians, and

(ii) certified by Papa Ola Lokahi as having the qualifications and the capacity to provide the services and meet the requirements under the contract the Native Hawaiian health care system enters into with the Secretary or the grant the Native Hawaiian health care system receives from the Secretary pursuant to this chapter.

(7) Papa Ola Lokahi

(A) The term “Papa Ola Lokahi” means an organization composed of—

(i) E Ola Mau;

(ii) the Office of Hawaiian Affairs of the State of Hawaii;

(iii) Alu Like Inc.;

(iv) the University of Hawaii;

(v) the Office of Hawaiian Health of the Hawaii State Department of Health;

(vi) Ho’ola Lahui Hawaii, or a health care system serving the islands of Kaua’i and Ni’i-

hau, and which may be composed of as many health care centers as are necessary to meet the health care needs of the Native Hawaiians of those islands;

(vii) Ke Ola Mamo, or a health care system serving the island of O’ahu, and which may be composed of as many health care centers as are necessary to meet the health care needs of the Native Hawaiians of that island;

(viii) Na Pu’uwai or a health care system serving the islands of Moloka’i and Lana’i, and which may be composed of as many health care centers as are necessary to meet the health care needs of the Native Hawaiians of those islands;

(ix) Hui No Ke Ola Pono, or a health care system serving the island of Maui, and which may be composed of as many health care centers as are necessary to meet the health care needs of the Native Hawaiians of that island;

(x) Hui Malama Ola Ha’Oiwai or a health care system serving the island of Hawaii, and which may be composed of as many health care centers as are necessary to meet the health care needs of the Native Hawaiians of that island; and

(xi) such other member organizations as the Board of Papa Ola Lokahi may admit from time to time, based upon satisfactory demonstration of a record of contribution to the health and well-being of Native Hawaiians, and upon satisfactory development of a mission statement in relation to this chapter, including clearly defined goals and objectives, a 5-year action plan outlining the contributions that each organization will make in carrying out the policy of this chapter, and an estimated budget.

(B) Such term does not include any such organization identified in subparagraph (A) if the Secretary determines that such organization has not developed a mission statement with clearly defined goals and objectives for the contributions the organization will make to the Native Hawaiian health care systems, and an action plan for carrying out those goals and objectives.

(8) Primary health services

The term “primary health services” means—

(A) services of physicians, physicians’ assistants, nurse practitioners, and other health professionals;

(B) diagnostic laboratory and radiologic services;

(C) preventive health services (including children’s eye and ear examinations to determine the need for vision and hearing correction, perinatal services, well child services, and family planning services);

(D) emergency medical services;

(E) transportation services as required for adequate patient care;

(F) preventive dental services; and

(G) pharmaceutical services, as may be appropriate for particular health centers.

(9) Secretary

The term “Secretary” means the Secretary of Health and Human Services.

(10) Traditional Native Hawaiian healer

The term “traditional Native Hawaiian healer” means a practitioner—

- (A) who—
 - (i) is of Hawaiian ancestry, and
 - (ii) has the knowledge, skills, and experience in direct personal health care of individuals, and
- (B) whose knowledge, skills, and experience are based on demonstrated learning of Native Hawaiian healing practices acquired by—
 - (i) direct practical association with Native Hawaiian elders, and
 - (ii) oral traditions transmitted from generation to generation.

(Pub. L. 100-579, §12, Oct. 31, 1988, 102 Stat. 2923; Pub. L. 100-690, title II, §2312, Nov. 18, 1988, 102 Stat. 4230; Pub. L. 102-396, title IX, §9168, Oct. 6, 1992, 106 Stat. 1948.)

CODIFICATION

The 1992 amendment is based on section 1 of S. 2681, One Hundred Second Congress, as passed by the Senate on Aug. 7, 1992, and enacted into law by section 9168 of Pub. L. 102-396. Section 9168, which referred to S. 2681, as passed by the Senate on “September 12, 1992”, has been treated as referring to S. 2681, as passed by the Senate on Aug. 7, 1992, to reflect the probable intent of Congress.

Section was formerly classified to section 11710 of this title prior to the general amendment of this chapter by Pub. L. 102-396.

Pub. L. 100-579 and Pub. L. 100-690 enacted identical sections.

AMENDMENTS

1992—Pub. L. 102-396 amended section generally. Prior to amendment, section related to severability.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11705, 11709 of this title.

§ 11712. Rule of construction

Nothing in this chapter shall be construed to restrict the authority of the State of Hawaii to license health practitioners.

(Pub. L. 100-579, §13, as added Pub. L. 102-396, title IX, §9168, Oct. 6, 1992, 106 Stat. 1948.)

CODIFICATION

Section enacted by section 1 of S. 2681, One Hundred Second Congress, as passed by the Senate on Aug. 7, 1992, which was enacted into law by section 9168 of Pub. L. 102-396. Section 9168, which referred to S. 2681, as passed by the Senate on “September 12, 1992”, has been treated as referring to S. 2681, as passed by the Senate on Aug. 7, 1992, to reflect the probable intent of Congress.

§ 11713. Compliance with Budget Act

Any new spending authority (described in subsection (c)(2)(A) or (B) of section 651¹ of title 2) which is provided under this chapter shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

(Pub. L. 100-579, §15, as added Pub. L. 102-396, title IX, §9168, Oct. 6, 1992, 106 Stat. 1948.)

¹ See References in Text note below.

REFERENCES IN TEXT

Section 651 of title 2, referred to in text, was amended by Pub. L. 105-33, title X, §10116(a)(3), Aug. 5, 1997, 111 Stat. 691, by striking out subsec. (c) and redesignating former subsec. (d) as (c).

CODIFICATION

Section enacted by section 1 of S. 2681, One Hundred Second Congress, as passed by the Senate on Aug. 7, 1992, which was enacted into law by section 9168 of Pub. L. 102-396. Section 9168, which referred to S. 2681, as passed by the Senate on “September 12, 1992”, has been treated as referring to S. 2681, as passed by the Senate on Aug. 7, 1992, to reflect the probable intent of Congress.

§ 11714. Severability

If any provision of this chapter, or the application of any such provision to any person or circumstances is held to be invalid, the remainder of this chapter, and the application of such provision or amendment to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

(Pub. L. 100-579, §16, as added Pub. L. 102-396, title IX, §9168, Oct. 6, 1992, 106 Stat. 1948.)

CODIFICATION

Section enacted by section 1 of S. 2681, One Hundred Second Congress, as passed by the Senate on Aug. 7, 1992, which was enacted into law by section 9168 of Pub. L. 102-396. Section 9168, which referred to S. 2681, as passed by the Senate on “September 12, 1992”, has been treated as referring to S. 2681, as passed by the Senate on Aug. 7, 1992, to reflect the probable intent of Congress.

CHAPTER 123—DRUG ABUSE EDUCATION AND PREVENTION

SUBCHAPTER I—DRUG EDUCATION AND PREVENTION RELATING TO YOUTH GANGS

- Sec.
- 11801. Establishment of drug abuse education and prevention program relating to youth gangs.
- 11802. Application for grants and contracts.
 - (a) Submission of applications.
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- 11803. Approval of applications.
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- 11821. Establishment of program.
 - (a) Program aims.
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 - (a) Authorization.
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- 11824. Applications.
 - (a) Submission of application.
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- 11825. Review of applications.
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SUBCHAPTER III—COMMUNITY PROGRAM

- 11841. Community youth activity program.
 - (a) Block grant program.
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Sec.

- (c) Amount of grant.
- (d) Priority.
- (e) Activities and projects.
- (f) Project evaluations.
- (g) Authorization of appropriations.

11842. Evaluation of drug abuse education and prevention efforts.

- (a) Method.
- (b) Grants.
- (c) Time of reports.
- (d) Authorization of appropriations.

SUBCHAPTER IV—MISCELLANEOUS

11851. Definitions.

SUBCHAPTER I—DRUG EDUCATION AND PREVENTION RELATING TO YOUTH GANGS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 5667-1, 5667a-1 of this title.

§ 11801. Establishment of drug abuse education and prevention program relating to youth gangs

The Secretary of Health and Human Services, through the Administration on Children, Youth, and Families, shall make grants to, and enter into contracts with, public and nonprofit private agencies (including agencies described in paragraph (7)(A) acting jointly), organizations (including community based organizations with demonstrated experience in this field), institutions, and individuals, to carry out projects and activities—

(1) to prevent and to reduce the participation of youth in the activities of gangs that engage in illicit drug-related activities,

(2) to promote the involvement of youth in lawful activities in communities in which such gangs commit drug-related crimes,

(3) to prevent the abuse of drugs by youth, to educate youth about such abuse, and to refer for treatment and rehabilitation members of such gangs who abuse drugs,

(4) to support activities of local police departments and other local law enforcement agencies to conduct educational outreach activities in communities in which gangs commit drug-related crimes,

(5) to inform gang members and their families of the availability of treatment and rehabilitation services for drug abuse,

(6) to facilitate Federal and State cooperation with local school officials to assist youth who are likely to participate in gangs that commit drug-related crimes,

(7) to facilitate coordination and cooperation among—

(A) local education, juvenile justice, employment and social service agencies, and

(B) drug abuse referral, treatment, and rehabilitation programs,

for the purpose of preventing or reducing the participation of youth in activities of gangs that commit drug-related crimes, and

(8) to provide technical assistance to eligible organizations in planning and implementing drug abuse education, prevention, rehabilitation, and referral programs for youth who are members of gangs that commit drug-related crimes.

(Pub. L. 100-690, title III, §3501, Nov. 18, 1988, 102 Stat. 4254; Pub. L. 102-132, §1(a), Oct. 18, 1991, 105 Stat. 630.)

AMENDMENTS

1991—Pub. L. 102-132 inserted “(including agencies described in paragraph (7)(A) acting jointly)” after “agencies” in introductory provisions.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 3 of Pub. L. 102-132 provided that: “This Act [enacting section 11806 of this title and amending this section and sections 11805 and 11823 of this title] shall take effect on October 1, 1991.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11802, 11803, 11804 of this title.

§ 11802. Application for grants and contracts

(a) Submission of applications

Any agency, organization, institution, or individual desiring to receive a grant, or to enter into a contract, under section 11801 of this title shall submit to the Secretary an application at such time, in such manner, and containing or accompanied by such information as the Secretary may require by rule.

(b) Contents of application

Each application for assistance under this subchapter shall—

(1) set forth a project or activity for carrying out one or more of the purposes specified in section 11801 of this title and specifically identify each such purpose such project or activity is designed to carry out,

(2) provide that such project or activity shall be administered by or under the supervision of the applicant,

(3) provide for the proper and efficient administration of such project or activity,

(4) provide for regular evaluation of the operation of such project or activity,

(5) provide that regular reports on such project or activity shall be submitted to the Secretary, and

(6) provide such fiscal control and fund accounting procedures as may be necessary to ensure prudent use, proper disbursement, and accurate accounting of funds received under this subchapter.

(Pub. L. 100-690, title III, §3502, Nov. 18, 1988, 102 Stat. 4254.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11803 of this title.

§ 11803. Approval of applications

In selecting among applications submitted under section 11802(a) of this title, the Secretary shall give priority to applicants who propose to carry out projects and activities—

(1) for the purposes specified in section 11801 of this title in geographical areas in which frequent and severe drug-related crimes are committed by gangs whose membership is composed primarily of youth, and

(2) that the applicant demonstrates have the broad support of community based organizations in such geographical areas.

(Pub. L. 100-690, title III, § 3503, Nov. 18, 1988, 102 Stat. 4255; Pub. L. 101-204, title X, § 1001(a), Dec. 7, 1989, 103 Stat. 1826.)

AMENDMENTS

1989—Par. (2). Pub. L. 101-204 substituted “have” for “that it has”.

§ 11804. Coordination with juvenile justice programs

The Secretary shall coordinate the program established by section 11801 of this title with the programs and activities carried out under the Juvenile Justice and Delinquency Prevention Act of 1974 [42 U.S.C. 5601 et seq.] and with the programs and activities of the Attorney General, to ensure that all such programs and activities are complementary and not duplicative.

(Pub. L. 100-690, title III, § 3504, Nov. 18, 1988, 102 Stat. 4255.)

REFERENCES IN TEXT

The Juvenile Justice and Delinquency Prevention Act of 1974, referred to in text, is Pub. L. 93-415, Sept. 7, 1974, 88 Stat. 1109, as amended, which is classified principally to chapter 72 (§ 5601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5601 of this title and Tables.

§ 11805. Authorization of appropriations

To carry out this subchapter, there are authorized to be appropriated \$16,000,000 for fiscal year 1992 and such sums as may be necessary for fiscal years 1993 and 1994.

(Pub. L. 100-690, title III, § 3505, Nov. 18, 1988, 102 Stat. 4255; Pub. L. 102-132, § 1(b), Oct. 18, 1991, 105 Stat. 630.)

AMENDMENTS

1991—Pub. L. 102-132 substituted “\$16,000,000 for fiscal year 1992 and such sums as may be necessary for fiscal years 1993 and 1994” for “\$15,000,000 for the fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990 and 1991”.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-132 effective Oct. 1, 1991, see section 3 of Pub. L. 102-132, set out as a note under section 11801 of this title.

§ 11806. Annual report

Not later than 180 days after the end of each fiscal year, the Secretary shall submit, to the Speaker of the House of Representatives and the President pro tempore of the Senate, a report describing—

- (1) the types of projects and activities for which grants and contracts were made under this subchapter for such fiscal year,
- (2) the number and characteristics of the youth and families served by such projects and activities, and
- (3) each of such projects and activities the Secretary considers to be exemplary.

(Pub. L. 100-690, title III, § 3506, as added Pub. L. 102-132, § 1(c), Oct. 18, 1991, 105 Stat. 630.)

EFFECTIVE DATE

Section effective Oct. 1, 1991, see section 3 of Pub. L. 102-132, set out as an Effective Date of 1991 Amendment note under section 11801 of this title.

SUBCHAPTER II—PROGRAM FOR RUNAWAY AND HOMELESS YOUTH

§ 11821. Establishment of program

(a) Program aims

The Secretary shall make grants to public and private nonprofit agencies, organizations, and institutions to carry out research, demonstration, and services projects designed—

(1) to provide individual, family, and group counseling to runaway youth and their families and to homeless youth for the purpose of preventing or reducing the illicit use of drugs by such youth,

(2) to develop and support peer counseling programs for runaway and homeless youth related to the illicit use of drugs,

(3) to develop and support community education activities related to illicit use of drugs by runaway and homeless youth, including outreach to youth individually,

(4) to provide to runaway and homeless youth in rural areas assistance (including the development of community support groups) related to the illicit use of drugs,

(5) to provide to individuals involved in providing services to runaway and homeless youth, information and training regarding issues related to the illicit use of drugs by runaway and homeless youth,

(6) to support research on the illicit drug use by runaway and homeless youth, and the effects on such youth of drug abuse by family members, and any correlation between such use and attempts at suicide, and

(7) to improve the availability and coordination of local services related to drug abuse, for runaway and homeless youth.

(b) Priority

In selecting among applicants for grants under subsection (a) of this section, the Secretary shall give priority to agencies and organizations that have experience in providing services to runaway and homeless youth.

(c) Limitation

Grants under this section may be made for a period not to exceed 3 years.

(Pub. L. 100-690, title III, § 3511, Nov. 18, 1988, 102 Stat. 4255.)

§ 11822. Annual report

Not later than 180 days after the end of a fiscal year for which funds are appropriated to carry out this subchapter, the Secretary shall submit to the President, the Speaker of the House of Representatives, and the President pro tempore of the Senate a report that contains—

(1) a description of the types of projects and activities for which grants were made under this subchapter for such fiscal year,

(2) a description of the number and characteristics of the youth and families served by such projects and activities, and

(3) a description of exemplary projects and activities for which grants were made under this subchapter for such fiscal year.

(Pub. L. 100-690, title III, § 3512, Nov. 18, 1988, 102 Stat. 4256.)

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which a report required under this section is listed as the 12th item on page 92), see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

§ 11823. Authorization of appropriations

To carry out this subchapter, there are authorized to be appropriated \$16,000,000 for fiscal year 1992 and such sums as may be necessary for fiscal years 1993 and 1994.

(Pub. L. 100-690, title III, § 3513, Nov. 18, 1988, 102 Stat. 4256; Pub. L. 102-132, § 2, Oct. 18, 1991, 105 Stat. 630.)

AMENDMENTS

1991—Pub. L. 102-132 amended section generally. Prior to amendment, section read as follows:

“(a) AUTHORIZATION.—Subject to subsection (b) of this section, to carry out this subchapter, there are authorized to be appropriated \$15,000,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990 and 1991.

“(b) LIMITATION.—No funds are authorized to be appropriated for a fiscal year to carry out this subchapter unless the aggregate amount appropriated to carry out title III of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5701-5751) for such fiscal year is not less than the aggregate amount appropriated to carry out such title for the preceding fiscal year.”

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-132 effective Oct. 1, 1991, see section 3 of Pub. L. 102-132, set out as a note under section 11801 of this title.

§ 11824. Applications**(a) Submission of application**

Any State, unit of local government (or combination of units of local government), agency, organization, institution, or individual desiring to receive a grant, or enter into a contract, under this subchapter shall submit an application at such time, in such manner, and containing or accompanied by such information as may be prescribed by the Federal officer who is authorized to make such grant or enter into such contract (hereinafter in this subchapter referred to as the “appropriate Federal officer”).

(b) Contents of application

In accordance with guidelines established by the appropriate Federal officer, each application for assistance under this subchapter shall—

- (1) set forth a project or activity for carrying out one or more of the purposes for which such grant or contract is authorized to be made and expressly identify each such purpose such project or activity is designed to carry out,
- (2) provide that such project or activity shall be administered by or under the supervision of the applicant,
- (3) provide for the proper and efficient administration of such project or activity,
- (4) provide for regular evaluation of such project or activity,

(5) provide that regular reports on such project or activity shall be sent to the appropriate Federal officer, and

(6) provide for such fiscal control and fund accounting procedures as may be necessary to ensure prudent use, proper disbursement, and accurate accounting of funds received under this subchapter.

(Pub. L. 100-690, title III, § 3514, Nov. 18, 1988, 102 Stat. 4256.)

§ 11825. Review of applications**(a) Consideration of factors**

In reviewing applications submitted under this subchapter, the appropriate Federal officer shall consider—

(1) the relative cost and effectiveness of the proposed project or activity in carrying out purposes for which the requested grant or contract is authorized to be made,

(2) the extent to which such project or activity will incorporate new or innovative techniques,

(3) the increase in capacity of the State or the public or nonprofit private agency, organization, institution, or individual involved to provide services to address the illicit use of drugs by runaway and homeless youth,

(4) the extent to which such project or activity serves communities which have high rates of illicit drug use by juveniles (including runaway and homeless youth),

(5) the extent to which such project or activity will provide services in geographical areas where similar services are unavailable or in short supply, and

(6) the extent to which such project or activity will increase the level of services, or coordinate other services, in the community available to eligible youth.

(b) Competitive process

(1) Applications submitted under this subchapter shall be selected for approval through a competitive process to be established by rule by the appropriate Federal officer. As part of such a process, such officer shall publish a notice in the Federal Register—

(A) announcing the availability of funds to carry out this subchapter,

(B) stating the general criteria applicable to the selection of applicants to receive such funds, and

(C) describing the procedures applicable to submitting and reviewing applications for such funds.

(2) As part of such process, each application referred to in subsection (a) of this section shall be subject to peer review by individuals (excluding officers and employees of the Department of Justice and the Department of Health and Human Services) who have expertise in the subject matter related to the project or activity proposed in such application.

(c) Expedited review

The appropriate Federal officer shall expedite the consideration of an application referred to in subsection (a) of this section if the applicant demonstrates, to the satisfaction of the¹ such

¹ So in original. The word “the” probably should not appear.

officer, that the failure to expedite such consideration would prevent the effective implementation of the project or activity set forth in such application.

(Pub. L. 100-690, title III, § 3515, Nov. 18, 1988, 102 Stat. 4257; Pub. L. 101-204, title X, § 1001(b), Dec. 7, 1989, 103 Stat. 1826.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (b)(1)(A), was in the original “this part” and was translated as reading “this chapter” to reflect the probable intent of Congress because subtitle B of title III of Pub. L. 100-690, which comprises subchapters I to III of this chapter, does not contain parts.

AMENDMENTS

1989—Subsec. (b)(1)(B). Pub. L. 101-204, § 1001(b)(1)(A), inserted “stating” before “the general criteria”.

Subsec. (b)(1)(C). Pub. L. 101-204, § 1001(b)(1)(B), substituted “describing” for “a description of”.

Subsec. (c). Pub. L. 101-204, § 1001(b)(2), substituted “such officer” for “Administrator”.

SUBCHAPTER III—COMMUNITY PROGRAM

§ 11841. Community youth activity program

(a) Block grant program

The Secretary of Health and Human Services shall make grants to eligible States to enable such States to carry out the activities described in subsection (e) of this section.

(b) Application

(1) In general

To be eligible to receive a grant under this section, a State, acting on its own behalf or on behalf of a person, shall submit to the Secretary an application that contains such information and is in such form as may be required by the Secretary.

(2) Demonstration of need

In the application submitted under paragraph (1), the State shall demonstrate a need for the activities described in subsection (e) of this section and provide a description of those activities and projects that will receive financial assistance from a grant made under this section to the State.

(c) Amount of grant

(1) Minimum amount

Each State that submits for a fiscal year an application under subsection (b) of this section that meets the requirements of the Secretary shall, subject to the availability of appropriations, receive a grant in an amount determined in accordance with paragraph (3).

(2) Programs of national significance

Of amounts appropriated or otherwise available to carry out this section for any fiscal year, the Secretary shall reserve 5 percent to be provided for activities and projects of national significance or projects expected to have a significant impact in preventing the abuse of drugs by youth.

(3) Specified appropriations

(A) In general

Of the aggregate amount appropriated under subsection (g) of this section for any

fiscal year and after reserving the amount required by paragraph (2), the Secretary shall—

(i) allot—

(I) 25 percent equally among the eligible States if such amount is less than \$40,000,000; or

(II) \$250,000 to each eligible State if such amount equals or exceeds \$40,000,000;

(ii) allot one-half of 1 percent of such amount on the basis of need among Guam, American Samoa, the Virgin Islands of the United States, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands; and

(iii) set aside the remainder to be disbursed as described in subparagraph (B).

For purposes of this subparagraph, the term “State” does not include Guam, American Samoa, the Virgin Islands of the United States, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(B) Remainder

Amounts referred to in subparagraph (A)(iii) shall be used by the Secretary to make grants, on a competitive basis and taking into consideration with respect to the States—

(i) the highest proportions of school-aged youth are¹ at risk of drug abuse;

(ii) if a tangible need has been identified by the State involved; and

(iii) if the State involved has proposed the funding of additional projects targeted at the areas of highest need;

to carry out the activities and projects that are consistent with the activities described in subsection (e)(1) of this section. The activities and projects for which such grants are made shall be selected by the Secretary from among proposed activities and projects submitted to the Secretary by the States. Such grants shall be made to the States for redistribution to the persons on whose behalf the State submitted an application under subsection (b) of this section.

(d) Priority

In making grants under this section, the Secretary shall give priority to—

(1) projects aimed at youth who are not in school or who are at risk of dropping out of school;

(2) projects that seek to reinvolve dropouts in educational programs, involve youth community-based activities, develop training or employment opportunities for dropouts, or provide youth with alternatives to drug abuse;

(3) projects to provide after-school, vacation, and weekend activities designed to give youth opportunities to actively participate in a variety of activities, including youth sports programs;

(4) activities and projects that are consistent with activities and projects described in

¹ So in original. Probably should be “who are”.

subsection (e)(1) of this section and that include participation by the business community;

(5) projects that provide outreach to individuals of all ages who are at high risk of involvement with drug abuse;

(6) projects targeted to communities with the most serious drug abuse problems to enable such communities to develop programs that coordinate Federal, State, and local efforts to develop comprehensive, long-term, community-wide prevention and education strategies;

(7) projects that seek to involve youth who are members of gangs or who may join a gang, in—

- (A) educational programs;
 - (B) community-based activities;
 - (C) training or employment opportunities;
- or
- (D) other alternatives to gang involvement;

(8) programs for unsupervised children before and after school, including—

- (A) education and instruction consistent with title IV of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7101 et seq.];
- (B) athletic activities;
- (C) creative activities; and
- (D) other programs designed to reduce the risk of drug abuse; and

(9) projects that seek to inform youth regarding the existence and operation of the projects referred to in paragraph (7).

(e) Activities and projects

Financial assistance may be provided with a grant received under subsection (a)² under this section by a State as follows:

(1) Community services and partnerships

Such assistance may be provided for community services and partnerships designed to develop community activities targeted at drug abuse prevention through education, training, and recreation projects. Such services may be provided by, and such partnerships may be entered into with—

- (A) local educational agencies;
- (B) law enforcement agencies;
- (C) community-based organizations;
- (D) community action agencies;
- (E) local or State recreational departments; or
- (F) business organizations; and

in consultation with local and State health departments and with community health or mental health centers when appropriate. Such assistance may be provided to any entity described in subparagraphs (A) through (F), either individually or in partnerships. Applications for such assistance shall include a description of the method to be used to evaluate the impact the particular service or partnership is designed to have on the drug abuse problem within the community.

²So in original. Words "under subsection (a)" probably should not appear.

(2) Other activities and projects

Such assistance may be provided to carry out projects or activities that are consistent with the activities and projects described in paragraph (1).

(f) Project evaluations

The Secretary shall provide for the evaluation of activities and projects conducted with financial assistance received under this section. Applications for grants under this section shall include a description of the method to be used in evaluating the impact such activities and programs have on the drug abuse problem within the communities in which such activities and projects are carried out.

(g) Authorization of appropriations

To carry out this section, there are authorized to be appropriated \$40,000,000 for fiscal year 1989, \$55,000,000 for fiscal year 1990, \$60,000,000 for fiscal year 1991, \$66,550,000 for fiscal year 1992, and \$73,205,000 for fiscal year 1993.

(Pub. L. 100-690, title III, §3521, Nov. 18, 1988, 102 Stat. 4258; Pub. L. 101-93, §4(1), Aug. 16, 1989, 103 Stat. 611; Pub. L. 101-226, §23, Dec. 12, 1989, 103 Stat. 1941; Pub. L. 103-382, title III, §394(b), Oct. 20, 1994, 108 Stat. 4027; Pub. L. 105-285, title II, §202(d), Oct. 27, 1998, 112 Stat. 2755.)

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsec. (d)(8)(A), is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27, as amended generally. Title IV of the Act is classified generally to subchapter IV (§7101 et seq.) of chapter 70 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

AMENDMENTS

1998—Subsec. (c)(2). Pub. L. 105-285 struck out “, such as activities authorized by section 9910(a)(2)(F) of this title,” after “national significance”.

1994—Subsec. (d)(8)(A). Pub. L. 103-382 substituted “title IV of the Elementary and Secondary Education Act of 1965” for “the Drug-Free Schools and Communities Act of 1986”.

1989—Subsec. (b)(2). Pub. L. 101-93, §4(1)(A), substituted “subsection (e)” for “subsections (c)(3)(B) and (e)”.

Subsec. (c)(3)(A). Pub. L. 101-93, §4(1)(B), substituted “subsection (g)” for “subsection (h)”.

Subsec. (d). Pub. L. 101-226, which directed amendment of section 3521(d) of the National Narcotics Leadership Act of 1988 by adding par. (8) and redesignating former par. (8) as (9), was executed to section 3521(d) of Pub. L. 100-690, the Anti-Drug Abuse Act of 1988, as the probable intent of Congress. Subtitle A (§§1001-1012) of title I of Pub. L. 100-690 is the National Narcotics Leadership Act of 1988.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 11842. Evaluation of drug abuse education and prevention efforts

(a) Method

The Secretary of Health and Human Services shall develop and conduct a structured evaluation of the different approaches utilized across the Nation to reduce drug abuse.

(b) Grants

The Secretary of Health and Human Services may make grants to or enter into contracts with appropriate entities for the purpose of conducting the evaluations required by subsection (a) of this section.

(c) Time of reports

The Secretary shall submit a report based on the evaluations prepared under subsection (a) of this section not later than 1 year after November 18, 1988, and another report based on such evaluations not later than 3 years after November 18, 1988. A third report based on such evaluations shall be submitted by the Secretary not later than January 1, 1994.

(d) Authorization of appropriations

To carry out this section, there are authorized to be appropriated \$12,000,000 in fiscal year 1989, and \$15,000,000 for each of the fiscal years 1990 through 1993.

(Pub. L. 100-690, title III, § 3522, Nov. 18, 1988, 102 Stat. 4260; Pub. L. 101-93, § 4(2), Aug. 16, 1989, 103 Stat. 611; Pub. L. 101-204, title X, § 1001(c)(1), Dec. 7, 1989, 103 Stat. 1826.)

AMENDMENTS

1989—Subsec. (a). Pub. L. 101-93 and Pub. L. 101-204, § 1001(c)(1)(A)(ii), made identical amendments, striking out “(as defined in section 11851(6) of this title)” after “drug abuse”.

Pub. L. 101-204, § 1001(c)(1)(A)(i), struck out “, acting through the Administrator,” before “shall develop”.

Subsec. (b). Pub. L. 101-204, § 1001(c)(1)(B), substituted “Secretary of Health and Human Services” for “Administrator”.

SUBCHAPTER IV—MISCELLANEOUS

§ 11851. Definitions

Unless otherwise defined by an Act amended by this title,¹ for purposes of this title¹ and the amendments made by this title—¹

- (1) the term “community based” has the meaning given it in section 5603(1) of this title,
- (2) the term “controlled substance” has the meaning given it in section 802(6) of title 21,
- (3) the term “controlled substance analogue” has the meaning given it in section 802(32) of title 21,
- (4) the term “drug” means—
 - (A) a beverage containing alcohol,
 - (B) a controlled substance, or
 - (C) a controlled substance analogue,
- (5) the term “Director” means the Chief Executive Officer of the Corporation for National and Community Service,
- (6) the term “illicit” means unlawful or injurious,
- (7) the term “institution of higher education” has the meaning given it in section 1001 of title 20,
- (8) the term “public agency” has the meaning given it in section 5603(11) of this title,
- (9) the term “Secretary” means—
 - (A) the Secretary of Education for purposes of subtitle A (other than section 3201),
 - (B) the Secretary of Agriculture for purposes of the amendments made by section 3201, and

(C) the Secretary of Health and Human Services for purposes of subtitle B,

(10) the term “State” has the meaning given it in section 5603(7) of this title,

(11) the term “treatment” has the meaning given it in section 5603(15) of this title, and

(12) the term “unit of general local government” has the meaning given it in section 5603(8)¹ of this title.

(Pub. L. 100-690, title III, § 3601, Nov. 18, 1988, 102 Stat. 4260; Pub. L. 101-204, title X, § 1001(c)(2), Dec. 7, 1989, 103 Stat. 1827; Pub. L. 103-82, title IV, § 405(n), Sept. 21, 1993, 107 Stat. 922; Pub. L. 105-244, title I, § 102(a)(13)(J), Oct. 7, 1998, 112 Stat. 1621.)

REFERENCES IN TEXT

This title, referred to in introductory provisions, means title III of Pub. L. 100-690, Nov. 18, 1988, 102 Stat. 4244, which enacted this chapter and sections 3156-1, 3201, and 3227 of Title 20, Education, and amended sections 1786, 4994, and 5081 of this title and sections 3156a, 3181, 3191 to 3195, 3197, 3212, and 3222 of Title 20. For complete classification of title III to the Code, see Tables.

Subtitle A (other than section 3201), referred to in par. (9)(A), is subtitle A (§§ 3101-3402) of title III of Pub. L. 100-690, Nov. 18, 1988, 102 Stat. 4245, which enacted former sections 3156-1, 3201, and 3227 of Title 20, and amended sections 4994 and 5081 of this title and former sections 3156a, 3181, 3191 to 3195, 3197, 3212, and 3222 of Title 20. For complete classification of subtitle A to the Code, see Tables.

Section 3201, referred to in par. (9)(A), (B), is section 3201 of Pub. L. 100-690, title III, Nov. 18, 1988, 102 Stat. 4246, which amended section 1786 of this title.

Subtitle B, referred to in par. (9)(C), is subtitle B (§§ 3501-3522) of title III of Pub. L. 100-690, Nov. 18, 1988, 102 Stat. 4254, which enacted subchapters I to III of this chapter. For complete classification of subtitle B to the Code, see Tables.

Section 5603(8) of this title, referred to in par. (12), was subsequently amended, and no longer defines “unit of general local government”. However, it now defines “unit of local government”.

AMENDMENTS

1998—Par. (7). Pub. L. 105-244 substituted “section 1001” for “section 1141(a)”.

1993—Par. (5). Pub. L. 103-82 added par. (5) and struck out former par. (5) which read as follows: “the term ‘Director’ means the Director of the ACTION Agency.”

1989—Pub. L. 101-204 redesignated pars. (2) to (13) as (1) to (12), respectively, and struck out former par. (1) which read as follows: “the term ‘Administrator’ means the Administrator of the Office of Juvenile Justice and Delinquency Prevention.”

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of Title 20, Education.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Apr. 4, 1994, see section 406(b) of Pub. L. 103-82, set out as a note under section 8332 of Title 5, Government Organization and Employees.

CHAPTER 124—PUBLIC HOUSING DRUG ELIMINATION

SUBCHAPTER I—PUBLIC AND ASSISTED HOUSING DRUG ELIMINATION

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¹ See References in Text note below.

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SUBCHAPTER I—PUBLIC AND ASSISTED HOUSING DRUG ELIMINATION

§ 11901. Congressional findings

The Congress finds that—

- (1) the Federal Government has a duty to provide public and other federally assisted low-income housing that is decent, safe, and free from illegal drugs;
- (2) public and other federally assisted low-income housing in many areas suffers from rampant drug-related or violent crime;
- (3) drug dealers are increasingly imposing a reign of terror on public and other federally assisted low-income housing tenants;
- (4) the increase in drug-related and violent crime not only leads to murders, muggings, and other forms of violence against tenants, but also to a deterioration of the physical environment that requires substantial government expenditures;
- (5) local law enforcement authorities often lack the resources to deal with the drug problem in public and other federally assisted low-income housing, particularly in light of the recent reductions in Federal aid to cities;
- (6) the Federal Government should provide support for effective safety and security measures to combat drug-related and violent crime, primarily in and around public housing projects with severe crime problems;

(7) closer cooperation should be encouraged between public and assisted housing managers, local law enforcement agencies, and residents in developing and implementing anti-crime programs; and

(8) anti-crime strategies should be improved through the expansion of community-oriented policing initiatives.

(Pub. L. 100-690, title V, § 5122, Nov. 18, 1988, 102 Stat. 4301; Pub. L. 101-625, title V, § 581(a), Nov. 28, 1990, 104 Stat. 4245; Pub. L. 105-276, title V, § 586(b), Oct. 21, 1998, 112 Stat. 2646.)

AMENDMENTS

1998—Par. (2). Pub. L. 105-276, § 586(b)(1), inserted “or violent” after “drug-related”.

Par. (4). Pub. L. 105-276, § 586(b)(2)(A), inserted “and violent” after “drug-related”.

Pars. (6) to (8). Pub. L. 105-276, § 586(b)(2)(B), (3), (4), added pars. (6) to (8).

1990—Pub. L. 101-625 amended section generally. Prior to amendment, section read as follows: “The Congress finds that—

“(1) the Federal Government has a duty to provide public housing that is decent, safe, and free from illegal drugs;

“(2) public housing projects in many areas suffer from rampant drug-related crime;

“(3) drug dealers are increasingly imposing a reign of terror on public housing tenants;

“(4) the increase in drug-related crime not only leads to murders, muggings, and other forms of violence against tenants, but also to a deterioration of the physical environment that requires substantial government expenditures; and

“(5) local law enforcement authorities often lack the resources to deal with the drug problem in public housing, particularly in light of the recent reductions in Federal aid to cities.”

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105-276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105-276, set out as a note under section 1437 of this title.

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105-276, title V, § 586(a), Oct. 21, 1998, 112 Stat. 2646, provided that: “This section [enacting sections 11906 to 11908 of this title, amending this section and sections 11902, 11903, 11904, and 11905 of this title, and repealing sections 11906 to 11909 of this title] may be cited as the ‘Public and Assisted Housing Drug Elimination Program Amendments of 1998’.”

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103-227, title X, § 1051, Mar. 31, 1994, 108 Stat. 274, provided that: “This part [part D (§§ 1051-1053) of title X of Pub. L. 103-227, amending section 11903a of this title] may be cited as the ‘Midnight Basketball League Training and Partnership Act’.”

SHORT TITLE

Section 5121 of Pub. L. 100-690, as amended by Pub. L. 101-625, title V, § 581(a), Nov. 28, 1990, 104 Stat. 4245, provided that: “This chapter [chapter 2 (§§ 5121-5130) of subtitle C of title V of Pub. L. 100-690, enacting this subchapter] may be cited as the ‘Public and Assisted Housing Drug Elimination Act of 1990’.”

Section 5141 of Pub. L. 100-690 provided that: “This chapter [chapter 3 (§§ 5141-5146) of subtitle C of title V of Pub. L. 100-690, enacting subchapter II of this chapter] may be cited as the ‘Drug-Free Public Housing Act of 1988’.”

§ 11902. Authority to make grants**(a) In general**

The Secretary of Housing and Urban Development, in accordance with the provisions of this subchapter, may make grants to public housing agencies, public housing resident management corporations that are principally managing, as determined by the Secretary, public housing projects owned by public housing agencies, recipients of assistance under the Native American Housing Assistance and Self-Determination Act of 1996 [25 U.S.C. 4101 et seq.], Indian tribes¹ and private, for-profit and nonprofit owners of federally assisted low-income housing for use in eliminating drug-related and violent crime.

(b) Consortia

Subject to terms and conditions established by the Secretary, public housing agencies may form consortia for purposes of applying for grants under this subchapter.

(Pub. L. 100-690, title V, § 5123, Nov. 18, 1988, 102 Stat. 4301; Pub. L. 101-625, title V, § 581(a), Nov. 28, 1990, 104 Stat. 4246; Pub. L. 102-550, title I, § 161(d)(1), Oct. 28, 1992, 106 Stat. 3719; Pub. L. 104-330, title VII, § 704(1), Oct. 26, 1996, 110 Stat. 4051; Pub. L. 105-276, title II, § 220(1), title V, § 586(c), Oct. 21, 1998, 112 Stat. 2488, 2647.)

REFERENCES IN TEXT

The Native American Housing Assistance and Self-Determination Act of 1996, referred to in subsec. (a), is Pub. L. 104-330, Oct. 26, 1996, 110 Stat. 4016, as amended, which is classified principally to chapter 43 (§ 4101 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of Title 25 and Tables.

AMENDMENTS

1998—Pub. L. 105-276, § 586(c), designated existing provisions as subsec. (a), inserted heading, substituted “recipients of assistance under the Native American Housing Assistance and Self-Determination Act of 1996” for “tribally designated housing entities”, inserted “and violent” after “drug-related”, and added subsec. (b).

Pub. L. 105-276, § 220(1), inserted “Indian tribes” before “and private”.

1996—Pub. L. 104-330 struck out “(including Indian Housing Authorities)” after “grants to public housing agencies” and inserted “tribally designated housing entities,” before “and private”.

1992—Pub. L. 102-550 inserted “, public housing resident management corporations that are principally managing, as determined by the Secretary, public housing projects owned by public housing agencies,” after “Authorities”.

1990—Pub. L. 101-625 amended section generally. Prior to amendment, section read as follows: “The Secretary of Housing and Urban Development, in accordance with the provisions of this subchapter, may make grants to public housing agencies (including Indian housing authorities) for use in eliminating drug-related crime in public housing projects.”

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105-276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105-276, set out as a note under section 1437 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as an Effective Date note under section 4101 of Title 25, Indians.

§ 11903. Eligible activities**(a) Public and assisted housing**

Grants under this subchapter may be used in public housing or other federally assisted low-income housing projects for—

- (1) the employment of security personnel;
- (2) reimbursement of local law enforcement agencies for additional security and protective services;
- (3) physical improvements which are specifically designed to enhance security;
- (4) the employment of one or more individuals—

(A) to investigate drug-related or violent crime in and around the real property comprising any public or other federally assisted low-income housing project; and

(B) to provide evidence relating to such crime in any administrative or judicial proceeding;

- (5) the provision of training, communications equipment, and other related equipment for use by voluntary tenant patrols acting in cooperation with local law enforcement officials;

(6) programs designed to reduce use of drugs in and around public or other federally assisted low-income housing projects, including drug-abuse prevention, intervention, referral, and treatment programs;

(7) where a public housing agency, an Indian tribe, or recipient of assistance under the Native American Housing Assistance and Self-Determination Act of 1996 [25 U.S.C. 4101 et seq.] receives a grant, providing funding to nonprofit resident management corporations and resident councils to develop security and drug abuse prevention programs involving site residents; and

(8) sports programs and sports activities that serve primarily youths from public or other federally assisted low-income housing projects and are operated in conjunction with, or in furtherance of, an organized program or plan designed to reduce or eliminate drugs and drug-related problems in and around such projects.

(b) Other PHA-owned housing

Notwithstanding any other provision of this subchapter, grants under this subchapter may be used to eliminate drug-related crime in and around housing owned by public housing agencies that is not public housing assisted under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] and is not otherwise federally assisted, for the activities described in paragraphs (1) through (7) of subsection (a) of this section, but only if—

- (1) the housing is located in a high intensity drug trafficking area designated pursuant to section 1504¹ of title 21; and

¹ So in original. Probably should be followed by a comma.

¹ See References in Text note below.

(2) the public housing agency owning the housing demonstrates, to the satisfaction of the Secretary, that drug-related or violent activity in or around the housing has a detrimental effect on or about the real property comprising any public or other federally assisted low-income housing.

(Pub. L. 100-690, title V, §5124, Nov. 18, 1988, 102 Stat. 4301; Pub. L. 101-625, title V, §581(a), Nov. 28, 1990, 104 Stat. 4246; Pub. L. 102-550, title I, §161(c), (d)(2), Oct. 28, 1992, 106 Stat. 3718, 3719; Pub. L. 104-330, title VII, §704(2), Oct. 26, 1996, 110 Stat. 4051; Pub. L. 105-276, title II, §220(2), title V, §586(d), Oct. 21, 1998, 112 Stat. 2488, 2647.)

REFERENCES IN TEXT

The Native American Housing Assistance and Self-Determination Act of 1996, referred to in subsec. (a)(7), is Pub. L. 104-330, Oct. 26, 1996, 110 Stat. 4016, as amended, which is classified principally to chapter 43 (§4101 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of Title 25 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, which is classified generally to chapter 8 (§1437 et seq.) 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.

Section 1504 of title 21, referred to in subsec. (b)(1), was repealed by Pub. L. 100-690, title I, §1009, Nov. 18, 1988, 102 Stat. 4188, as amended.

AMENDMENTS

1998—Subsec. (a)(4)(A). Pub. L. 105-276, §586(d)(1)(A), substituted “drug-related or violent crime in and around” for “drug-related crime on or about”.

Subsec. (a)(7). Pub. L. 105-276, §586(d)(1)(C)(i), substituted “recipient of assistance under the Native American Housing Assistance and Self-Determination Act of 1996” for “tribally designated housing entity”.

Pub. L. 105-276, §220(2), inserted “, an Indian tribe,” after “public housing agency”.

Subsec. (a)(8). Pub. L. 105-276, §586(d)(1)(B), (C)(ii), (8)(D)], added par. (8).

Subsec. (b). Pub. L. 105-276, §586(d)(2)(A), substituted “drug-related crime in and around” for “drug-related crime in” in introductory provisions.

Subsec. (b)(2). Pub. L. 105-276, §586(d)(2)(B), substituted “drug-related or violent activity in or around” for “drug-related activity at”.

1996—Subsec. (a)(7). Pub. L. 104-330 inserted “or tribally designated housing entity” after “public housing agency” and struck out “public housing” after “non-profit”.

1992—Pub. L. 102-550 designated existing provisions as subsec. (a), inserted heading, inserted “where a public housing agency receives a grant,” in par. (7), and added subsec. (b).

1990—Pub. L. 101-625 amended section generally. Prior to amendment, section read as follows: “A public housing agency may use a grant under this subchapter for—

“(1) the employment of security personnel in public housing projects;

“(2) reimbursement of local law enforcement agencies for additional security and protective services for public housing projects;

“(3) physical improvements in public housing projects which are specifically designed to enhance security;

“(4) the employment of 1 or more individuals—

“(A) to investigate drug-related crime on or about the real property comprising any public housing project; and

“(B) to provide evidence relating to any such crime in any administrative or judicial proceeding;

“(5) the provision of training, communications equipment, and other related equipment for use by voluntary public housing tenant patrols acting in cooperation with local law enforcement officials;

“(6) innovative programs designed to reduce use of drugs in and around public housing projects; and

“(7) providing funding to nonprofit public housing resident management corporation and tenant councils to develop security and drug abuse prevention programs involving site residents.”

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105-276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105-276, set out as a note under section 1437 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as an Effective Date note under section 4101 of Title 25, Indians.

§ 11903a. Repealed. Pub. L. 105-276, title V, § 582(a)(13), Oct. 21, 1998, 112 Stat. 2644

Section, Pub. L. 101-625, title V, §520, Nov. 28, 1990, 104 Stat. 4202; Pub. L. 102-389, title II, Oct. 6, 1992, 106 Stat. 1587; Pub. L. 102-550, title I, §126(b), Oct. 28, 1992, 106 Stat. 3710; Pub. L. 103-227, title X, §§1052, 1053, Mar. 31, 1994, 108 Stat. 274, 280; Pub. L. 104-330, title V, §501(d)(2), Oct. 26, 1996, 110 Stat. 4043, authorized grants for public and assisted housing youth sports programs.

EFFECTIVE DATE OF REPEAL

Repeal effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement repeal before such date, and with savings provision, see section 503 of Pub. L. 105-276, set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

§ 11904. Applications

(a) In general

To receive a grant under this subchapter, a public housing agency, a public housing resident management corporation, an Indian tribe¹ a recipient of assistance under the Native American Housing Assistance and Self-Determination Act of 1996 [25 U.S.C. 4101 et seq.], or an owner of federally assisted low-income housing shall submit an application to the Secretary, at such time, in such manner, and accompanied by such additional information as the Secretary may reasonably require. Such application shall include a plan for addressing the problem of drug-related or violent crime in and around of² the housing administered or owned by the applicant for which the application is being submitted, which plan shall be coordinated with and may be included in the public housing agency plan submitted to the Secretary pursuant to section 1437c-1 of this title.

(b) One-year renewable grants

(1) In general

An eligible applicant that is a public housing agency may apply for a 1-year grant under this subchapter that, subject to the availabil-

¹ So in original. Probably should be followed by a comma.

² So in original.

ity of appropriated amounts, shall be renewed annually for a period of not more than 4 additional years, except that such renewal shall be contingent upon the Secretary finding, upon an annual or more frequent review, that the grantee agency is performing under the terms of the grant and applicable laws in a satisfactory manner and meets such other requirements as the Secretary may prescribe. The Secretary may adjust the amount of any grant received or renewed under this paragraph to take into account increases or decreases in amounts appropriated for these purposes or such other factors as the Secretary determines to be appropriate.

(2) Eligibility and preference

The Secretary may not provide assistance under this subchapter to an applicant that is a public housing agency unless—

(A) the agency will use the grants to continue or expand activities eligible for assistance under this subchapter, as in effect immediately before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998, in which case the Secretary shall provide preference to such applicant; except that preference under this subparagraph shall not preclude selection by the Secretary of other meritorious applications that address urgent or serious crime problems nor be construed to require continuation of activities determined by the Secretary to be unworthy of continuation; or

(B) the agency is in the class established under paragraph (3).

(3) PHAs having urgent or serious crime problems

The Secretary shall, by regulations issued after notice and opportunity for public comment, set forth criteria for establishing a class of public housing agencies that have urgent or serious crime problems. The Secretary may reserve a portion of the amount appropriated to carry out this subchapter in each fiscal year only for grants for public housing agencies in such class, except that any amounts from such portion reserved that are not obligated to agencies in the class shall be made available only for agencies that are subject to a preference under paragraph (2)(A).

(4) Inapplicability to federally assisted low-income housing

The provisions of this subsection shall not apply to federally assisted low-income housing.

(c) Criteria

The Secretary shall approve applications under subsection (b) of this section that are not subject to a preference under subsection (b)(2)(A) of this section on the basis of thresholds or criteria such as—

(1) the extent of the drug-related or violent crime problem in and around the public or federally assisted low-income housing project or projects proposed for assistance;

(2) the quality of the plan to address the crime problem in the public or federally as-

sisted low-income housing project or projects proposed for assistance, including the extent to which the plan includes initiatives that can be sustained over a period of several years;

(3) the capability of the applicant to carry out the plan; and

(4) the extent to which tenants, the local government and the local community support and participate in the design and implementation of the activities proposed to be funded under the application.

(d) Federally assisted low-income housing

In addition to the selection criteria specified in subsection (c) of this section, the Secretary may establish other criteria for the evaluation of applications submitted by owners of federally assisted low-income housing, except that such additional criteria shall be designed only to reflect—

(1) relevant differences between the financial resources and other characteristics of public housing authorities and owners of federally assisted low-income housing, or

(2) relevant differences between the problem of drug-related or violent crime in public housing and the problem of drug-related or violent crime in federally assisted low-income housing.

(e) High intensity drug trafficking areas

In evaluating the extent of the drug-related crime problem pursuant to subsection (c) of this section, the Secretary may consider whether housing projects proposed for assistance are located in a high intensity drug trafficking area designated pursuant to section 1504³ of title 21.

(Pub. L. 100-690, title V, §5125, Nov. 18, 1988, 102 Stat. 4302; Pub. L. 101-625, title V, §581(a), Nov. 28, 1990, 104 Stat. 4246; Pub. L. 102-550, title I, §161(d)(3), Oct. 28, 1992, 106 Stat. 3719; Pub. L. 104-330, title VII, §704(3), Oct. 26, 1996, 110 Stat. 4051; Pub. L. 105-276, title II, §220(3), title V, §586(e), Oct. 21, 1998, 112 Stat. 2488, 2647.)

REFERENCES IN TEXT

The Native American Housing Assistance and Self-Determination Act of 1996, referred to in subsec. (a), is Pub. L. 104-330, Oct. 26, 1996, 110 Stat. 4016, as amended, which is classified principally to chapter 43 (§4101 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of Title 25 and Tables.

Section 503(a) of the Quality Housing and Work Responsibility Act of 1998, referred to in subsec. (b)(2)(A), is section 503(a) of Pub. L. 105-276, which is set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

Section 1504 of title 21, referred to in subsec. (e), was repealed by Pub. L. 100-690, title I, §1009, Nov. 18, 1988, 102 Stat. 4188, as amended.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-276, §586(e)(1), substituted “recipient of assistance under the Native American Housing Assistance and Self-Determination Act of 1996” for “tribally designated housing entity” in first sentence and “or violent crime in and around” for “crime on the premises” in second sentence, and inserted before period at end “, which plan shall be coordinated with and may be included in the public housing agency plan submitted to the Secretary pursuant to section 1437c-1 of this title”.

³ See References in Text note below.

Pub. L. 105-276, §220(3), inserted “an Indian tribe” after “resident management corporation.”

Subsec. (b). Pub. L. 105-276, §586(e)(5), (6), added subsec. (b) and redesignated former subsec. (b) as (c).

Pub. L. 105-276, §586(e)(2)(A), inserted introductory provisions and struck out former introductory provisions which read as follows: “Except as provided by subsections (c) and (d) of this section the Secretary shall approve applications under this subchapter based exclusively on—”.

Subsec. (b)(1). Pub. L. 105-276, §586(e)(2)(B), substituted “or violent crime problem in and around” for “crime problem in”.

Subsec. (c). Pub. L. 105-276, §586(e)(5), redesignated subsec. (b) as (c). Former subsec. (c) redesignated (d).

Pub. L. 105-276, §586(e)(3)(A), substituted “subsection (c)” for “subsection (b)” in introductory provisions.

Subsec. (c)(2). Pub. L. 105-276, §586(e)(3)(B), inserted “or violent” after “drug-related” in two places.

Subsec. (d). Pub. L. 105-276, §586(e)(5), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Pub. L. 105-276, §586(e)(4), substituted “subsection (c)” for “subsection (b)”.

Subsec. (e). Pub. L. 105-276, §586(e)(5), redesignated subsec. (d) as (e).

1996—Subsec. (a). Pub. L. 104-330 inserted “a tribally designated housing entity,” after “resident management corporation.”

1992—Subsec. (a). Pub. L. 102-550 inserted “, a public housing resident management corporation,” after “public housing agency” in first sentence.

1990—Pub. L. 101-625 amended section generally, substituting present provisions for provisions relating generally to applications for grants under this subchapter and to criteria for approval of such applications.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105-276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105-276, set out as a note under section 1437 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as an Effective Date note under section 4101 of Title 25, Indians.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11906, 11907 of this title.

§ 11905. Definitions

For the purposes of this subchapter:

(1) Controlled substance

The term “controlled substance” has the meaning given such term in section 802 of title 21.

(2) Drug-related crime

The term “drug-related crime” means the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use a controlled substance.

(3) Secretary

The term “Secretary” means the Secretary of Housing and Urban Development.

(4) Federally assisted low-income housing

The term “federally assisted low-income housing” means housing assisted under—

(A) section 1715/(d)(3), section 1715/(d)(4), or 1715z-1 of title 12;

(B) section 1701s of title 12; or
(C) section 1437f of this title.

(5) Recipient

The term “recipient”, when used in reference to the Native American Housing Assistance and Self-Determination Act of 1996 [25 U.S.C. 4101 et seq.], has the meaning given such term in section 4 of such Act [25 U.S.C. 4103].

(6) Indian tribe

The term “Indian tribe” has the meaning given the term in section 4(12) of the Native American Housing Assistance and Self-Determination Act of 1996, 25 U.S.C. 4103(12).

(Pub. L. 100-690, title V, §5126, Nov. 18, 1988, 102 Stat. 4302; Pub. L. 101-625, title V, §581(a), Nov. 28, 1990, 104 Stat. 4247; Pub. L. 104-330, title VII, §704(4), Oct. 26, 1996, 110 Stat. 4051; Pub. L. 105-276, title II, §220(4), title V, §586(f), Oct. 21, 1998, 112 Stat. 2488, 2649; Pub. L. 106-74, title II, §227(a), as added Pub. L. 106-113, div. A, title I, §175(d), Nov. 29, 1999, 113 Stat. 1534.)

REFERENCES IN TEXT

The Native American Housing Assistance and Self-Determination Act of 1996, referred to in par. (5), is Pub. L. 104-330, Oct. 26, 1996, 110 Stat. 4016, as amended, which is classified principally to chapter 43 (§4101 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of Title 25 and Tables.

AMENDMENTS

1999—Par. (4)(D). Pub. L. 106-74, §227(a), as added by Pub. L. 106-113, struck out subpar. (D) which read as follows: “the Native American Housing Assistance and Self-Determination Act.”

1998—Par. (5). Pub. L. 105-276, §586(f), added par. (5) and struck out heading and text of former par. (5). Text read as follows: “The term ‘tribally designated housing entity’ has the meaning given such term in section 4 of the Native American Housing Assistance and Self-Determination Act of 1996.”

Par. (6). Pub. L. 105-276, §220(4), added par. (6).

1996—Par. (4)(D). Pub. L. 104-330, §704(4)(A), added subpar. (D).

Par. (5). Pub. L. 104-330, §704(4)(B), added par. (5).

1990—Pub. L. 101-625 amended section generally, adding provisions defining “Federally assisted low-income housing”.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-74, title II, §227(b), as added by Pub. L. 106-113, div. A, title I, §175(d), Nov. 29, 1999, 113 Stat. 1534, provided that: “The amendments made by subsection (a) [amending this section] shall be construed to have taken effect on October 21, 1998.”

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105-276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105-276, set out as a note under section 1437 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as an Effective Date note under section 4101 of Title 25, Indians.

§ 11906. Reports**(a) Grantee reports**

The Secretary shall require grantees under this subchapter to provide periodic reports that include the obligation and expenditure of grant funds, the progress made by the grantee in implementing the plan described in section 11904(a) of this title, and any change in the incidence of drug-related crime in projects assisted under this subchapter.

(b) HUD reports

The Secretary shall submit a report to the Congress not later than 18 months after October 21, 1998, describing the system used to distribute funding to grantees under this section, which shall include descriptions of—

(1) the methodology used to distribute amounts made available under this subchapter among public housing agencies, including provisions used to provide for renewals of ongoing programs funded under this subchapter; and

(2) actions taken by the Secretary to ensure that amounts made available under this subchapter are not used to fund baseline local government services, as described in section 11907(b) of this title.

(c) Notice of funding awards

The Secretary shall cause to be published in the Federal Register notice of all grant awards made pursuant to this subchapter, which shall identify the grantees and the amount of the grants. Such notice shall be published not less frequently than annually.

(Pub. L. 100-690, title V, § 5127, as added Pub. L. 105-276, title V, § 586(g), Oct. 21, 1998, 112 Stat. 2649.)

PRIOR PROVISIONS

A prior section 11906, Pub. L. 100-690, title V, § 5127, Nov. 18, 1988, 102 Stat. 4303; Pub. L. 101-625, title V, § 581(a), Nov. 28, 1990, 104 Stat. 4248, related to implementation of this subchapter, prior to repeal by Pub. L. 105-276, title V, §§ 503, 586(g), Oct. 21, 1998, 112 Stat. 2521, 2649, effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement the repeal before such date, except to extent otherwise provided, and with savings provision.

EFFECTIVE DATE

Section effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement section before such date, except to extent otherwise provided, see section 503 of Pub. L. 105-276, set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11907 of this title.

§ 11907. Monitoring**(a) In general**

The Secretary shall audit and monitor the programs funded under this subchapter to ensure that assistance provided under this subchapter is administered in accordance with the provisions of this subchapter.

(b) Prohibition of funding baseline services**(1) In general**

Amounts provided under this subchapter may not be used to reimburse or support any

local law enforcement agency or unit of general local government for the provision of services that are included in the baseline of services required to be provided by any such entity pursuant to a local cooperation agreement under section 1437c(e)(2) of this title or any provision of an annual contributions contract for payments in lieu of taxation pursuant to section 1437d(d) of this title.

(2) Description

Each public housing agency that receives grant amounts under this subchapter shall describe, in the report under section 11906(a) of this title, such baseline of services for the unit of general local government in which the jurisdiction of the agency is located.

(c) Enforcement

The Secretary shall provide for the effective enforcement of this section, which may include the use of on-site monitoring, independent public audit requirements, certification by local law enforcement or local government officials regarding the performance of baseline services referred to in subsection (b) of this section, and entering into agreements with the Attorney General to achieve compliance, and verification of compliance, with the provisions of this subchapter.

(Pub. L. 100-690, title V, § 5128, as added Pub. L. 105-276, title V, § 586(g), Oct. 21, 1998, 112 Stat. 2649.)

PRIOR PROVISIONS

A prior section 11907, Pub. L. 100-690, title V, § 5128, Nov. 18, 1988, 102 Stat. 4303; Pub. L. 101-625, title V, § 581(a), Nov. 28, 1990, 104 Stat. 4248, related to provision of periodic reports by grantees, prior to repeal by Pub. L. 105-276, title V, §§ 503, 586(g), Oct. 21, 1998, 112 Stat. 2521, 2649, effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement the repeal before such date, except to extent otherwise provided, and with savings provision.

EFFECTIVE DATE

Section effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement section before such date, except to extent otherwise provided, see section 503 of Pub. L. 105-276, set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

REVIEW OF DRUG ELIMINATION PROGRAM CONTRACTS

Pub. L. 105-276, title V, § 587, Oct. 21, 1998, 112 Stat. 2650, provided that:

“(a) REQUIREMENT.—The Secretary of Housing and Urban Development shall investigate all security contracts awarded by grantees under the Public and Assisted Housing Drug Elimination Act of 1990 (42 U.S.C. 11901 et seq.) that are public housing agencies that own or operate more than 4,500 public housing dwelling units—

“(1) to determine whether the contractors under such contracts have complied with all laws and regulations regarding prohibition of discrimination in hiring practices;

“(2) to determine whether such contracts were awarded in accordance with the applicable laws and regulations regarding the award of such contracts;

“(3) to determine how many such contracts were awarded under emergency contracting procedures; and

“(4) to evaluate the effectiveness of the contracts.

“(b) REPORT.—Not later than 180 days after the date of the enactment of this Act [Oct. 21, 1998], the Secretary shall complete the investigation required under subsection (a) and submit a report to the Congress regarding the findings under the investigation. With respect to each such contract, the report shall (1) state whether the contract was made and is operating, or was not made or is not operating, in full compliance with applicable laws and regulations, and (2) for each contract that the Secretary determines is in such compliance issue a certification of such compliance by the Secretary of Housing and Urban Development.

“(c) ACTIONS.—For each contract that is described in the report under subsection (b) as not made or not operating in full compliance with applicable laws and regulations, the Secretary of Housing and Urban Development shall promptly take any actions available under law or regulation that are necessary—

“(1) to bring such contract into compliance; or

“(2) to terminate the contract.

“(d) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this Act [Oct. 21, 1998].”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11906 of this title.

§ 11908. Authorization of appropriations

(a) In general

There are authorized to be appropriated to carry out this subchapter \$310,000,000 for fiscal year 1999, and such sums as may be necessary for fiscal years 2000, 2001, 2002, and 2003.

(b) Set-aside for federally assisted low-income housing

Of any amounts made available in any fiscal year to carry out this subchapter not more than 6.25 percent shall be available for grants for federally assisted low-income housing.

(c) Set-aside for technical assistance and program oversight

Of any amounts appropriated in any fiscal year to carry out this subchapter, amounts shall be available to the extent provided in appropriations Acts to provide training, technical assistance, contract expertise, program oversight, program assessment, execution, and other assistance for or on behalf of public housing agencies, recipients of assistance under the Native American Housing Assistance and Self-Determination Act of 1996 [25 U.S.C. 4101 et seq.], resident organizations, and officials and employees of the Department (including training and the cost of necessary travel for participants in such training, by or to officials and employees of the Department and of public housing agencies, and to residents and to other eligible grantees). Assistance and other activities carried out using amounts made available under this subsection may be provided directly or indirectly by grants, contracts, or cooperative agreements.

(Pub. L. 100-690, title V, § 5129, as added Pub. L. 105-276, title V, § 586(g), Oct. 21, 1998, 112 Stat. 2650.)

REFERENCES IN TEXT

The Native American Housing Assistance and Self-Determination Act of 1996, referred to in subsec. (c), is Pub. L. 104-330, Oct. 26, 1996, 110 Stat. 4016, as amended, which is classified principally to chapter 43 (§ 4101 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of Title 25 and Tables.

PRIOR PROVISIONS

A prior section 11908, Pub. L. 100-690, title V, § 5129, Nov. 18, 1988, 102 Stat. 4303; Pub. L. 101-625, title V, §§ 520(k), 581(a), Nov. 28, 1990, 104 Stat. 4205, 4248, related to auditing and monitoring of programs funded under this subchapter, prior to repeal by Pub. L. 105-276, title V, §§ 503, 586(g), Oct. 21, 1998, 112 Stat. 2521, 2649, effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement the repeal before such date, except to extent otherwise provided, and with savings provision.

EFFECTIVE DATE

Section effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement section before such date, except to extent otherwise provided, see section 503 of Pub. L. 105-276, set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

§ 11909. Repealed. Pub. L. 105-276, title V, § 586(g), Oct. 21, 1998, 112 Stat. 2649

A prior section 11909, Pub. L. 100-690, title V, § 5130, as added Pub. L. 101-625, title V, § 581(a), Nov. 28, 1990, 104 Stat. 4248; amended Pub. L. 102-550, title I, § 126(a), 161(a), (b), Oct. 28, 1992, 106 Stat. 3710, 3718, authorized appropriations to carry out this subchapter.

EFFECTIVE DATE OF REPEAL

Repeal effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement the repeal before such date, and with savings provision, see section 503 of Pub. L. 105-276, set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

SUBCHAPTER II—DRUG-FREE PUBLIC HOUSING

§ 11921. Statement of purpose

The purpose of this subchapter is to reaffirm the principle that decent affordable shelter is a basic necessity, and the general welfare of the Nation and the health and living standards of its people require better coordination and training in drug prevention programs among the public officials and agencies responsible for administering the public housing programs of the Nation.

(Pub. L. 100-690, title V, § 5142, Nov. 18, 1988, 102 Stat. 4303.)

§ 11922. Clearinghouse on drug abuse in public housing

(a) Establishment

The Secretary of Housing and Urban Development shall establish, in the Office of Public Housing in the Department of Housing and Urban Development, a clearinghouse to receive, collect, process, and assemble information regarding the abuse of controlled substances in public housing projects.

(b) Functions

The clearinghouse established under subsection (a) of this section shall—

(1) respond to inquiries by members of the public requesting assistance in investigating, studying, and working on the problem of the abuse of controlled substances; and

(2) receive, collect, process, assemble, and provide information on programs, authorities,

institutions, and agencies, that may further assist members of the public requesting information from the clearinghouse.

(Pub. L. 100-690, title V, §5143, Nov. 18, 1988, 102 Stat. 4303.)

§ 11923. Regional training program on drug abuse in public housing

(a) Establishment

The Secretary shall establish a regional training program for the training of public housing officials, to better prepare and educate the officials to confront the widespread abuse of controlled substances in the communities in which the officials work.

(b) Operation

The regional training program established under subsection (a) of this section shall be conducted within 12 months after November 18, 1988, by a national training unit established by the Secretary.

(Pub. L. 100-690, title V, §5144, Nov. 18, 1988, 102 Stat. 4303.)

§ 11924. Definitions

For purposes of this subchapter:

(1) Controlled substance

The term “controlled substance” has the meaning given such term in section 802 of title 21.

(2) Secretary

The term “Secretary” means the Secretary of Housing and Urban Development.

(Pub. L. 100-690, title V, §5145, Nov. 18, 1988, 102 Stat. 4304.)

§ 11925. Regulations

Not later than 6 months after November 18, 1988, the Secretary shall issue any regulations necessary to carry out this subchapter.

(Pub. L. 100-690, title V, §5146, Nov. 18, 1988, 102 Stat. 4304.)

CHAPTER 125—RENEWABLE ENERGY AND ENERGY EFFICIENCY TECHNOLOGY COMPETITIVENESS

Sec.	
12001.	Finding, purpose, and general authority. (a) Finding. (b) Purpose. (c) General authority.
12002.	Definitions.
12003.	National goals and multi-year funding for Federal wind, photovoltaics, and solar thermal programs. (a) National goals. (b) Amended goals. (c) Authorizations.
12004.	Energy efficiency authorizations.
12005.	Demonstration and commercial application projects. (a) Purpose. (b) Demonstration and commercial application projects. (c) Selection of projects. (d) Authorization of appropriations.
12006.	Reports. (a) Report by Secretary.

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12007.	No antitrust immunity or defenses.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 5905 of this title.

§ 12001. Finding, purpose, and general authority

(a) Finding

The Congress finds that it is in the national security and economic interest of the United States to foster greater efficiency in the use of available energy supplies and greater use of renewable energy technologies.

(b) Purpose

It is the purpose of this chapter to authorize the Secretary of Energy, acting in accordance with section 13541 of this title, to pursue an aggressive national program of research, development, demonstration, and commercial application of renewable energy and energy efficiency technologies in order to ensure a stable and secure future energy supply by—

- (1) achieving as soon as practicable cost competitive use of those technologies without need of Federal financial incentives;
- (2) establishing long-term Federal research goals and multiyear funding levels;
- (3) directing the Secretary to undertake initiatives to improve the ability of the private sector to commercialize in the near term renewable energy and energy efficiency technologies; and
- (4) fostering collaborative efforts involving the private sector through government support of a program of demonstration and commercial application projects.

(c) General authority

The Secretary, acting in accordance with section 13541 of this title, is authorized and directed to—

- (1) pursue a program of research, development, demonstration, and commercial application with the private sector, to achieve the purpose of this chapter, including the goals established under section 12003 of this title; and
- (2) undertake demonstration and commercial application projects as provided in section 12005 of this title.

(Pub. L. 101-218, §2, Dec. 11, 1989, 103 Stat. 1859; Pub. L. 102-486, title XII, §1202(d)(1)-(3), Oct. 24, 1992, 106 Stat. 2959, 2960.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b) and (c)(1), was in the original “this Act”, meaning Pub. L. 101-218, Dec. 11, 1989, 103 Stat. 1859, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note below and Tables.

AMENDMENTS

1992—Subsec. (b). Pub. L. 102-486, §1202(d)(1), substituted “section 13541 of this title” for “authority contained in the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5901-5920) and other law applicable to the Secretary” and “demonstration, and commercial application” for “and demonstration”.
Subsec. (b)(4). Pub. L. 102-486, §1202(d)(2), substituted “efforts” for “research and development efforts” and

“demonstration and commercial application projects” for “joint ventures”.

Subsec. (c). Pub. L. 102-486, §1202(d)(3), substituted “section 13541 of this title, is authorized and directed to—” and pars. (1) and (2) for “the authority contained in the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5901-5920) and other law applicable to the Secretary—

“(1) is authorized and directed to—

“(A) pursue a program of research, development, and demonstration, including the use of joint ventures with the private sector, to achieve the purpose of this chapter, including the goals established under section 12003 of this title; and

“(B) undertake joint ventures as provided in section 12005 of this title; and

“(2) is authorized to undertake, from time to time, joint ventures in technology areas other than those set forth in section 12005(c) of this title, subject to the conditions set forth in section 12005(b) of this title.”

SHORT TITLE

Section 1 of Pub. L. 101-218 provided: “That this Act [enacting this chapter and amending sections 6276 and 8243 of this title, section 2857 of Title 10, Armed Forces, and section 2194 of Title 22, Foreign Relations and Intercourse] may be referred to as the ‘Renewable Energy and Energy Efficiency Technology Competitiveness Act of 1989’.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12003 of this title.

§ 12002. Definitions

As used in this chapter—

(1) the term “invention” means an invention or discovery that is patented or for which a patent may be obtained under title 35, or any novel variety of plant that is protected or for which plant variety protection may be obtained under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.) and that is conceived or reduced to practice as a result of work under an agreement entered into under this chapter;

(2) the term “non-Federal person” means an entity located in the United States, the controlling interest (as defined by the Secretary) of which is held by persons of the United States, including—

(A) a for-profit business;

(B) a private foundation;

(C) a nonprofit organization such as a university;

(D) a trade or professional society; and

(E) a unit of State or local government;

(3) the term “Secretary” means the Secretary of Energy;

(4) the term “small business”, with respect to a participant in any demonstration and commercial application project under this chapter, means a private firm that does not exceed the numerical size standard promulgated by the Small Business Administration under section 632(a) of title 15 for the Standard Industrial Classification (SIC) code designated by the Secretary of Energy as the primary business activity to be undertaken in the demonstration and commercial application project;

(5) the term “source reduction” means any practice which—

(A) reduces the amount of any hazardous substance, pollutant, or contaminant enter-

ing any waste stream or otherwise released into the environment, including fugitive emissions, prior to recycling, treatment, or disposal; and

(B) reduces the hazards to the public health and the environment associated with the release of such substances, pollutants, or contaminants,

including equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, and inventory control, but not including any practice which alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity which itself is not integral to and necessary for the production of a product or the providing of a service;¹

(6) the term “United States” means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other Commonwealth, territory, or possession of the United States.

(Pub. L. 101-218, §3, Dec. 11, 1989, 103 Stat. 1859; Pub. L. 102-486, title XII, §1202(d)(4), Oct. 24, 1992, 106 Stat. 2960.)

REFERENCES IN TEXT

The Plant Variety Protection Act, referred to in par. (1), is Pub. L. 91-577, Dec. 24, 1970, 84 Stat. 1542, as amended, which is classified principally to chapter 57 (§2321 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2321 of Title 7 and Tables.

AMENDMENTS

1992—Pars. (2) to (5). Pub. L. 102-486 redesignated pars. (3) to (5) as (2) to (4), respectively, in par. (4) substituted “any demonstration and commercial application project” for “any joint venture” and “in the demonstration and commercial application project;” for “in the venture; and”, added par. (5), and struck out former par. (2) which read as follows: “‘joint venture’ means any agreement entered into under this chapter by the Secretary with more than one or a consortium of non-Federal persons (including a joint venture under the National Cooperative Research Act of 1984 (15 U.S.C. 4301 et seq.)) for cost-shared research, development, or demonstration of technologies, but does not include procurement contracts, grant agreements, or cooperative agreements as those terms are used in sections 6303, 6304, and 6305 of title 31;”.

§ 12003. National goals and multi-year funding for Federal wind, photovoltaics, and solar thermal programs

(a) National goals

The following are declared to be the national goals for the wind, photovoltaics, and solar thermal energy programs being carried out by the Secretary:

(1) Wind

(A) In general, the goals for the Wind Energy Research Program include improving design

¹ So in original. Probably should be “; and”.

methodologies and developing more reliable and efficient wind turbines to increase the cost competitiveness of wind energy. Research efforts shall emphasize—

- (i) activities that address near-term technical problems and assist private sector exploitation of market opportunities of the wind energy industry;
- (ii) developing technologies such as advanced airfoils and variable speed generators to increase wind turbine output and reduce maintenance costs by decreasing structural stress and fatigue;
- (iii) increasing the basic knowledge of aerodynamics, structural dynamics, fatigue, and electrical systems interactions as applied to wind energy technology; and
- (iv) improving the compatibility of electricity produced from wind farms with conventional utility needs.

(B) Specific goals for the Wind Energy Research Program shall be to—

- (i) reduce average wind energy costs to 3 to 5 cents per kilowatt hour by 1995;
- (ii) reduce capital costs of new wind energy systems to \$500 to \$750 per kilowatt of installed capacity by 1995;
- (iii) reduce operation and maintenance costs for wind energy systems to less than one cent per kilowatt hour by 1995; and
- (iv) increase capacity factors for new wind energy systems to 25 to 35 percent by 1995.

(2) Photovoltaics

(A) In general, the goals of the Photovoltaic Energy Systems Program shall include improving the reliability and conversion efficiencies of and lowering the costs of photovoltaic conversion. Research efforts shall emphasize advancements in the performance, stability, and durability of photovoltaic materials.

(B) Specific goals of the Photovoltaic Energy Systems Program shall be to—

- (i) improve operational reliability of photovoltaic modules to 30 years by 1995;
- (ii) increase photovoltaic conversion efficiencies by 20 percent by 1995;
- (iii) decrease new photovoltaic module direct manufacturing costs to \$800 per kilowatt by 1995; and
- (iv) increase cost efficiency of photovoltaic power production to 10 cents per kilowatt hour by 1995.

(3) Solar thermal

(A) In general, the goal of the Solar Thermal Energy Systems Program shall be to advance research and development to a point where solar thermal technology is cost-competitive with conventional energy sources, and to promote the integration of this technology into the production of industrial process heat and the conventional utility network. Research and development shall emphasize development of a thermal storage technology to provide capacity for shifting power to periods of demand when full insolation is not available; improvement in receivers, energy conversion devices, and innovative concentrators using stretch membranes, lenses, and other materials; and

exploration of advanced manufacturing techniques.

(B) Specific goals of the Solar Thermal Energy Systems Program shall be to—

- (i) reduce solar thermal costs for industrial process heat to \$9.00 per million Btu by 1995; and
- (ii) reduce average solar thermal costs for electricity to 4 to 5 cents per kilowatt hour by 1995.

(4) Alcohol from biomass

(A) In general, the goal of the Alcohol From Biomass Program shall be to advance research and development to a point where alcohol from biomass technology is cost-competitive with conventional hydrocarbon transportation fuels, and to promote the integration of this technology into the transportation fuel sector of the economy.

(B)(i) Specific goals for producing ethanol from biomass shall be to—

- (I) reduce the cost of alcohol to 70 cents per gallon;
- (II) improve the overall biomass carbohydrate conversion efficiency to 91 percent;
- (III) reduce the capital cost component of the cost of alcohol to 23 cents per gallon; and
- (IV) reduce the operating and maintenance component of the cost of alcohol to 47 cents per gallon.

(ii) Specific goals for producing methanol from biomass shall be to—

- (I) reduce the cost of alcohol to 47 cents per gallon; and
- (II) reduce the capital component of the cost of alcohol to 16 cents per gallon.

(5) Other technologies

The Secretary shall submit to the Congress, as part of the first report submitted under section 12006 of this title, recommendations for specific cost goals and other pertinent goals for 1995 for Department of Energy research, development, and demonstration programs in Biofuels Energy Systems, Biodiesel Energy Systems, Hydrogen Energy Systems, Solar Buildings Energy Systems, Ocean Energy Systems, Geothermal Energy Systems, Low-Head Hydro, and Energy Storage Systems.

(b) Amended goals

Whenever the Secretary determines that any of the goals established under this section is no longer appropriate, the Secretary shall notify Congress, as part of a report submitted under section 12006 of this title, of the reason for the determination and provide an amended goal that is consistent with the purpose stated in section 12001(b) of this title.

(c) Authorizations

There are authorized to be appropriated to the Secretary for the following renewable energy research, development, and demonstration programs: the Wind Energy Research Program, the Photovoltaic Energy Systems Program, the Solar Thermal Energy Systems Program, the Biofuels Energy Systems Program, the Hydrogen Energy Systems Program, the Solar Buildings Energy Systems Program, the Ocean Energy Systems Program, and the Geothermal Energy Systems Program—

(1) not to exceed \$113,000,000 for fiscal year 1991, of which—

(A) not to exceed \$39,000,000 shall be available for the Photovoltaic Energy Systems Program;

(B) not to exceed \$19,000,000 shall be available for the Geothermal Energy Systems Program; and

(C) not to exceed \$4,000,000 shall be available for the Hydrogen Energy Systems Program; and

(2) not to exceed \$121,000,000 for fiscal year 1992, of which—

(A) not to exceed \$40,000,000 shall be available for the Photovoltaic Energy Systems Program;

(B) not to exceed \$20,500,000 shall be available for the Geothermal Energy Systems Program; and

(C) not to exceed \$5,000,000 shall be available for the Hydrogen Energy Systems Program.

Each of the President's annual budget requests submitted to Congress after December 11, 1989, shall include as separate line items each of the categories of renewable energy programs described in this subsection.

(Pub. L. 101-218, § 4, Dec. 11, 1989, 103 Stat. 1860; Pub. L. 102-486, title XII, § 1202(b), title XXI, § 2125(1)-(3), Oct. 24, 1992, 106 Stat. 2958, 3085.)

AMENDMENTS

1992—Subsec. (a)(4), (5). Pub. L. 102-486, § 1202(b)(1), added par. (4), redesignated former par. (4) as (5), and inserted "Biodiesel Energy Systems," after "Biofuels Energy Systems,".

Subsec. (c)(3). Pub. L. 102-486, § 2125(1)-(3), struck out par. (3) which read as follows: "not to exceed \$124,000,000 for fiscal year 1993, of which—

"(A) not to exceed \$40,000,000 shall be available for the Photovoltaic Energy Systems Program;

"(B) not to exceed \$23,000,000 shall be available for the Geothermal Energy Systems Program; and

"(C) not to exceed \$6,000,000 shall be available for the Hydrogen Energy Systems Program."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12001 of this title.

§ 12004. Energy efficiency authorizations

There are authorized to be appropriated to the Secretary for the following energy efficiency research, development, and demonstration programs: transportation, industrial, buildings and community systems, multi-sector, and policy and management—

(1) not to exceed \$201,100,000 for fiscal year 1991, of which—

(A) not to exceed \$68,300,000 shall be available for the transportation program; and

(B) not to exceed \$53,500,000 shall be available for the industrial program; and

(2) not to exceed \$210,600,000 for fiscal year 1992, of which—

(A) not to exceed \$71,000,000 shall be available for the transportation program; and

(B) not to exceed \$54,700,000 shall be available for the industrial program.

(Pub. L. 101-218, § 5, Dec. 11, 1989, 103 Stat. 1862; Pub. L. 102-486, title XXI, § 2125(4)-(6), Oct. 24, 1992, 106 Stat. 3085.)

AMENDMENTS

1992—Par. (3). Pub. L. 102-486 struck out par. (3) which read as follows: "not to exceed \$225,000,000 for fiscal year 1993, of which—

"(A) not to exceed \$73,900,000 shall be available for the transportation program; and

"(B) not to exceed \$56,900,000 shall be available for the industrial program."

§ 12005. Demonstration and commercial application projects

(a) Purpose

The purpose of this section is to direct the Secretary to further the commercialization of renewable energy and energy efficiency technologies through a five-year program.

(b) Demonstration and commercial application projects

(1) Establishment

(A) The Secretary shall solicit proposals for demonstration and commercial application projects for renewable energy and energy efficiency technologies pursuant to subsection (c) of this section. Such projects may include projects for—

(i) the production and sale of electricity, thermal energy, or other forms of energy using a renewable energy technology;

(ii) increasing the efficiency of energy use; and

(iii) improvements in, or expansion of, facilities for the manufacture of renewable energy or energy efficiency technologies.

(B) REQUIREMENTS.—Each project selected under this section shall include at least one for-profit business. Activities supported under this section shall be performed in the United States. Each project under this section shall require the manufacture and reproduction substantially within the United States for commercial sale of any invention or product that may result from the project.

(2) Forms of financial assistance

(A) In supporting projects selected under subsection (c) of this section, the Secretary may choose from among the forms of agreements described in section 13541 of this title.

(B) In supporting projects selected under subsection (c) of this section, the Secretary may also enter into agreements with private lenders to pay a portion of the interest on loans made for such projects.

(3) Cost sharing

Cost sharing for projects under this section shall be conducted according to the procedures described in section 13542(b) and (c) of this title.

(4) Advisory Committee

(A) The Secretary shall establish an Advisory Committee on Demonstration and Commercial Application of Renewable Energy and Energy Efficiency Technologies (in this chapter referred to as the "Advisory Committee") to advise the Secretary on the development of the solicitation and evaluation criteria for projects under this section, and on otherwise carrying out his responsibilities under this

section. The Secretary shall appoint members to the Advisory Committee, including at least one member representing—

- (i) the Secretary of Commerce;
- (ii) the National Laboratories of the Department of Energy;
- (iii) the Solar Energy Research Institute;
- (iv) the Electric Power Research Institute;
- (v) the Gas Research Institute;
- (vi) the National Institute of Building Sciences;
- (vii) the National Institute of Standards and Technology;
- (viii) associations of firms in the major renewable energy manufacturing industries; and
- (ix) associations of firms in the major energy efficiency manufacturing industries.

Nothing in this subparagraph shall be construed to require the Secretary to reestablish the Advisory Committee in place under this subsection as of October 24, 1992, or to perform again any duties performed by such advisory committee before October 24, 1992.

(B) Not later than 18 months after October 24, 1992, the Advisory Committee shall provide the Secretary with a report assessing the implementation of the program under this section, including specific recommendations for improvements or changes to the program and solicitation process. The Secretary shall transmit such report and, if any, the Secretary's recommendations to the Congress.

(c) Selection of projects

(1) Solicitation

(A) Not later than 9 months after October 24, 1992, the Secretary shall solicit proposals for projects under this section. The Secretary may make additional solicitations for proposals if the Secretary determines that such solicitations are necessary to carry out this section.

(B) A solicitation for proposals under this paragraph shall establish a closing date for receipt of proposals. The Secretary may, if necessary, extend the closing date for receipt of proposals for a period not to exceed 90 days.

(C) Each solicitation under this paragraph shall include a description of the criteria, developed by the Secretary, according to which proposals will be evaluated. In developing such criteria, the Secretary shall consider—

- (i) the need for Federal involvement to commercialize the technology or speed commercialization of the technology;
- (ii) the potential for the technology to have significant market penetration;
- (iii) the potential energy efficiency gains or energy supply contributions of the technology;
- (iv) potential environmental improvements associated with the technology;
- (v) the export potential of the technology;
- (vi) the likelihood that the proposal is technically sufficient to achieve the objective of the solicitation;
- (vii) the degree to which non-Federal financial participation is involved in the proposal;
- (viii) the business and financial history of the proposer or proposers; and

(ix) any other factor the Secretary considers appropriate.

(2) Project technologies

Projects under this section may include the following technologies:

- (A) Conversion of cellulosic biomass to liquid fuels.
- (B) Ethanol and ethanol byproduct processes.
- (C) Direct combustion or gasification of biomass.
- (D) Biofuels energy systems.
- (E) Photovoltaics, including utility scale and remote applications.
- (F) Solar thermal, including solar water heating.
- (G) Wind energy.
- (H) High temperature and low temperature geothermal energy.
- (I) Fuel cells, including transportation and stationary applications.
- (J) Nondefense high-temperature superconducting electricity technology.
- (K) Source reduction technology.
- (L) Factory-made housing.
- (M) Advanced district cooling.

(3) Project selection

The Secretary shall, within 120 days after the closing date established under paragraph (1)(B), select proposals to receive financial assistance under this section. In selecting proposals under this paragraph, the Secretary shall—

- (A) consider each proposal's ability to meet the criteria developed pursuant to paragraph (1)(C); and
- (B) attempt to achieve technological and geographic diversity.

(d) Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this section \$50,000,000 for fiscal year 1994.

(Pub. L. 101-218, §6, Dec. 11, 1989, 103 Stat. 1863; Pub. L. 102-486, title XII, §1202(a), Oct. 24, 1992, 106 Stat. 2956.)

AMENDMENTS

1992—Pub. L. 102-486 amended section generally, substituting provisions relating to demonstration and commercial application projects for renewable energy and energy efficiency technologies for provisions relating to use of joint ventures to further commercialization of renewable energy and energy efficiency technologies.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12001, 12006, 13313 of this title.

§ 12006. Reports

(a) Report by Secretary

One year after December 11, 1989, and annually thereafter, the Secretary shall report to Congress on the programs and projects supported under this chapter and the progress being made toward accomplishing the goals and purposes set forth in this chapter.

(b) National renewable energy and energy efficiency management plan

(1) The Secretary, in consultation with the Advisory Committee, shall prepare a three-year management plan to be administered and carried out by the Secretary in the conduct of activities under this chapter.

(2) After opportunity for public comment and consideration, as appropriate, of such comment, the Secretary shall publish the plan.

(3) In addition to describing the Secretary's intentions for administering this chapter, the plan shall include a comprehensive strategy for assisting the private sector—

(A) in commercializing the renewable energy and energy efficiency technologies developed under this chapter; and

(B) in meeting competition from foreign suppliers of products derived from renewable energy and energy efficiency technologies.

(4) The plan shall address the role of federally-assisted research, development, and demonstration in the achievement of applicable national policy goals of the National Energy Policy Plan required under section 7321 of this title and the plan developed under section 5905 of this title.

(5) In addition, the Plan¹ shall—

(A) contain a detailed assessment of program needs, objectives, and priorities for each of the programs authorized under section 12005 of this title;

(B) use a uniform prioritization methodology to facilitate cost-benefit analyses of proposals in various program areas;

(C) establish milestones for setting forth specific technology transfer activities under each program area;

(D) include annual and five-year cost estimates for individual programs under this chapter; and

(E) identify program areas for which funding levels have been changed from the previous year's Plan.¹

(6) Within one year after October 24, 1992, the Secretary shall submit a revised management plan under this section to Congress. Thereafter, the Secretary shall submit a management plan every three years at the time of submittal of the President's annual budget submission to the Congress.

(c) Report on options

As part of the first report submitted under subsection (a) of this section, the Secretary shall submit to Congress a report analyzing options available to the Secretary under existing law to assist the private sector with the timely commercialization of wind, photovoltaic, solar thermal, biofuels, hydrogen, solar buildings,

ocean, geothermal, low-head hydro, and energy storage renewable energy technologies and energy efficiency technologies through emphasis on development and demonstration assistance to specific technologies in the research, development, and demonstration programs of the Department of Energy that are near commercial application.

(Pub. L. 101-218, §9, Dec. 11, 1989, 103 Stat. 1868; Pub. L. 102-486, title XII, §1202(c), (d)(5), title XXIII, §2303(b), Oct. 24, 1992, 106 Stat. 2959, 2960, 3093.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-486, §1202(d)(5), substituted “and projects” for “, projects, and joint ventures”.

Subsec. (b)(1). Pub. L. 102-486, §1202(c)(1), inserted “three-year” before “management plan”.

Subsec. (b)(4). Pub. L. 102-486, §2303(b), inserted before period at end “and the plan developed under section 5905 of this title”.

Subsec. (b)(5), (6). Pub. L. 102-486, §1202(c)(2), added pars. (5) and (6) and struck out former par. (5) which read as follows: “The plan shall accompany the President's annual budget submission to the Congress.”

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which reports required under subsecs. (a) and (b) of this section are listed as the 20th item on page 84 and the 19th item on page 86), see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12003 of this title.

§ 12007. No antitrust immunity or defenses

Nothing in this chapter shall be deemed to convey to any person, partnership, corporation, or other entity immunity from civil or criminal liability under any antitrust law or to create defenses to actions under any antitrust law. As used in this section, “antitrust laws” means those Acts set forth in section 12 of title 15.

(Pub. L. 101-218, §10, Dec. 11, 1989, 103 Stat. 1869.)

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¹ So in original. Probably should not be capitalized.

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 12213. Severability.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 290bb-34, 608, 1760, 1786, 3796gg-7, 15007, 15024 of this title; title 2 sections 1302, 1331, 1371, 1434; title 3 sections 402, 421; title 16 sections 410aaa-41, 410aaa-52; title 20 sections 1011, 1140c, 1415; title 23 section 133; title 25 section 2005; title

26 section 44; title 29 sections 720, 721, 762, 764, 781, 793, 795, 3011; title 49 sections 5302, 5307, 5314, 5323, 5335, 47102.

§ 12101. Findings and purpose

(a) Findings

The Congress finds that—

(1) some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;

(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

(4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, over-protective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(7) individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society;

(8) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

(9) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and non-productivity.

(b) Purpose

It is the purpose of this chapter—

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

(Pub. L. 101-336, §2, July 26, 1990, 104 Stat. 328.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original "this Act", meaning Pub. L. 101-336, July 26, 1990, 104 Stat. 327, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

SHORT TITLE

Section 1(a) of Pub. L. 101-336 provided that: "This Act [enacting this chapter and section 225 of Title 47, Telegraphs, Telephones, and Radiotelegraphs, amending section 706 of Title 29, Labor, and sections 152, 221, and 611 of Title 47, and enacting provisions set out as notes under sections 12111, 12131, 12141, 12161, and 12181 of this title] may be cited as the 'Americans with Disabilities Act of 1990'."

STUDY BY GENERAL ACCOUNTING OFFICE OF EXISTING DISABILITY-RELATED EMPLOYMENT INCENTIVES

Pub. L. 106-170, title III, §303(a), Dec. 17, 1999, 113 Stat. 1903, provided that:

"(1) STUDY.—As soon as practicable after the date of the enactment of this Act [Dec. 17, 1999], the Comptroller General of the United States shall undertake a study to assess existing tax credits and other disability-related employment incentives under the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and other Federal laws. In such study, the Comptroller General shall specifically address the extent to which such credits and other incentives would encourage employers to hire and retain individuals with disabilities.

"(2) REPORT.—Not later than 3 years after the date of the enactment of this Act, the Comptroller General shall transmit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a written report presenting the results of the Comptroller General's study conducted pursuant to this subsection, together with such recommendations for legislative or administrative changes as the Comptroller General determines are appropriate."

§ 12102. Definitions

As used in this chapter:

(1) Auxiliary aids and services

The term "auxiliary aids and services" includes—

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually deliv-

ered materials available to individuals with visual impairments;

(C) acquisition or modification of equipment or devices; and

(D) other similar services and actions.

(2) Disability

The term “disability” means, with respect to an individual—

(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment.

(3) State

The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

(Pub. L. 101-336, §3, July 26, 1990, 104 Stat. 329.)

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 280b-1c, 3796gg-7, 3796hh, 12211, 12581, 12594 of this title; title 20 sections 1003, 1228c, 2302, 9202; title 29 section 2801; title 40 section 484; title 47 section 255.

SUBCHAPTER I—EMPLOYMENT

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1981a, 12201, 12203, 12206 of this title; title 2 section 1311; title 3 section 411; title 29 sections 723, 728a, 732, 772, 791, 793, 794.

§ 12111. Definitions

As used in this subchapter:

(1) Commission

The term “Commission” means the Equal Employment Opportunity Commission established by section 2000e-4 of this title.

(2) Covered entity

The term “covered entity” means an employer, employment agency, labor organization, or joint labor-management committee.

(3) Direct threat

The term “direct threat” means a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation.

(4) Employee

The term “employee” means an individual employed by an employer. With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.

(5) Employer

(A) In general

The term “employer” means a person engaged in an industry affecting commerce

who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person, except that, for two years following the effective date of this subchapter, an employer means a person engaged in an industry affecting commerce who has 25 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year, and any agent of such person.

(B) Exceptions

The term “employer” does not include—

(i) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or

(ii) a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of title 26.

(6) Illegal use of drugs

(A) In general

The term “illegal use of drugs” means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act [21 U.S.C. 801 et seq.]. Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(B) Drugs

The term “drug” means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act [21 U.S.C. 812].

(7) Person, etc.

The terms “person”, “labor organization”, “employment agency”, “commerce”, and “industry affecting commerce”, shall have the same meaning given such terms in section 2000e of this title.

(8) Qualified individual with a disability

The term “qualified individual with a disability” means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. For the purposes of this subchapter, consideration shall be given to the employer’s judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

(9) Reasonable accommodation

The term “reasonable accommodation” may include—

(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations,

training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

(10) Undue hardship

(A) In general

The term “undue hardship” means an action requiring significant difficulty or expense, when considered in light of the factors set forth in subparagraph (B).

(B) Factors to be considered

In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include—

- (i) the nature and cost of the accommodation needed under this chapter;
- (ii) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;
- (iii) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and
- (iv) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

(Pub. L. 101-336, title I, §101, July 26, 1990, 104 Stat. 330; Pub. L. 102-166, title I, §109(a), Nov. 21, 1991, 105 Stat. 1077.)

REFERENCES IN TEXT

The effective date of this subchapter, referred to in par. (5)(A), is 24 months after July 26, 1990, see section 108 of Pub. L. 101-336, set out as an Effective Date note below.

The Controlled Substances Act, referred to in par. (6)(A), is title II of Pub. L. 91-513, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to subchapter I (§801 et seq.) of chapter 13 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

This chapter, referred to in par. (10)(B)(i), was in the original “this Act”, meaning Pub. L. 101-336, July 26, 1990, 104 Stat. 327, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

AMENDMENTS

1991—Par. (4). Pub. L. 102-166 inserted at end “With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.”

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-166 inapplicable to conduct occurring before Nov. 21, 1991, see section 109(c) of Pub. L. 102-166, set out as a note under section 2000e of this title.

EFFECTIVE DATE

Section 108 of title I of Pub. L. 101-336 provided that: “This title [enacting this subchapter] shall become ef-

fective 24 months after the date of enactment [July 26, 1990].”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5057, 12581, 12594, 12635 of this title.

§ 12112. Discrimination

(a) General rule

No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

(b) Construction

As used in subsection (a) of this section, the term “discriminate” includes—

- (1) limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;
- (2) participating in a contractual or other arrangement or relationship that has the effect of subjecting a covered entity’s qualified applicant or employee with a disability to the discrimination prohibited by this subchapter (such relationship includes a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs);
- (3) utilizing standards, criteria, or methods of administration—

(A) that have the effect of discrimination on the basis of disability; or

(B) that perpetuate the discrimination of others who are subject to common administrative control;

(4) excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;

(5)(A) not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity; or

(B) denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

(6) using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity; and

(7) failing to select and administer tests concerning employment in the most effective manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, such test results accurately reflect the skills, aptitude, or whatever other factor of such applicant or employee that such test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure).

(c) Covered entities in foreign countries

(1) In general

It shall not be unlawful under this section for a covered entity to take any action that constitutes discrimination under this section with respect to an employee in a workplace in a foreign country if compliance with this section would cause such covered entity to violate the law of the foreign country in which such workplace is located.

(2) Control of corporation

(A) Presumption

If an employer controls a corporation whose place of incorporation is a foreign country, any practice that constitutes discrimination under this section and is engaged in by such corporation shall be presumed to be engaged in by such employer.

(B) Exception

This section shall not apply with respect to the foreign operations of an employer that is a foreign person not controlled by an American employer.

(C) Determination

For purposes of this paragraph, the determination of whether an employer controls a corporation shall be based on—

- (i) the interrelation of operations;
- (ii) the common management;
- (iii) the centralized control of labor relations; and
- (iv) the common ownership or financial control,

of the employer and the corporation.

(d) Medical examinations and inquiries

(1) In general

The prohibition against discrimination as referred to in subsection (a) of this section shall include medical examinations and inquiries.

(2) Preemployment

(A) Prohibited examination or inquiry

Except as provided in paragraph (3), a covered entity shall not conduct a medical examination or make inquiries of a job applicant as to whether such applicant is an individual with a disability or as to the nature or severity of such disability.

(B) Acceptable inquiry

A covered entity may make preemployment inquiries into the ability of an applicant to perform job-related functions.

(3) Employment entrance examination

A covered entity may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of such applicant, and may condition an offer of employment on the results of such examination, if—

(A) all entering employees are subjected to such an examination regardless of disability;

(B) information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that—

(i) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

(ii) first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) government officials investigating compliance with this chapter shall be provided relevant information on request; and

(C) the results of such examination are used only in accordance with this subchapter.

(4) Examination and inquiry

(A) Prohibited examinations and inquiries

A covered entity shall not require a medical examination and shall not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity.

(B) Acceptable examinations and inquiries

A covered entity may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that work site. A covered entity may make inquiries into the ability of an employee to perform job-related functions.

(C) Requirement

Information obtained under subparagraph (B) regarding the medical condition or history of any employee are subject to the requirements of subparagraphs (B) and (C) of paragraph (3).

(Pub. L. 101-336, title I, §102, July 26, 1990, 104 Stat. 331; Pub. L. 102-166, title I, §109(b)(2), Nov. 21, 1991, 105 Stat. 1077.)

AMENDMENTS

1991—Subsecs. (c), (d). Pub. L. 102-166 added subsec. (c) and redesignated former subsec. (c) as (d).

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-166 inapplicable to conduct occurring before Nov. 21, 1991, see section 109(c) of Pub. L. 102-166, set out as a note under section 2000e of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1981a, 2000e-16b, 12209 of this title; title 2 section 1311; title 3 section 411.

§ 12113. Defenses**(a) In general**

It may be a defense to a charge of discrimination under this chapter that an alleged application of qualification standards, tests, or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability has been shown to be job-related and consistent with business necessity, and such performance cannot be accomplished by reasonable accommodation, as required under this subchapter.

(b) Qualification standards

The term “qualification standards” may include a requirement that an individual shall not pose a direct threat to the health or safety of other individuals in the workplace.

(c) Religious entities**(1) In general**

This subchapter shall not prohibit a religious corporation, association, educational institution, or society from giving preference in employment to individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

(2) Religious tenets requirement

Under this subchapter, a religious organization may require that all applicants and employees conform to the religious tenets of such organization.

(d) List of infectious and communicable diseases**(1) In general**

The Secretary of Health and Human Services, not later than 6 months after July 26, 1990, shall—

(A) review all infectious and communicable diseases which may be transmitted through handling the food supply;

(B) publish a list of infectious and communicable diseases which are transmitted through handling the food supply;

(C) publish the methods by which such diseases are transmitted; and

(D) widely disseminate such information regarding the list of diseases and their modes of transmissibility¹ to the general public.

Such list shall be updated annually.

(2) Applications

In any case in which an individual has an infectious or communicable disease that is transmitted to others through the handling of food, that is included on the list developed by the Secretary of Health and Human Services under paragraph (1), and which cannot be eliminated by reasonable accommodation, a covered entity may refuse to assign or continue to assign such individual to a job involving food handling.

(3) Construction

Nothing in this chapter shall be construed to preempt, modify, or amend any State, county,

or local law, ordinance, or regulation applicable to food handling which is designed to protect the public health from individuals who pose a significant risk to the health or safety of others, which cannot be eliminated by reasonable accommodation, pursuant to the list of infectious or communicable diseases and the modes of transmissibility¹ published by the Secretary of Health and Human Services.

(Pub. L. 101-336, title I, §103, July 26, 1990, 104 Stat. 333.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2000e-16b, 12209 of this title; title 2 section 1311; title 3 section 411.

§ 12114. Illegal use of drugs and alcohol**(a) Qualified individual with a disability**

For purposes of this subchapter, the term “qualified individual with a disability” shall not include any employee or applicant who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.

(b) Rules of construction

Nothing in subsection (a) of this section shall be construed to exclude as a qualified individual with a disability an individual who—

(1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(2) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(3) is erroneously regarded as engaging in such use, but is not engaging in such use;

except that it shall not be a violation of this chapter for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (1) or (2) is no longer engaging in the illegal use of drugs.

(c) Authority of covered entity

A covered entity—

(1) may prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees;

(2) may require that employees shall not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace;

(3) may require that employees behave in conformance with the requirements established under the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.);

(4) may hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior that such entity holds other employees, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of such employee; and

(5) may, with respect to Federal regulations regarding alcohol and the illegal use of drugs, require that—

(A) employees comply with the standards established in such regulations of the De-

¹ So in original. Probably should be “transmissibility”.

partment of Defense, if the employees of the covered entity are employed in an industry subject to such regulations, including complying with regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Department of Defense);

(B) employees comply with the standards established in such regulations of the Nuclear Regulatory Commission, if the employees of the covered entity are employed in an industry subject to such regulations, including complying with regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Nuclear Regulatory Commission); and

(C) employees comply with the standards established in such regulations of the Department of Transportation, if the employees of the covered entity are employed in a transportation industry subject to such regulations, including complying with such regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Department of Transportation).

(d) Drug testing

(1) In general

For purposes of this subchapter, a test to determine the illegal use of drugs shall not be considered a medical examination.

(2) Construction

Nothing in this subchapter shall be construed to encourage, prohibit, or authorize the conducting of drug testing for the illegal use of drugs by job applicants or employees or making employment decisions based on such test results.

(e) Transportation employees

Nothing in this subchapter shall be construed to encourage, prohibit, restrict, or authorize the otherwise lawful exercise by entities subject to the jurisdiction of the Department of Transportation of authority to—

(1) test employees of such entities in, and applicants for, positions involving safety-sensitive duties for the illegal use of drugs and for on-duty impairment by alcohol; and

(2) remove such persons who test positive for illegal use of drugs and on-duty impairment by alcohol pursuant to paragraph (1) from safety-sensitive duties in implementing subsection (c) of this section.

(Pub. L. 101-336, title I, §104, July 26, 1990, 104 Stat. 334.)

REFERENCES IN TEXT

The Drug-Free Workplace Act of 1988, referred to in subsec. (c)(3), is subtitle D (§§5151-5160) of title V of Pub. L. 100-690, Nov. 18, 1988, 102 Stat. 4304, which is classified generally to chapter 10 (§701 et seq.) of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 41 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2000e-16b, 12209 of this title; title 2 section 1311; title 3 section 411.

§ 12115. Posting notices

Every employer, employment agency, labor organization, or joint labor-management committee covered under this subchapter shall post notices in an accessible format to applicants, employees, and members describing the applicable provisions of this chapter, in the manner prescribed by section 2000e-10 of this title.

(Pub. L. 101-336, title I, §105, July 26, 1990, 104 Stat. 336.)

§ 12116. Regulations

Not later than 1 year after July 26, 1990, the Commission shall issue regulations in an accessible format to carry out this subchapter in accordance with subchapter II of chapter 5 of title 5.

(Pub. L. 101-336, title I, §106, July 26, 1990, 104 Stat. 336.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12117 of this title.

§ 12117. Enforcement

(a) Powers, remedies, and procedures

The powers, remedies, and procedures set forth in sections 2000e-4, 2000e-5, 2000e-6, 2000e-8, and 2000e-9 of this title shall be the powers, remedies, and procedures this subchapter provides to the Commission, to the Attorney General, or to any person alleging discrimination on the basis of disability in violation of any provision of this chapter, or regulations promulgated under section 12116 of this title, concerning employment.

(b) Coordination

The agencies with enforcement authority for actions which allege employment discrimination under this subchapter and under the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.] shall develop procedures to ensure that administrative complaints filed under this subchapter and under the Rehabilitation Act of 1973 are dealt with in a manner that avoids duplication of effort and prevents imposition of inconsistent or conflicting standards for the same requirements under this subchapter and the Rehabilitation Act of 1973. The Commission, the Attorney General, and the Office of Federal Contract Compliance Programs shall establish such coordinating mechanisms (similar to provisions contained in the joint regulations promulgated by the Commission and the Attorney General at part 42 of title 28 and part 1691 of title 29, Code of Federal Regulations, and the Memorandum of Understanding between the Commission and the Office of Federal Contract Compliance Programs dated January 16, 1981 (46 Fed. Reg. 7435, January 23, 1981)) in regulations implementing this subchapter and Rehabilitation Act of 1973 not later than 18 months after July 26, 1990.

(Pub. L. 101-336, title I, §107, July 26, 1990, 104 Stat. 336.)

REFERENCES IN TEXT

The Rehabilitation Act of 1973, referred to in subsec. (b), is Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 355, as amended, which is classified generally to chapter 16 (§701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1981a, 12203 of this title; title 2 section 1311; title 3 section 411.

SUBCHAPTER II—PUBLIC SERVICES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 300d-52, 1437c-1, 9918, 12201, 12203, 12204, 12206 of this title; title 2 section 1331; title 29 section 792.

PART A—PROHIBITION AGAINST DISCRIMINATION AND OTHER GENERALLY APPLICABLE PROVISIONS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 12206 of this title.

§ 12131. Definitions

As used in this subchapter:

(1) Public entity

The term “public entity” means—

- (A) any State or local government;
- (B) any department, agency, special purpose district, or other instrumentality of a State or States or local government; and
- (C) the National Railroad Passenger Corporation, and any commuter authority (as defined in section 24102(4)¹ of title 49).

(2) Qualified individual with a disability

The term “qualified individual with a disability” means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

(Pub. L. 101-336, title II, §201, July 26, 1990, 104 Stat. 337.)

REFERENCES IN TEXT

Section 24102 of title 49, referred to in par. (1)(C), was subsequently amended, and section 24102(4) no longer defines “commuter authority”. However, such term is defined elsewhere in that section.

CODIFICATION

In par. (1)(C), “section 24102(4) of title 49” substituted for “section 103(8) of the Rail Passenger Service Act” on authority of Pub. L. 103-272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

EFFECTIVE DATE

Section 205 of Pub. L. 101-336 provided that: “(a) GENERAL RULE.—Except as provided in subsection (b), this subtitle [subtitle A (§§201-205) of title II of Pub. L. 101-336, enacting this part] shall become effective 18 months after the date of enactment of this Act [July 26, 1990].

¹ See References in Text note below.

“(b) EXCEPTION.—Section 204 [section 12134 of this title] shall become effective on the date of enactment of this Act.”

EX. ORD. NO. 13217. COMMUNITY-BASED ALTERNATIVES FOR INDIVIDUALS WITH DISABILITIES

Ex. Ord. No. 13217, June 18, 2001, 66 F.R. 33155, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to place qualified individuals with disabilities in community settings whenever appropriate, it is hereby ordered as follows:

SECTION 1. *Policy.* This order is issued consistent with the following findings and principles:

(a) The United States is committed to community-based alternatives for individuals with disabilities and recognizes that such services advance the best interests of Americans.

(b) The United States seeks to ensure that America’s community-based programs effectively foster independence and participation in the community for Americans with disabilities.

(c) Unjustified isolation or segregation of qualified individuals with disabilities through institutionalization is a form of disability-based discrimination prohibited by Title II of the Americans With Disabilities Act of 1990 (ADA), 42 U.S.C. 12101 [12131] *et seq.* States must avoid disability-based discrimination unless doing so would fundamentally alter the nature of the service, program, or activity provided by the State.

(d) In *Olmstead v. L.C.*, 527 U.S. 581 (1999) (the “*Olmstead* decision”), the Supreme Court construed Title II of the ADA [42 U.S.C. 12131 *et seq.*] to require States to place qualified individuals with mental disabilities in community settings, rather than in institutions, whenever treatment professionals determine that such placement is appropriate, the affected persons do not oppose such placement, and the State can reasonably accommodate the placement, taking into account the resources available to the State and the needs of others with disabilities.

(e) The Federal Government must assist States and localities to implement swiftly the *Olmstead* decision, so as to help ensure that all Americans have the opportunity to live close to their families and friends, to live more independently, to engage in productive employment, and to participate in community life.

SEC. 2. *Swift Implementation of the Olmstead Decision: Agency Responsibilities.* (a) The Attorney General, the Secretaries of Health and Human Services, Education, Labor, and Housing and Urban Development, and the Commissioner of the Social Security Administration shall work cooperatively to ensure that the *Olmstead* decision is implemented in a timely manner. Specifically, the designated agencies should work with States to help them assess their compliance with the *Olmstead* decision and the ADA [42 U.S.C. 12101 *et seq.*] in providing services to qualified individuals with disabilities in community-based settings, as long as such services are appropriate to the needs of those individuals. These agencies should provide technical guidance and work cooperatively with States to achieve the goals of Title II of the ADA [42 U.S.C. 12131 *et seq.*], particularly where States have chosen to develop comprehensive, effectively working plans to provide services to qualified individuals with disabilities in the most integrated settings. These agencies should also ensure that existing Federal resources are used in the most effective manner to support the goals of the ADA. The Secretary of Health and Human Services shall take the lead in coordinating these efforts.

(b) The Attorney General, the Secretaries of Health and Human Services, Education, Labor, and Housing and Urban Development, and the Commissioner of the Social Security Administration shall evaluate the policies, programs, statutes, and regulations of their respective agencies to determine whether any should be revised or modified to improve the availability of community-based services for qualified individuals with

disabilities. The review shall focus on identifying affected populations, improving the flow of information about supports in the community, and removing barriers that impede opportunities for community placement. The review should ensure the involvement of consumers, advocacy organizations, providers, and relevant agency representatives. Each agency head should report to the President, through the Secretary of Health and Human Services, with the results of their evaluation within 120 days.

(c) The Attorney General and the Secretary of Health and Human Services shall fully enforce Title II of the ADA, including investigating and resolving complaints filed on behalf of individuals who allege that they have been the victims of unjustified institutionalization. Whenever possible, the Department of Justice and the Department of Health and Human Services should work cooperatively with States to resolve these complaints, and should use alternative dispute resolution to bring these complaints to a quick and constructive resolution.

(d) The agency actions directed by this order shall be done consistent with this Administration's budget.

SEC. 3. *Judicial Review.* Nothing in this order shall affect any otherwise available judicial review of agency action. This order is intended only to improve the internal management of the Federal Government and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

GEORGE W. BUSH.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12181, 12209 of this title; title 2 section 1331; title 3 section 421.

§ 12132. Discrimination

Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

(Pub. L. 101-336, title II, §202, July 26, 1990, 104 Stat. 337.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12133, 12142, 12143, 12144, 12146, 12147, 12148, 12162, 12209 of this title; title 2 section 1331; title 3 section 421.

§ 12133. Enforcement

The remedies, procedures, and rights set forth in section 794a of title 29 shall be the remedies, procedures, and rights this subchapter provides to any person alleging discrimination on the basis of disability in violation of section 12132 of this title.

(Pub. L. 101-336, title II, §203, July 26, 1990, 104 Stat. 337.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12203, 12209 of this title; title 2 section 1331; title 3 section 421.

§ 12134. Regulations

(a) In general

Not later than 1 year after July 26, 1990, the Attorney General shall promulgate regulations in an accessible format that implement this part. Such regulations shall not include any

matter within the scope of the authority of the Secretary of Transportation under section 12143, 12149, or 12164 of this title.

(b) Relationship to other regulations

Except for "program accessibility, existing facilities", and "communications", regulations under subsection (a) of this section shall be consistent with this chapter and with the coordination regulations under part 41 of title 28, Code of Federal Regulations (as promulgated by the Department of Health, Education, and Welfare on January 13, 1978), applicable to recipients of Federal financial assistance under section 794 of title 29. With respect to "program accessibility, existing facilities", and "communications", such regulations shall be consistent with regulations and analysis as in part 39 of title 28 of the Code of Federal Regulations, applicable to federally conducted activities under section 794 of title 29.

(c) Standards

Regulations under subsection (a) of this section shall include standards applicable to facilities and vehicles covered by this part, other than facilities, stations, rail passenger cars, and vehicles covered by part B of this subchapter. Such standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 12204(a) of this title.

(Pub. L. 101-336, title II, §204, July 26, 1990, 104 Stat. 337.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original "this Act", meaning Pub. L. 101-336, July 26, 1990, 104 Stat. 327, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

EFFECTIVE DATE

Section effective July 26, 1990, see section 205(b) of Pub. L. 101-336, set out as a note under section 12131 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12209 of this title; title 2 section 1331; title 3 section 421.

PART B—ACTIONS APPLICABLE TO PUBLIC TRANSPORTATION PROVIDED BY PUBLIC ENTITIES CONSIDERED DISCRIMINATORY

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 12134, 12206 of this title.

SUBPART I—PUBLIC TRANSPORTATION OTHER THAN BY AIRCRAFT OR CERTAIN RAIL OPERATIONS

§ 12141. Definitions

As used in this subpart:

(1) Demand responsive system

The term "demand responsive system" means any system of providing designated public transportation which is not a fixed route system.

(2) Designated public transportation

The term "designated public transportation" means transportation (other than pub-

lic school transportation) by bus, rail, or any other conveyance (other than transportation by aircraft or intercity or commuter rail transportation (as defined in section 12161 of this title)) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

(3) Fixed route system

The term “fixed route system” means a system of providing designated public transportation on which a vehicle is operated along a prescribed route according to a fixed schedule.

(4) Operates

The term “operates”, as used with respect to a fixed route system or demand responsive system, includes operation of such system by a person under a contractual or other arrangement or relationship with a public entity.

(5) Public school transportation

The term “public school transportation” means transportation by schoolbus vehicles of schoolchildren, personnel, and equipment to and from a public elementary or secondary school and school-related activities.

(6) Secretary

The term “Secretary” means the Secretary of Transportation.

(Pub. L. 101-336, title II, §221, July 26, 1990, 104 Stat. 338.)

EFFECTIVE DATE

Section 231 of Pub. L. 101-336 provided that: “(a) GENERAL RULE.—Except as provided in subsection (b), this part [part I (§§221-231) of subtitle B of title II of Pub. L. 101-336, enacting this subpart] shall become effective 18 months after the date of enactment of this Act [July 26, 1990].

“(b) EXCEPTION.—Sections 222, 223 (other than subsection (a)), 224, 225, 227(b), 228(b), and 229 [sections 12142, 12143(b) to (f), 12144, 12145, 12147(b), 12148(b), and 12149 of this title] shall become effective on the date of enactment of this Act.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12209 of this title; title 2 section 1331.

§ 12142. Public entities operating fixed route systems

(a) Purchase and lease of new vehicles

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a public entity which operates a fixed route system to purchase or lease a new bus, a new rapid rail vehicle, a new light rail vehicle, or any other new vehicle to be used on such system, if the solicitation for such purchase or lease is made after the 30th day following July 26, 1990, and if such bus, rail vehicle, or other vehicle is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(b) Purchase and lease of used vehicles

Subject to subsection (c)(1) of this section, it shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a public entity which operates a fixed route system to purchase or lease, after the 30th

day following July 26, 1990, a used vehicle for use on such system unless such entity makes demonstrated good faith efforts to purchase or lease a used vehicle for use on such system that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) Remanufactured vehicles

(1) General rule

Except as provided in paragraph (2), it shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a public entity which operates a fixed route system—

(A) to remanufacture a vehicle for use on such system so as to extend its usable life for 5 years or more, which remanufacture begins (or for which the solicitation is made) after the 30th day following July 26, 1990; or

(B) to purchase or lease for use on such system a remanufactured vehicle which has been remanufactured so as to extend its usable life for 5 years or more, which purchase or lease occurs after such 30th day and during the period in which the usable life is extended;

unless, after remanufacture, the vehicle is, to the maximum extent feasible, readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) Exception for historic vehicles

(A) General rule

If a public entity operates a fixed route system any segment of which is included on the National Register of Historic Places and if making a vehicle of historic character to be used solely on such segment readily accessible to and usable by individuals with disabilities would significantly alter the historic character of such vehicle, the public entity only has to make (or to purchase or lease a remanufactured vehicle with) those modifications which are necessary to meet the requirements of paragraph (1) and which do not significantly alter the historic character of such vehicle.

(B) Vehicles of historic character defined by regulations

For purposes of this paragraph and section 12148(b) of this title, a vehicle of historic character shall be defined by the regulations issued by the Secretary to carry out this subsection.

(Pub. L. 101-336, title II, §222, July 26, 1990, 104 Stat. 339.)

EFFECTIVE DATE

Section effective July 26, 1990, see section 231(b) of Pub. L. 101-336, set out as a note under section 12141 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12145, 12148, 12209 of this title; title 2 section 1331.

§ 12143. Paratransit as a complement to fixed route service

(a) General rule

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a public entity which operates a fixed route system (other than a system which provides solely commuter bus service) to fail to provide with respect to the operations of its fixed route system, in accordance with this section, paratransit and other special transportation services to individuals with disabilities, including individuals who use wheelchairs, that are sufficient to provide to such individuals a level of service (1) which is comparable to the level of designated public transportation services provided to individuals without disabilities using such system; or (2) in the case of response time, which is comparable, to the extent practicable, to the level of designated public transportation services provided to individuals without disabilities using such system.

(b) Issuance of regulations

Not later than 1 year after July 26, 1990, the Secretary shall issue final regulations to carry out this section.

(c) Required contents of regulations

(1) Eligible recipients of service

The regulations issued under this section shall require each public entity which operates a fixed route system to provide the paratransit and other special transportation services required under this section—

(A)(i) to any individual with a disability who is unable, as a result of a physical or mental impairment (including a vision impairment) and without the assistance of another individual (except an operator of a wheelchair lift or other boarding assistance device), to board, ride, or disembark from any vehicle on the system which is readily accessible to and usable by individuals with disabilities;

(ii) to any individual with a disability who needs the assistance of a wheelchair lift or other boarding assistance device (and is able with such assistance) to board, ride, and disembark from any vehicle which is readily accessible to and usable by individuals with disabilities if the individual wants to travel on a route on the system during the hours of operation of the system at a time (or within a reasonable period of such time) when such a vehicle is not being used to provide designated public transportation on the route; and

(iii) to any individual with a disability who has a specific impairment-related condition which prevents such individual from traveling to a boarding location or from a disembarking location on such system;

(B) to one other individual accompanying the individual with the disability; and

(C) to other individuals, in addition to the one individual described in subparagraph (B), accompanying the individual with a disability provided that space for these additional individuals is available on the para-

transit vehicle carrying the individual with a disability and that the transportation of such additional individuals will not result in a denial of service to individuals with disabilities.

For purposes of clauses (i) and (ii) of subparagraph (A), boarding or disembarking from a vehicle does not include travel to the boarding location or from the disembarking location.

(2) Service area

The regulations issued under this section shall require the provision of paratransit and special transportation services required under this section in the service area of each public entity which operates a fixed route system, other than any portion of the service area in which the public entity solely provides commuter bus service.

(3) Service criteria

Subject to paragraphs (1) and (2), the regulations issued under this section shall establish minimum service criteria for determining the level of services to be required under this section.

(4) Undue financial burden limitation

The regulations issued under this section shall provide that, if the public entity is able to demonstrate to the satisfaction of the Secretary that the provision of paratransit and other special transportation services otherwise required under this section would impose an undue financial burden on the public entity, the public entity, notwithstanding any other provision of this section (other than paragraph (5)), shall only be required to provide such services to the extent that providing such services would not impose such a burden.

(5) Additional services

The regulations issued under this section shall establish circumstances under which the Secretary may require a public entity to provide, notwithstanding paragraph (4), paratransit and other special transportation services under this section beyond the level of paratransit and other special transportation services which would otherwise be required under paragraph (4).

(6) Public participation

The regulations issued under this section shall require that each public entity which operates a fixed route system hold a public hearing, provide an opportunity for public comment, and consult with individuals with disabilities in preparing its plan under paragraph (7).

(7) Plans

The regulations issued under this section shall require that each public entity which operates a fixed route system—

(A) within 18 months after July 26, 1990, submit to the Secretary, and commence implementation of, a plan for providing paratransit and other special transportation services which meets the requirements of this section; and

(B) on an annual basis thereafter, submit to the Secretary, and commence implementation of, a plan for providing such services.

(8) Provision of services by others

The regulations issued under this section shall—

(A) require that a public entity submitting a plan to the Secretary under this section identify in the plan any person or other public entity which is providing a paratransit or other special transportation service for individuals with disabilities in the service area to which the plan applies; and

(B) provide that the public entity submitting the plan does not have to provide under the plan such service for individuals with disabilities.

(9) Other provisions

The regulations issued under this section shall include such other provisions and requirements as the Secretary determines are necessary to carry out the objectives of this section.

(d) Review of plan**(1) General rule**

The Secretary shall review a plan submitted under this section for the purpose of determining whether or not such plan meets the requirements of this section, including the regulations issued under this section.

(2) Disapproval

If the Secretary determines that a plan reviewed under this subsection fails to meet the requirements of this section, the Secretary shall disapprove the plan and notify the public entity which submitted the plan of such disapproval and the reasons therefor.

(3) Modification of disapproved plan

Not later than 90 days after the date of disapproval of a plan under this subsection, the public entity which submitted the plan shall modify the plan to meet the requirements of this section and shall submit to the Secretary, and commence implementation of, such modified plan.

(e) "Discrimination" defined

As used in subsection (a) of this section, the term "discrimination" includes—

(1) a failure of a public entity to which the regulations issued under this section apply to submit, or commence implementation of, a plan in accordance with subsections (c)(6) and (c)(7) of this section;

(2) a failure of such entity to submit, or commence implementation of, a modified plan in accordance with subsection (d)(3) of this section;

(3) submission to the Secretary of a modified plan under subsection (d)(3) of this section which does not meet the requirements of this section; or

(4) a failure of such entity to provide paratransit or other special transportation services in accordance with the plan or modified plan the public entity submitted to the Secretary under this section.

(f) Statutory construction

Nothing in this section shall be construed as preventing a public entity—

(1) from providing paratransit or other special transportation services at a level which is greater than the level of such services which are required by this section,

(2) from providing paratransit or other special transportation services in addition to those paratransit and special transportation services required by this section, or

(3) from providing such services to individuals in addition to those individuals to whom such services are required to be provided by this section.

(Pub. L. 101-336, title II, §223, July 26, 1990, 104 Stat. 340.)

EFFECTIVE DATE

Subsec. (a) of this section effective 18 months after July 26, 1990, and subsecs. (b) to (f) of this section effective July 26, 1990, see section 231 of Pub. L. 101-336, set out as a note under section 12141 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12134, 12149, 12209 of this title; title 2 section 1331; title 49 section 5302.

§ 12144. Public entity operating a demand responsive system

If a public entity operates a demand responsive system, it shall be considered discrimination, for purposes of section 12132 of this title and section 794 of title 29, for such entity to purchase or lease a new vehicle for use on such system, for which a solicitation is made after the 30th day following July 26, 1990, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless such system, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service such system provides to individuals without disabilities.

(Pub. L. 101-336, title II, §224, July 26, 1990, 104 Stat. 342.)

EFFECTIVE DATE

Section effective July 26, 1990, see section 231(b) of Pub. L. 101-336, set out as a note under section 12141 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12145, 12209 of this title; title 2 section 1331.

§ 12145. Temporary relief where lifts are unavailable**(a) Granting**

With respect to the purchase of new buses, a public entity may apply for, and the Secretary may temporarily relieve such public entity from the obligation under section 12142(a) or 12144 of this title to purchase new buses that are readily accessible to and usable by individuals with disabilities if such public entity demonstrates to the satisfaction of the Secretary—

(1) that the initial solicitation for new buses made by the public entity specified that all new buses were to be lift-equipped and were to be otherwise accessible to and usable by individuals with disabilities;

(2) the unavailability from any qualified manufacturer of hydraulic, electromechanical, or other lifts for such new buses;

(3) that the public entity seeking temporary relief has made good faith efforts to locate a qualified manufacturer to supply the lifts to the manufacturer of such buses in sufficient time to comply with such solicitation; and

(4) that any further delay in purchasing new buses necessary to obtain such lifts would significantly impair transportation services in the community served by the public entity.

(b) Duration and notice to Congress

Any relief granted under subsection (a) of this section shall be limited in duration by a specified date, and the appropriate committees of Congress shall be notified of any such relief granted.

(c) Fraudulent application

If, at any time, the Secretary has reasonable cause to believe that any relief granted under subsection (a) of this section was fraudulently applied for, the Secretary shall—

(1) cancel such relief if such relief is still in effect; and

(2) take such other action as the Secretary considers appropriate.

(Pub. L. 101-336, title II, §225, July 26, 1990, 104 Stat. 343.)

EFFECTIVE DATE

Section effective July 26, 1990, see section 231(b) of Pub. L. 101-336, set out as a note under section 12141 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12209 of this title; title 2 section 1331.

§ 12146. New facilities

For purposes of section 12132 of this title and section 794 of title 29, it shall be considered discrimination for a public entity to construct a new facility to be used in the provision of designated public transportation services unless such facility is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(Pub. L. 101-336, title II, §226, July 26, 1990, 104 Stat. 343.)

EFFECTIVE DATE

Section effective 18 months after July 26, 1990, see section 231(a) of Pub. L. 101-336, set out as a note under section 12141 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12150, 12209 of this title; title 2 section 1331.

§ 12147. Alterations of existing facilities

(a) General rule

With respect to alterations of an existing facility or part thereof used in the provision of designated public transportation services that affect or could affect the usability of the facility or part thereof, it shall be considered discrimination, for purposes of section 12132 of this title and section 794 of title 29, for a public entity to

fail to make such alterations (or to ensure that the alterations are made) in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon the completion of such alterations. Where the public entity is undertaking an alteration that affects or could affect usability of or access to an area of the facility containing a primary function, the entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations, where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

(b) Special rule for stations

(1) General rule

For purposes of section 12132 of this title and section 794 of title 29, it shall be considered discrimination for a public entity that provides designated public transportation to fail, in accordance with the provisions of this subsection, to make key stations (as determined under criteria established by the Secretary by regulation) in rapid rail and light rail systems readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) Rapid rail and light rail key stations

(A) Accessibility

Except as otherwise provided in this paragraph, all key stations (as determined under criteria established by the Secretary by regulation) in rapid rail and light rail systems shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than the last day of the 3-year period beginning on July 26, 1990.

(B) Extension for extraordinarily expensive structural changes

The Secretary may extend the 3-year period under subparagraph (A) up to a 30-year period for key stations in a rapid rail or light rail system which stations need extraordinarily expensive structural changes to, or replacement of, existing facilities; except that by the last day of the 20th year following July 26, 1990, at least $\frac{2}{3}$ of such key stations must be readily accessible to and usable by individuals with disabilities.

(3) Plans and milestones

The Secretary shall require the appropriate public entity to develop and submit to the Secretary a plan for compliance with this subsection—

(A) that reflects consultation with individuals with disabilities affected by such plan

and the results of a public hearing and public comments on such plan, and

(B) that establishes milestones for achievement of the requirements of this subsection.

(Pub. L. 101-336, title II, §227, July 26, 1990, 104 Stat. 343.)

EFFECTIVE DATE

Subsec. (a) of this section effective 18 months after July 26, 1990, and subsec. (b) of this section effective July 26, 1990, see section 231 of Pub. L. 101-336, set out as a note under section 12141 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12148, 12150, 12209 of this title; title 2 section 1331.

§ 12148. Public transportation programs and activities in existing facilities and one car per train rule

(a) Public transportation programs and activities in existing facilities

(1) In general

With respect to existing facilities used in the provision of designated public transportation services, it shall be considered discrimination, for purposes of section 12132 of this title and section 794 of title 29, for a public entity to fail to operate a designated public transportation program or activity conducted in such facilities so that, when viewed in the entirety, the program or activity is readily accessible to and usable by individuals with disabilities.

(2) Exception

Paragraph (1) shall not require a public entity to make structural changes to existing facilities in order to make such facilities accessible to individuals who use wheelchairs, unless and to the extent required by section 12147(a) of this title (relating to alterations) or section 12147(b) of this title (relating to key stations).

(3) Utilization

Paragraph (1) shall not require a public entity to which paragraph (2) applies, to provide to individuals who use wheelchairs services made available to the general public at such facilities when such individuals could not utilize or benefit from such services provided at such facilities.

(b) One car per train rule

(1) General rule

Subject to paragraph (2), with respect to 2 or more vehicles operated as a train by a light or rapid rail system, for purposes of section 12132 of this title and section 794 of title 29, it shall be considered discrimination for a public entity to fail to have at least 1 vehicle per train that is accessible to individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than the last day of the 5-year period beginning on the effective date of this section.

(2) Historic trains

In order to comply with paragraph (1) with respect to the remanufacture of a vehicle of

historic character which is to be used on a segment of a light or rapid rail system which is included on the National Register of Historic Places, if making such vehicle readily accessible to and usable by individuals with disabilities would significantly alter the historic character of such vehicle, the public entity which operates such system only has to make (or to purchase or lease a remanufactured vehicle with) those modifications which are necessary to meet the requirements of section 12142(c)(1) of this title and which do not significantly alter the historic character of such vehicle.

(Pub. L. 101-336, title II, §228, July 26, 1990, 104 Stat. 344.)

REFERENCES IN TEXT

The effective date of this section, referred to in subsec. (b)(1), probably means the effective date of subsec. (b), which is effective on date of enactment of Pub. L. 101-336, which was approved July 26, 1990. The effective date of subsec. (a) is 18 months after July 26, 1990. See section 231 of Pub. L. 101-336, set out as an Effective Date note under section 12141 of this title.

EFFECTIVE DATE

Subsec. (a) of this section effective 18 months after July 26, 1990, and subsec. (b) of this section effective July 26, 1990, see section 231 of Pub. L. 101-336, set out as a note under section 12141 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12142, 12209 of this title; title 2 section 1331.

§ 12149. Regulations

(a) In general

Not later than 1 year after July 26, 1990, the Secretary of Transportation shall issue regulations, in an accessible format, necessary for carrying out this subpart (other than section 12143 of this title).

(b) Standards

The regulations issued under this section and section 12143 of this title shall include standards applicable to facilities and vehicles covered by this part. The standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 12204 of this title.

(Pub. L. 101-336, title II, §229, July 26, 1990, 104 Stat. 345.)

EFFECTIVE DATE

Section effective July 26, 1990, see section 231(b) of Pub. L. 101-336, set out as a note under section 12141 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12134, 12150, 12209 of this title; title 2 section 1331.

§ 12150. Interim accessibility requirements

If final regulations have not been issued pursuant to section 12149 of this title, for new construction or alterations for which a valid and appropriate State or local building permit is obtained prior to the issuance of final regulations

under such section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities as required under sections 12146 and 12147 of this title, except that, if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines required under section 12204(a) of this title, compliance with such supplemental minimum guidelines shall be necessary to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations.

(Pub. L. 101-336, title II, § 230, July 26, 1990, 104 Stat. 345.)

EFFECTIVE DATE

Section effective 18 months after July 26, 1990, see section 231(a) of Pub. L. 101-336, set out as a note under section 12141 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12209 of this title; title 2 section 1331.

SUBPART II—PUBLIC TRANSPORTATION BY INTERCITY AND COMMUTER RAIL

§ 12161. Definitions

As used in this subpart:

(1) Commuter authority

The term “commuter authority” has the meaning given such term in section 24102(4)¹ of title 49.

(2) Commuter rail transportation

The term “commuter rail transportation” has the meaning given the term “commuter rail passenger transportation” in section 24102(5)¹ of title 49.

(3) Intercity rail transportation

The term “intercity rail transportation” means transportation provided by the National Railroad Passenger Corporation.

(4) Rail passenger car

The term “rail passenger car” means, with respect to intercity rail transportation, single-level and bi-level coach cars, single-level and bi-level dining cars, single-level and bi-level sleeping cars, single-level and bi-level lounge cars, and food service cars.

(5) Responsible person

The term “responsible person” means—

(A) in the case of a station more than 50 percent of which is owned by a public entity, such public entity;

(B) in the case of a station more than 50 percent of which is owned by a private party, the persons providing intercity or commuter rail transportation to such station, as allo-

cated on an equitable basis by regulation by the Secretary of Transportation; and

(C) in a case where no party owns more than 50 percent of a station, the persons providing intercity or commuter rail transportation to such station and the owners of the station, other than private party owners, as allocated on an equitable basis by regulation by the Secretary of Transportation.

(6) Station

The term “station” means the portion of a property located appurtenant to a right-of-way on which intercity or commuter rail transportation is operated, where such portion is used by the general public and is related to the provision of such transportation, including passenger platforms, designated waiting areas, ticketing areas, restrooms, and, where a public entity providing rail transportation owns the property, concession areas, to the extent that such public entity exercises control over the selection, design, construction, or alteration of the property, but such term does not include flag stops.

(Pub. L. 101-336, title II, § 241, July 26, 1990, 104 Stat. 346; Pub. L. 104-287, § 6(k), Oct. 11, 1996, 110 Stat. 3400.)

REFERENCES IN TEXT

Section 24102 of title 49, referred to in pars. (1) and (2), was subsequently amended, and pars. (4) and (5) of section 24102 no longer define “commuter authority” and “commuter rail passenger transportation”, respectively. However, such terms are defined elsewhere in that section.

CODIFICATION

In pars. (1) and (2), “section 24102(4) of title 49” substituted for “section 103(8) of the Rail Passenger Service Act (45 U.S.C. 502(8))” and “section 24102(5) of title 49” substituted for “section 103(9) of the Rail Passenger Service Act (45 U.S.C. 502(9))” on authority of Pub. L. 103-272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

AMENDMENTS

1996—Par. (2). Pub. L. 104-287 substituted “commuter rail passenger transportation” for “commuter service”.

EFFECTIVE DATE

Section 246 of Pub. L. 101-336 provided that:

“(a) GENERAL RULE.—Except as provided in subsection (b), this part [part II (§§ 241-246) of subtitle B of title II of Pub. L. 101-336, enacting this subpart] shall become effective 18 months after the date of enactment of this Act [July 26, 1990].

“(b) EXCEPTION.—Sections 242 and 244 [sections 12162 and 12164 of this title] shall become effective on the date of enactment of this Act.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12141 of this title.

§ 12162. Intercity and commuter rail actions considered discriminatory

(a) Intercity rail transportation

(1) One car per train rule

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person who provides inter-

¹ See References in Text note below.

city rail transportation to fail to have at least one passenger car per train that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, in accordance with regulations issued under section 12164 of this title, as soon as practicable, but in no event later than 5 years after July 26, 1990.

(2) New intercity cars

(A) General rule

Except as otherwise provided in this subsection with respect to individuals who use wheelchairs, it shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person to purchase or lease any new rail passenger cars for use in intercity rail transportation, and for which a solicitation is made later than 30 days after July 26, 1990, unless all such rail cars are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

(B) Special rule for single-level passenger coaches for individuals who use wheelchairs

Single-level passenger coaches shall be required to—

- (i) be able to be entered by an individual who uses a wheelchair;
- (ii) have space to park and secure a wheelchair;
- (iii) have a seat to which a passenger in a wheelchair can transfer, and a space to fold and store such passenger's wheelchair; and
- (iv) have a restroom usable by an individual who uses a wheelchair,

only to the extent provided in paragraph (3).

(C) Special rule for single-level dining cars for individuals who use wheelchairs

Single-level dining cars shall not be required to—

- (i) be able to be entered from the station platform by an individual who uses a wheelchair; or
- (ii) have a restroom usable by an individual who uses a wheelchair if no restroom is provided in such car for any passenger.

(D) Special rule for bi-level dining cars for individuals who use wheelchairs

Bi-level dining cars shall not be required to—

- (i) be able to be entered by an individual who uses a wheelchair;
- (ii) have space to park and secure a wheelchair;
- (iii) have a seat to which a passenger in a wheelchair can transfer, or a space to fold and store such passenger's wheelchair; or
- (iv) have a restroom usable by an individual who uses a wheelchair.

(3) Accessibility of single-level coaches

(A) General rule

It shall be considered discrimination for purposes of section 12132 of this title and sec-

tion 794 of title 29 for a person who provides intercity rail transportation to fail to have on each train which includes one or more single-level rail passenger coaches—

- (i) a number of spaces—

(I) to park and secure wheelchairs (to accommodate individuals who wish to remain in their wheelchairs) equal to not less than one-half of the number of single-level rail passenger coaches in such train; and

(II) to fold and store wheelchairs (to accommodate individuals who wish to transfer to coach seats) equal to not less than one-half of the number of single-level rail passenger coaches in such train,

as soon as practicable, but in no event later than 5 years after July 26, 1990; and

- (ii) a number of spaces—

(I) to park and secure wheelchairs (to accommodate individuals who wish to remain in their wheelchairs) equal to not less than the total number of single-level rail passenger coaches in such train; and

(II) to fold and store wheelchairs (to accommodate individuals who wish to transfer to coach seats) equal to not less than the total number of single-level rail passenger coaches in such train,

as soon as practicable, but in no event later than 10 years after July 26, 1990.

(B) Location

Spaces required by subparagraph (A) shall be located in single-level rail passenger coaches or food service cars.

(C) Limitation

Of the number of spaces required on a train by subparagraph (A), not more than two spaces to park and secure wheelchairs nor more than two spaces to fold and store wheelchairs shall be located in any one coach or food service car.

(D) Other accessibility features

Single-level rail passenger coaches and food service cars on which the spaces required by subparagraph (A) are located shall have a restroom usable by an individual who uses a wheelchair and shall be able to be entered from the station platform by an individual who uses a wheelchair.

(4) Food service

(A) Single-level dining cars

On any train in which a single-level dining car is used to provide food service—

- (i) if such single-level dining car was purchased after July 26, 1990, table service in such car shall be provided to a passenger who uses a wheelchair if—

(I) the car adjacent to the end of the dining car through which a wheelchair may enter is itself accessible to a wheelchair;

(II) such passenger can exit to the platform from the car such passenger occupies, move down the platform, and enter the adjacent accessible car described in

subclause (I) without the necessity of the train being moved within the station; and

(III) space to park and secure a wheelchair is available in the dining car at the time such passenger wishes to eat (if such passenger wishes to remain in a wheelchair), or space to store and fold a wheelchair is available in the dining car at the time such passenger wishes to eat (if such passenger wishes to transfer to a dining car seat); and

(ii) appropriate auxiliary aids and services, including a hard surface on which to eat, shall be provided to ensure that other equivalent food service is available to individuals with disabilities, including individuals who use wheelchairs, and to passengers traveling with such individuals.

Unless not practicable, a person providing intercity rail transportation shall place an accessible car adjacent to the end of a dining car described in clause (i) through which an individual who uses a wheelchair may enter.

(B) Bi-level dining cars

On any train in which a bi-level dining car is used to provide food service—

(i) if such train includes a bi-level lounge car purchased after July 26, 1990, table service in such lounge car shall be provided to individuals who use wheelchairs and to other passengers; and

(ii) appropriate auxiliary aids and services, including a hard surface on which to eat, shall be provided to ensure that other equivalent food service is available to individuals with disabilities, including individuals who use wheelchairs, and to passengers traveling with such individuals.

(b) Commuter rail transportation

(1) One car per train rule

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person who provides commuter rail transportation to fail to have at least one passenger car per train that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, in accordance with regulations issued under section 12164 of this title, as soon as practicable, but in no event later than 5 years after July 26, 1990.

(2) New commuter rail cars

(A) General rule

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person to purchase or lease any new rail passenger cars for use in commuter rail transportation, and for which a solicitation is made later than 30 days after July 26, 1990, unless all such rail cars are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

(B) Accessibility

For purposes of section 12132 of this title and section 794 of title 29, a requirement that a rail passenger car used in commuter rail transportation be accessible to or readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, shall not be construed to require—

(i) a restroom usable by an individual who uses a wheelchair if no restroom is provided in such car for any passenger;

(ii) space to fold and store a wheelchair;

or

(iii) a seat to which a passenger who uses a wheelchair can transfer.

(c) Used rail cars

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person to purchase or lease a used rail passenger car for use in intercity or commuter rail transportation, unless such person makes demonstrated good faith efforts to purchase or lease a used rail car that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

(d) Remanufactured rail cars

(1) Remanufacturing

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person to remanufacture a rail passenger car for use in intercity or commuter rail transportation so as to extend its usable life for 10 years or more, unless the rail car, to the maximum extent feasible, is made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

(2) Purchase or lease

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person to purchase or lease a remanufactured rail passenger car for use in intercity or commuter rail transportation unless such car was remanufactured in accordance with paragraph (1).

(e) Stations

(1) New stations

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person to build a new station for use in intercity or commuter rail transportation that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

(2) Existing stations

(A) Failure to make readily accessible

(i) General rule

It shall be considered discrimination for purposes of section 12132 of this title and

section 794 of title 29 for a responsible person to fail to make existing stations in the intercity rail transportation system, and existing key stations in commuter rail transportation systems, readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

(ii) Period for compliance

(I) Intercity rail

All stations in the intercity rail transportation system shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable, but in no event later than 20 years after July 26, 1990.

(II) Commuter rail

Key stations in commuter rail transportation systems shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than 3 years after July 26, 1990, except that the time limit may be extended by the Secretary of Transportation up to 20 years after July 26, 1990, in a case where the raising of the entire passenger platform is the only means available of attaining accessibility or where other extraordinarily expensive structural changes are necessary to attain accessibility.

(iii) Designation of key stations

Each commuter authority shall designate the key stations in its commuter rail transportation system, in consultation with individuals with disabilities and organizations representing such individuals, taking into consideration such factors as high ridership and whether such station serves as a transfer or feeder station. Before the final designation of key stations under this clause, a commuter authority shall hold a public hearing.

(iv) Plans and milestones

The Secretary of Transportation shall require the appropriate person to develop a plan for carrying out this subparagraph that reflects consultation with individuals with disabilities affected by such plan and that establishes milestones for achievement of the requirements of this subparagraph.

(B) Requirement when making alterations

(i) General rule

It shall be considered discrimination, for purposes of section 12132 of this title and section 794 of title 29, with respect to alterations of an existing station or part thereof in the intercity or commuter rail transportation systems that affect or could affect the usability of the station or part thereof, for the responsible person, owner, or person in control of the station

to fail to make the alterations in such a manner that, to the maximum extent feasible, the altered portions of the station are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations.

(ii) Alterations to a primary function area

It shall be considered discrimination, for purposes of section 12132 of this title and section 794 of title 29, with respect to alterations that affect or could affect the usability of or access to an area of the station containing a primary function, for the responsible person, owner, or person in control of the station to fail to make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations, where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

(C) Required cooperation

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for an owner, or person in control, of a station governed by subparagraph (A) or (B) to fail to provide reasonable cooperation to a responsible person with respect to such station in that responsible person's efforts to comply with such subparagraph. An owner, or person in control, of a station shall be liable to a responsible person for any failure to provide reasonable cooperation as required by this subparagraph. Failure to receive reasonable cooperation required by this subparagraph shall not be a defense to a claim of discrimination under this chapter.

(Pub. L. 101-336, title II, §242, July 26, 1990, 104 Stat. 347.)

EFFECTIVE DATE

Section effective July 26, 1990, see section 246(b) of Pub. L. 101-336, set out as a note under section 12161 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12165, 12181 of this title.

§ 12163. Conformance of accessibility standards

Accessibility standards included in regulations issued under this subpart shall be consistent with the minimum guidelines issued by the Architectural and Transportation Barriers Compliance Board under section 12204(a) of this title.

(Pub. L. 101-336, title II, §243, July 26, 1990, 104 Stat. 352.)

EFFECTIVE DATE

Section effective 18 months after July 26, 1990, see section 246(a) of Pub. L. 101-336, set out as a note under section 12161 of this title.

§ 12164. Regulations

Not later than 1 year after July 26, 1990, the Secretary of Transportation shall issue regulations, in an accessible format, necessary for carrying out this subpart.

(Pub. L. 101-336, title II, §244, July 26, 1990, 104 Stat. 352.)

EFFECTIVE DATE

Section effective July 26, 1990, see section 246(b) of Pub. L. 101-336, set out as a note under section 12161 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12134, 12162, 12165 of this title.

§ 12165. Interim accessibility requirements**(a) Stations**

If final regulations have not been issued pursuant to section 12164 of this title, for new construction or alterations for which a valid and appropriate State or local building permit is obtained prior to the issuance of final regulations under such section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to satisfy the requirement that stations be readily accessible to and usable by persons with disabilities as required under section 12162(e) of this title, except that, if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines required under section 12204(a) of this title, compliance with such supplemental minimum guidelines shall be necessary to satisfy the requirement that stations be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations.

(b) Rail passenger cars

If final regulations have not been issued pursuant to section 12164 of this title, a person shall be considered to have complied with the requirements of section 12162(a) through (d) of this title that a rail passenger car be readily accessible to and usable by individuals with disabilities, if the design for such car complies with the laws and regulations (including the Minimum Guidelines and Requirements for Accessible Design and such supplemental minimum guidelines as are issued under section 12204(a) of this title) governing accessibility of such cars, to the extent that such laws and regulations are not inconsistent with this subpart and are in effect at the time such design is substantially completed.

(Pub. L. 101-336, title II, §245, July 26, 1990, 104 Stat. 352.)

EFFECTIVE DATE

Section effective 18 months after July 26, 1990, see section 246(a) of Pub. L. 101-336, set out as a note under section 12161 of this title.

SUBCHAPTER III—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 12201, 12203, 12204, 12206 of this title; title 29 section 792.

§ 12181. Definitions

As used in this subchapter:

(1) Commerce

The term “commerce” means travel, trade, traffic, commerce, transportation, or communication—

(A) among the several States;

(B) between any foreign country or any territory or possession and any State; or

(C) between points in the same State but through another State or foreign country.

(2) Commercial facilities

The term “commercial facilities” means facilities—

(A) that are intended for nonresidential use; and

(B) whose operations will affect commerce.

Such term shall not include railroad locomotives, railroad freight cars, railroad cabooses, railroad cars described in section 12162 of this title or covered under this subchapter, railroad rights-of-way, or facilities that are covered or expressly exempted from coverage under the Fair Housing Act of 1968¹ (42 U.S.C. 3601 et seq.).

(3) Demand responsive system

The term “demand responsive system” means any system of providing transportation of individuals by a vehicle, other than a system which is a fixed route system.

(4) Fixed route system

The term “fixed route system” means a system of providing transportation of individuals (other than by aircraft) on which a vehicle is operated along a prescribed route according to a fixed schedule.

(5) Over-the-road bus

The term “over-the-road bus” means a bus characterized by an elevated passenger deck located over a baggage compartment.

(6) Private entity

The term “private entity” means any entity other than a public entity (as defined in section 12131(1) of this title).

(7) Public accommodation

The following private entities are considered public accommodations for purposes of this subchapter, if the operations of such entities affect commerce—

(A) an inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;

¹ See References in Text note below.

(B) a restaurant, bar, or other establishment serving food or drink;

(C) a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;

(D) an auditorium, convention center, lecture hall, or other place of public gathering;

(E) a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;

(F) a laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;

(G) a terminal, depot, or other station used for specified public transportation;

(H) a museum, library, gallery, or other place of public display or collection;

(I) a park, zoo, amusement park, or other place of recreation;

(J) a nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education;

(K) a day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and

(L) a gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

(8) Rail and railroad

The terms “rail” and “railroad” have the meaning given the term “railroad” in section 20102(1) of title 49.

(9) Readily achievable

The term “readily achievable” means easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable, factors to be considered include—

(A) the nature and cost of the action needed under this chapter;

(B) the overall financial resources of the facility or facilities involved in the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility;

(C) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

(D) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity.

(10) Specified public transportation

The term “specified public transportation” means transportation by bus, rail, or any other conveyance (other than by aircraft) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

(11) Vehicle

The term “vehicle” does not include a rail passenger car, railroad locomotive, railroad freight car, railroad caboose, or a railroad car described in section 12162 of this title or covered under this subchapter.

(Pub. L. 101-336, title III, § 301, July 26, 1990, 104 Stat. 353.)

REFERENCES IN TEXT

The Fair Housing Act of 1968, referred to in par. (2), probably means the Fair Housing Act, title VIII of Pub. L. 90-284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I of chapter 45 (§3601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

This chapter, referred to in par. (9)(A), was in the original “this Act”, meaning Pub. L. 101-336, July 26, 1990, 104 Stat. 327, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

CODIFICATION

In par. (8), “section 20102(1) of title 49” substituted for “section 202(e) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431(e))” on authority of Pub. L. 103-272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

EFFECTIVE DATE

Section 310 of title III of Pub. L. 101-336 provided that:

“(a) GENERAL RULE.—Except as provided in subsections (b) and (c), this title [enacting this subchapter] shall become effective 18 months after the date of the enactment of this Act [July 26, 1990].

“(b) CIVIL ACTIONS.—Except for any civil action brought for a violation of section 303 [section 12183 of this title], no civil action shall be brought for any act or omission described in section 302 [section 12182 of this title] which occurs—

“(1) during the first 6 months after the effective date, against businesses that employ 25 or fewer employees and have gross receipts of \$1,000,000 or less; and

“(2) during the first year after the effective date, against businesses that employ 10 or fewer employees and have gross receipts of \$500,000 or less.

“(c) EXCEPTION.—Sections 302(a) [section 12182(a) of this title] for purposes of section 302(b)(2)(B) and (C) only, 304(a) [section 12184(a) of this title] for purposes of section 304(b)(3) only, 304(b)(3), 305 [section 12185 of this title], and 306 [section 12186 of this title] shall take effect on the date of the enactment of this Act [July 26, 1990].”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 47 section 255.

§ 12182. Prohibition of discrimination by public accommodations

(a) General rule

No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

(b) Construction**(1) General prohibition****(A) Activities****(i) Denial of participation**

It shall be discriminatory to subject an individual or class of individuals on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of an entity.

(ii) Participation in unequal benefit

It shall be discriminatory to afford an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation that is not equal to that afforded to other individuals.

(iii) Separate benefit

It shall be discriminatory to provide an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with a good, service, facility, privilege, advantage, or accommodation that is different or separate from that provided to other individuals, unless such action is necessary to provide the individual or class of individuals with a good, service, facility, privilege, advantage, or accommodation, or other opportunity that is as effective as that provided to others.

(iv) Individual or class of individuals

For purposes of clauses (i) through (iii) of this subparagraph, the term "individual or class of individuals" refers to the clients or customers of the covered public accommodation that enters into the contractual, licensing or other arrangement.

(B) Integrated settings

Goods, services, facilities, privileges, advantages, and accommodations shall be afforded to an individual with a disability in the most integrated setting appropriate to the needs of the individual.

(C) Opportunity to participate

Notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different.

(D) Administrative methods

An individual or entity shall not, directly or through contractual or other arrangements, utilize standards or criteria or methods of administration—

(i) that have the effect of discriminating on the basis of disability; or

(ii) that perpetuate the discrimination of others who are subject to common administrative control.

(E) Association

It shall be discriminatory to exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations, or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

(2) Specific prohibitions**(A) Discrimination**

For purposes of subsection (a) of this section, discrimination includes—

(i) the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered;

(ii) a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations;

(iii) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden;

(iv) a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities, and transportation barriers in existing vehicles and rail passenger cars used by an establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles or rail passenger cars by the installation of a hydraulic or other lift), where such removal is readily achievable; and

(v) where an entity can demonstrate that the removal of a barrier under clause (iv) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages, or accommodations available

through alternative methods if such methods are readily achievable.

(B) Fixed route system

(i) Accessibility

It shall be considered discrimination for a private entity which operates a fixed route system and which is not subject to section 12184 of this title to purchase or lease a vehicle with a seating capacity in excess of 16 passengers (including the driver) for use on such system, for which a solicitation is made after the 30th day following the effective date of this subparagraph, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(ii) Equivalent service

If a private entity which operates a fixed route system and which is not subject to section 12184 of this title purchases or leases a vehicle with a seating capacity of 16 passengers or less (including the driver) for use on such system after the effective date of this subparagraph that is not readily accessible to or usable by individuals with disabilities, it shall be considered discrimination for such entity to fail to operate such system so that, when viewed in its entirety, such system ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities.

(C) Demand responsive system

For purposes of subsection (a) of this section, discrimination includes—

(i) a failure of a private entity which operates a demand responsive system and which is not subject to section 12184 of this title to operate such system so that, when viewed in its entirety, such system ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities; and

(ii) the purchase or lease by such entity for use on such system of a vehicle with a seating capacity in excess of 16 passengers (including the driver), for which solicitations are made after the 30th day following the effective date of this subparagraph, that is not readily accessible to and usable by individuals with disabilities (including individuals who use wheelchairs) unless such entity can demonstrate that such system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to that provided to individuals without disabilities.

(D) Over-the-road buses

(i) Limitation on applicability

Subparagraphs (B) and (C) do not apply to over-the-road buses.

(ii) Accessibility requirements

For purposes of subsection (a) of this section, discrimination includes (I) the pur-

chase or lease of an over-the-road bus which does not comply with the regulations issued under section 12186(a)(2) of this title by a private entity which provides transportation of individuals and which is not primarily engaged in the business of transporting people, and (II) any other failure of such entity to comply with such regulations.

(3) Specific construction

Nothing in this subchapter shall require an entity to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of such entity where such individual poses a direct threat to the health or safety of others. The term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids or services.

(Pub. L. 101-336, title III, § 302, July 26, 1990, 104 Stat. 355.)

REFERENCES IN TEXT

For the effective date of this subparagraph, referred to in subsec. (b)(2)(B), (C)(ii), see section 310 of Pub. L. 101-336, set out as an Effective Date note under section 12181 of this title.

EFFECTIVE DATE

Section effective 18 months after July 26, 1990, but with subsec. (a) of this section (for purposes of subsec. (b)(2)(B), (C) only) effective July 26, 1990, and with certain qualifications with respect to bringing of civil actions, see section 310 of Pub. L. 101-336, set out as a note under section 12181 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12183, 12184, 12186, 12188, 12209 of this title; title 2 section 1331; title 3 section 421.

§ 12183. New construction and alterations in public accommodations and commercial facilities

(a) Application of term

Except as provided in subsection (b) of this section, as applied to public accommodations and commercial facilities, discrimination for purposes of section 12182(a) of this title includes—

(1) a failure to design and construct facilities for first occupancy later than 30 months after July 26, 1990, that are readily accessible to and usable by individuals with disabilities, except where an entity can demonstrate that it is structurally impracticable to meet the requirements of such subsection in accordance with standards set forth or incorporated by reference in regulations issued under this subchapter; and

(2) with respect to a facility or part thereof that is altered by, on behalf of, or for the use of an establishment in a manner that affects or could affect the usability of the facility or part thereof, a failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals

who use wheelchairs. Where the entity is undertaking an alteration that affects or could affect usability of or access to an area of the facility containing a primary function, the entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

(b) Elevator

Subsection (a) of this section shall not be construed to require the installation of an elevator for facilities that are less than three stories or have less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider or unless the Attorney General determines that a particular category of such facilities requires the installation of elevators based on the usage of such facilities.

(Pub. L. 101-336, title III, §303, July 26, 1990, 104 Stat. 358.)

EFFECTIVE DATE

Section effective 18 months after July 26, 1990, see section 310(a), (b) of Pub. L. 101-336, set out as a note under section 12181 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12184, 12186, 12188, 12209 of this title; title 2 section 1331; title 3 section 421.

§ 12184. Prohibition of discrimination in specified public transportation services provided by private entities

(a) General rule

No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of specified public transportation services provided by a private entity that is primarily engaged in the business of transporting people and whose operations affect commerce.

(b) Construction

For purposes of subsection (a) of this section, discrimination includes—

(1) the imposition or application by a¹ entity described in subsection (a) of this section of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully enjoying the specified public transportation services provided by the entity, unless such criteria can be shown to be necessary for the provision of the services being offered;

(2) the failure of such entity to—

(A) make reasonable modifications consistent with those required under section 12182(b)(2)(A)(ii) of this title;

(B) provide auxiliary aids and services consistent with the requirements of section 12182(b)(2)(A)(iii) of this title; and

(C) remove barriers consistent with the requirements of section 12182(b)(2)(A) of this title and with the requirements of section 12183(a)(2) of this title;

(3) the purchase or lease by such entity of a new vehicle (other than an automobile, a van with a seating capacity of less than 8 passengers, including the driver, or an over-the-road bus) which is to be used to provide specified public transportation and for which a solicitation is made after the 30th day following the effective date of this section, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs; except that the new vehicle need not be readily accessible to and usable by such individuals if the new vehicle is to be used solely in a demand responsive system and if the entity can demonstrate that such system, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service provided to the general public;

(4)(A) the purchase or lease by such entity of an over-the-road bus which does not comply with the regulations issued under section 12186(a)(2) of this title; and

(B) any other failure of such entity to comply with such regulations; and

(5) the purchase or lease by such entity of a new van with a seating capacity of less than 8 passengers, including the driver, which is to be used to provide specified public transportation and for which a solicitation is made after the 30th day following the effective date of this section that is not readily accessible to or usable by individuals with disabilities, including individuals who use wheelchairs; except that the new van need not be readily accessible to and usable by such individuals if the entity can demonstrate that the system for which the van is being purchased or leased, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service provided to the general public;

(6) the purchase or lease by such entity of a new rail passenger car that is to be used to provide specified public transportation, and for which a solicitation is made later than 30 days after the effective date of this paragraph, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs; and

(7) the remanufacture by such entity of a rail passenger car that is to be used to provide specified public transportation so as to extend its usable life for 10 years or more, or the purchase or lease by such entity of such a rail car, unless the rail car, to the maximum extent feasible, is made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) Historical or antiquated cars

(1) Exception

To the extent that compliance with subsection (b)(2)(C) or (b)(7) of this section would significantly alter the historic or antiquated

¹ So in original. Probably should be "an".

character of a historical or antiquated rail passenger car, or a rail station served exclusively by such cars, or would result in violation of any rule, regulation, standard, or order issued by the Secretary of Transportation under the Federal Railroad Safety Act of 1970, such compliance shall not be required.

(2) Definition

As used in this subsection, the term “historical or antiquated rail passenger car” means a rail passenger car—

(A) which is not less than 30 years old at the time of its use for transporting individuals;

(B) the manufacturer of which is no longer in the business of manufacturing rail passenger cars; and

(C) which—

(i) has a consequential association with events or persons significant to the past; or

(ii) embodies, or is being restored to embody, the distinctive characteristics of a type of rail passenger car used in the past, or to represent a time period which has passed.

(Pub. L. 101-336, title III, §304, July 26, 1990, 104 Stat. 359.)

REFERENCES IN TEXT

For the effective date of this section, referred to in subsec. (b)(3), (5), see section 310 of Pub. L. 101-336, set out as an Effective Date note under section 12181 of this title.

The effective date of this paragraph, referred to in subsec. (b)(6), is 18 months after July 26, 1990, see section 310(a) of Pub. L. 101-336, set out as an Effective Date note under section 12181 of this title.

The Federal Railroad Safety Act of 1970, referred to in subsec. (c)(1), is title II of Pub. L. 91-458, Oct. 16, 1970, 84 Stat. 971, as amended, which was classified generally to subchapter II (§431 et seq.) of chapter 13 of Title 45, Railroads, and was repealed and reenacted in section 5109(c) of Title 5, Government Organization and Employees, section 54a of Title 45, Railroads, chapter 201 and sections 21301, 21302, 21304, 21311, 24902, and 24905 of Title 49, Transportation, and provisions set out as a note under section 20103 of Title 49 by Pub. L. 103-272, §§1(e), 4(b)(1), (i), (t), 7(b), July 5, 1994, 108 Stat. 862, 891, 893, 930, 935, 1361, 1365, 1372, 1379, the first section of which enacted subtitles II, III, and V to X of Title 49.

EFFECTIVE DATE

Section effective 18 months after July 26, 1990, but with subsec. (a) of this section (for purposes of subsec. (b)(3) only) and subsec. (b)(3) of this section effective July 26, 1990, see section 310(a), (c) of Pub. L. 101-336, set out as a note under section 12181 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12182, 12185, 12186, 12206 of this title.

§ 12185. Study

(a) Purposes

The Office of Technology Assessment shall undertake a study to determine—

(1) the access needs of individuals with disabilities to over-the-road buses and over-the-road bus service; and

(2) the most cost-effective methods for providing access to over-the-road buses and over-

the-road bus service to individuals with disabilities, particularly individuals who use wheelchairs, through all forms of boarding options.

(b) Contents

The study shall include, at a minimum, an analysis of the following:

(1) The anticipated demand by individuals with disabilities for accessible over-the-road buses and over-the-road bus service.

(2) The degree to which such buses and service, including any service required under sections 12184(b)(4) and 12186(a)(2) of this title, are readily accessible to and usable by individuals with disabilities.

(3) The effectiveness of various methods of providing accessibility to such buses and service to individuals with disabilities.

(4) The cost of providing accessible over-the-road buses and bus service to individuals with disabilities, including consideration of recent technological and cost saving developments in equipment and devices.

(5) Possible design changes in over-the-road buses that could enhance accessibility, including the installation of accessible restrooms which do not result in a loss of seating capacity.

(6) The impact of accessibility requirements on the continuation of over-the-road bus service, with particular consideration of the impact of such requirements on such service to rural communities.

(c) Advisory committee

In conducting the study required by subsection (a) of this section, the Office of Technology Assessment shall establish an advisory committee, which shall consist of—

(1) members selected from among private operators and manufacturers of over-the-road buses;

(2) members selected from among individuals with disabilities, particularly individuals who use wheelchairs, who are potential riders of such buses; and

(3) members selected for their technical expertise on issues included in the study, including manufacturers of boarding assistance equipment and devices.

The number of members selected under each of paragraphs (1) and (2) shall be equal, and the total number of members selected under paragraphs (1) and (2) shall exceed the number of members selected under paragraph (3).

(d) Deadline

The study required by subsection (a) of this section, along with recommendations by the Office of Technology Assessment, including any policy options for legislative action, shall be submitted to the President and Congress within 36 months after July 26, 1990. If the President determines that compliance with the regulations issued pursuant to section 12186(a)(2)(B) of this title on or before the applicable deadlines specified in section 12186(a)(2)(B) of this title will result in a significant reduction in intercity over-the-road bus service, the President shall extend each such deadline by 1 year.

(e) Review

In developing the study required by subsection (a) of this section, the Office of Technology Assessment shall provide a preliminary draft of such study to the Architectural and Transportation Barriers Compliance Board established under section 792 of title 29. The Board shall have an opportunity to comment on such draft study, and any such comments by the Board made in writing within 120 days after the Board's receipt of the draft study shall be incorporated as part of the final study required to be submitted under subsection (d) of this section.

(Pub. L. 101-336, title III, § 305, July 26, 1990, 104 Stat. 360.)

EFFECTIVE DATE

Section effective July 26, 1990, see section 310(c) of Pub. L. 101-336, set out as a note under section 12181 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12186 of this title.

§ 12186. Regulations**(a) Transportation provisions****(1) General rule**

Not later than 1 year after July 26, 1990, the Secretary of Transportation shall issue regulations in an accessible format to carry out sections¹ 12182(b)(2)(B) and (C) of this title and to carry out section 12184 of this title (other than subsection (b)(4)).

(2) Special rules for providing access to over-the-road buses**(A) Interim requirements****(i) Issuance**

Not later than 1 year after July 26, 1990, the Secretary of Transportation shall issue regulations in an accessible format to carry out sections 12184(b)(4) and 12182(b)(2)(D)(ii) of this title that require each private entity which uses an over-the-road bus to provide transportation of individuals to provide accessibility to such bus; except that such regulations shall not require any structural changes in over-the-road buses in order to provide access to individuals who use wheelchairs during the effective period of such regulations and shall not require the purchase of boarding assistance devices to provide access to such individuals.

¹ So in original. Probably should be "section".

(ii) Effective period

The regulations issued pursuant to this subparagraph shall be effective until the effective date of the regulations issued under subparagraph (B).

(B) Final requirement**(i) Review of study and interim requirements**

The Secretary shall review the study submitted under section 12185 of this title and the regulations issued pursuant to subparagraph (A).

(ii) Issuance

Not later than 1 year after the date of the submission of the study under section 12185 of this title, the Secretary shall issue in an accessible format new regulations to carry out sections 12184(b)(4) and 12182(b)(2)(D)(ii) of this title that require, taking into account the purposes of the study under section 12185 of this title and any recommendations resulting from such study, each private entity which uses an over-the-road bus to provide transportation to individuals to provide accessibility to such bus to individuals with disabilities, including individuals who use wheelchairs.

(iii) Effective period

Subject to section 12185(d) of this title, the regulations issued pursuant to this subparagraph shall take effect—

(I) with respect to small providers of transportation (as defined by the Secretary), 3 years after the date of issuance of final regulations under clause (ii); and

(II) with respect to other providers of transportation, 2 years after the date of issuance of such final regulations.

(C) Limitation on requiring installation of accessible restrooms

The regulations issued pursuant to this paragraph shall not require the installation of accessible restrooms in over-the-road buses if such installation would result in a loss of seating capacity.

(3) Standards

The regulations issued pursuant to this subsection shall include standards applicable to facilities and vehicles covered by sections 12182(b)(2) and 12184 of this title.

(b) Other provisions

Not later than 1 year after July 26, 1990, the Attorney General shall issue regulations in an accessible format to carry out the provisions of this subchapter not referred to in subsection (a) of this section that include standards applicable to facilities and vehicles covered under section 12182 of this title.

(c) Consistency with ATBCB guidelines

Standards included in regulations issued under subsections (a) and (b) of this section shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 12204 of this title.

(d) Interim accessibility standards**(1) Facilities**

If final regulations have not been issued pursuant to this section, for new construction or alterations for which a valid and appropriate State or local building permit is obtained prior to the issuance of final regulations under this section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities as required under section 12183 of this title, except that, if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines required under section 12204(a) of this title, compliance with such supplemental minimum guidelines shall be necessary to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations.

(2) Vehicles and rail passenger cars

If final regulations have not been issued pursuant to this section, a private entity shall be considered to have complied with the requirements of this subchapter, if any, that a vehicle or rail passenger car be readily accessible to and usable by individuals with disabilities, if the design for such vehicle or car complies with the laws and regulations (including the Minimum Guidelines and Requirements for Accessible Design and such supplemental minimum guidelines as are issued under section 12204(a) of this title) governing accessibility of such vehicles or cars, to the extent that such laws and regulations are not inconsistent with this subchapter and are in effect at the time such design is substantially completed.

(Pub. L. 101-336, title III, §306, July 26, 1990, 104 Stat. 361; Pub. L. 104-59, title III, §341, Nov. 28, 1995, 109 Stat. 608.)

AMENDMENTS

1995—Subsec. (a)(2)(B)(iii). Pub. L. 104-59 substituted “3 years after the date of issuance of final regulations under clause (ii)” for “7 years after July 26, 1990” in subcl. (I) and “2 years after the date of issuance of such final regulations” for “6 years after July 26, 1990” in subcl. (II).

EFFECTIVE DATE

Section effective July 26, 1990, see section 310(c) of Pub. L. 101-336, set out as a note under section 12181 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12182, 12184, 12185 of this title.

§ 12187. Exemptions for private clubs and religious organizations

The provisions of this subchapter shall not apply to private clubs or establishments ex-

empted from coverage under title II of the Civil Rights Act of 1964 (42 U.S.C. 2000a–a(e)) [42 U.S.C. 2000a et seq.] or to religious organizations or entities controlled by religious organizations, including places of worship.

(Pub. L. 101-336, title III, §307, July 26, 1990, 104 Stat. 363.)

REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in text, is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title II of the Act is classified generally to subchapter II (§2000a et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

EFFECTIVE DATE

Section effective 18 months after July 26, 1990, see section 310(a) of Pub. L. 101-336, set out as a note under section 12181 of this title.

§ 12188. Enforcement**(a) In general****(1) Availability of remedies and procedures**

The remedies and procedures set forth in section 2000a-3(a) of this title are the remedies and procedures this subchapter provides to any person who is being subjected to discrimination on the basis of disability in violation of this subchapter or who has reasonable grounds for believing that such person is about to be subjected to discrimination in violation of section 12183 of this title. Nothing in this section shall require a person with a disability to engage in a futile gesture if such person has actual notice that a person or organization covered by this subchapter does not intend to comply with its provisions.

(2) Injunctive relief

In the case of violations of sections 12182(b)(2)(A)(iv) and section¹ 12183(a) of this title, injunctive relief shall include an order to alter facilities to make such facilities readily accessible to and usable by individuals with disabilities to the extent required by this subchapter. Where appropriate, injunctive relief shall also include requiring the provision of an auxiliary aid or service, modification of a policy, or provision of alternative methods, to the extent required by this subchapter.

(b) Enforcement by Attorney General**(1) Denial of rights****(A) Duty to investigate****(i) In general**

The Attorney General shall investigate alleged violations of this subchapter, and shall undertake periodic reviews of compliance of covered entities under this subchapter.

(ii) Attorney General certification

On the application of a State or local government, the Attorney General may, in consultation with the Architectural and Transportation Barriers Compliance

¹So in original. The word “section” probably should not appear.

Board, and after prior notice and a public hearing at which persons, including individuals with disabilities, are provided an opportunity to testify against such certification, certify that a State law or local building code or similar ordinance that establishes accessibility requirements meets or exceeds the minimum requirements of this chapter for the accessibility and usability of covered facilities under this subchapter. At any enforcement proceeding under this section, such certification by the Attorney General shall be rebuttable evidence that such State law or local ordinance does meet or exceed the minimum requirements of this chapter.

(B) Potential violation

If the Attorney General has reasonable cause to believe that—

- (i) any person or group of persons is engaged in a pattern or practice of discrimination under this subchapter; or
- (ii) any person or group of persons has been discriminated against under this subchapter and such discrimination raises an issue of general public importance,

the Attorney General may commence a civil action in any appropriate United States district court.

(2) Authority of court

In a civil action under paragraph (1)(B), the court—

(A) may grant any equitable relief that such court considers to be appropriate, including, to the extent required by this subchapter—

- (i) granting temporary, preliminary, or permanent relief;
- (ii) providing an auxiliary aid or service, modification of policy, practice, or procedure, or alternative method; and
- (iii) making facilities readily accessible to and usable by individuals with disabilities;

(B) may award such other relief as the court considers to be appropriate, including monetary damages to persons aggrieved when requested by the Attorney General; and

(C) may, to vindicate the public interest, assess a civil penalty against the entity in an amount—

- (i) not exceeding \$50,000 for a first violation; and
- (ii) not exceeding \$100,000 for any subsequent violation.

(3) Single violation

For purposes of paragraph (2)(C), in determining whether a first or subsequent violation has occurred, a determination in a single action, by judgment or settlement, that the covered entity has engaged in more than one discriminatory act shall be counted as a single violation.

(4) Punitive damages

For purposes of subsection (b)(2)(B) of this section, the term “monetary damages” and

“such other relief” does not include punitive damages.

(5) Judicial consideration

In a civil action under paragraph (1)(B), the court, when considering what amount of civil penalty, if any, is appropriate, shall give consideration to any good faith effort or attempt to comply with this chapter by the entity. In evaluating good faith, the court shall consider, among other factors it deems relevant, whether the entity could have reasonably anticipated the need for an appropriate type of auxiliary aid needed to accommodate the unique needs of a particular individual with a disability.

(Pub. L. 101-336, title III, § 308, July 26, 1990, 104 Stat. 363.)

EFFECTIVE DATE

Section effective 18 months after July 26, 1990, see section 310(a) of Pub. L. 101-336, set out as a note under section 12181 of this title.

CIVIL ACTIONS FOR VIOLATIONS BY PUBLIC ACCOMMODATIONS

For provisions directing that, except for any civil action brought for a violation of section 12183 of this title, no civil action shall be brought for any act or omission described in section 12182 of this title which occurs (1) during the first six months after the effective date of this subchapter, against businesses that employ 25 or fewer employees and have gross receipts of \$1,000,000 or less, and (2) during the first year after the effective date, against businesses that employ 10 or fewer employees and have gross receipts of \$500,000 or less, see section 310(b) of Pub. L. 101-336, set out as an Effective Date note under section 12181 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12203 of this title; title 2 section 1331; title 3 section 421.

§ 12189. Examinations and courses

Any person that offers examinations or courses related to applications, licensing, certification, or credentialing for secondary or postsecondary education, professional, or trade purposes shall offer such examinations or courses in a place and manner accessible to persons with disabilities or offer alternative accessible arrangements for such individuals.

(Pub. L. 101-336, title III, § 309, July 26, 1990, 104 Stat. 365.)

EFFECTIVE DATE

Section effective 18 months after July 26, 1990, see section 310(a) of Pub. L. 101-336, set out as a note under section 12181 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 section 1331; title 3 section 421.

SUBCHAPTER IV—MISCELLANEOUS PROVISIONS

§ 12201. Construction

(a) In general

Except as otherwise provided in this chapter, nothing in this chapter shall be construed to apply a lesser standard than the standards ap-

plied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.) or the regulations issued by Federal agencies pursuant to such title.

(b) Relationship to other laws

Nothing in this chapter shall be construed to invalidate or limit the remedies, rights, and procedures of any Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this chapter. Nothing in this chapter shall be construed to preclude the prohibition of, or the imposition of restrictions on, smoking in places of employment covered by subchapter I of this chapter, in transportation covered by subchapter II or III of this chapter, or in places of public accommodation covered by subchapter III of this chapter.

(c) Insurance

Subchapters I through III of this chapter and title IV of this Act shall not be construed to prohibit or restrict—

(1) an insurer, hospital or medical service company, health maintenance organization, or any agent, or entity that administers benefit plans, or similar organizations from underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

(2) a person or organization covered by this chapter from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

(3) a person or organization covered by this chapter from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that is not subject to State laws that regulate insurance.

Paragraphs (1), (2), and (3) shall not be used as a subterfuge to evade the purposes of subchapter¹ I and III of this chapter.

(d) Accommodations and services

Nothing in this chapter shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit which such individual chooses not to accept.

(Pub. L. 101-336, title V, §501, July 26, 1990, 104 Stat. 369.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 101-336, July 26, 1990, 104 Stat. 327, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

The Rehabilitation Act of 1973, referred to in subsec. (a), is Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 355, as amended. Title V of the Rehabilitation Act of 1973 is classified generally to subchapter V (§790 et seq.) of chapter 16 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

¹ So in original. Probably should be “subchapters”.

Title IV of this Act, referred to in subsec. (c), means title IV of Pub. L. 101-336, July 26, 1990, 104 Stat. 366, which enacted section 225 of Title 47, Telegraphs, Telephones, and Radiotelegraphs, and amended sections 152, 221, and 611 of Title 47.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 29 sections 791, 793, 794.

§ 12202. State immunity

A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in¹ Federal or State court of competent jurisdiction for a violation of this chapter. In any action against a State for a violation of the requirements of this chapter, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

(Pub. L. 101-336, title V, §502, July 26, 1990, 104 Stat. 370.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 29 sections 791, 793, 794.

§ 12203. Prohibition against retaliation and coercion

(a) Retaliation

No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter.

(b) Interference, coercion, or intimidation

It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this chapter.

(c) Remedies and procedures

The remedies and procedures available under sections 12117, 12133, and 12188 of this title shall be available to aggrieved persons for violations of subsections (a) and (b) of this section, with respect to subchapter I, subchapter II and subchapter III of this chapter, respectively.

(Pub. L. 101-336, title V, §503, July 26, 1990, 104 Stat. 370.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 29 sections 791, 793, 794.

§ 12204. Regulations by Architectural and Transportation Barriers Compliance Board

(a) Issuance of guidelines

Not later than 9 months after July 26, 1990, the Architectural and Transportation Barriers Com-

¹ So in original. Probably should be “in a”.

pliance Board shall issue minimum guidelines that shall supplement the existing Minimum Guidelines and Requirements for Accessible Design for purposes of subchapters II and III of this chapter.

(b) Contents of guidelines

The supplemental guidelines issued under subsection (a) of this section shall establish additional requirements, consistent with this chapter, to ensure that buildings, facilities, rail passenger cars, and vehicles are accessible, in terms of architecture and design, transportation, and communication, to individuals with disabilities.

(c) Qualified historic properties

(1) In general

The supplemental guidelines issued under subsection (a) of this section shall include procedures and requirements for alterations that will threaten or destroy the historic significance of qualified historic buildings and facilities as defined in 4.1.7(1)(a) of the Uniform Federal Accessibility Standards.

(2) Sites eligible for listing in National Register

With respect to alterations of buildings or facilities that are eligible for listing in the National Register of Historic Places under the National Historic Preservation Act (16 U.S.C. 470 et seq.), the guidelines described in paragraph (1) shall, at a minimum, maintain the procedures and requirements established in 4.1.7(1) and (2) of the Uniform Federal Accessibility Standards.

(3) Other sites

With respect to alterations of buildings or facilities designated as historic under State or local law, the guidelines described in paragraph (1) shall establish procedures equivalent to those established by 4.1.7(1)(b) and (c) of the Uniform Federal Accessibility Standards, and shall require, at a minimum, compliance with the requirements established in 4.1.7(2) of such standards.

(Pub. L. 101-336, title V, §504, July 26, 1990, 104 Stat. 370.)

REFERENCES IN TEXT

The National Historic Preservation Act, referred to in subsec. (c)(2), is Pub. L. 89-665, Oct. 15, 1966, 80 Stat. 915, as amended, which is classified generally to subchapter II (§470 et seq.) of chapter 1A of Title 16, Conservation. For complete classification of this Act to the Code, see section 470(a) of Title 16 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12134, 12149, 12150, 12163, 12165, 12186 of this title; title 29 sections 791, 793, 794.

§ 12205. Attorney's fees

In any action or administrative proceeding commenced pursuant to this chapter, the court or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual.

(Pub. L. 101-336, title V, §505, July 26, 1990, 104 Stat. 371.)

§ 12206. Technical assistance

(a) Plan for assistance

(1) In general

Not later than 180 days after July 26, 1990, the Attorney General, in consultation with the Chair of the Equal Employment Opportunity Commission, the Secretary of Transportation, the Chair of the Architectural and Transportation Barriers Compliance Board, and the Chairman of the Federal Communications Commission, shall develop a plan to assist entities covered under this chapter, and other Federal agencies, in understanding the responsibility of such entities and agencies under this chapter.

(2) Publication of plan

The Attorney General shall publish the plan referred to in paragraph (1) for public comment in accordance with subchapter II of chapter 5 of title 5 (commonly known as the Administrative Procedure Act).

(b) Agency and public assistance

The Attorney General may obtain the assistance of other Federal agencies in carrying out subsection (a) of this section, including the National Council on Disability, the President's Committee on Employment of People with Disabilities, the Small Business Administration, and the Department of Commerce.

(c) Implementation

(1) Rendering assistance

Each Federal agency that has responsibility under paragraph (2) for implementing this chapter may render technical assistance to individuals and institutions that have rights or duties under the respective subchapter or subchapters of this chapter for which such agency has responsibility.

(2) Implementation of subchapters

(A) Subchapter I

The Equal Employment Opportunity Commission and the Attorney General shall implement the plan for assistance developed under subsection (a) of this section, for subchapter I of this chapter.

(B) Subchapter II

(i) Part A

The Attorney General shall implement such plan for assistance for part A of subchapter II of this chapter.

(ii) Part B

The Secretary of Transportation shall implement such plan for assistance for part B of subchapter II of this chapter.

(C) Subchapter III

The Attorney General, in coordination with the Secretary of Transportation and the Chair of the Architectural Transportation Barriers Compliance Board, shall implement such plan for assistance for subchapter III of this chapter, except for section 12184 of this title, the plan for assistance for which shall be implemented by the Secretary of Transportation.

(D) Title IV

The Chairman of the Federal Communications Commission, in coordination with the Attorney General, shall implement such plan for assistance for title IV.

(3) Technical assistance manuals

Each Federal agency that has responsibility under paragraph (2) for implementing this chapter shall, as part of its implementation responsibilities, ensure the availability and provision of appropriate technical assistance manuals to individuals or entities with rights or duties under this chapter no later than six months after applicable final regulations are published under subchapters I, II, and III of this chapter and title IV.

(d) Grants and contracts**(1) In general**

Each Federal agency that has responsibility under subsection (c)(2) of this section for implementing this chapter may make grants or award contracts to effectuate the purposes of this section, subject to the availability of appropriations. Such grants and contracts may be awarded to individuals, institutions not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual (including educational institutions), and associations representing individuals who have rights or duties under this chapter. Contracts may be awarded to entities organized for profit, but such entities may not be the recipients or¹ grants described in this paragraph.

(2) Dissemination of information

Such grants and contracts, among other uses, may be designed to ensure wide dissemination of information about the rights and duties established by this chapter and to provide information and technical assistance about techniques for effective compliance with this chapter.

(e) Failure to receive assistance

An employer, public accommodation, or other entity covered under this chapter shall not be excused from compliance with the requirements of this chapter because of any failure to receive technical assistance under this section, including any failure in the development or dissemination of any technical assistance manual authorized by this section.

(Pub. L. 101-336, title V, §506, July 26, 1990, 104 Stat. 371.)

REFERENCES IN TEXT

Title IV, referred to in subsec. (c)(2)(D), (3), means title IV of Pub. L. 101-336, July 26, 1990, 104 Stat. 366, which enacted section 225 of Title 47, Telegraphs, Telephones, and Radiotelegraphs, and amended sections 152, 221, and 611 of Title 47.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 29 section 762.

§ 12207. Federal wilderness areas**(a) Study**

The National Council on Disability shall conduct a study and report on the effect that wil-

derness designations and wilderness land management practices have on the ability of individuals with disabilities to use and enjoy the National Wilderness Preservation System as established under the Wilderness Act (16 U.S.C. 1131 et seq.).

(b) Submission of report

Not later than 1 year after July 26, 1990, the National Council on Disability shall submit the report required under subsection (a) of this section to Congress.

(c) Specific wilderness access**(1) In general**

Congress reaffirms that nothing in the Wilderness Act [16 U.S.C. 1131 et seq.] is to be construed as prohibiting the use of a wheelchair in a wilderness area by an individual whose disability requires use of a wheelchair, and consistent with the Wilderness Act no agency is required to provide any form of special treatment or accommodation, or to construct any facilities or modify any conditions of lands within a wilderness area in order to facilitate such use.

(2) "Wheelchair" defined

For purposes of paragraph (1), the term "wheelchair" means a device designed solely for use by a mobility-impaired person for locomotion, that is suitable for use in an indoor pedestrian area.

(Pub. L. 101-336, title V, §507, July 26, 1990, 104 Stat. 372.)

REFERENCES IN TEXT

The Wilderness Act, referred to in subsecs. (a) and (c)(1), is Pub. L. 88-577, Sept. 3, 1964, 78 Stat. 890, as amended, which is classified generally to chapter 23 (§1131 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1131 of Title 16 and Tables.

§ 12208. Transvestites

For the purposes of this chapter, the term "disabled" or "disability" shall not apply to an individual solely because that individual is a transvestite.

(Pub. L. 101-336, title V, §508, July 26, 1990, 104 Stat. 373.)

§ 12209. Instrumentalities of Congress

The General Accounting Office, the Government Printing Office, and the Library of Congress shall be covered as follows:

(1) In general

The rights and protections under this chapter shall, subject to paragraph (2), apply with respect to the conduct of each instrumentality of the Congress.

(2) Establishment of remedies and procedures by instrumentalities

The chief official of each instrumentality of the Congress shall establish remedies and procedures to be utilized with respect to the rights and protections provided pursuant to paragraph (1).

(3) Report to Congress

The chief official of each instrumentality of the Congress shall, after establishing remedies

¹ So in original. Probably should be "of".

and procedures for purposes of paragraph (2), submit to the Congress a report describing the remedies and procedures.

(4) Definition of instrumentalities

For purposes of this section, the term “instrumentality of the Congress” means the following:¹ the General Accounting Office, the Government Printing Office, and the Library of Congress.¹

(5) Enforcement of employment rights

The remedies and procedures set forth in section 2000e-16 of this title shall be available to any employee of an instrumentality of the Congress who alleges a violation of the rights and protections under sections 12112 through 12114 of this title that are made applicable by this section, except that the authorities of the Equal Employment Opportunity Commission shall be exercised by the chief official of the instrumentality of the Congress.

(6) Enforcement of rights to public services and accommodations

The remedies and procedures set forth in section 2000e-16 of this title shall be available to any qualified person with a disability who is a visitor, guest, or patron of an instrumentality of Congress and who alleges a violation of the rights and protections under sections 12131 through 12150 of this title or section 12182 or 12183 of this title that are made applicable by this section, except that the authorities of the Equal Employment Opportunity Commission shall be exercised by the chief official of the instrumentality of the Congress.

(7) Construction

Nothing in this section shall alter the enforcement procedures for individuals with disabilities provided in the General Accounting Office Personnel Act of 1980 and regulations promulgated pursuant to that Act.

(Pub. L. 101-336, title V, § 509, July 26, 1990, 104 Stat. 373; Pub. L. 102-166, title III, § 315, Nov. 21, 1991, 105 Stat. 1095; Pub. L. 104-1, title II, §§ 201(c)(3), 210(g), Jan. 23, 1995, 109 Stat. 8, 16.)

REFERENCES IN TEXT

The General Accounting Office Personnel Act of 1980, referred to in par. (7), is Pub. L. 96-191, Feb. 15, 1980, 94 Stat. 27, which was classified principally to section 52-1 et seq. of former Title 31, and which was substantially repealed by Pub. L. 97-258, § 5(b), Sept. 13, 1982, 96 Stat. 1068, and reenacted by the first section thereof principally in subchapters III (§ 731 et seq.) and IV (§ 751 et seq.) of chapter 7 of Title 31, Money and Finance.

AMENDMENTS

1995—Pub. L. 104-1, § 201(c)(3)(F), amended section catchline generally.

Pub. L. 104-1, § 201(c)(3)(A), struck out subssecs. (a) and (b) which related to coverage of Senate and House of Representatives with respect to bans on employment discrimination and other discriminatory practices against individuals with disabilities.

Pub. L. 104-1, § 201(c)(3)(B), substituted “The General Accounting Office, the Government Printing Office, and the Library of Congress shall be covered as follows:” for subsec. (c) heading and designated subsec. (c) as entire section.

Par. (2). Pub. L. 104-1, § 201(c)(3)(C), struck out at end “Such remedies and procedures shall apply exclusively, except for the employees who are defined as Senate employees, in section 1201(c)(1) of title 2.”

Par. (4). Pub. L. 104-1, § 201(c)(3)(D), struck out “the Architect of the Capitol, the Congressional Budget Office” after “the following:”, inserted “and” before “the Library of Congress”, and struck out “the Office of Technology Assessment, and the United States Botanic Garden” before period at end.

Pub. L. 104-1, § 201(c)(3)(D), which in part directed the substitution of “the term ‘instrumentality of the Congress’ means” for “the instrumentalities of the Congress include”, was executed by making the substitution for “instrumentalities of the Congress include” to reflect the probable intent of Congress.

Par. (5). Pub. L. 104-1, § 201(c)(3)(E), added par. (5). Former par. (5) redesignated (7).

Par. (6). Pub. L. 104-1, § 210(g), which directed amendment of this section by adding par. (6), was executed by adding par. (6) after par. (5) to reflect the probable intent of Congress.

Par. (7). Pub. L. 104-1, § 201(c)(3)(E), redesignated par. (5) as (7).

1991—Subsec. (a)(2). Pub. L. 102-166, § 315(1), redesignated par. (6) as (2) and struck out former par. (2) which read as follows: “APPLICATION TO SENATE EMPLOYMENT.—The rights and protections provided pursuant to this chapter, the Civil Rights Act of 1990 (S. 2104, 101st Congress), the Civil Rights Act of 1964 [42 U.S.C. 2000a et seq.], the Age Discrimination in Employment Act of 1967 [29 U.S.C. 621 et seq.], and the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.] shall apply with respect to employment by the United States Senate.”

Subsec. (a)(3). Pub. L. 102-166, § 315(1), redesignated par. (7) as (3), substituted “(2)(A)” for “(2) and (6)(A)” and “(2)” for “(3), (4), (5), (6)(B), and (6)(C)”, and struck out former par. (3) which read as follows: “INVESTIGATION AND ADJUDICATION OF CLAIMS.—All claims raised by any individual with respect to Senate employment, pursuant to the Acts referred to in paragraph (2), shall be investigated and adjudicated by the Select Committee on Ethics, pursuant to S. Res. 338, 88th Congress, as amended, or such other entity as the Senate may designate.”

Subsec. (a)(4), (5). Pub. L. 102-166, § 315(1), struck out pars. (4) and (5) which read as follows:

“(4) RIGHTS OF EMPLOYEES.—The Committee on Rules and Administration shall ensure that Senate employees are informed of their rights under the Acts referred to in paragraph (2).

“(5) APPLICABLE REMEDIES.—When assigning remedies to individuals found to have a valid claim under the Acts referred to in paragraph (2), the Select Committee on Ethics, or such other entity as the Senate may designate, should to the extent practicable apply the same remedies applicable to all other employees covered by the Acts referred to in paragraph (2). Such remedies shall apply exclusively.”

Subsec. (a)(6), (7). Pub. L. 102-166, § 315(1), redesignated pars. (6) and (7) as (2) and (3), respectively.

Subsec. (c)(2). Pub. L. 102-166, § 315(2), inserted “, except for the employees who are defined as Senate employees, in section 1201(c)(1) of title 2” after “shall apply exclusively”.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by section 201(c)(3) of Pub. L. 104-1 effective 1 year after Jan. 23, 1995, see section 1311(d) of Title 2, The Congress.

Amendment by section 210(g) of Pub. L. 104-1 effective 1 year after transmission to Congress of study under section 1371 of Title 2, see section 1331(h)(2) of Title 2.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-166 effective Nov. 21, 1991, except as otherwise provided, see section 402 of Pub. L. 102-166, set out as a note under section 1981 of this title.

¹ So in original. The comma probably should not appear.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 section 1435.

§ 12210. Illegal use of drugs

(a) In general

For purposes of this chapter, the term “individual with a disability” does not include an individual who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.

(b) Rules of construction

Nothing in subsection (a) of this section shall be construed to exclude as an individual with a disability an individual who—

(1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(2) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(3) is erroneously regarded as engaging in such use, but is not engaging in such use;

except that it shall not be a violation of this chapter for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (1) or (2) is no longer engaging in the illegal use of drugs; however, nothing in this section shall be construed to encourage, prohibit, restrict, or authorize the conducting of testing for the illegal use of drugs.

(c) Health and other services

Notwithstanding subsection (a) of this section and section 12211(b)(3) of this title, an individual shall not be denied health services, or services provided in connection with drug rehabilitation, on the basis of the current illegal use of drugs if the individual is otherwise entitled to such services.

(d) “Illegal use of drugs” defined

(1) In general

The term “illegal use of drugs” means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act [21 U.S.C. 801 et seq.]. Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(2) Drugs

The term “drug” means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act [21 U.S.C. 812].

(Pub. L. 101-336, title V, §510, July 26, 1990, 104 Stat. 375.)

REFERENCES IN TEXT

The Controlled Substances Act, referred to in subsec. (d)(1), is title II of Pub. L. 91-513, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to subchapter I (§801 et seq.) of chapter 13 of Title 21, Food and Drugs. For complete classification of this Act to

the Code, see Short Title note set out under section 801 of Title 21 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 29 sections 791, 793, 794.

§ 12211. Definitions

(a) Homosexuality and bisexuality

For purposes of the definition of “disability” in section 12102(2) of this title, homosexuality and bisexuality are not impairments and as such are not disabilities under this chapter.

(b) Certain conditions

Under this chapter, the term “disability” shall not include—

(1) transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(2) compulsive gambling, kleptomania, or pyromania; or

(3) psychoactive substance use disorders resulting from current illegal use of drugs.

(Pub. L. 101-336, title V, §511, July 26, 1990, 104 Stat. 376.)

§ 12212. Alternative means of dispute resolution

Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, fact-finding, minitrials, and arbitration, is encouraged to resolve disputes arising under this chapter.

(Pub. L. 101-336, title V, §513, July 26, 1990, 104 Stat. 377.)

§ 12213. Severability

Should any provision in this chapter be found to be unconstitutional by a court of law, such provision shall be severed from the remainder of the chapter, and such action shall not affect the enforceability of the remaining provisions of the chapter.

(Pub. L. 101-336, title V, §514, July 26, 1990, 104 Stat. 378.)

CHAPTER 127—COORDINATED SERVICES FOR CHILDREN, YOUTH, AND FAMILIES

Sec. 12301. Findings. 12302. Definitions.

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§ 12301. Findings

Congress finds that—

- (1) children and youth are inherently the most valuable resource of the United States;
- (2) the welfare, protection, healthy development, and positive role of children and youth in society are essential to the United States;
- (3) children and youth deserve love, respect, and guidance, as well as good health, shelter, food, education, productive employment opportunities, and preparation for responsible participation in community life;
- (4) children and youth have increasing opportunities to participate in the decisions that affect their lives;
- (5) the family is the primary caregiver and source of social learning and must be supported and strengthened;
- (6) when a family is unable to ensure the satisfaction of basic needs of children and youth it is the responsibility of society to assist such family; and
- (7) it is the joint and several responsibility of the Federal Government, each State, and the political subdivisions of each State to assist children and youth to secure, to the maximum extent practicable, equal opportunity to full and free access to—
 - (A) the best possible physical and mental health;
 - (B) adequate and safe physical shelter;
 - (C) a high level of educational opportunity;
 - (D) effective training, apprenticeships, opportunities for community service, and productive employment and participation in decisions affecting their lives;
 - (E) a wide range of civic, cultural, and recreational activities that recognize young Americans as resources and promote self-esteem and a stake in the communities of such Americans; and
 - (F) comprehensive community services that are efficient, coordinated, readily available, and involve families of young individuals.

(Pub. L. 101-501, title IX, §902, Nov. 3, 1990, 104 Stat. 1262.)

EFFECTIVE DATE

Chapter effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101-501, set out as an Effective Date of 1990 Amendment note under section 8621 of this title.

SHORT TITLE

Section 901 of title IX of Pub. L. 101-501 provided that: "This title [enacting this chapter] may be cited as the 'Claude Pepper Young Americans Act of 1990'."

Section 955 of Pub. L. 101-501 provided that: "This chapter [chapter 3 (§§955-960) of subtitle A of title IX of Pub. L. 101-501, enacting part C of subchapter I of this chapter] may be cited as the 'Family Resource Act'."

Section 981 of Pub. L. 101-501 provided that: "This subtitle [subtitle B (§§981-988) of title IX of Pub. L. 101-501, enacting subchapter II of this chapter] may be cited as the '1993 White House Conference on Children, Youth, and Families'."

COMMISSION ON CHILD AND FAMILY WELFARE

Pub. L. 102-521, §5, Oct. 25, 1992, 106 Stat. 3406, provided for establishment, membership, etc., of a Commission on Child and Family Welfare, specified that among other duties the Commission compile information and data on the issues that affect the best interests of children, including domestic issues such as abuse, family relations, services and agencies for children and families, family courts, and juvenile courts, directed Commission to submit to President and Congress an interim report no later than Jan. 1, 1994, and a final report no later than Jan. 1, 1995, containing a detailed statement of the findings and conclusions of the Commission, together with recommendations for such legislation and administrative actions as considered appropriate, and directed that the Commission terminate 90 days after the date it submitted its final report.

§ 12302. Definitions

As used in this chapter:

(1) Commissioner

The term "Commissioner" means the Commissioner of the Administration on Children, Youth, and Families, as established under section 12311 of this title.

(2) Council

The term "Council" means the Federal Council on Children, Youth, and Families, as established under section 12314(a) of this title.

(3) Nonprofit

The term "nonprofit", as applied to any agency, institution, or organization, means an agency, institution, or organization that is, or is owned and operated by, one or more corporations or associations, no part of the net earnings of which may lawfully inure to the benefit of any private shareholder or individual.

(4) Secretary

The term "Secretary" means the Secretary of Health and Human Services.

(5) State

The term "State" includes the District of Columbia, the Virgin Islands, Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(6) Young individual

The term "young individual" means any child or youth from birth to 21 years of age.

(Pub. L. 101-501, title IX, §903, Nov. 3, 1990, 104 Stat. 1262.)

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SUBCHAPTER I—ESTABLISHMENT OF ADMINISTRATION AND AWARDING OF GRANTS FOR PROGRAMS

PART A—ADMINISTRATION ON CHILDREN, YOUTH, AND FAMILIES

§ 12311. Establishment of Administration on Children, Youth, and Families

(a) In general

There is established within the Department of Health and Human Services an Administration on Children, Youth, and Families.

(b) Commissioner

(1) Establishment

(A) In general

The Administration on Children, Youth, and Families, as established under subsection (a) of this section, shall be headed by a Commissioner on Children, Youth, and Families.

(B) Omitted

(2) Appointment

The President, by and with the advice and consent of the Senate, shall appoint the Commissioner.

(Pub. L. 101-501, title IX, §915, Nov. 3, 1990, 104 Stat. 1263.)

CODIFICATION

Section is comprised of section 915 of Pub. L. 101-501. Subsec. (b)(1)(B) of section 915 of Pub. L. 101-501 amended section 5316 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12302 of this title.

§ 12312. Functions of Commissioner

(a) In general

The Commissioner shall—

(1) serve as the effective and visible advocate for children, youth, and families within the Department of Health and Human Services and with other departments, agencies, and instrumentalities of the Federal Government by maintaining active review and commenting responsibilities, as appropriate, concerning Federal policies affecting young individuals, and the families of young individuals;

(2) collect and disseminate information related to the problems of young individuals and the families of such individuals;

(3) assist the Secretary in appropriate matters pertaining to young individuals, and the families of such individuals;

(4) administer the grants authorized under this subchapter;

(5) develop plans and conduct research in the field of young individuals, and the families of such individuals;

(6) assist, to the maximum extent practicable, in the establishment and implementation of programs designed to meet the needs of young individuals for supportive services including—

- (A) health and mental health services;
- (B) housing and shelter assistance;
- (C) education and training services;
- (D) protective services;
- (E) foster care;
- (F) teen parenting support;
- (G) child care;
- (H) family support and preservation;
- (I) teen pregnancy prevention and counseling;
- (J) counseling on the effects of violence in the communities of such individuals and their families;
- (K) recreational and volunteer opportunities; and
- (L) comprehensive early childhood development;

(7) provide technical assistance and consultation to States and the political subdivisions of such States with respect to programs for young individuals;

(8) prepare, publish, and disseminate educational materials concerning the welfare of young individuals;

(9) gather statistics concerning young individuals, and the families of such individuals, that other Federal agencies are not collecting;

(10) to the maximum extent practicable coordinate activities carried out or assisted by all departments, agencies, and instrumentalities of the Federal Government with respect to the collection, preparation, and dissemination of information relevant to young individuals and the families of such individuals;

(11) stimulate more effective uses of existing resources and available services for young individuals and the families of such individuals;

(12) develop basic policies and set priorities with respect to the development and operation of programs and activities conducted under this chapter;

(13) convene conferences of authorities and officials of organizations, including Federal, State, and local agencies, and nonprofit private organizations, of programs for children, youth and their families for the development and implementation of policies related to the priorities and purposes of this chapter, including topics such as the establishment of a nationwide network of comprehensive, coordinated services and opportunities for such individuals;

(14) conduct periodic evaluations of the programs and activities related to the purposes of this chapter; and

(15) develop, in coordination with other agencies, methods to ensure adequate training for personnel concerning children, youth and families and to ensure the adequate dissemination of such information to appropriate State and community agencies.

(b) Encouragement of volunteerism

In executing the duties and functions of the Administration under this subchapter and in

carrying out the programs and activities authorized under this chapter, the Commissioner, in consultation with the Chief Executive Officer of the Corporation for National and Community Service, shall take necessary steps to coordinate with and seek the advice of voluntary agencies and organizations that provide services related to the purposes of this chapter.

(Pub. L. 101-501, title IX, §916, Nov. 3, 1990, 104 Stat. 1263; Pub. L. 103-82, title IV, §405(o), Sept. 21, 1993, 107 Stat. 922.)

AMENDMENTS

1993—Subsec. (b). Pub. L. 103-82 substituted “the Chief Executive Officer of the Corporation for National and Community Service” for “the Director of the ACTION Agency”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Apr. 4, 1994, see section 406(b) of Pub. L. 103-82, set out as a note under section 8332 of Title 5, Government Organization and Employees.

§ 12313. Federal agency consultations

(a) In general

The Commissioner shall consult and cooperate with the heads of all appropriate Federal agencies or departments administering programs or services that are substantially related to the purposes of this chapter.

(b) Interagency agreements

To the extent practicable, the Commissioner shall facilitate cooperation through the entering into of interagency agreements.

(Pub. L. 101-501, title IX, §917, Nov. 3, 1990, 104 Stat. 1265.)

§ 12314. Federal Council on Children, Youth, and Families

(a) Establishment

There is established a Federal Council on Children, Youth, and Families.

(b) Number of members

The Council shall be composed of 18 members to be appointed in accordance with subsection (d) of this section.

(c) Term of membership

Each member of the Council shall serve for a 3-year term without regard to title 5.

(d) Appointment of members

(1) In general

The Council shall be composed of—

(A) six members who possess¹ such skills and qualifications so as to be representative of—

- (i) rural and urban populations; and
- (ii) national organizations with an interest in young individuals, families, early childhood development, elementary and secondary education, business, labor, minorities, and the general public;

(B) six members who are representatives of public, State or local agencies that serve

¹ So in original. Probably should be “possess”.

children, youth and their families and include representatives of child welfare and child mental health agencies; and

(C) six members who are cabinet-level representatives of Federal agencies that have responsibility for programs relating to children, youth and families.

(2) Age of members

At least one of the individuals appointed to the Council under paragraph (1)(A) shall be under the age of 21 at the time of such appointment.

(3) Appointing authority

Of the members of the Council who are appointed under paragraph (1)—

(A) six of the members described under subparagraphs (A) and (B) shall be appointed by the President pro tempore of the Senate on the recommendation of the Majority and Minority Leaders of the Senate;

(B) six of the members described under subparagraphs (A) and (B) shall be appointed by the Speaker of the House of Representatives on the recommendation of the Majority and Minority Leaders of the House of Representatives; and

(C) the members described under subparagraph (C) shall be appointed by the President.

(e) Vacancy

(1) Filling vacancy

A vacancy on the Council shall be filled in the same manner in which the original appointment was made.

(2) Powers of board²

A vacancy on the Council shall not affect the powers of the Council.

(3) Term of appointment

A member of the Council who is appointed to fill a vacancy occurring prior to the expiration of the term for which the predecessor of such member was appointed shall be appointed only for the remainder of such term.

(f) Reappointment

Each member of the Council shall be eligible for reappointment to the Council.

(g) Expiration of term

Each member of the Council may serve after the expiration of the term of membership until the successor of such member has taken office.

(h) Travel expenses

Each member of the Council, while serving on business of the Council away from the home or regular place of business of such member, may be allowed subsistence in the same manner as the expenses authorized by section 5703 of title 5 for individuals in the Government service employed intermittently.

(i) Chairperson

The President shall designate the Secretary of Health and Human Services to serve as the Chairperson of the Council. In the event that the Secretary chooses to designate the functions of

Chairperson under this subsection, such designation may only be made to the Commissioner.

(j) Meetings

Not less than once during each 6-month period, the Chairperson of the Council shall call a meeting of the Council.

(k) Duties of Council

The Council shall—

(1) advise and assist the President on matters relating to the special needs of young individuals;

(2) review, evaluate, and inventory on a continuing basis Federal policies, programs and other activities affecting young individuals that are conducted or assisted by all Federal departments and agencies for the purpose of appraising the value and the impact on such policies, programs, and activities on the lives of young individuals, and of identifying duplication of services for young individuals and the families of such individuals;

(3) make recommendations to the President, the Secretary, the Commissioner, the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate concerning changes in such policies and programs that can streamline services, reduce duplication of services and encourage the coordination of services provided to young individuals and the families of such individuals at the State and local level;

(4) provide public forums, including public hearings, conferences, workshops, and other meetings, for discussing and publicizing the problems and needs of young individuals and obtaining information relating to such individuals;

(6)³ identify program regulations, practices, and eligibility requirements that impede coordination and collaboration and make recommendations for their modifications or elimination; and

(7) develop recommendations for creating jointly funded programs, unified assessments, eligibility, and application procedures, and confidentiality protections that facilitate information sharing.

(l) Staff

The Chairperson shall appoint staff personnel to assist the Chairperson in carrying out the duties required under subsection (k) of this section.

(m) Information and assistance

The head of each Federal department and agency shall make available to the Chairperson such information and other assistance as the Chairperson may require to carry out the duties required under subsection (k) of this section.

(n) Reports

(1) Submission to the President

In fiscal year 1992 and each fiscal year thereafter, the Chairperson shall prepare and submit—

(A) interim reports as the Chairperson considers to be appropriate; and

² So in original. Probably should be "Council".

³ So in original. No par. (5) has been enacted.

(B) an annual report of the findings and recommendations of the Council concerning the matters described in paragraphs (2) and (3) of subsection (k) of this section;

to the President not later than March 31 of each year.

(2) Review and submission to Congress

(A) Comments and recommendations

The President may make comments and recommendations concerning reports submitted under paragraph (1).

(B) Submission to Congress

The President shall submit such comments, recommendations, and reports to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate.

(o) Authorization of appropriation

There are authorized to be appropriated to carry out this section \$200,000 for each of the fiscal years 1995 through 1998.

(p) Termination

The Council shall terminate on September 30, 1998.

(Pub. L. 101-501, title IX, §918, Nov. 3, 1990, 104 Stat. 1265; Pub. L. 103-252, title IV, §402(a), May 18, 1994, 108 Stat. 672.)

AMENDMENTS

1994—Subsec. (k)(6), (7). Pub. L. 103-252, §402(a)(1), added pars. (6) and (7).

Subsec. (o). Pub. L. 103-252, §402(a)(2), substituted “1995 through 1998” for “1991 through 1994”.

Subsec. (p). Pub. L. 103-252, §402(a)(3), substituted “1998” for “1995”.

CHANGE OF NAME

Committee on Education and Labor of House of Representatives treated as referring to Committee on Economic and Educational Opportunities of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Economic and Educational Opportunities of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Fifth Congress, Jan. 7, 1997.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which a report required under subsec. (n)(2)(B) of this section is listed as the last item on page 18), see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12302 of this title.

§ 12315. Administration

(a) Duties of Commissioner

In carrying out this subchapter, the Commissioner is authorized to—

(1) provide consultative services, technical assistance, and short-term training to the independent State bodies;

(2) conduct research and demonstrations;

(3) collect, prepare, publish, and disseminate special educational or informational materials, including reports of the projects for which funds are provided under this subchapter;

(4) provide staff and other technical assistance to the Council;

(5) evaluate the effectiveness of programs authorized under this subchapter and periodically publish analyses of the results of such evaluations; and

(6) not later than 180 days after the end of each fiscal year, prepare and submit, to the President and the chairman of the Committee on Education and Labor of the House of Representatives and the chairman of the Committee on Labor and Human Resources of the Senate, a report concerning the activities carried out under this subchapter and concerning such other activities as the Secretary determines appropriate.

(b) Utilization of services and facilities

(1) In general

Subject to agreements made between the Commissioner and the head of such agency or organization, in carrying out the duties referred to in subsection (a) of this section the Commissioner may utilize the services and facilities of any agency of the Federal Government and of any other public or nonprofit agency or organizations.¹

(2) Payment

The Commissioner may pay for such services and facilities, in advance or by way of reimbursement, as may be provided in such agreement.

(c) Reservation of funds

Of the aggregate amount appropriated to carry out this chapter in any fiscal year, the Secretary may reserve not more than 10 percent for salaries and expenses of the Administration on Children, Youth, and Families related to the administration of this chapter.

(Pub. L. 101-501, title IX, §919, Nov. 3, 1990, 104 Stat. 1267.)

CHANGE OF NAME

Committee on Education and Labor of House of Representatives treated as referring to Committee on Economic and Educational Opportunities of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Economic and Educational Opportunities of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Fifth Congress, Jan. 7, 1997.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12340 of this title.

PART B—GRANTS FOR STATE AND COMMUNITY PROGRAMS FOR CHILDREN, YOUTH, AND FAMILIES

§ 12331. Purpose

It is the purpose of this part to encourage and assist State and local agencies to coordinate re-

¹ So in original. Probably should be “organization.”

sources, reduce barriers to services, and develop new capacities to ensure that State and community services designed to serve children, youth, and families are more effective and comprehensive.

(Pub. L. 101-501, title IX, §925, Nov. 3, 1990, 104 Stat. 1268.)

§ 12332. Definitions

As used in this part:

(1) Community referral services

The term “community referral services” means services to assist families in obtaining community resources, including health care, mental health care, employability development and job training, and other social services.

(2) Core services

The term “core services” means—

(A) educational and support services provided to assist parents in acquiring parenting skills, learning about child development, and responding appropriately to the behavior of their children; and

(B) the early developmental screening of children to assess any needs of such children and to identify specific types of support that may be provided;

(C) outreach services;

(D) community referral services; and

(E) follow up services.

(3) Follow up services

The term “follow up services” means services provided to ensure that necessary services are received by families and are effective in meeting their needs.

(4) Independent State body

The term “independent State body” means the entity established under section 12336 of this title.

(5) Lead agency

The term “lead agency” means an existing State agency, or other public or nonprofit private entity designated by the chief executive officer of the State as the agency responsible for the development and implementation of local family resource and support programs. Such agency shall have demonstrated ability to work with other State and community based agencies, to provide training and technical assistance, and shall also have a commitment to parental participation in the design and administration of family resource and support programs.

(6) Other services

The term “other services” and “other support services” includes—

(A) child care, early childhood development and intervention programs;

(B) employability development services (including skill training);

(C) educational services, such as scholastic tutoring, literacy training, and General Educational Degree (GED) services;

(D) nutritional education;

(E) life management skills training;

(F) peer counseling and crisis intervention, family violence counseling and referrals for such services;

(G) referral for substance abuse counseling and treatment referral; and

(H) referral for primary health and mental health services.

(7) Outreach services

The term “outreach services” means services provided to ensure (through home visits or other methods) that parents are aware of and able to participate in family resource and support program activities.

(Pub. L. 101-501, title IX, §926, Nov. 3, 1990, 104 Stat. 1268.)

§ 12333. Establishment of programs

The Commissioner shall make grants—

(1) in each State under section 12337 of this title to improve State planning and coordination of services, and under section 12338 of this title to expand supportive services, in order to promote the availability of developmental, preventive, and remedial services to children, youth and their families that are designed to ensure—

(A) adequate and safe physical shelter whether in their own homes or, if necessary, in out-of-home programs;

(B) high quality physical and mental health care;

(C) the enhancement of the development of children to ensure that children enter school prepared and ready to learn;

(D) highest quality educational opportunity;

(E) effective training and apprenticeships to increase the likelihood of employment;

(F) opportunities for community service and productive employment, and for participation by children and youth in decisions affecting the lives of such children and youth; and

(G) a wide range of civic, cultural, and recreational activities that recognize young individuals as resources and promote self-esteem and a sense of community; and

(2) to States on a competitive basis under section 12339¹ of this title to establish family resource programs (including family support centers) in order to enhance the ability of families to remain together and to thrive through the provision of community based services that—

(A) promote and build family and parenting skills;

(B) promote and assist families in the use of formal and informal family support services;

(C) create a support network to strengthen and reinforce good parenting; and

(D) are closely linked with, but not duplicative of, other community resources.

(Pub. L. 101-501, title IX, §927, Nov. 3, 1990, 104 Stat. 1269.)

¹ See References in Text note below.

REFERENCES IN TEXT

Section 12339 of this title, referred to in par. (2), was repealed by Pub. L. 103-252, title IV, § 401(b)(1), May 18, 1994, 108 Stat. 672.

§ 12334. Administration**(a) In general**

The Commissioner shall administer programs under this part through the Administration on Children, Youth, and Families.

(b) Technical assistance

In carrying out this part, the Commissioner may request the technical assistance and cooperation of the Secretary of Education, the Secretary of Labor, the Attorney General, the Secretary of Housing and Urban Development, the Secretary of Transportation, the Director of the Office of Community Services, and such other agencies and departments of the Federal Government as may be appropriate.

(Pub. L. 101-501, title IX, § 928, Nov. 3, 1990, 104 Stat. 1269.)

§ 12335. State plan**(a) Submission of plan**

The chief executive officer of a State, in order to be eligible for grants from an allotment under section 12337, 12338, or 12339¹ of this title for any fiscal year, shall prepare and submit to the Commissioner a State plan for a 3-year period.

(b) Revisions of plan

Each chief executive officer of a State may make annual revisions of the State plan referred to in subsection (a) of this section.

(c) Content of plan

The chief executive officer of a State shall include within the State plan of that State assurances as required under sections² 12337, 12338, or 12339¹ of this title, and a description of the proposed multi-year plans of the State for program development and implementation.

(d) Type of application

A State may apply for funds under one or more of the following categories:

- (1) section 12337 of this title;
- (2) sections 12337 and 12338 of this title jointly; or
- (3) section 12339¹ of this title.

In the case of each category, the State application and plan shall comply only with the requirements of the appropriate section.

(e) Approval of plan**(1) In general**

The Commissioner shall approve any State plan under sections 12337 and 12338 of this title that the Commissioner determines meets the requirements of such sections.

(2) Notice and opportunity to correct deficiencies

The Commissioner shall not make a final determination disapproving any State plan,

modifying such plan, or declaring a State to be ineligible to receive funds under sections 12337 and 12338 of this title without previously affording such State reasonable notice and opportunity to correct deficiencies in its application.

(Pub. L. 101-501, title IX, § 929, Nov. 3, 1990, 104 Stat. 1270.)

REFERENCES IN TEXT

Section 12339 of this title, referred to in subsecs. (a), (c), and (d)(3), was repealed by Pub. L. 103-252, title IV, § 401(b)(1), May 18, 1994, 108 Stat. 672.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12340 of this title.

§ 12336. Independent State body**(a) Designation**

A State shall not be eligible to receive a grant from an allotment under section 12337 or 12338 of this title unless—

(1) the chief executive officer of such State designates an independent State body that is composed of—

(A) cabinet level representatives from each agency of such State that has responsibilities for programs affecting young individuals who shall comprise a majority of the independent State body; and

(B) individuals appointed from among—

(i) private nonprofit providers of services to young individuals;

(ii) advocacy and citizens groups concerned with young individuals;

(iii) committees of the legislature of such State that have responsibility for young individuals;

(iv) leaders who are young individuals, including such leaders who are recipients of services provided under this subchapter;

(v) representatives of the business community;

(vi) representatives of employees of providers of services to young individuals;

(vii) representatives of general purpose local government; and

(viii) such staff as shall be necessary to—

(I) develop a State plan to be submitted to the Commissioner for approval under section 12337 of this title;

(II) administer and monitor the State plan within such State;

(III) assist in the coordination of all State activities related to the purpose of the chapter;

(IV) serve as an effective and visible advocate for young individuals by reviewing and commenting on all State plans, budgets, and policies that affect such individuals and the families of such individuals by providing technical assistance to any agency, organization, association, or individual representing the needs of young individuals; and

(2) the independent State body designated under paragraph (1)—

(A) develops a system for the distribution within the State of funds received under sec-

¹ See References in Text note below.

² So in original. Probably should be "section".

tions 12337 and 12338 of this title by the chief executive officer;

(B) submits a description of such system to the Commissioner for review and comment; and

(C) ensures that preference will be given in such distribution of funds to developing or supporting local service delivery systems that—

(i) provide a range of services organized to tailor responses to needs rather than a predetermined array of services;

(ii) are rooted in and part of the communities that such systems are designed to serve as measured by the degree to which public and private community leaders and young individuals participate in the planning of such systems; and

(iii) demonstrate an ability to develop systematic collaboration among service providers on behalf of children, youth and families, including joint planning, joint financing, joint service delivery, common intake and assessment, and other arrangements that promote more effective service systems for such individuals.

(b) Existing entity

The Commissioner may approve a State plan in which the chief executive officer of the State designates as the independent State body an existing State entity that is comprised of the parties described in subsection (a) of this section and that is authorized to conduct the same range of interagency planning and coordination activities.

(Pub. L. 101-501, title IX, §930, Nov. 3, 1990, 104 Stat. 1270.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12332, 12338 of this title.

§ 12337. State coordination of services

(a) Authority

The Commissioner shall make grants under this section to States on a formula basis for the purpose of improving the coordination of services provided to children, youth, and families.

(b) Application

To be eligible to receive a grant under this section, the chief executive officer of a State shall prepare and submit to the Commissioner an application containing a plan providing assurances that—

(1) the independent State body is committed to interagency planning that results in state-wide policies promoting systematic collaboration among agencies on behalf of young individuals as demonstrated by joint planning, joint financing, joint service delivery, common intake and assessment, and other arrangements that reduce barriers to services and promote more effective local service delivery systems for young individuals;

(2) such plan will be based on needs as identified through an analysis of updated reports (such as "State of the Child" reports) prepared by the State, including detailed information gathered by the State, to the extent prac-

ticable, on young individuals and the families of such individuals concerning—

(A) age, sex, race, and ethnicity;

(B) the residences of such individuals;

(C) the incidence of homelessness among such individuals;

(D) the composition of families of such individuals;

(E) the economic situations of such individuals;

(F) the incidence of poverty among such individuals;

(G) experiences in the care of such individuals away from home;

(H) the health of such individuals;

(I) violence in the homes or communities of such individuals;

(J) the nature of the attachment of such individuals to school and work;

(K) dropout rates of such individuals from school; and

(L) the character of the communities in which such individuals reside;

(3) the system to be used for the distribution of funds within the State will require that—

(A) each area have an equal opportunity to apply for or receive funds under this part; and

(B) the public be given an opportunity to express views concerning the development and administration of such plan;

(4) the independent State body will provide an inventory of existing public and private services for children, youth and their families and will evaluate the need for supportive services within the State to address the purposes of this chapter and determine the extent to which existing public and private programs meet such need;

(5) the independent State body will make such reports, in such form, and containing such information, as the Commissioner may require;

(6) such fiscal control and fund accounting procedures will be adopted as may be necessary to ensure proper disbursement of, and accounting for, Federal funds paid under this part to the chief executive officer of the State, including any such funds paid to the recipients of a grant or contract;

(7) the independent State body will conduct periodic evaluations of activities and projects carried out pursuant to this section and section 12338 of this title and will report the results and recommendations to the chief executive officer of the State and the State legislature;

(8) the chief executive officer of the State will provide technical assistance or in-service training opportunities for personnel responsible for carrying out the purposes of this section and section 12338 of this title; and

(9) the chief executive officer of each State will provide for the implementation of the requirements of section 12338 of this title, relating to supportive services.

(c) Use of grants to States

Notwithstanding section 12340(g) of this title, the amounts made available to each State under

section 12340(a) of this title may be used to make grants to a State to enable such State to pay such percentages as the independent State body of such State determines to be appropriate, of the cost of administering the State plan of such State including—

- (1) the costs of the preparation of such plan and the provision of technical assistance to local areas;
- (2) the costs of the evaluation of activities carried out under such plan;
- (3) the costs of the collection of data and the carrying out of analyses related to the need for supportive services within the State;
- (4) the costs of the dissemination of information obtained under paragraph (3); and
- (5) the costs of the provision of short-term training to personnel of public or nonprofit private agencies and organizations engaged in the operation of programs authorized by this part.

(e)¹ Supplement not supplant

Amounts received by a State under this section and section 12338 of this title shall be used only to supplement, not to supplant, the amount of Federal, State, and local funds expended for the purposes for which grants are made under this section and section 12338 of this title. In no event shall such expenditures be used to satisfy the matching requirements of any other Federal program.

(f) Relationship to family resource and support program grants

If a State intends to apply for a grant under section 12339² of this title to be used for the same calendar year as the grant under this section, such State shall include in the application for a grant under this section a description of plans for family resource and support programs and for the coordination of the use of all funds received under this part.

(Pub. L. 101-501, title IX, §931, Nov. 3, 1990, 104 Stat. 1271.)

REFERENCES IN TEXT

Section 12339 of this title, referred to in subsec. (f), was repealed by Pub. L. 103-252, title IV, §401(b)(1), May 18, 1994, 108 Stat. 672.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12333, 12335, 12336, 12338, 12340 of this title.

§ 12338. Supportive services

(a) Authority

The Commissioner shall carry out a program for making grants to a State, that has designated an independent State body under section 12336 of this title and provided for coordinated services under section 12337 of this title, for distribution by the chief executive officer under a State plan approved under section 12337 of this title to demonstrate successful program approaches to fill service gaps identified through State planning and advocacy efforts for any of the areas specified in paragraph (2).

¹ So in original. No subsec. (d) has been enacted.
² See References in Text note below.

(b) Eligible services

The services eligible to be provided under subsection (a) of this section are services—

- (1) that are designed to facilitate the provision of comprehensive community based services that are efficient, coordinated, and readily available through such activities as case planning, case management, intake and assessment, and information and referral; and
- (2) that serve any of the following purposes—
 - (A) provide adequate and safe physical shelter to young individuals and the families of such individuals, especially in emergency circumstances;
 - (B) provide transitional living services to young individuals who are homeless;
 - (C) enable young individuals to attain and maintain physical and mental well-being;
 - (D) provide health screening to detect or prevent illnesses, or both, that occur most frequently in young individuals as well as better treatment and counseling;
 - (E) enhance the development of children to ensure that such children enter school prepared and ready to learn;
 - (F) promote the highest quality of educational opportunity, especially through drop-out prevention programs, remediation for young individuals who have dropped out of school, and vocational education;
 - (G) provide effective training apprenticeships and employment opportunities;
 - (H) promote participation in community service and civic, cultural, and recreational activities that value young individuals as resources and promote self-esteem and a stake in the community;
 - (I) promote the participation of young individuals in decisions concerning planning and managing the lives of such individuals;
 - (J) encourage young individuals and the families of such individuals to use any community facilities and services that are available to such individuals;
 - (K) ensure that young individuals who are unable to live with the biological families of such individuals have a safe place to live until such individuals can return home or move into independent adult life; and
 - (L) prevent the abuse, neglect, or exploitation of young individuals.

(Pub. L. 101-501, title IX, §932, Nov. 3, 1990, 104 Stat. 1273.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12333, 12335, 12336, 12337, 12340 of this title.

§ 12339. Repealed. Pub. L. 103-252, title IV, § 401(b)(1), May 18, 1994, 108 Stat. 672

Section, Pub. L. 101-501, title IX, §933, Nov. 3, 1990, 104 Stat. 1274, related to grants to States for purpose of implementing family resource and support programs.

§ 12340. Authorization of appropriation and allotment

(a) Administration on Children, Youth, and Families; State coordination; supportive services

(1) Authorization of appropriations

There are authorized to be appropriated to carry out sections 12337 and 12338 of this title

such sums as may be necessary for each of the fiscal years 1995 through 1998.

(2) Availability of appropriation

Of the amount appropriated under paragraph (1) for any fiscal year—

(A) not more than 10 percent shall be available to carry out section 12315 of this title; and

(B) not less than 90 percent shall be available to carry out sections 12337 and 12338 of this title.

(3) Allotment formula

Except as provided in paragraph (4), from the amount available under paragraph (2)(B) for each fiscal year, a State shall be allotted an amount that bears the same ratio to the amount appropriated for such fiscal year as the population of the State that is under the age of 21 bears to the population of all States that is under the age of 21.

(4) Exceptions

(A) In general

Except as provided in subparagraph (B) and subject to the availability of appropriations under paragraph (1), no State shall be allotted less than \$300,000 under the formula established under paragraph (3).

(B) Limitation on allotment

Notwithstanding subparagraph (A), Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands shall each be allotted not less than \$75,000 under the formula established under paragraph (2).

(b) Determination of age

The number of individuals under the age of 21 in each State shall be determined by the Commissioner on the basis of the most recent data available to the Commissioner.

(c) Transfer of allotted funds

Whenever the Commissioner determines that—

(1) any amount allotted to a State for a fiscal year under section 12337 or 12338 of this title will not be used by such State for carrying out the purpose for which such allotment was made; or

(2) a State has failed to qualify under the State plan required under section 12335 of this title;

the Commissioner shall make such allotment available for carrying out such purposes to other participating States in a proportional manner based on the relative population of the State of individuals under the age of 21.

(d) Repealed. Pub. L. 103-252, title IV, § 402(b)(2), May 18, 1994, 108 Stat. 673

(e) Limitation

A State shall not use in excess of 10 percent of a grant awarded under section 12338 or 12339¹ of this title for administrative activities at the State level.

(f) Grants for Indians

The Commissioner shall use 1 percent of the amount appropriated under this section for each

fiscal year to make allotments to Indian tribes and tribal organizations (such terms having the same meaning given to such terms in section 450b(b) and (c)¹ of title 25) that submit to the Commissioner a plan that meets criteria consistent with the provisions of this part and that comply with other requirements established by the Commissioner.

(g) Limitation

Grants made under this subchapter may be used to pay not more than 80 percent of the cost of—

(1) the preparation, administration, and evaluation of State plans under section 12337 of this title;

(2) the development of comprehensive, efficient, coordinated supportive services under section 12338 of this title; and

(3) the development, expansion, and operation of local family support and resource programs under section 12339¹ of this title.

The remaining 20 percent of such cost shall be paid by the State with funds from non-Federal sources.

(Pub. L. 101-501, title IX, §934, Nov. 3, 1990, 104 Stat. 1277; Pub. L. 103-252, title IV, §402(b), May 18, 1994, 108 Stat. 673.)

REFERENCES IN TEXT

Section 12339 of this title, referred to in subsecs. (e) and (g)(3), was repealed by Pub. L. 103-252, title IV, §401(b)(1), May 18, 1994, 108 Stat. 672.

Section 450b of title 25, referred to in subsec. (f), has been amended, and subsecs. (b) and (c) of section 450b no longer define the terms "Indian tribe" and "tribal organization". However, such terms are defined elsewhere in that section.

AMENDMENTS

1994—Subsec. (a)(1). Pub. L. 103-252, §402(b)(1), amended par. (1) generally. Prior to amendment, text read as follows: "There are authorized to be appropriated to carry out sections 12315, 12337, and 12338 of this title, \$30,000,000 for fiscal year 1991 and such sums as may be necessary for fiscal years 1992, 1993, and 1994. Funds appropriated under this paragraph shall remain available for expenditure in the fiscal year succeeding the fiscal year for which such funds are appropriated."

Subsec. (d). Pub. L. 103-252, §402(b)(2), struck out heading and text of subsec. (d). Text read as follows: "There are authorized to be appropriated to carry out section 12339 of this title, \$30,000,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 through 1994."

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12337 of this title.

PART C—NATIONAL CLEARINGHOUSE

§ 12351. Findings and purpose

(a) Findings

Congress finds that—

(1) fundamental changes in the demographics and economics of family life in the

¹ See References in Text note below.

United States over the past 20 years have had a profound effect on children and their parents;

(2) since 1966, the number of women working outside the home has increased by 92 percent and the number of two earner families has increased by over 50 percent;

(3) 61 percent of the children born today will live in a single-parent family before reaching the age of 20, with one out of every three single female heads of households living on income below the Federal poverty level;

(4) one out of every four children under the age of 6 in the United States currently lives below the Federal poverty level;

(5) over the past 10 years, parents have increasingly come together with other parents to organize family resource and support programs that promote healthy child development and increase parental competency, particularly families at risk; and

(6) Federal investment in promoting the development of family resource and support programs will reap long-term benefits for individual families and the nation as a whole.

(b) Purpose

It is the purpose of this part¹ to—

(1) stimulate the development and expansion of family resource and support programs that are prevention oriented;

(2) encourage early intervention of such programs with families to ameliorate problem situations before such situations become crises; and

(3) assist parents in enhancing their children's development to ensure that their children enter school prepared and ready to learn.

(Pub. L. 101-501, title IX, §956, Nov. 3, 1990, 104 Stat. 1278.)

REFERENCES IN TEXT

This part, referred to in subsec. (b), was in the original "this Act", and was translated as reading "this chapter", meaning chapter 3 (§§955-960) of subtitle A of title IX of Pub. L. 101-501, known as the Family Resources Act, to reflect the probable intent of Congress.

§ 12352. "Family resource and support programs" defined

As used in this part, the term "family resource and support programs" means community-based services that offer sustained assistance to families at various stages in their development. Such services shall promote parental competencies and behaviors that will lead to the healthy and positive personal development of parents and children through—

(1) the provision of assistance to build family skills and assist parents in improving their capacities to be supportive and nurturing parents;

(2) the provision of assistance to families to enable such families to use other formal and informal resources and opportunities for assistance that are available within the communities of such families; and

(3) the creation of supportive networks to enhance the childrearing capacity of parents

¹ See References in Text note below.

and assist in compensating for the increased social isolation and vulnerability of families.

(Pub. L. 101-501, title IX, §957, Nov. 3, 1990, 104 Stat. 1278.)

§ 12353. Establishment of National Center on Family Resource and Support Programs

(a) Establishment

The Commissioner shall establish, through grant or contract, a national center for the collection and provision of programmatic information and technical assistance that relates to all types of family resource and support programs, to be known as the "National Center on Family Resource and Support Programs".

(b) Functions

The national center established under subsection (a) of this section shall serve as a national information and data clearinghouse, training, technical assistance, and material development source for family resource and support programs. Such center shall—

(1) develop and maintain a system for disseminating information on all types of family resource and support programs and on the state of family resource and support program development, including information concerning the most effective model programs;

(2) develop and sponsor a variety of training institutes and curricula for family resource and support program staff;

(3) identify several programs representing the various types of family resource and support programs to develop technical assistance materials and activities to assist other agencies in establishing family resource and support programs; and

(4) develop State-wide networks of family resource and support programs for the purpose of sharing and disseminating information.

(Pub. L. 101-501, title IX, §958, Nov. 3, 1990, 104 Stat. 1279; Pub. L. 103-252, title IV, §403(a), May 18, 1994, 108 Stat. 673.)

AMENDMENTS

1994—Subsec. (b)(3). Pub. L. 103-252 substituted "several programs" for "several model programs".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12355 of this title.

§ 12354. Evaluation

The Commissioner shall, through grants or contracts awarded or entered into with independent auditors, conduct evaluations and related activities, of family resource and support programs, including—

(1) evaluations of on-going programs;

(2) process evaluations focusing on implementation strategies; and

(3) the development of simple evaluation models for use by local family resource and support programs.

(Pub. L. 101-501, title IX, §959, Nov. 3, 1990, 104 Stat. 1279.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12355 of this title.

§ 12355. Authorization of appropriations

(a) Establishment of Center

To carry out section 12353 of this title, there are authorized to be appropriated \$2,000,000 for each of the fiscal years 1995 through 1998.

(b) Evaluation

To carry out section 12354 of this title, there are authorized to be appropriated \$1,000,000 for fiscal year 1995, and such sums as may be necessary for each of the fiscal years 1996 through 1998.

(Pub. L. 101-501, title IX, §960, Nov. 3, 1990, 104 Stat. 1279; Pub. L. 103-252, title IV, §403(b), May 18, 1994, 108 Stat. 673.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-252, §403(b)(1), substituted “\$2,000,000 for each of the fiscal years 1995 through 1998” for “\$2,300,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 through 1994”.

Subsec. (b). Pub. L. 103-252, §403(b)(2), substituted “\$1,000,000 for fiscal year 1995, and such sums as may be necessary for each of the fiscal years 1996 through 1998” for “\$700,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 through 1994”.

SUBCHAPTER II—WHITE HOUSE CONFERENCE ON CHILDREN, YOUTH, AND FAMILIES

§ 12371. Findings

(a) Findings

The Congress finds that—

(1) children and youth are inherently our most valuable resource and their welfare, protection, healthy development, and positive role in society are essential to the Nation;

(2) children and youth deserve love, respect, and guidance, as well as good health, shelter, food, education, productive work, and preparation for responsible participation in community life;

(3) an increasing opportunity for children and youth to participate in the decisions that affect their lives is essential;

(4) the family is the primary caregiver and the source of social learning which must be supported and strengthened, but when families are unable to ensure the satisfaction of the needs of children and youth, it is society’s responsibility to assist them;

(5) at a minimum, all children and youth need and deserve access to—

(A) the best possible physical and mental health;

(B) adequate and safe physical shelter;

(C) the highest quality of educational opportunity;

(D) effective training, apprenticeships, opportunities for community service, and productive employment;

(E) the widest range of civic, cultural, and recreational activities which recognize young Americans as resources and promote self-esteem and a stake in their communities;

(F) comprehensive community services which are efficient, coordinated, and readily available; and

(G) genuine participation in decisions concerning the planning and managing of their lives; and

(6) there is a great need for a comprehensive national policy with respect to young individuals, designed to engage Federal, State, and local government agencies, youth organizations, and other voluntary organizations.

(b) Statement of policy

It is the policy of the Congress that the Federal Government should work jointly with the States and their citizens to develop recommendations and plans for action to meet the challenge and needs of young individuals.

(Pub. L. 101-501, title IX, §982, Nov. 3, 1990, 104 Stat. 1280.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12372 of this title.

§ 12372. Authority of President and Secretary; final report

(a) Calling of Conference

The President shall call a White House Conference on Children, Youth, and Families in 1993 in order to develop recommendations for further action in the field of children, youth, and families which will further the policy set forth in section 12371(b) of this title. The Conference shall be planned and conducted under the direction of the Secretary in cooperation with the Commissioner and with the heads of such other Federal departments and agencies as are appropriate. Such assistance may include the assignment of personnel.

(b) Purposes of Conference

The purposes of the Conference shall be—

(1) to increase the public awareness of the value and needs of young individuals;

(2) to examine the well-being of young individuals as well as the problems which they face;

(3) to describe the extent to which young individuals with identified needs do not receive services to meet such needs;

(4) to determine the reasons why young individuals are not receiving needed services; and

(5) to develop such specific and comprehensive recommendations for executive and legislative action as may be appropriate to improve the well-being of youth and their families.

(c) Conference participants and delegates

(1) Participants

In order to carry out the purposes of the Conference, the Conference shall bring together—

(A) representatives of Federal, State, and local governments, including representatives of the General Accounting Office;

(B) professionals who are working in the field of children, youth, and families; and

(C) representatives of the general public, particularly young individuals.

(2) Selection of delegates

The delegates to attend the Conference shall be selected without regard to political affili-

ation or past partisan activity and shall, to the best of the appointing authority's ability, be representative of the spectrum of thought in the field of children, youth, and families.

(Pub. L. 101-501, title IX, §983, Nov. 3, 1990, 104 Stat. 1280.)

§ 12373. Conference administration

(a) Administration

For purposes of carrying out this subchapter, the Secretary shall—

(1) request the cooperation and assistance of the heads of such other Federal departments and agencies as may be appropriate;

(2) furnish all reasonable assistance to State agencies administering programs related to children, youth and families, and to other appropriate organizations, to enable them to organize and conduct conferences in conjunction with the Conference;

(3) prepare and make available for public comment a proposed agenda for the Conference which reflects, to the greatest extent possible, the major issues facing children, youth, and families consistent with subsection (a) of this section;

(4) prepare and make available background materials which the Secretary deems necessary for the use of delegates to the Conference; and

(5) engage such additional personnel as may be necessary to carry out this section without regard to provisions of title 5 governing appointments in the competitive service, and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(b) Duties

The Secretary shall, in carrying out the Secretary's responsibilities and functions under this section, ensure that—

(1) the conferences under subsection (a)(2) of this section will be conducted so as to ensure broad participation of young individuals;

(2) the proposed agenda for the Conference under subsection (a)(3) of this section is published in the Federal Register not less than 180 days before the beginning of the Conference and the proposed agenda is open for public comment for a period of not less than 60 days;

(3) the final agenda for the Conference, taking into consideration the comments received under paragraph (2), is published in the Federal Register and transmitted to the chief executive officers of the States not later than 30 days after the close of the public comment period provided for under paragraph (2);

(4) the personnel engaged under subsection (a)(5) of this section shall be fairly balanced in terms of points of views represented and shall be appointed without regard to political affiliation or previous partisan activities;

(5) the recommendations of the Conference are not inappropriately influenced by any appointing authority or by any special interest, but will instead be the result of the independent judgment of the Conference; and

(6) to the extent practicable, current and adequate statistical data (including decennial

census data) and other information on the well-being of young individuals in the United States are readily available, in advance of the Conference, to the delegates of the Conference, together with such information as may be necessary to evaluate Federal programs and policies relating to children and youth. In carrying out this subparagraph, the Secretary may make grants to, and enter into contracts with, public agencies and nonprofit private organizations.

(Pub. L. 101-501, title IX, §984, Nov. 3, 1990, 104 Stat. 1281.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (a)(5), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

§ 12374. Conference committees

(a) Advisory committee

The Secretary shall establish an advisory committee to the Conference which shall include representatives from the Federal Council on Children, Youth, and Families, public agencies and nonprofit private organizations as appropriate.

(b) Other committees

The Secretary may establish such other committees, including technical committees, as may be necessary to assist in the planning, conducting, and reviewing of the Conference.

(c) Composition of committees

Each committee established under this section shall be composed of professionals and public members, and shall include individuals from low-income families and from minority groups.

(d) Compensation

Members of any committee established under this section (other than any officers or employees of the Federal Government), while attending conferences or meetings of the committee or otherwise serving at the request of the Secretary, shall be entitled to receive compensation at a rate to be fixed by the Secretary, but not to exceed the daily rate payable for GS-18 of the General Schedule under section 5332 of title 5 (including travel time). While away from their homes or regular places of business, such members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized under section 5703 of such title for persons employed intermittently in Federal Government service.

(Pub. L. 101-501, title IX, §985, Nov. 3, 1990, 104 Stat. 1282.)

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

§ 12375. Report of Conference

(a) Proposed report

A proposed report of the Conference which shall include a statement of comprehensive coherent national policy on children, youth, and families together with recommendations for the implementation of such policy, shall be published and submitted to the chief executive officers of the States not later than 180 days following the date on which the Conference is adjourned. The findings and recommendations included in the published proposed report shall be available immediately to the public.

(b) Response to proposed report

The chief executive officers of the States, after reviewing and soliciting recommendations and comments on the proposed report of the Conference, shall submit to the Secretary, not later than 180 days after receiving such report, their views and findings on the recommendations of the Conference.

(c) Final report

Not later than 180 days after submission of the views and comments of the chief executive officers of the States, the Secretary shall—

(1) prepare a final report on the conference, which shall include—

(A) a statement of the policy and recommendations of the Conference;

(B) the views and comments of the chief executive officers of the States; and

(C) the recommendations of the Secretary, after taking into consideration the views and comments of such officers, for administrative and legislative action necessary to implement the recommendations of the Conference; and

(2) publish and transmit such report to the President and the chairman of the Committee on Education and Labor of the House of Representatives and chairman of the Committee on Labor and Human Resources of the Senate.

(Pub. L. 101-501, title IX, § 986, Nov. 3, 1990, 104 Stat. 1282.)

CHANGE OF NAME

Committee on Education and Labor of House of Representatives treated as referring to Committee on Economic and Educational Opportunities of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Economic and Educational Opportunities of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Fifth Congress, Jan. 7, 1997.

§ 12376. Definitions

For purposes of this subchapter—

(1) the term “Conference” means the 1993 White House Conference on Children, Youth, and Families; and

(2) the terms “child”, “youth”, and “young individual” means¹ an individual who is less than 21 years of age.

(Pub. L. 101-501, title IX, § 987, Nov. 3, 1990, 104 Stat. 1283.)

§ 12377. Authorization of appropriations

(a) Authorization

There are authorized to be appropriated such sums as may be necessary, for each of the fiscal years 1993 and 1994, to carry out this subchapter. Sums appropriated under this subsection shall remain available until the expiration of the 1-year period beginning on the date the Conference is adjourned. New spending authority or authority to enter into contracts as provided in this subchapter shall be effective only to the extent and in such amounts as are provided in advance in appropriations Acts.

(b) Return of unexpended funds

Any funds remaining upon the expiration of the 1-year period referred to in subsection (a) of this section shall be returned to the Treasury of the United States and credited as miscellaneous receipts.

(Pub. L. 101-501, title IX, § 988, Nov. 3, 1990, 104 Stat. 1283.)

CHAPTER 128—HYDROGEN RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAM

Sec.	
12401.	Finding, purposes, and definitions. <ul style="list-style-type: none"> (a) Finding. (b) Purposes. (c) Definitions.
12402.	Report to Congress.
12403.	Hydrogen research and development. <ul style="list-style-type: none"> (a) Program. (b) Research. (c) Innovative energy technologies. (d) Renewable energy systems; hybrid systems. (e) Information. (f) Federal funding. (g) Non-Federal funding. (h) Prohibition on duplicative efforts. (i) Federal funding consistent with the Agreement on Subsidies and Countervailing Measures.
12404.	Demonstrations. <ul style="list-style-type: none"> (a) Requirement. (b) Small-scale demonstrations. (c) Non-Federal funding.
12405.	Technology transfer program. <ul style="list-style-type: none"> (a) Program. (b) Information.
12406.	Coordination and consultation. <ul style="list-style-type: none"> (a) Secretary's responsibility. (b) Assistance. (c) Consultation.
12407.	Technical panel. <ul style="list-style-type: none"> (a) Establishment. (b) Membership. (c) Cooperation. (d) Review. (e) Support.
12408.	Authorization of appropriations.

¹ So in original. Probably should be “mean”.

§ 12401. Finding, purposes, and definitions

(a) Finding

Congress finds that it is in the national interest to accelerate efforts to develop a domestic capability to economically produce hydrogen in quantities that will make a significant contribution toward reducing the Nation's dependence on conventional fuels.

(b) Purposes

The purposes of this chapter are—

(1) to direct the Secretary of Energy to conduct a research, development, and demonstration program leading to the production, storage, transport, and use of hydrogen for industrial, residential, transportation, and utility applications;

(2) to direct the Secretary to develop a technology assessment and information transfer program among the Federal agencies and aerospace, transportation, energy, and other entities; and

(3) to develop renewable energy resources as a primary source of energy for the production of hydrogen.

(c) Definitions

As used in this chapter, the term:

(1) “critical technology” (or “critical technical issue”) means a technology (or issue) that, in the opinion of the Secretary, requires understanding and development in order to take the next needed step in the development of hydrogen as an economic fuel or storage medium;

(2) “Department” means the Department of Energy; and

(3) “Secretary” means the Secretary of Energy.

(Pub. L. 101–566, §102, Nov. 15, 1990, 104 Stat. 2797; Pub. L. 104–271, title I, §101, Oct. 9, 1996, 110 Stat. 3304.)

AMENDMENTS

1996—Subsec. (b)(1). Pub. L. 104–271, §101(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “to direct the Secretary to prepare a comprehensive 5-year comprehensive program management plan that will identify and resolve critical technical issues necessary for the realization of a domestic capability to produce, distribute, and use hydrogen economically within the shortest time practicable;”

Subsec. (c). Pub. L. 104–271, §101(b), added par. (2) and redesignated former par. (2) as (3).

SHORT TITLE OF 1996 AMENDMENT

Section 1 of Pub. L. 104–271 provided that: “This Act [enacting section 7238 of this title, amending this section and sections 12402 to 12405, 12407, 12408, and 13436 of this title, and enacting provisions set out as notes under sections 7238, 12403, and 13436 of this title] may be cited as the ‘Hydrogen Future Act of 1996’.”

SHORT TITLE

Section 101 of Pub. L. 101–566 provided that: “This Act [enacting this chapter] may be referred to as the ‘Spark M. Matsunaga Hydrogen Research, Development, and Demonstration Act of 1990’.”

§ 12402. Report to Congress

(a) Not later than January 1, 1999, the Secretary shall transmit to Congress a detailed re-

port on the status and progress of the programs authorized under this chapter.

(b) A report under subsection (a) of this section shall include, in addition to any views and recommendations of the Secretary—

(1) an analysis of the effectiveness of the programs authorized under this chapter, to be prepared and submitted to the Secretary by the Hydrogen Technical Advisory Panel established under section 12407 of this title; and

(2) recommendations of the Hydrogen Technical Advisory Panel for any improvements in the program that are needed, including recommendations for additional legislation.

(Pub. L. 101–566, §103, Nov. 15, 1990, 104 Stat. 2797; Pub. L. 104–271, title I, §102(a), Oct. 9, 1996, 110 Stat. 3304.)

AMENDMENTS

1996—Pub. L. 104–271 amended section generally, substituting provisions requiring report to Congress on chapter programs by Jan. 1, 1999, for provisions regarding preparation and contents of comprehensive 5-year program management plan for research and development activities and comprehensive large-scale hydrogen demonstration plan with respect to section 12404 demonstrations.

§ 12403. Hydrogen research and development

(a) Program

The Secretary shall conduct a hydrogen research and development program relating to production, storage, transportation, and use of hydrogen, with the goal of enabling the private sector to demonstrate the technical feasibility of using hydrogen for industrial, residential, transportation, and utility applications.

(b) Research

In conducting the program authorized by this section, the Secretary shall—

(1) give particular attention to developing an understanding and resolution of critical technical issues preventing the introduction of hydrogen into the marketplace;

(2) initiate or accelerate existing research in critical technical issues that will contribute to the development of more economic hydrogen production and use, including, but not limited to, critical technical issues with respect to production (giving priority to those production techniques that use renewable energy resources as their primary source of energy for hydrogen production), liquefaction, transmission, distribution, storage, and use (including use of hydrogen in surface transportation); and

(3) survey private sector hydrogen activities and take steps to ensure that research and development activities under this section do not displace or compete with the privately funded hydrogen research and development activities of United States industry.

(c) Innovative energy technologies

The Secretary is authorized to evaluate any reasonable new or improved technology, including basic research on highly innovative energy technologies, that could lead or contribute to the development of economic hydrogen production, storage, and utilization.

(d) Renewable energy systems; hybrid systems

The Secretary is authorized to evaluate any reasonable new or improved technology that could lead or contribute to, or demonstrate the use of, advanced renewable energy systems or hybrid systems for use in isolated communities that currently import diesel fuel as the primary fuel for electric power production.

(e) Information

The Secretary is authorized to arrange for tests and demonstrations and to disseminate to researchers and developers information, data, and other materials necessary to support the research and development activities authorized under this section and other efforts authorized under this chapter, consistent with section 12405 of this title.

(f) Federal funding

The Secretary shall carry out the research and development activities authorized under this section only through the funding of research and development proposals submitted by interested persons according to such procedures as the Secretary may require and evaluate on a competitive basis using peer review. Such funding shall be in the form of a grant agreement, procurement contract, or cooperative agreement (as those terms are used in chapter 63 of title 31).

(g) Non-Federal funding

The Secretary shall not consider a proposal submitted by a person from industry unless the proposal contains a certification that reasonable efforts to obtain non-Federal funding for the entire cost of the project have been made, and that such non-Federal funding could not be reasonably obtained. As appropriate, the Secretary shall require a commitment from non-Federal sources of at least 50 percent of the cost of the development portion of such a proposal.

(h) Prohibition on duplicative efforts

The Secretary shall not carry out any activities under this section that unnecessarily duplicate activities carried out elsewhere by the Federal Government or industry.

(i) Federal funding consistent with the Agreement on Subsidies and Countervailing Measures

The Secretary shall establish, after consultation with other Federal agencies, terms and conditions under which Federal funding will be provided under this chapter that are consistent with the Agreement on Subsidies and Countervailing Measures referred to in section 3511(d)(12) of title 19.

(Pub. L. 101-566, §104, Nov. 15, 1990, 104 Stat. 2798; Pub. L. 104-271, title I, §103(a), Oct. 9, 1996, 110 Stat. 3305.)

AMENDMENTS

1996—Pub. L. 104-271 amended section generally, substituting present provisions for provisions which stated in subsec. (a) the Secretary was to conduct a research and development program for development of a domestic hydrogen fuel production capability; subsec. (b) attention was to be given to research of critical technical issues; subsec. (c) renewable energy priority; subsec. (d) new technologies; and subsec. (e) gathering and dissemination of information to support research and development efforts.

FUEL CELLS

Title II of Pub. L. 104-271 provided that:

“SEC. 201. INTEGRATION OF FUEL CELLS WITH HYDROGEN PRODUCTION SYSTEMS.

“(a) Not later than 180 days after the date of enactment of this section [Oct. 9, 1996], and subject to the availability of appropriations made specifically for this section, the Secretary of Energy shall solicit proposals for projects to prove the feasibility of integrating fuel cells with—

“(1) photovoltaic systems for hydrogen production;

or

“(2) systems for hydrogen production from solid waste via gasification or steam reforming.

“(b) Each proposal submitted in response to the solicitation under this section shall be evaluated on a competitive basis using peer review. The Secretary is not required to make an award under this section in the absence of a meritorious proposal. [sic]

“(c) The Secretary shall give preference, in making an award under this section, to proposals that—

“(1) are submitted jointly from consortia including academic institutions, industry, State or local governments, and Federal laboratories; and

“(2) reflect proven experience and capability with technologies relevant to the systems described in subsections (a)(1) and (a)(2).

“(d) In the case of a proposal involving development or demonstration, the Secretary shall require a commitment from non-Federal sources of at least 50 percent of the cost of the development or demonstration portion of the proposal.

“(e) The Secretary shall establish, after consultation with other Federal agencies, terms and conditions under which Federal funding will be provided under this title that are consistent with the Agreement on Subsidies and Countervailing Measures referred to in section 101(d)(12) of the Uruguay Round Agreement Act (19 U.S.C. 3511(d)(12)).

“SEC. 202. AUTHORIZATION OF APPROPRIATIONS.

“There are authorized to be appropriated, for activities under this section [title], a total of \$50,000,000 for fiscal years 1997 and 1998, to remain available until September 30, 1999.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12404 of this title.

§ 12404. Demonstrations**(a) Requirement**

The Secretary shall conduct demonstrations of critical technologies, preferably in self-contained locations, so that technical and non-technical parameters can be evaluated to best determine commercial applicability of the technology.

(b) Small-scale demonstrations

Concurrently with activities conducted pursuant to section 12403 of this title, the Secretary shall conduct small-scale demonstrations of hydrogen technology at self-contained sites.

(c) Non-Federal funding

The Secretary shall require a commitment from non-Federal sources of at least 50 percent of the cost of any demonstration conducted under this section.

(Pub. L. 101-566, §105, Nov. 15, 1990, 104 Stat. 2799; Pub. L. 104-271, title I, §104, Oct. 9, 1996, 110 Stat. 3306.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104-271 added subsec. (c).

§ 12405. Technology transfer program**(a) Program**

The Secretary shall conduct a program designed to accelerate wider application of hydrogen production, storage, utilization, and other technologies available in near term as a result of aerospace experience as well as other research progress by transferring critical technologies to the private sector. The Secretary shall direct the program with the advice and assistance of the Hydrogen Technical Advisory Panel established under section 12407 of this title. The objective in seeking this advice is to increase participation of private industry in the demonstration of near commercial applications through cooperative research and development arrangements, joint ventures or other appropriate arrangements involving the private sector.

(b) Information

The Secretary, in carrying out the program authorized by subsection (a) of this section, shall—

(1) undertake an inventory and assessment of hydrogen technologies and their commercial capability to economically produce, store, or utilize hydrogen in aerospace, transportation, electric utilities, petrochemical, chemical, merchant hydrogen, and other industrial sectors; and

(2) develop a National Aeronautics Space Administration, Department of Energy, and industry information exchange program to improve technology transfer for—

(A) application of aerospace experience by industry;

(B) application of research progress by industry and aerospace;

(C) application of commercial capability of industry by aerospace; and

(D) expression of industrial needs to research organizations.

The information exchange program may consist of workshops, publications, conferences, and a data base for the use by the public and private sectors. The Secretary shall also foster the exchange of generic, nonproprietary information and technology, developed pursuant to this chapter, among industry, academia, and the Federal Government, to help the United States economy attain the economic benefits of this information and technology.

(Pub. L. 101-566, §106, Nov. 15, 1990, 104 Stat. 2799; Pub. L. 104-271, title I, §105, Oct. 9, 1996, 110 Stat. 3306.)

AMENDMENTS

1996—Subsec. (b). Pub. L. 104-271 inserted at end “The Secretary shall also foster the exchange of generic, nonproprietary information and technology, developed pursuant to this chapter, among industry, academia, and the Federal Government, to help the United States economy attain the economic benefits of this information and technology.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12403 of this title.

§ 12406. Coordination and consultation**(a) Secretary's responsibility**

The Secretary shall have overall management responsibility for carrying out programs under this chapter. In carrying out such programs, the Secretary, consistent with such overall management responsibility—

(1) shall use the expertise of the National Aeronautics and Space Administration and the Department of Transportation; and

(2) may use the expertise of any other Federal agency in accordance with subsection (b) of this section in carrying out any activities under this chapter,¹ to the extent that the Secretary determines that any such agency has capabilities which would allow such agency to contribute to the purpose of this chapter.

(b) Assistance

The Secretary may, in accordance with subsection (a) of this section, obtain the assistance of any department, agency, or instrumentality of the Executive branch of the Federal Government upon written request, on a reimbursable basis or otherwise and with the consent of such department, agency, or instrumentality. Each such request shall identify the assistance the Secretary deems necessary to carry out any duty under this chapter.

(c) Consultation

The Secretary shall consult with the Administrator of the National Aeronautics and Space Administration, the Administrator of the Environmental Protection Agency, the Secretary of Transportation, and the Hydrogen Technical Advisory Panel established under section 12407 of this title in carrying out his authorities pursuant to this chapter.

(Pub. L. 101-566, §107, Nov. 15, 1990, 104 Stat. 2800.)

REFERENCES IN TEXT

This chapter, the first time appearing in subsec. (a)(2), was in the original “this title”, and was translated as reading “this Act” meaning Pub. L. 101-566, to reflect the probable intent of Congress, because Pub. L. 101-566 is not divided into titles.

§ 12407. Technical panel**(a) Establishment**

There is hereby established the Hydrogen Technical Advisory Panel (the “technical panel”), to advise the Secretary on the programs under this chapter.

(b) Membership

The technical panel shall be appointed by the Secretary and shall be comprised of such representatives from domestic industry, universities, professional societies, Government laboratories, financial, environmental, and other organizations as the Secretary deems appropriate based on his assessment of the technical and other qualifications of such representatives. Appointments to the technical panel shall be made within 90 days after November 15, 1990. The

¹ See References in Text note below.

technical panel shall have a chairman, who shall be elected by the members from among their number.

(c) Cooperation

The heads of the departments, agencies, and instrumentalities of the Executive branch of the Federal Government shall cooperate with the technical panel in carrying out the requirements of this section and shall furnish to the technical panel such information as the technical panel deems necessary to carry out this section.

(d) Review

The technical panel shall review and make any necessary recommendations to the Secretary on the following items—

- (1) the implementation and conduct of programs under this chapter; and
- (2) the economic, technological, and environmental consequences of the deployment of hydrogen production and use systems.

(e) Support

The Secretary shall provide such staff, funds and other support as may be necessary to enable the technical panel to carry out the functions described in this section.

(Pub. L. 101-566, §108, Nov. 15, 1990, 104 Stat. 2800; Pub. L. 104-271, title I, §102(b), Oct. 9, 1996, 110 Stat. 3305.)

AMENDMENTS

1996—Subsec. (d)(3). Pub. L. 104-271 struck out par. (3) which read as follows: “comments on and recommendations for improvements in the comprehensive 5-year program management plan required under section 12402 of this title.”

TERMINATION OF ADVISORY PANELS

Advisory panels established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a panel established by the President or an officer of the Federal Government, such panel is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a panel established by Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12402, 12405, 12406 of this title.

§ 12408. Authorization of appropriations

There is hereby authorized to be appropriated to carry out the purposes of this chapter (in addition to any amounts made available for such purposes under other Acts)—

- (1) \$3,000,000 for the fiscal year 1992;
- (2) \$7,000,000 for the fiscal year 1993;
- (3) \$10,000,000 for the fiscal year 1994;
- (4) \$14,500,000 for fiscal year 1996;
- (5) \$20,000,000 for fiscal year 1997;
- (6) \$25,000,000 for fiscal year 1998;
- (7) \$30,000,000 for fiscal year 1999;
- (8) \$35,000,000 for fiscal year 2000; and
- (9) \$40,000,000 for fiscal year 2001.

(Pub. L. 101-566, §109, Nov. 15, 1990, 104 Stat. 2801; Pub. L. 104-271, title I, §106, Oct. 9, 1996, 110 Stat. 3306.)

AMENDMENTS

1996—Pub. L. 104-271 substituted “under other Acts” for “to other Acts” in introductory provisions and added pars. (4) to (9).

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 2756a, 3056a of this title; title 20 sections 1087vv, 6143; title 29 sections 2822, 2841; title 40 section 484.

§ 12501. Findings and purpose

(a) Findings

The Congress finds the following:

(1) Throughout the United States, there are pressing unmet human, educational, environmental, and public safety needs.

(2) Americans desire to affirm common responsibilities and shared values, and join together in positive experiences, that transcend race, religion, gender, age, disability, region, income, and education.

(3) The rising costs of postsecondary education are putting higher education out of reach for an increasing number of citizens.

(4) Americans of all ages can improve their communities and become better citizens through service to the United States.

(5) Nonprofit organizations, local governments, States, and the Federal Government are already supporting a wide variety of national service programs that deliver needed services in a cost-effective manner.

(6) Residents of low-income communities, especially youth and young adults, can be empowered through their service, and can help provide future community leadership.

(b) Purpose

It is the purpose of this chapter to—

(1) meet the unmet human, educational, environmental, and public safety needs of the United States, without displacing existing workers;

(2) renew the ethic of civic responsibility and the spirit of community throughout the United States;

(3) expand educational opportunity by rewarding individuals who participate in national service with an increased ability to pursue higher education or job training;

(4) encourage citizens of the United States, regardless of age, income, or disability, to engage in full-time or part-time national service;

(5) reinvent government to eliminate duplication, support locally established initiatives, require measurable goals for performance, and offer flexibility in meeting those goals;

(6) expand and strengthen existing service programs with demonstrated experience in providing structured service opportunities

with visible benefits to the participants and community;

(7) build on the existing organizational service infrastructure of Federal, State, and local programs and agencies to expand full-time and part-time service opportunities for all citizens; and

(8) provide tangible benefits to the communities in which national service is performed.

(Pub. L. 101-610, § 2, Nov. 16, 1990, 104 Stat. 3129; Pub. L. 103-82, § 2(a), Sept. 21, 1993, 107 Stat. 787.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original “this Act”, meaning Pub. L. 101-610, Nov. 16, 1990, 104 Stat. 3127, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

AMENDMENTS

1993—Pub. L. 103-82 amended section generally, substituting provisions relating to findings and purposes for former provisions setting forth the purposes of this chapter.

SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107-117, div. B, § 1301(a), Jan. 10, 2002, 115 Stat. 2339, provided that: “This section [enacting subchapter III of this chapter] may be cited as the ‘Unity in the Spirit of America Act’ or the ‘USA Act’.”

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103-304, § 1, Aug. 23, 1994, 108 Stat. 1565, provided that: “This Act [amending sections 4953, 5024, 12591, 12602, 12615, 12619, 12622, 12651d, 12653, and 12655n of this title and enacting provisions set out as a note under section 4953 of this title] may be cited as the ‘King Holiday and Service Act of 1994’.”

SHORT TITLE OF 1993 AMENDMENT

Section 1(a) of Pub. L. 103-82 provided that: “This Act [see Tables for classification] may be cited as the ‘National and Community Service Trust Act of 1993’.”

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102-384, § 1, Oct. 5, 1992, 106 Stat. 1455, provided that: “This Act [amending sections 12511, 12522, 12523, 12525, 12526, 12541, 12550, 12612, 12614, 12615, 12622, 12639, 12651, and 12681 of this title] may be cited as the ‘National and Community Service Technical Amendment Act of 1992’.”

SHORT TITLE OF 1991 AMENDMENT

Pub. L. 102-10, § 1, Mar. 12, 1991, 105 Stat. 29, provided that: “This Act [enacting section 12645 of this title, amending sections 5091m, 12511, 12521, 12522, 12524, 12527, 12531, 12542 to 12544, 12548, 12553, 12575, 12576, 12602, 12638, and 12651 of this title, and repealing section 12556 of this title] may be cited as the ‘National and Community Service Technical Amendments Act of 1991’.”

SHORT TITLE

Section 1(a) of Pub. L. 101-610 provided that: “This Act [enacting this chapter, sections 5091 to 5091n of this title, and section 2452a of Title 22, Foreign Relations and Intercourse, amending sections 1018c, 1018e, 1070a-6, 1087vv, 1092, and 1092b of Title 20, Education, and former section 546 of Title 45, Railroads, and enacting provisions set out as notes under this section and section 24301 of Title 49, Transportation] may be cited as the ‘National and Community Service Act of 1990’.”

Section 110 of subtitle B (§§ 110-118) of title I of Pub. L. 101-610, which provided that such subtitle (enacting former part B (§§ 12521-12531) of subchapter I of this chapter) be cited as the “Serve-America: The Commu-

nity Service, Schools and Service-Learning Act of 1990”, was repealed by Pub. L. 103-82, title I, § 103(a)(2), Sept. 21, 1993, 107 Stat. 825.

Section 199 [formerly 120] of subtitle I (§§ 199-1990) [formerly subtitle C (§§ 120-136)] of title I of Pub. L. 101-610, as renumbered by Pub. L. 103-82, title I, § 101(a), Sept. 21, 1993, 107 Stat. 788, provided that: “This subtitle [enacting division I (formerly part C) of subchapter I of this chapter] may be cited as the ‘American Conservation and Youth Service Corps Act of 1990’.”

Section 140 of subtitle D (§§ 140-150) of title I of Pub. L. 101-610, which provided that such subtitle (enacting former part D (§§ 12571-12580) of subchapter I of this chapter) be cited as the “National and Community Service Act”, was omitted in the general amendment of part D (now division D) by Pub. L. 103-82, title I, § 102(a), Sept. 21, 1993, 107 Stat. 816.

Section 301 of title III of Pub. L. 101-610 provided that: “This title [enacting subchapter II of this chapter] may be cited as ‘The Points of Light Foundation Act’.”

COMPLIANCE WITH BUY AMERICAN ACT

Section 501 of Pub. L. 103-82 provided that: “No funds appropriated pursuant to this Act [see Tables for classification] (including the amendments made by this Act) may be expended by an entity unless the entity agrees that in expending the assistance the entity will comply with sections 2 through 4 of the Act of March 3, 1933 (41 U.S.C. 10a-10c [41 U.S.C. 10a, 10b, former 10b-1], popularly known as the ‘Buy American Act’).”

SENSE OF CONGRESS; REQUIREMENT REGARDING NOTICE

Section 502 of Pub. L. 103-82 provided that:

“(a) PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS.—In the case of any equipment or product that may be authorized to be purchased with financial assistance provided under this Act [see Tables for classification] (including the amendments made by this Act), it is the sense of the Congress that entities receiving such assistance should, in expending the assistance, purchase only American-made equipment and products.

“(b) NOTICE TO RECIPIENTS OF ASSISTANCE.—In providing financial assistance under this Act (including the amendments made by this Act), the Secretary of Education shall provide to each recipient of the assistance a notice describing the statement made in subsection (a) by the Congress.”

PROHIBITION OF CONTRACTS WITH PERSONS FALSELY LABELING PRODUCTS AS MADE IN AMERICA

Section 503 of Pub. L. 103-82 provided that: “If it has been finally determined by a court or Federal agency that any person intentionally affixed a label bearing a ‘Made in America’ inscription, or any inscription with the same meaning, to any product sold in or shipped to the United States that is not made in the United States, the person shall be ineligible to receive any contract or subcontract made with funds appropriated to carry out this Act, pursuant to the debarment, suspension, and ineligibility procedures described in sections 9.400 through 9.409 of title 48, Code of Federal Regulations.”

EX. ORD. NO. 13254. ESTABLISHING THE USA FREEDOM CORPS

Ex. Ord. No. 13254, Jan. 29, 2002, 67 F.R. 4869, provided: By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

SECTION 1. *Policy.* Building on our Nation’s rich tradition of citizen service, this Administration’s policy is to foster a culture of responsibility, service, and citizenship by promoting, expanding, and enhancing public service opportunities for all Americans and by making these opportunities readily available to citizens from all geographic areas, professions, and walks of life.

More specifically, this Administration encourages all Americans to serve their country for the equivalent of at least 2 years (4,000 hours) over their lifetimes. Toward those ends, the executive departments, agencies, and offices constituting the USA Freedom Corps shall coordinate and strengthen Federal and other service opportunities, including opportunities for participation in homeland security preparedness and response, other areas of public and social service, and international service. The executive branch departments, agencies, and offices also will work with State and local governments and private entities to foster and encourage participation in public and social service programs, as appropriate.

SEC. 2. USA Freedom Corps. The USA Freedom Corps shall be an interagency initiative, bringing together executive branch departments, agencies, and offices with public service programs and components, including but not limited to programs and components with the following functions:

- (i) recruiting, mobilizing, and encouraging all Americans to engage in public service;
- (ii) providing concrete opportunities to engage in public service;
- (iii) providing the public with access to information about public service opportunities through Federal programs and elsewhere; and
- (iv) providing recognition and awards to volunteers and other participants in public service programs.

SEC. 3. USA Freedom Corps Council. (a) *Establishment and Mission.* There shall be a USA Freedom Corps Council (Council) chaired by the President and composed of heads of executive branch departments, agencies, and offices, which shall have the following functions:

- (i) serving as a forum for Federal officials responsible for public service programs to coordinate and improve public service programs and activities administered by the executive branch;
- (ii) working to encourage all Americans to engage in public service, whether through Federal programs or otherwise;
- (iii) advising the President and heads of executive branch departments, agencies, and offices concerning the optimization of current Federal programs to enhance public service opportunities;
- (iv) coordinating public outreach and publicity of citizen service opportunities provided by Federal programs;
- (v) encouraging schools, universities, private public service organizations, and other non-Federal entities to foster and reward public service;
- (vi) studying the availability of public service opportunities provided by the Federal Government and elsewhere; and
- (vii) tracking progress in participation in public service programs.

(b) *Membership.* In addition to the Chair, the members of the Council shall be the heads of the executive branch departments, agencies, and offices listed below, or their designees, and such other officers of the executive branch as the President may from time to time designate. Every member of the Council or designee shall be a full-time or permanent part-time officer or employee of the Federal Government. Members shall not be compensated for their service on the Council in addition to the salaries they receive as employees or officers of the Federal Government.

- (i) Vice President;
- (ii) Attorney General;
- (iii) Secretary of State;
- (iv) Secretary of Health and Human Services;
- (v) Secretary of Commerce;
- (vi) Secretary of Education;
- (vii) Secretary of Veterans Affairs;
- (viii) Director of the Federal Emergency Management Agency;
- (ix) Chief Executive Officer of the Corporation for National and Community Service;
- (x) Director of the Peace Corps;
- (xi) Administrator of the United States Agency for International Development;

- (xii) Director of the USA Freedom Corps Office; and
- (xiii) Director of the Office of Faith-Based and Community Initiatives.

(c) *Chair.* The President shall be the Chair of the USA Freedom Corps Council, and in his absence, the Vice President shall serve as Chair. The Director of the USA Freedom Corps Office may, at the President's direction, preside over meetings of the Council in the President's and Vice President's absence.

(d) *Honorary Co-Chair.* The President may, from time to time, designate an Honorary Co-Chair or Co-Chairs, who shall serve in an advisory role to the Council and to the President on matters considered by the Council. Any Honorary Co-Chair shall be a full-time or permanent part-time employee or officer of the Federal Government.

(e) *Meetings.* The Council shall meet at the President's direction. The Director of the USA Freedom Corps Office shall be responsible, at the President's direction, for determining the agenda, ensuring that necessary papers are prepared, and recording Council actions and Presidential decisions.

(f) *Responsibilities of Executive Branch Departments, Agencies, and Offices.*

(i) Members of the Council shall remain responsible for overseeing the programs administered by their respective departments, agencies, and offices. Each such department, agency, and office will retain its authority and responsibility to administer those programs according to law;

(ii) Each executive branch department, agency, or office with responsibility for programs relating to the functions and missions of the USA Freedom Corps as described in section 2 of this order shall be responsible for identifying those public service opportunities and coordinating with the USA Freedom Corps Council to ensure that such programs are, if appropriate, publicized and encouraged by the Council; and

(iii) Upon the request of the Chair, and to the extent permitted by law, the heads of executive branch departments and agencies shall provide the Council with relevant information.

SEC. 4. USA Freedom Corps Office. (a) *General.* The USA Freedom Corps also shall be supported by a USA Freedom Corps Office (Office), which shall be a component of the White House Office. The USA Freedom Corps Office shall have a Director who shall be appointed by the President. The Director shall be assisted by an appropriate staff within the White House Office.

(b) *Presidential Recognition to Participants in USA Freedom Corps Programs.* In addition to supporting and facilitating the functions of the Council listed in section 3 of this order, the Office shall support the President in providing recognition to volunteers and other participants in programs and activities relating to the functions and missions of the USA Freedom Corps as described in section 2 of this order.

SEC. 5. General Provisions. (a) The White House Office shall provide the Council and Office with such funding and administrative support, to the extent permitted by law and subject to the availability of appropriations, as directed by the Chief of Staff to the President to carry out the provisions of this order.

(b) This order does not alter the existing authorities or roles of executive branch departments, agencies, or offices. Nothing in this order shall supersede any requirement made by or under law.

(c) This order does not create any right or benefit, substantive or procedural, enforceable at law or equity, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

GEORGE W. BUSH.

SUBCHAPTER I—NATIONAL AND COMMUNITY SERVICE STATE GRANT PROGRAM

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 12681 of this title; title 20 sections 1078, 1087vv.

Division A—General Provisions

§ 12511. Definitions

For purposes of this subchapter:

(1) Adult volunteer

The term “adult volunteer” means an individual, such as an older adult, an individual with a disability, a parent, or an employee of a business or public or private nonprofit organization, who—

(A) works without financial remuneration in an educational institution to assist students or out-of-school youth; and

(B) is beyond the age of compulsory school attendance in the State in which the educational institution is located.

(2) Approved national service position

The term “approved national service position” means a national service position for which the Corporation has approved the provision of a national service educational award described in section 12603 of this title as one of the benefits to be provided for successful service in the position.

(3) Carry out

The term “carry out”, when used in connection with a national service program described in section 12572 of this title, means the planning, establishment, operation, expansion, or replication of the program.

(4) Chief Executive Officer

The term “Chief Executive Officer”, except when used to refer to the chief executive officer of a State, means the Chief Executive Officer of the Corporation appointed under section 12651c of this title.

(5) Community-based agency

The term “community-based agency” means a private nonprofit organization (including a church or other religious entity) that—

(A) is representative of a community or a significant segment of a community; and

(B) is engaged in meeting human, educational, environmental, or public safety community needs.

(6) Corporation

The term “Corporation” means the Corporation for National and Community Service established under section 12651 of this title.

(7) Economically disadvantaged

The term “economically disadvantaged” means, with respect to an individual, an individual who is determined by the Chief Executive Officer to be low-income according to the latest available data from the Department of Commerce.

(8) Elementary school

The term “elementary school” has the same meaning given such term in section 7801 of title 20.

(9) Indian

The term “Indian” means a person who is a member of an Indian tribe, or is a “Native”, as defined in section 1602(b) of title 43.

(10) Indian lands

The term “Indian lands” means any real property owned by an Indian tribe, any real

property held in trust by the United States for an Indian or Indian tribe, and any real property held by an Indian or Indian tribe that is subject to restrictions on alienation imposed by the United States.

(11) Indian tribe

The term “Indian tribe” means—

(A) an Indian tribe, band, nation, or other organized group or community, including—

(i) any Native village, as defined in section 1602(c) of title 43, whether organized traditionally or pursuant to the Act of June 18, 1934 (commonly known as the “Indian Reorganization Act”; 48 Stat. 984, chapter 576; 25 U.S.C 461 et seq.); and

(ii) any Regional Corporation or Village Corporation, as defined in subsection (g) or (j), respectively, of section 1602 of title 43,

that is recognized as eligible for the special programs and services provided by the United States under Federal law to Indians because of their status as Indians; and

(B) any tribal organization controlled, sanctioned, or chartered by an entity described in subparagraph (A).

(12) Individual with a disability

Except as provided in section 12635(a) of this title, the term “individual with a disability” has the meaning given the term in section 705(20)(B) of title 29.

(13) Institution of higher education

The term “institution of higher education” has the same meaning given such term in section 1001 of title 20.

(14) Local educational agency

The term “local educational agency” has the same meaning given such term in section 7801 of title 20.

(15) National service laws

The term “national service laws” means this chapter and the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4950 et seq.).

(16) Out-of-school youth

The term “out-of-school youth” means an individual who—

(A) has not attained the age of 27;

(B) has not completed college or the equivalent thereof; and

(C) is not enrolled in an elementary or secondary school or institution of higher education.

(17) Participant**(A) In general**

The term “participant” means—

(i) for purposes of division C of this subchapter, an individual in an approved national service position; and

(ii) for purposes of any other provision of this chapter, an individual enrolled in a program that receives assistance under this subchapter.

(B) Rule

A participant shall not be considered to be an employee of the program in which the participant is enrolled.

(18) Partnership program

The term “partnership program” means a program through which an adult volunteer, a public or private nonprofit organization, an institution of higher education, or a business assists a local educational agency.

(19) Program

The term “program”, unless the context otherwise requires, and except when used as part of the term “academic program”, means a program described in section 12521(a) of this title (other than a program referred to in paragraph (3)(B) of such section), 12542(a), 12561(b)(1), or 12572(a) of this title, or in paragraph (1) or (2) of section 12612(b) of this title, or an activity that could be funded under section 12653, 12653c, or 12653d of this title.

(20) Project

The term “project” means an activity, carried out through a program that receives assistance under this subchapter, that results in a specific identifiable service or improvement that otherwise would not be done with existing funds, and that does not duplicate the routine services or functions of the employer to whom participants are assigned.

(21) School-age youth

The term “school-age youth” means—

(A) individuals between the ages of 5 and 17, inclusive; and

(B) children with disabilities, as defined in section 602(a)(1)¹ of the Individuals with Disabilities Education Act (20 U.S.C. 1401(a)(1)), who receive services under part B of such Act [20 U.S.C. 1411 et seq.].

(22) Secondary school

The term “secondary school” has the same meaning given such term in section 7801 of title 20.

(23) Service-learning

The term “service-learning” means a method—

(A) under which students or participants learn and develop through active participation in thoughtfully organized service that—

- (i) is conducted in and meets the needs of a community;
- (ii) is coordinated with an elementary school, secondary school, institution of higher education, or community service program, and with the community; and
- (iii) helps foster civic responsibility; and

(B) that—

- (i) is integrated into and enhances the academic curriculum of the students, or the educational components of the community service program in which the participants are enrolled; and
- (ii) provides structured time for the students or participants to reflect on the service experience.

(24) Service-learning coordinator

The term “service-learning coordinator” means an individual who provides services as

described in subsection (a)(3) or (b) of section 12521 of this title.

(25) Service sponsor

The term “service sponsor” means an organization, or other entity, that has been selected to provide a placement for a participant.

(26) State

The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. The term also includes Palau, until such time as the Compact of Free Association is ratified.

(27) State Commission

The term “State Commission” means a State Commission on National and Community Service maintained by a State pursuant to section 12638 of this title. Except when used in section 12638 of this title, the term includes an alternative administrative entity for a State approved by the Corporation under such section to act in lieu of a State Commission.

(28) State educational agency

The term “State educational agency” has the same meaning given such term in section 7801 of title 20.

(29) Student

The term “student” means an individual who is enrolled in an elementary or secondary school or institution of higher education on a full- or part-time basis.

(Pub. L. 101-610, title I, §101, Nov. 16, 1990, 104 Stat. 3129; Pub. L. 102-10, §3, Mar. 12, 1991, 105 Stat. 29; Pub. L. 102-384, §3, Oct. 5, 1992, 106 Stat. 1455; Pub. L. 103-82, title I, §111(a), Sept. 21, 1993, 107 Stat. 857; Pub. L. 103-382, title III, §394(h)(1), Oct. 20, 1994, 108 Stat. 4028; Pub. L. 105-220, title IV, §414(g), Aug. 7, 1998, 112 Stat. 1242; Pub. L. 105-244, title I, §102(a)(13)(K), Oct. 7, 1998, 112 Stat. 1621; Pub. L. 107-110, title X, §1076(ff), Jan. 8, 2002, 115 Stat. 2093.)

REFERENCES IN TEXT

Act of June 18, 1934, referred to in par. (11)(A)(i), is act June 18, 1934, ch. 576, 48 Stat. 984, as amended, popularly known as the Indian Reorganization Act, which is classified generally to subchapter V (§461 et seq.) of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 461 of Title 25 and Tables.

This chapter, referred to in pars. (15) and (17)(A)(ii), was in the original “this Act”, meaning Pub. L. 101-610, Nov. 16, 1990, 104 Stat. 3127, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12501 of this title and Tables.

The Domestic Volunteer Service Act of 1973, referred to in par. (15), is Pub. L. 93-113, Oct. 1, 1973, 87 Stat. 394, as amended, which is classified principally to chapter 66 (§4950 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of this title and Tables.

The Individuals with Disabilities Education Act, referred to in par. (21)(B), is title VI of Pub. L. 91-230, Apr. 13, 1970, 84 Stat. 175, as amended. Part B of the Act is classified generally to subchapter II (§1411 et seq.) of chapter 33 of Title 20, Education. Section 602 of the Act,

¹ See References in Text note below.

which was classified to section 1401 of Title 20, was omitted in the general amendment of subchapter I of chapter 33 of Title 20 by Pub. L. 105-17, title I, §101, June 4, 1997, 111 Stat. 37. Pub. L. 105-17 enacted a new section 602, which is classified to section 1401 of Title 20, and contains provisions defining "child with a disability". For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

For ratification of Compact of Free Association with Palau, referred to in par. (26), see Proc. No. 6726, Sept. 27, 1994, 59 F.R. 49777, set out as a note under section 1931 of Title 48, Territories and Insular Possessions.

AMENDMENTS

2002—Pars. (8), (14), (22), (28). Pub. L. 107-110 substituted "section 7801 of title 20" for "section 8801 of title 20".

1998—Par. (12). Pub. L. 105-220 substituted "section 705(20)(B) of title 29" for "section 706(8)(B) of title 29".

Par. (13). Pub. L. 105-244 substituted "section 1001" for "section 1141(a)".

1994—Par. (8). Pub. L. 103-382, §394(h)(1)(A), substituted "section 8801 of title 20" for "section 2891(8) of title 20".

Par. (14). Pub. L. 103-382, §394(h)(1)(B), substituted "section 8801 of title 20" for "section 2891(12) of title 20".

Par. (22). Pub. L. 103-382, §394(h)(1)(C), substituted "section 8801 of title 20" for "section 2891(21) of title 20".

Par. (28). Pub. L. 103-382, §394(h)(1)(D), substituted "section 8801 of title 20" for "section 2891(23) of title 20".

1993—Pub. L. 103-82 amended section generally, substituting provisions consisting of 29 definitions of terms used in this subchapter for former provisions consisting of 30 definitions.

1992—Par. (29). Pub. L. 102-384, §3(1), added par. (29) and struck out former par. (29) which read as follows: "The term 'summer program' means a youth corps program authorized under this subchapter that is limited to the months of June, July, and August."

Par. (30). Pub. L. 102-384, §3(2), substituted "living allowances" for "stipends".

1991—Par. (7). Pub. L. 102-10, §3(1), added par. (7). Former par. (7) redesignated (8).

Par. (8). Pub. L. 102-10, §3(2), (3), redesignated par. (7) as (8) and inserted "an Indian or" before "Indian tribes" in two places. Former par. (8) redesignated (9).

Pars. (9) to (13). Pub. L. 102-10, §3(2), redesignated pars. (8) to (12) as (9) to (13), respectively. Former par. (13) redesignated (14).

Par. (14). Pub. L. 102-10, §3(2), (4), redesignated par. (13) as (14) and inserted at end "Participants shall not be considered employees of the program." Former par. (14) redesignated (15).

Pars. (15) to (22). Pub. L. 102-10, §3(2), redesignated pars. (14) to (21) as (15) to (22), respectively. Former par. (22) redesignated (23).

Par. (23). Pub. L. 102-10, §3(5), which directed the substitution of "participants" for "students or out of school youth", was executed by making the substitution for "students or out-of-school youth" to reflect the probable intent of Congress.

Pub. L. 102-10, §3(2), redesignated par. (22) as (23). Former par. (23) redesignated (24).

Par. (24). Pub. L. 102-10, §3(2), (6), redesignated par. (23) as (24) and in heading and text substituted "participant" for "member". Former par. (24) redesignated (25).

Pars. (25) to (29). Pub. L. 102-10, §3(2), redesignated pars. (24) to (28) as (25) to (29), respectively. Former par. (29) redesignated (30).

Par. (30). Pub. L. 102-10, §3(2), (7), redesignated par. (29) as (30) and inserted "corps" after "youth service".

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub.

L. 107-110, set out as an Effective Date note under section 6301 of Title 20, Education.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of Title 20, Education.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2751, 12524, 12531, 12561, 12604, 12653b, 12682 of this title; title 20 section 1003.

§ 12512. Repealed. Pub. L. 103-82, title I, § 112, Sept. 21, 1993, 107 Stat. 861

Section, Pub. L. 101-610, title I, §102, Nov. 16, 1990, 104 Stat. 3132, authorized Commission to make grants to carry out programs under parts B, C, D, and E of this subchapter.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as an Effective Date of 1993 Amendment note under section 1701 of Title 16, Conservation.

Division B—School-Based and Community-Based Service-Learning Programs

PRIOR PROVISIONS

This division is comprised of subtitle B, §§111-119, of title I of Pub. L. 101-610. A prior part B (§12521 et seq.), comprised of subtitle B, §§111-118, of title I of Pub. L. 101-610, related to programs for students and out-of-school youth, prior to repeal by Pub. L. 103-82, title I, §103(a)(2), (b), Sept. 21, 1993, 107 Stat. 825, 837.

DIVISION REFERRED TO IN OTHER SECTIONS

This division is referred to in sections 12638, 12653, 12681 of this title.

PART I—SERVE-AMERICA PROGRAMS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 12572, 12573 of this title.

SUBPART A—SCHOOL-BASED PROGRAMS FOR STUDENTS

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in section 12681 of this title.

§ 12521. Authority to assist States and Indian tribes

(a) Use of funds

The Corporation, in consultation with the Secretary of Education, may make grants under section 12524(b)(1) of this title, and allotments under subsections (a) and (b)(2) of section 12524 of this title, to States (through State educational agencies), and to Indian tribes, to pay for the Federal share of—

(1) planning and building the capacity of the States or Indian tribes (which may be accomplished through grants or contracts with qualified organizations) to implement school-based service-learning programs, including—

(A) providing training for teachers, supervisors, personnel from community-based agencies (particularly with regard to the utilization of participants), and trainers, to be conducted by qualified individuals or organizations that have experience with service-learning;

(B) developing service-learning curricula to be integrated into academic programs, including the age-appropriate learning component described in section 12526(d)(2) of this title;

(C) forming local partnerships described in paragraph (2) or (4) to develop school-based service-learning programs in accordance with this subpart;

(D) devising appropriate methods for research and evaluation of the educational value of service-learning and the effect of service-learning activities on communities; and

(E) establishing effective outreach and dissemination of information to ensure the broadest possible involvement of community-based agencies with demonstrated effectiveness in working with school-age youth in their communities;

(2) implementing, operating, or expanding school-based service-learning programs, which may include paying for the cost of the recruitment, training, supervision, placement, salaries, and benefits of service-learning coordinators, through State distribution of Federal funds made available under this subpart to projects operated by local partnerships among—

(A) local educational agencies; and

(B) one or more community partners that—

(i) shall include a public or private nonprofit organization that—

(I) has a demonstrated expertise in the provision of services to meet unmet human, educational, environmental, or public safety needs;

(II) was in existence at least 1 year before the date on which the organization submitted an application under section 12526 of this title; and

(III) will make projects available for participants, who shall be students; and

(ii) may include a private for-profit business or private elementary or secondary school;

(3) planning of school-based service-learning programs, through State distribution of Federal funds made available under this subpart to local educational agencies, which planning may include paying for the cost of—

(A) the salaries and benefits of service-learning coordinators; or

(B) the recruitment, training, supervision, and placement of service-learning coordinators who are participants in a program under division C of this subchapter or receive a national service educational award under division D of this subchapter,

who will identify the community partners described in paragraph (2)(B) and assist in the

design and implementation of a program described in paragraph (2); and

(4) implementing, operating, or expanding school-based service-learning programs involving adult volunteers to utilize service-learning to improve the education of students, through State distribution of Federal funds made available under this part to local partnerships among—

(A) local educational agencies; and

(B) one or more—

(i) public or private nonprofit organizations;

(ii) other educational agencies; or

(iii) private for-profit businesses,

that coordinate and operate projects for participants, who shall be students.

(b) Duties of service-learning coordinator

A service-learning coordinator referred to in paragraph (2) or (3) of subsection (a) of this section shall provide services to a local educational agency by—

(1) providing technical assistance and information to, and facilitating the training of, teachers who want to use service-learning in their classrooms;

(2) assisting local partnerships described in subsection (a) of this section in the planning, development, and execution of service-learning projects; and

(3) carrying out such other duties as the local educational agency may determine to be appropriate.

(c) Related expenses

A partnership, local educational agency, or other qualified organization that receives financial assistance under this subpart may, in carrying out the activities described in subsection (a) of this section, use such assistance to pay for the Federal share of reasonable costs related to the supervision of participants, program administration, transportation, insurance, and evaluations, and for other reasonable expenses related to the activities.

(Pub. L. 101-610, title I, §111, as added Pub. L. 103-82, title I, §103(a)(2), Sept. 21, 1993, 107 Stat. 825.)

PRIOR PROVISIONS

A prior section 12521, Pub. L. 101-610, title I, §111, Nov. 16, 1990, 104 Stat. 3132; Pub. L. 102-10, §4(2), Mar. 12, 1991, 105 Stat. 30, prescribed general authority of Commission on National and Community Service to make grants for service-learning programs, prior to repeal by Pub. L. 103-82, title I, §103(a)(2), Sept. 21, 1993, 107 Stat. 825.

EFFECTIVE DATE

Division effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as an Effective Date of 1993 Amendment note under section 1701 of Title 16, Conservation.

PURPOSE OF AMENDMENTS TO SERVE-AMERICA PROGRAMS

Section 103(a)(1) of Pub. L. 103-82 provided that: "The purpose of this subsection [enacting this part] is to improve the Serve-America programs established under part I of subtitle B [of title I] of the National and Community Service Act of 1990 [probably refers to former subpart I (§12521 et seq.) of part B of this subchapter], and to enable the Corporation for National and Com-

munity Service, and the entities receiving financial assistance under such part, to—

“(A) work with teachers in elementary schools and secondary schools within a community, and with community-based agencies, to create and offer service-learning opportunities for all school-age youth;

“(B) educate teachers, and faculty providing teacher training and retraining, about service-learning, and incorporate service-learning opportunities into classroom teaching to strengthen academic learning;

“(C) coordinate the work of adult volunteers who work with elementary and secondary schools as part of their community service activities; and

“(D) work with employers in the communities to ensure that projects introduce the students to various careers and expose the students to needed further education and training.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12511, 12522, 12523, 12524, 12525, 12526, 12527, 12530 of this title.

§ 12522. Authority to assist local applicants in nonparticipating States

In any fiscal year in which a State does not submit an application under section 12525 of this title, for an allotment under subsection (a) or (b)(2) of section 12524 of this title, that meets the requirements of section 12525 of this title and such other requirements as the Chief Executive Officer may determine to be appropriate, the Corporation may use the allotment of that State to make direct grants to pay for the Federal share of the cost of—

(1) carrying out the activities described in paragraph (2) or (4) of section 12521(a) of this title, to a local partnership described in such paragraph; or

(2) carrying out the activities described in paragraph (3) of such section, to an agency described in such paragraph,

that is located in the State.

(Pub. L. 101-610, title I, §111A, as added Pub. L. 103-82, title I, §103(a)(2), Sept. 21, 1993, 107 Stat. 827.)

PRIOR PROVISIONS

A prior section 12522, Pub. L. 101-610, title I, §112, Nov. 16, 1990, 104 Stat. 3133; Pub. L. 102-10, §4(3), Mar. 12, 1991, 105 Stat. 30; Pub. L. 102-384, §4, Oct. 5, 1992, 106 Stat. 1455, related to allotments, prior to repeal by Pub. L. 103-82, §103(a)(2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12524, 12526, 12527 of this title.

§ 12523. Authority to assist public or private nonprofit organizations

(a) In general

The Corporation may make grants under section 12524(b)(1) of this title to public or private nonprofit organizations that—

(1) have experience with service-learning;

(2) were in existence at least 1 year before the date on which the organization submitted an application under section 12526(a) of this title; and

(3) meet such other criteria as the Chief Executive Officer may establish.

(b) Use of funds

Such organizations may use grants made under subsection (a) of this section to make

grants to partnerships described in paragraph (2) or (4) of section 12521(a) of this title to implement, operate, or expand school-based service-learning programs as described in such section and provide technical assistance and training to appropriate persons.

(Pub. L. 101-610, title I, §111B, as added Pub. L. 103-82, title I, §103(a)(2), Sept. 21, 1993, 107 Stat. 827.)

PRIOR PROVISIONS

A prior section 12523, Pub. L. 101-610, title I, §113, Nov. 16, 1990, 104 Stat. 3134; Pub. L. 102-384, §4, Oct. 5, 1992, 106 Stat. 1455, related to State grant applications, prior to repeal by Pub. L. 103-82, §103(a)(2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12524, 12526, 12527, 12531 of this title.

§ 12524. Grants and allotments

(a) Indian tribes and territories

Of the amounts appropriated to carry out this subpart for any fiscal year, the Corporation shall reserve an amount of not more than 3 percent for payments to Indian tribes, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, to be allotted in accordance with their respective needs. The Corporation may also make payments from such amount to Palau, in accordance with its needs, until such time as the Compact of Free Association with Palau is ratified.

(b) Grants and allotments through States

The Corporation shall use the remainder of the funds appropriated to carry out this subpart for any fiscal year as follows:

(1) Grants

Except as provided in paragraph (3), from 25 percent of such remainder, the Corporation may make grants, on a competitive basis, to—

(A) States and Indian tribes; or

(B) as described in section 12523 of this title, to grantmaking entities.

(2) Allotments

(A) School-age youth

Except as provided in paragraph (3), from 37.5 percent of such remainder, the Corporation shall allot to each State an amount that bears the same ratio to 37.5 percent of such remainder as the number of school-age youth in the State bears to the total number of school-age youth of all States.

(B) Allocation under Elementary and Secondary Education Act of 1965

Except as provided in paragraph (3), from 37.5 percent of such remainder, the Corporation shall allot to each State an amount that bears the same ratio to 37.5 percent of such remainder as the allocation to the State for the previous fiscal year under title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.] or its successor authority bears to such allocations to all States.

(3) Minimum amount

No State shall receive, under paragraph (2), an allotment that is less than the allotment

such State received for fiscal year 1993 under section 12522(b) of this title, as in effect on the day before September 21, 1993. If the amount of funds made available in a fiscal year to carry out paragraph (2) is insufficient to make such allotments, the Corporation shall make available sums from the 25 percent described in paragraph (1) for such fiscal year to make such allotments.

(4) "State" defined

Notwithstanding section 12511(26) of this title, for purposes of this subsection, the term "State" means each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

(c) Reallotment

If the Corporation determines that the allotment of a State or Indian tribe under this section will not be required for a fiscal year because the State or Indian tribe does not submit an application for the allotment under section 12525 of this title that meets the requirements of such section and such other requirements as the Chief Executive Officer may determine to be appropriate, the Corporation shall, after making any grants under section 12522 of this title to a partnership or agency described in such section, make any remainder of such allotment available for reallotment to such other States, and Indian tribes, with approved applications submitted under section 12525 of this title, as the Corporation may determine to be appropriate.

(d) Exception

Notwithstanding subsections (a) and (b) of this section, if less than \$20,000,000 is appropriated for any fiscal year to carry out this subpart, the Corporation shall award grants to States and Indian tribes, from the amount so appropriated, on a competitive basis to pay for the Federal share of the activities described in section 12521 of this title.

(Pub. L. 101-610, title I, §112, as added Pub. L. 103-82, title I, §103(a)(2), Sept. 21, 1993, 107 Stat. 827; amended Pub. L. 103-382, title III, §§391(y), 394(h)(2), Oct. 20, 1994, 108 Stat. 4026, 4028.)

REFERENCES IN TEXT

For ratification of Compact of Free Association with Palau, referred to in subsec. (a), see Proc. No. 6726, Sept. 27, 1994, 59 F.R. 49777, set out as a note under section 1931 of Title 48, Territories and Insular Possessions.

The Elementary and Secondary Education Act of 1965, referred to in subsec. (b)(2)(B), is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27, as amended. Title I of the Act is classified generally to subchapter I (§6301 et seq.) of chapter 70 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

Section 12522(b) of this title, as in effect on the day before September 21, 1993, referred to in subsec. (b)(3), means former section 12522(b) which was repealed by Pub. L. 103-82, title I, §103(a)(2), Sept. 21, 1993, 107 Stat. 825.

PRIOR PROVISIONS

A prior section 12524, Pub. L. 101-610, title I, §114, Nov. 16, 1990, 104 Stat. 3135; Pub. L. 102-10, §4(4), Mar. 12, 1991, 105 Stat. 30, related to local applications for assistance, prior to repeal by Pub. L. 103-82, §103(a)(2).

A prior section 112 of Pub. L. 101-610 was classified to section 12522 of this title prior to repeal by Pub. L. 103-82.

AMENDMENTS

1994—Subsec. (b)(2)(B). Pub. L. 103-382, §394(h)(2), inserted "or its successor authority" before "bears to such".

Pub. L. 103-382, §391(y), substituted "title I of" for "chapter 1 of title I of".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12521, 12522, 12523, 12525, 12527, 12530 of this title.

§ 12525. State or tribal applications

(a) Submission

To be eligible to receive a grant under section 12524(b)(1) of this title, an allotment under subsection (a) or (b)(2) of section 12524 of this title, a reallotment under section 12524(c) of this title, or a grant under section 12524(d) of this title, a State, acting through the State educational agency, or an Indian tribe, shall prepare, submit to the Corporation, and obtain approval of, an application at such time and in such manner as the Chief Executive Officer may reasonably require.

(b) Contents

An application that is submitted under subsection (a) of this section with respect to service-learning programs described in section 12521 of this title shall include—

(1) a 3-year strategic plan, or a revision of a previously approved 3-year strategic plan, for promoting service-learning through the programs, which plan shall contain such information as the Chief Executive Officer may reasonably require, including information demonstrating that the programs will be carried out in a manner consistent with the approved strategic plan;

(2) assurances that—

(A) the applicant will keep such records and provide such information to the Corporation with respect to the programs as may be required for fiscal audits and program evaluation; and

(B) the applicant will comply with the nonduplication and nondisplacement requirements of section 12637 of this title and the grievance procedure requirements of section 12636(f) of this title; and

(3) such additional information as the Chief Executive Officer may reasonably require.

(Pub. L. 101-610, title I, §113, as added Pub. L. 103-82, title I, §103(a)(2), Sept. 21, 1993, 107 Stat. 829.)

PRIOR PROVISIONS

A prior section 12525, Pub. L. 101-610, title I, §115, Nov. 16, 1990, 104 Stat. 3137; Pub. L. 102-384, §4, Oct. 5, 1992, 106 Stat. 1455, related to priority applications and private school participation, prior to repeal by Pub. L. 103-82, §103(a)(2).

A prior section 113 of Pub. L. 101-610 was classified to section 12523 of this title prior to repeal by Pub. L. 103-82.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12522, 12524, 12526, 12527, 12638 of this title.

§ 12526. Local applications**(a) Application to Corporation to make grants for school-based service-learning programs****(1) In general**

To be eligible to receive a grant in accordance with section 12523(a) of this title to make grants relating to school-based service-learning programs described in section 12521(a) of this title, a grantmaking entity shall prepare, submit to the Corporation, and obtain approval of, an application.

(2) Submission

Such application shall be submitted at such time and in such manner, and shall contain such information, as the Chief Executive Officer may reasonably require. Such application shall include a proposal to assist such programs in more than 1 State.

(b) Direct application to Corporation to carry out school-based service-learning programs in nonparticipating States

To be eligible to receive a grant from the Corporation in the circumstances described in section 12522 of this title to carry out an activity as described in such section, a partnership or agency described in such section shall prepare, submit to the Corporation, and obtain approval of, an application. Such application shall be submitted at such time and in such manner, and shall contain such information, as the Chief Executive Officer may reasonably require.

(c) Application to State or Indian tribe to receive assistance to carry out school-based service-learning programs**(1) In general**

Any—

(A) qualified organization that desires to receive financial assistance under this subpart from a State or Indian tribe for an activity described in section 12521(a)(1) of this title;

(B) partnership described in section 12521(a)(2) of this title that desires to receive such assistance from a State, Indian tribe, or grantmaking entity for an activity described in section 12521(a)(2) of this title;

(C) agency described in section 12521(a)(3) of this title that desires to receive such assistance from a State or Indian tribe for an activity described in such section; or

(D) partnership described in section 12521(a)(4) of this title that desires to receive such assistance from a State or Indian tribe for an activity described in such section,

to be carried out through a service-learning program described in section 12521 of this title, shall prepare, submit to the State educational agency, Indian tribe, or grantmaking entity, and obtain approval of, an application for the program.

(2) Submission

Such application shall be submitted at such time and in such manner, and shall contain such information, as the agency, tribe, or entity may reasonably require.

(d) Regulations

The Corporation shall by regulation establish standards for the information and assurances re-

quired to be contained in an application submitted under subsection (a) or (b) of this section with respect to a service-learning program described in section 12521 of this title, including, at a minimum, assurances that—

(1) prior to the placement of a participant, the entity carrying out the program will consult with the appropriate local labor organization, if any, representing employees in the area who are engaged in the same or similar work as that proposed to be carried out by such program, to prevent the displacement and protect the rights of such employees;

(2) the entity carrying out the program will develop an age-appropriate learning component for participants in the program that shall include a chance for participants to analyze and apply their service experiences; and

(3) the entity carrying out the program will comply with the nonduplication and non-displacement requirements of section 12637 of this title and the grievance procedure requirements of section 12636(f) of this title.

(e) Limitation on same project in multiple applications

No applicant shall submit an application under section 12525 of this title or this section, and the Corporation shall reject an application that is submitted under section 12525 of this title or this section, if the application describes a project proposed to be conducted using assistance requested by the applicant and the project is already described in another application pending before the Corporation.

(Pub. L. 101-610, title I, §114, as added Pub. L. 103-82, title I, §103(a)(2), Sept. 21, 1993, 107 Stat. 829.)

PRIOR PROVISIONS

A prior section 12526, Pub. L. 101-610, title I, §116, Nov. 16, 1990, 104 Stat. 3138; Pub. L. 102-384, §4, Oct. 5, 1992, 106 Stat. 1455, prescribed Federal and local project contributions, prior to repeal by Pub. L. 103-82, §103(a)(2).

A prior section 114 of Pub. L. 101-610 was classified to section 12524 of this title prior to repeal by Pub. L. 103-82.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12521, 12523, 12527 of this title.

§ 12527. Consideration of applications**(a) Criteria for applications**

In approving applications for financial assistance under subsection (a), (b), (c), or (d) of section 12524 of this title, the Corporation shall consider such criteria with respect to sustainability, replicability, innovation, and quality of programs under this subpart as the Chief Executive Officer may by regulation specify. In providing assistance under this subpart, a State educational agency, Indian tribe, or grantmaking entity shall consider such criteria.

(b) Priority for local applications

In providing assistance under this subpart, a State educational agency or Indian tribe, or the Corporation if section 12522 or 12523 of this title applies, shall give priority to entities that submit applications under section 12526 of this title

with respect to service-learning programs described in section 12521 of this title that—

- (1) involve participants in the design and operation of the program;
- (2) are in the greatest need of assistance, such as programs targeting low-income areas;
- (3) involve—
 - (A) students from public elementary or secondary schools, and students from private elementary or secondary schools, serving together; or
 - (B) students of different ages, races, sexes, ethnic groups, disabilities, or economic backgrounds, serving together; or
- (4) are integrated into the academic program of the participants.

(c) Rejection of applications

If the Corporation rejects an application submitted by a State under section 12525 of this title for an allotment under section 12524(b)(2) of this title, the Corporation shall promptly notify the State of the reasons for the rejection of the application. The Corporation shall provide the State with a reasonable opportunity to revise and resubmit the application and shall provide technical assistance, if needed, to the State as part of the resubmission process. The Corporation shall promptly reconsider such resubmitted application.

(Pub. L. 101-610, title I, §115, as added Pub. L. 103-82, title I, §103(a)(2), Sept. 21, 1993, 107 Stat. 830.)

PRIOR PROVISIONS

A prior section 12527, Pub. L. 101-610, title I, §117, Nov. 16, 1990, 104 Stat. 3138; Pub. L. 102-10, §4(5), Mar. 12, 1991, 105 Stat. 30, prescribed authorized uses of funds, prior to repeal by Pub. L. 103-82, §103(a)(2).

A prior section 115 of Pub. L. 101-610 was classified to section 12525 of this title prior to repeal by Pub. L. 103-82.

§ 12528. Participation of students and teachers from private schools

(a) In general

To the extent consistent with the number of students in the State or Indian tribe or in the school district of the local educational agency involved who are enrolled in private nonprofit elementary and secondary schools, such State, Indian tribe, or agency shall (after consultation with appropriate private school representatives) make provision—

- (1) for the inclusion of services and arrangements for the benefit of such students so as to allow for the equitable participation of such students in the programs implemented to carry out the objectives and provide the benefits described in this subpart; and
- (2) for the training of the teachers of such students so as to allow for the equitable participation of such teachers in the programs implemented to carry out the objectives and provide the benefits described in this subpart.

(b) Waiver

If a State, Indian tribe, or local educational agency is prohibited by law from providing for the participation of students or teachers from private nonprofit schools as required by sub-

section (a) of this section, or if the Corporation determines that a State, Indian tribe, or local educational agency substantially fails or is unwilling to provide for such participation on an equitable basis, the Chief Executive Officer shall waive such requirements and shall arrange for the provision of services to such students and teachers. Such waivers shall be subject to consultation, withholding, notice, and judicial review requirements in accordance with paragraphs (3) and (4) of section 2727(b) of title 20, as in effect on the day preceding October 20, 1994.

(Pub. L. 101-610, title I, §115A, as added Pub. L. 103-82, title I, §103(a)(2), Sept. 21, 1993, 107 Stat. 831; amended Pub. L. 103-382, title III, §394(h)(3), Oct. 20, 1994, 108 Stat. 4028.)

REFERENCES IN TEXT

Section 2727(b) of title 20, referred to in subsec. (b), was in the original “section 1017(b) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2727(b))”, Pub. L. 89-10, and was omitted in the general amendment of that Act by Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3519. See section 6311 et seq. of Title 20, Education.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103-382 inserted before period at end “, as in effect on the day preceding October 20, 1994”.

§ 12529. Federal, State, and local contributions

(a) Share

(1) In general

The Federal share attributable to this subpart of the cost of carrying out a program for which a grant or allotment is made under this subpart may not exceed—

- (A) 90 percent of the total cost of the program for the first year for which the program receives assistance under this subpart;
- (B) 80 percent of the total cost of the program for the second year for which the program receives assistance under this subpart;
- (C) 70 percent of the total cost of the program for the third year for which the program receives assistance under this subpart; and
- (D) 50 percent of the total cost of the program for the fourth year, and for any subsequent year, for which the program receives assistance under this subpart.

(2) Calculation

In providing for the remaining share of the cost of carrying out such a program, each recipient of assistance under this subpart—

- (A) shall provide for such share through a payment in cash or in kind, fairly evaluated, including facilities, equipment, or services; and
- (B) may provide for such share through State sources, local sources, or Federal sources (other than funds made available under the national service laws).

(b) Waiver

The Chief Executive Officer may waive the requirements of subsection (a) of this section in whole or in part with respect to any such program in any fiscal year if the Corporation deter-

mines that such a waiver would be equitable due to a lack of available financial resources at the local level.

(Pub. L. 101-610, title I, §116, as added Pub. L. 103-82, title I, §103(a)(2), Sept. 21, 1993, 107 Stat. 832.)

PRIOR PROVISIONS

A prior section 116 of Pub. L. 101-610 was classified to section 12526 of this title prior to repeal by Pub. L. 103-82.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12546, 12561 of this title.

§ 12530. Limitations on uses of funds

(a) Administrative costs

(1) Limitation

Not more than 5 percent of the amount of assistance provided to a State educational agency, Indian tribe, or grantmaking entity that is the original recipient of a grant or allotment under subsection (a), (b), (c), or (d) of section 12524 of this title for a fiscal year may be used to pay for administrative costs incurred by—

- (A) the original recipient; or
- (B) the entity carrying out the service-learning programs supported with the assistance.

(2) Rules on use

The Chief Executive Officer may by rule prescribe the manner and extent to which—

- (A) such assistance may be used to cover administrative costs; and
- (B) that portion of the assistance available to cover administrative costs should be distributed between—
 - (i) the original recipient; and
 - (ii) the entity carrying out the service-learning programs supported with the assistance.

(b) Capacity-building activities

(1) In general

Except as provided in paragraph (2), not less than 10 percent and not more than 15 percent of the amount of assistance provided to a State educational agency or Indian tribe that is the original recipient of a grant or allotment under subsection (a), (b), (c), or (d) of section 12524 of this title for a fiscal year may be used to build capacity through training, technical assistance, curriculum development, and coordination activities, described in section 12521(a)(1) of this title.

(2) Waiver

The Chief Executive Officer may waive the requirements of paragraph (1) in order to permit an agency or a tribe to use not less than 10 percent and not more than 20 percent of such amount to build capacity as provided in paragraph (1). To be eligible to receive such a waiver such an agency or tribe shall submit an application to the Chief Executive Officer at such time, in such manner, and containing such information as the Chief Executive Officer may require.

(c) Local uses of funds

Funds made available under this subpart may not be used to pay any stipend, allowance, or

other financial support to any student who is a participant under this division, except reimbursement for transportation, meals, and other reasonable out-of-pocket expenses directly related to participation in a program assisted under this subpart.

(Pub. L. 101-610, title I, §116A, as added Pub. L. 103-82, title I, §103(a)(2), Sept. 21, 1993, 107 Stat. 832.)

§ 12531. Definitions

As used in this subpart:

(1) Grantmaking entity

The term “grantmaking entity” means an organization described in section 12523(a) of this title.

(2) School-based

The term “school-based” means based in an elementary school or a secondary school.

(3) Student

Notwithstanding section 12511(29) of this title, the term “student” means an individual who is enrolled in an elementary or secondary school on a full- or part-time basis.

(Pub. L. 101-610, title I, §116B, as added Pub. L. 103-82, title I, §103(a)(2), Sept. 21, 1993, 107 Stat. 833.)

PRIOR PROVISIONS

A prior section 12531, Pub. L. 101-610, title I, §118, Nov. 16, 1990, 104 Stat. 3139; Pub. L. 102-10, §4(6), Mar. 12, 1991, 105 Stat. 30, related to higher education innovative projects for community service, prior to repeal by Pub. L. 103-82, §103(b).

SUBPART B—COMMUNITY-BASED SERVICE PROGRAMS FOR SCHOOL-AGE YOUTH

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in section 12681 of this title.

§ 12541. Definitions

As used in this subpart:

(1) Community-based service program

The term “community-based service program” means a program described in section 12542(b)(1)(A) of this title.

(2) Grantmaking entity

The term “grantmaking entity” means a qualified organization that—

- (A) submits an application under section 12544(a) of this title to make grants to qualified organizations;
- (B) was in existence at least 1 year before the date on which the organization submitted the application; and
- (C) meets such other criteria as the Chief Executive Officer shall establish.

(3) Qualified organization

The term “qualified organization” means a public or private nonprofit organization with experience working with school-age youth that meets such criteria as the Chief Executive Officer may establish.

(Pub. L. 101-610, title I, §117, as added Pub. L. 103-82, title I, §103(a)(2), Sept. 21, 1993, 107 Stat. 833.)

PRIOR PROVISIONS

A prior section 12541, Pub. L. 101-610, title I, §121, Nov. 16, 1990, 104 Stat. 3140, as amended, which prescribed general authority of Commission to make grants and transfer funds for youth corps programs, was renumbered section 199A of Pub. L. 101-610 by Pub. L. 103-82, §101(a), and transferred to section 12655 of this title.

A prior section 117 of Pub. L. 101-610 was classified to section 12527 of this title prior to repeal by Pub. L. 103-82.

§ 12542. General authority**(a) Grants**

From the funds appropriated to carry out this subpart for a fiscal year, the Corporation may make grants to State Commissions, grantmaking entities, and qualified organizations to pay for the Federal share of the implementation, operation, expansion, or replication of community-based service programs.

(b) Use of funds**(1) State Commissions and grantmaking entities**

A State Commission or grantmaking entity may use a grant made under subsection (a) of this section—

(A) to make a grant to a qualified organization to implement, operate, expand, or replicate a community-based service program that provides for meaningful human, educational, environmental, or public safety service by participants, who shall be school-age youth; or

(B) to provide training and technical assistance to such an organization.

(2) Qualified organizations

A qualified organization, other than a grantmaking entity, may use a grant made under subsection (a) of this section to implement, operate, expand, or replicate a program described in paragraph (1)(A).

(Pub. L. 101-610, title I, §117A, as added Pub. L. 103-82, title I, §103(a)(2), Sept. 21, 1993, 107 Stat. 833.)

PRIOR PROVISIONS

A prior section 12542, Pub. L. 101-610, title I, §122, Nov. 16, 1990, 104 Stat. 3140, as amended, which related to allocation of funds by Commission for conservation and youth corps programs, was renumbered section 199B of Pub. L. 101-610 by Pub. L. 103-82, §101(a), and transferred to section 12655a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12511, 12541, 12543, 12544, 12545, 12547 of this title.

§ 12543. State applications**(a) In general**

To be eligible to receive a grant under section 12542(a) of this title, a State Commission shall prepare, submit to the Corporation, and obtain approval of, an application.

(b) Submission

Such application shall be submitted to the Corporation at such time and in such manner, and shall contain such information, as the Chief Executive Officer may reasonably require.

(c) Contents

Such an application shall include, at a minimum, a State plan that contains the information and assurances described in section 12544(d) of this title with respect to each community-based service program proposed to be carried out through funding distributed by the State Commission under this subpart.

(Pub. L. 101-610, title I, §117B, as added Pub. L. 103-82, title I, §103(a)(2), Sept. 21, 1993, 107 Stat. 834.)

PRIOR PROVISIONS

A prior section 12543, Pub. L. 101-610, title I, §123, Nov. 16, 1990, 104 Stat. 3141, as amended, which related to applications for assistance by States, Indian tribes and other local applicants, was renumbered section 199C of Pub. L. 101-610 by Pub. L. 103-82, §101(a), and transferred to section 12655b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12544, 12545, 12638 of this title.

§ 12544. Local applications**(a) Application to Corporation to make grants for community-based service programs**

To be eligible to receive a grant from the Corporation under section 12542(a) of this title to make grants under section 12542(b)(1) of this title, a grantmaking entity shall prepare, submit to the Corporation, and obtain approval of, an application that proposes a community-based service program to be carried out through grants made to qualified organizations. Such application shall be submitted at such time and in such manner, and shall contain such information, as the Chief Executive Officer may reasonably require.

(b) Direct application to Corporation to carry out community-based service programs

To be eligible to receive a grant from the Corporation under section 12542(a) of this title to implement, operate, expand, or replicate a community service program, a qualified organization shall prepare, submit to the Corporation, and obtain approval of, an application that proposes a community-based service program to be carried out at multiple sites, or that proposes an innovative community-based service program. Such application shall be submitted at such time and in such manner, and shall contain such information, as the Chief Executive Officer may reasonably require.

(c) Application to State Commission or grantmaking entity to receive grants to carry out community-based service programs

To be eligible to receive a grant from a State Commission or grantmaking entity under section 12542(b)(1) of this title, a qualified organization shall prepare, submit to the Commission or entity, and obtain approval of, an application. Such application shall be submitted at such time and in such manner, and shall contain such information, as the Commission or entity may reasonably require.

(d) Regulations

The Corporation shall by regulation establish standards for the information and assurances re-

quired to be contained in an application submitted under subsection (a) or (b) of this section with respect to a community-based service program, including, at a minimum—

(1) an assurance that the entity carrying out the program proposed by the applicant will comply with the nonduplication and non-displacement provisions of section 12637 of this title and the grievance procedure requirements of section 12636(f) of this title;

(2) an assurance that the entity carrying out the program will, prior to placing a participant in the program, consult with the appropriate local labor organization, if any, representing employees in the area in which the program will be carried out that are engaged in the same or similar work as the work proposed to be carried out by the program, to prevent the displacement of such employees; and

(3) in the case of an application submitted by a grantmaking entity, information demonstrating that the entity will make grants for a program to—

(A) carry out activities described in section 12542(b)(1) of this title in two or more States, under circumstances in which the activities carried out under such program can be carried out more efficiently through one program than through two or more programs; and

(B) carry out the same activities, such as training activities or activities related to exchanging information on service experiences, through each of the projects assisted through the program.

(e) Limitation on same project in multiple applications

No applicant shall submit an application under section 12543 of this title or this section, and the Corporation shall reject an application that is submitted under section 12543 of this title or this section, if the application describes a project proposed to be conducted using assistance requested by the applicant and the project is already described in another application pending before the Corporation.

(Pub. L. 101-610, title I, §117C, as added Pub. L. 103-82, title I, §103(a)(2), Sept. 21, 1993, 107 Stat. 834.)

PRIOR PROVISIONS

A prior section 12544, Pub. L. 101-610, title I, §124, Nov. 16, 1990, 104 Stat. 3143, as amended, which prescribed appropriate focus for conservation and youth service corps programs, was renumbered section 199D of Pub. L. 101-610 by Pub. L. 103-82, §101(a), and transferred to section 12655c of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12541, 12543, 12545 of this title.

§ 12545. Consideration of applications

(a) Application of criteria

The Corporation shall apply the criteria described in subsection (b) of this section in determining whether to approve an application submitted under section 12543 of this title or under subsection (a) or (b) of section 12544 of this title and to provide assistance under section 12542 of

this title to the applicant on the basis of the application.

(b) Assistance criteria

In evaluating such an application with respect to a program under this subpart, the Corporation shall consider the criteria established for national service programs under section 12585(c) of this title.

(c) Application to subgrants

A State Commission or grantmaking entity shall apply the criteria described in subsection (b) of this section in determining whether to approve an application under section 12544(c) of this title and to make a grant under section 12542(b)(1) of this title to the applicant on the basis of the application.

(Pub. L. 101-610, title I, §117D, as added Pub. L. 103-82, title I, §103(a)(2), Sept. 21, 1993, 107 Stat. 835.)

PRIOR PROVISIONS

A prior section 12545, Pub. L. 101-610, title I, §125, Nov. 16, 1990, 104 Stat. 3144, which related to administration of related programs, was renumbered section 199E of Pub. L. 101-610 by Pub. L. 103-82, §101(a), and transferred to section 12655d of this title.

§ 12546. Federal, State, and local contributions

(a) Federal share

(1) In general

The Federal share attributable to this subpart of the cost of carrying out a program for which a grant is made under this subpart may not exceed the percentage specified in subparagraph (A), (B), (C), or (D) of section 12529(a)(1) of this title, as appropriate.

(2) Calculation

Each recipient of assistance under this subpart shall comply with section 12529(a)(2) of this title.

(b) Waiver

The Chief Executive Officer may waive the requirements of subsection (a) of this section, in whole or in part, as provided in section 12529(b) of this title.

(Pub. L. 101-610, title I, §117E, as added Pub. L. 103-82, title I, §103(a)(2), Sept. 21, 1993, 107 Stat. 836.)

PRIOR PROVISIONS

A prior section 12546, Pub. L. 101-610, title I, §126, Nov. 16, 1990, 104 Stat. 3144, which related to program activities on public or Indian lands, was renumbered section 199F of Pub. L. 101-610 by Pub. L. 103-82, §101(a), and transferred to section 12655e of this title.

§ 12547. Limitations on uses of funds

(a) Administrative costs

Not more than 5 percent of the amount of assistance provided to a State Commission, grantmaking entity, or qualified organization that is the original recipient of a grant under section 12542(a) of this title for a fiscal year may be used to pay for administrative costs incurred by—

(1) the original recipient; or

(2) the entity carrying out the community-based service programs supported with the assistance.

(b) Rules on use

The Chief Executive Officer may by rule prescribe the manner and extent to which—

- (1) such assistance may be used to cover administrative costs; and
- (2) that portion of the assistance available to cover administrative costs should be distributed between—
 - (A) the original recipient; and
 - (B) the entity carrying out the community-based service programs supported with the assistance.

(Pub. L. 101-610, title I, §117F, as added Pub. L. 103-82, title I, §103(a)(2), Sept. 21, 1993, 107 Stat. 836.)

PRIOR PROVISIONS

A prior section 12547, Pub. L. 101-610, title I, §127, Nov. 16, 1990, 104 Stat. 3145, which related to training and education services, was renumbered section 199G of Pub. L. 101-610 by Pub. L. 103-82, §101(a), and transferred to section 12655f of this title.

A prior section 12548, Pub. L. 101-610, title I, §128, Nov. 16, 1990, 104 Stat. 3146, as amended, which related to amount of award and matching requirement, was renumbered section 199H of Pub. L. 101-610 by Pub. L. 103-82, title I, §101(a), Sept. 21, 1993, 107 Stat. 788, and transferred to section 12655g of this title, prior to repeal by Pub. L. 103-82, §101(e)(8)(A).

A prior section 12549, Pub. L. 101-610, title I, §129, Nov. 16, 1990, 104 Stat. 3146, which related to preference for certain projects, was successively renumbered section 199I, then 199H, of Pub. L. 101-610 by Pub. L. 103-82, §101(a), (e)(8)(B), and transferred to section 12655h of this title.

A prior section 12550, Pub. L. 101-610, title I, §130, Nov. 16, 1990, 104 Stat. 3146, as amended, which related to age and citizenship criteria for enrollment, was successively renumbered section 199J, then 199I, of Pub. L. 101-610 by Pub. L. 103-82, §101(a), (e)(8)(B), and transferred to section 12655i of this title.

SUBPART C—CLEARINGHOUSE

§ 12551. Service-learning clearinghouse**(a) In general**

The Corporation shall provide financial assistance, from funds appropriated to carry out division H of this subchapter, to organizations described in subsection (b) of this section to establish a clearinghouse, which shall carry out activities, either directly or by arrangement with another such organization, with respect to information about service-learning.

(b) Public or private nonprofit organizations

Public or private nonprofit organizations that have extensive experience with service-learning, including use of adult volunteers to foster service-learning, shall be eligible to receive assistance under subsection (a) of this section.

(c) Function of clearinghouse

An organization that receives assistance under subsection (a) of this section may—

- (1) assist entities carrying out State or local service-learning programs with needs assessments and planning;
- (2) conduct research and evaluations concerning service-learning;
- (3)(A) provide leadership development and training to State and local service-learning program administrators, supervisors, service sponsors, and participants; and

(B) provide training to persons who can provide the leadership development and training described in subparagraph (A);

(4) facilitate communication among entities carrying out service-learning programs and participants in such programs;

(5) provide information, curriculum materials, and technical assistance relating to planning and operation of service-learning programs, to States and local entities eligible to receive financial assistance under this subchapter;

(6) provide information regarding methods to make service-learning programs accessible to individuals with disabilities;

(7)(A) gather and disseminate information on successful service-learning programs, components of such successful programs, innovative youth skills curricula related to service-learning, and service-learning projects; and

(B) coordinate the activities of the Clearinghouse¹ with appropriate entities to avoid duplication of effort;

(8) make recommendations to State and local entities on quality controls to improve the quality of service-learning programs;

(9) assist organizations in recruiting, screening, and placing service-learning coordinators; and

(10) carry out such other activities as the Chief Executive Officer determines to be appropriate.

(Pub. L. 101-610, title I, §118, as added Pub. L. 103-82, title I, §103(a)(2), Sept. 21, 1993, 107 Stat. 836.)

PRIOR PROVISIONS

A prior section 12551, Pub. L. 101-610, title I, §131, Nov. 16, 1990, 104 Stat. 3147, which related to use of volunteers in assisting program projects, was successively renumbered section 199K, then 199J, of Pub. L. 101-610 by Pub. L. 103-82, §101(a), (e)(8)(B), and transferred to section 12655j of this title.

A prior section 118 of Pub. L. 101-610 was classified to section 12531 of this title prior to repeal by Pub. L. 103-82.

A prior section 12552, Pub. L. 101-610, title I, §132, Nov. 16, 1990, 104 Stat. 3147, which related to post-service benefits, was renumbered section 199L of Pub. L. 101-610 by Pub. L. 103-82, §101(a), and transferred to section 12655k of this title, prior to repeal by Pub. L. 103-82, §101(e)(8)(A).

A prior section 12553, Pub. L. 101-610, title I, §133, Nov. 16, 1990, 104 Stat. 3147, as amended, which related to living allowance, was successively renumbered section 199M, then 199K, of Pub. L. 101-610 by Pub. L. 103-82, §101(a), (e)(8)(B), and transferred to section 12655l of this title.

A prior section 12554, Pub. L. 101-610, title I, §134, Nov. 16, 1990, 104 Stat. 3148, which related to joint programs, was successively renumbered section 199N, then 199L, of Pub. L. 101-610 by Pub. L. 103-82, §101(a), (e)(8)(B), and transferred to section 12655m of this title.

A prior section 12555, Pub. L. 101-610, title I, §135, Nov. 16, 1990, 104 Stat. 3149, which related to Federal and State employee status, was successively renumbered section 199O, then 199M, of Pub. L. 101-610 by Pub. L. 103-82, §101(a), (e)(8)(B), and transferred to section 12655n of this title.

A prior section 12556, Pub. L. 101-610, title I, §136, Nov. 16, 1990, 104 Stat. 3150, directed Commission on National and Community Service to promulgate regula-

¹ So in original. Probably should not be capitalized.

tions implementing American Conservation Youth Corps program and established procedures for promulgation, prior to repeal by Pub. L. 102-10, §5(7), Mar. 12, 1991, 105 Stat. 31.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12653a of this title.

PART II—HIGHER EDUCATION INNOVATIVE PROGRAMS FOR COMMUNITY SERVICE

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 12681 of this title.

§ 12561. Higher education innovative programs for community service

(a) Purpose

It is the purpose of this part to expand participation in community service by supporting innovative community service programs carried out through institutions of higher education, acting as civic institutions to meet the human, educational, environmental, or public safety needs of neighboring communities.

(b) General authority

The Corporation, in consultation with the Secretary of Education, is authorized to make grants to, and enter into contracts with, institutions of higher education (including a combination of such institutions), and partnerships comprised of such institutions and of other public or private nonprofit organizations, to pay for the Federal share of the cost of—

(1) enabling such an institution or partnership to create or expand an organized community service program that—

(A) engenders a sense of social responsibility and commitment to the community in which the institution is located; and

(B) provides projects for participants, who shall be students, faculty, administration, or staff of the institution, or residents of the community;

(2) supporting student-initiated and student-designed community service projects through the program;

(3) strengthening the leadership and instructional capacity of teachers at the elementary, secondary, and postsecondary levels, with respect to service-learning, by—

(A) including service-learning as a key component of the preservice teacher education of the institution; and

(B) encouraging the faculty of the institution to use service-learning methods throughout their curriculum;

(4) facilitating the integration of community service carried out under the program into academic curricula, including integration of clinical programs into the curriculum for students in professional schools, so that students can obtain credit for their community service projects;

(5) supplementing the funds available to carry out work-study programs under part C of title IV of the Higher Education Act of 1965 (42 U.S.C. 2751 et seq.) to support service-learning and community service through the community service program;

(6) strengthening the service infrastructure within institutions of higher education in the United States through the program; and

(7) providing for the training of teachers, prospective teachers, related education personnel, and community leaders in the skills necessary to develop, supervise, and organize service-learning.

(c) Federal share

(1) Share

(A) In general

The Federal share of the cost of carrying out a community service project for which a grant or contract is awarded under this part may not exceed 50 percent.

(B) Calculation

Each recipient of assistance under this part shall comply with section 12529(a)(2) of this title.

(2) Waiver

The Chief Executive Officer may waive the requirements of paragraph (1), in whole or in part, as provided in section 12529(b) of this title.

(d) Application for grant

(1) Submission

To receive a grant or enter into a contract under this part, an institution or partnership described in subsection (b) of this section shall prepare, submit to the Corporation, and obtain approval of, an application at such time, in such manner, and containing such information and assurances as the Corporation may reasonably require. In requesting applications for assistance under this part, the Corporation shall specify such required information and assurances.

(2) Contents

An application submitted under paragraph (1) shall contain, at a minimum—

(A) assurances that—

(i) prior to the placement of a participant, the applicant will consult with the appropriate local labor organization, if any, representing employees in the area who are engaged in the same or similar work as that proposed to be carried out by such program, to prevent the displacement and protect the rights of such employees; and

(ii) the applicant will comply with the nonduplication and nondisplacement provisions of section 12637 of this title and grievance procedure requirements of section 12636(f) of this title; and

(B) such other assurances as the Chief Executive Officer may reasonably require.

(e) Priority

(1) In general

In making grants and entering into contracts under subsection (b) of this section, the Corporation shall give priority to applicants that submit applications containing proposals that—

(A) demonstrate the commitment of the institution of higher education, other than

by demonstrating the commitment of the students, to supporting the community service projects carried out under the program;

(B) specify the manner in which the institution will promote faculty, administration, and staff participation in the community service projects;

(C) specify the manner in which the institution will provide service to the community through organized programs, including, where appropriate, clinical programs for students in professional schools;

(D) describe any partnership that will participate in the community service projects, such as a partnership comprised of—

- (i) the institution;
- (ii) (I) a community-based agency;
- (II) a local government agency; or
- (III) a nonprofit entity that serves or involves school-age youth or older adults; and
- (iii) a student organization;

(E) demonstrate community involvement in the development of the proposal;

(F) specify that the institution will use such assistance to strengthen the service infrastructure in institutions of higher education; or

(G) with respect to projects involving delivery of service, specify projects that involve leadership development of school-age youth.

(2) Determination

In giving priority to applicants under paragraph (1), the Corporation shall give increased priority to such an applicant for each characteristic described in subparagraphs (A) through (G) of paragraph (1) that is reflected in the application submitted by the applicant.

(f) National service educational award

A participant in a program funded under this part shall be eligible for the national service educational award described in division D of this subchapter, if the participant served in an approved national service position.

(g) “Student” defined

Notwithstanding section 12511(29) of this title, as used in this part, the term “student” means an individual who is enrolled in an institution of higher education on a full- or part-time basis.

(Pub. L. 101-610, title I, §119, as added Pub. L. 103-82, title I, §103(b), Sept. 21, 1993, 107 Stat. 837.)

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in subsec. (b)(5), is Pub. L. 89-329, Nov. 8, 1965, 79 Stat. 1219, as amended. Part C of title IV of the Act is classified generally to part C (§2751 et seq.) of subchapter I of chapter 34 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20, Education, and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12511 of this title.

Division C—National Service Trust Program

PRIOR PROVISIONS

This division is comprised of subtitle C, §§121-141, of title I of Pub. L. 101-610. A prior part C (§12541 et seq.),

comprised of subtitle C, §§120-135, of title I of Pub. L. 101-610 was renumbered subtitle I, §§199A-199O, of title I of Pub. L. 101-610 by Pub. L. 103-82, title I, §101(a), Sept. 21, 1993, 107 Stat. 788, and transferred to division I of this subchapter.

DIVISION REFERRED TO IN OTHER SECTIONS

This division is referred to in sections 12511, 12521, 12601, 12604, 12638, 12639, 12651d, 12653, 12655, 12656, 12681 of this title; title 16 sections 1726, 1727; title 20 section 7263; title 31 section 6703.

PART I—INVESTMENT IN NATIONAL SERVICE

§ 12571. Authority to provide assistance and approved national service positions

(a) Provision of assistance

Subject to the availability of appropriations for this purpose, the Corporation for National and Community Service may make grants to States, subdivisions of States, Indian tribes, public or private nonprofit organizations, and institutions of higher education for the purpose of assisting the recipients of the grants—

(1) to carry out full- or part-time national service programs, including summer programs, described in section 12572(a) of this title; and

(2) to make grants in support of other national service programs described in section 12572(a) of this title that are carried out by other entities.

(b) Agreements with Federal agencies

(1) Agreements authorized

The Corporation may enter into a contract or cooperative agreement with another Federal agency to support a national service program carried out by the agency. The support provided by the Corporation pursuant to the contract or cooperative agreement may include the transfer to the Federal agency of funds available to the Corporation under this division.

(2) Matching funds requirements

A Federal agency receiving assistance under this subsection shall not be required to satisfy the matching funds requirements specified in subsection (e) of this section. However, the supplementation requirements specified in section 12633 of this title shall apply with respect to the Federal national service programs supported with such assistance.

(3) Consultation with State Commissions

A Federal agency receiving assistance under this subsection shall consult with the State Commissions for those States in which projects will be conducted using such assistance in order to ensure that the projects do not duplicate projects conducted by State or local national service programs.

(4) Support for other national service programs

A Federal agency that enters into a contract or cooperative agreement under paragraph (1) shall, in an appropriate case, enter into a contract or cooperative agreement with an entity that is carrying out a national service program in a State that is in existence in the State as of the date of the contract or cooperative agreement and is of high quality, in order to support the national service program.

(c) Provision of approved national service positions

As part of the provision of assistance under subsections (a) and (b) of this section, the Corporation shall—

(1) approve the provision of national service educational awards described in division D of this subchapter for the participants who serve in national service programs carried out using such assistance; and

(2) deposit in the National Service Trust established in section 12601(a) of this title an amount equal to the product of—

(A) the value of a national service educational award under section 12603 of this title; and

(B) the total number of approved national service positions to be provided.

(d) Five percent limitation on administrative costs**(1) Limitation**

Not more than 5 percent of the amount of assistance provided to the original recipient of a grant or transfer of assistance under subsection (a) or (b) of this section for a fiscal year may be used to pay for administrative costs incurred by—

(A) the recipient of the assistance; and

(B) national service programs carried out or supported with the assistance.

(2) Rules on use

The Corporation may by rule prescribe the manner and extent to which—

(A) assistance provided under subsection (a) or (b) of this section may be used to cover administrative costs; and

(B) that portion of the assistance available to cover administrative costs should be distributed between—

(i) the original recipient of the grant or transfer of assistance under such subsection; and

(ii) national service programs carried out or supported with the assistance.

(e) Matching funds requirements**(1) Requirements**

Except as provided in section 12594 of this title, the Federal share of the cost of carrying out a national service program that receives the assistance under subsection (a) of this section, whether the assistance is provided directly or as a subgrant from the original recipient of the assistance, may not exceed 75 percent of such cost.

(2) Calculation

In providing for the remaining share of the cost of carrying out a national service program, the program—

(A) shall provide for such share through a payment in cash or in kind, fairly evaluated, including facilities, equipment, or services; and

(B) may provide for such share through State sources, local sources, or other Federal sources (other than the use of funds made available under the national service laws).

(3) Cost of health care

In providing a payment in cash under paragraph (2)(A) as part of providing for the remaining share of the cost of carrying out a national service program, the program may count not more than 85 percent of the cost of providing a health care policy described in section 12594(d)(2) of this title toward such share.

(4) Waiver

The Corporation may waive in whole or in part the requirements of paragraph (1) with respect to a national service program in any fiscal year if the Corporation determines that such a waiver would be equitable due to a lack of available financial resources at the local level.

(Pub. L. 101-610, title I, §121, as added Pub. L. 103-82, title I, §101(b), Sept. 21, 1993, 107 Stat. 788.)

PRIOR PROVISIONS

A prior section 12571, Pub. L. 101-610, title I, §141, Nov. 16, 1990, 104 Stat. 3150, related to general authority to make grants for national and community service programs, prior to the general amendment of subtitle D of title I of Pub. L. 101-610 [formerly part D of this subchapter] by Pub. L. 103-82, §102(a).

A prior section 121 of Pub. L. 101-610 was renumbered section 199A, and is classified to section 12655 of this title.

EFFECTIVE DATE

Division effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as an Effective Date of 1993 Amendment note under section 1701 of Title 16, Conservation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12572, 12573, 12574, 12575, 12576, 12581, 12582, 12583, 12584, 12585, 12591, 12592, 12593, 12594, 12595, 12604, 12638, 12639, 12651d, 12651f, 12655l, 12656 of this title; title 16 section 1729.

§ 12572. Types of national service programs eligible for program assistance**(a) Eligible national service programs**

The recipient of a grant under section 12571(a) of this title and each Federal agency receiving assistance under section 12571(b) of this title shall use the assistance, directly or through subgrants to other entities, to carry out full- or part-time national service programs, including summer programs, that address unmet human, educational, environmental, or public safety needs. Subject to subsection (b)(1) of this section, these national service programs may include the following types of national service programs:

(1) A community corps program that meets unmet human, educational, environmental, or public safety needs and promotes greater community unity through the use of organized teams of participants of varied social and economic backgrounds, skill levels, physical and developmental capabilities, ages, ethnic backgrounds, or genders.

(2) A full-time, year-round youth corps program or full-time summer youth corps program, such as a conservation corps or youth service corps (including youth corps programs under division I of this subchapter, the Public Lands Corps established under the Public

Lands Corps Act of 1993 [16 U.S.C. 1721 et seq.], the Urban Youth Corps established under section 12656 of this title, and other conservation corps or youth service corps that performs service on Federal or other public lands or on Indian lands or Hawaiian home lands), that—

(A) undertakes meaningful service projects with visible public benefits, including natural resource, urban renovation, or human services projects;

(B) includes as participants youths and young adults between the ages of 16 and 25, inclusive, including out-of-school youths and other disadvantaged youths (such as youths with limited basic skills, youths in foster care who are becoming too old for foster care, youths of limited-English proficiency, homeless youths, and youths who are individuals with disabilities) who are between those ages; and

(C) provides those participants who are youths and young adults with—

(i) crew-based, highly structured, and adult-supervised work experience, life skills, education, career guidance and counseling, employment training, and support services; and

(ii) the opportunity to develop citizenship values and skills through service to their community and the United States.

(3) A program that provides specialized training to individuals in service-learning and places the individuals after such training in positions, including positions as service-learning coordinators, to facilitate service-learning in programs eligible for funding under part I of division B of this subchapter.

(4) A service program that is targeted at specific unmet human, educational, environmental, or public safety needs and that—

(A) recruits individuals with special skills or provides specialized preservice training to enable participants to be placed individually or in teams in positions in which the participants can meet such unmet needs; and

(B) if consistent with the purposes of the program, brings participants together for additional training and other activities designed to foster civic responsibility, increase the skills of participants, and improve the quality of the service provided.

(5) An individualized placement program that includes regular group activities, such as leadership training and special service projects.

(6) A campus-based program that is designed to provide substantial service in a community during the school term and during summer or other vacation periods through the use of—

(A) students who are attending an institution of higher education, including students participating in a work-study program assisted under part C of title IV of the Higher Education Act of 1965 (42 U.S.C. 2751 et seq.);

(B) teams composed of such students; or

(C) teams composed of a combination of such students and community residents.

(7) A preprofessional training program in which students enrolled in an institution of higher education—

(A) receive training in specified fields, which may include classes containing service-learning;

(B) perform service related to such training outside the classroom during the school term and during summer or other vacation periods; and

(C) agree to provide service upon graduation to meet unmet human, educational, environmental, or public safety needs related to such training.

(8) A professional corps program that recruits and places qualified participants in positions—

(A) as teachers, nurses and other health care providers, police officers, early childhood development staff, engineers, or other professionals providing service to meet educational, human, environmental, or public safety needs in communities with an inadequate number of such professionals;

(B) that may include a salary in excess of the maximum living allowance authorized in subsection (a)(3) of section 12594 of this title, as provided in subsection (c) of such section; and

(C) that are sponsored by public or private nonprofit employers who agree to pay 100 percent of the salaries and benefits (other than any national service educational award under division D of this subchapter) of the participants.

(9) A program in which economically disadvantaged individuals who are between the ages of 16 and 24 years of age, inclusive, are provided with opportunities to perform service that, while enabling such individuals to obtain the education and employment skills necessary to achieve economic self-sufficiency, will help their communities meet—

(A) the housing needs of low-income families and the homeless; and

(B) the need for community facilities in low-income areas.

(10) A national service entrepreneur program that identifies, recruits, and trains gifted young adults of all backgrounds and assists them in designing solutions to community problems.

(11) An intergenerational program that combines students, out-of-school youths, and older adults as participants to provide needed community services, including an intergenerational component for other national service programs described in this subsection.

(12) A program that is administered by a combination of nonprofit organizations located in a low-income area, provides a broad range of services to residents of such area, is governed by a board composed in significant part of low-income individuals, and is intended to provide opportunities for individuals or teams of individuals to engage in community projects in such area that meet unaddressed community and individual needs, including projects that would—

(A) meet the needs of low-income children and youth aged 18 and younger, such as providing after-school “safe-places”, including schools, with opportunities for learning and recreation; or

(B) be directed to other important unaddressed needs in such area.

(13) A community service program designed to meet the needs of rural communities, using teams or individual placements to address the development needs of rural communities and to combat rural poverty, including health care, education, and job training.

(14) A program that seeks to eliminate hunger in communities and rural areas through service in projects—

(A) involving food banks, food pantries, and nonprofit organizations that provide food during emergencies;

(B) involving the gleaning of prepared and unprepared food that would otherwise be discarded as unusable so that the usable portion of such food may be donated to food banks, food pantries, and other nonprofit organizations;

(C) seeking to address the long-term causes of hunger through education and the delivery of appropriate services; or

(D) providing training in basic health, nutrition, and life skills necessary to alleviate hunger in communities and rural areas.

(15) Such other national service programs addressing unmet human, educational, environmental, or public safety needs as the Corporation may designate.

(b) Qualification criteria to determine eligibility

(1) Establishment by Corporation

The Corporation shall establish qualification criteria for different types of national service programs for the purpose of determining whether a particular national service program should be considered to be a national service program eligible to receive assistance or approved national service positions under this division.

(2) Consultation

In establishing qualification criteria under paragraph (1), the Corporation shall consult with organizations and individuals with extensive experience in developing and administering effective national service programs or regarding the delivery of human, educational, environmental, or public safety services to communities or persons.

(3) Application to subgrants

The qualification criteria established by the Corporation under paragraph (1) shall also be used by each recipient of assistance under section 12571(a) of this title that uses any portion of the assistance to conduct a grant program to support other national service programs.

(4) Encouragement of intergenerational components of programs

The Corporation shall encourage national service programs eligible to receive assistance or approved national service positions under this division to establish, if consistent with the purposes of the program, an intergenerational component of the program that combines students, out-of-school youths, and older adults as participants to provide services to address unmet human, educational, environmental, or public safety needs.

(c) National service priorities

(1) Establishment

(A) By Corporation

In order to concentrate national efforts on meeting certain unmet human, educational, environmental, or public safety needs and to achieve the other purposes of this chapter, the Corporation shall establish, and after reviewing the strategic plan approved under section 12651b(g)(1) of this title, periodically alter priorities as appropriate regarding the types of national service programs to be assisted under subsection (b) or (d) of section 12581 of this title and the purposes for which such assistance may be used.

(B) By States

Consistent with paragraph (4), States shall establish, and through the national service plan process described in section 12638(e)(1) of this title, periodically alter priorities as appropriate regarding the national service programs to be assisted under section 12581(a)(1) of this title. The State priorities shall be subject to Corporation review as part of the application process under section 12582 of this title.

(2) Notice to applicants

The Corporation shall provide advance notice to potential applicants of any national service priorities to be in effect under this subsection for a fiscal year. The notice shall specifically include—

(A) a description of any alteration made in the priorities since the previous notice; and

(B) a description of the national service programs that are designated by the Corporation under section 12585(d)(2) of this title as eligible for priority consideration in the next competitive distribution of assistance under section 12571(a) of this title.

(3) Regulations

The Corporation shall by regulation establish procedures to ensure the equitable treatment of national service programs that—

(A) receive funding under this division for multiple years; and

(B) would be adversely affected by annual revisions in such national service priorities.

(4) Application to subgrants

Any national service priorities established by the Corporation under this subsection shall also be used by each recipient of funds under section 12571(a) of this title that uses any portion of the assistance to conduct a grant program to support other national service programs.

(Pub. L. 101-610, title I, §122, as added Pub. L. 103-82, title I, §101(b), Sept. 21, 1993, 107 Stat. 790.)

REFERENCES IN TEXT

The Public Lands Corps Act of 1993, referred to in subsec. (a)(2), is title II of Pub. L. 91-378, as added Pub. L. 103-82, title I, §105(6), Sept. 21, 1993, 107 Stat. 848, which is classified generally to subchapter II (§1721 et seq.) of chapter 37 of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 16 and Tables.

The Higher Education Act of 1965, referred to in subsec. (a)(6)(A), is Pub. L. 89-329, Nov. 8, 1965, 79 Stat. 1219, as amended. Part C of title IV of the Act is classified generally to part C (§2751 et seq.) of subchapter I of chapter 34 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20, Education, and Tables.

This chapter, referred to in subsec. (c)(1), was in the original "this Act", meaning Pub. L. 101-610, Nov. 16, 1990, 104 Stat. 3127, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12501 of this title and Tables.

PRIOR PROVISIONS

A prior section 12572, Pub. L. 101-610, title I, §142, Nov. 16, 1990, 104 Stat. 3150, related to criteria and requirements for awarding grants for national and community service programs, prior to the general amendment of subtitle D of title I of Pub. L. 101-610 [former part D of this subchapter] by Pub. L. 103-82, §102(a).

A prior section 122 of Pub. L. 101-610 was renumbered section 199B, and is classified to section 12655a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12511, 12571, 12573, 12576, 12582, 12585, 12591, 12594, 12602, 12638, 12651d of this title.

§ 12573. Types of national service positions eligible for approval for national service educational awards

The Corporation may approve of any of the following service positions as an approved national service position that includes the national service educational award described in division D of this subchapter as one of the benefits to be provided for successful service in the position:

(1) A position for a participant in a national service program described in section 12572(a) of this title that receives assistance under subsection (a) or (b) of section 12571 of this title.

(2) A position for a participant in a program that—

(A) is carried out by a State, a subdivision of a State, an Indian tribe, a public or private nonprofit organization, an institution of higher education, or a Federal agency; and

(B) would be eligible to receive assistance under section 12571(a) of this title, based on criteria established by the Corporation, but has not applied for such assistance.

(3) A position involving service as a VISTA volunteer under title I of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 et seq.).

(4) A position facilitating service-learning in a program described in section 12572(a)(3) of this title that is eligible for assistance under part I of division B of this subchapter.

(5) A position for a participant in the Civilian Community Corps under division E of this subchapter.

(6) A position involving service as a crew leader in a youth corps program or a similar position supporting a national service program that receives an approved national service position.

(7) Such other national service positions as the Corporation considers to be appropriate.

(Pub. L. 101-610, title I, §123, as added Pub. L. 103-82, title I, §101(b), Sept. 21, 1993, 107 Stat. 794.)

REFERENCES IN TEXT

The Domestic Volunteer Service Act of 1973, referred to in par. (3), is Pub. L. 93-113, Oct. 1, 1973, 87 Stat. 394, as amended. Title I of the Act is classified generally to subchapter I (§4951 et seq.) of chapter 66 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of this title and Tables.

PRIOR PROVISIONS

A prior section 12573, Pub. L. 101-610, title I, §143, Nov. 16, 1990, 104 Stat. 3152, related to types of national service, prior to the general amendment of subtitle D of title I of Pub. L. 101-610 [former part D of this subchapter] by Pub. L. 103-82, §102(a).

A prior section 123 of Pub. L. 101-610 was renumbered section 199C, and is classified to section 12655b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12582, 12585 of this title.

§ 12574. Types of program assistance

(a) Planning assistance

The Corporation may provide assistance under section 12571 of this title to a qualified applicant that submits an application under section 12582 of this title for the planning of a national service program. Assistance provided in accordance with this subsection may cover a period of not more than 1 year.

(b) Operational assistance

The Corporation may provide assistance under section 12571 of this title to a qualified applicant that submits an application under section 12582 of this title for the establishment, operation, or expansion of a national service program. Assistance provided in accordance with this subsection may cover a period of not more than 3 years, but may be renewed by the Corporation upon consideration of a new application under section 12582 of this title.

(c) Replication assistance

The Corporation may provide assistance under section 12571 of this title to a qualified applicant that submits an application under section 12582 of this title for the expansion of a proven national service program to another geographical location. Assistance provided in accordance with this subsection may cover a period of not more than 3 years, but may be renewed by the Corporation upon consideration of a new application under section 12582 of this title.

(d) Application to subgrants

The requirements of this section shall apply to any State or other applicant receiving assistance under section 12571 of this title that proposes to conduct a grant program using the assistance to support other national service programs.

(Pub. L. 101-610, title I, §124, as added Pub. L. 103-82, title I, §101(b), Sept. 21, 1993, 107 Stat. 794.)

PRIOR PROVISIONS

A prior section 12574, Pub. L. 101-610, title I, §144, Nov. 16, 1990, 104 Stat. 3152, related to terms of service for national and community service, prior to the general amendment of subtitle D of title I of Pub. L.

101-610 [former part D of this subchapter] by Pub. L. 103-82, §102(a).

A prior section 124 of Pub. L. 101-610 was renumbered section 199D, and is classified to section 12655c of this title.

§ 12575. Training and technical assistance

(a) Training programs

The Corporation may conduct, directly or by grant or contract, appropriate training programs regarding national service in order to—

(1) improve the ability of national service programs assisted under section 12571 of this title to meet human, educational, environmental, or public safety needs in communities—

(A) where services are needed most; and

(B) where programs do not exist, or are too limited to meet community needs, as of the date on which the Corporation makes the grant or enters into the contract;

(2) promote leadership development in such programs;

(3) improve the instructional and programmatic quality of such programs to build an ethic of civic responsibility;

(4) develop the management and budgetary skills of program operators;

(5) provide for or improve the training provided to the participants in such programs; and

(6) encourage national service programs to adhere to risk management procedures, including the training of participants in appropriate risk management practices.

(b) Technical assistance

To the extent appropriate and necessary, the Corporation shall make technical assistance available to States, Indian tribes, labor organizations, organizations operated by young adults, organizations serving economically disadvantaged individuals, and other entities described in section 12571 of this title that desire—

(1) to develop national service programs; or

(2) to apply for assistance under such section or under a grant program conducted using assistance provided under such section.

(Pub. L. 101-610, title I, §125, as added Pub. L. 103-82, title I, §101(b), Sept. 21, 1993, 107 Stat. 795.)

PRIOR PROVISIONS

A prior section 12575, Pub. L. 101-610, title I, §145, Nov. 16, 1990, 104 Stat. 3153; Pub. L. 102-10, §6(a), Mar. 12, 1991, 105 Stat. 31, related to eligibility for part-time, full-time, and special senior service in national and community service program, prior to the general amendment of subtitle D of title I of Pub. L. 101-610 [former part D of this subchapter] by Pub. L. 103-82, §102(a).

A prior section 125 of Pub. L. 101-610 was renumbered section 199E, and is classified to section 12655d of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12581, 12681 of this title.

§ 12576. Other special assistance

(a) Support for State Commissions

(1) Grants authorized

From amounts appropriated for a fiscal year pursuant to the authorization of appropriation

in section 12681(a)(4) of this title, the Corporation may make a grant in an amount between \$125,000 and \$750,000 to a State to assist the State to establish or operate the State Commission on National and Community Service required to be established by the State under section 12638 of this title.

(2) Limitation on amount of grants

Notwithstanding the amounts specified in paragraph (1), the amount of a grant that may be provided to a State Commission under this subsection, together with other Federal funds available to establish or operate the State Commission, may not exceed—

(A) 85 percent of the total cost to establish or operate the State Commission for the first year for which the State Commission receives assistance under this subsection; and

(B) such smaller percentage of such cost as the Corporation may establish for the second, third, and fourth years of such assistance in order to ensure that the Federal share does not exceed 50 percent of such costs for the fifth year, and any subsequent year, for which the State Commission receives assistance under this subsection.

(b) Disaster service

The Corporation may undertake activities, including activities carried out through part A of title I of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 et seq.), to involve in disaster relief efforts youth corps programs described in section 12572(a)(2) of this title and other programs that receive assistance under the national service laws.

(c) Challenge grants for national service programs

(1) Assistance authorized

The Corporation may make challenge grants under this subsection to national service programs that receive assistance under section 12571 of this title.

(2) Selection criteria

The Corporation shall develop criteria for the selection of recipients of challenge grants under this subsection, so as to make the grants widely available to a variety of programs that—

(A) are high-quality national service programs; and

(B) are carried out by entities with demonstrated experience in establishing and implementing projects that provide benefits to participants and communities.

(3) Amount of assistance

A challenge grant under this subsection may provide not more than \$1 of assistance under this subsection for each \$1 in cash raised by the national service program from private sources in excess of amounts required to be provided by the program to satisfy matching funds requirements under section 12571(e) of this title. The Corporation shall establish a ceiling on the amount of assistance that may be provided to a national service program under this subsection.

(Pub. L. 101-610, title I, §126, as added Pub. L. 103-82, title I, §101(b), Sept. 21, 1993, 107 Stat. 795.)

REFERENCES IN TEXT

The Domestic Volunteer Service Act of 1973, referred to in subsec. (b), is Pub. L. 93-113, Oct. 1, 1973, 87 Stat. 394, as amended. Part A of title I of the Act is classified generally to part A (§4951 et seq.) of subchapter I of chapter 66 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of this title and Tables.

PRIOR PROVISIONS

Prior sections 12576 to 12580, which related to national and community service, were omitted in the general amendment of subtitle D of title I of Pub. L. 101-610 [former part D of this subchapter] by Pub. L. 103-82, §102(a).

Section 12576, Pub. L. 101-610, title I, §146, Nov. 16, 1990, 104 Stat. 3153; Pub. L. 102-10, §6(b), Mar. 12, 1991, 105 Stat. 31; Pub. L. 102-325, title XV, §1557, July 23, 1992, 106 Stat. 841, related to post-service benefits.

A prior section 126 of Pub. L. 101-610 was renumbered section 199F and is classified to section 12655e of this title.

Section 12577, Pub. L. 101-610, title I, §147, Nov. 16, 1990, 104 Stat. 3154, related to living allowances for participants.

Section 12578, Pub. L. 101-610, title I, §148, Nov. 16, 1990, 104 Stat. 3155, related to training of participants.

Section 12579, Pub. L. 101-610, title I, §149, Nov. 16, 1990, 104 Stat. 3156, related to cooperation between public and private entities.

Section 12580, Pub. L. 101-610, title I, §150, Nov. 16, 1990, 104 Stat. 3156, related to in-service education benefits.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12581, 12681 of this title.

PART II—APPLICATION AND APPROVAL PROCESS

§ 12581. Provision of assistance and approved national service positions by competitive and other means

(a) Allotments of assistance and approved positions to States and Indian tribes

(1) 33½ percent allotment of assistance to certain States

Of the funds allocated by the Corporation for provision of assistance under subsections (a) and (b) of section 12571 of this title for a fiscal year, the Corporation shall make a grant under section 12571(a) of this title (and a corresponding allotment of approved national service positions) to each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico that has an application approved by the Corporation under section 12585 of this title. The amount allotted as a grant to each such State under this paragraph for a fiscal year shall be equal to the amount that bears the same ratio to 33½ percent of the allocated funds for that fiscal year as the population of the State bears to the total population of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

(2) One percent allotment for certain territories and possessions

Of the funds allocated by the Corporation for provision of assistance under subsections (a)

and (b) of section 12571 of this title for a fiscal year, the Corporation shall reserve 1 percent of the allocated funds for grants under section 12571(a) of this title to the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands upon approval of an application by the Corporation under section 12585 of this title. Palau shall also be eligible for a grant under this paragraph from the allotment until such time as the Compact of Free Association with Palau is ratified. The amount allotted as a grant to each such territory or possession under this paragraph for a fiscal year shall be equal to the amount that bears the same ratio to 1 percent of the allocated funds for that fiscal year as the population of the territory or possession bears to the total population of such territories and possessions.

(3) One percent allotment for Indian tribes

Of the funds allocated by the Corporation for provision of assistance under subsections (a) and (b) of section 12571 of this title for a fiscal year, the Corporation shall reserve 1 percent of the allocated funds for grants under section 12571(a) of this title to Indian tribes, to be allotted by the Corporation on a competitive basis in accordance with their respective needs.

(4) Effect of failure to apply

If a State or Indian tribe fails to apply for, or fails to give notice to the Corporation of its intent to apply for, an allotment under this subsection, the Corporation shall use the amount that would have been allotted under this subsection to the State or Indian tribe—

(A) to make grants (and provide approved national service positions in connection with such grants) to other eligible entities under section 12571 of this title that propose to carry out national service programs in the State or on behalf of the Indian tribe; and

(B) after making grants under subparagraph (A), to make a reallocation to other States and Indian tribes with approved applications under section 12582 of this title.

(b) Reservation of approved positions

The Corporation shall ensure that each individual selected during a fiscal year for assignment as a VISTA volunteer under title I of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 et seq.) or as a participant in the Civilian Community Corps Demonstration Program under division E of this subchapter shall receive the national service educational award described in division D of this subchapter if the individual satisfies the eligibility requirements for the award. Funds for approved national service positions required by this paragraph for a fiscal year shall be deducted from the total funding for approved national service positions to be available for distribution under subsections (a) and (d) of this section for that fiscal year.

(c) Reservation for special assistance

From amounts appropriated for a fiscal year pursuant to the authorization of appropriation

in section 12681(a)(2) of this title, and subject to the limitation in such section, the Corporation may reserve such amount as the Corporation considers to be appropriate for the purpose of making assistance available under sections 12575 and 12576 of this title. The Corporation may not reserve more than \$10,000,000 for a fiscal year for disaster service under subsection (b) of section 12576 of this title or challenge grants under subsection (c) of such section.

(d) Competitive distribution of remaining funds

(1) State competition

Of the funds allocated by the Corporation for provision of assistance under subsections (a) and (b) of section 12571 of this title for a fiscal year, the Corporation shall use not less than 33½ percent of the allocated funds to make grants to States on a competitive basis under section 12571(a) of this title.

(2) Federal agencies and other applicants

The Corporation shall distribute on a competitive basis to subdivisions of States, Indian tribes, public or private nonprofit organizations (including labor organizations), institutions of higher education, and Federal agencies the remainder of the funds allocated by the Corporation for provision of assistance under section 12571 of this title for a fiscal year, after operation of paragraph (1) and subsections (a) and (c) of this section.

(3) Limitation on distribution to Federal agencies

The Corporation may not provide more than ⅓ of the funds available for competitive distribution under paragraph (2) for a fiscal year to Federal agencies under section 12571(b) of this title.

(4) Priority limitations

The Corporation may limit the categories of eligible applicants for assistance under paragraph (2) consistent with the priorities established by the Corporation under section 12585(d)(2) of this title.

(5) Reservation of funds for supplemental and outreach grants

(A) Reservation

From amounts appropriated for a fiscal year pursuant to the authorization of appropriation in section 12681(a)(2) of this title, and subject to the limitation in such section, the Chief Executive Officer shall reserve an amount that is not less than 1 percent of such amounts (except that the amount reserved may not exceed \$5,000,000), in order to make supplemental grants as provided in subparagraph (B) and outreach grants as provided in subparagraph (C). The amount reserved pursuant to this paragraph shall be available until expended.

(B) Grants to assist entities in placing applicants who are individuals with a disability

(i) In general

The Chief Executive Officer shall make grants from a portion of the funds reserved under subparagraph (A) to entities that—

(I) receive a grant to carry out a national service program under paragraph (1) or (2);

(II) demonstrate that the entity has received a substantial number of applications for placement in the national service program of persons who are individuals with a disability and who require a reasonable accommodation (as defined in section 12111(9) of this title), or auxiliary aids and services (as defined in section 12102(1) of this title), in order to perform national service; and

(III) demonstrate that additional funding would assist the national service program in placing a substantial number of such individuals with a disability as participants in projects carried out through the program.

(ii) Requirements

Funds made available through such a supplemental grant under clause (i) shall be made available for the same purposes, and subject to the same requirements, as funds made available through a grant made under paragraph (1) or (2).

(C) Grants for outreach to individuals with a disability

(i) In general

From the portion of the funds reserved under subparagraph (A) that is not used to make grants under subparagraph (B), the Chief Executive Officer shall make grants to public or private nonprofit organizations to pay for the Federal share described in section 12571(e) of this title of—

(I) providing information about the programs specified in section 12651d(d)(10)¹ of this title to such individuals with a disability who desire to perform national service; and

(II) enabling the individuals to participate in activities carried out through such programs, which may include assisting the placement of the individuals in approved national service positions.

(ii) Application

To be eligible to receive a grant under this subparagraph, an organization described in clause (i) shall submit an application to the Chief Executive Officer at such time, in such manner, and containing such information as the Chief Executive Officer may require.

(e) Application required

The allotment of assistance and approved national service positions to a State or Indian tribe under subsection (a) of this section, and the competitive distribution of assistance under subsection (d) of this section, shall be made by the Corporation only pursuant to an application submitted by a State or other applicant under section 12582 of this title and approved by the Corporation under section 12585 of this title.

¹So in original. Section 12651d(d) of this title does not contain a par. (10).

(f) Approval of positions subject to available funds

The Corporation may not approve positions as approved national service positions under this division for a fiscal year in excess of the number of such positions for which the Corporation has sufficient available funds in the National Service Trust for that fiscal year, taking into consideration funding needs for national service educational awards under division D of this subchapter based on completed service. If appropriations are insufficient to provide the maximum allowable national service educational awards under division D of this subchapter for all eligible participants, the Corporation is authorized to make necessary and reasonable adjustments to program rules.

(g) Sponsorship of approved national service positions**(1) Sponsorship authorized**

The Corporation may enter into agreements with persons or entities who offer to sponsor national service positions for which the person or entity will be responsible for supplying the funds necessary to provide a national service educational award. The distribution of these approved national service positions shall be made pursuant to the agreement, and the creation of these positions shall not be taken into consideration in determining the number of approved national service positions to be available for distribution under this section.

(2) Deposit of contribution

Funds provided pursuant to an agreement under paragraph (1) and any other funds contributed to the Corporation to support the activities of the Corporation under the national service laws shall be deposited in the National Service Trust established in section 12601 of this title until such time as the funds are needed.

(Pub. L. 101-610, title I, §129, as added Pub. L. 103-82, title I, §101(b), Sept. 21, 1993, 107 Stat. 796.)

REFERENCES IN TEXT

For ratification of Compact of Free Association with Palau, referred to in subsec. (a)(2), see Proc. No. 6726, Sept. 27, 1994, 59 F.R. 49777, set out as a note under section 1931 of Title 48, Territories and Insular Possessions.

The Domestic Volunteer Service Act of 1973, referred to in subsec. (b), is Pub. L. 93-113, Oct. 1, 1973, 87 Stat. 394, as amended. Title I of the Act is classified generally to subchapter I (§4951 et seq.) of chapter 66 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of this title and Tables.

PRIOR PROVISIONS

A prior section 129 of Pub. L. 101-610 was renumbered section 199H and is classified to section 12655h of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12572, 12585 of this title.

§ 12582. Application for assistance and approved national service positions**(a) Time, manner, and content of application**

To be eligible to receive assistance under section 12571 of this title or approved national service positions for participants who serve in the national service programs to be carried out using the assistance, a State, subdivision of a State, Indian tribe, public or private nonprofit organization, institution of higher education, or Federal agency shall prepare and submit to the Corporation an application at such time, in such manner, and containing such information as the Corporation may reasonably require.

(b) Types of permissible application information

In order to have adequate information upon which to consider an application under section 12585 of this title, the Corporation may require the following information to be provided in an application submitted under subsection (a) of this section:

(1) A description of the national service programs proposed to be carried out directly by the applicant using assistance provided under section 12571 of this title.

(2) A description of the national service programs that are selected by the applicant to receive a grant using assistance requested under section 12571 of this title and a description of the process and criteria by which the programs were selected.

(3) A description of other funding sources to be used, or sought to be used, for the national service programs referred to in paragraphs (1) and (2), and, if the application is submitted for the purpose of seeking a renewal of assistance, a description of the success of the programs in reducing their reliance on Federal funds.

(4) A description of the extent to which the projects to be conducted using the assistance will address unmet human, educational, environmental, or public safety needs and produce a direct benefit for the community in which the projects are performed.

(5) A description of the plan to be used to recruit participants, including youth who are individuals with disabilities and economically disadvantaged young men and women, for the national service programs referred to in paragraphs (1) and (2).

(6) A description of the manner in which the national service programs referred to in paragraphs (1) and (2) build on existing programs, including Federal programs.

(7) A description of the manner in which the national service programs referred to in paragraphs (1) and (2) will involve participants—

(A) in projects that build an ethic of civic responsibility and produce a positive change in the lives of participants through training and participation in meaningful service experiences and opportunities for reflection on such experiences; and

(B) in leadership positions in implementing and evaluating the program.

(8) Measurable goals for the national service programs referred to in paragraphs (1) and (2), and a strategy to achieve such goals, in terms of—

(A) the impact to be made in meeting unmet human, educational, environmental, or public safety needs; and

(B) the service experience to be provided to participants in the programs.

(9) A description of the manner and extent to which the national service programs referred to in paragraphs (1) and (2) conform to the national service priorities established by the Corporation under section 12572(c) of this title.

(10) A description of the past experience of the applicant in operating a comparable program or in conducting a grant program in support of other comparable service programs.

(11) A description of the type and number of proposed service positions in which participants will receive the national service educational award described in division D of this subchapter and a description of the manner in which approved national service positions will be apportioned by the applicant.

(12) A description of the manner and extent to which participants, representatives of the community served, community-based agencies with a demonstrated record of experience in providing services, and labor organizations contributed to the development of the national service programs referred to in paragraphs (1) and (2), including the identity of the individual representing each appropriate labor organization (if any) who was consulted and the nature of the consultation.

(13) Such other information as the Corporation may reasonably require.

(c) Required application information

An application submitted under subsection (a) of this section shall contain the following information:

(1) A description of the jobs or positions into which participants will be placed using the assistance provided under section 12571 of this title, including descriptions of specific tasks to be performed by such participants.

(2) A description of the minimum qualifications that individuals shall meet to become participants in such programs.

(d) Application to receive only approved national service positions

(1) Applicability of subsection

This subsection shall apply in the case of an application in which—

(A) the applicant is not seeking assistance under subsection (a) or (b) of section 12571 of this title, but requests national service educational awards for individuals serving in service positions described in section 12573 of this title; or

(B) the applicant requests national service educational awards for service positions described in section 12573 of this title, but the positions are not positions in a national service program described in section 12572(a) of this title for which assistance may be provided under subsection (a) or (b) of section 12571 of this title.

(2) Special application requirements

For the applications described in paragraph (1), the Corporation shall establish special application requirements in order to determine—

(A) whether the service positions meet unmet human, educational, environmental, or public safety needs and meet the criteria for assistance under this division; and

(B) whether the Corporation should approve the positions as approved national service positions.

(e) Special rule for State applicants

(1) Submission by State Commission

The application of a State for approved national service positions or for a grant under section 12571(a) of this title shall be submitted by the State Commission.

(2) Competitive selection

The application of a State shall contain an assurance that all assistance provided under section 12571(a) of this title to the State will be used to support national service programs that were selected by the State on a competitive basis. In making such competitive selections, the State shall seek to ensure the equitable allocation within the State of assistance and approved national service positions provided under this division to the State taking into consideration such factors as the location of the programs applying to the State, population density, and economic distress.

(3) Assistance to non-State entities

The application of a State shall also contain an assurance that not less than 60 percent of the assistance will be used to make grants in support of national service programs other than national service programs carried out by a State agency. The Corporation may permit a State to deviate from the percentage specified by this subsection if the State has not received a sufficient number of acceptable applications to comply with the percentage.

(f) Special rule for certain applicants

(1) Written concurrence

In the case of a program applicant that proposes to also serve as the service sponsor, the application shall include the written concurrence of any local labor organization representing employees of the service sponsor who are engaged in the same or substantially similar work as that proposed to be carried out.

(2) "Program applicant" defined

For purposes of this subsection, the term "program applicant" means—

(A) a State, subdivision of a State, Indian tribe, public or private nonprofit organization, institution of higher education, or Federal agency submitting an application under this section; or

(B) an entity applying for assistance or approved national service positions through a grant program conducted using assistance provided to a State, subdivision of a State, Indian tribe, public or private nonprofit organization, institution of higher education, or Federal agency under section 12571 of this title.

(g) Limitation on same project in multiple applications

The Corporation shall reject an application submitted under this section if a project pro-

posed to be conducted using assistance requested by the applicant is already described in another application pending before the Corporation.

(Pub. L. 101-610, title I, §130, as added Pub. L. 103-82, title I, §101(b), Sept. 21, 1993, 107 Stat. 800.)

PRIOR PROVISIONS

A prior section 130 of Pub. L. 101-610 was renumbered section 199I and is classified to section 12655I of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12572, 12574, 12581, 12583, 12584, 12585, 12638 of this title.

§ 12583. National service program assistance requirements

(a) Impact on communities

An application submitted under section 12582 of this title shall include an assurance by the applicant that any national service program carried out by the applicant using assistance provided under section 12571 of this title and any national service program supported by a grant made by the applicant using such assistance will—

- (1) address unmet human, educational, environmental, or public safety needs through services that provide a direct benefit to the community in which the service is performed; and
- (2) comply with the nonduplication and nondisplacement requirements of section 12637 of this title and the grievance procedure requirements of section 12636(f) of this title.

(b) Impact on participants

An application submitted under section 12582 of this title shall also include an assurance by the applicant that any national service program carried out by the applicant using assistance provided under section 12571 of this title and any national service program supported by a grant made by the applicant using such assistance will—

- (1) provide participants in the national service program with the training, skills, and knowledge necessary for the projects that participants are called upon to perform;
- (2) provide support services to participants, such as the provision of appropriate information and support—
 - (A) to those participants who are completing a term of service and making the transition to other educational and career opportunities; and
 - (B) to those participants who are school dropouts in order to assist those participants in earning the equivalent of a high school diploma; and
- (3) provide, if appropriate, structured opportunities for participants to reflect on their service experiences.

(c) Consultation

An application submitted under section 12582 of this title shall also include an assurance by the applicant that any national service program carried out by the applicant using assistance

provided under section 12571 of this title and any national service program supported by a grant made by the applicant using such assistance will—

(1) provide in the design, recruitment, and operation of the program for broad-based input from—

- (A) the community served and potential participants in the program; and
- (B) community-based agencies with a demonstrated record of experience in providing services and local labor organizations representing employees of service sponsors, if these entities exist in the area to be served by the program;

(2) prior to the placement of participants, consult with the appropriate local labor organization, if any, representing employees in the area who are engaged in the same or similar work as that proposed to be carried out by such program to ensure compliance with the nondisplacement requirements specified in section 12637 of this title; and

(3) in the case of a program that is not funded through a State, consult with and coordinate activities with the State Commission for the State in which the program operates.

(d) Evaluation and performance goals

(1) In general

An application submitted under section 12582 of this title shall also include an assurance by the applicant that the applicant will—

- (A) arrange for an independent evaluation of any national service program carried out using assistance provided to the applicant under section 12571 of this title or, with the approval of the Corporation, conduct an internal evaluation of the program;
- (B) apply measurable performance goals and evaluation methods (such as the use of surveys of participants and persons served), which are to be used as part of such evaluation to determine the impact of the program—

- (i) on communities and persons served by the projects performed by the program;
- (ii) on participants who take part in the projects; and
- (iii) in such other areas as the Corporation may require; and

(C) cooperate with any evaluation activities undertaken by the Corporation.

(2) Evaluation

Subject to paragraph (3), the Corporation shall develop evaluation criteria and performance goals applicable to all national service programs carried out with assistance provided under section 12571 of this title.

(3) Alternative evaluation requirements

The Corporation may establish alternative evaluation requirements for national service programs based upon the amount of assistance received under section 12571 of this title or received by a grant made by a recipient of assistance under such section. The determination of whether a national service program is covered by this paragraph shall be made in such manner as the Corporation may prescribe.

(e) Living allowances and other inservice benefits

Except as provided in section 12594(c) of this title, an application submitted under section 12582 of this title shall also include an assurance by the applicant that the applicant will—

(1) ensure the provision of a living allowance and other benefits specified in section 12594 of this title to participants in any national service program carried out by the applicant using assistance provided under section 12571 of this title; and

(2) require that each national service program that receives a grant from the applicant using such assistance will also provide a living allowance and other benefits specified in section 12594 of this title to participants in the program.

(f) Selection of participants from individuals recruited by Corporation or State Commissions

The Corporation may also require an assurance by the applicant that any national service program carried out by the applicant using assistance provided under section 12571 of this title and any national service program supported by a grant made by the applicant using such assistance will select a portion of the participants for the program from among prospective participants recruited by the Corporation or State Commissions under section 12592(d) of this title. The Corporation may specify a minimum percentage of participants to be selected from the national leadership pool established under section 12592(e) of this title and may vary the percentage for different types of national service programs.

(Pub. L. 101-610, title I, §131, as added Pub. L. 103-82, title I, §101(b), Sept. 21, 1993, 107 Stat. 803.)

PRIOR PROVISIONS

A prior section 131 of Pub. L. 101-610 was renumbered section 199J and is classified to section 12655j of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12592 of this title.

§ 12584. Ineligible service categories**(a) In general**

Except as provided in subsection (b) of this section, an application submitted to the Corporation under section 12582 of this title shall include an assurance by the applicant that any national service program carried out using assistance provided under section 12571 of this title and any approved national service position provided to an applicant will not be used to perform service that provides a direct benefit to any—

- (1) business organized for profit;
- (2) labor union;
- (3) partisan political organization;

(4) organization engaged in religious activities, unless such service does not involve the use of assistance provided under section 12571 of this title or participants—

- (A) to give religious instruction;

(B) to conduct worship services;

(C) to provide instruction as part of a program that includes mandatory religious education or worship;

(D) to construct or operate facilities devoted to religious instruction or worship or to maintain facilities primarily or inherently devoted to religious instruction or worship; or

(E) to engage in any form of proselytization; or

(5) nonprofit organization that fails to comply with the restrictions contained in section 501(c) of title 26, except that nothing in this section shall be construed to prevent participants from engaging in advocacy activities undertaken at their own initiative.

(b) Regional Corporation

The requirement of subsection (a) of this section relating to an assurance regarding direct benefits to businesses organized for profit shall not apply with respect to a Regional Corporation, as defined in section 3(g) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(g)), that is established in accordance with such Act [43 U.S.C. 1601 et seq.] as a for-profit corporation but that is engaging in nonprofit activities.

(Pub. L. 101-610, title I, §132, as added Pub. L. 103-82, title I, §101(b), Sept. 21, 1993, 107 Stat. 805.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in subsec. (b), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

PRIOR PROVISIONS

A prior section 132 of Pub. L. 101-610 was renumbered section 199L and classified to section 12655k of this title, prior to repeal by Pub. L. 103-82, §101(e)(8)(A).

§ 12585. Consideration of applications**(a) Corporation consideration of certain criteria**

The Corporation shall apply the criteria described in subsections (c) and (d) of this section in determining whether—

(1) to approve an application submitted under section 12582 of this title and provide assistance under section 12571 of this title to the applicant; and

(2) to approve service positions described in the application as national service positions that include the national service educational award described in division D of this subchapter and provide such approved national service positions to the applicant.

(b) Application to subgrants**(1) In general**

A State or other entity that uses assistance provided under section 12571(a) of this title to support national service programs selected on a competitive basis to receive a share of the assistance shall use the criteria described in subsections (c) and (d) of this section when considering an application submitted by a na-

tional service program to receive a portion of such assistance or an approved national service position.

(2) Contents

The application of the State or other entity under section 12582 of this title shall contain—

(A) a certification that the State or other entity used these criteria in the selection of national service programs to receive assistance;

(B) a description of the jobs or positions into which participants will be placed using such assistance, including descriptions of specific tasks to be performed by such participants; and

(C) a description of the minimum qualifications that individuals shall meet to become participants in such programs.

(c) Assistance criteria

The criteria required to be applied in evaluating applications submitted under section 12582 of this title are as follows:

(1) The quality of the national service program proposed to be carried out directly by the applicant or supported by a grant from the applicant.

(2) The innovative aspects of the national service program, and the feasibility of replicating the program.

(3) The sustainability of the national service program, based on evidence such as the existence—

(A) of strong and broad-based community support for the program; and

(B) of multiple funding sources or private funding for the program.

(4) The quality of the leadership of the national service program, the past performance of the program, and the extent to which the program builds on existing programs.

(5) The extent to which participants of the national service program are recruited from among residents of the communities in which projects are to be conducted, and the extent to which participants and community residents are involved in the design, leadership, and operation of the program.

(6) The extent to which projects would be conducted in the following areas where they are needed most:

(A) Communities designated as empowerment zones or redevelopment areas, targeted for special economic incentives, or otherwise identifiable as having high concentrations of low-income people.

(B) Areas that are environmentally distressed.

(C) Areas adversely affected by Federal actions related to the management of Federal lands that result in significant regional job losses and economic dislocation.

(D) Areas adversely affected by reductions in defense spending or the closure or realignment of military installations.

(E) Areas that have an unemployment rate greater than the national average unemployment for the most recent 12 months for which satisfactory data are available.

(7) In the case of applicants other than States, the extent to which the application is

consistent with the application under section 12582 of this title of the State in which the projects would be conducted.

(8) Such other criteria as the Corporation considers to be appropriate.

(d) Other considerations

(1) Geographic diversity

The Corporation shall ensure that recipients of assistance provided under section 12571 of this title are geographically diverse and include projects to be conducted in those urban and rural areas in a State with the highest rates of poverty.

(2) Priorities

The Corporation may designate, under such criteria as may be established by the Corporation, certain national service programs or types of national service programs described in section 12572(a) of this title for priority consideration in the competitive distribution of funds under section 12581(d)(2) of this title. In designating national service programs to receive priority, the Corporation may include—

(A) national service programs carried out by another Federal agency;

(B) national service programs that conform to the national service priorities in effect under section 12572(c) of this title;

(C) innovative national service programs;

(D) national service programs that are well established in one or more States at the time of the application and are proposed to be expanded to additional States using assistance provided under section 12571 of this title;

(E) grant programs in support of other national service programs if the grant programs are to be conducted by nonprofit organizations with a demonstrated and extensive expertise in the provision of services to meet human, educational, environmental, or public safety needs;

(F) professional corps programs described in section 12572(a)(8) of this title; and

(G) programs that—

(i) received funding under part D of this subchapter, as in effect on the day before September 21, 1993;

(ii) the Corporation determines to meet the requirements of sections 12572 (other than subsection (g)), 12573, and 12578 through 12580 of this title, as in effect on such day, in addition to the requirements of this division; and

(iii) include an evaluation component.

(3) Additional priority

In making a competitive distribution of funds under section 12581(d)(2) of this title, the Corporation may give priority consideration to a national service program that is—

(A) proposed in an application submitted by a State Commission; and

(B) not one of the types of programs described in paragraph (2),

if the State Commission provides an adequate explanation of the reasons why it should not be a priority of such State to carry out any of such types of programs in the State.

(4) Review panel

The Corporation shall—

(A) establish panels of experts for the purpose of securing recommendations on applications submitted under section 12582 of this title for more than \$250,000 in assistance, or for national service positions that would require more than \$250,000 in national service educational awards; and

(B) consider the opinions of such panels prior to making such determinations.

(e) Emphasis on areas most in need

In making assistance available under section 12571 of this title and in providing approved national service positions under section 12573 of this title, the Corporation shall ensure that not less than 50 percent of the total amount of assistance to be distributed to States under subsections (a) and (d)(1) of section 12581 of this title for a fiscal year is provided to carry out or support national service programs and projects that—

(1) are conducted in any of the areas described in subsection (c)(6) of this section or on Federal or other public lands, to address unmet human, educational, environmental, or public safety needs in such areas or on such lands; and

(2) place a priority on the recruitment of participants who are residents of any of such areas or Federal or other public lands.

(f) Rejection of State applications**(1) Notification of State applicants**

If the Corporation rejects an application submitted by a State Commission under section 12582 of this title for funds described in section 12581(a)(1) of this title, the Corporation shall promptly notify the State Commission of the reasons for the rejection of the application.

(2) Resubmission and reconsideration

The Corporation shall provide a State Commission notified under paragraph (1) with a reasonable opportunity to revise and resubmit the application. At the request of the State Commission, the Corporation shall provide technical assistance to the State Commission as part of the resubmission process. The Corporation shall promptly reconsider an application resubmitted under this paragraph.

(3) Reallocation

The amount of any State's allotment under section 12581(a) of this title for a fiscal year that the Corporation determines will not be provided for that fiscal year shall be available for distribution by the Corporation as provided in paragraph (3) of such subsection.

(Pub. L. 101-610, title I, §133, as added Pub. L. 103-82, title I, §101(b), Sept. 21, 1993, 107 Stat. 805.)

REFERENCES IN TEXT

Part D of this subchapter and sections 12572, 12573, and 12578 through 12580 of this title, as in effect on the day before September 21, 1993, referred to in subsec. (d)(2)(G), mean former part D of this subchapter and former sections 12572, 12573, and 12578 of this title prior to the general amendment of subtitle D of

title I of Pub. L. 101-610 [former part D of this subchapter] by Pub. L. 103-82, title I, §102(a), Sept. 21, 1993, 107 Stat. 816.

PRIOR PROVISIONS

A prior section 133 of Pub. L. 101-610 was renumbered section 199K and is classified to section 12655/ of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12545, 12572, 12581, 12582, 12639, 12651d of this title.

PART III—NATIONAL SERVICE PARTICIPANTS

§ 12591. Description of participants**(a) In general**

For purposes of this division, an individual shall be considered to be a participant in a national service program carried out using assistance provided under section 12571 of this title if the individual—

(1) meets such eligibility requirements, directly related to the tasks to be accomplished, as may be established by the program;

(2) is selected by the program to serve in a position with the program;

(3) will serve in the program for a term of service specified in section 12593 of this title to be performed before, during, or after attendance at an institution of higher education;

(4) is 17 years of age or older at the time the individual begins the term of service;

(5) has received a high school diploma or its equivalent, agrees to obtain a high school diploma or its equivalent (unless this requirement is waived based on an individual education assessment conducted by the program) and the individual did not drop out of an elementary or secondary school to enroll in the program, or is enrolled in an institution of higher education on an ability to benefit basis and is considered eligible for funds under section 1091 of title 20; and

(6) is a citizen or national of the United States or lawful permanent resident alien of the United States.

(b) Special rules for certain youth programs

An individual shall be considered to be a participant in a youth corps program described in section 12572(a)(2) of this title or a program described in section 12572(a)(9) of this title that is carried out with assistance provided under section 12571(a) of this title if the individual—

(1) satisfies the requirements specified in subsection (a) of this section, except paragraph (4) of such subsection; and

(2) is between the ages of 16 and 25, inclusive, at the time the individual begins the term of service.

(c) Waiver

The Corporation may waive the requirements of subsection (a)(5) of this section with respect to an individual if the program in which the individual seeks to become a participant conducts an independent evaluation demonstrating that the individual is incapable of obtaining a high school diploma or its equivalent.

(Pub. L. 101-610, title I, §137, as added Pub. L. 103-82, title I, §101(b), Sept. 21, 1993, 107 Stat. 808;

amended Pub. L. 103-304, §3(b)(3), Aug. 23, 1994, 108 Stat. 1567.)

PRIOR PROVISIONS

A prior section 12591, Pub. L. 101-610, title I, §155, Nov. 16, 1990, 104 Stat. 3156, related to limitation on grants for innovative and demonstration programs and projects, prior to repeal by Pub. L. 103-82, §104(a).

AMENDMENTS

1994—Subsec. (c). Pub. L. 103-304 substituted “subsection (a)(5)” for “subsection (a)(5)(A)”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12602 of this title; title 16 section 1723.

§ 12592. Selection of national service participants

(a) Selection process

Subject to subsections (b) and (c) of this section and section 12583(f) of this title, the actual recruitment and selection of an individual to serve in a national service program receiving assistance under section 12571 of this title or to fill an approved national service position shall be conducted by the State, subdivision of a State, Indian tribe, public or private nonprofit organization, institution of higher education, Federal agency, or other entity to which the assistance and approved national service positions are provided.

(b) Nondiscrimination and nonpolitical selection of participants

The recruitment and selection of individuals to serve in national service programs receiving assistance under section 12571 of this title or to fill approved national service positions shall be consistent with the requirements of section 12635 of this title.

(c) Second term

Acceptance into a national service program to serve a second term of service under section 12593 of this title shall only be available to individuals who perform satisfactorily in their first term of service.

(d) Recruitment and placement

The Corporation and each State Commission shall establish a system to recruit individuals who desire to perform national service and to assist the placement of these individuals in approved national service positions, which may include positions available under titles I and II of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 et seq. [and 5000 et seq.]). The Corporation and State Commissions shall disseminate information regarding available approved national service positions through cooperation with secondary schools, institutions of higher education, employment service offices, State vocational rehabilitation agencies within the meaning of the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.) and other State agencies that primarily serve individuals with disabilities, and other appropriate entities, particularly those organizations that provide outreach to disadvantaged youths and youths who are individuals with disabilities.

(e) National leadership pool

(1) Selection and training

From among individuals recruited under subsection (d) of this section, the Corporation

may select individuals with significant leadership potential, as determined by the Corporation, to receive special training to enhance their leadership ability. The leadership training shall be provided by the Corporation directly or through a grant or contract.

(2) Emphasis on certain individuals

In selecting individuals to receive leadership training under this subsection, the Corporation shall make special efforts to select individuals who have served—

(A) in the Peace Corps;

(B) as VISTA volunteers;

(C) as participants in national service programs receiving assistance under section 12571 of this title;

(D) as participants in programs receiving assistance under part D of this subchapter, as in effect on the day before September 21, 1993; or

(E) as members of the Armed Forces of the United States and who were honorably discharged from such service.

(3) Assignment

At the request of a program that receives assistance under the national service laws, the Corporation may assign an individual who receives leadership training under paragraph (1) to work with the program in a leadership position and carry out assignments not otherwise performed by regular participants. An individual assigned to a program shall be considered to be a participant of the program.

(f) Evaluation of service

The Corporation shall issue regulations regarding the manner and criteria by which the service of a participant shall be evaluated to determine whether the service is satisfactory and successful for purposes of eligibility for a second term of service or a national service educational award.

(Pub. L. 101-610, title I, §138, as added Pub. L. 103-82, title I, §101(b), Sept. 21, 1993, 107 Stat. 809.)

REFERENCES IN TEXT

The Domestic Volunteer Service Act of 1973, referred to in subsec. (d), is Pub. L. 93-113, Oct. 1, 1973, 87 Stat. 394, as amended. Titles I and II of the Act are classified generally to subchapters I (§4951 et seq.) and II (§5000 et seq.), respectively, of chapter 66 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of this title and Tables.

The Rehabilitation Act of 1973, referred to in subsec. (d), is Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 355, as amended, which is classified generally to chapter 16 (§701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

Part D of this subchapter, as in effect on the day before September 21, 1993, referred to in subsec. (e)(2)(D), means former part D of this subchapter prior to the general amendment of subtitle D of title I of Pub. L. 101-610 [former part D of this subchapter] by Pub. L. 103-82, title I, §102(a), Sept. 21, 1993, 107 Stat. 816.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12583 of this title.

§ 12593. Terms of service**(a) In general**

As a condition of receiving a national service education award under division D of this subchapter, a participant in an approved national service position shall be required to perform full- or part-time national service for at least one term of service specified in subsection (b) of this section.

(b) Term of service**(1) Full-time service**

An individual performing full-time national service in an approved national service position shall agree to participate in the program sponsoring the position for not less than 1,700 hours during a period of not less than 9 months and not more than 1 year.

(2) Part-time service

Except as provided in paragraph (3), an individual performing part-time national service in an approved national service position shall agree to participate in the program sponsoring the position for not less than 900 hours during a period of—

(A) not more than 2 years; or

(B) not more than 3 years if the individual is enrolled in an institute¹ of higher education while performing² all or a portion of the service.

(3) Reduction in hours of part-time service

The Corporation may reduce the number of hours required to be served to successfully complete part-time national service to a level determined by the Corporation, except that any reduction in the required term of service shall include a corresponding reduction in the amount of any national service educational award that may be available under division D of this subchapter with regard to that service.

(c) Release from completing term of service**(1) Release authorized**

A recipient of assistance under section 12571 of this title or a program sponsoring an approved national service position may release a participant from completing a term of service in the position—

(A) for compelling personal circumstances as demonstrated by the participant; or

(B) for cause.

(2) Effect of release for compelling circumstances

If a participant eligible for release under paragraph (1)(A) is serving in an approved national service position, the recipient of assistance under section 12571 of this title or a program sponsoring an approved national service position may elect—

(A) to grant such release and provide to the participant that portion of the national service educational award corresponding to the portion of the term of service actually completed, as provided in section 12603(c) of this title; or

(B) to permit the participant to temporarily suspend performance of the term of service for a period of up to 2 years (and such additional period as the Corporation may allow for extenuating circumstances) and, upon completion of such period, to allow return to the program with which the individual was serving in order to complete the remainder of the term of service and obtain the entire national service educational award.

(3) Effect of release for cause

A participant released for cause may not receive any portion of the national service educational award.

(Pub. L. 101-610, title I, §139, as added Pub. L. 103-82, title I, §101(b), Sept. 21, 1993, 107 Stat. 810.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12591, 12592, 12594, 12602, 12603, 12631, 12656 of this title.

§ 12594. Living allowances for national service participants**(a) Provision of living allowance****(1) Living allowance required**

Subject to paragraph (3), a national service program carried out using assistance provided under section 12571 of this title shall provide to each participant who participates on a full-time basis in the program a living allowance in an amount equal to or greater than the average annual subsistence allowance provided to VISTA volunteers under section 4955 of this title.

(2) Limitation on Federal share

The amount of the annual living allowance provided under paragraph (1) that may be paid using assistance provided under section 12571 of this title and using any other Federal funds shall not exceed 85 percent of the total average annual¹ provided to VISTA volunteers under section 4955 of this title.

(3) Maximum living allowance

Except as provided in subsection (c) of this section, the total amount of an annual living allowance that may be provided to a participant in a national service program shall not exceed 200 percent of the average annual subsistence allowance provided to VISTA volunteers under section 4955 of this title.

(4) Proration of living allowance

The amount provided as a living allowance under this subsection shall be prorated in the case of a participant who is authorized to serve a reduced term of service under section 12593(b)(3) of this title.

(5) Waiver or reduction of living allowance

The Corporation may waive or reduce the requirement of paragraph (1) with respect to such national service program if such program demonstrates that—

(A) such requirement is inconsistent with the objectives of the program; and

¹ So in original. Probably should be "institution".

² So in original. Probably should be "performing".

¹ So in original. Probably should be followed by "subsistence allowance".

(B) the amount of the living allowance that will be provided to each full-time participant is sufficient to meet the necessary costs of living (including food, housing, and transportation) in the area in which the program is located.

(6) Exemption

The requirement of paragraph (1) shall not apply to any program that was in existence on September 21, 1993.

(b) Coverage of certain employment-related taxes

To the extent a national service program that receives assistance under section 12571 of this title is subject, with respect to the participants in the program, to the taxes imposed on an employer under sections 3111 and 3301 of title 26 and taxes imposed on an employer under a workmen's compensation act, the assistance provided to the program under section 12571 of this title shall include an amount sufficient to cover 85 percent of such taxes based upon the lesser of—

- (1) the total average annual subsistence allowance provided to VISTA volunteers under section 4955 of this title; and
- (2) the annual living allowance established by the program.

(c) Exception from maximum living allowance for certain assistance

A professional corps program described in section 12572(a)(8) of this title that desires to provide a living allowance in excess of the maximum allowance authorized in subsection (a)(3) of this section may still apply for such assistance, except that—

- (1) any assistance provided to the applicant under section 12571 of this title may not be used to pay for any portion of the allowance;
- (2) the applicant shall apply for such assistance only by submitting an application to the Corporation for assistance on a competitive basis; and
- (3) the national service program shall be operated directly by the applicant and shall meet urgent, unmet human, educational, environmental, or public safety needs, as determined by the Corporation.

(d) Health insurance

(1) In general

A State or other recipient of assistance under section 12571 of this title shall provide a basic health care policy for each full-time participant in a national service program carried out or supported using the assistance, if the participant is not otherwise covered by a health care policy. Not more than 85 percent of the cost of a premium shall be provided by the Corporation, with the remaining cost paid by the entity receiving assistance under section 12571 of this title. The Corporation shall establish minimum standards that all plans must meet in order to qualify for payment under this part, any circumstances in which an alternative health care policy may be substituted for the basic health care policy, and mechanisms to prohibit participants from dropping existing coverage.

(2) Option

A State or other recipient of assistance under section 12571 of this title may elect to

provide from its own funds a health care policy for participants that does not meet all of the standards established by the Corporation if the fair market value of such policy is equal to or greater than the fair market value of a plan that meets the minimum standards established by the Corporation, and is consistent with other applicable laws.

(e) Child care

(1) Availability

A State or other recipient of assistance under section 12571 of this title shall—

- (A) make child care available for children of each full-time participant who needs child care in order to participate in a national service program carried out or supported by the recipient using the assistance; or
- (B) provide a child care allowance to each full-time participant in a national service program who needs such assistance in order to participate in the program.

(2) Guidelines

The Corporation shall establish guidelines regarding the circumstances under which child care shall be made available under this subsection and the value of any allowance to be provided.

(f) Individualized support services

A State or other recipient of assistance under section 12571 of this title shall provide reasonable accommodation, including auxiliary aids and services (as defined in section 12102(1) of this title), based on the individualized need of a participant who is a qualified individual with a disability (as defined in section 12111(8) of this title).

(g) Waiver of limitation on Federal share

The Corporation may waive in whole or in part the limitation on the Federal share specified in this section with respect to a particular national service program in any fiscal year if the Corporation determines that such a waiver would be equitable due to a lack of available financial resources at the local level.

(h) Limitation on number of terms of service for federally subsidized living allowance

No national service program may use assistance provided under section 12571 of this title, or any other Federal funds, to provide a living allowance under subsection (a) of this section, a health care policy under subsection (d) of this section, or child care or a child care allowance under subsection (e) of this section, to an individual for a third, or subsequent, term of service described in section 12593(b) of this title by the individual in a national service program carried out under this division.

(Pub. L. 101-610, title I, §140, as added Pub. L. 103-82, title I, §101(b), Sept. 21, 1993, 107 Stat. 811.)

PRIOR PROVISIONS

A prior section 140 of Pub. L. 101-610 was set out as a note under section 12501 of this title, prior to the general amendment of subtitle D of title I of Pub. L. 101-610 [former part D of this subchapter] by Pub. L. 103-82, §102(a).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12571, 12572, 12583, 12638, 12656 of this title; title 16 section 1726.

§ 12595. National service educational awards**(a) Eligibility generally**

A participant in a national service program carried out using assistance provided to an applicant under section 12571 of this title shall be eligible for the national service educational award described in division D of this subchapter if the participant—

- (1) serves in an approved national service position; and
- (2) satisfies the eligibility requirements specified in section 12602 of this title with respect to service in that approved national service position.

(b) Special rule for VISTA volunteers

A VISTA volunteer who serves in an approved national service position shall be ineligible for a national service educational award if the VISTA volunteer accepts the stipend authorized under section 4955(a)(1) of this title.

(Pub. L. 101-610, title I, §141, as added Pub. L. 103-82, title I, §101(b), Sept. 21, 1993, 107 Stat. 814.)

PRIOR PROVISIONS

A prior section 141 of Pub. L. 101-610 was classified to section 12571 of this title prior to the general amendment of subtitle D of title I of Pub. L. 101-610 [former part D of this subchapter] by Pub. L. 103-82, §102(a).

Division D—National Service Trust and Provision of National Service Educational Awards

CODIFICATION

Subtitle D of title I of Pub. L. 101-610, comprising this division, was formerly classified to part D (§12571 et seq.) of this subchapter prior to the general amendment by Pub. L. 103-82, §102(a).

DIVISION REFERRED TO IN OTHER SECTIONS

This division is referred to in sections 4955, 12521, 12561, 12571, 12572, 12573, 12581, 12582, 12585, 12593, 12595, 12618, 12638, 12656, 12681 of this title; title 16 section 1727; title 20 sections 1078-10, 1078-11, 1087j, 1087ee.

§ 12601. Establishment of the National Service Trust**(a) Establishment**

There is established in the Treasury of the United States an account to be known as the National Service Trust. The Trust shall consist of—

- (1) from the amounts appropriated to the Corporation and made available to carry out this division pursuant to section 12681(a)(2) of this title, such amounts as the Corporation may designate to be available for the payment of—
 - (A) national service educational awards; and
 - (B) interest expenses pursuant to section 12604(e) of this title;
- (2) any amounts received by the Corporation as gifts, bequests, devises, or otherwise pursuant to section 12651g(a)(2) of this title; and
- (3) the interest on, and proceeds from the sale or redemption of, any obligations held by the Trust.

(b) Investment of Trust

It shall be the duty of the Secretary of the Treasury to invest in full the amounts appropriated to the Trust. Except as otherwise expressly provided in instruments concerning a gift, bequest, devise, or other donation and agreed to by the Corporation, such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose, such obligations may be acquired on original issue at the issue price or by purchase of outstanding obligations at the market price. Any obligation acquired by the Trust may be sold by the Secretary at the market price.

(c) Expenditures from Trust

Amounts in the Trust shall be available, to the extent provided for in advance by appropriation, for payments of national service educational awards in accordance with section 12604 of this title.

(d) Reports to Congress on receipts and expenditures

Not later than March 1 of each year, the Corporation shall submit a report to the Congress on the financial status of the Trust during the preceding fiscal year. Such report shall—

- (1) specify the amount deposited to the Trust from the most recent appropriation to the Corporation, the amount received by the Corporation as gifts, bequests, devises, or otherwise pursuant to section 12651g(a)(2) of this title during the period covered by the report, and any amounts obtained by the Trust pursuant to subsection (a)(3) of this section;
- (2) identify the number of individuals who are currently performing service to qualify, or have qualified, for national service educational awards;
- (3) identify the number of individuals whose expectation to receive national service educational awards during the period covered by the report—
 - (A) has been reduced pursuant to section 12603(c) of this title; or
 - (B) has lapsed pursuant to section 12602(d) of this title; and
- (4) estimate the number of additional approved national service positions that the Corporation will be able to make available under division C of this subchapter on the basis of any accumulated surplus in the Trust above the amount required to provide national service educational awards to individuals identified under paragraph (2), including any amounts available as a result of the circumstances referred to in paragraph (3).

(Pub. L. 101-610, title I, §145, as added Pub. L. 103-82, title I, §102(a), Sept. 21, 1993, 107 Stat. 816.)

PRIOR PROVISIONS

A prior section 12601, Pub. L. 101-610, title I, §156, Nov. 16, 1990, 104 Stat. 3156, related to authority of Commission on National and Community Service to make grants to States or Indian tribes for creation of innovative volunteer and community service programs, prior to repeal by Pub. L. 103-82, §104(a).

A prior section 145 of Pub. L. 101-610 was classified to section 12575 of this title prior to the general amendment of subtitle D of title I of Pub. L. 101-610 [former part D of this subchapter] by Pub. L. 103-82, §102(a).

EFFECTIVE DATE

Division effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as an Effective Date of 1993 Amendment note under section 1701 of Title 16, Conservation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12571, 12581 of this title.

§ 12602. Individuals eligible to receive a national service educational award from the Trust

(a) Eligible individuals

An individual shall receive a national service educational award from the National Service Trust if the individual—

- (1) successfully completes the required term of service described in subsection (b) of this section in an approved national service position;
- (2) was 17 years of age or older at the time the individual began serving in the approved national service position or was an out-of-school youth serving in an approved national service position with a youth corps program described in section 12572(a)(2) of this title or a program described in section 12572(a)(9) of this title;
- (3) at the time the individual uses the national service educational award—
 - (A) has received a high school diploma, or the equivalent of such diploma;
 - (B) is enrolled at an institution of higher education on the basis of meeting the standard described in paragraph (1) or (2) of subsection (a) of section 1091 of title 20 and meets the requirements of subsection (a) of such section; or
 - (C) has received a waiver described in section 12591(c) of this title; and
- (4) is a citizen or national of the United States or lawful permanent resident alien of the United States.

(b) Term of service

The term of service for an approved national service position shall not be less than the full- or part-time term of service specified in section 12593(b) of this title.

(c) Limitation on number of terms of service for awards

Although an individual may serve more than 2 terms of service described in subsection (b) of this section in an approved national service position, the individual shall receive a national service educational award from the National Service Trust only on the basis of the first and second of such terms of service.

(d) Time for use of educational award

(1) Seven-year requirement

An individual eligible to receive a national service educational award under this section may not use such award after the end of the 7-year period beginning on the date the individual completes the term of service in an approved national service position that is the basis of the award.

(2) Exception

The Corporation may extend the period within which an individual may use a national service educational award if the Corporation determines that the individual—

- (A) was unavoidably prevented from using the national service educational award during the original 7-year period; or
- (B) performed another term of service in an approved national service position during that period.

(e) Suspension of eligibility for drug-related offenses

(1) In general

An individual who, after qualifying under this section as an eligible individual, has been convicted under any Federal or State law of the possession or sale of a controlled substance shall not be eligible to receive a national service educational award during the period beginning on the date of such conviction and ending after the interval specified in the following table:

If convicted of:	
The possession of a controlled substance:	Ineligibility period is:
1st conviction	1 year
2nd conviction	2 years
3rd conviction	indefinite
The sale of a controlled substance:	
1st conviction	2 years
2nd conviction	indefinite

(2) Rehabilitation

An individual whose eligibility has been suspended under paragraph (1) shall resume eligibility before the end of the period determined under such paragraph if the individual satisfactorily completes a drug rehabilitation program that complies with such criteria as the Corporation shall prescribe for purposes of this paragraph.

(3) First convictions

An individual whose eligibility has been suspended under paragraph (1) and is convicted of a first offense may resume eligibility before the end of the period determined under such paragraph if the individual demonstrates that he or she has enrolled or been accepted for enrollment in a drug rehabilitation program described in paragraph (2).

(4) "Controlled substance" defined

As used in this subsection, the term "controlled substance" has the meaning given in section 802(6) of title 21.

(5) Effective date

This subsection shall be effective upon publication by the Corporation in the Federal Register of criteria prescribed under paragraph (2).

(f) Authority to establish demonstration programs

The Corporation may establish by regulation demonstration programs for the creation and evaluation of innovative volunteer and community service programs.

(Pub. L. 101-610, title I, §146, as added Pub. L. 103-82, title I, §102(a), Sept. 21, 1993, 107 Stat. 818; amended Pub. L. 103-304, §3(b)(4), Aug. 23, 1994, 108 Stat. 1567.)

PRIOR PROVISIONS

A prior section 12602, Pub. L. 101-610, title I, §157, Nov. 16, 1990, 104 Stat. 3156; Pub. L. 102-10, §7, Mar. 12, 1991, 105 Stat. 31, related to grant applications, awards, and uses, prior to repeal by Pub. L. 103-82, §104(a).

A prior section 146 of Pub. L. 101-610 was classified to section 12576 of this title prior to the general amendment of subtitle D of title I of Pub. L. 101-610 [former part D of this subchapter] by Pub. L. 103-82, §102(a).

AMENDMENTS

1994—Subsec. (a)(3). Pub. L. 103-304 struck out second par. (3) which read as follows: “has received a high school diploma, or the equivalent of such diploma, at the time the individual uses the national service educational award, unless this requirement has been waived based on an individual education assessment conducted by the program; and”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12595, 12601, 12603, 12604, 12618 of this title.

§ 12603. Determination of amount of national service educational award

(a) Amount for full-time national service

Except as provided in subsection (c) of this section, an individual described in section 12602(a) of this title who successfully completes a required term of full-time national service in an approved national service position shall receive a national service educational award having a value, for each of not more than 2 of such terms of service, equal to 90 percent of—

(1) one-half of an amount equal to the aggregate basic educational assistance allowance provided in section 3015(b)(1) of title 38 (as in effect on July 28, 1993), for the period referred to in section 3013(a)(1) of such title (as in effect on July 28, 1993), for a member of the Armed Forces who is entitled to such an allowance under section 3011 of such title and whose initial obligated period of active duty is 2 years; less

(2) one-half of the aggregate basic contribution required to be made by the member in section 3011(b) of such title (as in effect on July 28, 1993).

(b) Amount for part-time national service

Except as provided in subsection (c) of this section, an individual described in section 12602(a) of this title who successfully completes a required term of part-time national service in an approved national service position shall receive a national service educational award having a value, for each of not more than 2 of such terms of service, equal to 50 percent of value of the national service educational award determined under subsection (a) of this section.

(c) Award for partial completion of service

If an individual serving in an approved national service position is released in accordance with section 12593(c)(1)(A) of this title from completing the full-time or part-time term of service agreed to by the individual, the Corporation may provide the individual with that portion of

the national service educational award approved for the individual that corresponds to the quantity of the term of service actually completed by the individual.

(Pub. L. 101-610, title I, §147, as added Pub. L. 103-82, title I, §102(a), Sept. 21, 1993, 107 Stat. 819.)

PRIOR PROVISIONS

A prior section 147 of Pub. L. 101-610 was classified to section 12577 of this title prior to the general amendment of subtitle D of title I of Pub. L. 101-610 [former part D of this subchapter] by Pub. L. 103-82, §102(a).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12511, 12571, 12593, 12601 of this title.

§ 12604. Disbursement of national service educational awards

(a) In general

Amounts in the Trust shall be available—

(1) to repay student loans in accordance with subsection (b) of this section;

(2) to pay all or part of the cost of attendance at an institution of higher education in accordance with subsection (c) of this section;

(3) to pay expenses incurred in participating in an approved school-to-work program in accordance with subsection (d) of this section; and

(4) to pay interest expenses in accordance with regulations prescribed pursuant to subsection (e) of this section.

(b) Use of educational award to repay outstanding student loans

(1) Application by eligible individuals

An eligible individual under section 12602 of this title who desires to apply the national service educational award of the individual to the repayment of qualified student loans shall submit, in a manner prescribed by the Corporation, an application to the Corporation that—

(A) identifies, or permits the Corporation to identify readily, the holder or holders of such loans;

(B) indicates, or permits the Corporation to determine readily, the amounts of principal and interest outstanding on the loans;

(C) specifies, if the outstanding balance is greater than the amount disbursed under paragraph (2), which of the loans the individual prefers to be paid by the Corporation; and

(D) contains or is accompanied by such other information as the Corporation may require.

(2) Disbursement of repayments

Upon receipt of an application from an eligible individual of an application that complies with paragraph (1), the Corporation shall, as promptly as practicable consistent with paragraph (5), disburse the amount of the national service educational award that the eligible individual has earned. Such disbursement shall be made by check or other means that is payable to the holder of the loan and requires the endorsement or other certification by the eligible individual.

(3) Application of disbursed amounts

If the amount disbursed under paragraph (2) is less than the principal and accrued interest on any qualified student loan, such amount shall be applied according to the specified priorities of the individual.

(4) Reports by holders

Any holder receiving a loan payment pursuant to this subsection shall submit to the Corporation such information as the Corporation may require to verify that such payment was applied in accordance with this subsection and any regulations prescribed to carry out this subsection.

(5) Notification of individual

The Corporation upon disbursing the national service educational award, shall notify the individual of the amount paid for each outstanding loan and the date of payment.

(6) Authority to aggregate payments

The Corporation may, by regulation, provide for the aggregation of payments to holders under this subsection.

(7) "Qualified student loans" defined

As used in this subsection, the term "qualified student loans" means—

(A) any loan made, insured, or guaranteed pursuant to title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq. [and 42 U.S.C. 2751 et seq.]), other than a loan to a parent of a student pursuant to section 428B of such Act (20 U.S.C. 1078-2); and

(B) any loan made pursuant to title VII or VIII of the Public Health Service Act [42 U.S.C. 292 et seq., 296 et seq.].

(8) "Holder" defined

As used in this subsection, the term "holder" with respect to any eligible loan means the original lender or, if the loan is subsequently sold, transferred, or assigned to some other person, and such other person acquires a legally enforceable right to receive payments from the borrower, such other person.

(c) Use of educational awards to pay current educational expenses**(1) Application by eligible individual**

An eligible individual under section 12602 of this title who desires to apply the individual's national service educational award to the payment of current full-time or part-time educational expenses shall, on a form prescribed by the Corporation, submit an application to the institution of higher education in which the student will be enrolled that contains such information as the Corporation may require to verify the individual's eligibility.

(2) Submission of requests for payment by institutions

An institution of higher education that receives one or more applications that comply with paragraph (1) shall submit to the Corporation a statement, in a manner prescribed by the Corporation, that—

(A) identifies each eligible individual filing an application under paragraph (1) for a disbursement of the individual's national service educational award under this subsection;

(B) specifies the amounts for which such eligible individuals are, consistent with paragraph (6), qualified for disbursement under this subsection;

(C) certifies that—

(i) the institution of higher education has in effect a program participation agreement under section 487 of the Higher Education Act of 1965 (20 U.S.C. 1094);

(ii) the institution's eligibility to participate in any of the programs under title IV of such Act (20 U.S.C. 1070 et seq. [and 42 U.S.C. 2751 et seq.]) has not been limited, suspended, or terminated; and

(iii) individuals using national service educational awards received under this division to pay for educational costs do not comprise more than 15 percent of the total student population of the institution; and

(D) contains such provisions concerning financial compliance as the Corporation may require.

(3) Disbursement of payments

Upon receipt of a statement from an institution of higher education that complies with paragraph (2), the Corporation shall, subject to paragraph (4), disburse the total amount of the national service educational awards for which eligible individuals who have submitted applications to that institution under paragraph (1) are scheduled to receive. Such disbursement shall be made by check or other means that is payable to the institution and requires the endorsement or other certification by the eligible individual.

(4) Multiple disbursements required

The total amount required to be disbursed to an institution of higher education under paragraph (3) for any period of enrollment shall be disbursed by the Corporation in 2 or more installments, none of which exceeds ½ of such total amount. The interval between the first and second such installment shall not be less than ½ of such period of enrollment, except as necessary to permit the second installment to be paid at the beginning of the second semester, quarter, or similar division of such period of enrollment.

(5) Refund rules

The Corporation shall, by regulation, provide for the refund to the Corporation (and the crediting to the national service educational award of an eligible individual) of amounts disbursed to institutions for the benefit of eligible individuals who withdraw or otherwise fail to complete the period of enrollment for which the assistance was provided. Such regulations shall be consistent with the fair and equitable refund policies required of institutions pursuant to section 484B of the Higher Education Act of 1965 (20 U.S.C. 1091b). Amounts refunded to the Trust pursuant to this paragraph may be used by the Corporation to fund additional approved national service positions under division C of this subchapter.

(6) Maximum award

The portion of an eligible individual's total available national service educational award

that may be disbursed under this subsection for any period of enrollment shall not exceed the difference between—

(A) the eligible individual's cost of attendance for such period of enrollment, determined in accordance with section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087*ll*); and

(B) the sum of—

(i) the student's estimated financial assistance for such period under part A of title IV of such Act (20 U.S.C. 1070 et seq.); and

(ii) the student's veterans' education benefits, determined in accordance with section 480(c) of such Act (20 U.S.C. 1087vv(c)).

(d) Use of educational award to participate in approved school-to-work programs

The Corporation shall by regulation provide for the payment of national service educational awards to permit eligible individuals to participate in school-to-work programs approved by the Secretaries of Labor and Education.

(e) Interest payments during forbearance on loan repayment

The Corporation shall provide by regulation for the payment on behalf of an eligible individual of interest that accrues during a period for which such individual has obtained forbearance in the repayment of a qualified student loan (as defined in subsection (b)(6)¹ of this section), if the eligible individual successfully completes the individual's required term of service (as determined under section 12602(b) of this title). Such regulations shall be prescribed after consultation with the Secretary of Education.

(f) Exception

With the approval of the Director, an approved national service program funded under section 12571 of this title, may offer participants the option of waiving their right to receive a national service educational award in order to receive an alternative post-service benefit funded by the program entirely with non-Federal funds.

(g) "Institution of higher education" defined

Notwithstanding section 12511 of this title, for purposes of this section the term "institution of higher education" has the meaning provided by section 102 of the Higher Education Act of 1965 [20 U.S.C. 1002].

(Pub. L. 101-610, title I, § 148, as added Pub. L. 103-82, title I, § 102(a), Sept. 21, 1993, 107 Stat. 820; amended Pub. L. 105-244, title I, § 102(c)(2), Oct. 7, 1998, 112 Stat. 1622.)

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in subsecs. (b)(7)(A) and (c)(2)(C)(ii), (6)(B)(i), is Pub. L. 89-329, Nov. 8, 1965, 79 Stat. 1219, as amended. Title IV of the Act is classified generally to subchapter IV (§ 1070 et seq.) of chapter 28 of Title 20, Education, and part C (§ 2751 et seq.) of subchapter I of chapter 34 of this title. Part A of title IV of the Act is classified generally to part A (§ 1070 et seq.) of subchapter IV of chapter 28 of Title 20. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

¹ So in original. Probably should be subsection "(b)(7)".

The Public Health Service Act, referred to in subsec. (b)(7)(B), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Titles VII and VIII of the Act are classified generally to subchapters V (§ 292 et seq.) and VI (§ 296 et seq.), respectively, of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

PRIOR PROVISIONS

A prior section 148 of Pub. L. 101-610 was classified to section 12578 of this title prior to the general amendment of subtitle D of title I of Pub. L. 101-610 [former part D of this subchapter] by Pub. L. 103-82, § 102(a).

AMENDMENTS

1998—Subsec. (g). Pub. L. 105-244 substituted "section 102 of the Higher Education Act of 1965" for "section 481(a) of the Higher Education Act of 1965 (20 U.S.C. 1088(a))".

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12601 of this title.

Division E—Civilian Community Corps

CODIFICATION

Subtitle E of title I of Pub. L. 101-610, comprising this division, was formerly classified to part H (§ 12653 et seq.) of this subchapter prior to amendment by Pub. L. 103-82, § 104(b).

PRIOR PROVISIONS

This division is comprised of subtitle E, §§ 151-166, of title I of Pub. L. 101-610. A prior part E (§ 12591 et seq.), comprised of subtitle E, §§ 155-167, of title I of Pub. L. 101-610, related to innovative and demonstration programs and projects, prior to repeal by Pub. L. 103-82, § 104(a).

DIVISION REFERRED TO IN OTHER SECTIONS

This division is referred to in sections 12573, 12581, 12681 of this title; title 32 section 509.

§ 12611. Purpose

It is the purpose of this division to authorize the establishment of a Civilian Community Corps to provide a basis for determining—

(1) whether residential service programs administered by the Federal Government can significantly increase the support for national service and community service by the people of the United States;

(2) whether such programs can expand the opportunities for willing young men and women to perform meaningful, direct, and consequential acts of community service in a manner that will enhance their own skills while contributing to their understanding of civic responsibility in the United States;

(3) whether retired members and former members of the Armed Forces of the United States, members and former members of the Armed Forces discharged or released from active duty in connection with reduced Department of Defense spending, members and former members of the Armed Forces discharged or transferred from the Selected Re-

serve of the Ready Reserve in connection with reduced Department of Defense spending, and other members of the Armed Forces not on active duty and not actively participating in a reserve component of the Armed Forces can provide guidance and training under such programs that contribute meaningfully to the encouragement of national and community service; and

(4) whether domestic national service programs can serve as a substitute for the traditional option of military service in the Armed Forces of the United States which, in times of reductions in the size of the Armed Forces, is a diminishing national service opportunity for young Americans.

(Pub. L. 101-610, title I, § 151, formerly § 195, as added Pub. L. 102-484, div. A, title X, § 1092(a)(1), Oct. 23, 1992, 106 Stat. 2522; renumbered § 151, Pub. L. 103-82, title I, § 104(b), Sept. 21, 1993, 107 Stat. 840.)

CODIFICATION

Section was formerly classified to section 12653 of this title prior to renumbering by Pub. L. 103-82, § 104(b).

PRIOR PROVISIONS

A prior section 12611, Pub. L. 101-610, title I, § 160, Nov. 16, 1990, 104 Stat. 3157, authorized Commission to make grants to Directors of Peace Corps and ACTION to carry out training and educational benefits demonstration programs, prior to repeal by Pub. L. 103-82, § 104(a).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12619, 12622 of this title.

§ 12612. Establishment of Civilian Community Corps Demonstration Program

(a) In general

The Corporation may establish the Civilian Community Corps Demonstration Program to carry out the purpose of this division.

(b) Program components

Under the Civilian Community Corps Demonstration Program authorized by subsection (a) of this section, the members of a Civilian Community Corps shall receive training and perform service in at least one of the following two program components:

- (1) A national service program.
- (2) A summer national service program.

(c) Residential programs

Both program components are residential programs. The members of the Corps in each program shall reside with other members of the Corps in Corps housing during the periods of the members' agreed service.

(Pub. L. 101-610, title I, § 152, formerly § 195A, as added Pub. L. 102-484, div. A, title X, § 1092(a)(1), Oct. 23, 1992, 106 Stat. 2523; renumbered § 152 and amended Pub. L. 103-82, title I, § 104(b), title IV, § 402(b)(2), Sept. 21, 1993, 107 Stat. 840, 919.)

CODIFICATION

Section was formerly classified to section 12653a of this title prior to renumbering by Pub. L. 103-82, § 104(b).

PRIOR PROVISIONS

A prior section 12612, Pub. L. 101-610, title I, § 161, Nov. 16, 1990, 104 Stat. 3157; Pub. L. 102-384, § 7(a), Oct. 5, 1992, 106 Stat. 1456, related to eligibility and selection procedures, prior to repeal by Pub. L. 103-82, § 104(a).

AMENDMENTS

1993—Subsec. (a). Pub. L. 103-82, § 402(b)(2), substituted "Corporation" for "Commission on National and Community Service".

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 402(b)(2) of Pub. L. 103-82 effective Oct. 1, 1993, see section 406(a) of Pub. L. 103-82, set out as a note under section 5061 of this title.

REPORT AND STUDY REQUIREMENTS

Section 1092(b) of Pub. L. 102-484, as amended by Pub. L. 103-82, title I, § 104(e)(1)(B), (C), title IV, § 402(a)(1), Sept. 21, 1993, 107 Stat. 846, 918, provided that:

"(1) Not later than 180 days after the date on which the Corporation for National and Community Service establishes the Civilian Community Corps Demonstration Program authorized by section 152 of the National and Community Service Act of 1990 [42 U.S.C. 12612] (as added by subsection (a)), the Board of Directors of the Corporation shall prepare and submit to the appropriate committees of Congress a progress report on the implementation of the provisions of subtitle E of title I of such Act [42 U.S.C. 12611 et seq.]. The progress report shall include an assessment of the activities undertaken in establishing and administering Civilian Community Corps camps and an analysis of the level of coordination of Corps activities with activities of other departments or agencies of the Federal Government.

"(2) Not later than 90 days after the end of the one-year period beginning on the first day of the Civilian Community Corps Demonstration Program established pursuant to section 152 of the National and Community Service Act of 1990 (as added by subsection (a)), the Board of Directors of the Corporation for National and Community Service and the Director of the Civilian Community Corps shall prepare and submit to the appropriate committees of Congress a report concerning the desirability and feasibility of establishing the Civilian Community Corps as an independent agency of the Federal Government."

COORDINATION OF PROGRAMS

Section 1093 of Pub. L. 102-484, as amended by Pub. L. 103-82, title I, § 104(e)(1)(B), title IV, § 402(a)(2), Sept. 21, 1993, 107 Stat. 846, 918, provided that:

"(a) COORDINATED ADMINISTRATION.—To the maximum extent practicable, the Chief of the National Guard Bureau, the Board of Directors and Chief Executive Officer of the Corporation for National and Community Service, and the Director of the Civilian Community Corps shall coordinate the National Guard Youth Opportunities Program established pursuant to section 1091 [of Pub. L. 102-484, 32 U.S.C. 501 note] and the Civilian Community Corps Demonstration Program established pursuant to the authorization contained in section 152 of the National and Community Service Act of 1990 [42 U.S.C. 12612] (as added by section 1092(a)).

"(b) OBJECTIVES.—The officials referred to in subsection (a) shall ensure that—

"(1) the programs referred to in subsection (a) are conducted in such a manner in relationship to each other that the public benefit of those programs is maximized;

"(2) to the maximum extent appropriate to meet the needs of program participants, persons who complete participation in the National Guard Youth Opportunities Program and are eligible and apply to participate in the Civilian Community Corps under the Civilian Community Corps Demonstration Program are accepted for participation in that Program; and

“(3) the programs referred to in subsection (a) are conducted simultaneously in competition with each other in the same immediate area of the United States only when the population of eligible participants in that area is sufficient to justify the simultaneous conduct of such programs in that area.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12511, 12613, 12614, 12619, 12626 of this title.

§ 12613. National service program

(a) In general

Under the national service program component of the Civilian Community Corps Demonstration Program authorized by section 12612(a) of this title, eligible young people shall work in teams on Civilian Community Corps projects.

(b) Eligible participants

A person shall be eligible for selection for the national service program if the person—

- (1) is at least 16 and not more than 24 years of age; and
- (2) is a high school graduate or has not received a high school diploma or its equivalent.

(c) Diverse backgrounds of participants

In selecting persons for the national service program, the Director shall endeavor to ensure that participants are from economically, geographically, and ethnically diverse backgrounds.

(d) Necessary participants

To the extent practicable, at least 50 percent of the participants in the national service program shall be economically disadvantaged youths.

(e) Period of participation

Persons desiring to participate in the national service program shall enter into an agreement with the Director to participate in the Corps for a period of not less than nine months and not more than one year, as specified by the Director, and may renew the agreement for not more than one additional such period.

(Pub. L. 101-610, title I, § 153, formerly § 195B, as added Pub. L. 102-484, div. A, title X, § 1092(a)(1), Oct. 23, 1992, 106 Stat. 2523; renumbered § 153 and amended Pub. L. 103-82, title I, § 104(b), (e)(2)(A), Sept. 21, 1993, 107 Stat. 840, 846.)

CODIFICATION

Section was formerly classified to section 12653b of this title prior to renumbering by Pub. L. 103-82, § 104(b).

PRIOR PROVISIONS

A prior section 12613, Pub. L. 101-610, title I, § 162, Nov. 16, 1990, 104 Stat. 3158, related to training program in skills to be employed in Peace Corps or VISTA, prior to repeal by Pub. L. 103-82, § 104(a).

AMENDMENTS

1993—Subsec. (a). Pub. L. 103-82, § 104(e)(2)(A), substituted “section 12612(a)” for “section 12653a(a)”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12653c of this title.

§ 12614. Summer national service program

(a) In general

Under the summer national service program of the Civilian Community Corps Demonstration Program authorized by section 12612(a) of this title, a diverse group of youth aged 14 through 18 years who are from urban or rural areas shall work in teams on Civilian Community Corps projects.

(b) Necessary participants

To the extent practicable, at least 50 percent of the participants in the summer national service program shall be economically disadvantaged youths.

(c) Seasonal program

The training and service of Corps members under the summer national service program in each year shall be conducted after April 30 and before October 1 of that year.

(Pub. L. 101-610, title I, § 154, formerly § 195C, as added Pub. L. 102-484, div. A, title X, § 1092(a)(1), Oct. 23, 1992, 106 Stat. 2524; renumbered § 154 and amended Pub. L. 103-82, title I, § 104(b), (e)(2)(B), Sept. 21, 1993, 107 Stat. 840, 847.)

CODIFICATION

Section was formerly classified to section 12653c of this title prior to renumbering by Pub. L. 103-82, § 104(b).

PRIOR PROVISIONS

A prior section 12614, Pub. L. 101-610, title I, § 163, Nov. 16, 1990, 104 Stat. 3158; Pub. L. 102-384, § 7(b), Oct. 5, 1992, 106 Stat. 1456, related to higher education benefits for those selected for Peace Corps or VISTA demonstration programs, prior to repeal by Pub. L. 103-82, § 104(a).

AMENDMENTS

1993—Subsec. (a). Pub. L. 103-82, § 104(e)(2)(B), substituted “section 12612(a)” for “section 12653a(a)”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12653c of this title.

§ 12615. Civilian Community Corps

(a) Director

Upon the establishment of the Civilian Community Corps Demonstration Program, the Civilian Community Corps shall be under the direction of the Director appointed pursuant to section 12619(c)(1) of this title.

(b) Membership in Civilian Community Corps

(1) Participants to be members

Persons selected to participate in the national service program or the summer national service program components of the Program shall become members of the Civilian Community Corps.

(2) Selection of members

The Director or the Director's designee shall select individuals for membership in the Corps.

(3) Application for membership

To be selected to become a Corps member an individual shall submit an application to the Director or to any other office as the Director may designate, at such time, in such manner, and containing such information as the Director shall require. At a minimum, the application shall contain information about the work experience of the applicant and sufficient information to enable the Director, or the superintendent of the appropriate camp, to determine whether selection of the applicant for membership in the Corps is appropriate.

(c) Organization of Corps into units**(1) Units**

The Corps shall be divided into permanent units. Each Corps member shall be assigned to a unit.

(2) Unit leaders

The leader of each unit shall be selected from among persons in the permanent cadre established pursuant to section 12619(c)(2) of this title. The designated leader shall accompany the unit throughout the period of agreed service of the members of the unit.

(d) Camps**(1) Units to be assigned to camps**

The units of the Corps shall be grouped together as appropriate in camps for operational, support, and boarding purposes. The Corps camp for a unit shall be in a facility or central location established as the operational headquarters and boarding place for the unit. Corps members may be housed in the camps.

(2) Camp superintendent

There shall be a superintendent for each camp. The superintendent is the head of the camp.

(3) Eligible site for camp

A camp may be located in a facility referred to in section 12622(a)(3) of this title.

(e) Distribution of units and camps

The Director shall ensure that the Corps units and camps are distributed in urban areas and rural areas in various regions throughout the United States.

(f) Standards of conduct**(1) In general**

The superintendent of each camp shall establish and enforce standards of conduct to promote proper moral and disciplinary conditions in the camp.

(2) Sanctions

Under procedures prescribed by the Director, the superintendent of a camp may—

- (A) transfer a member of the Corps in that camp to another unit or camp if the superintendent determines that the retention of the member in the member's unit or in the superintendent's camp will jeopardize the

enforcement of the standards or diminish the opportunities of other Corps members in that unit or camp, as the case may be; or

(B) dismiss a member of the Corps from the Corps if the superintendent determines that retention of the member in the Corps will jeopardize the enforcement of the standards or diminish the opportunities of other Corps members.

(3) Appeals

Under procedures prescribed by the Director, a member of the Corps may appeal to the Director a determination of a camp superintendent to transfer or dismiss the member. The Director shall provide for expeditious disposition of appeals under this paragraph.

(Pub. L. 101-610, title I, §155, formerly §195D, as added Pub. L. 102-484, div. A, title X, §1092(a)(1), Oct. 23, 1992, 106 Stat. 2524; renumbered §155 and amended Pub. L. 103-82, title I, §104(b), (e)(2)(C), title IV, §403(b), Sept. 21, 1993, 107 Stat. 840, 847, 920; Pub. L. 103-304, §3(b)(5)(A), Aug. 23, 1994, 108 Stat. 1567.)

CODIFICATION

Section was formerly classified to section 12653d of this title prior to renumbering by Pub. L. 103-82, §104(b).

PRIOR PROVISIONS

A prior section 12615, Pub. L. 101-610, title I, §164, Nov. 16, 1990, 104 Stat. 3159; Pub. L. 102-384, §4, Oct. 5, 1992, 106 Stat. 1455, related to evaluation reports on Peace Corps and VISTA demonstration programs, prior to repeal by Pub. L. 103-82, §104(a).

A prior section 155 of Pub. L. 101-610 was classified to section 12591 of this title prior to repeal by Pub. L. 103-82.

AMENDMENTS

1994—Subsec. (e). Pub. L. 103-304 substituted "camps" for "Corps" in heading.

1993—Subsec. (a). Pub. L. 103-82, §403(b), substituted "Director" for "Director of the Civilian Community Corps".

Pub. L. 103-82, §104(e)(2)(C)(i), substituted "section 12619(c)(1)" for "section 12653h(c)(1)".

Subsec. (c)(2). Pub. L. 103-82, §104(e)(2)(C)(ii), substituted "section 12619(c)(2)" for "section 12653h(c)(2)".

Subsec. (d)(3). Pub. L. 103-82, §104(e)(2)(C)(iii), substituted "section 12622(a)(3)" for "section 12653k(a)(3)".

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 104(b), (e)(2)(C) of Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12626 of this title.

§ 12616. Training**(a) Common curriculum**

Each member of the Civilian Community Corps shall be provided with between three and six weeks of training that includes a comprehensive service-learning curriculum designed to promote team building, discipline, leadership, work, training, citizenship, and physical conditioning.

(b) Advanced service training**(1) National service program**

Members of the Corps participating in the national service program shall receive advanced training in basic, project-specific skills that the members will use in performing their community service projects.

(2) Summer national service program

Members of the Corps participating in the summer national service program shall not receive advanced training referred to in paragraph (1) but, to the extent practicable, may receive other training.

(c) Training personnel**(1) In general**

Members of the cadre appointed under section 12619(c)(2) of this title shall provide the training for the members of the Corps, including, as appropriate, advanced service training and ongoing training throughout the members' periods of agreed service.

(2) Coordination with other entities

Members of the cadre may provide the advanced service training referred to in subsection (b)(1) of this section in coordination with vocational or technical schools, other employment and training providers, existing youth service programs, or other qualified individuals.

(d) Facilities

The training may be provided at installations and other facilities of the Department of Defense, and at National Guard facilities, identified under section 12622(a)(3) of this title.

(Pub. L. 101-610, title I, § 156, formerly § 195E, as added Pub. L. 102-484, div. A, title X, § 1092(a)(1), Oct. 23, 1992, 106 Stat. 2525; renumbered § 156 and amended Pub. L. 103-82, title I, § 104(b), (e)(2)(D), Sept. 21, 1993, 107 Stat. 840, 847.)

CODIFICATION

Section was formerly classified to section 12653e of this title prior to renumbering by Pub. L. 103-82, § 104(b).

PRIOR PROVISIONS

A prior section 156 of Pub. L. 101-610 was classified to section 12601 of this title prior to repeal by Pub. L. 103-82, § 104(a).

AMENDMENTS

1993—Subsec. (c)(1). Pub. L. 103-82, § 104(e)(2)(D)(i), substituted “section 12619(c)(2)” for “section 12653h(c)(2)”.

Subsec. (d). Pub. L. 103-82, § 104(e)(2)(D)(ii), substituted “section 12622(a)(3)” for “section 12653k(a)(3)”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

§ 12617. Service projects**(a) Project requirements**

The service projects carried out by the Civilian Community Corps shall—

- (1) meet an identifiable public need;
- (2) emphasize the performance of community service activities that provide meaningful

community benefits and opportunities for service learning and skills development;

(3) to the maximum extent practicable, encourage work to be accomplished in teams of diverse individuals working together; and

(4) include continued education and training in various technical fields.

(b) Project proposals**(1) Development of proposals****(A) Specific executive departments**

Upon the establishment of the Program, the Secretary of Agriculture, the Secretary of the Interior, and the Secretary of Housing and Urban Development shall develop proposals for Corps projects pursuant to guidance which the Director shall prescribe.

(B) Other sources

Other public and private organizations and agencies, including representatives of local communities in the vicinity of a Corps camp, may develop proposals for projects for a Corps camp. Corps members shall also be encouraged to identify projects for the Corps.

(2) Consultation requirements

The process for developing project proposals under paragraph (1) shall include consultation with the Corporation, representatives of local communities, and persons involved in other youth service programs.

(c) Project selection, organization, and performance**(1) Selection**

The superintendent of a Corps camp shall select the projects to be performed by the members of the Corps assigned to the units in that camp. The superintendent shall select projects from among the projects proposed or identified pursuant to subsection (b) of this section.

(2) Innovative local arrangements for project performance

The Director shall encourage camp superintendents to negotiate with representatives of local communities, to the extent practicable, innovative arrangements for the performance of projects. The arrangements may provide for cost-sharing and the provision by the communities of in-kind support and other support.

(Pub. L. 101-610, title I, § 157, formerly § 195F, as added Pub. L. 102-484, div. A, title X, § 1092(a)(1), Oct. 23, 1992, 106 Stat. 2526; renumbered § 157 and amended Pub. L. 103-82, title I, § 104(b), title IV, §§ 402(b)(2), 403(b), Sept. 21, 1993, 107 Stat. 840, 919, 920.)

CODIFICATION

Section was formerly classified to section 12653f of this title prior to renumbering by Pub. L. 103-82, § 104(b).

PRIOR PROVISIONS

A prior section 157 of Pub. L. 101-610 was classified to section 12602 of this title prior to repeal by Pub. L. 103-82, § 104(a).

AMENDMENTS

1993—Subsec. (b)(1)(A). Pub. L. 103-82, § 403(b), substituted “Director” for “Director of the Civilian Community Corps”.

Subsec. (b)(2). Pub. L. 103-82, §402(b)(2), substituted "Corporation" for "Commission on National and Community Service".

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 402(b)(2) of Pub. L. 103-82 effective Oct. 1, 1993, see section 406(a) of Pub. L. 103-82, set out as a note under section 5061 of this title.

§ 12618. Authorized benefits for Corps members

(a) In general

The Director shall provide for members of the Civilian Community Corps to receive benefits authorized by this section.

(b) Living allowance

The Director shall provide a living allowance to members of the Corps for the period during which such members are engaged in training or any activity on a Corps project. The Director shall establish the amount of the allowance at any amount not in excess of the amount equal to 100 percent of the poverty line that is applicable to a family of two (as defined by the Office of Management and Budget and revised annually in accordance with section 9902(2) of this title.¹

(c) Other authorized benefits

While receiving training or engaging in service projects as members of the Civilian Community Corps, members may be provided the following benefits:

- (1) Allowances for travel expenses, personal expenses, and other expenses.
- (2) Quarters.
- (3) Subsistence.
- (4) Transportation.
- (5) Equipment.
- (6) Clothing.
- (7) Recreational services and supplies.
- (8) Other services determined by the Director to be consistent with the purposes of the Program.

(d) Supportive services

As the Director determines appropriate, the Director may provide each member of the Corps with health care services, child care services, counseling services, and other supportive services.

(e) Post-service benefits

Upon completion of the agreed period of service with the Corps, a member shall elect to receive the educational assistance under subsection (f) of this section or the cash benefit under subsection (g) of this section.

(f) National service educational awards

A Corps member who successfully completes a period of agreed service in the Corps may receive the national service educational award described in division D of this subchapter if the Corps member—

- (1) serves in an approved national service position; and
- (2) satisfies the eligibility requirements specified in section 12602 of this title with respect to service in that approved national service position.

¹ So in original. A closing parenthesis probably should precede the period.

(g) Alternative benefit

If a Corps member who successfully completes a period of agreed service in the Corps is ineligible for the national service educational award described in division D of this subchapter, the Director may provide for the provision of a suitable alternative benefit for the Corps member.

(Pub. L. 101-610, title I, §158, formerly §195G, as added Pub. L. 102-484, div. A, title X, §1092(a)(1), Oct. 23, 1992, 106 Stat. 2526; renumbered §158 and amended Pub. L. 103-82, title I, §104(b), (g), title IV, §403(b), Sept. 21, 1993, 107 Stat. 840, 847, 920.)

CODIFICATION

Section was formerly classified to section 12653g of this title prior to renumbering by Pub. L. 103-82, §104(b).

AMENDMENTS

1993—Subsec. (a). Pub. L. 103-82, §403(b), substituted "Director" for "Director of the Civilian Community Corps".

Subsecs. (f) to (h). Pub. L. 103-82, §104(g), added subsecs. (f) and (g) and struck out former subsecs. (f) to (h) which related to monetary educational assistance, cash benefit election for Corps members, and other post-service benefits, respectively.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 104(b), (g) of Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 32 section 509.

§ 12619. Administrative provisions

(a) Supervision

The Chief Executive Officer shall monitor and supervise the administration of the Civilian Community Corps Demonstration Program authorized to be established under section 12612 of this title. In carrying out this section, the Chief Executive Officer shall—

- (1) approve such guidelines, recommended by the Board, for the design, selection of members, and operation of the Civilian Community Corps as the Chief Executive Officer considers appropriate;
- (2) evaluate the progress of the Corps in providing a basis for determining the matters set forth in section 12611 of this title; and
- (3) carry out any other activities determined appropriate by the Board.

(b) Monitoring and coordination

The Chief Executive Officer shall—

- (1) monitor the overall operation of the Civilian Community Corps;
- (2) coordinate the activities of the Corps with other youth service programs administered by the Corporation; and
- (3) carry out any other activities determined appropriate by the Board.

(c) Staff

(1) Director

(A) Appointment

Upon the establishment of the Program, the Chief Executive Officer shall appoint a

Director. The Director may be selected from among retired commissioned officers of the Armed Forces of the United States.

(B) Duties

The Director shall—

- (i) design, develop, and administer the Civilian Community Corps programs;
- (ii) be responsible for managing the daily operations of the Corps; and
- (iii) report to the Chief Executive Officer.

(C) Authority to employ staff

The Director may employ such staff as is necessary to carry out this division. The Director shall, to the maximum extent practicable, utilize in staff positions personnel who are detailed from departments and agencies of the Federal Government and, to the extent the Director considers appropriate, shall request and accept detail of personnel from such departments and agencies in order to do so.

(2) Permanent cadre

(A) Establishment

The Director shall establish a permanent cadre of supervisors and training instructors for Civilian Community Corps programs.

(B) Appointment

The Director shall appoint the members of the permanent cadre.

(C) Employment considerations

In appointing individuals to cadre positions, the Director shall—

- (i) give consideration to retired, discharged, and other inactive members and former members of the Armed Forces recommended under section 12622(a)(2) of this title;
- (ii) give consideration to former VISTA, Peace Corps, and youth service program personnel;
- (iii) ensure that the cadre is comprised of males and females of diverse ethnic, economic, professional, and geographic backgrounds; and
- (iv) consider applicants' experience in other youth service programs.

(D) Community service credit

Service as a member of the cadre shall be considered as a community service opportunity for purposes of section 4403 of the National Defense Authorization Act for Fiscal Year 1993 and as employment with a public service or community service organization for purposes of section 4464 of that Act.

(E) Training

The Director shall provide to members of the permanent cadre appropriate training in youth development techniques and the principles of service learning. All members of the permanent cadre shall be required to participate in the training.

(3) Inapplicability of certain civil service laws

The Director, the members of the permanent cadre, and the other staff personnel shall be

appointed without regard to the provisions of title 5 governing appointments in the competitive service. The rates of pay of such persons may be established without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title. In the case of a member of the permanent cadre who was recommended for appointment in accordance with section 12622(a)(2)(A) of this title and is entitled to retired or retainer pay, section 5532¹ of title 5 shall not apply to reduce the member's retired or retainer pay by reason of the member being paid as a member of the cadre.

(4) Voluntary services

Notwithstanding any other provision of law, the Director may accept the voluntary services of individuals. While away from their homes or regular places of business on the business of the Corps, such individuals may be allowed travel expenses, including per diem in lieu of subsistence, in the same amounts and to the same extent, as authorized under section 5703 of title 5 for persons employed intermittently in Federal Government service.

(Pub. L. 101-610, title I, § 159, formerly § 195H, as added Pub. L. 102-484, div. A, title X, § 1092(a)(1), Oct. 23, 1992, 106 Stat. 2528; renumbered § 159 and amended Pub. L. 103-82, title I, § 104(b), (e)(2)(E), title IV, §§ 402(b)(1), 403(a)(1)-(3), (b), Sept. 21, 1993, 107 Stat. 840, 847, 918-920; Pub. L. 103-304, § 3(b)(5)(B), Aug. 23, 1994, 108 Stat. 1567; Pub. L. 103-337, div. A, title VI, § 640, Oct. 5, 1994, 108 Stat. 2791.)

REFERENCES IN TEXT

Section 4403 of the National Defense Authorization Act for Fiscal Year 1993, referred to in subsec. (c)(2)(D), is section 4403 of Pub. L. 102-484 which is set out as a note under section 1293 of Title 10, Armed Forces.

Section 4464 of that Act, referred to in subsec. (c)(2)(D), is section 4464 of Pub. L. 102-484 which is set out as a note under section 1143a of Title 10.

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (c)(3), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

Section 5532 of title 5, referred to in subsec. (c)(3), was repealed by Pub. L. 106-65, div. A, title VI, § 651(a)(1), Oct. 5, 1999, 113 Stat. 664.

CODIFICATION

Section was formerly classified to section 12653h of this title prior to renumbering by Pub. L. 103-82, § 104(b).

AMENDMENTS

1994—Subsec. (c)(2)(C)(i). Pub. L. 103-304 substituted “section 12622(a)(2)” for “section section 12622(a)(2)”.

Subsec. (c)(3). Pub. L. 103-337 inserted at end “In the case of a member of the permanent cadre who was recommended for appointment in accordance with section 12622(a)(2)(A) of this title and is entitled to retired or retainer pay, section 5532 of title 5 shall not apply to reduce the member's retired or retainer pay by reason of the member being paid as a member of the cadre.”

1993—Subsec. (a). Pub. L. 103-82, § 403(a)(1)(A), (B), substituted “Supervision” for “Board” in heading and “The Chief Executive Officer shall monitor” for “The Board shall monitor” and “the Chief Executive Officer shall—” for “the Board shall—” in introductory provisions.

¹ See References in Text note below.

Pub. L. 103-82, §104(e)(2)(E)(i)(I), substituted "section 12612" for "section 12653a" in introductory provisions.

Subsec. (a)(1). Pub. L. 103-82, §403(a)(1)(B), (C), substituted "by the Board" for "by the Director" and "as the Chief Executive Officer" for "as the Board".

Subsec. (a)(2). Pub. L. 103-82, §104(e)(2)(E)(i)(II), substituted "section 12611" for "section 12653".

Subsec. (b). Pub. L. 103-82, §403(a)(2), substituted "Monitoring and coordination" for "Executive Director" in heading and "The Chief Executive Officer shall" for "The Executive Director of the Commission on National and Community Service shall" in introductory provisions.

Subsec. (b)(2). Pub. L. 103-82, §402(b)(1), substituted "by the Corporation" for "by the Commission".

Subsec. (c)(1)(A). Pub. L. 103-82, §403(a)(3)(A), (b), substituted "the Chief Executive Officer shall appoint a Director" for "the Board, in consultation with the Executive Director, shall appoint a Director of the Civilian Community Corps".

Subsec. (c)(1)(B)(iii). Pub. L. 103-82, §403(a)(3)(B), substituted "the Chief Executive Officer" for "the Board through the Executive Director".

Subsec. (c)(2)(C)(i). Pub. L. 103-82, §104(e)(2)(E)(ii), substituted "section 12622(a)(2)" for "12653k(a)(2)".

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 104(b), (e)(2)(E) of Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

Amendment by section 402(b)(1) of Pub. L. 103-82 effective Oct. 1, 1993, see section 406(a) of Pub. L. 103-82, set out as a note under section 5061 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12615, 12616 of this title.

§ 12620. Status of Corps members and Corps personnel under Federal law

(a) In general

Except as otherwise provided in this section, members of the Civilian Community Corps shall not, by reason of their status as such members, be considered Federal employees or be subject to the provisions of law relating to Federal employment.

(b) Work-related injuries

(1) In general

For purposes of subchapter I of chapter 81 of title 5 relating to the compensation of Federal employees for work injuries, members of the Corps shall be considered as employees of the United States within the meaning of the term "employee", as defined in section 8101 of such title.

(2) Special rule

In the application of the provisions of subchapter I of chapter 81 of title 5 to a person referred to in paragraph (1), the person shall not be considered to be in the performance of duty while absent from the person's assigned post of duty unless the absence is authorized in accordance with procedures prescribed by the Director.

(c) Tort claims procedure

A member of the Corps shall be considered an employee of the United States for purposes of chapter 171 of title 28 relating to tort claims liability and procedure.

(Pub. L. 101-610, title I, §160, formerly §195I, as added Pub. L. 102-484, div. A, title X, §1092(a)(1),

Oct. 23, 1992, 106 Stat. 2530; renumbered §160, Pub. L. 103-82, title I, §104(b), Sept. 21, 1993, 107 Stat. 840.)

CODIFICATION

Section was formerly classified to section 12653i of this title prior to renumbering by Pub. L. 103-82, §104(b).

PRIOR PROVISIONS

A prior section 160 of Pub. L. 101-610 was classified to section 12611 of this title prior to repeal by Pub. L. 103-82, §104(a).

§ 12621. Contract and grant authority

(a) Programs

The Director may, by contract or grant, provide for any public or private organization to perform any program function under this division.

(b) Equipment and facilities

(1) Federal and National Guard property

The Director shall enter into agreements, as necessary, with the Secretary of Defense, the Governor of a State, territory or commonwealth, or the commanding general of the District of Columbia National Guard, as the case may be, to utilize—

(A) equipment of the Department of Defense and equipment of the National Guard; and

(B) Department of Defense facilities and National Guard facilities identified pursuant to section 12622(a)(3) of this title.

(2) Other property

The Director may enter into contracts or agreements for the use of other equipment or facilities to the extent practicable to train and house members of the Civilian Community Corps and leaders of Corps units.

(Pub. L. 101-610, title I, §161, formerly §195J, as added Pub. L. 102-484, div. A, title X, §1092(a)(1), Oct. 23, 1992, 106 Stat. 2530; renumbered §161 and amended Pub. L. 103-82, title I, §104(b), (e)(2)(F), Sept. 21, 1993, 107 Stat. 840, 847.)

CODIFICATION

Section was formerly classified to section 12653j of this title prior to renumbering by Pub. L. 103-82, §104(b).

PRIOR PROVISIONS

A prior section 12621, Pub. L. 101-610, title I, §165, Nov. 16, 1990, 104 Stat. 3159, related to rural youth service demonstration project, prior to repeal by Pub. L. 103-82, §104(a).

A prior section 161 of Pub. L. 101-610 was classified to section 12612 of this title prior to repeal by Pub. L. 103-82.

AMENDMENTS

1993—Subsec. (b)(1)(B). Pub. L. 103-82, §104(e)(2)(F), substituted "section 12622(a)(3)" for "section 12653k(a)(3)".

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

§ 12622. Responsibilities of other departments**(a) Secretary of Defense****(1) Liaison office****(A) Establishment**

Upon the establishment of the Program, the Secretary of Defense shall establish an office to provide for liaison between the Secretary and the Civilian Community Corps.

(B) Duties

The office shall—

(i) in order to assist in the recruitment of personnel for appointment in the permanent cadre, make available to the Director information in the registry established by section 1143a of title 10; and

(ii) provide other assistance in the coordination of Department of Defense activities with the Corps.

(2) Corps cadre**(A) List of recommended personnel**

Upon the establishment of the Program, the Secretary of Defense, in consultation with the liaison office established under paragraph (1) shall develop a list of individuals to be recommended for appointment in the permanent cadre of Corps personnel. Such personnel shall be selected from among members and former members of the Armed Forces referred to in section 12611(3) of this title who are commissioned officers, non-commissioned officers, former commissioned officers, or former noncommissioned officers.

(B) Recommendations regarding grade and pay

The Secretary of Defense shall recommend to the Director an appropriate rate of pay for each person recommended for the cadre pursuant to this paragraph.

(C) Contribution for retired member's pay

If a listed individual receiving retired or retainer pay is appointed to a position in the cadre and the rate of pay for that individual is established at the amount equal to the difference between the active duty pay and allowances which that individual would receive if ordered to active duty and the amount of the individual's retired or retainer pay, the Secretary of Defense shall pay, by transfer to the Corporation from amounts available for pay of active duty members of the Armed Forces, the amount equal to 50 percent of that individual's rate of pay for service in the cadre.

(3) Facilities

Upon the establishment of the Program, the Secretary of Defense shall identify military installations and other facilities of the Department of Defense and, in consultation with the adjutant generals of the State National Guards, National Guard facilities that may be used, in whole or in part, by the Civilian Community Corps for training or housing Corps members. The Secretary of Defense shall carry out this paragraph in consultation with the liaison office established under paragraph (1).

(4) Information regarding Corps

The Secretary of Defense may permit Armed Forces recruiters to inform potential applicants for the Corps regarding service in the Corps as an alternative to service in the Armed Forces.

(b) Secretary of Labor

Upon the establishment of the Program, the Secretary of Labor shall identify and assist in establishing a system for the recruitment of persons to serve as members of the Civilian Community Corps. In carrying out this subsection, the Secretary of Labor may utilize the Employment Service Agency or the Office of Job Training.

(Pub. L. 101-610, title I, § 162, formerly § 195K, as added Pub. L. 102-484, div. A, title X, § 1092(a)(1), Oct. 23, 1992, 106 Stat. 2531; renumbered § 162 and amended Pub. L. 103-82, title I, § 104(b), (e)(2)(G), title IV, § 402(b)(2), Sept. 21, 1993, 107 Stat. 840, 847, 919; Pub. L. 103-304, § 3(b)(5)(C), Aug. 23, 1994, 108 Stat. 1567.)

CODIFICATION

Section was formerly classified to section 12653k of this title prior to renumbering by Pub. L. 103-82, § 104(b).

PRIOR PROVISIONS

A prior section 12622, Pub. L. 101-610, title I, § 166, Nov. 16, 1990, 104 Stat. 3159; Pub. L. 102-384, § 8, Oct. 5, 1992, 106 Stat. 1456, related to assistance for Head Start programs, prior to repeal by Pub. L. 103-82, § 104(a).

A prior section 162 of Pub. L. 101-610 was classified to section 12613 of this title prior to repeal by Pub. L. 103-82.

AMENDMENTS

1994—Subsec. (a)(1)(B)(i). Pub. L. 103-304, which directed the substitution of “section 1143a of title 10” for “section 4462 of the National Defense Authorization Act for Fiscal Year 1993” in subsec. (a)(1)(B)(ii) of this section, was executed by making the substitution in subsec. (a)(1)(B)(i) of this section to reflect the probable intent of Congress.

1993—Subsec. (a)(2)(A). Pub. L. 103-82, § 104(e)(2)(G), substituted “section 12611(3)” for “section 12653(3)”.

Subsec. (a)(2)(C). Pub. L. 103-82, § 402(b)(2), substituted “Corporation” for “Commission on National and Community Service”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 104(b), (e)(2)(G) of Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

Amendment by section 402(b)(2) of Pub. L. 103-82 effective Oct. 1, 1993, see section 406(a) of Pub. L. 103-82, set out as a note under section 5061 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12615, 12616, 12619, 12621 of this title.

§ 12623. Advisory Board**(a) Establishment and purpose**

Upon the establishment of the Program, there shall also be established a Civilian Community Corps Advisory Board to advise the Director concerning the administration of this division and to assist in the development and administration of the Corps.

(b) Membership

The Advisory Board shall be composed of the following members:

- (1) The Secretary of Labor.
- (2) The Secretary of Defense.
- (3) The Secretary of the Interior.
- (4) The Secretary of Agriculture.
- (5) The Secretary of Education.
- (6) The Secretary of Housing and Urban Development.
- (7) The Chief of the National Guard Bureau.
- (8) Individuals appointed by the Director from among persons who are broadly representative of educational institutions, voluntary organizations, industry, youth, and labor unions.
- (9) The Chief Executive Officer.

(c) Inapplicability of termination requirement

Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Advisory Board.

(Pub. L. 101-610, title I, §163, formerly §195L, as added Pub. L. 102-484, div. A, title X, §1092(a)(1), Oct. 23, 1992, 106 Stat. 2532; renumbered §163 and amended Pub. L. 103-82, title I, §104(b), title IV, §§402(b)(3), 403(b), Sept. 21, 1993, 107 Stat. 840, 919, 920.)

REFERENCES IN TEXT

Section 14 of the Federal Advisory Committee Act, referred to in subsec. (c), is section 14 of Pub. L. 92-463, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

Section was formerly classified to section 12653l of this title prior to renumbering by Pub. L. 103-82.

PRIOR PROVISIONS

A prior section 12623, Pub. L. 101-610, title I, §167, Nov. 16, 1990, 104 Stat. 3159, related to employer-based retiree volunteer programs, prior to repeal by Pub. L. 103-82, title I, §104(a), Sept. 21, 1993, 107 Stat. 840.

A prior section 163 of Pub. L. 101-610 was classified to section 12614 of this title prior to repeal by Pub. L. 103-82.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103-82, §403(b), substituted “Director” for “Director of the Civilian Community Corps”.

Subsec. (b)(9). Pub. L. 103-82, §402(b)(3), substituted “Chief Executive Officer” for “Chair of the Commission on National and Community Service”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 402(b)(3) of Pub. L. 103-82 effective Oct. 1, 1993, see section 406(a) of Pub. L. 103-82, set out as a note under section 5061 of this title.

§ 12624. Annual evaluation

Pursuant to the provisions for evaluations conducted under section 12639 of this title, and in particular subsection (g) of such section, the Corporation shall conduct an annual evaluation of the Civilian Community Corps programs authorized under this division.

(Pub. L. 101-610, title I, §164, formerly §195M, as added Pub. L. 102-484, div. A, title X, §1092(a)(1), Oct. 23, 1992, 106 Stat. 2532; renumbered §164 and amended Pub. L. 103-82, title I, §104(b), title IV, §402(b)(2), Sept. 21, 1993, 107 Stat. 840, 919.)

CODIFICATION

Section was formerly classified to section 12653m of this title prior to renumbering by Pub. L. 103-82, §104(b).

PRIOR PROVISIONS

A prior section 164 of Pub. L. 101-610 was classified to section 12615 of this title prior to repeal by Pub. L. 103-82, §104(a).

AMENDMENTS

1993—Pub. L. 103-82, §402(b)(2), substituted “Corporation” for “Commission on National and Community Service”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 402(b)(2) of Pub. L. 103-82 effective Oct. 1, 1993, see section 406(a) of Pub. L. 103-82, set out as a note under section 5061 of this title.

§ 12625. Funding limitation

The Corporation, in consultation with the Director, shall ensure that no amounts appropriated under section 12681 of this title are utilized to carry out this division.

(Pub. L. 101-610, title I, §165, formerly §195N, as added Pub. L. 102-484, div. A, title X, §1092(a)(1), Oct. 23, 1992, 106 Stat. 2532; renumbered §165 and amended Pub. L. 103-82, title I, §104(b), title IV, §402(b)(1), Sept. 21, 1993, 107 Stat. 840, 918.)

CODIFICATION

Section was formerly classified to section 12653n of this title prior to renumbering by Pub. L. 103-82, §104(b).

PRIOR PROVISIONS

A prior section 165 of Pub. L. 101-610 was classified to section 12621 of this title prior to repeal by Pub. L. 103-82, §104(a).

AMENDMENTS

1993—Pub. L. 103-82, §402(b)(1), substituted “Corporation” for “Commission”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 402(b)(1) of Pub. L. 103-82 effective Oct. 1, 1993, see section 406(a) of Pub. L. 103-82, set out as a note under section 5061 of this title.

§ 12626. Definitions

In this division:

(1) Board

The term “Board” means the Board of Directors of the Corporation.

(2) Corps

The terms “Civilian Community Corps” and “Corps” mean the Civilian Community Corps required under section 12615 of this title as part of the Civilian Community Corps Demonstration Program.

(3) Corps camp

The term “Corps camp” means the facility or central location established as the operational headquarters and boarding place for particular Corps units.

(4) Corps members

The term “Corps members” means persons receiving training and participating in

projects under the Civilian Community Corps Demonstration Program.

(5) Director

The term “Director” means the Director of the Civilian Community Corps.

(6) Institution of higher education

The term “institution of higher education” has the meaning given that term in section 1001 of title 20.

(7) Program

The terms “Civilian Community Corps Demonstration Program” and “Program” mean the Civilian Community Corps Demonstration Program established pursuant to section 12612 of this title.

(8) Service learning

The term “service learning”, with respect to Corps members, means a method—

(A) under which Corps members learn and develop through active participation in thoughtfully organized service experiences that meet actual community needs;

(B) that provides structured time for a Corps member to think, talk, or write about what the Corps member did and saw during an actual service activity;

(C) that provides Corps members with opportunities to use newly acquired skills and knowledge in real life situations in their own communities; and

(D) that helps to foster the development of a sense of caring for others, good citizenship, and civic responsibility.

(9) Superintendent

The term “superintendent”, with respect to a Corps camp, means the head of the camp under section 12615(d) of this title.

(10) Unit

The term “unit” means a unit of the Corps referred to in section 12615(c) of this title.

(Pub. L. 101–610, title I, § 166, formerly § 195O, as added Pub. L. 102–484, div. A, title X, § 1092(a)(1), Oct. 23, 1992, 106 Stat. 2532; renumbered § 166 and amended Pub. L. 103–82, title I, § 104(b), (e)(2)(H), title IV, §§ 402(b)(2), 403(a)(4), Sept. 21, 1993, 107 Stat. 840, 847, 919; Pub. L. 105–244, title I, § 102(a)(13)(L), Oct. 7, 1998, 112 Stat. 1621.)

CODIFICATION

Section was formerly classified to section 12653o of this title prior to renumbering by Pub. L. 103–82, § 104(b).

PRIOR PROVISIONS

A prior section 166 of Pub. L. 101–610 was classified to section 12622 of this title prior to repeal by Pub. L. 103–82, § 104(a).

AMENDMENTS

1998—Par. (6). Pub. L. 105–244 substituted “section 1001” for “section 1141(a)”.

1993—Par. (1). Pub. L. 103–82, § 402(b)(2), substituted “Corporation” for “Commission on National and Community Service”.

Par. (2). Pub. L. 103–82, § 104(e)(2)(H)(i), substituted “section 12615” for “section 12653d”.

Par. (6). Pub. L. 103–82, § 403(a)(4), which directed amendment of par. (6) of this section by striking par.

(6) and redesignating par. (7) of this section as (6) was executed by redesignating par. (7) of this section as (6) and striking out former par. (6) which defined “Executive Director” as Executive Director of Commission on National and Community Service, to reflect the probable intent of Congress.

Par. (7). Pub. L. 103–82, § 403(a)(4)(B), which directed amendment of par. (6) of this section by redesignating par. (8) as (7) was executed by redesignating par. (8) of this section as (7), to reflect the probable intent of Congress. Former par. (7) redesignated (6).

Par. (8). Pub. L. 103–82, § 403(a)(4)(B), which directed amendment of par. (6) of this section by redesignating par. (9) as (8) was executed by redesignating par. (9) of this section as (8), to reflect the probable intent of Congress. Former par. (8) redesignated (7).

Pub. L. 103–82, § 104(e)(2)(H)(ii), substituted “section 12612” for “section 12653a”.

Par. (9). Pub. L. 103–82, § 403(a)(4)(B), which directed amendment of par. (6) of this section by redesignating par. (10) as (9) was executed by redesignating par. (10) of this section as (9), to reflect the probable intent of Congress. Former par. (9) redesignated (8).

Par. (10). Pub. L. 103–82, § 403(a)(4)(B), which directed amendment of par. (6) of this section by redesignating par. (11) as (10) was executed by redesignating par. (11) of this section as (10), to reflect the probable intent of Congress. Former par. (10) redesignated (9).

Pub. L. 103–82, § 104(e)(2)(H)(iii), substituted “section 12615(d)” for “section 12653d(d)”.

Par. (11). Pub. L. 103–82, § 403(a)(4)(B), which directed amendment of par. (6) of this section by redesignating par. (11) as (10) was executed by redesignating par. (11) of this section as (10), to reflect the probable intent of Congress.

Pub. L. 103–82, § 104(e)(2)(H)(iv), substituted “section 12615(c)” for “section 12653d(c)”.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of Title 20, Education.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 104(b), (e)(2)(H) of Pub. L. 103–82 effective Oct. 1, 1993, see section 123 of Pub. L. 103–82, set out as a note under section 1701 of Title 16, Conservation.

Amendment by section 402(b)(2) of Pub. L. 103–82 effective Oct. 1, 1993, see section 406(a) of Pub. L. 103–82, set out as a note under section 5061 of this title.

Division F—Administrative Provisions

§ 12631. Family and medical leave

(a) Participants in private, State, and local projects

For purposes of title I of the Family and Medical Leave Act of 1993 [29 U.S.C. 2611 et seq.], if—

(1) a participant has provided service for the period required by section 101(2)(A)(i) (29 U.S.C. 2611(2)(A)(i)), and has met the hours of service requirement of section 101(2)(A)(ii), of such Act with respect to a project; and

(2) the service sponsor of the project is an employer described in section 101(4) of such Act (other than an employing agency within the meaning of subchapter V of chapter 63 of title 5),

the participant shall be considered to be an eligible employee of the service sponsor.

(b) Participants in Federal projects

For purposes of subchapter V of chapter 63 of title 5, if—

(1) a participant has provided service for the period required by section 6381(1)(B) of such title with respect to a project; and

(2) the service sponsor of the project is an employing agency within the meaning of such subchapter,

the participant shall be considered to be an employee of the service sponsor.

(c) Treatment of absence

The period of any absence of a participant from a service position pursuant to title I of the Family and Medical Leave Act of 1993 [29 U.S.C. 2611 et seq.] or subchapter V of chapter 63 of title 5 shall not be counted toward the completion of the term of service of the participant under section 12593 of this title.

(Pub. L. 101-610, title I, §171, Nov. 16, 1990, 104 Stat. 3159; Pub. L. 103-82, title I, §113(a), Sept. 21, 1993, 107 Stat. 861.)

REFERENCES IN TEXT

The Family and Medical Leave Act of 1993, referred to in subsecs. (a) and (c), is Pub. L. 103-3, Feb. 5, 1993, 107 Stat. 6. Title I of the Act is classified generally to subchapter I (§2611 et seq.) of chapter 28 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 29 and Tables.

AMENDMENTS

1993—Pub. L. 103-82 amended section generally, substituting provisions relating to family and medical leave for provisions relating to limitation on number of grants under this subchapter.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

§ 12632. Reports

(a) State reports

(1) In general

Each State receiving assistance under this subchapter shall prepare and submit, to the Corporation, an annual report concerning the use of assistance provided under this subchapter and the status of the national and community service programs that receive assistance under such subchapter in such State.

(2) Local grantees

Each State may require local grantees that receive assistance under this subchapter to supply such information to the State as is necessary to enable the State to complete the report required under paragraph (1), including a comparison of actual accomplishments with the goals established for the program, the number of participants in the program, the number of service hours generated, and the existence of any problems, delays or adverse conditions that have affected or will affect the attainment of program goals.

(3) Report demonstrating compliance

(A) In general

Each State receiving assistance under this subchapter shall include information in the report required under paragraph (1) that

demonstrates the compliance of the State with the provisions of this chapter, including section 12637 of this title.

(B) Local grantees

Each State may require local grantees to supply such information to the State as is necessary to enable the State to comply with the requirement of paragraph (1).

(4) Availability of report

Reports submitted under paragraph (1) shall be made available to the public on request.

(b) Report to Congress by Corporation

(1) In general

Not later than 120 days after the end of each fiscal year, the Corporation shall prepare and submit, to the appropriate authorizing and appropriation Committees of Congress, a report concerning the programs that receive assistance under the national service laws.

(2) Content

Reports submitted under paragraph (1) shall contain a summary of the information contained in the State reports submitted under subsection (a) of this section, and shall reflect the findings and actions taken as a result of any evaluation conducted by the Corporation.

(c) Report to Congress by Secretary of Defense

(1) Study

The Secretary of Defense shall annually conduct a study of the effect of the programs carried out under this subchapter on recruitment for the Armed Forces.

(2) Report

The Secretary of Defense shall annually submit a report to the appropriate committees of Congress containing the findings of the study described in paragraph (1) and such recommendations for legislative and administrative reform as the Secretary may determine to be appropriate.

(Pub. L. 101-610, title I, §172, Nov. 16, 1990, 104 Stat. 3159; Pub. L. 103-82, title I, §114, title IV, §402(b)(1), Sept. 21, 1993, 107 Stat. 861, 918.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(3)(A), was in the original “this Act”, meaning Pub. L. 101-610, Nov. 16, 1990, 104 Stat. 3127, as amended, known as the National and Community Service Act of 1990, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12501 of this title and Tables.

AMENDMENTS

1993—Subsec. (a)(1). Pub. L. 103-82, §402(b)(1), substituted “Corporation” for “Commission”.

Subsec. (a)(3)(A). Pub. L. 103-82, §114(1), substituted “section 12637” for “sections 12637 and 12523(9)”.

Subsec. (b). Pub. L. 103-82, §114(2)(A), substituted “Report to Congress by Corporation” for “Report to Congress” in heading.

Subsec. (b)(1). Pub. L. 103-82, §402(b)(1), substituted “Corporation” for “Commission”.

Pub. L. 103-82, §114(2)(B), substituted “the national service laws” for “this subchapter”.

Subsec. (b)(2). Pub. L. 103-82, §402(b)(1), substituted “Corporation” for “Commission”.

Subsec. (c). Pub. L. 103-82, §114(3), added subsec. (c).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 114 of Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

Amendment by section 402(b)(1) of Pub. L. 103-82 effective Oct. 1, 1993, see section 406(a) of Pub. L. 103-82, set out as a note under section 5061 of this title.

§ 12633. Supplementation**(a) In general**

Assistance provided under this subchapter shall be used to supplement the level of State and local public funds expended for services of the type assisted under this subchapter in the previous fiscal year.

(b) Aggregate expenditure

Subsection (a) of this section shall be satisfied, with respect to a particular program, if the aggregate expenditure for such program for the fiscal year in which services are to be provided will not be less than the aggregate expenditure for such program in the previous fiscal year, excluding the amount of Federal assistance provided and any other amounts used to pay the remainder of the costs of programs assisted under this subchapter.

(Pub. L. 101-610, title I, §173, Nov. 16, 1990, 104 Stat. 3160.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12571 of this title.

§ 12634. Prohibition on use of funds**(a) Prohibited uses**

No assistance made available under a grant under this subchapter shall be used to provide religious instruction, conduct worship services, or engage in any form of proselytization.

(b) Political activity

Assistance provided under this subchapter shall not be used by program participants and program staff to—

- (1) assist, promote, or deter union organizing; or
- (2) finance, directly or indirectly, any activity designed to influence the outcome of an election to Federal office or the outcome of an election to a State or local public office.

(c) Contracts or collective bargaining agreements

A program that receives assistance under this subchapter shall not impair existing contracts for services or collective bargaining agreements.

(Pub. L. 101-610, title I, §174, Nov. 16, 1990, 104 Stat. 3160.)

§ 12635. Nondiscrimination**(a) In general****(1) Basis**

An individual with responsibility for the operation of a project that receives assistance under this subchapter shall not discriminate against a participant in, or member of the staff of, such project on the basis of race, color, national origin, sex, age, or political af-

filiation of such participant or member, or on the basis of disability, if the participant or member is a qualified individual with a disability.

(2) “Qualified individual with a disability” defined

As used in paragraph (1), the term “qualified individual with a disability” has the meaning given the term in section 12111(8) of this title.

(b) Federal financial assistance

Any assistance provided under this subchapter shall constitute Federal financial assistance for purposes of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), and shall constitute Federal financial assistance to an education program or activity for purposes of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.).

(c) Religious discrimination**(1) In general**

Except as provided in paragraph (2), an individual with responsibility for the operation of a project that receives assistance under this subchapter shall not discriminate on the basis of religion against a participant in such project or a member of the staff of such project who is paid with funds received under this subchapter.

(2) Exception

Paragraph (1) shall not apply to the employment, with assistance provided under this subchapter, of any member of the staff, of a project that receives assistance under this subchapter, who was employed with the organization operating the project on the date the grant under this subchapter was awarded.

(d) Rules and regulations

The Chief Executive Officer shall promulgate rules and regulations to provide for the enforcement of this section that shall include provisions for summary suspension of assistance for not more than 30 days, on an emergency basis, until notice and an opportunity to be heard can be provided.

(Pub. L. 101-610, title I, §175, Nov. 16, 1990, 104 Stat. 3161; Pub. L. 103-82, title I, §115, Sept. 21, 1993, 107 Stat. 862.)

REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in subsec. (b), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Education Amendments of 1972, referred to in subsec. (b), is Pub. L. 92-318, June 23, 1972, 86 Stat. 235, as amended. Title IX of the Act is classified principally to chapter 38 (§1681 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title of 1972 Amendment note set out under section 1001 of Title 20 and Tables.

The Age Discrimination Act of 1975, referred to in subsec. (b), is title III of Pub. L. 94-135, Nov. 28, 1975, 89

Stat. 728, as amended, which is classified generally to chapter 76 (§6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

AMENDMENTS

1993—Pub. L. 103-82 amended section generally, making revisions relating to discrimination based on disability, the laws for which assistance under this subchapter constitutes Federal financial assistance, and the responsibility for promulgating regulations.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12511, 12592 of this title.

§ 12636. Notice, hearing, and grievance procedures

(a) In general

(1) Suspension of payments

The Corporation may in accordance with the provisions of this subchapter, suspend or terminate payments under a contract or grant providing assistance under this subchapter, or revoke the designation of positions, related to the grant or contract, as approved national service positions, whenever the Corporation determines there is a material failure to comply with this subchapter or the applicable terms and conditions of any such grant or contract issued pursuant to this subchapter.

(2) Procedures to ensure assistance

The Corporation shall prescribe procedures to ensure that—

(A) assistance provided under this subchapter shall not be suspended for failure to comply with the applicable terms and conditions of this subchapter except, in emergency situations, a suspension may be granted for 30 days; and

(B) assistance provided under this subchapter shall not be terminated or revoked for failure to comply with applicable terms and conditions of this subchapter unless the recipient of such assistance has been afforded reasonable notice and opportunity for a full and fair hearing.

(b) Hearings

Hearings or other meetings that may be necessary to fulfill the requirements of this section shall be held at locations convenient to the recipient of assistance under this subchapter.

(c) Transcript or recording

A transcript or recording shall be made of a hearing conducted under this section and shall be available for inspection by any individual.

(d) State legislation

Nothing in this subchapter shall be construed to preclude the enactment of State legislation providing for the implementation, consistent with this subchapter, of the programs administered under this subchapter.

(e) Construction

Nothing in this subchapter shall be construed to link performance of service with receipt of

Federal student financial assistance, other than assistance provided pursuant to this chapter.

(f) Grievance procedure

(1) In general

A State or local applicant that receives assistance under this subchapter shall establish and maintain a procedure for the filing and adjudication of grievances from participants, labor organizations, and other interested individuals concerning projects that receive assistance under this subchapter, including grievances regarding proposed placements of such participants in such projects.

(2) Deadline for grievances

Except for a grievance that alleges fraud or criminal activity, a grievance shall be made not later than 1 year after the date of the alleged occurrence of the event that is the subject of the grievance.

(3) Deadline for hearing and decision

(A) Hearing

A hearing on any grievance conducted under this subsection shall be conducted not later than 30 days after the filing of such grievance.

(B) Decision

A decision on any such grievance shall be made not later than 60 days after the filing of such grievance.

(4) Arbitration

(A) In general

(i) Jointly selected arbitrator

In the event of a decision on a grievance that is adverse to the party who filed such grievance, or 60 days after the filing of such grievance if no decision has been reached, such party shall be permitted to submit such grievance to binding arbitration before a qualified arbitrator who is jointly selected and independent of the interested parties.

(ii) Appointed arbitrator

If the parties cannot agree on an arbitrator, the Chief Executive Officer shall appoint an arbitrator from a list of qualified arbitrators within 15 days after receiving a request for such appointment from one of the parties to the grievance.

(B) Deadline for proceeding

An arbitration proceeding shall be held not later than 45 days after the request for such arbitration proceeding, or, if the arbitrator is appointed by the Chief Executive Officer in accordance with subparagraph (A)(ii), not later than 30 days after the appointment of such arbitrator.

(C) Deadline for decision

A decision concerning a grievance shall be made not later than 30 days after the date such arbitration proceeding begins.

(D) Cost

(i) In general

Except as provided in clause (ii), the cost of an arbitration proceeding shall be di-

vided evenly between the parties to the arbitration.

(ii) Exception

If a participant, labor organization, or other interested individual described in paragraph (1) prevails under a binding arbitration proceeding, the State or local applicant described in paragraph (1) that is a party to such grievance shall pay the total cost of such proceeding and the attorneys' fees of such participant, labor organization, or individual, as the case may be.

(5) Proposed placement

If a grievance is filed regarding a proposed placement of a participant in a project that receives assistance under this subchapter, such placement shall not be made unless the placement is consistent with the resolution of the grievance pursuant to this subsection.

(6) Remedies

Remedies for a grievance filed under this subsection include—

(A) suspension of payments for assistance under this subchapter;

(B) termination of such payments;

(C) prohibition of the placement described in paragraph (5); and

(D) in a case in which the grievance involves a violation of subsection (a) or (b) of section 12637 of this title and the employer of the displaced employee is the recipient of assistance under this subchapter—

(i) reinstatement of the displaced employee to the position held by such employee prior to displacement;

(ii) payment of lost wages and benefits of the displaced employee;

(iii) reestablishment of other relevant terms, conditions, and privileges of employment of the displaced employee; and

(iv) such equitable relief as is necessary to correct any violation of subsection (a) or (b) of section 12637 of this title or to make the displaced employee whole.

(7) Enforcement

Suits to enforce arbitration awards under this section may be brought in any district court of the United States having jurisdiction of the parties, without regard to the amount in controversy and without regard to the citizenship of the parties.

(Pub. L. 101-610, title I, §176, Nov. 16, 1990, 104 Stat. 3161; Pub. L. 103-82, title I, §116, title IV, §402(b)(1), Sept. 21, 1993, 107 Stat. 863, 918.)

AMENDMENTS

1993—Subsec. (a)(1). Pub. L. 103-82, §402(b)(1), substituted "Corporation" for "Commission" in two places.

Pub. L. 103-82, §116(a)(1), inserted " , or revoke the designation of positions, related to the grant or contract, as approved national service positions," after "assistance under this subchapter".

Subsec. (a)(2). Pub. L. 103-82, §402(b)(1), substituted "Corporation" for "Commission" in introductory provisions.

Subsec. (a)(2)(B). Pub. L. 103-82, §116(a)(2), inserted "or revoked" after "terminated".

Subsec. (e). Pub. L. 103-82, §116(b), inserted before period at end " , other than assistance provided pursuant to this chapter".

Subsec. (f). Pub. L. 103-82, §116(c), amended subsec. (f) generally, substituting pars. (1) to (6) for former pars. (1) to (6) relating to same subjects and adding par. (7).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 116 of Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

Amendment by section 402(b)(1) of Pub. L. 103-82 effective Oct. 1, 1993, see section 406(a) of Pub. L. 103-82, set out as a note under section 5061 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12525, 12526, 12544, 12561, 12583, 12651d, 12653c of this title.

§ 12637. Nonduplication and nondisplacement

(a) Nonduplication

(1) In general

Assistance provided under this subchapter shall be used only for a program that does not duplicate, and is in addition to, an activity otherwise available in the locality of such program.

(2) Private nonprofit entity

Assistance made available under this subchapter shall not be provided to a private nonprofit entity to conduct activities that are the same or substantially equivalent to activities provided by a State or local government agency that such entity resides in, unless the requirements of subsection (b) of this section are met.

(b) Nondisplacement

(1) In general

An employer shall not displace an employee or position, including partial displacement such as reduction in hours, wages, or employment benefits, as a result of the use by such employer of a participant in a program receiving assistance under this subchapter.

(2) Service opportunities

A service opportunity shall not be created under this subchapter that will infringe in any manner on the promotional opportunity of an employed individual.

(3) Limitation on services

(A) Duplication of services

A participant in a program receiving assistance under this subchapter shall not perform any services or duties or engage in activities that would otherwise be performed by an employee as part of the assigned duties of such employee.

(B) Supplantation of hiring

A participant in any program receiving assistance under this subchapter shall not perform any services or duties, or engage in activities, that—

(i) will supplant the hiring of employed workers; or

(ii) are services, duties, or activities with respect to which an individual has recall rights pursuant to a collective bargaining agreement or applicable personnel procedures.

(C) Duties formerly performed by another employee

A participant in any program receiving assistance under this subchapter shall not per-

form services or duties that have been performed by or were assigned to any—

- (i) presently employed worker;
- (ii) employee who recently resigned or was discharged;
- (iii) employee who—
 - (I) is subject to a reduction in force; or
 - (II) has recall rights pursuant to a collective bargaining agreement or applicable personnel procedures;
- (iv) employee who is on leave (terminal, temporary, vacation, emergency, or sick); or
- (v) employee who is on strike or who is being locked out.

(c) Labor market information

The Secretary of Labor shall make available to the Corporation and to any program agency under this subchapter such labor market information as is appropriate for use in carrying out the purposes of this subchapter.

(d) Treatment of benefits

Allowances, earnings, and payments to individuals participating in programs that receive assistance under this subchapter shall not be considered to be income for the purposes of determining eligibility for and the amount of income transfer and in-kind aid furnished under any Federal or federally assisted program based on need, other than as provided under the Social Security Act (42 U.S.C. 301 et seq.).

(e) Standards of conduct

Programs that receive assistance under this subchapter shall establish and stringently enforce standards of conduct at the program site to promote proper moral and disciplinary conditions.

(Pub. L. 101-610, title I, §177, Nov. 16, 1990, 104 Stat. 3163; Pub. L. 103-82, title I, §117, title IV, §402(b)(1), Sept. 21, 1993, 107 Stat. 864, 918; Pub. L. 105-277, div. A, §101(f) [title VIII, §405(d)(42)(A)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-427.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§301 et seq.) of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

1998—Subsec. (d). Pub. L. 105-277 amended heading and text of subsec. (d) generally. Prior to amendment, text read as follows: “Section 142(b) of the Job Training Partnership Act shall apply to the projects conducted under this subchapter as such projects were conducted under the Job Training Partnership Act.”

1993—Subsec. (b)(3)(B). Pub. L. 103-82, §117(1), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: “A participant in any program receiving assistance under this subchapter shall not perform any services or duties or engage in activities that will supplant the hiring of employed workers.”

Subsec. (b)(3)(C)(iii). Pub. L. 103-82, §117(2), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: “employee who is subject to a reduction in force;”

Subsec. (c). Pub. L. 103-82, §402(b)(1), substituted “Corporation” for “Commission”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 117 of Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

Amendment by section 402(b)(1) of Pub. L. 103-82 effective Oct. 1, 1993, see section 406(a) of Pub. L. 103-82, set out as a note under section 5061 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12525, 12526, 12544, 12561, 12583, 12632, 12636, 12653c, 12656 of this title; title 16 section 1728.

§ 12638. State Commissions on National and Community Service

(a) Existence required

(1) State Commission

Except as provided in paragraph (2), to be eligible to receive a grant or allotment under division B or C of this subchapter or to receive a distribution of approved national service positions under division C of this subchapter, a State shall maintain a State Commission on National and Community Service that satisfies the requirements of this section.

(2) Alternative administrative entity

The chief executive officer of a State may apply to the Corporation for approval to use an alternative administrative entity to carry out the duties otherwise entrusted to a State Commission under this chapter. The chief executive officer shall ensure that any alternative administrative entity used in lieu of a State Commission provides for the individuals described in paragraph (1), and some of the individuals described in paragraph (2), of subsection (c) of this section to play a significant policymaking role in carrying out the duties otherwise entrusted to a State Commission, including the submission of applications on behalf of the State under sections 12543 and 12582 of this title.

(b) Appointment and size

Except as provided in subsection (c)(3) of this section, the members of a State Commission for a State shall be appointed by the chief executive officer of the State. A State Commission shall consist of not fewer than 15, and not more than 25, voting members, and any ex officio non-voting members, as described in paragraph (3) or (4) of subsection (c) of this section.

(c) Composition and membership

(1) Required members

The State Commission for a State shall include as voting members at least one of each of the following individuals:

(A) An individual with expertise in the educational, training, and development needs of youth, particularly disadvantaged youth.

(B) An individual with experience in promoting the involvement of older adults in service and voluntarism.

(C) A representative of community-based agencies or community-based organizations within the State.

(D) The head of the State educational agency.

(E) A representative of local governments in the State.

(F) A representative of local labor organizations in the State.

(G) A representative of business.

(H) An individual between the ages of 16 and 25 who is a participant or supervisor in a program.

(I) A representative of a national service program described in section 12572(a) of this title, such as a youth corps program described in section 12572(a)(2) of this title.

(2) Sources of other members

The State Commission for a State may include as voting members the following individuals:

(A) Members selected from among local educators.

(B) Members selected from among experts in the delivery of human, educational, environmental, or public safety services to communities and persons.

(C) Representatives of Indian tribes.

(D) Members selected from among out-of-school youth or other at-risk youth.

(E) Representatives of entities that receive assistance under the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4950 et seq.).

(3) Corporation representative

The representative of the Corporation designated under section 12651f(c) of this title for a State shall be an ex officio nonvoting member of the State Commission or alternative administrative entity for that State, unless the State permits the representative to serve as a voting member of the State Commission or alternative administrative entity.

(4) Ex officio State representatives

The chief executive officer of a State may appoint, as ex officio nonvoting members of the State Commission for the State, representatives selected from among officers and employees of State agencies operating community service, youth service, education, social service, senior service, and job training programs.

(5) Limitation on number of State employees as members

The number of voting members of a State Commission selected under paragraph (1) or (2) who are officers or employees of the State may not exceed 25 percent (reduced to the nearest whole number) of the total membership of the State Commission.

(d) Miscellaneous matters

(1) Membership balance

The chief executive officer of a State shall ensure, to the maximum extent practicable, that the membership of the State Commission for the State is diverse with respect to race, ethnicity, age, gender, and disability characteristics. Not more than 50 percent of the voting members of a State Commission, plus one additional member, may be from the same political party.

(2) Terms

Each member of the State Commission for a State shall serve for a term of 3 years, except

that the chief executive officer of a State shall initially appoint a portion of the members to terms of 1 year and 2 years.

(3) Vacancies

If a vacancy occurs on a State Commission, a new member shall be appointed by the chief executive officer of the State and serve for the remainder of the term for which the predecessor of such member was appointed. The vacancy shall not affect the power of the remaining members to execute the duties of the State Commission.

(4) Compensation

A member of a State Commission or alternative administrative entity shall not receive any additional compensation by reason of service on the State Commission or alternative administrative entity, except that the State may authorize the reimbursement of travel expenses, including a per diem in lieu of subsistence, in the same manner as other employees serving intermittently in the service of the State.

(5) Chairperson

The voting members of a State Commission shall elect one of the voting members to serve as chairperson of the State Commission.

(6) Limitation on member participation

(A) General limitation

Except as provided in subparagraph (B), a voting member of the State Commission (or of an alternative administrative entity) shall not participate in the administration of the grant program (including any discussion or decision regarding the provision of assistance or approved national service positions, or the continuation, suspension, or termination of such assistance or such positions, to any program or entity) described in subsection (e)(9) of this section if—

(i) a grant application relating to such program is pending before the Commission (or such entity); and

(ii) the application was submitted by a program or entity of which such member is, or in the 1-year period before the submission of such application was, an officer, director, trustee, full-time volunteer, or employee.

(B) Exception

If, as a result of the operation of subparagraph (A), the number of voting members of the Commission (or of such entity) is insufficient to establish a quorum for the purpose of administering such program, then voting members excluded from participation by subparagraph (A) may participate in the administration of such program, notwithstanding the limitation in subparagraph (A), to the extent permitted by regulations issued under section 12651d(b)(11) of this title by the Corporation.

(C) Rule of construction

Subparagraph (A) shall not be construed to limit the authority of any voting member of the Commission (or of such entity) to participate in—

(i) discussion of, and hearing and forums on—

(I) the general duties, policies, and operations of the Commission (or of such entity); or

(II) the general administration of such program; or

(ii) similar general matters relating to the Commission (or such entity).

(e) Duties of a State Commission

The State Commission or alternative administrative entity for a State shall be responsible for the following duties:

(1) Preparation of a national service plan for the State that—

(A) is developed through an open and public process (such as through regional forums, hearings, and other means) that provides for maximum participation and input from national service programs within the State and other interested members of the public;

(B) covers a 3-year period;

(C) is updated annually;

(D) ensures outreach to diverse community-based agencies that serve underrepresented populations, by—

(i) using established networks, and registries, at the State level; or

(ii) establishing such networks and registries; and

(E) contains such information as the State Commission considers to be appropriate or as the Corporation may require.

(2) Preparation of the applications of the State under sections 12543 and 12582 of this title for financial assistance.

(3) Assistance in the preparation of the application of the State educational agency for assistance under section 12525 of this title.

(4) Preparation of the application of the State under section 12582 of this title for the approval of service positions that include the national service educational award described in division D of this subchapter.

(5) Make recommendations to the Corporation with respect to priorities for programs receiving assistance under the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4950 et seq.).

(6) Make technical assistance available to enable applicants for assistance under section 12571 of this title—

(A) to plan and implement service programs; and

(B) to apply for assistance under the national service laws using, if appropriate, information and materials available through a clearinghouse established under section 12653a of this title.

(7) Assistance in the provision of health care and child care benefits under section 12594 of this title to participants in national service programs that receive assistance under section 12571 of this title.

(8) Development of a State system for the recruitment and placement of participants in programs that receive assistance under the national service laws and dissemination of information concerning national service programs that receive such assistance or approved national service positions.

(9) Administration of the grant program in support of national service programs that is conducted by the State using assistance provided to the State under section 12571 of this title, including selection, oversight, and evaluation of grant recipients.

(10) Development of projects, training methods, curriculum materials, and other materials and activities related to national service programs that receive assistance directly from the Corporation (to be made available in a case in which such a program requests such a project, method, material, or activity) or from the State using assistance provided under section 12571 of this title, for use by programs that request such projects, methods, materials, and activities.

(f) Activity ineligible for assistance

A State Commission or alternative administrative entity may not directly carry out any national service program that receives assistance under section 12571 of this title.

(g) Delegation

Subject to such requirements as the Corporation may prescribe, a State Commission may delegate nonpolicymaking duties to a State agency or public or private nonprofit organization.

(h) Approval of State Commission or alternative

(1) Submission to Corporation

The chief executive officer for a State shall notify the Corporation of the establishment or designation of the State Commission or use of an alternative administrative entity for the State. The notification shall include a description of—

(A) the composition and membership of the State Commission or alternative administrative entity; and

(B) the authority of the State Commission or alternative administrative entity regarding national service activities carried out by the State.

(2) Approval of alternative administrative entity

Any designation of a State Commission or use of an alternative administrative entity to carry out the duties of a State Commission shall be subject to the approval of the Corporation, which shall not be unreasonably withheld. The Corporation shall approve an alternative administrative entity if such entity provides for individuals described in paragraph (1), and some of the individuals described in paragraph (2), of subsection (c) of this section to play a significant policymaking role in carrying out the duties otherwise entrusted to a State Commission, including the duties described in paragraphs (1) through (4) of subsection (e) of this section.

(3) Rejection

The Corporation may reject a State Commission if the Corporation determines that the composition, membership, or duties of the State Commission do not comply with the requirements of this section. The Corporation may reject a request to use an alternative ad-

ministrative entity in lieu of a State Commission if the Corporation determines that the entity does not provide for the individuals described in paragraph (1), and some of the individuals described in paragraph (2), of subsection (c) of this section to play a significant policymaking role as described in paragraph (2). If the Corporation rejects a State Commission or alternative administrative entity under this paragraph, the Corporation shall promptly notify the State of the reasons for the rejection.

(4) Resubmission and reconsideration

The Corporation shall provide a State notified under paragraph (3) with a reasonable opportunity to revise the rejected State Commission or alternative administrative entity. At the request of the State, the Corporation shall provide technical assistance to the State as part of the revision process. The Corporation shall promptly reconsider any resubmission of a notification under paragraph (1) or application to use an alternative administrative entity under paragraph (2).

(5) Subsequent changes

This subsection shall also apply to any change in the composition or duties of a State Commission or an alternative administrative entity made after approval of the State Commission or the alternative administrative entity.

(6) Rights

An alternative administrative entity approved by the Corporation under this subsection shall have the same rights as a State Commission.

(i) Coordination

(1) Coordination with other State agencies

The State Commission or alternative administrative entity for a State shall coordinate the activities of the Commission or entity under this chapter with the activities of other State agencies that administer Federal financial assistance programs under the Community Services Block Grant Act (42 U.S.C. 9901 et seq.) or other appropriate Federal financial assistance programs.

(2) Coordination with volunteer service programs

(A) In general

The State Commission or alternative administrative entity for a State shall coordinate functions of the Commission or entity (including recruitment, public awareness, and training activities) with such functions of any division of the Corporation that carries out volunteer service programs in the State.

(B) Agreement

In coordinating functions under this paragraph, such Commission or entity, and such division, may enter into an agreement to—

- (i) carry out such a function jointly;
- (ii) to¹ assign responsibility for such a function to the Commission or entity; or

- (iii) to¹ assign responsibility for such a function to the division.

(C) Information

The State Commission or alternative entity for a State, and the head of any such division, shall exchange information about—

- (i) the programs carried out in the State by the Commission, entity, or division, as appropriate; and
- (ii) opportunities to coordinate activities.

(j) Liability

(1) Liability of State

Except as provided in paragraph (2)(B), a State shall agree to assume liability with respect to any claim arising out of or resulting from any act or omission by a member of the State Commission or alternative administrative entity of the State, within the scope of the service of the member on the State Commission or alternative administrative entity.

(2) Other claims

(A) In general

A member of the State Commission or alternative administrative entity shall have no personal liability with respect to any claim arising out of or resulting from any act or omission by such person, within the scope of the service of the member on the State Commission or alternative administrative entity.

(B) Limitation

This paragraph shall not be construed to limit personal liability for criminal acts or omissions, willful or malicious misconduct, acts or omissions for private gain, or any other act or omission outside the scope of the service of such member on the State Commission or alternative administrative entity.

(3) Effect on other law

This subsection shall not be construed—

- (A) to affect any other immunities and protections that may be available to such member under applicable law with respect to such service;
- (B) to affect any other right or remedy against the State under applicable law, or against any person other than a member of the State Commission or alternative administrative entity; or
- (C) to limit or alter in any way the immunities that are available under applicable law for State officials and employees not described in this subsection.

(Pub. L. 101-610, title I, §178, as added and amended Pub. L. 103-82, title II, §201(a), title IV, §405(p)(1), Sept. 21, 1993, 107 Stat. 867, 922.)

REFERENCES IN TEXT

The Domestic Volunteer Service Act of 1973, referred to in subsecs. (c)(2)(E) and (e)(5), is Pub. L. 93-113, Oct. 1, 1973, 87 Stat. 394, as amended, which is classified principally to chapter 66 (§4950 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of this title and Tables.

¹ So in original. The word "to" probably should not appear.

The Community Services Block Grant Act, referred to in subsec. (i)(1), is subtitle B (§671 et seq.) of title VI of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 511, as amended, which is classified generally to chapter 106 (§9901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9901 of this title and Tables.

PRIOR PROVISIONS

A prior section 12638, Pub. L. 101-610, title I, §178, Nov. 16, 1990, 104 Stat. 3164; Pub. L. 102-10, §8(1), Mar. 12, 1991, 105 Stat. 31, provided that States applying for assistance under this subchapter be encouraged to establish a State Advisory Board for National and Community Service and set out additional provisions for membership and duties of such boards, prior to repeal by Pub. L. 103-82, §201(a).

AMENDMENTS

1993—Subsec. (i)(2)(A). Pub. L. 103-82, §405(p)(1), substituted “the Corporation” for “ACTION, or of the Corporation,” before “that carries out”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 405(p)(1) of Pub. L. 103-82 effective Apr. 4, 1994, see section 406(b) of Pub. L. 103-82, set out as a note under section 8332 of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Section 201(c) of Pub. L. 103-82 provided that: “The amendments made by this section [enacting this section and repealing former section 12638 of this title] shall take effect on October 1, 1993.”

TRANSITIONAL PROVISIONS

Section 201(d) of Pub. L. 103-82 provided that:
“(1) USE OF ALTERNATIVES TO STATE COMMISSION.—If a State does not have a State Commission on National and Community Service that satisfies the requirements specified in section 178 of the National and Community Service Act of 1990 [42 U.S.C. 12638], as amended by subsection (a), the Corporation for National and Community Service may authorize the chief executive officer of the State to use an existing agency of the State to perform the duties otherwise reserved to a State Commission under subsection (e) of such section.

“(2) APPLICATION OF SUBSECTION.—This subsection shall apply only during the 27-month period beginning on the date of the enactment of this Act [Sept. 21, 1993].”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5011, 12511, 12572, 12576, 12651d, 12651f, 12651h of this title.

§ 12639. Evaluation

(a) In general

The Corporation shall provide, through grants or contracts, for the continuing evaluation of programs that receive assistance under the national service laws, including evaluations that measure the impact of such programs, to determine—

(1) the effectiveness of various program models in achieving stated goals and the costs associated with such;

(2) with respect to the programs authorized under division C of this subchapter, the impact of such programs, in each State in which a program is conducted, on the ability of—

(A) the VISTA and National Senior Volunteer Corps programs (established under the Domestic Volunteer Services¹ Act of 1973 (42 U.S.C. 4950 et seq.);

(B) each regular component of the Armed Forces (as defined in section 101(a)(4) of title 10);

(C) each of the reserve components of the Armed Forces (as described in section 10101 of title 10); and

(D) the Peace Corps (as established by the Peace Corps Act (22 U.S.C. 2501 et seq.);

to recruit individuals residing in such State to serve in such program; and

(3) the structure and mechanisms for delivery of services for such programs.

(b) Comparisons

The Corporation shall provide for inclusion in the evaluations required under subsection (a) of this section, where appropriate, comparisons of participants in such programs with individuals who have not participated in such programs.

(c) Conducting evaluations

Evaluations of programs under subsection (a) of this section shall be conducted by individuals who are not directly involved in the administration of such program.

(d) Standards

The Corporation shall develop and publish general standards for the evaluation of program effectiveness in achieving the objectives of the national service laws.

(e) Community participation

In evaluating a program receiving assistance under the national service laws, the Corporation shall consider the opinions of participants and members of the communities where services are delivered concerning the strengths and weaknesses of such program.

(f) Comparison of program models

The Corporation shall evaluate and compare the effectiveness of different program models in meeting the program objectives described in subsection (g) of this section including full- and part-time programs, programs involving different types of national service, programs using different recruitment methods, programs offering alternative voucher or post-service benefit options, and programs utilizing individual placements and teams.

(g) Program objectives

The Corporation shall ensure that programs that receive assistance under division C of this subchapter are evaluated to determine their effectiveness in—

(1) recruiting and enrolling diverse participants in such programs, consistent with the requirements of section 12575² of this title, based on economic background, race, ethnicity, age, marital status, education levels, and disability;

(2) promoting the educational achievement of each participant in such programs, based on earning a high school diploma or the equivalent of such diploma and the future enrollment and completion of increasingly higher levels of education;

(3) encouraging each participant to engage in public and community service after comple-

¹ So in original. Probably should be “Service”.

² See References in Text note below.

tion of the program based on career choices and service in other service programs such as the Volunteers in Service to America Program and National Senior Volunteer Corps programs established under the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4950 et seq.), the Peace Corps (as established by the Peace Corps Act (22 U.S.C. 2501 et seq.)), the military, and part-time volunteer service;

(4) promoting of positive attitudes among each participant regarding the role of such participant in solving community problems based on the view of such participant regarding the personal capacity of such participant to improve the lives of others, the responsibilities of such participant as a citizen and community member, and other factors;

(5) enabling each participant to finance a lesser portion of the higher education of such participant through student loans;

(6) providing services and projects that benefit the community;

(7) supplying additional volunteer assistance to community agencies without overloading such agencies with more volunteers than can effectively be utilized;

(8) providing services and activities that could not otherwise be performed by employed workers and that will not supplant the hiring of, or result in the displacement of, employed workers or impair the existing contracts of such workers; and

(9) attracting a greater number of citizens to public service, including service in the active and reserve components of the Armed Forces, the National Guard, the Peace Corps (as established by the Peace Corps Act (22 U.S.C. 2501 et seq.)), and the VISTA and National Senior Volunteer Corps programs established under the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4950 et seq.).

(h) Obtaining information

(1) In general

In conducting the evaluations required under this section, the Corporation may require each program participant and State or local applicant to provide such information as may be necessary to carry out the requirements of this section.

(2) Confidentiality

(A) In general

The Corporation shall maintain the confidentiality of information acquired under this subsection regarding individual participants.

(B) Disclosure

(i) Consent

The content of any information described in subparagraph (A) may be disclosed with the prior written consent of the individual participant with respect to whom the information is maintained.

(ii) Aggregate information

The Corporation may disclose information about the aggregate characteristics of such participants.

(i) Independent evaluation and report of demographics of national service participants and communities

(1) Independent evaluation

(A) In general

The Corporation shall, on an annual basis, arrange for an independent evaluation of the programs assisted under division C of this subchapter.

(B) Participants

(i) In general

The entity conducting such evaluation shall determine the demographic characteristics of the participants in such programs.

(ii) Characteristics

The entity shall determine, for the year covered by the evaluation, the total number of participants in the programs, and the number of participants within the programs in each State, by sex, age, economic background, education level, ethnic group, disability classification, and geographic region.

(iii) Categories

The Corporation shall determine appropriate categories for analysis of each of the characteristics referred to in clause (i) for purposes of such an evaluation.

(C) Communities

In conducting the evaluation, the entity shall determine the amount of assistance provided under section 12571 of this title during the year that has been expended for projects conducted under the programs in areas described in section 12585(c)(6) of this title.

(2) Report

The entity conducting the evaluation shall submit a report to the President, Congress, the Corporation, and each State Commission containing the results of the evaluation—

(A) with respect to the evaluation covering the year beginning on September 21, 1993, not later than 18 months after September 21, 1993; and

(B) with respect to the evaluation covering each subsequent year, not later than 18 months after the first day of each such year.

(Pub. L. 101-610, title I, §179, Nov. 16, 1990, 104 Stat. 3164; Pub. L. 102-384, §§4, 9, Oct. 5, 1992, 106 Stat. 1455, 1456; Pub. L. 103-82, title I, §118, title II, §203(a)(1)(A), title IV, §402(b)(1), Sept. 21, 1993, 107 Stat. 865, 891, 918; Pub. L. 103-160, div. A, title XI, §1182(d)(4), Nov. 30, 1993, 107 Stat. 1773; Pub. L. 104-106, div. A, title XV, §1501(e)(5), Feb. 10, 1996, 110 Stat. 501.)

REFERENCES IN TEXT

The Peace Corps Act, referred to in subsecs. (a)(2)(D) and (g)(3), (9), is Pub. L. 87-293, Sept. 22, 1961, 75 Stat. 612, as amended, which is classified principally to chapter 34 (§2501 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of that Act to the Code, see Short Title note set out under section 2501 of Title 22 and Tables.

Section 12575 of this title, referred to in subsec. (g)(1), was in the original a reference to section 145 of Pub. L.

101-610. Section 145 of Pub. L. 101-610 was omitted in the general amendment of subtitle D of title I of Pub. L. 101-610 [former part D of this subchapter] by Pub. L. 103-82, title I, §102(a), Sept. 21, 1993, 107 Stat. 816. Pub. L. 103-82 enacted a new section 125 of Pub. L. 101-610, relating to training and technical assistance, and a new section 145, relating to establishment of the National Service Trust, which are classified to sections 12575 and sections 12601, respectively, of this title. Provisions relating to the eligibility of individuals for participation in national service programs are now contained in section 12591 et seq. of this title.

The Domestic Volunteer Service Act of 1973, referred to in subsec. (g)(3), (9), is Pub. L. 93-113, Oct. 1, 1973, 87 Stat. 394, as amended, which is classified principally to chapter 66 (§4950 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of this title and Tables.

AMENDMENTS

1996—Subsec. (a)(2)(C). Pub. L. 104-106 substituted “section 10101 of title 10” for “section 216(a) of title 5”.

1993—Subsec. (a). Pub. L. 103-82, §402(b)(1), substituted “Corporation” for “Commission” in introductory provisions.

Pub. L. 103-82, §203(a)(1)(A), substituted “the national service laws” for “this subchapter” in introductory provisions.

Subsec. (a)(2). Pub. L. 103-82, §118(1)(A), substituted “with respect to the programs authorized under division C of this subchapter” for “for purposes of the reports required by subsection (j) of this section” in introductory provisions.

Subsec. (a)(2)(A). Pub. L. 103-82, §118(1)(B), substituted “National Senior Volunteer Corps programs” for “older American volunteer programs”.

Subsec. (a)(2)(B). Pub. L. 103-160 substituted “section 101(a)(4) of title 10” for “section 101(4) of title 10”.

Subsec. (b). Pub. L. 103-82, §402(b)(1), substituted “Corporation” for “Commission”.

Subsec. (d). Pub. L. 103-82, §402(b)(1), substituted “Corporation” for “Commission”.

Pub. L. 103-82, §203(a)(1)(A), substituted “the national service laws” for “this subchapter”.

Subsec. (e). Pub. L. 103-82, §402(b)(1), substituted “Corporation” for “Commission”.

Pub. L. 103-82, §203(a)(1)(A), substituted “the national service laws” for “this subchapter”.

Subsec. (f). Pub. L. 103-82, §402(b)(1), substituted “Corporation” for “Commission”.

Subsec. (g). Pub. L. 103-82, §402(b)(1), substituted “Corporation” for “Commission” in introductory provisions.

Pub. L. 103-82, §118(2)(A), substituted “division C of this subchapter” for “part D of this subchapter” in introductory provisions.

Subsec. (g)(3), (9). Pub. L. 103-82, §118(2)(B), substituted “National Senior Volunteer Corps programs” for “older American volunteer programs”.

Subsec. (h)(1), (2)(A), (B)(ii). Pub. L. 103-82, §402(b)(1), substituted “Corporation” for “Commission”.

Subsecs. (i), (j). Pub. L. 103-82, §118(3), (4), added subsec. (i) and struck out former subsecs. (i) and (j) which related to deadline and report, respectively.

1992—Subsec. (a)(2). Pub. L. 102-384, §9(1), substituted “subsection (j)” for “subsection (h)”.

Subsec. (d). Pub. L. 102-384, §4, substituted “Commission” for “Secretary”.

Subsec. (f). Pub. L. 102-384, §9(2), inserted “or post-service benefit” after “voucher”.

Subsec. (h)(1). Pub. L. 102-384, §9(3)(A), substituted “this section” for “subsection (g) of this section”.

Subsec. (h)(2). Pub. L. 102-384, §9(3)(B), added par. (2) and struck out former par. (2) which read as follows: “The Commission shall keep information acquired under this section confidential.”

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-106 effective as if included in the Reserve Officer Personnel Management Act, title

XVI of Pub. L. 103-337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104-106, set out as a note under section 113 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 118 of Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

Amendment by section 203(a)(1)(A) of Pub. L. 103-82 effective Apr. 4, 1994, see section 203(d) of Pub. L. 103-82, set out as a note under section 12651 of this title.

Amendment by section 402(b)(1) of Pub. L. 103-82 effective Oct. 1, 1993, see section 406(a) of Pub. L. 103-82, set out as a note under section 5061 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12624, 12651d of this title.

§ 12640. Engagement of participants

A State shall not engage a participant to serve in any program that receives assistance under this subchapter unless and until amounts have been appropriated under section 12681 of this title for the provision of national service educational awards and for the payment of other necessary expenses and costs associated with such participant.

(Pub. L. 101-610, title I, §180, Nov. 16, 1990, 104 Stat. 3166; Pub. L. 103-82, title I, §119, Sept. 21, 1993, 107 Stat. 866.)

AMENDMENTS

1993—Pub. L. 103-82 substituted “national service educational awards” for “post-service benefits”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

§ 12641. Contingent extension

Section 1226a¹ of title 20 shall apply to this chapter.

(Pub. L. 101-610, title I, §181, Nov. 16, 1990, 104 Stat. 3166; Pub. L. 103-82, title I, §120(a), Sept. 21, 1993, 107 Stat. 866.)

REFERENCES IN TEXT

Section 1226a of title 20, referred to in text, was in the original a reference to section 414 of the General Education Provisions Act. Section 414 of that Act was renumbered as section 422 by Pub. L. 103-382, title II, §212(b)(1), Oct. 20, 1994, 108 Stat. 3913, and is classified to section 1226a of Title 20, Education.

AMENDMENTS

1993—Pub. L. 103-82 amended section generally, reenacting subsec. (c) as entire section and striking out former subsecs. (a) and (b) which related to treatment of education and housing benefits and treatment of stipend for living expenses, respectively.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

§ 12642. Partnerships with schools

(a) Design of programs

The head of each Federal agency and department shall design and implement a comprehen-

¹ See References in Text note below.

sive strategy to involve employees of such agencies and departments in partnership programs with elementary schools and secondary schools. Such strategy shall include—

- (1) a review of existing programs to identify and expand the opportunities for such employees to be adult volunteers in schools and for students and out-of-school youth;
- (2) the designation of a senior official in each such agency and department who will be responsible for establishing partnership and youth service programs in each such agency and department and for developing partnership and youth service programs;
- (3) the encouragement of employees of such agencies and departments to participate in partnership programs and other service projects;
- (4) the annual recognition of outstanding service programs operated by Federal agencies; and
- (5) the encouragement of businesses and professional firms to include community service among the factors considered in making hiring, compensation, and promotion decisions.

(b) Report

Not later than 180 days after November 16, 1990, and on a regular basis thereafter, the head of each Federal agency and department shall prepare and submit, to the appropriate Committees of Congress, a report concerning the implementation of this section.

(Pub. L. 101-610, title I, §182, Nov. 16, 1990, 104 Stat. 3167; Pub. L. 103-82, title I, §111(b)(1), (2), Sept. 21, 1993, 107 Stat. 860.)

AMENDMENTS

1993—Subsec. (a)(2), (3). Pub. L. 103-82 substituted “partnership” for “adult volunteer and partnership” wherever appearing.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

§ 12643. Rights of access, examination, and copying

(a) Comptroller General

The Comptroller General, or any of the duly authorized representatives of the Comptroller General, shall have access to, and the right to examine and copy, any books, documents, papers, records, and other recorded information in any form—

- (1) within the possession or control of the Corporation or any State or local government, Indian tribe, or public or private nonprofit organization receiving assistance directly or indirectly under this chapter; and
- (2) that the Comptroller General, or his representative, considers necessary to the performance of an evaluation, audit, or review.

(b) Chief Financial Officer

The Chief Financial Officer of the Corporation shall have access to, and the right to examine and copy, any books, documents, papers, records, and other recorded information in any form—

(1) within the possession or control of the Corporation or any State or local government, Indian tribe, or public or private nonprofit organization receiving assistance directly or indirectly under this chapter; and

(2) that relates to the duties of the Chief Financial Officer.

(Pub. L. 101-610, title I, §183, Nov. 16, 1990, 104 Stat. 3167; Pub. L. 103-82, title I, §121(a), Sept. 21, 1993, 107 Stat. 866.)

AMENDMENTS

1993—Pub. L. 103-82 amended section generally, substituting provision relating to rights of access, examination, and copying for provision relating to service as tutors.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

§ 12644. Drug-free workplace requirements

All programs receiving grants under this subchapter shall be subject to the Drug-Free Workplace Requirements for Federal Grant Recipients under sections 702 through 707 of title 41.

(Pub. L. 101-610, title I, §184, Nov. 16, 1990, 104 Stat. 3167.)

§ 12645. Repealed. Pub. L. 103-82, title I, § 122(a), Sept. 21, 1993, 107 Stat. 867

Section, Pub. L. 101-610, title I, §186, as added Pub. L. 102-10, §8(2), Mar. 12, 1991, 105 Stat. 31, directed Commission to issue final rules or regulations necessary to implement this subchapter.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as an Effective Date of 1993 Amendment note under section 1701 of Title 16, Conservation.

Division G—Corporation for National and Community Service

§ 12651. Corporation for National and Community Service

There is established a Corporation for National and Community Service that shall administer the programs established under the national service laws. The Corporation shall be a Government corporation, as defined in section 103 of title 5.

(Pub. L. 101-610, title I, §191, as added and amended Pub. L. 103-82, title II, §§202(a), 203(a)(1)(B), Sept. 21, 1993, 107 Stat. 873, 891.)

PRIOR PROVISIONS

A prior section 12651, Pub. L. 101-610, title I, §190, Nov. 16, 1990, 104 Stat. 3168; Pub. L. 102-10, §9, Mar. 12, 1991, 105 Stat. 31; Pub. L. 102-384, §§4, 10, Oct. 5, 1992, 106 Stat. 1455, 1456, provided for establishment of Commission on National and Community Service, prior to the general amendment of subtitle G of title I of Pub. L. 101-610 [former part G of this subchapter] by Pub. L. 103-82, §202(a).

AMENDMENTS

1993—Pub. L. 103-82, §203(a)(1)(B), which directed amendment of section 191 of subtitle I of the National and Community Service Act of 1990 by substituting “the national service laws” for “this chapter”, was ex-

cuted to this section, which is section 191 of subtitle G of title I of the National Community Service Act of 1990, to reflect the probable intent of Congress.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 203(d) of Pub. L. 103-82 provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), this section [amending this section and sections 12639, 12651b to 12651d, 12651f, and 12651g of this title, repealing sections 5041 and 5042 of this title, and enacting provisions set out below], and the amendments made by this section, shall take effect—

“(A) 18 months after the date of enactment of this Act [Sept. 21, 1993]; or

“(B) on such earlier date as the President shall determine to be appropriate and announce by proclamation published in the Federal Register.

“(2) TRANSITION.—Subsection (c)(10) [set out below] shall take effect on the date of enactment of this Act [Sept. 21, 1993].”

[Section 203, and the amendments made by section 203, of Pub. L. 103-82 became effective Apr. 4, 1994, pursuant to Proc. No. 6662, Apr. 4, 1994, 59 F.R. 16507, set out below.]

EFFECTIVE DATE

Section 202(i) of Pub. L. 103-82 provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), or paragraph (2) or (3) of subsection (g) [amending sections 8F and 9 of the Inspector General Act of 1978, Pub. L. 95-452, set out in the Appendix to Title 5, Government Organization and Employees, and enacting provisions set out as notes under sections 8F and 9 of such act], the amendments made by this section [enacting this division and section 8E of the Inspector General Act of 1978, Pub. L. 95-452, set out in the Appendix to Title 5, amending section 5041 of this title, sections 4, 8F, 8G, 9, and 11 of the Inspector General Act of 1978, Pub. L. 95-452, set out in the Appendix to Title 5, sections 9101 and 9105 of Title 31, Money and Finance, section 410 of Title 39, Postal Service, and section 484 of Title 40, Public Buildings, Property, and Works] shall take effect on October 1, 1993.

“(2) ESTABLISHMENT AND APPOINTMENT AUTHORITIES.—Sections 191, 192, and 193 of the National and Community Service Act of 1990 [42 U.S.C. 12651, 12651a, 12651c], as added by subsection (a), shall take effect on the date of enactment of this Act [Sept. 21, 1993].”

TRANSFER OF FUNCTIONS OF COMMISSION ON NATIONAL AND COMMUNITY SERVICE

Section 202(c) of Pub. L. 103-82 provided that:

“(1) DEFINITIONS.—For purposes of this subsection, unless otherwise provided or indicated by the context, each term specified in section 203(c)(1) [set out below] shall have the meaning given the term in such section.

“(2) TRANSFER OF FUNCTIONS.—There are transferred to the Corporation the functions that the Board of Directors or Executive Director of the Commission on National and Community Service exercised before the effective date of this subsection (including all related functions of any officer or employee of the Commission).

“(3) APPLICATION.—The provisions of paragraphs (3) through (10) of section 203(c) [set out below] shall apply with respect to the transfer described in paragraph (2), except that—

“(A) for purposes of such application, references to the term ‘ACTION Agency’ shall be deemed to be references to the Commission on National and Community Service; and

“(B) paragraph (10) of such section shall not preclude the transfer of the members of the Board of Directors of the Commission to the Corporation if, on the effective date of this subsection, the Board of Directors of the Corporation has not been confirmed.”

TRANSFER OF FUNCTIONS FROM ACTION AGENCY

Section 203(c) of Pub. L. 103-82 provided that:

“(1) DEFINITIONS.—For purposes of this subsection, unless otherwise provided or indicated by the context—

“(A) the term ‘Chief Executive Officer’ means the Chief Executive Officer of the Corporation;

“(B) the term ‘Corporation’ means the Corporation for National and Community Service, established under section 191 of the National and Community Service Act of 1990 [42 U.S.C. 12651];

“(C) the term ‘Federal agency’ has the meaning given to the term ‘agency’ by section 551(1) of title 5, United States Code;

“(D) the term ‘function’ means any duty, obligation, power, authority, responsibility, right, privilege, activity, or program; and

“(E) the term ‘office’ includes any office, administration, agency, institute, unit, organizational entity, or component thereof.

“(2) TRANSFER OF FUNCTIONS.—There are transferred to the Corporation the functions that the Director of the ACTION Agency exercised before the effective date of this subsection [see Effective Date of 1993 Amendment note above] (including all related functions of any officer or employee of the ACTION Agency).

“(3) DETERMINATIONS OF CERTAIN FUNCTIONS BY THE OFFICE OF MANAGEMENT AND BUDGET.—If necessary, the Office of Management and Budget shall make any determination of the functions that are transferred under paragraph (2).

“(4) REORGANIZATION.—The Chief Executive Officer is authorized to allocate or reallocate any function transferred under paragraph (2) among the officers of the Corporation.

“(5) TRANSFER AND ALLOCATIONS OF APPROPRIATIONS AND PERSONNEL.—Except as otherwise provided in this subsection, the personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, used, held, arising from, available to, or to be made available in connection with the functions transferred by this subsection, subject to section 1531 of title 31, United States Code, shall be transferred to the Corporation. Unexpended funds transferred pursuant to this paragraph shall be used only for the purposes for which the funds were originally authorized and appropriated.

“(6) INCIDENTAL TRANSFER.—The Director of the Office of Management and Budget, at such time or times as the Director shall provide, is authorized to make such determinations as may be necessary with regard to the functions transferred by this subsection, and to make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with such functions, as may be necessary to carry out the provisions of this subsection. The Director of the Office of Management and Budget shall provide for the termination of the affairs of all entities terminated by this subsection and for such further measures and dispositions as may be necessary to effectuate the purposes of this subsection.

“(7) EFFECT ON PERSONNEL.—

“(A) IN GENERAL.—Except as otherwise provided by this subsection, the transfer pursuant to this subsection of full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall be to positions in the Corporation subject to section 195(a) of the National and Community Service Act of 1990 [42 U.S.C. 12651f(a)], as added by section 202(a) of this Act, and shall not cause any such employee to be separated or reduced in grade or compensation, or to have the benefits of the employee reduced, for 1 year after the date of transfer of such employee under this subsection, and such transfer shall be deemed to be a transfer of functions for purposes of section 3503 of title 5, United States Code.

“(B) EXECUTIVE SCHEDULE POSITIONS.—Except as otherwise provided in this subsection, any person

who, on the day preceding the effective date of this subsection [see Effective Date of 1993 Amendment note above], held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, United States Code, and who, without a break in service, is appointed in the Corporation to a position having duties comparable to the duties performed immediately preceding such appointment shall continue to be compensated in such new position at not less than the rate provided for such previous position, for the duration of the service of such person in such new position.

“(C) TERMINATION OF CERTAIN POSITIONS.—Positions whose incumbents are appointed by the President, by and with the advice and consent of the Senate, the functions of which are transferred by this subsection, shall terminate on the effective date of this subsection.

“(8) SAVINGS PROVISIONS.—

“(A) CONTINUING EFFECT OF LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, agreements, grants, contracts, certificates, licenses, registrations, privileges, and other administrative actions—

“(i) that have been issued, made, granted, or allowed to become effective by the President, any Federal agency or official thereof, or by a court of competent jurisdiction, in the performance of functions that are transferred under this subsection; and

“(ii) that are in effect at the time this subsection takes effect [see Effective Date of 1993 Amendment note above], or were final before the effective date of this subsection and are to become effective on or after the effective date of this subsection, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Chief Executive Officer, or other authorized official, a court of competent jurisdiction, or by operation of law.

“(B) PROCEEDINGS NOT AFFECTED.—The provisions of this subsection shall not affect any proceedings, including notices of proposed rulemaking, or any application for any license, permit, certificate, or financial assistance pending before the ACTION Agency at the time this subsection takes effect, with respect to functions transferred by this subsection. Such proceedings and applications shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this subsection had not been enacted, and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subparagraph shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this subsection had not been enacted.

“(C) SUITS NOT AFFECTED.—The provisions of this subsection shall not affect suits commenced before the effective date of this subsection, and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this subsection had not been enacted.

“(D) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the ACTION Agency, or by or against any individual in the official capacity of such individual as an officer of the ACTION Agency, shall abate by reason of the enactment of this subsection.

“(E) ADMINISTRATIVE ACTIONS RELATING TO PROMULGATION OF REGULATIONS.—Any administrative action relating to the preparation or promulgation of a regulation by the ACTION Agency relating to a function transferred under this subsection may be continued

by the Corporation with the same effect as if this subsection had not been enacted.

“(9) SEVERABILITY.—If a provision of this subsection or its application to any person or circumstance is held invalid, neither the remainder of this subsection nor the application of the provision to other persons or circumstances shall be affected.

“(10) TRANSITION.—Prior to, or after, any transfer of a function under this subsection, the Chief Executive Officer is authorized to utilize—

“(A) the services of such officers, employees, and other personnel of the ACTION Agency with respect to functions that will be or have been transferred to the Corporation by this subsection; and

“(B) funds appropriated to such functions for such period of time as may reasonably be needed to facilitate the orderly implementation of this subsection.”

CONTINUING PERFORMANCE OF CERTAIN FUNCTIONS BY COMMISSION ON NATIONAL AND COMMUNITY SERVICE

Section 202(d) of Pub. L. 103–82 provided that: “The individuals who, on the day before the date of enactment of this Act [Sept. 21, 1993], are performing any of the functions required by section 190 of the National and Community Service Act of 1990 (42 U.S.C. 12651), as in effect on such date, to be performed by the members of the Board of Directors of the Commission on National and Community Service may, subject to section 193A of the National and Community Service Act of 1990 [42 U.S.C. 12651d], as added by subsection (a) of this section, continue to perform such functions until the date on which the Board of Directors of the Corporation for National and Community Service conducts the first meeting of the Board. The service of such individuals as members of the Board of Directors of such Commission, and the employment of such individuals as special Government employees, shall terminate on such date.”

BUSINESS PLAN FOR CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Section 204 of Pub. L. 103–82 provided that:

“(a) BUSINESS PLAN REQUIRED.—

“(1) IN GENERAL.—The Corporation for National and Community Service (referred to in this section as the ‘Corporation’) shall prepare and submit to Congress a business plan. The Corporation may not provide assistance under section 121 of the National and Community Service Act of 1990 [42 U.S.C. 12571] before the twentieth day of continuous session of Congress after the date on which the Corporation submits the business plan to Congress.

“(2) COMPUTATION.—For purposes of the computation of the 20-day period referred to in paragraph (1), continuity of a session of the Congress shall be considered to be broken only by—

“(A) an adjournment of the Congress sine die; and

“(B) the days on which either House is not in session because of an adjournment of more than 3 days to a date certain.

“(b) REQUIRED ELEMENTS OF BUSINESS PLAN.—

“(1) ALLOCATION OF FUNDS.—The business plan shall contain—

“(A) a description of the manner in which the Corporation will allocate funds for programs carried out by the Corporation after October 1, 1993;

“(B) information on the principal offices and officers of the Corporation that will allocate such funds; and

“(C) information that indicates how accountability for such funds can be determined, in terms of the office or officer responsible for such funds.

“(2) INVESTIGATIVE AND AUDIT FUNCTIONS.—The business plan shall include a description of the plans of the Corporation—

“(A) to ensure continuity, during the transition period, and after the transition period, in the investigative and audit functions carried out by the Inspector General of ACTION prior to such period,

consistent with the Inspector General Act of 1978 (5 U.S.C. App.); and

“(B) to carry out investigative and audit functions and implement financial management controls regarding programs carried out by the Corporation after October 1, 1993, consistent with the Inspector General Act of 1978, including a specific description of—

“(i) the manner in which the Office of Inspector General shall be established in the Corporation, in accordance with section 194(b) of the National Community Service Act of 1990 [42 U.S.C. 12651e(b)], as added by section 202 of this Act; and

“(ii) the manner in which grants made by the Corporation shall be audited by such Office and the financial management controls that shall apply with regard to such grants and programs.

“(3) ACCOUNTABILITY MEASURES.—The business plan shall include a detailed description of the accountability measures to be established by the Corporation to ensure effective control of all funds for programs carried out by the Corporation after October 1, 1993.

“(4) INFORMATION RESOURCES.—The business plan shall include a description of an information resource management program that will support the program and financial management needs of the Corporation.

“(5) CORPORATION STAFFING AND INTEGRATION OF ACTION.—

“(A) TRANSFERS.—The business plan shall include a report on the progress and plans of the President for transferring the functions, programs, and related personnel of ACTION to the Corporation, and shall include a timetable for the transfer.

“(B) DETAILS AND ASSIGNMENTS.—The report shall specify the number of ACTION employees detailed or assigned to the Corporation, and describe the hiring activity of the Corporation, during the transition period.

“(C) STRUCTURE.—The business plan shall include a description of the organizational structure of the Corporation during the transition period.

“(D) STAFFING.—The business plan shall include a description of—

“(i) measures to ensure adequate staffing during the transition period with respect to programs carried out by the Corporation after October 1, 1993; and

“(ii) the responsibilities and authorities of the Managing Directors and other key personnel of the Corporation.

“(E) SENIOR EXECUTIVE SERVICE.—The business plan shall include—

“(i) an explanation of the number of the employees of the Corporation who will be paid at or above the rate of pay for level 1 of the Senior Executive Service Schedule under section 5382 of title 5, United States Code; and

“(ii) information justifying such pay for such employees.

“(6) DUPLICATION OF FUNCTIONS.—The business plan shall include a description of the measures that the Corporation is taking or will take to minimize duplication of functions in the Corporation caused by the transfer of the functions of the Commission on National and Community Service, and the transfer of the functions of ACTION, to the Corporation. This description shall address functions at both the national and State levels.

“(c) DEFINITION.—The term ‘transition period’ means the period beginning on October 1, 1993 and ending on the day before the effective date of section 203(c)(2) [see Effective Date of 1993 Amendment note above].”

PROC. NO. 6662. TRANSFER OF FUNCTIONS OF ACTION AGENCY TO CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proc. No. 6662, Apr. 4, 1994, 59 F.R. 16507, provided:

On September 21, 1993, I had the honor of signing into law the National and Community Service Trust Act of 1993 [Pub. L. 103-82, see Tables for classification], which

created the Corporation for National and Community Service. The Corporation was designed to involve Americans of all ages and backgrounds in community projects to address many of our Nation's most important needs—from educating our children to ensuring public safety to protecting our environment. It was chartered to foster civic responsibility, strengthening the ties that bind us together as a people, while providing educational opportunity for those who make the commitment to serve.

In the few short months since the Corporation's establishment, enormous progress has been made toward the achievement of these invaluable goals. Final regulations have been published governing the Corporation's new grant programs, grant application packages have been developed, and a national recruitment effort has begun. As a result of intensive outreach efforts, most states have already established State Commissions on National and Community Service, and many local programs, national nonprofit organizations, institutions of higher education, and Federal agencies are eager to participate. Grant competitions have begun for a summer program that will focus on our Nation's public safety concerns, and all community service grant competitions will be completed by this summer. Finally, the Corporation has established the National Civilian Community Corps, which will take advantage of closed and down-sized military bases to launch environmental clean-up and preservation efforts.

The ACTION Agency, provided for by the Domestic Volunteer Service Act of 1973 [42 U.S.C. 4950 et seq.], has worked closely with the Corporation, sharing its many years of experience in engaging Americans in service to their communities. Because the Corporation's initiatives and those programs operated by the ACTION Agency involve similar goals, the National and Community Service Trust Act calls for the merger of ACTION with the Corporation no later than March 22, 1995. To build upon the tremendous accomplishments already achieved by the Corporation, and to facilitate the further development of community service programs across the country, I am pleased to order that the functions of the Director of the ACTION Agency be transferred to the Corporation for National and Community Service.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to sections 203(c)(2) and (d)(1)(B) of the National and Community Service Trust Act of 1993 [set out above], proclaim that all functions of the Director of the ACTION Agency are hereby transferred to the Corporation for National and Community Service, effective April 4, 1994.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of April, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and eighteenth.

WILLIAM J. CLINTON.

EX. ORD. NO. 12819. ESTABLISHING PRESIDENTIAL YOUTH AWARD FOR COMMUNITY SERVICE

Ex. Ord. No. 12819, Oct. 28, 1992, 57 F.R. 49369, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 12651 of title 42 of the United States Code [see 42 U.S.C. 12653b], it is hereby ordered as follows:

SECTION 1. A youth award for community service is hereby established. The award shall recognize outstanding voluntary community service contributions made by individuals between the ages of 5 and 22.

SEC. 2. The Director of the White House Office of National Service shall establish the criteria for the award. The criteria shall be based upon participation in voluntary community service activity. The award may

be bestowed upon any eligible individual who meets the established criteria.

SEC. 3. The selection process for the award shall be administered by the Commission on National and Community Service and the White House Office of National Service. Such other individuals and entities as the Director of the White House Office of National Service deems appropriate may participate in the selection process.

SEC. 4. The award shall be presented by the President, his designee or designees, or individuals designated by the Director of the White House Office of National Service.

SEC. 5. The name and design of the award shall be approved by the President upon the recommendation of the Director of the White House Office of National Service.

GEORGE BUSH.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5061, 12511 of this title.

§ 12651a. Board of Directors

(a) Composition

(1) In general

There shall be in the Corporation a Board of Directors (referred to in this division as the "Board") that shall be composed of—

(A) 15 members, including an individual between the ages of 16 and 25 who—

- (i) has served in a school-based or community-based service-learning program; or
- (ii) is or was a participant or a supervisor in a program;

to be appointed by the President, by and with the advice and consent of the Senate; and

(B) the ex officio nonvoting members described in paragraph (3).

(2) Qualifications

To the maximum extent practicable, the President shall appoint members—

(A) who have extensive experience in volunteer or service activities, which may include programs funded under one of the national service laws, and in State government;

(B) who represent a broad range of viewpoints;

(C) who are experts in the delivery of human, educational, environmental, or public safety services;

(D) so that the Board shall be diverse according to race, ethnicity, age, gender, and disability characteristics; and

(E) so that no more than 50 percent of the appointed members of the Board, plus 1 additional appointed member, are from a single political party.

(3) Ex officio members

The Secretary of Education, the Secretary of Health and Human Services, the Secretary of Labor, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Housing and Urban Development, the Secretary of Defense, the Attorney General, the Director of the Peace Corps, the Administrator of the Environmental Protection Agency, and the Chief Executive Officer shall serve as ex officio nonvoting members of the Board.

(b) Officers

(1) Chairperson

The President shall appoint a member of the Board to serve as the initial Chairperson of the Board. Each subsequent Chairperson shall be elected by the Board from among its members.

(2) Vice Chairperson

The Board shall elect a Vice Chairperson from among its membership.

(3) Other officers

The Board may elect from among its membership such additional officers of the Board as the Board determines to be appropriate.

(c) Terms

Each appointed member of the Board shall serve for a term of 5 years, except that, as designated by the President—

(1) 3 of the members first appointed to the Board shall serve for a term of 1 year;

(2) 3 of the members first appointed to the Board shall serve for a term of 2 years;

(3) 3 of the members first appointed to the Board shall serve for a term of 3 years;

(4) 3 of the members first appointed to the Board shall serve for a term of 4 years; and

(5) 3 of the members first appointed to the Board shall serve for a term of 5 years.

(d) Vacancies

If a vacancy occurs on the Board, a new member shall be appointed by the President, by and with the advice and consent of the Senate, and serve for the remainder of the term for which the predecessor of such member was appointed. The vacancy shall not affect the power of the remaining members to execute the duties of the Board.

(Pub. L. 101-610, title I, §192, as added Pub. L. 103-82, title II, §202(a), Sept. 21, 1993, 107 Stat. 873.)

EFFECTIVE DATE

Section effective Sept. 21, 1993, see section 202(i)(2) of Pub. L. 103-82, set out as a note under section 12651 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12651b of this title.

§ 12651b. Authorities and duties of the Board of Directors

(a) Meetings

The Board shall meet not less often than 3 times each year. The Board shall hold additional meetings at the call of the Chairperson of the Board, or if 6 members of the Board request such meetings in writing.

(b) Quorum

A majority of the appointed members of the Board shall constitute a quorum.

(c) Authorities of officers

(1) Chairperson

The Chairperson of the Board may call and conduct meetings of the Board.

(2) Vice Chairperson

The Vice Chairperson of the Board may conduct meetings of the Board in the absence of the Chairperson.

(d) Expenses

While away from their homes or regular places of business on the business of the Board, members of such Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5 for persons employed intermittently in the Government service.

(e) Special Government employees

For purposes of the provisions of chapter 11 of part I of title 18, and any other provision of Federal law, a member of the Board (to whom such provisions would not otherwise apply except for this subsection) shall be a special Government employee.

(f) Status of members**(1) Tort claims**

For the purposes of the tort claims provisions of chapter 171 of title 28, a member of the Board shall be considered to be a Federal employee.

(2) Other claims

A member of the Board shall have no personal liability under Federal law with respect to any claim arising out of or resulting from any act or omission by such person, within the scope of the service of the member on the Board, in connection with any transaction involving the provision of financial assistance by the Corporation. This paragraph shall not be construed to limit personal liability for criminal acts or omissions, willful or malicious misconduct, acts or omissions for private gain, or any other act or omission outside the scope of the service of such member on the Board.

(3) Effect on other law

This subsection shall not be construed—

(A) to affect any other immunities and protections that may be available to such member under applicable law with respect to such transactions;

(B) to affect any other right or remedy against the Corporation, against the United States under applicable law, or against any person other than a member of the Board participating in such transactions; or

(C) to limit or alter in any way the immunities that are available under applicable law for Federal officials and employees not described in this subsection.

(g) Duties

The Board shall—

(1) review and approve the strategic plan described in section 12651d(b)(1) of this title, and annual updates of the plan;

(2) review and approve the proposal described in section 12651d(b)(2)(A) of this title, with respect to the grants, allotments, contracts, financial assistance, payment, and positions referred to in such section;

(3) review and approve the proposal described in section 12651d(b)(3)(A) of this title, regarding the regulations, standards, policies, procedures, programs, and initiatives referred to in such section;

(4) review and approve the evaluation plan described in section 12651d(b)(4)(A) of this title;

(5)(A) review, and advise the Chief Executive Officer regarding, the actions of the Chief Executive Officer with respect to the personnel of the Corporation, and with respect to such standards, policies, procedures, programs, and initiatives as are necessary or appropriate to carry out the national service laws; and

(B) inform the Chief Executive Officer of any aspects of the actions of the Chief Executive Officer that are not in compliance with the annual strategic plan referred to in paragraph (1), the proposals referred to in paragraphs (2) and (3), or the plan referred to in paragraph (4), or are not consistent with the objectives of the national service laws;

(6) receive any report as provided under subsection (b), (c), or (d) of section 8E¹ of the Inspector General Act of 1978;

(7) make recommendations relating to a program of research for the Corporation with respect to national and community service programs, including service-learning programs;

(8) advise the President and the Congress concerning developments in national and community service that merit the attention of the President and the Congress;

(9) ensure effective dissemination of information regarding the programs and initiatives of the Corporation;

(10) notwithstanding any other provision of law, make grants to or contracts with Federal or other public departments or agencies and private nonprofit organizations for the assignment or referral of volunteers under the provisions of the Domestic Volunteer Service Act of 1973 [42 U.S.C. 4950 et seq.] (except as provided in section 108 of the Domestic Volunteer Service Act of 1973 [42 U.S.C. 4958]), which may provide that the agency or organization shall pay all or a part of the costs of the program; and

(11) prepare and make recommendations to the Congress and the President for changes in the national service laws resulting from the studies and demonstrations the Chief Executive Officer is required to carry out under section 12651d(b)(10) of this title, which recommendations shall be submitted to the Congress and President not later than September 30, 1995.

(h) Administration

The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply with respect to the Board.

(i) Limitation on participation

All employees and officers of the Corporation shall recuse themselves from decisions that would constitute conflicts of interest.

(j) Coordination with other Federal activities

As part of the agenda of meetings of the Board under subsection (a) of this section, the Board

¹ See References in Text note below.

shall review projects and programs conducted or funded by the Corporation under the national service laws to improve the coordination between such projects and programs, and the activities of other Federal agencies that deal with the individuals and communities participating in or benefiting from such projects and programs. The ex officio members of the Board specified in section 12651a(a)(3) of this title shall jointly plan, implement, and fund activities in connection with projects and programs conducted under the national service laws to ensure that Federal efforts attempt to address the total needs of participants in such programs and projects, their communities, and the persons and communities the participants serve.

(Pub. L. 101-610, title I, §192A, as added and amended Pub. L. 103-82, title II, §§202(a), 203(a)(1)(B), (2), Sept. 21, 1993, 107 Stat. 875, 891.)

REFERENCES IN TEXT

Section 8E of the Inspector General Act of 1978, referred to in subsec. (g)(6), is section 8E of Pub. L. 95-452, as added by Pub. L. 103-82, title II, §202(g)(1), Sept. 21, 1993, 107 Stat. 889, which was renumbered section 8F of the Act by Pub. L. 103-204, §23(a)(3), Dec. 17, 1993, 107 Stat. 2408, and is set out in the Appendix to Title 5, Government Organization and Employees.

The Domestic Volunteer Service Act of 1973, referred to in subsec. (g)(10), is Pub. L. 93-113, Oct. 1, 1973, 87 Stat. 394, as amended, which is classified principally to chapter 66 (§4950 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of this title and Tables.

The Federal Advisory Committee Act, referred to in subsec. (h), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5.

AMENDMENTS

1993—Subsec. (g)(5)(A), (B). Pub. L. 103-82, §203(a)(1)(B), which directed amendment of section 192A(g)(5) of subtitle I of the National and Community Service Act of 1990 by substituting “the national service laws” for “this chapter”, was executed to subsec. (g)(5) of this section, which is section 192A of subtitle G of title I of the National Community Service Act of 1990, to reflect the probable intent of Congress.

Subsec. (g)(9). Pub. L. 103-82, §203(a)(2)(A), struck out “and” at end.

Subsec. (g)(10). Pub. L. 103-82, §203(a)(2)(C), added par. (10). Former par. (10) redesignated (11).

Pub. L. 103-82, §203(a)(1)(B), which directed amendment of section 192A(g)(10) of subtitle I of the National and Community Service Act of 1990 by substituting “the national service laws” for “this chapter”, was executed to subsec. (g)(10) of this section, which is section 192A of subtitle G of title I of the National Community Service Act of 1990, to reflect the probable intent of Congress.

Subsec. (g)(11). Pub. L. 103-82, §203(a)(2)(B), redesignated par. (10) as (11).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 203(a)(1)(B), (2) of Pub. L. 103-82 effective Apr. 4, 1994, see section 203(d) of Pub. L. 103-82, set out as a note under section 12651 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1993, see section 202(i) of Pub. L. 103-82, set out as a note under section 12651 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12572, 12651d, 12651f, 12651g of this title.

§ 12651c. Chief Executive Officer

(a) Appointment

The Corporation shall be headed by an individual who shall serve as Chief Executive Officer of the Corporation, and who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) Compensation

The Chief Executive Officer shall be compensated at the rate provided for level III of the Executive Schedule under section 5314 of title 5.

(c) Regulations

The Chief Executive Officer shall prescribe such rules and regulations as are necessary or appropriate to carry out the national service laws.

(Pub. L. 101-610, title I, §193, as added and amended Pub. L. 103-82, title II, §§202(a), 203(a)(1)(B), Sept. 21, 1993, 107 Stat. 877, 891.)

AMENDMENTS

1993—Subsec. (c). Pub. L. 103-82, §203(a)(1)(B), which directed amendment of section 193(c) of subtitle I of the National and Community Service Act of 1990 by substituting “the national service laws” for “this chapter”, was executed to subsec. (c) of this section, which is section 193 of subtitle G of title I of the National Community Service Act of 1990, to reflect the probable intent of Congress.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 203(a)(1)(B) of Pub. L. 103-82 effective Apr. 4, 1994, see section 203(d) of Pub. L. 103-82, set out as a note under section 12651 of this title.

EFFECTIVE DATE

Section effective Sept. 21, 1993, see section 202(i)(2) of Pub. L. 103-82, set out as a note under section 12651 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5061, 12511 of this title.

§ 12651d. Authorities and duties of the Chief Executive Officer

(a) General powers and duties

The Chief Executive Officer shall be responsible for the exercise of the powers and the discharge of the duties of the Corporation that are not reserved to the Board, and shall have authority and control over all personnel of the Corporation, except as provided in section 8E¹ of the Inspector General Act of 1978.

(b) Duties

In addition to the duties conferred on the Chief Executive Officer under any other provision of the national service laws, the Chief Executive Officer shall—

(1) prepare and submit to the Board a strategic plan every 3 years, and annual updates of the plan, for the Corporation with respect to the major functions and operations of the Corporation;

(2)(A) prepare and submit to the Board a proposal with respect to such grants and allotments, contracts, other financial assistance,

¹ See References in Text note below.

and designation of positions as approved national service positions, as are necessary or appropriate to carry out the national service laws; and

(B) after receiving and reviewing an approved proposal under section 12651b(g)(2) of this title, make such grants and allotments, enter into such contracts, award such other financial assistance, make such payments (in lump sum or installments, and in advance or by way of reimbursement, and in the case of financial assistance otherwise authorized under the national service laws, with necessary adjustments on account of overpayments and underpayments), and designate such positions as approved national service positions as are necessary or appropriate to carry out the national service laws;

(3)(A) prepare and submit to the Board a proposal regarding, the regulations established under section 12651f(b)(3)(A) of this title, and such other standards, policies, procedures, programs, and initiatives as are necessary or appropriate to carry out the national service laws; and

(B) after receiving and reviewing an approved proposal under section 12651b(g)(3) of this title—

(i) establish such standards, policies, and procedures as are necessary or appropriate to carry out the national service laws; and

(ii) establish and administer such programs and initiatives as are necessary or appropriate to carry out the national service laws;

(4)(A) prepare and submit to the Board a plan for the evaluation of programs established under the national service laws, in accordance with section 12639 of this title; and

(B) after receiving an approved proposal under section 12651b(g)(4) of this title—

(i) establish measurable performance goals and objectives for such programs, in accordance with section 12639 of this title; and

(ii) provide for periodic evaluation of such programs to assess the manner and extent to which the programs achieve the goals and objectives, in accordance with such section;

(5) consult with appropriate Federal agencies in administering the programs and initiatives;

(6) suspend or terminate payments and positions described in paragraph (2)(B), in accordance with section 12636 of this title;

(7) prepare and submit to the Board an annual report, and such interim reports as may be necessary, describing the major actions of the Chief Executive Officer with respect to the personnel of the Corporation, and with respect to such standards, policies, procedures, programs, and initiatives;

(8) inform the Board of, and provide an explanation to the Board regarding, any substantial differences regarding the implementation of the national service laws between—

(A) the actions of the Chief Executive Officer; and

(B)(i) the strategic plan approved by the Board under section 12651b(g)(1) of this title;

(ii) the proposals approved by the Board under paragraph (2) or (3) of section 12651b(g) of this title; or

(iii) the evaluation plan approved by the Board under section 12651b(g)(4) of this title;

(9) prepare and submit to the appropriate committees of Congress an annual report, and such interim reports as may be necessary, describing—

(A) the services referred to in paragraph (1), and the money and property referred to in paragraph (2), of section 12651g(a) of this title that have been accepted by the Corporation;

(B) the manner in which the Corporation used or disposed of such services, money, and property; and

(C) information on the results achieved by the programs funded under the national service laws during the year preceding the year in which the report is prepared;

(10) provide for studies (including the evaluations described in subsection (f) of this section) and demonstrations that evaluate, and prepare and submit to the Board by June 30, 1995, a report containing recommendations regarding, issues related to—

(A) the administration and organization of programs authorized under the national service laws or under Public Law 91-378 [16 U.S.C. 1701 et seq.] (referred to in this subparagraph as “service programs”), including—

(i) whether the State and national priorities designed to meet the unmet human, education, environmental, or public safety needs described in section 12572(c)(1) of this title are being addressed by this chapter;

(ii) the manner in which—

(I) educational and other outcomes of both stipended and nonstipended service and service-learning are defined and measured in such service programs; and

(II) such outcomes should be defined and measured in such service programs;

(iii) whether stipended service programs, and service programs providing educational benefits in return for service, should focus on economically disadvantaged individuals or at-risk youth or whether such programs should include a mix of individuals, including individuals from middle- and upper-income families;

(iv) the role and importance of stipends and educational benefits in achieving desired outcomes in the service programs;

(v) the potential for cost savings and coordination of support and oversight services from combining functions performed by ACTION State offices and State Commissions;

(vi) the implications of the results from such studies and demonstrations for authorized funding levels for the service programs; and

(vii) other issues that the Director determines to be relevant to the administration and organization of the service programs; and

(B) the number, potential consolidation, and future organization of national service

or domestic volunteer service programs that are authorized under Federal law, including VISTA, service corps assisted under division C of this subchapter and other programs authorized by this chapter, programs administered by the Public Health Service, the Department of Defense, or other Federal agencies, programs regarding teacher corps, and programs regarding work-study and higher education loan forgiveness or forbearance programs authorized by the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.) related to community service; and

(11) for purposes of section 12638(d)(6)(B) of this title, issue regulations to waive the disqualification of members of the Board and members of the State Commissions selectively in a random, nondiscretionary manner and only to the extent necessary to establish the quorum involved, including rules that forbid each member of the Board and each voting member of a State Commission to participate in any discussion or decision regarding the provision of assistance or approved national service positions, or the continuation, suspension, or termination of such assistance or such positions, to any program or entity of which such member of the Board or such member of the State Commission is, or in the 1-year period before the submission of the application referred to in such section was, an officer, director, trustee, full-time volunteer, or employee.

(c) Powers

In addition to the authority conferred on the Chief Executive Officer under any other provision of the national service laws, the Chief Executive Officer may—

(1) establish, alter, consolidate, or discontinue such organizational units or components within the Corporation as the Chief Executive Officer considers necessary or appropriate, consistent with Federal law, and shall, to the maximum extent practicable, consolidate such units or components of the divisions of the Corporation described in section 12651e(a)(3) of this title as may be appropriate to enable the two divisions to coordinate common support functions;

(2) with the approval of the President, arrange with and reimburse the heads of other Federal agencies for the performance of any of the provisions of the national service laws;

(3) with their consent, utilize the services and facilities of Federal agencies with or without reimbursement, and, with the consent of any State, or political subdivision of a State, accept and utilize the services and facilities of the agencies of such State or subdivisions without reimbursement;

(4) allocate and expend funds made available under the national service laws;

(5) disseminate, without regard to the provisions of section 3204 of title 39, data and information, in such form as the Chief Executive Officer shall determine to be appropriate to public agencies, private organizations, and the general public;

(6) collect or compromise all obligations to or held by the Chief Executive Officer and all

legal or equitable rights accruing to the Chief Executive Officer in connection with the payment of obligations in accordance with chapter 37 of title 31 (commonly known as the “Federal Claims Collection Act of 1966”);

(7) file a civil action in any court of record of a State having general jurisdiction or in any district court of the United States, with respect to a claim arising under this chapter;

(8) exercise the authorities of the Corporation under section 12651g of this title;

(9) consolidate the reports to Congress required under the national service laws, and the report required under section 9106 of title 31, into a single report, and submit the report to Congress on an annual basis; and

(10) generally perform such functions and take such steps consistent with the objectives and provisions of the national service laws, as the Chief Executive Officer determines to be necessary or appropriate to carry out such provisions.

(d) Delegation

(1) “Function” defined

As used in this subsection, the term “function” means any duty, obligation, power, authority, responsibility, right, privilege, activity, or program.

(2) In general

Except as otherwise prohibited by law or provided in the national service laws, the Chief Executive Officer may delegate any function under the national service laws, and authorize such successive redelegations of such function as may be necessary or appropriate. No delegation of a function by the Chief Executive Officer under this subsection or under any other provision of the national service laws shall relieve such Chief Executive Officer of responsibility for the administration of such function.

(3) Function of Board

The Chief Executive Officer may not delegate a function of the Board without the permission of the Board.

(e) Actions

In an action described in subsection (c)(7) of this section—

(1) a district court referred to in such subsection shall have jurisdiction of such a civil action without regard to the amount in controversy;

(2) such an action brought by the Chief Executive Officer shall survive notwithstanding any change in the person occupying the office of Chief Executive Officer or any vacancy in that office;

(3) no attachment, injunction, garnishment, or other similar process, mesne or final, shall be issued against the Chief Executive Officer or the Board or property under the control of the Chief Executive Officer or the Board; and

(4) nothing in this section shall be construed to except litigation arising out of activities under this chapter from the application of sections 509, 517, 547, and 2679 of title 28.

(f) Evaluations

(1) Evaluation of living allowance

The Corporation shall arrange for an independent evaluation to determine the levels of

living allowances paid in all programs under divisions C and I of this subchapter, individually, by State, and by region. Such evaluation shall determine the effects that such living allowances have had on the ability of individuals to participate in such programs.

(2) Evaluation of success of investment in national service

(A) Evaluation required

The Corporation shall arrange for the independent evaluation of the operation of division C of this subchapter to determine the levels of participation of economically disadvantaged individuals in national service programs carried out or supported using assistance provided under section 12571 of this title.

(B) Period covered by evaluation

The evaluation required by this paragraph shall cover the period beginning on the date the Corporation first makes a grant under section 12571 of this title, and ending on a date that is as close as is practicable to the date specified in subsection (b)(10) of this section.

(C) Income levels of participants

The evaluating entity shall determine the total income of each participant who serves, during the period covered by the evaluation, in a national service program carried out or supported using assistance provided under section 12571 of this title or in an approved national service position. The total income of the participant shall be determined as of the date the participant was first selected to participate in such a program and shall include family total income unless the evaluating entity determines that the participant was independent at the time of selection.

(D) Assistance for distressed areas

The evaluating entity shall also determine the amount of assistance provided under section 12571 of this title during the period covered by the report that has been expended for projects conducted in areas of economic distress described in section 12585(c)(6) of this title.

(E) Definitions

As used in this paragraph:

(i) Independent

The term "independent" has the meaning given the term in section 480(d) of the Higher Education Act of 1965 (20 U.S.C. 1087vv(d)).

(ii) Total income

The term "total income" has the meaning given the term in section 480(a) of the Higher Education Act of 1965 (20 U.S.C. 1087vv(a)).

(g) Recruitment and public awareness functions

(1) Effort

The Chief Executive Officer shall ensure that the Corporation, in carrying out the recruiting and public awareness functions of the Corporation, shall expend at least the level of

effort on recruitment and public awareness activities related to the programs carried out under the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4950 et seq.) as ACTION expended on recruitment and public awareness activities related to programs under the Domestic Volunteer Service Act of 1973 during fiscal year 1993.

(2) Personnel

The Chief Executive Officer shall assign or hire, as necessary, such additional national, regional, and State personnel to carry out such recruiting and public awareness functions as may be necessary to ensure that such functions are carried out in a timely and effective manner. The Chief Executive Officer shall give priority in the hiring of such additional personnel to individuals who have formerly served as volunteers in the programs carried out under the Domestic Volunteer Service Act of 1973 [42 U.S.C. 4950 et seq.] or similar programs, and to individuals who have specialized experience in the recruitment of volunteers.

(3) Funds

For the first fiscal year after the effective date of this subsection, and for each fiscal year thereafter, for the purpose of carrying out such recruiting and public awareness functions, the Chief Executive Officer shall obligate not less than 1.5 percent of the amounts appropriated for the fiscal year under section 501(a) of the Domestic Volunteer Service Act of 1973 [42 U.S.C. 5081(a)].

(Pub. L. 101-610, title I, §193A, as added and amended Pub. L. 103-82, title II, §§202(a), 203(a)(1)(B), (3), Sept. 21, 1993, 107 Stat. 877, 891; Pub. L. 103-304, §3(b)(2), Aug. 23, 1994, 108 Stat. 1567.)

REFERENCES IN TEXT

Section 8E of the Inspector General Act of 1978, referred to in subsec. (a), is section 8E of Pub. L. 95-452, as added by Pub. L. 103-82, title II, §202(g)(1), Sept. 21, 1993, 107 Stat. 889, which was renumbered section 8F of the Act by Pub. L. 103-204, §23(a)(3), Dec. 17, 1993, 107 Stat. 2408, and is set out in the Appendix to Title 5, Government Organization and Employees.

Public Law 91-378, referred to in subsec. (b)(10)(A), is Pub. L. 91-378, Aug. 13, 1970, 84 Stat. 794, as amended, popularly known as the Youth Conservation Corps Act of 1970, which is classified generally to chapter 37 (§1701 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 16 and Tables.

This chapter, referred to in subsecs. (b)(10)(A)(i), (B), (c)(7), and (e)(4), was in the original "this Act", meaning Pub. L. 101-610, Nov. 16, 1990, 104 Stat. 3127, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12501 of this title and Tables.

The Higher Education Act of 1965, referred to in subsec. (b)(10)(B), is Pub. L. 89-329, Nov. 8, 1965, 79 Stat. 1219, as amended, which is classified principally to chapter 28 (§1001 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

The Domestic Volunteer Service Act of 1973, referred to in subsec. (g), is Pub. L. 93-113, Oct. 1, 1973, 87 Stat. 394, as amended, which is classified principally to chapter 66 (§4950 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of this title and Tables.

For the effective date of this subsection, referred to in subsec. (g)(3), see Effective Date of 1993 Amendment note below.

AMENDMENTS

1994—Subsec. (g). Pub. L. 103-304 made technical amendment to directory language of Pub. L. 103-82, §203(a)(3). See 1993 Amendment note below.

1993—Subsecs. (b) to (d). Pub. L. 103-82, §203(a)(1)(B), which directed amendment of section 193A of subtitle I of the National and Community Service Act of 1990 by substituting “the national service laws” for “this chapter” was executed wherever appearing in the following provisions of this section, which is section 193A of subtitle G of title I of the National Community Service Act of 1990, to reflect the probable intent of Congress: introductory provisions and pars. (2) to (4)(A), (8), and (9)(C) of subsec. (b), introductory provisions and pars. (2), (4), (9), and (10) of subsec. (c), and subsec. (d)(2).

Subsec. (g). Pub. L. 103-82, §203(a)(3), as amended by Pub. L. 103-304, added subsec. (g).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-304 effective as of Oct. 1, 1993, see section 3(b)(10)(B) of Pub. L. 103-304, set out as a note under section 4953 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 203(a)(1)(B), (3) of Pub. L. 103-82 effective Apr. 4, 1994, see section 203(d) of Pub. L. 103-82, set out as a note under section 12651 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1993, see section 202(i) of Pub. L. 103-82, set out as a note under section 12651 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12581, 12638, 12651b of this title.

§ 12651e. Officers

(a) Managing Directors

(1) In general

There shall be in the Corporation 2 Managing Directors, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall report to the Chief Executive Officer.

(2) Compensation

The Managing Directors shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5.

(3) Duties

The Corporation shall determine the programs for which the Managing Directors shall have primary responsibility and shall establish the divisions of the Corporation to be headed by the Managing Directors.

(b) Inspector General

(1) Office

There shall be in the Corporation an Office of the Inspector General.

(2) Appointment

The Office shall be headed by an Inspector General, appointed in accordance with the Inspector General Act of 1978 [5 App. U.S.C.].

(3) Compensation

The Inspector General shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5.

(c) Chief Financial Officer

(1) Office

There shall be in the Corporation a Chief Financial Officer, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) Compensation

The Chief Financial Officer shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5.

(3) Duties

The Chief Financial Officer shall—

(A) report directly to the Chief Executive Officer regarding financial management matters;

(B) oversee all financial management activities relating to the programs and operations of the Corporation;

(C) develop and maintain an integrated accounting and financial management system for the Corporation, including financial reporting and internal controls;

(D) develop and maintain any joint financial management systems with the Department of Education necessary to carry out the programs of the Corporation; and

(E) direct, manage, and provide policy guidance and oversight of the financial management personnel, activities, and operations of the Corporation.

(d) Assistant Directors for VISTA and National Senior Volunteer Corps

(1) Appointment

One of the Managing Directors appointed under subsection (a) of this section shall, in accordance with applicable provisions of title 5, appoint 4 Assistant Directors who shall report directly to such Managing Director, of which—

(A) 1 Assistant Director shall be responsible for programs carried out under parts A and B of title I of the Domestic Volunteer Service Act of 1973 [42 U.S.C. 4951 et seq., 4971 et seq.] (the Volunteers in Service to America (VISTA) program) and other anti-poverty programs under title I of that Act [42 U.S.C. 4951 et seq.];

(B) 1 Assistant Director shall be responsible for programs carried out under part A of title II of that Act [42 U.S.C. 5001 et seq.] (relating to the Retired Senior Volunteer Program);

(C) 1 Assistant Director shall be responsible for programs carried out under part B of title II of that Act [42 U.S.C. 5011 et seq.] (relating to the Foster Grandparent Program); and

(D) 1 Assistant Director shall be responsible for programs carried out under part C of title II of that Act [42 U.S.C. 5013] (relating to the Senior Companion Program).

(2) Effective date for exercise of authority

Each Assistant Director appointed pursuant to paragraph (1) may exercise the authority assigned to each such Director only after the effective date of section 203(c)(2) of the Na-

tional and Community Service Trust Act of 1993.

(Pub. L. 101-610, title I, §194, as added Pub. L. 103-82, title II, §202(a), Sept. 21, 1993, 107 Stat. 882.)

REFERENCES IN TEXT

The Inspector General Act of 1978, referred to in subsec. (b)(2), is Pub. L. 95-452, Oct. 12, 1978, 92 Stat. 1101, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

The Domestic Volunteer Service Act of 1973, referred to in subsec. (d)(1), is Pub. L. 93-113, Oct. 1, 1973, 87 Stat. 394, as amended. Title I of the Act is classified generally to subchapter I (§4951 et seq.) of chapter 66 of this title. Parts A and B of title I of the Act are classified generally to parts A (§4951 et seq.) and B (§4971 et seq.), respectively, of subchapter I of chapter 66 of this title. Parts A, B, and C of title II of the Act are classified generally to parts A (§5001 et seq.), B (§5011 et seq.), and C (§5013 et seq.), respectively, of subchapter II of chapter 66 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of this title and Tables.

Section 203(c)(2) of the National and Community Service Trust Act of 1993, referred to in subsec. (d)(2), is section 203(c)(2) of Pub. L. 103-82, which is set out as a note under section 12651 of this title. For the effective date of section 203(c)(2) of this Act, see section 203(d) of Pub. L. 103-82, set out as an Effective Date of 1993 Amendment note under section 12651 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1993, see section 202(i) of Pub. L. 103-82, set out as a note under section 12651 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4952, 12651d, 12651f of this title.

§ 12651f. Employees, consultants, and other personnel

(a) Employees

Except as provided in subsection (b) of this section, section 12651e(d) of this title, and section 8E¹ of the Inspector General Act of 1978, the Chief Executive Officer shall, in accordance with applicable provisions of title 5, appoint and determine the compensation of such employees as the Chief Executive Officer determines to be necessary to carry out the duties of the Corporation.

(b) Alternative personnel system

(1) Authority

The Chief Executive Officer may designate positions in the Corporation as positions to which the Chief Executive Officer may make appointments, and for which the Chief Executive Officer may determine compensation, without regard to the provisions of title 5 governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, to the extent the Chief Executive Officer determines that such a designation is appropriate and desirable to further the effective operation of the Corporation. The Chief Executive Officer may provide

for appointments to such positions to be made on a limited term basis.

(2) Appointment in the competitive service after employment under alternative personnel system

The Director of the Office of Personnel Management may grant competitive status for appointment to the competitive service, under such conditions as the Director may prescribe, to an employee who is appointed under this subsection and who is separated from the Corporation (other than by removal for cause).

(3) Selection and compensation system

(A) Establishment of system

The Chief Executive Officer, after obtaining the approval of the Director of the Office of Personnel Management, shall issue regulations establishing a selection and compensation system for employees of the Corporation appointed under paragraph (1). In issuing such regulations, the Chief Executive Officer shall take into consideration the need for flexibility in such a system.

(B) Application

The Chief Executive Officer shall appoint and determine the compensation of employees in accordance with the selection and compensation system established under subparagraph (A).

(C) Selection

The system established under subparagraph (A) shall provide for the selection of employees—

- (i) through a competitive process; and
- (ii) on the basis of the qualifications of applicants and the requirements of the positions.

(D) Compensation

The system established under subparagraph (A) shall include a scheme for the classification of positions in the Corporation. The system shall require that the compensation of an employee be determined in part on the basis of the job performance of the employee, and in a manner consistent with the principles described in section 5301 of title 5. The rate of compensation for each employee compensated under the system shall not exceed the annual rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5.

(c) Corporation representative in each State

(1) Designation of representative

The Corporation shall designate 1 employee of the Corporation for each State or group of States to serve as the representative of the Corporation in the State or States and to assist the Corporation in carrying out the activities described in the national service laws in the State or States.

(2) Duties

The representative designated under this subsection for a State or group of States shall serve as the liaison between—

- (A) the Corporation and the State Commission that is established in the State or States;

¹ See References in Text note below.

(B) the Corporation and any subdivision of a State, Indian tribe, public or private non-profit organization, or institution of higher education, in the State or States, that is awarded a grant under section 12571 of this title directly from the Corporation; and

(C) after the effective date of section 203(c)(2) of the National and Community Service Trust Act of 1993, the State Commission and the Corporation employee responsible for programs under the Domestic Volunteer Service Act of 1973 [42 U.S.C. 4950 et seq.] in the State, if the employee is not the representative described in paragraph (1) for the State.

(3) Member of State Commission

The representative designated under this subsection for a State or group of States shall also serve as a member of the State Commission established in the State or States, as described in section 12638(c)(3) of this title.

(4) Compensation

If the employee designated under paragraph (1) is an employee whose appointment was made pursuant to subsection (b) of this section, the rate of compensation for such employee may not exceed the maximum rate of basic pay payable for GS-13 of the General Schedule under section 5332 of title 5.

(d) Consultants

The Chief Executive Officer may procure the temporary and intermittent services of experts and consultants and compensate the experts and consultants in accordance with section 3109(b) of title 5.

(e) Details of personnel

The head of any Federal department or agency may detail on a reimbursable basis, or on a non-reimbursable basis for not to exceed 180 calendar days during any fiscal year, as agreed upon by the Chief Executive Officer and the head of the Federal agency, any of the personnel of that department or agency to the Corporation to assist the Corporation in carrying out the duties of the Corporation under the national service laws. Any detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employee.

(f) Advisory committees

(1) Establishment

The Chief Executive Officer, acting upon the recommendation of the Board, may establish advisory committees in the Corporation to advise the Board with respect to national service issues, such as the type of programs to be established or assisted under the national service laws, priorities and criteria for such programs, and methods of conducting outreach for, and evaluation of, such programs.

(2) Composition

Such an advisory committee shall be composed of members appointed by the Chief Executive Officer, with such qualifications as the Chief Executive Officer may specify.

(3) Expenses

Members of such an advisory committee may be allowed travel expenses as described in section 12651b(d) of this title.

(4) Staff

(A) In general

Except as provided in subparagraph (B), the Chief Executive Officer is authorized to appoint and fix the compensation of such staff as the Chief Executive Officer determines to be necessary to carry out the functions of the advisory committee, without regard to—

- (i) the provisions of title 5 governing appointments in the competitive service; and
- (ii) the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(B) Compensation

If a member of the staff appointed under subparagraph (A) was appointed without regard to the provisions described in clauses (i) and (ii) of subparagraph (A), the rate of compensation for such member may not exceed the maximum rate of basic pay payable for GS-13 of the General Schedule under section 5332 of title 5.

(Pub. L. 101-610, title I, §195, as added and amended Pub. L. 103-82, title II, §§202(a), 203(a)(1)(B), Sept. 21, 1993, 107 Stat. 883, 891.)

REFERENCES IN TEXT

Section 8E of the Inspector General Act of 1978, referred to in subsec. (a), is section 8E of Pub. L. 95-452, as added by Pub. L. 103-82, title II, §202(g)(1), Sept. 21, 1993, 107 Stat. 889, which was renumbered section 8F of the Act by Pub. L. 103-204, §23(a)(3), Dec. 17, 1993, 107 Stat. 2408, and is set out in the Appendix to Title 5, Government Organization and Employees.

The provisions of title 5 governing appointments in the competitive service, referred to in subsecs. (b)(1) and (f)(4)(A)(i), are classified generally to section 3301 et seq. of Title 5.

Section 203(c)(2) of the National and Community Service Trust Act of 1993, referred to in subsec. (c)(2)(C), is section 203(c)(2) of Pub. L. 103-82, which is set out as a note under section 12651 of this title. For the effective date of section 203(c)(2) of this Act, see section 203(d) of Pub. L. 103-82, set out as an Effective Date of 1993 Amendment note under section 12651 of this title.

The Domestic Volunteer Service Act of 1973, referred to in subsec. (c)(2)(C), is Pub. L. 93-113, Oct. 1, 1973, 87 Stat. 394, as amended, which is classified generally to chapter 66 (§4950 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of this title and Tables.

PRIOR PROVISIONS

A prior section 195 of Pub. L. 101-610 was renumbered section 151 by Pub. L. 103-82 and is classified to section 12611 of this title.

AMENDMENTS

1993—Subsecs. (c)(1), (e). Pub. L. 103-82, §203(a)(1)(B), which directed amendment of section 195(c) and (e) of subtitle I of the National and Community Service Act of 1990 by substituting “the national service laws” for “this chapter”, was executed to subsecs. (c)(1) and (e) of this section, which is section 195 of subtitle G of title I of the National Community Service Act of 1990, to reflect the probable intent of Congress.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 203(a)(1)(B) of Pub. L. 103-82 effective Apr. 4, 1994, see section 203(d) of Pub. L. 103-82, set out as a note under section 12651 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1993, see section 202(i) of Pub. L. 103-82, set out as a note under section 12651 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5011, 12638, 12651d, 12651h of this title.

§ 12651g. Administration**(a) Donations****(1) Services****(A) Volunteers**

Notwithstanding section 1342 of title 31, the Corporation may solicit and accept the voluntary services of individuals to assist the Corporation in carrying out the duties of the Corporation under the national service laws, and may provide to such individuals the travel expenses described in section 12651b(d) of this title.

(B) Limitation

Such a volunteer shall not be considered to be a Federal employee and shall not be subject to the provisions of law relating to Federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits, except that—

(i) for the purposes of the tort claims provisions of chapter 171 of title 28, a volunteer under this division shall be considered to be a Federal employee;

(ii) for the purposes of subchapter I of chapter 81 of title 5 relating to compensation to Federal employees for work injuries, volunteers under this division shall be considered to be employees, as defined in section 8101(1)(B) of title 5 and the provisions of such subchapter shall apply; and

(iii) for purposes of the provisions of chapter 11 of part I of title 18, such a volunteer (to whom such provisions would not otherwise apply except for this subsection) shall be a special Government employee.

(C) Inherently governmental function**(i) In general**

Such a volunteer shall not carry out an inherently governmental function.

(ii) Regulations

The Chief Executive Officer shall promulgate regulations to carry out this subparagraph.

(iii) “Inherently governmental function” defined

As used in this subparagraph, the term “inherently governmental function” means any activity that is so intimately related to the public interest as to mandate performance by an officer or employee of the Federal Government, including an activity that requires either the exercise of discretion in applying the authority of the Government or the use of value judgment in making a decision for the Government.

(2) Property**(A) In general**

The Corporation may solicit, accept, hold, administer, use, and dispose of, in furtherance of the purposes of the national service laws, donations of any money or property, real, personal, or mixed, tangible or intangible, received by gift, devise, bequest, or otherwise. Donations accepted under this subparagraph shall be used as nearly as possible in accordance with the terms, if any, of such donation.

(B) Status of contribution

Any donation accepted under subparagraph (A) shall be considered to be a gift, devise, or bequest to, or for the use of, the United States.

(C) Rules

The Chief Executive Officer shall establish written rules to ensure that the solicitation, acceptance, holding, administration, and use of property described in subparagraph (A)—

(i) will not reflect unfavorably upon the ability of the Corporation, or of any officer or employee of the Corporation, to carry out the responsibilities or official duties of the Corporation in a fair and objective manner; and

(ii) will not compromise the integrity of the programs of the Corporation or any official or employee of the Corporation involved in such programs.

(D) Disposition

Upon completion of the use by the Corporation of any property accepted pursuant to subparagraph (A) (other than money or monetary proceeds from sales of property so accepted), such completion shall be reported to the General Services Administration and such property shall be disposed of in accordance with title II of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481 et seq.).

(3) Volunteer

As used in this subsection, the term “volunteer” does not include a participant.

(b) Contracts

Subject to the Federal Property and Administrative Services Act of 1949 [40 U.S.C. 471 et seq.], the Corporation may enter into contracts, and cooperative and interagency agreements, with Federal and State agencies, private firms, institutions, and individuals to conduct activities necessary to assist the Corporation in carrying out the duties of the Corporation under the national service laws.

(c) Office of Management and Budget

Appropriate circulars of the Office of Management and Budget shall apply to the Corporation.

(Pub. L. 101-610, title I, §196, as added Pub. L. 103-82, title II, §§202(a), 203(a)(1)(B), Sept. 21, 1993, 107 Stat. 885, 891.)

REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, referred to in subsecs. (a)(2)(D) and (b), is

act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Title II of the Act is classified principally to subchapter II (§481 et seq.) of chapter 10 of Title 40, Public Buildings, Property, and Works. Provisions of that act relating to contracts are classified to subchapter IV (§251 et seq.) of chapter 4 of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 471 of Title 40 and Tables.

AMENDMENTS

1993—Subsecs. (a)(1)(A), (2)(A), (b). Pub. L. 103-82, §203(a)(1)(B), which directed amendment of section 196(a) and (b) of subtitle I of the National and Community Service Act of 1990 by substituting “the national service laws” for “this chapter”, was executed to subsecs. (a)(1)(A), (2)(A) and (b) of this section, which is section 196 of subtitle G of title I of the National Community Service Act of 1990, to reflect the probable intent of Congress.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 203(a)(1)(B) of Pub. L. 103-82 effective Apr. 4, 1994, see section 203(d) of Pub. L. 103-82, set out as a note under section 12651 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1993, see section 202(i) of Pub. L. 103-82, set out as a note under section 12651 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12601, 12651d of this title.

§ 12651h. Corporation State offices

(a) In general

The Chief Executive Officer shall establish and maintain a decentralized field structure that provides for an office of the Corporation for each State. The office for a State shall be located in, or in reasonable proximity to, such State. Only one such office may carry out the duties described in subsection (b) of this section with respect to a State at any particular time. Such State office may be directed by the representative designated under section 12651f(c) of this title.

(b) Duties

Each State office established pursuant to subsection (a) of this section shall—

(1) provide to the State Commissions established under section 12638 of this title technical and other assistance for the development and implementation of national service plans under section 12638(e)(1) of this title;

(2) provide to community-based agencies and other entities within the State technical assistance for the preparation of applications for assistance under the national service laws, utilizing, as appropriate, information and materials provided by the clearinghouses established pursuant to section 12653a of this title;

(3) provide to the State Commission and other entities within the State support and technical assistance necessary to assure the existence of an effective system of recruitment, placement, and training of volunteers within the State;

(4) monitor and evaluate the performance of all programs and projects within the State that receive assistance under the national service laws; and

(5) perform such other duties and functions as may be assigned or delegated by the Chief Executive Officer.

(Pub. L. 101-610, title I, §196A, as added Pub. L. 103-82, title II, §202(a), Sept. 21, 1993, 107 Stat. 887.)

EFFECTIVE DATE

Section effective Oct. 1, 1993, see section 202(i) of Pub. L. 103-82, set out as a note under section 12651 of this title.

Division H—Investment for Quality and Innovation

PRIOR PROVISIONS

This division is comprised of subtitle H, §§198-198D, of title I of Pub. L. 101-610. A prior part H (§12653 et seq.), comprised of subtitle H, §§195-195O, of title I of Pub. L. 101-610, was renumbered subtitle E, §§151-166, of title I of Pub. L. 101-610 by Pub. L. 103-82, §104(b), and transferred to division E (§12611 et seq.) of this subchapter.

DIVISION REFERRED TO IN OTHER SECTIONS

This division is referred to in sections 12551, 12681 of this title.

§ 12653. Additional Corporation activities to support national service

(a) Methods of conducting activities

The Corporation may carry out this section directly (except as provided in subsection (r) of this section) or through grants, contracts, and cooperative agreements with other entities.

(b) Innovation and quality improvement

The Corporation may undertake activities to improve the quality of national service programs, including service-learning programs, and to support innovative and model programs, including—

- (1) programs, including programs for rural youth, under division B or C of this subchapter;
- (2) employer-based retiree programs;
- (3) intergenerational programs;
- (4) programs involving individuals with disabilities as participants providing service; and
- (5) programs sponsored by Governors.

(c) Summer programs

The Corporation may support service programs intended to be carried out between May 1 and October 1, except that such a program may also include a year-round component.

(d) Community-based agencies

The Corporation may provide training and technical assistance and other assistance to service sponsors and other community-based agencies that provide volunteer placements in order to improve the ability of such agencies to use participants and other volunteers in a manner that results in high-quality service and a positive service experience for the participants and volunteers.

(e) Improve ability to apply for assistance

The Corporation shall provide training and technical assistance, where necessary, to individuals, programs, local labor organizations, State educational agencies, State Commissions, local educational agencies, local governments,

community-based agencies, and other entities to enable them to apply for funding under one of the national service laws, to conduct high-quality programs, to evaluate such programs, and for other purposes.

(f) National service fellowships

The Corporation may award national service fellowships.

(g) Conferences and materials

The Corporation may organize and hold conferences, and prepare and publish materials, to disseminate information and promote the sharing of information among programs for the purpose of improving the quality of programs and projects.

(h) Peace Corps and VISTA training

The Corporation may provide training assistance to selected individuals who volunteer to serve in the Peace Corps or a program authorized under title I of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 et seq.). The training shall be provided as part of the course of study of the individual at an institution of higher education, shall involve service-learning, and shall cover appropriate skills that the individual will use in the Peace Corps or VISTA.

(i) Promotion and recruitment

The Corporation may conduct a campaign to solicit funds for the National Service Trust and other programs and activities authorized under the national service laws and to promote and recruit participants for programs that receive assistance under the national service laws.

(j) Training

The Corporation may support national and regional participant and supervisor training, including leadership training and training in specific types of service and in building the ethic of civic responsibility.

(k) Research

The Corporation may support research on national service, including service-learning.

(l) Intergenerational support

The Corporation may assist programs in developing a service component that combines students, out-of-school youths, and older adults as participants to provide needed community services.

(m) Planning coordination

The Corporation may coordinate community-wide planning among programs and projects.

(n) Youth leadership

The Corporation may support activities to enhance the ability of youth and young adults to play leadership roles in national service.

(o) National program identity

The Corporation may support the development and dissemination of materials, including training materials, and arrange for uniforms and insignia, designed to promote unity and shared features among programs that receive assistance under the national service laws.

(p) Service-learning

The Corporation shall support innovative programs and activities that promote service-learning.

(q) National Youth Service Day

(1) Designation

April 19, 1994, and April 18, 1995, are each designated as "National Youth Service Day". The President is authorized and directed to issue a proclamation calling on the people of the United States to observe the day with appropriate ceremonies and activities.

(2) Federal activities

In order to observe National Youth Service Day at the Federal level, the Corporation may organize and carry out appropriate ceremonies and activities.

(3) Activities

The Corporation may make grants to public or private nonprofit organizations with demonstrated ability to carry out appropriate activities, in order to support such activities on National Youth Service Day.

(r) Assistance for Head Start

The Corporation may make grants to, and enter into contracts and cooperative agreements with, public or nonprofit private agencies and organizations that receive grants or contracts under the Foster Grandparent Program (part B of title II of the Domestic Volunteer Service Act of 1973 [42 U.S.C. 5011 et seq.]), for projects of the type described in section 211(a) of such Act [42 U.S.C. 5011] operating under memoranda of agreement with the Corporation, for the purpose of increasing the number of low-income individuals who provide services under such program to children who participate in Head Start programs under the Head Start Act (42 U.S.C 9831 et seq.).

(s) Martin Luther King, Jr., Service Day

(1) Assistance

The Corporation may make grants to eligible entities described in paragraph (2) to pay for the Federal share of the cost of planning and carrying out service opportunities in conjunction with the Federal legal holiday honoring the birthday of Martin Luther King, Jr. Such service opportunities shall consist of activities reflecting the life and teachings of Martin Luther King, Jr., such as cooperation and understanding among racial and ethnic groups, nonviolent conflict resolution, equal economic and educational opportunities, and social justice.

(2) Eligible entities

Any entity otherwise eligible for assistance under the national services laws shall be eligible to receive a grant under this subsection.

(3) Repealed. Pub. L. 105-354, § 2(b), Nov. 3, 1998, 112 Stat. 3244

(4) Federal share

Grants provided under this subsection to an eligible entity to support the planning and carrying out of a service opportunity in conjunction with the Federal legal holiday honoring the birthday of Martin Luther King, Jr., together with all other Federal funds used to plan or carry out the service opportunity, may not exceed 30 percent of the cost of planning and carrying out the service opportunity.

(5) Calculation of entity contributions

In determining the non-Federal share of the costs of planning and carrying out a service opportunity supported by a grant under this subsection, the Corporation shall consider in-kind contributions (including facilities, equipment, and services) to plan or carry out the service opportunity.

(Pub. L. 101-610, title I, §198, as added and amended Pub. L. 103-82, title I, §104(c), title IV, §405(p)(2), Sept. 21, 1993, 107 Stat. 840, 922; Pub. L. 103-304, §3(a), (b)(6), Aug. 23, 1994, 108 Stat. 1566, 1568; Pub. L. 105-354, §2(b), Nov. 3, 1998, 112 Stat. 3244.)

REFERENCES IN TEXT

The Domestic Volunteer Service Act of 1973, referred to in subsecs. (h) and (r), is Pub. L. 93-113, Oct. 1, 1973, 87 Stat. 394, as amended. Title I and part B of title II of the Act are classified generally to subchapter I (§ 4951 et seq.) and part B (§5011 et seq.) of subchapter II, respectively, of chapter 66 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of this title and Tables.

The Head Start Act, referred to in subsec. (r), is subchapter B (§§635-657) of chapter 8 of subtitle A of title VI of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 499, as amended, which is classified generally to subchapter II (§9831 et seq.) of chapter 105 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of this title and Tables.

PRIOR PROVISIONS

A prior section 12653, Pub. L. 101-610, title I, §195, as added Pub. L. 102-484, div. A, title X, §1092(a)(1), Oct. 23, 1992, 106 Stat. 2522, which stated purpose of Civilian Community Corps, was renumbered section 151 of Pub. L. 101-610 by Pub. L. 103-82, §104(b), and transferred to section 12611 of this title.

AMENDMENTS

1998—Subsec. (s)(3). Pub. L. 105-354 struck out heading and text of par. (3). Text read as follows: "In making grants under this subsection, the Corporation shall consult with the Martin Luther King, Jr. Federal Holiday Commission established under section 169j-1 of title 36."

1994—Subsec. (q)(1). Pub. L. 103-304, §3(b)(6), substituted "1995," for "1995".

Subsec. (s). Pub. L. 103-304, §3(a), added subsec. (s).

1993—Subsec. (r). Pub. L. 103-82, §405(p)(2), substituted "Corporation" for "ACTION Agency".

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 405(p)(2) of Pub. L. 103-82 effective Apr. 4, 1994, see section 406(b) of Pub. L. 103-82, set out as a note under section 8332 of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Division effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as an Effective Date of 1993 Amendment note under section 1701 of Title 16, Conservation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12511 of this title.

§ 12653a. Clearinghouses**(a) Assistance**

The Corporation shall provide assistance to appropriate entities to establish one or more clearinghouses, including the clearinghouse described in section 12551 of this title.

(b) Application

To be eligible to receive assistance under subsection (a) of this section, an entity shall submit an application to the Corporation at such time, in such manner, and containing such information as the Corporation may require.

(c) Function of clearinghouses

An entity that receives assistance under subsection (a) of this section may—

(1) assist entities carrying out State or local community service programs with needs assessments and planning;

(2) conduct research and evaluations concerning community service;

(3)(A) provide leadership development and training to State and local community service program administrators, supervisors, and participants; and

(B) provide training to persons who can provide the leadership development and training described in subparagraph (A);

(4) facilitate communication among entities carrying out community service programs and participants;

(5) provide information, curriculum materials, and technical assistance relating to planning and operation of community service programs, to States and local entities eligible to receive funds under this subchapter;

(6)(A) gather and disseminate information on successful community service programs, components of such successful programs, innovative youth skills curriculum, and community service projects; and

(B) coordinate the activities of the clearinghouse with appropriate entities to avoid duplication of effort;

(7) make recommendations to State and local entities on quality controls to improve the delivery of community service programs and on changes in the programs under this subchapter; and

(8) carry out such other activities as the Chief Executive Officer determines to be appropriate.

(Pub. L. 101-610, title I, §198A, as added Pub. L. 103-82, title I, §104(c), Sept. 21, 1993, 107 Stat. 842.)

PRIOR PROVISIONS

A prior section 12653a, Pub. L. 101-610, title I, §195A, as added Pub. L. 102-484, div. A, title X, §1092(a)(1), Oct. 23, 1992, 106 Stat. 2523, which provided for establishment of Civilian Community Corps Demonstration Program, was renumbered section 152 of Pub. L. 101-610 by Pub. L. 103-82, §104(b), and transferred to section 12612 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12638, 12651h of this title.

§ 12653b. Presidential awards for service**(a) Presidential awards****(1) In general**

The President, acting through the Corporation, may make Presidential awards for service to individuals providing significant service, and to outstanding service programs.

(2) Individuals and programs

Notwithstanding section 12511(19) of this title—

(A) an individual receiving an award under this subsection need not be a participant in a program authorized under this chapter; and

(B) a program receiving an award under this subsection need not be a program authorized under this chapter.

(3) Nature of award

In making an award under this section to an individual or program, the President, acting through the Corporation—

(A) is authorized to incur necessary expenses for the honorary recognition of the individual or program; and

(B) is not authorized to make a cash award to such individual or program.

(b) Information

The President, acting through the Corporation, shall ensure that information concerning individuals and programs receiving awards under this section is widely disseminated.

(Pub. L. 101-610, title I, §198B, as added Pub. L. 103-82, title I, §104(c), Sept. 21, 1993, 107 Stat. 843.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(2), was in the original “this Act”, meaning Pub. L. 101-610, Nov. 16, 1990, 104 Stat. 3127, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12501 of this title and Tables.

PRIOR PROVISIONS

A prior section 12653b, Pub. L. 101-610, title I, §195B, as added Pub. L. 102-484, div. A, title X, §1092(a)(1), Oct. 23, 1992, 106 Stat. 2523, which related to national service program component of Civilian Community Corps Demonstration Program, was renumbered section 153 of Pub. L. 101-610 by Pub. L. 103-82, title I, §104(b), Sept. 21, 1993, 107 Stat. 840, and transferred to section 12613 of this title.

§ 12653c. Military installation conversion demonstration programs

(a) Purposes

The purposes of this section are to—

(1) provide meaningful service opportunities for economically disadvantaged youth;

(2) fully utilize military installations affected by closures or realignments;

(3) encourage communities affected by such closures or realignments to convert the installations to community use; and

(4) foster a sense of community pride in the youth in the community.

(b) Definitions

As used in this section:

(1) Affected military installation

The term “affected military installation” means a military installation being closed or realigned under—

(A) the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of division B of Public Law 101-510; 10 U.S.C. 2687 note); and

(B) title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).

(2) Community

The term “community” includes a county.

(3) Convert to community use

The term “convert to community use”, used with respect to an affected military installation, includes—

(A) conversion of the installation or a part of the installation to—

(i) a park;

(ii) a community center;

(iii) a recreational facility; or

(iv) a facility for a Head Start program under the Head Start Act (42 U.S.C. 9831 et seq.); and

(B) carrying out, at the installation, a construction or economic development project that is of substantial benefit, as determined by the Chief Executive Officer, to—

(i) the community in which the installation is located; or

(ii) a community located within such distance of the installation as the Chief Executive Officer may determine by regulation to be appropriate.

(4) Demonstration program

The term “demonstration program” means a program described in subsection (c) of this section.

(c) Demonstration programs

(1) Grants

The Corporation may make grants to communities and community-based agencies to pay for the Federal share of establishing and carrying out military installation conversion demonstration programs, to assist in converting to community use affected military installations located—

(A) within the community; or

(B) within such distance from the community as the Chief Executive Officer may by regulation determine to be appropriate.

(2) Duration

In carrying out such a demonstration program, the community or community-based agency may carry out—

(A) a program of not less than 6 months in duration; or

(B) a full-time summer program.

(d) Use of funds

(1) Stipend

A community or community-based agency that receives a grant under subsection (c) of this section to establish and carry out a project through a demonstration program may use the funds made available through such grant to pay for a portion of a stipend for the participants in the project.

(2) Limitation on amount of stipend

The amount of the stipend provided to a participant under paragraph (1) that may be paid using assistance provided under this section and using any other Federal funds shall not exceed the lesser of—

(A) 85 percent of the total average annual subsistence allowance provided to VISTA volunteers under section 4955 of this title; and

(B) 85 percent of the stipend established by the demonstration program involved.

(e) Participants

(1) Eligibility

A person shall be eligible to be selected as a participant in a project carried out through a demonstration program if the person is—

- (A) an economically disadvantaged individual; and
- (B)(i) a person described in section 12613(b) of this title;
- (ii) a youth described in section 12614(a) of this title; or
- (iii) an individual described in section 2884 of title 29.

(2) Participation

Persons desiring to participate in such a project shall enter into an agreement with the service sponsor of the project to participate—

- (A) on a full-time or a part-time basis; and
- (B) for the duration referred to in subsection (f)(2)(C) of this section.

(f) Application

(1) In general

To be eligible to receive a grant under subsection (c) of this section, a community or community-based agency shall submit an application to the Chief Executive Officer at such time, in such manner, and containing such information as the Chief Executive Officer may require.

(2) Contents

At a minimum, such application shall contain—

- (A) a description of the demonstration program proposed to be conducted by the applicant;
- (B) a proposal for carrying out the program that describes the manner in which the applicant will—
 - (i) provide preservice and inservice training, for supervisors and participants, that will be conducted by qualified individuals or qualified organizations;
 - (ii) conduct an appropriate evaluation of the program; and
 - (iii) provide for appropriate community involvement in the program;
- (C) information indicating the duration of the program; and
- (D) an assurance that the applicant will comply with the nonduplication and non-displacement provisions of section 12637 of this title and the grievance procedure requirements of section 12636(f) of this title.

(g) Limitation on grant

In making a grant under subsection (c) of this section with respect to a demonstration program to assist in converting an affected military installation, the Corporation shall not make a grant for more than 25 percent of the total cost of the conversion.

(Pub. L. 101-610, title I, §198C, as added Pub. L. 103-82, title I, §104(c), Sept. 21, 1993, 107 Stat. 843; amended Pub. L. 105-277, div. A, §101(f) [title VIII, §405(d)(42)(B), (f)(33)(A)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-428, 2681-434.)

REFERENCES IN TEXT

The Defense Base Closure and Realignment Act of 1990, referred to in subsec. (b)(1)(A), is part A of title XXIX of div. B of Pub. L. 101-510, Nov. 5, 1990, 104 Stat. 1808, which is set out as a note under section 2687 of Title 10, Armed Forces. For complete classification of this Act to the Code, see Tables.

The Defense Authorization Amendments and Base Closure and Realignment Act, referred to in subsec. (b)(1)(B), is Pub. L. 100-526, Oct. 24, 1988, 102 Stat. 2623, as amended. Title II of the Act is set out as a note under section 2687 of Title 10, Armed Forces. For complete classification of this Act to the Code, see Short Title of 1988 Amendment note set out under section 2687 of Title 10 and Tables.

The Head Start Act, referred to in subsec. (b)(3)(A)(iv), is subchapter B (§§635-657) of chapter 8 of subtitle A of title VI of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 499, as amended, which is classified generally to subchapter II (§9831 et seq.) of chapter 105 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of this title and Tables.

PRIOR PROVISIONS

A prior section 12653c, Pub. L. 101-610, title I, §195C, as added Pub. L. 102-484, div. A, title X, §1092(a)(1), Oct. 23, 1992, 106 Stat. 2524, which related to summer national service program of Civilian Community Corps Demonstration Program, was renumbered section 154 of Pub. L. 101-610 by Pub. L. 103-82, §104(b), and transferred to section 12614 of this title.

AMENDMENTS

1998—Subsec. (b)(1). Pub. L. 105-277, §101(f) [title VIII, §405(d)(42)(B)(i)], substituted “a military installation being closed or realigned under—” and subpars. (A) and (B) for “a military installation described in section 1662d(e)(1) of title 29”.

Subsec. (e)(1)(B)(iii). Pub. L. 105-277, §101(f) [title VIII, §405(f)(33)(A)], added cl. (iii) and struck out former cl. (iii) which read as follows: “an eligible youth described in section 1693 of title 29 or an individual described in section 2884 of title 29.”

Pub. L. 105-277, §101(f) [title VIII, §405(d)(42)(B)(ii)], added cl. (iii) and struck out former cl. (iii) which read as follows: “an eligible youth described in section 1693 of title 29.”

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 101(f) [title VIII, §405(d)(42)(B)] of Pub. L. 105-277 effective Oct. 21, 1998, and amendment by section 101(f) [title VIII, §405(f)(33)(A)] of Pub. L. 105-277 effective July 1, 2000, see section 101(f) [title VIII, §405(g)(1), (2)(B)] of Pub. L. 105-277, set out as a note under section 3502 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12511 of this title.

§ 12653d. Special demonstration project

(a) Special demonstration project for the Yukon-Kuskokwim delta of Alaska

The President may award grants to, and enter into contracts with, organizations to carry out programs that address significant human needs in the Yukon-Kuskokwim delta region of Alaska.

(b) Application

(1) General requirements

To be eligible to receive a grant or enter into a contract under subsection (a) of this section with respect to a program, an organi-

zation shall submit an application to the President at such time, in such manner, and containing such information as the President may require.

(2) Contents

The application submitted by the organization shall, at a minimum—

(A) include information describing the manner in which the program will utilize VISTA volunteers, individuals who have served in the Peace Corps, and other qualified persons, in partnership with the local nonprofit organizations known as the Yukon-Kuskokwim Health Corporation and the Alaska Village Council Presidents;

(B) take into consideration—

(i) the primarily noncash economy of the region; and

(ii) the needs and desires of residents of the local communities in the region; and

(C) include specific strategies, developed in cooperation with the Yupi'k speaking population that resides in such communities, for comprehensive and intensive community development for communities in the Yukon-Kuskokwim delta region.

(Pub. L. 101-610, title I, §198D, as added Pub. L. 103-82, title I, §104(c), Sept. 21, 1993, 107 Stat. 845.)

PRIOR PROVISIONS

Prior sections 12653d to 12653o relating to Civilian Community Corps were renumbered by Pub. L. 103-82, §104(b), and transferred as follows:

Section 12653d, Pub. L. 101-610, title I, §195D, as added Pub. L. 102-484, div. A, title X, §1092(a)(1), Oct. 23, 1992, 106 Stat. 2524, which related to organization and membership of the Corps, was renumbered section 155 of Pub. L. 101-610 and transferred to section 12615 of this title.

Section 12653e, Pub. L. 101-610, title I, §195E, as added Pub. L. 102-484, div. A, title X, §1092(a)(1), Oct. 23, 1992, 106 Stat. 2525, which provided for training of Corps members, was renumbered section 156 of Pub. L. 101-610 and transferred to section 12616 of this title.

Section 12653f, Pub. L. 101-610, title I, §195F, as added Pub. L. 102-484, div. A, title X, §1092(a)(1), Oct. 23, 1992, 106 Stat. 2526, which related to service projects carried out by the Corps, was renumbered section 157 of Pub. L. 101-610 and transferred to section 12617 of this title.

Section 12653g, Pub. L. 101-610, title I, §195G, as added Pub. L. 102-484, div. A, title X, §1092(a)(1), Oct. 23, 1992, 106 Stat. 2526, which related to authorized benefits for Corps members, was renumbered section 158 of Pub. L. 101-610 and transferred to section 12618 of this title.

Section 12653h, Pub. L. 101-610, title I, §195H, as added Pub. L. 102-484, div. A, title X, §1092(a)(1), Oct. 23, 1992, 106 Stat. 2528, which related to administration of the Corps, was renumbered section 159 of Pub. L. 101-610 and transferred to section 12619 of this title.

Section 12653i, Pub. L. 101-610, title I, §195I, as added Pub. L. 102-484, div. A, title X, §1092(a)(1), Oct. 23, 1992, 106 Stat. 2530, which related to status of Corps members and Corps personnel under Federal law, was renumbered section 160 of Pub. L. 101-610 and transferred to section 12620 of this title.

Section 12653j, Pub. L. 101-610, title I, §195J, as added Pub. L. 102-484, div. A, title X, §1092(a)(1), Oct. 23, 1992, 106 Stat. 2530, which provided for contract and grant authority of Corps Director, was renumbered section 161 of Pub. L. 101-610 and transferred to section 12621 of this title.

Section 12653k, Pub. L. 101-610, title I, §195K, as added Pub. L. 102-484, div. A, title X, §1092(a)(1), Oct. 23, 1992,

106 Stat. 2531, which set out other departments' responsibilities to the Corps, was renumbered section 162 of Pub. L. 101-610 and transferred to section 12622 of this title.

Section 12653l, Pub. L. 101-610, title I, §195L, as added Pub. L. 102-484, div. A, title X, §1092(a)(1), Oct. 23, 1992, 106 Stat. 2532, which related to Advisory Board for the Corps, was renumbered section 163 of Pub. L. 101-610 and transferred to section 12623 of this title.

Section 12653m, Pub. L. 101-610, title I, §195M, as added Pub. L. 102-484, div. A, title X, §1092(a)(1), Oct. 23, 1992, 106 Stat. 2532, which provided for annual evaluations of Corps programs, was renumbered section 164 of Pub. L. 101-610 and transferred to section 12624 of this title.

Section 12653n, Pub. L. 101-610, title I, §195N, as added Pub. L. 102-484, div. A, title X, §1092(a)(1), Oct. 23, 1992, 106 Stat. 2532, which limited funding for Corps programs, was renumbered section 165 of Pub. L. 101-610 and transferred to section 12625 of this title.

Section 12653o, Pub. L. 101-610, title I, §195O, as added Pub. L. 102-484, div. A, title X, §1092(a)(1), Oct. 23, 1992, 106 Stat. 2532, which defined terms used in former part H of this subchapter, was renumbered section 166 of Pub. L. 101-610 and transferred to section 12626 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12511 of this title.

Division I—American Conservation and Youth Service Corps

CODIFICATION

Subtitle I of title I of Pub. L. 101-610, comprising this division, was formerly classified to part C (§12541 et seq.) of this subchapter prior to the general amendment by Pub. L. 103-82, §101(a).

DIVISION REFERRED TO IN OTHER SECTIONS

This division is referred to in sections 12572, 12651d of this title.

§ 12655. General authority

The Corporation may make grants to States or local applicants and may transfer funds to the Secretary of Agriculture or to the Secretary of the Interior for the creation or expansion of full-time, part-time, year-round, or summer, youth corps programs¹ To the extent practicable, the Corporation shall apply the provisions of division C of this subchapter in making grants under this section.

(Pub. L. 101-610, title I, §199A, formerly §121, Nov. 16, 1990, 104 Stat. 3140; Pub. L. 102-384, §5, Oct. 5, 1992, 106 Stat. 1455; renumbered §199A and amended Pub. L. 103-82, title I, §101(a), (e)(1), (2), Sept. 21, 1993, 107 Stat. 788, 815.)

CODIFICATION

Section was formerly classified to section 12541 of this title prior to renumbering by Pub. L. 103-82, §101(a).

AMENDMENTS

1993—Pub. L. 103-82, §101(e)(1), (2), substituted “Corporation” for “Commission”, substituted “or to the Secretary of the Interior” for “, to the Secretary of the Interior, or to the Director of ACTION”, struck out “under section 12512 of this title” after “may make grants”, and inserted at end “To the extent practicable, the Corporation shall apply the provisions of

¹ So in original. Probably should be followed by a period.

division C of this subchapter in making grants under this section.”

1992—Pub. L. 102-384 amended section generally. Prior to amendment, section read as follows: “The Commission may make grants under section 12512 of this title to States or local applicants, to the Secretary of Agriculture, to the Secretary of the Interior, or to the Director of ACTION for the creation or expansion of full-time or summer youth corps programs.”

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12655b of this title.

§ 12655a. Limitation on purchase of capital equipment

Not to exceed 10 percent of the amount of assistance made available to a program agency under this division shall be used for the purchase of major capital equipment.

(Pub. L. 101-610, title I, §199B, formerly §122, Nov. 16, 1990, 104 Stat. 3140; Pub. L. 102-10, §5(2), Mar. 12, 1991, 105 Stat. 30; renumbered §199B and amended Pub. L. 103-82, title I, §101(a), (e)(3), Sept. 21, 1993, 107 Stat. 788, 815.)

CODIFICATION

Section was formerly classified to section 12542 of this title prior to renumbering by Pub. L. 103-82, §101(a).

AMENDMENTS

1993—Pub. L. 103-82, §101(e)(3), amended section generally, substituting provisions relating to limitation on purchase of capital equipment for provisions relating to allocation of funds.

1991—Subsec. (e). Pub. L. 102-10 inserted “service” after “youth”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

§ 12655b. State application

(a) Submission

To be eligible to receive a grant under this division, a State or Indian tribe (or a local applicant if section 12655 of this title applies) shall prepare and submit to the Corporation, an application at such time, in such manner, and containing such information as the Corporation may reasonably require.

(b) General content

An application submitted under subsection (a) of this section shall describe—

- (1) any youth corps program proposed to be conducted directly by such applicant with assistance provided under this division; and
- (2) any grant program proposed to be conducted by such State with assistance provided under this division for the benefit of entities within such State.

(Pub. L. 101-610, title I, §199C, formerly §123, Nov. 16, 1990, 104 Stat. 3141; Pub. L. 102-10, §5(3), Mar. 12, 1991, 105 Stat. 30; renumbered §199C and

amended Pub. L. 103-82, title I, §101(a), (e)(1), (4), Sept. 21, 1993, 107 Stat. 788, 815.)

CODIFICATION

Section was formerly classified to section 12543 of this title prior to renumbering by Pub. L. 103-82, §101(a).

AMENDMENTS

1993—Subsec. (a). Pub. L. 103-82, §101(e)(1), (4)(A), substituted “Corporation” for “Commission” in two places and “section 12655 of this title” for “section 12542(b) of this title” and struck out before period at end “, including the information required under subsection (b) of this section”.

Subsecs. (c), (d). Pub. L. 103-82, §101(e)(4)(B), struck out subsec. (c) which specified required contents of State applications and subsec. (d) which required State applicants to establish and implement programs to make grants to applicants within the State.

1991—Subsec. (c)(14), (15). Pub. L. 102-10 added par. (14) and redesignated former par. (14) as (15).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12655e, 12655h of this title.

§ 12655c. Focus of programs

(a) In general

Programs that receive assistance under this division may carry out activities that—

(1) in the case of conservation corps programs, focus on—

(A) conservation, rehabilitation, and the improvement of wildlife habitat, rangelands, parks, and recreational areas;

(B) urban and rural revitalization, historical and cultural site preservation, and reforestation of both urban and rural areas;

(C) fish culture, wildlife habitat maintenance and improvement, and other fishery assistance;

(D) road and trail maintenance and improvement;

(E) erosion, flood, drought, and storm damage assistance and controls;

(F) stream, lake, waterfront harbor, and port improvement;

(G) wetlands protection and pollution control;

(H) insect, disease, rodent, and fire prevention and control;

(I) the improvement of abandoned railroad beds and rights-of-way;

(J) energy conservation projects, renewable resource enhancement, and recovery of biomass;

(K) reclamation and improvement of strip-mined land;

(L) forestry, nursery, and cultural operations; and

(M) making public facilities accessible to individuals with disabilities.

(2) in the case of youth service corps programs, include participant service in—

(A) State, local, and regional governmental agencies;

(B) nursing homes, hospices, senior centers, hospitals, local libraries, parks, recreational facilities, child and adult day care centers, programs serving individuals with disabilities, and schools;

(C) law enforcement agencies,¹ and penal and probation systems;

(D) private nonprofit organizations that primarily focus on social service such as community action agencies;

(E) activities that focus on the rehabilitation or improvement of public facilities, neighborhood improvements, literacy training that benefits educationally disadvantaged individuals, weatherization of and basic repairs to low-income housing including housing occupied by older adults, energy conservation (including solar energy techniques), removal of architectural barriers to access by individuals with disabilities to public facilities, activities that focus on drug and alcohol abuse education, prevention and treatment, and conservation, maintenance, or restoration of natural resources on publicly held lands; and

(F) any other nonpartisan civic activities and services that the Corporation determines to be of a substantial social benefit in meeting unmet human, educational, or environmental needs (particularly needs related to poverty) or in the community where volunteer service is to be performed; or

(3) encompass the focuses and services described in both paragraphs (1) and (2).

(b) Limitation on service

No participant shall perform any specific activity for more than a 6-month period. No participant shall remain enrolled in programs assisted under this division for more than 24 months.

(Pub. L. 101-610, title I, §199D, formerly §124, Nov. 16, 1990, 104 Stat. 3143; Pub. L. 102-10, §5(4), Mar. 12, 1991, 105 Stat. 30; renumbered §199D and amended Pub. L. 103-82, title I, §101(a), (e)(1), (5), Sept. 21, 1993, 107 Stat. 788, 815, 816.)

CODIFICATION

Section was formerly classified to section 12544 of this title prior to renumbering by Pub. L. 103-82, §101(a).

AMENDMENTS

1993—Subsec. (a)(2)(F). Pub. L. 103-82, §101(e)(1), substituted “Corporation” for “Commission”.

Subsecs. (b), (c). Pub. L. 103-82, §101(e)(5), redesignated subsec. (c) as (b) and struck out former subsec. (b) which related to ineligible service categories.

1991—Subsec. (a)(2). Pub. L. 102-10, §5(4)(A), substituted “youth service” for “human services” in introductory provisions.

Subsec. (c). Pub. L. 102-10, §5(4)(B), substituted “any specific activity for more than a 6-month period. No participant shall remain enrolled in programs” for “services in any project for more than a 6-month period. No participant shall remain enrolled in projects”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

¹ So in original. The comma probably should not appear.

§ 12655d. Related programs

An activity administered under the authority of the Secretary of Health and Human Services, that is operated for the same purpose as a program eligible to be carried out under this division, is encouraged to use services available under this division.

(Pub. L. 101-610, title I, §199E, formerly §125, Nov. 16, 1990, 104 Stat. 3144; renumbered §199E, Pub. L. 103-82, title I, §101(a), Sept. 21, 1993, 107 Stat. 788.)

CODIFICATION

Section was formerly classified to section 12545 of this title prior to renumbering by Pub. L. 103-82, §101(a).

§ 12655e. Public lands or Indian lands

(a) Limitation

To be eligible to receive assistance through a grant provided under this division, a program shall carry out activities on public lands or Indian lands, or result in a public benefit.

(b) Review of applications

In reviewing applications submitted under section 12655b of this title that propose programs or projects to be carried out on public lands or Indian lands, the Corporation shall consult with the Secretary of the Interior.

(c) Consistency

A program carried out with assistance provided under this division for conservation, rehabilitation, or improvement of any public lands or Indian lands shall be consistent with—

(1) the provisions of law and policies relating to the management and administration of such lands, and all other applicable provisions of law; and

(2) all management, operational, and other plans and documents that govern the administration of such lands.

(d) Participation by other conservation programs

Any land or water conservation program (or any related program) administered in any State under the authority of any Federal program is encouraged to use services available under this part¹ to carry out its program.

(Pub. L. 101-610, title I, §199F, formerly §126, Nov. 16, 1990, 104 Stat. 3144; renumbered §199F and amended Pub. L. 103-82, title I, §101(a), (e)(1), (6), Sept. 21, 1993, 107 Stat. 788, 815, 816.)

REFERENCES IN TEXT

This part, referred to in subsec. (d), is unidentifiable in the original because subtitle I (§§199 to 1990) of title I of Pub. L. 101-610 does not contain parts.

CODIFICATION

Section was formerly classified to section 12546 of this title prior to renumbering by Pub. L. 103-82, §101(a).

AMENDMENTS

1993—Subsec. (b). Pub. L. 103-82, §101(e)(1), (6), substituted “Corporation” for “Commission” and “section 12655b of this title” for “section 12543 of this title”.

¹ See References in Text note below.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

§ 12655f. Training and education services**(a) Assessment of skills**

Each program agency shall assess the educational level of participants at the time of their entrance into the program, using any available records or simplified assessment means or methodology and shall, where appropriate, refer such participants for testing for specific learning disabilities.

(b) Enhancement of skills

Each program agency shall, through the programs and activities administered under this division, enhance the educational skills of participants.

(c) Provision of pre-service and in-service training and education**(1) Requirement**

Each program agency shall use not less than 10 percent of the assistance made available to such agency under this division in each fiscal year to provide pre-service and in-service training and educational materials and services for participants in such a program. Program participants shall be provided with information concerning the benefits to the community that result from the activities undertaken by such participants.

(2) Agreements for academic study

A program agency may enter into arrangements with academic institutions or education providers, including—

- (A) local education agencies;
- (B) community colleges;
- (C) 4-year colleges;
- (D) area vocational-technical schools; and
- (E) community based organizations;

to evaluate the basic skills of participants and to make academic study available to participants to enable such participants to upgrade literacy skills, to obtain high school diplomas or the equivalent of such diplomas, to obtain college degrees, or to enhance employable skills.

(3) Counseling

Career and educational guidance and counseling shall be provided to a participant during a period of in-service training as described in this subsection. Each graduating participant shall be provided with counseling with respect to additional study, job skills training or employment and shall be provided job placement assistance where appropriate.

(4) Priority for participants without high school diplomas

A program agency shall give priority to participants who have not obtained a high school diploma or the equivalent of such diploma, in providing services under this subsection.

(d) Standards and procedures**(1) Consistency with State and local requirements**

Appropriate State and local officials shall certify that standards and procedures with re-

spect to the awarding of academic credit and the certification of educational attainment in programs conducted under subsection (c) of this section are consistent with the requirements of applicable State and local law and regulations.

(2) Academic standards

The standards and procedures described in paragraph (1) shall provide that an individual serving in a program that receives assistance under this division—

(A) who is not a high school graduate, participate in an educational curriculum so that such individual can earn a high school diploma or the equivalent of such diploma; and

(B) may arrange to receive academic credit in recognition of the education and skills obtained from service satisfactorily completed.

(Pub. L. 101-610, title I, §199G, formerly §127, Nov. 16, 1990, 104 Stat. 3145; renumbered §199G, Pub. L. 103-82, title I, §101(a), Sept. 21, 1993, 107 Stat. 788.)

CODIFICATION

Section was formerly classified to section 12547 of this title prior to renumbering by Pub. L. 103-82, §101(a).

§ 12655g. Repealed. Pub. L. 103-82, title I, § 101(e)(8)(A), Sept. 21, 1993, 107 Stat. 816

Section, Pub. L. 101-610, title I, §199H, formerly §128, Nov. 16, 1990, 104 Stat. 3146; Pub. L. 102-10, §5(5), Mar. 12, 1991, 105 Stat. 30; renumbered §199H, Pub. L. 103-82, title I, §101(a), Sept. 21, 1993, 107 Stat. 788, related to amount of award and matching requirement.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as an Effective Date of 1993 Amendment note under section 1701 of Title 16, Conservation.

§ 12655h. Preference for certain projects**(a) In general**

In the consideration of applications submitted under section 12655b of this title, the Corporation shall give preference to programs that—

- (1) will provide long-term benefits to the public;
- (2) will instill a work ethic and a sense of public service in the participants;
- (3) will be labor intensive, and involve youth operating in crews;
- (4) can be planned and initiated promptly; and
- (5) will enhance skills development and educational level and opportunities for the participants.

(b) Special rule

In the consideration of applications under this division the Corporation shall ensure the equitable treatment of both urban and rural areas.

(Pub. L. 101-610, title I, §199H, formerly §129, Nov. 16, 1990, 104 Stat. 3146; renumbered §199I, renumbered §199H, and amended Pub. L. 103-82, title I, §101(a), (e)(1), (7), (8)(B), Sept. 21, 1993, 107 Stat. 788, 815, 816.)

CODIFICATION

Section was formerly classified to section 12549 of this title prior to renumbering by Pub. L. 103-82, §101(a).

PRIOR PROVISIONS

A prior section 199H of Pub. L. 101-610 was classified to section 12655g of this title prior to repeal by Pub. L. 103-82, §101(e)(8)(A).

AMENDMENTS

1993—Subsec. (a). Pub. L. 103-82, §101(e)(1), (7), in introductory provisions, substituted “Corporation” for “Commission” and “section 12655b” for “section 12543”.

Subsec. (b). Pub. L. 103-82, §101(e)(1), substituted “Corporation” for “Commission”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

§ 12655i. Age and citizenship criteria for enrollment**(a) Age and citizenship**

Enrollment in programs that receive assistance under this division shall be limited to individuals who, at the time of enrollment, are—

(1) not less than 16 years nor more than 25 years of age, except that summer programs may include individuals not less than 14 years nor more than 21 years of age at the time of the enrollment of such individuals; and

(2) citizens or nationals of the United States or lawful permanent resident aliens of the United States.

(b) Participation of disadvantaged youth

Programs that receive assistance under this division shall ensure that educationally and economically disadvantaged youth, including youth in foster care who are becoming too old for foster care, youth with disabilities, youth with limited English proficiency, youth with limited basic skills or learning disabilities and homeless youth, are offered opportunities to enroll.

(c) Special corps members

Notwithstanding subsection (a)(1) of this section, program agencies may enroll a limited number of special corps members over age 25 so that the corps may draw on their special skills to fulfill the purposes of this chapter. Programs are encouraged to consider senior citizens as special corps members.

(d) Joint projects with senior citizens organizations

Program agencies shall use not more than 2 percent of amounts received under this division to conduct joint projects with senior citizens organizations to enable senior citizens to serve as mentors for youth participants.

(e) Construction

Nothing in subsection (a) of this section shall be construed to prohibit any program agency from limiting enrollment to any age subgroup within the range specified in subsection (a)(1) of this section.

(Pub. L. 101-610, title I, §199I, formerly §130, Nov. 16, 1990, 104 Stat. 3146; Pub. L. 102-384, §6, Oct. 5, 1992, 106 Stat. 1456; renumbered §199J, renumbered §199I, Pub. L. 103-82, title I, §101(a), (e)(8)(B), Sept. 21, 1993, 107 Stat. 788, 816.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c), was in the original “this Act”, meaning Pub. L. 101-610, Nov. 16,

1990, 104 Stat. 3127, as amended, known as the National and Community Service Act of 1990, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12501 of this title and Tables.

CODIFICATION

Section was formerly classified to section 12550 of this title prior to renumbering by Pub. L. 103-82, §101(a).

AMENDMENTS

1992—Subsec. (a)(1). Pub. L. 102-384 substituted “14” for “15”.

§ 12655j. Use of volunteers

Program agencies may use volunteer services for purposes of assisting projects carried out under this division and may expend funds made available for those purposes to the agency, including funds made available under this division, to provide for services or costs incidental to the utilization of such volunteers, including transportation, supplies, lodging, recruiting, training, and supervision. The use of volunteer services under this section shall be subject to the condition that such use does not result in the displacement of any participant.

(Pub. L. 101-610, title I, §199J, formerly §131, Nov. 16, 1990, 104 Stat. 3147; renumbered §199K, renumbered §199J, Pub. L. 103-82, title I, §101(a), (e)(8)(B), Sept. 21, 1993, 107 Stat. 788, 816.)

CODIFICATION

Section was formerly classified to section 12551 of this title prior to renumbering by Pub. L. 103-82, §101(a).

§ 12655k. Repealed. Pub. L. 103-82, title I, § 101(e)(8)(A), Sept. 21, 1993, 107 Stat. 816

Section, Pub. L. 101-610, title I, §199L, formerly §132, Nov. 16, 1990, 104 Stat. 3147; renumbered §199L, Pub. L. 103-82, title I, §101(a), Sept. 21, 1993, 107 Stat. 788, related to post-service benefits.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as an Effective Date of 1993 Amendment note under section 1701 of Title 16, Conservation.

§ 12655l. Living allowance**(a) Full-time service****(1) Living allowance required**

Subject to paragraph (3), each participant in a full-time youth corps program that receives assistance under this division shall receive a living allowance in an amount equal to or greater than the average annual subsistence allowance provided to VISTA volunteers under section 4955 of this title.

(2) Limitation on Federal share

The amount of the annual living allowance provided under paragraph (1) that may be paid using assistance provided under this division, section 12571 of this title, and any other Federal funds shall not exceed 85 percent of the total average annual subsistence allowance provided to VISTA volunteers under section 4955 of this title.

(3) Maximum living allowance

The total amount of an annual living allowance that may be provided to a participant in

a full-time youth corps program that receives assistance under this division shall not exceed 200 percent of the average annual subsistence allowance provided to VISTA volunteers under section 4955 of this title.

(4) Waiver or reduction of living allowance

The Corporation may waive or reduce the requirement of paragraph (1) with respect to such national service program if such program demonstrates that—

(A) such requirement is inconsistent with the objectives of the program; and

(B) the amount of the living allowance that will be provided to each full-time participant is sufficient to meet the necessary costs of living (including food, housing, and transportation) in the area in which the program is located.

(5) Exemption

The requirement of paragraph (1) shall not apply to any program that was in existence on September 21, 1993.

(b) Reduction in existing program benefits

(1) In general

Nothing in this section shall be construed to require a program in existence on November 16, 1990, to decrease any stipends, salaries, or living allowances provided to participants under such program so long as the amount of any such stipends, salaries, or living allowances that is in excess of the levels provided for in this section are paid from non-Federal sources.

(2) Fair Labor Standards Act of 1938

For purposes of the Fair Labor Standards Act of 1938 [29 U.S.C. 201 et seq.], residential youth corps programs under this division will be considered an organized camp.

(c) Health insurance

In addition to the living allowance provided under subsection (a) of this section, program agencies are encouraged to provide health insurance to each participant in a full-time youth corps program who does not otherwise have access to health insurance.

(d) Facilities, services, and supplies

(1) In general

The program agency may deduct, from amounts provided under subsection (a) of this section to a participant, a reasonable portion of the costs of the rates for any room and board that is provided for such participant at a residential facility. Such deducted funds shall be deposited into rollover accounts that shall be used solely to defray the costs of room and board for participants.

(2) Evaluation

The program agency shall establish the amount of the deductions and rates under paragraph (1) after evaluating the costs of providing such room and board to the participant.

(3) Duties of program agency

A program agency may provide facilities, quarters, and board and shall provide limited and emergency medical care, transportation

from administrative facilities to work sites, accommodations for individuals with disabilities, and other appropriate services, supplies, and equipment to each participant.

(4) Other Federal agencies

(A) In general

The Corporation may provide services, facilities, supplies, and equipment, including any surplus food and equipment available from other Federal programs, to any program agency carrying out projects under this division.

(B) Secretary of Defense

Whenever possible, the Corporation shall make arrangements with the Secretary of Defense to have logistical support provided by a military installation near the work site, including the provision of temporary tent centers where needed, and other supplies and equipment.

(5) Health and safety standards

The Corporation and program agencies shall establish standards and enforcement procedures concerning the health and safety of participants for all projects, consistent with Federal, State, and local health and safety standards.

(Pub. L. 101-610, title I, §199K, formerly §133, Nov. 16, 1990, 104 Stat. 3147; Pub. L. 102-10, §5(6), Mar. 12, 1991, 105 Stat. 30; renumbered §199M, renumbered §199K, and amended Pub. L. 103-82, title I, §101(a), (d), (e)(1), (8)(B), Sept. 21, 1993, 107 Stat. 788, 814-816.)

REFERENCES IN TEXT

The Fair Labor Standards Act of 1938, referred to in subsec. (b)(2), is act June 25, 1938, ch. 676, 52 Stat. 1060, as amended, which is classified principally to chapter 8 (§201 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see section 201 of Title 29 and Tables.

CODIFICATION

Section was formerly classified to section 12553 of this title prior to renumbering by Pub. L. 103-82, §101(a).

AMENDMENTS

1993—Subsec. (a). Pub. L. 103-82, §101(d), added pars. (1) to (5) and struck out former pars. (1) and (2) which read as follows:

“(1) IN GENERAL.—From assistance provided under this part, each participant in a full-time youth corps program that receives assistance under this part shall receive a living allowance of not more than an amount equal to 100 percent of the poverty line for a family of two (as defined in section 9902(2) of this title).

“(2) NON-FEDERAL SOURCES.—Notwithstanding paragraph (1), a program agency may provide participants with additional amounts that are made available from non-Federal sources.”

Subsec. (d)(4)(A), (B), (5). Pub. L. 103-82, §101(e)(1), substituted “Corporation” for “Commission”.

1991—Subsec. (d)(1). Pub. L. 102-10 substituted “subsection (a)” for “subsections (a) and (c)”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

§ 12655m. Joint programs**(a) Development**

The Corporation may develop, in cooperation with the heads of other Federal agencies, regulations designed to permit, where appropriate, joint programs in which activities supported with assistance made available under this division are coordinated with activities supported with assistance made available under programs administered by the heads of such agencies (including title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.]).

(b) Standards

Regulations promulgated under subsection (a) of this section shall establish standards for the approval of joint programs that meet both the purposes of this subchapter and the purposes of such statutes under which assistance is made available to support such projects.

(c) Operation of management agreements

Program agencies may enter into contracts and other appropriate arrangements with local government agencies and nonprofit organizations for the operation or management of any projects or facilities under the program.

(d) Coordination

The Corporation and program agencies carrying out programs under this division shall coordinate the programs with related Federal, State, local, and private activities.

(Pub. L. 101-610, title I, §199L, formerly §134, Nov. 16, 1990, 104 Stat. 3148; renumbered §199N, renumbered §199L, and amended Pub. L. 103-82, title I, §101(a), (e)(1), (8)(B), Sept. 21, 1993, 107 Stat. 788, 815, 816; Pub. L. 105-277, div. A, §101(f) [title VIII, §405(d)(42)(C), (f)(33)(B)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-428, 2681-434.)

REFERENCES IN TEXT

The Workforce Investment Act of 1998, referred to in subsec. (a), is Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 936, as amended. Title I of the Act is classified principally to chapter 30 (§2801 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

CODIFICATION

Section was formerly classified to section 12554 of this title prior to renumbering by Pub. L. 103-82, §101(a).

PRIOR PROVISIONS

A prior section 199L of Pub. L. 101-610 was classified to section 12655k of this title prior to repeal by Pub. L. 103-82, §101(e)(8)(A).

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-277, §101(f) [title VIII, §405(f)(33)(B)], struck out “the Job Training Partnership Act and” after “(including)”.

Pub. L. 105-277, §101(f) [title VIII, §405(d)(42)(C)], substituted “the Job Training Partnership Act and title I of the Workforce Investment Act of 1998” for “the Job Training Partnership Act (29 U.S.C. 1501 et seq.)”.

1993—Subsecs. (a), (d). Pub. L. 103-82, §101(e)(1), substituted “Corporation” for “Commission”.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 101(f) [title VIII, §405(d)(42)(C)] of Pub. L. 105-277 effective Oct. 21, 1998,

and amendment by section 101(f) [title VIII, §405(f)(33)(B)] of Pub. L. 105-277 effective July 1, 2000, see section 101(f) [title VIII, §405(g)(1), (2)(B)] of Pub. L. 105-277, set out as a note under section 3502 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

§ 12655n. Federal and State employee status**(a) In general**

Participants and crew leaders shall be responsible to, or be the responsibility of, the program agency administering the program on which such participants, crew leaders, and volunteers work.

(b) Non-Federal employees**(1) In general**

Except as otherwise provided in this subsection, a participant or crew leader in a program that receives assistance under this division shall not be considered a Federal employee and shall not be subject to the provisions of law relating to Federal employment.

(2) Work-related injury

For purposes of subchapter I of chapter 81 of title 5, relating to the compensation of Federal employees for work injuries, a participant or crew leader serving in a program that receives assistance under this division shall be considered an employee of the United States within the meaning of the term “employee” as defined in section 8101 of title 5 and the provision¹ of that subchapter shall apply, except—

(A) the term “performance of duty”, as used in such subchapter, shall not include an act of a participant or crew leader while absent from the assigned post of duty of such participant or crew leader, except while participating in an activity authorized by or under the direction and supervision of a program agency (including an activity while on pass or during travel to or from such post of duty); and

(B) compensation for disability shall not begin to accrue until the day following the date that the employment of the injured participant or crew leader is terminated.

(3) Tort claims procedure

For purposes of chapter 171 of title 28, relating to tort claims procedure, a participant or crew leaders assigned to a youth corps program for which a grant has been made to the Secretary of Agriculture, Secretary of the Interior, or the Director of ACTION, shall be considered an employee of the United States within the meaning of the term “employee of the government” as defined in section 2671 of such title.

(4) Allowance for quarters

For purposes of section 5911 of title 5, relating to allowances for quarters, a participant or crew leader shall be considered an employee of the United States within the meaning of the

¹ So in original. Probably should be “provisions”.

term “employee” as defined in paragraph (3) of subsection (a) of such section.

(c) Availability of appropriation

Contract authority under this division shall be subject to the availability of appropriations. Assistance made available under this division shall only be used for activities that are in addition to those which would otherwise be carried out in the area in the absence of such funds.

(Pub. L. 101-610, title I, §199M, formerly §135, Nov. 16, 1990, 104 Stat. 3149; renumbered §199O, renumbered §199M, Pub. L. 103-82, title I, §101(a), (e)(8)(B), Sept. 21, 1993, 107 Stat. 788, 816, as amended Pub. L. 103-304, §3(b)(1), Aug. 23, 1994, 108 Stat. 1567.)

CODIFICATION

Section was formerly classified to section 12555 of this title prior to renumbering by Pub. L. 103-82, §101(a).

AMENDMENTS

1994—Pub. L. 103-304 amended directory language of Pub. L. 103-82, §101(a)(3), which renumbered section 135 of Pub. L. 101-610 as section 199O.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-304 effective as of Oct. 1, 1993, see section 3(b)(10)(B) of Pub. L. 103-304, set out as a note under section 4953 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Director of ACTION Agency (including all related functions of any officer or employee of ACTION Agency) to Corporation for National and Community Service, and effective date of such transfer, see section 203(c), (d) of Pub. L. 103-82, set out as a note under section 12651 of this title.

Division J—Miscellaneous

§ 12656. Urban Youth Corps

(a) Findings

The Congress finds the following:

(1) The rehabilitation, reclamation, and beautification of urban public housing, recreational sites, youth and senior centers, and public roads and public works facilities through the efforts of young people in the United States in an Urban Youth Corps can benefit these youths, while also benefiting their communities, by—

(A) providing them with education and work opportunities;

(B) furthering their understanding and appreciation of the challenges faced by individuals residing in urban communities; and

(C) providing them with a means to pay for higher education or to repay indebtedness they have incurred to obtain higher education.

(2) A significant number of housing units for low-income individuals in urban areas has become substandard and unsafe and the deterioration of urban roadways, mass transit systems, and transportation facilities in the United States have contributed to the blight encountered in many cities in the United States.

(3) As a result, urban housing, public works, and transportation resources are in need of

labor intensive rehabilitation, reclamation, and beautification work that has been neglected in the past and cannot be adequately carried out by Federal, State, and local government at existing personnel levels.

(4) Urban youth corps have established a good record of rehabilitating, reclaiming, and beautifying these kinds of resources in a cost-efficient manner, especially when they have worked in partnership with government housing, public works, and transportation authorities and agencies.

(b) Purpose

It is the purpose of this section—

(1) to perform, in a cost-effective manner, appropriate service projects to rehabilitate, reclaim, beautify, and improve public housing and public works and transportation facilities and resources in urban areas suffering from high rates of poverty where work will not be performed by existing employees;

(2) to assist government housing, public works, and transportation authorities and agencies;

(3) to expose young people in the United States to public service while furthering their understanding and appreciation of their community;

(4) to expand educational opportunity for individuals who participate in the Urban Youth Corps established by this section by providing them with an increased ability to pursue post-secondary education or job training; and

(5) to stimulate interest among young people in the United States in lifelong service to their communities and the United States.

(c) Definitions

For purposes of this section:

(1) Appropriate service project

The term “appropriate service project” means any project for the rehabilitation, reclamation, or beautification of urban public housing and public works and transportation resources or facilities.

(2) Corps and Urban Youth Corps

The term “Corps” and “Urban Youth Corps” mean the Urban Youth Corps established under subsection (d)(1) of this section.

(3) Qualified urban youth corps

The term “qualified urban youth corps” means any program established by a State or local government or by a nonprofit organization that—

(A) is capable of offering meaningful, full-time, productive work for individuals between the ages of 16 and 25, inclusive, in an urban or public works or transportation setting;

(B) gives participants a mix of work experience, basic and life skills, education, training, and support services; and

(C) provides participants with the opportunity to develop citizenship values and skills through service to their communities and the United States.

(4) Secretary

The term “Secretary” means the Secretary of Housing and Urban Development or the Secretary of Transportation.

(5) State

The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(d) Establishment of Urban Youth Corps**(1) Establishment**

There is hereby established in the Department of Housing and Urban Development and the Department of Transportation an Urban Youth Corps. The Corps shall consist of individuals between the ages of 16 and 25, inclusive, who are enrolled as participants in the Corps by the Secretary of Housing and Urban Development and the Secretary of Transportation. To be eligible for enrollment in the Corps, an individual shall satisfy the criteria specified in section 139(b) of the National and Community Service Act of 1990 [42 U.S.C. 12593(b)]. The Secretaries may enroll such individuals in the Corps without regard to the civil service and classification laws, rules, or regulations of the United States. The Secretaries may establish a preference for the enrollment in the Corps of individuals who are economically, physically, or educationally disadvantaged.

(2) Use of qualified urban youth corps

The Secretaries are authorized to enter into contracts and cooperative agreements with any qualified urban youth corps to perform appropriate service projects described in paragraph (3). As part of the Urban Youth Corps established in the Department of Transportation, the Secretary of Transportation may make grants to States (and through States to local governments) for the purpose of establishing, operating, or supporting qualified urban youth corps that will perform appropriate service projects relating to transportation resources or facilities.

(3) Service projects

The Secretaries may each utilize the Corps or any qualified urban youth corps to carry out appropriate service projects that the Secretary involved is authorized to carry out under other authority of law involving public housing projects or public works resources or facilities.

(4) Preference for certain projects

In selecting an appropriate service project to be carried out under this section, the Secretaries shall give a preference to those projects which—

- (A) will provide long-term benefits to the public;
- (B) will instill in the participant a work ethic and a sense of public service;
- (C) will be labor intensive;
- (D) can be planned and initiated promptly; and
- (E) will provide academic, experiential, or community education opportunities.

(5) Consistency

Each appropriate service project carried out under this section in any public housing

project or public works resource or facility shall be consistent with the provisions of law and policies relating to the management and administration of such projects, facilities, or resources, with all other applicable provisions of law, and with all management, operational, and other plans and documents which govern the administration of such projects, facilities, or resources.

(e) Living allowances

The Secretaries shall provide each participant in the Urban Youth Corps with a living allowance in an amount not to exceed the maximum living allowance authorized by section 140(a)(3) of the National and Community Service Act of 1990 [42 U.S.C. 12594(a)(3)] for participants in a national service program assisted under subtitle C of title I of such Act [42 U.S.C. 12571 et seq.].

(f) Terms of service

Each participant in the Urban Youth Corps shall agree to participate in the Corps for a term of service established by the Secretary involved, consistent with the terms of service required under section 139(b) of the National and Community Service Act of 1990 [42 U.S.C. 12593(b)] for participants in a national service program assisted under subtitle C of title I of such Act [42 U.S.C. 12571 et seq.].

(g) Educational awards**(1) Eligibility**

Each participant in the Urban Youth Corps shall be eligible for a national service educational award in the manner prescribed in subtitle D of title I of the National and Community Service Act of 1990 [42 U.S.C. 12601 et seq.] if such participant complies with such requirements as may be established under this subtitle by the Secretary involved respecting eligibility for the award. The period during which the award may be used, the purposes for which the award may be used, and the amount of the award shall be determined as provided under such subtitle.

(2) Forbearance in the collection of Stafford loans

For purposes of section 1078 of title 20, in the case of borrowers who are participants in the Urban Youth Corps, upon written request, a lender shall grant a borrower forbearance on such terms as are otherwise consistent with the regulations of the Secretary of Education, during periods in which the borrower is serving as such a participant and eligible for a national service educational award under paragraph (1).

(h) Nondisplacement

The nondisplacement requirements of section 177 of the National and Community Service Act of 1990 [42 U.S.C. 12637] shall be applicable to all activities carried out by the Urban Youth Corps and to all activities carried out under this section by a qualified urban youth corps.

(i) Cost sharing**(1) Projects by qualified urban youth corps**

The Secretaries are each authorized to pay not more than 75 percent of the costs of any

appropriate service project carried out pursuant to this section by a qualified urban youth corps. The remaining 25 percent of the costs of such a project may be provided from non-federal sources in the form of funds, services, facilities, materials, equipment, or any combination of the foregoing.

(2) Donations

The Secretaries are each authorized to accept donations of funds, services, facilities, materials, or equipment for the purposes of operating the Urban Youth Corps and carrying out appropriate service projects by the Corps. However, nothing in this section shall be construed to require any cost sharing for any project carried out directly by the Corps.

(3) Funds available under National and Community Service Act

In order to carry out the Urban Youth Corps or to support qualified urban youth corps under this section, the Secretaries shall be eligible to apply for and receive assistance under section 121(b) of the National and Community Service Act of 1990 [42 U.S.C. 12571(b)].

(Pub. L. 103-82, title I, §106, Sept. 21, 1993, 107 Stat. 854.)

REFERENCES IN TEXT

The civil service laws, referred to in subsec. (d)(1), are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

The classification laws, referred to in subsec. (d)(1), are classified to chapter 51 (§5101 et seq.) and subchapter III (§5331 et seq.) of chapter 53 of Title 5.

The National and Community Service Act of 1990, referred to in subsections. (e), (f), and (g)(1), is Pub. L. 101-610, Nov. 16, 1990, 104 Stat. 3127, as amended. Subtitles C and D of title I of the Act are classified generally to divisions C (§12571 et seq.) and D (§12601 et seq.), respectively, of this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 12501 of this title and Tables.

CODIFICATION

Section was enacted as part of the National and Community Service Trust Act of 1993, and not as part of the National and Community Service Act of 1990 which comprises this chapter.

EFFECTIVE DATE

Section effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as an Effective Date of 1993 Amendment note under section 1701 of Title 16, Conservation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12572 of this title.

SUBCHAPTER II—POINTS OF LIGHT FOUNDATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 12681 of this title.

§ 12661. Findings and purpose

(a) Findings

Congress finds that—

- (1) community service and service to others is an integral part of American tradition;
- (2) existing volunteers and volunteer programs should be praised for their efforts in helping and serving others;

- (3) the definition of a successful life includes service to others;

- (4) individuals should be encouraged to volunteer their time and energies in community service efforts;

- (5) if asked to volunteer or participate in community service, most Americans will do so;

- (6) institutions should be encouraged to volunteer their resources and energies and should encourage volunteer and community service among their members, employees, affiliates; and

- (7) volunteer and community service programs are intended to complement and not replace governmental responsibilities.

(b) Purpose

It is the purpose of this subchapter—

- (1) to encourage every American and every American institution to help solve our most critical social problems by volunteering their time, energies and services through community service projects and initiatives;

- (2) to identify successful and promising community service projects and initiatives, and to disseminate information concerning such projects and initiatives to other communities in order to promote their adoption nationwide; and

- (3) to discover and encourage new leaders and develop individuals and institutions that serve as strong examples of a commitment to serving others and to convince all Americans that a successful life includes serving others.

(Pub. L. 101-610, title III, §302, Nov. 16, 1990, 104 Stat. 3180.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12662, 12663, 12664 of this title.

§ 12662. Authority

(a) In general

The President, acting through the Corporation, is authorized to designate a private, non-profit organization (hereinafter referred to in this subchapter as the Foundation) to receive funds pursuant to section 12681(b) of this title in furtherance of activities under section 12661 of this title, upon the determination of the Corporation that such organization is capable of carrying out the undertakings described in section 12661 of this title. Any such designation by the Corporation shall be revocable.

(b) Construction

Nothing in this chapter shall be construed either—

- (1) to cause the Foundation to be deemed an agency, establishment, or instrumentality of the United States Government; or

- (2) to cause the directors, officers or employees of the Foundation to be deemed officers or employees of the United States.

(Pub. L. 101-610, title III, §303, Nov. 16, 1990, 104 Stat. 3181; Pub. L. 103-82, title IV, §402(b)(4), Sept. 21, 1993, 107 Stat. 919.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original "this Act", meaning Pub. L. 101-610, Nov. 16,

1990, 104 Stat. 3127, as amended, known as the National and Community Service Act of 1990, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12501 of this title and Tables.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103-82 substituted “The President, acting through the Corporation,” for “The President”, inserted “in furtherance of activities under section 12661 of this title” after “section 12681(b) of this title”, and substituted “Corporation” for “President” in two places.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 406(a) of Pub. L. 103-82, set out as a note under section 5061 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12663 of this title.

§ 12663. Grants to Foundation

(a) In general

Funds made available pursuant to sections 12662 and 12681(b) of this title shall be granted to the Foundation by a department or agency in the executive branch of the United States Government designated by the President—

(1) to assist the Foundation in carrying out the undertakings described in section 12661 of this title; and

(2) for the administrative expenses of the Foundation.

(b) Interest earned on accounts

Notwithstanding any other provision of law, the Foundation may hold funds granted to it pursuant to this subchapter in interest-bearing accounts, prior to the disbursement of such funds for purposes specified in subsection (a) of this section, and may retain for such purposes any interest earned on such deposits without returning such interest to the Treasury of the United States and without further appropriation by the Congress.

(Pub. L. 101-610, title III, §304, Nov. 16, 1990, 104 Stat. 3181.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12664 of this title.

§ 12664. Eligibility of Foundation for grants

(a) Compliance

Grants may be made to the Foundation pursuant to this subchapter only if the Foundation agrees to comply with the requirements of this subchapter. If the Foundation fails to comply with the requirements of this subchapter, additional funds shall not be released until the Foundation brings itself into compliance with such requirements.

(b) Activities

The Foundation may use funds provided under this subchapter only for activities and programs consistent with the purposes described in sections 12661 and 12663 of this title.

(c) Limitation

The Foundation shall not issue any shares of stock or declare or pay any dividends.

(d) Compensation

No part of the funds available to the Foundation shall inure to the benefit of any board member, officer, or employee of the Foundation, except as salary or reasonable compensation for services or expenses. Compensation for board members shall be limited to reimbursement for reasonable costs of travel and expenses.

(e) Conflicts of interest

No director, officer, or employee of the Foundation shall participate, directly or indirectly, in the consideration or determination of any question before the Foundation that affects his or her financial interests or the financial interests of any corporation, partnership, entity, or organization in which he or she has a direct or indirect financial interest.

(f) Political activity

The Foundation shall not engage in lobbying or propaganda for the purpose of influencing legislation, and shall not participate or intervene in any political campaign on behalf of any candidate for public office.

(g) Private sector contributions

During the second and third fiscal years in which funds are provided to the Foundation under this subchapter, the Foundation shall raise from private sector donations an amount equal to not less than 25 percent of any funds provided to the Foundation under this subchapter in such fiscal year. Funds shall be released to the Foundation during such fiscal year only to the extent that the matching requirement of the subsection has been met.

(h) Audit of accounts

The accounts of the Foundation shall be audited annually by independent certified public accountants or independent licensed public accountants certified or licensed by a regulatory authority of a State or other political subdivision of the United States in accordance with generally accepted auditing standards. The reports,¹ of each such independent audit shall be included in the annual report required by subsection (l) of this section.

(i) Audits by agencies

In fiscal years in which the Foundation is receiving grants under this subchapter, the accounts of the Foundation may be audited at any time by any agency designated by the President. The Foundation shall keep such records as will facilitate effective audits.

(j) Congressional oversight

In fiscal years in which the Foundation is receiving grants under this subchapter, the Foundation shall be subject to appropriate oversight procedures of Congress.

(k) Duties

The Foundation shall ensure—

(1) that recipients of financial assistance provided by the Foundation under this subchapter, shall keep separate accounts with respect to such assistance and such records as may be reasonably necessary to disclose fully—

¹ So in original. The comma probably should not appear.

(A) the amount and the disposition by such recipient of the assistance received from the Foundation;

(B) the total cost of the project or undertaking in connection with which such assistance is given or used;

(C) the amount and nature of that portion of the cost of the project or undertaking supplied by other sources; and

(D) such other records as will facilitate effective audits; and

(2) that the Foundation, or any of its duly authorized representatives including any agency designated by the President pursuant to subsection (i) of this section shall have access, for the purpose of audit and examination, to any books, documents, papers, and records of the recipient that are pertinent to assistance provided from funds granted pursuant to this subchapter.

(I) Annual reports

The Foundation shall prepare and submit to the President and to the appropriate Committees of Congress an annual report, that shall include a comprehensive and detailed description of the Foundation's operations, activities, financial condition, and accomplishments for the fiscal year preceding the year in which the report is submitted. Such report shall be submitted not later than 3 months after the conclusion of any fiscal year in which the Foundation receives grants under this subchapter.

(Pub. L. 101-610, title III, §305, Nov. 16, 1990, 104 Stat. 3181.)

SUBCHAPTER III—PROJECTS HONORING VICTIMS OF TERRORIST ATTACKS

§ 12671. Projects

(a) Definition

In this section, the term “Foundation” means the Points of Light Foundation funded under section 301,¹ or another nonprofit private organization, that enters into an agreement with the Corporation to carry out this section.

(b) Identification of projects

(1) Estimated number

Not later than March 1, 2002, the Foundation, after obtaining the guidance of the heads of appropriate Federal agencies, such as the Director of the Office of Homeland Security and the Attorney General, shall—

(A) make an estimate of the number of victims killed as a result of the terrorist attacks on September 11, 2001 (referred to in this section as the “estimated number”); and

(B) compile a list that specifies, for each individual that the Foundation determines to be such a victim, the name of the victim and the State in which the victim resided.

(2) Identified projects

The Foundation may identify approximately the estimated number of community-based national and community service projects that

meet the requirements of subsection (d) of this section. The Foundation may name projects in honor of victims described in subsection (b)(1)(A) of this section, after obtaining the permission of an appropriate member of the victim's family and the entity carrying out the project.

(c) Eligible entities

To be eligible to have a project named under this section, the entity carrying out the project shall be a political subdivision of a State, a business, a nonprofit organization (which may be a religious organization), an Indian tribe, or an institution of higher education.

(d) Projects

The Foundation shall name, under this section, projects—

(1) that advance the goals of unity, and improving the quality of life in communities; and

(2) that will be planned, or for which implementation will begin, within a reasonable period after January 10, 2002, as determined by the Foundation.

(e) Website and database

The Foundation shall create and maintain websites and databases, to describe projects named under this section and serve as appropriate vehicles for recognizing the projects.

(Pub. L. 101-610, title IV, §401, as added Pub. L. 107-117, div. B, §1301(b), Jan. 10, 2002, 115 Stat. 2339.)

REFERENCES IN TEXT

Section 301, referred to in subsec. (a), is section 301 of Pub. L. 101-610, title III, Nov. 16, 1990, 104 Stat. 3180, which is set out as a note under section 12501 of this title and provides the short title for title III of Pub. L. 101-610, which enacted subchapter II (§12661 et seq.) of this chapter, relating to the Points of Light Foundation and its funding.

PRIOR PROVISIONS

A prior section 12671, Pub. L. 101-610, title IV, §401, Nov. 16, 1990, 104 Stat. 3183, stated sense of Congress concerning State enactment of model Good Samaritan Food Donation Act, prior to repeal by Pub. L. 104-210, §1(a)(1), Oct. 1, 1996, 110 Stat. 3011.

A prior section 12672, Pub. L. 101-610, title IV, §402, Nov. 16, 1990, 104 Stat. 3183, which set forth the model Good Samaritan Food Donation Act, was renumbered section 22 of the Child Nutrition Act of 1966 by Pub. L. 104-210, §1(b), Oct. 1, 1996, 110 Stat. 3012, and is classified to section 1791 of this title.

A prior section 12673, Pub. L. 101-610, title IV, §403, Nov. 16, 1990, 104 Stat. 3185, provided that model Good Samaritan Food Donation Act was intended only to serve as model law for enactment by States, District of Columbia, Commonwealth of Puerto Rico, and territories and possessions of United States, and that enactment of section 12672 of this title was to have no force or effect in law, prior to repeal by Pub. L. 104-210, §1(a)(1), Oct. 1, 1996, 110 Stat. 3011.

SUBCHAPTER IV—AUTHORIZATION OF APPROPRIATIONS

§ 12681. Authorization of appropriations

(a) Subchapter I

(1) Division B

(A) In general

There are authorized to be appropriated to provide financial assistance under division B

¹ See References in Text note below.

of subchapter I of this chapter, \$45,000,000 for fiscal year 1994 and such sums as may be necessary for each of the fiscal years 1995 through 1996.

(B) Programs

Of the amount appropriated under subparagraph (A) for a fiscal year—

(i) not more than 63.75 percent shall be available to provide financial assistance under subpart A of part I of division B of subchapter I of this chapter;

(ii) not more than 11.25 percent shall be available to provide financial assistance under subpart B of part I of such division; and

(iii) not more than 25 percent shall be available to provide financial assistance under part II of such division.

(2) Divisions C, D, and H

(A) In general

There are authorized to be appropriated to provide financial assistance under divisions C and H of subchapter I of this chapter, to provide national service educational awards under division D of subchapter I of this chapter, and to carry out such audits and evaluations as the Chief Executive Officer or the Inspector General of the Corporation may determine to be necessary, \$300,000,000 for fiscal year 1994, \$500,000,000 for fiscal year 1995, and \$700,000,000 for fiscal year 1996.

(B) Programs

Of the amount appropriated under subparagraph (A) for a fiscal year, up to 15 percent shall be made available to provide financial assistance under section 12575 of this title, under subsections (b) and (c) of section 12576 of this title, and under division H of subchapter I of this chapter.

(3) Division E

There are authorized to be appropriated to provide financial assistance under division E of subchapter I of this chapter, such sums as may be necessary for each of the fiscal years 1995 through 1996.

(4) Administration

(A) In general

There are authorized to be appropriated for the administration of this chapter \$40,000,000 for fiscal year 1994, \$60,000,000 for fiscal year 1995, and \$70,000,000 for fiscal year 1996.

(B) Corporation

Of the amounts appropriated under subparagraph (A) for a fiscal year—

(i) up to 60 percent shall be made available to the Corporation for the administration of this chapter; and

(ii) the remainder shall be available to provide financial assistance under section 12576(a) of this title.

(b) Subchapter II

There are authorized to be appropriated to carry out subchapter II of this chapter \$5,000,000 for each of the fiscal years 1994 through 1996.

(c) Availability of appropriations

Funds appropriated under this section shall remain available until expended.

(d) Specification of budget function

The authorizations of appropriations contained in this section shall be considered to be a component of budget function 500 as used by the Office of Management and Budget to cover education, training, employment, and social services, and, as such, shall be considered to be related to the programs of the Departments of Labor, Health and Human Services, and Education for budgetary purposes.

(Pub. L. 101-610, title V, §501, Nov. 16, 1990, 104 Stat. 3185; Pub. L. 102-384, §11, Oct. 5, 1992, 106 Stat. 1459; Pub. L. 103-82, title III, §301(a), Sept. 21, 1993, 107 Stat. 897.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(4), was in the original "this Act", meaning Pub. L. 101-610, Nov. 16, 1990, 104 Stat. 3127, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12501 of this title and Tables.

AMENDMENTS

1993—Pub. L. 103-82 amended section generally, substituting subsections (a) to (d) for former subsections (a) and (b) which authorized appropriations to carry out subchapter I for fiscal year 1993 and subchapter II for fiscal years 1991 to 1993.

1992—Subsec. (a)(1). Pub. L. 102-384, §11(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "There are authorized to be appropriated to carry out subchapter I of this chapter, \$56,000,000 for fiscal year 1991, \$95,500,000 for fiscal year 1992, and \$105,000,000 for fiscal year 1993."

Subsec. (a)(2). Pub. L. 102-384, §11(b), substituted "paragraph (1)(A)" for "paragraph (1)" in introductory provisions, redesignated subpars. (B) to (D) as (A) to (C), respectively, added subpar. (D), and struck out former subpar. (A) which read as follows: "\$2,000,000 shall be made available to carry out part G of subchapter I of this chapter in each such fiscal year;".

EFFECTIVE DATE OF 1993 AMENDMENT

Section 301(b) of Pub. L. 103-82 provided that: "The amendment made by subsection (a) [amending this section] shall take effect on October 1, 1993."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12576, 12581, 12601, 12625, 12640, 12662, 12663 of this title.

§ 12682. Actions under national service laws to be subject to availability of appropriations

No action involving the obligation or expenditure of funds may be taken under one of the national service laws (as defined in section 12511(15) of this title) unless and until the Corporation for National and Community Service has sufficient appropriations available at the time such action is taken to satisfy the obligation to be incurred or make the expenditure to be made.

(Pub. L. 103-82, title II, §205, Sept. 21, 1993, 107 Stat. 897.)

CODIFICATION

Section enacted as part of the National and Community Service Trust Act of 1993, and not as part of the National and Community Service Act of 1990 which comprises this chapter.

CHAPTER 130—NATIONAL AFFORDABLE HOUSING

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 12 section 1831q.

SUBCHAPTER I—GENERAL PROVISIONS AND POLICIES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1437c-1, 1437u of this title.

§ 12701. National housing goal

The Congress affirms the national goal that every American family be able to afford a decent home in a suitable environment.

(Pub. L. 101-625, title I, §101, Nov. 28, 1990, 104 Stat. 4085.)

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106-569, title I, §101, Dec. 27, 2000, 114 Stat. 2946, provided that: “This title [amending sections 5307, 12705c, and 12705d of this title] may be cited as the ‘Housing Affordability Barrier Removal Act of 2000.’”

SHORT TITLE

Section 1(a) of Pub. L. 101-625 provided that: "This Act [see Tables for classification] may be cited as the 'Cranston-Gonzalez National Affordable Housing Act'."

Section 201 of title II of Pub. L. 101-625 provided that: "This title [enacting subchapter II of this chapter, amending section 1437f of this title, and repealing sections 1437o and 1452b of this title, section 1706e of Title 12, Banks and Banking, and provisions set out as a note under section 1715l of Title 12] may be cited as the 'HOME Investment Partnerships Act'."

Section 301 of Pub. L. 101-625 provided that: "This subtitle [subtitle A (§§301-310) of title III of Pub. L. 101-625, enacting subchapter III of this chapter] may be cited as the 'National Homeownership Trust Act'."

MILLENNIAL HOUSING COMMISSION

Pub. L. 107-73, title II, Nov. 26, 2001, 115 Stat. 671, provided in part: "That \$1,500,000 shall be for necessary expenses of the Millennial Housing Commission, as authorized by section 206 of Public Law 106-74 [set out below], with the final report due no later than May 30, 2002 and a termination date of August 30, 2002, notwithstanding section 206(f) and (g) of Public Law 106-74".

Pub. L. 106-74, title II, §206, Oct. 20, 1999, 113 Stat. 1070, as amended by Pub. L. 106-554, §1(a)(4) [div. B, title X, §1001], Dec. 21, 2000, 114 Stat. 2763, 2763A-310, provided that:

"(a) ESTABLISHMENT.—There is hereby established a commission to be known as the Millennial Housing Commission (in this section referred to as the 'Commission').

"(b) STUDY.—The duty of the Commission shall be to conduct a study that examines, analyzes, and explores—

"(1) the importance of housing, particularly affordable housing which includes housing for the elderly, to the infrastructure of the United States;

"(2) the various possible methods for increasing the role of the private sector in providing affordable housing in the United States, including the effectiveness and efficiency of such methods; and

"(3) whether the existing programs of the Department of Housing and Urban Development work in conjunction with one another to provide better housing opportunities for families, neighborhoods, and communities, and how such programs can be improved with respect to such purpose.

"(c) MEMBERSHIP.—

"(1) NUMBER AND APPOINTMENT.—The Commission shall be composed of 22 members, appointed not later than January 1, 2000, as follows:

"(A) Two co-chairpersons appointed by—

"(i) one co-chairperson appointed by a committee consisting of the chairmen of the Subcommittees on the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies of the Committees on Appropriations of the House of Representatives and the Senate, and the chairman of the Subcommittee on Housing and Community Opportunities of the House of Representatives and the chairman of the Subcommittee on Housing and Transportation of the Senate; and

"(ii) one co-chairperson appointed by a committee consisting of the ranking minority members of the Subcommittees on the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies of the Committees on Appropriations of the House of Representatives and the Senate, and the ranking minority member of the Subcommittee on Housing and Community Opportunities of the House of Representatives and the ranking minority member of the Subcommittee on Housing and Transportation of the Senate.

"(B) Ten members appointed by the Chairman and Ranking Minority Member of the Committee on Appropriations of the House of Representatives

and the Chairman and Ranking Minority Member of the Committee on Banking and Financial Services [now Committee on Financial Services] of the House of Representatives.

"(C) Ten members appointed by the Chairman and Ranking Minority Member of the Committee on Appropriations of the Senate and the Chairman and Ranking Minority Member of the Committee on Banking, Housing, and Urban Affairs of the Senate.

"(2) QUALIFICATIONS.—Appointees should have proven expertise in directing, assembling, or applying capital resources from a variety of sources to the successful development of affordable housing or the revitalization of communities, including economic and job development.

"(3) VACANCIES.—Any vacancy on the Commission shall not affect its powers and shall be filled in the manner in which the original appointment was made.

"(4) CHAIRPERSONS.—The members appointed pursuant to paragraph (1)(A) shall serve as co-chairpersons of the Commission.

"(5) PROHIBITION OF PAY.—Members of the Commission shall serve without pay.

"(6) TRAVEL EXPENSES.—Each member of the Commission shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

"(7) QUORUM.—A majority of the members of the Commission shall constitute a quorum but a lesser number may hold hearings.

"(8) MEETINGS.—The Commission shall meet at the call of the Chairpersons.

"(d) DIRECTOR AND STAFF.—

"(1) DIRECTOR.—The Commission shall have a Director who shall be appointed by the Chairperson. The Director shall be paid at a rate not to exceed the rate of basic pay payable for level III of the Executive Schedule.

"(2) STAFF.—The Commission may appoint personnel as appropriate. The staff of the Commission shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates.

"(3) EXPERTS AND CONSULTANTS.—The Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for the General Schedule.

"(4) STAFF OF FEDERAL AGENCIES.—Upon request of the Commission, the head of any Federal department or agency may detail, on a non-reimbursable basis, any of the personnel of that department or agency to the Commission to assist it in carrying out its duties under this Act.

"(e) POWERS.—

"(1) HEARINGS AND SESSIONS.—The Commission may, for the purpose of carrying out this section, hold hearings, sit and act at times and places, take testimony, and receive evidence as the Commission considers appropriate.

"(2) POWERS OF MEMBERS AND AGENTS.—Any member or agent of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take by this section.

"(3) OBTAINING OFFICIAL DATA.—The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this Act. Upon request of the Chairpersons of the Commission, the head of that department or agency shall furnish that information to the Commission.

"(4) GIFTS, BEQUESTS, AND DEVICES.—The Commission may accept, use, and dispose of gifts, bequests, or devises of services or property, both real and personal, for the purpose of aiding or facilitating the work of the Commission. Gifts, bequests, or devises of

money and proceeds from sales of other property received as gifts, bequests, or devises shall be deposited in the Treasury and shall be available for disbursement upon order of the Commission.

“(5) **MAILS.**—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

“(6) **ADMINISTRATIVE SUPPORT SERVICES.**—Upon the request of the Commission, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services necessary for the Commission to carry out its responsibilities under this section.

“(7) **CONTRACT AUTHORITY.**—The Commission may contract with and compensate Government and private agencies or persons for services, without regard to section 3709 of the Revised Statutes (41 U.S.C. 5).

“(f) **REPORT.**—The Commission shall submit to the Committees on Appropriations and Banking and Financial Services [now Committee on Financial Services] of the House of Representatives and the Committees on Appropriations and Banking, Housing, and Urban Affairs of the Senate a final report not later than March 1, 2002. The report shall contain a detailed statement of the findings and conclusions of the Commission with respect to the study conducted under subsection (b), together with its recommendations for legislation, administrative actions, and any other actions the Commission considers appropriate.

“(g) **TERMINATION.**—The Commission shall terminate on June 30, 2002. Section 14(a)(2)(B) of the Federal Advisory Committee Act (5 U.S.C. App.; relating to the termination of advisory committees) shall not apply to the Commission.”

COMMISSION ON AFFORDABLE HOUSING AND HEALTH FACILITY NEEDS FOR SENIORS IN THE 21ST CENTURY

Pub. L. 107-73, title II, Nov. 26, 2001, 115 Stat. 671, provided in part: “That \$1,000,000 shall be for necessary expenses of the commission established under section 525 of the Preserving Affordable Housing for Senior Citizens and Families in the 21st Century Act [Pub. L. 106-74, set out below], with the final report due no later than June 30, 2002 and a termination date of September 30, 2002, notwithstanding section 525(f) and (g) of Public Law 106-74”.

Pub. L. 106-74, title V, § 525, Oct. 20, 1999, 113 Stat. 1106, as amended by Pub. L. 106-377, § 1(a)(1) [title II, § 230], Oct. 27, 2000, 114 Stat. 1441, 1441A-31, provided that:

“(a) **ESTABLISHMENT.**—There is hereby established a commission to be known as the Commission on Affordable Housing and Health Facility Needs for Seniors in the 21st Century (in this section referred to as the ‘Commission’).

“(b) **STUDY.**—The duty of the Commission shall be to conduct a study that—

“(1) compiles and interprets information regarding the expected increase in the population of persons 62 years of age or older, particularly information regarding distribution of income levels, homeownership and home equity rates, and degree or extent of health and independence of living;

“(2) provides an estimate of the future needs of seniors for affordable housing and assisted living and health care facilities;

“(3) provides a comparison of estimate of such future needs with an estimate of the housing and facilities expected to be provided under existing public programs, and identifies possible actions or initiatives that may assist in providing affordable housing and assisted living and health care facilities to meet such expected needs;

“(4) identifies and analyzes methods of encouraging increased private sector participation, investment, and capital formation in affordable housing and assisted living and health care facilities for seniors through partnerships between public and private entities and other creative strategies;

“(5) analyzes the costs and benefits of comprehensive aging-in-place strategies, taking into consideration physical and mental well-being and the importance of coordination between shelter and supportive services;

“(6) identifies and analyzes methods of promoting a more comprehensive approach to dealing with housing and supportive service issues involved in aging and the multiple governmental agencies involved in such issues, including the Department of Housing and Urban Development and the Department of Health and Human Services; and

“(7) examines how to establish intergenerational learning and care centers and living arrangements, in particular to facilitate appropriate environments for families consisting only of children and a grandparent or grandparents who are the head of the household.

“(c) **MEMBERSHIP.**—

“(1) **NUMBER AND APPOINTMENT.**—The Commission shall be composed of 14 members, appointed not later than January 1, 2000, as follows:

“(A) Two co-chairpersons, of whom—

“(i) one co-chairperson shall be appointed by a committee consisting of the chairman of the Subcommittee on Housing and Community Opportunities of the House of Representatives and the chairman of the Subcommittee on Housing and Transportation of the Senate, and the chairmen of the Subcommittees on the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies of the Committees on Appropriations of the House of Representatives and the Senate; and

“(ii) one co-chairperson shall be appointed by a committee consisting of the ranking minority member of the Subcommittee on Housing and Community Opportunities of the House of Representatives and the ranking minority member of the Subcommittee on Housing and Transportation of the Senate, and the ranking minority members of the Subcommittees on the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies of the Committees on Appropriations of the House of Representatives and the Senate.

“(B) Six members appointed by the Chairman and Ranking Minority Member of the Committee on Banking and Financial Services [now Committee on Financial Services] of the House of Representatives and the Chairman and Ranking Minority Member of the Committee on Appropriations of the House of Representatives.

“(C) Six members appointed by the Chairman and Ranking Minority Member of the Committee on Banking, Housing, and Urban Affairs of the Senate and the Chairman and Ranking Minority Member of the Committee on Appropriations of the Senate.

“(2) **QUALIFICATIONS.**—Appointees should have proven expertise in directing, assembling, or applying capital resources from a variety of sources to the successful development of affordable housing, assisted living facilities, or health care facilities.

“(3) **VACANCIES.**—Any vacancy on the Commission shall not affect its powers and shall be filled in the manner in which the original appointment was made.

“(4) **CHAIRPERSONS.**—The members appointed pursuant to paragraph (1)(A) shall serve as co-chairpersons of the Commission.

“(5) **PROHIBITION OF PAY.**—Members of the Commission shall serve without pay.

“(6) **TRAVEL EXPENSES.**—Each member of the Commission shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

“(7) **QUORUM.**—A majority of the members of the Commission shall constitute a quorum but a lesser number may hold hearings.

“(8) **MEETINGS.**—The Commission shall meet at the call of the Chairpersons.

“(d) DIRECTOR AND STAFF.—

“(1) DIRECTOR.—The Commission shall have a Director who shall be appointed by the Chairperson. The Director shall be paid at a rate not to exceed the rate of basic pay payable for level V of the Executive Schedule.

“(2) STAFF.—The Commission may appoint personnel as appropriate. The staff of the Commission shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates.

“(3) EXPERTS AND CONSULTANTS.—The Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for the General Schedule.

“(4) STAFF OF FEDERAL AGENCIES.—Upon request of the Commission, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of that department or agency to the Commission to assist it in carrying out its duties under this Act.

“(e) POWERS.—

“(1) HEARINGS AND SESSIONS.—The Commission may, for the purpose of carrying out this section, hold hearings, sit and act at times and places, take testimony, and receive evidence as the Commission considers appropriate.

“(2) POWERS OF MEMBERS AND AGENTS.—Any member or agent of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take by this section.

“(3) OBTAINING OFFICIAL DATA.—The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this Act. Upon request of the Chairpersons of the Commission, the head of that department or agency shall furnish that information to the Commission.

“(4) GIFTS, BEQUESTS, AND DEVISES.—The Commission may accept, use, and dispose of gifts, bequests, or devises of services or property, both real and personal, for the purpose of aiding or facilitating the work of the Commission. Gifts, bequests, or devises of money and proceeds from sales of other property received as gifts, bequests, or devises shall be deposited in the Treasury and shall be available for disbursement upon order of the Commission.

“(5) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

“(6) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Commission, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services necessary for the Commission to carry out its responsibilities under this section.

“(7) CONTRACT AUTHORITY.—The Commission may contract with and compensate Government and private agencies or persons for services, without regard to section 3709 of the Revised Statutes (41 U.S.C. 5).

“(f) REPORT.—The Commission shall submit to the Committees on Banking and Financial Services [now Committee on Financial Services] and Appropriations of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and Appropriations of the Senate, a final report not later than December 31, 2001. The report shall contain a detailed statement of the findings and conclusions of the Commission with respect to the study conducted under subsection (b), together with its recommendations for legislation, administrative actions, and any other actions the Commission considers appropriate.

“(g) TERMINATION.—The Commission shall terminate on June 30, 2002. Section 14(a)(2)(B) of the Federal Advi-

sory Committee Act (5 U.S.C. App.; relating to the termination of advisory committees) shall not apply to the Commission.”

§ 12702. Objective of national housing policy

The objective of national housing policy shall be to reaffirm the long-established national commitment to decent, safe, and sanitary housing for every American by strengthening a nationwide partnership of public and private institutions able—

(1) to ensure that every resident of the United States has access to decent shelter or assistance in avoiding homelessness;

(2) to increase the Nation’s supply of decent housing that is affordable to low-income and moderate-income families and accessible to job opportunities;

(3) to improve housing opportunities for all residents of the United States, particularly members of disadvantaged minorities, on a nondiscriminatory basis;

(4) to help make neighborhoods safe and livable;

(5) to expand opportunities for homeownership;

(6) to provide every American community with a reliable, readily available supply of mortgage finance at the lowest possible interest rates; and

(7) to encourage tenant empowerment and reduce generational poverty in federally assisted and public housing by improving the means by which self-sufficiency may be achieved.

(Pub. L. 101–625, title I, §102, Nov. 28, 1990, 104 Stat. 4085.)

§ 12703. Purposes of Cranston-Gonzalez National Affordable Housing Act

The purposes of this Act are—

(1) to help families not owning a home to save for a down payment for the purchase of a home;

(2) to retain wherever feasible as housing affordable to low-income families those dwelling units produced for such purpose with Federal assistance;

(3) to extend and strengthen partnerships among all levels of government and the private sector, including for-profit and nonprofit organizations, in the production and operation of housing affordable to low-income and moderate-income families;

(4) to expand and improve Federal rental assistance for very low-income families; and

(5) to increase the supply of supportive housing, which combines structural features and services needed to enable persons with special needs to live with dignity and independence.

(Pub. L. 101–625, title I, §103, Nov. 28, 1990, 104 Stat. 4085.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 101–625, Nov. 28, 1990, 104 Stat. 4079, known as the Cranston-Gonzalez National Affordable Housing Act. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of this title and Tables.

§ 12704. Definitions

As used in this subchapter and in subchapter II of this chapter:

(1) The term “unit of general local government” means a city, town, township, county, parish, village, or other general purpose political subdivision of a State; the Federated States of Micronesia and Palau, the Marshall Islands, or a general purpose political subdivision thereof; a consortium of such political subdivisions recognized by the Secretary in accordance with section 12746(2) of this title; and any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive to act on behalf of the jurisdiction with regard to provisions of this Act.

(2) The term “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive officer to act on behalf of the State with regard to the provisions of this Act.

(3) The term “jurisdiction” means a State or unit of general local government.

(4) The term “participating jurisdiction” means any State or unit of general local government that has been so designated in accordance with section 12746 of this title.

(5) The term “nonprofit organization” means any private, nonprofit organization (including a State or locally chartered, nonprofit organization) that—

- (A) is organized under State or local laws,
- (B) has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual,
- (C) complies with standards of financial accountability acceptable to the Secretary, and
- (D) has among its purposes significant activities related to the provision of decent housing that is affordable to low-income and moderate-income persons.

(6) The term “community housing development organization” means a nonprofit organization as defined in paragraph (5), that—

- (A) has among its purposes the provision of decent housing that is affordable to low-income and moderate-income persons;
- (B) maintains, through significant representation on the organization’s governing board and otherwise, accountability to low-income community residents and, to the extent practicable, low-income beneficiaries with regard to decisions on the design, siting, development, and management of affordable housing;
- (C) has a demonstrated capacity for carrying out activities assisted under this Act; and
- (D) has a history of serving the local community or communities within which housing to be assisted under this Act is to be located.

In the case of an organization serving more than one county, the Secretary may not require that such organization, to be considered

a community housing development organization for purposes of this Act, include as members on the organization’s governing board low-income persons residing in each county served.

(7) The term “government-sponsored mortgage finance corporations” means the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal Agricultural Mortgage Corporation.

(8) The term “housing” includes manufactured housing and manufactured housing lots and elder cottage housing opportunity units that are small, free-standing, barrier-free, energy-efficient, removable, and designed to be installed adjacent to existing 1- to 4-family dwellings.

(9) The term “very low-income families” means low-income families whose incomes do not exceed 50 percent of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 percent of the median for the area on the basis of the Secretary’s findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.

(10) The term “low-income families” means families whose incomes do not exceed 80 percent of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of the Secretary’s findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.

(11) The term “families” has the same meaning given that term by section 1437a of this title.

(12) The term “security” has the same meaning as in section 77b of title 15.

(13) The term “displaced homemaker” means an individual who—

- (A) is an adult;
- (B) has not worked full-time full-year in the labor force for a number of years but has, during such years, worked primarily without remuneration to care for the home and family; and
- (C) is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

(14) The term “first-time homebuyer” means an individual and his or her spouse who have not owned a home during the 3-year period prior to purchase of a home with assistance under subchapter II of this chapter, except that—

- (A) any individual who is a displaced homemaker may not be excluded from consideration as a first-time homebuyer under this paragraph on the basis that the individual, while a homemaker, owned a home with his or her spouse or resided in a home owned by the spouse;
- (B) any individual who is a single parent may not be excluded from consideration as a

first-time homebuyer under this paragraph on the basis that the individual, while married, owned a home with his or her spouse or resided in a home owned by the spouse; and (C) an individual shall not be excluded from consideration as a first-time homebuyer under this paragraph on the basis that the individual owns or owned, as a principal residence during such 3-year period, a dwelling unit whose structure is—

(i) not permanently affixed to a permanent foundation in accordance with local or other applicable regulations, or

(ii) not in compliance with State, local, or model building codes, or other applicable codes, and cannot be brought into compliance with such codes for less than the cost of constructing a permanent structure.

(15) The term “single parent” means an individual who—

(A) is unmarried or legally separated from a spouse; and

(B)(i) has 1 or more minor children for whom the individual has custody or joint custody; or

(ii) is pregnant.

(16) The term “Secretary” means the Secretary of Housing and Urban Development, unless otherwise specified in this Act.

(17) The term “substantial rehabilitation” means the rehabilitation of residential property at an average cost in excess of \$25,000 per dwelling unit.

(18) The term “public housing agency” has the meaning given the term in section 1437a(b) of this title.

(19) The term “metropolitan city” has the meaning given the term in section 5302(a)(4) of this title.

(20) The term “urban county” has the meaning given the term in section 5302(a)(6) of this title.

(21) The term “certification” means a written assertion, based on supporting evidence, which shall be kept available for inspection by the Secretary, the Inspector General and the public, which assertion shall be deemed to be accurate for purposes of this Act, unless the Secretary determines otherwise after inspecting the evidence and providing due notice and opportunity for comment.

(23)¹ The term “to demonstrate to the Secretary” means to submit to the Secretary a written assertion together with supporting evidence that, in the determination of the Secretary, supports the accuracy of the assertion.

(24)² The term “insular area” means any of the following: Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa.

(24)² The term “energy efficient mortgage” means a mortgage that provides financing incentives for the purchase of energy efficient homes, or that provides financing incentives to make energy efficiency improvements in existing homes by incorporating the cost of such improvements in the mortgage.

(25) The term “energy efficient mortgage” means a mortgage that provides financing incentives for the purchase of energy efficient homes, or that provides financing incentives to make energy efficiency improvements in existing homes by incorporating the cost of such improvements in the mortgage.

(Pub. L. 101-625, title I, §104, Nov. 28, 1990, 104 Stat. 4085; Pub. L. 102-229, title I, Dec. 12, 1991, 105 Stat. 1709; Pub. L. 101-230, §2, Dec. 12, 1991, 105 Stat. 1720; Pub. L. 102-486, title I, §105(a), Oct. 24, 1992, 106 Stat. 2792; Pub. L. 102-550, title II, §§211(a)(1), 217(a), 218, 219, title IX, §914(a), Oct. 28, 1992, 106 Stat. 3756, 3760, 3761, 3877; Pub. L. 103-233, title II, §201, Apr. 11, 1994, 108 Stat. 363.)

REFERENCES IN TEXT

This Act, referred to in pars. (1), (2), (6), (16), and (21), is Pub. L. 101-625, Nov. 28, 1990, 104 Stat. 4079, as amended, known as the Cranston-Gonzalez National Affordable Housing Act. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of this title and Tables.

AMENDMENTS

1994—Par. (2). Pub. L. 103-233 struck out “and” after “Columbia,” and inserted before period at end “, or any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive officer to act on behalf of the State with regard to the provisions of this Act”.

1992—Par. (1). Pub. L. 102-550, §211(a)(1), amended this section to read as if amendment made by Pub. L. 102-230, §2(1), had not been enacted. See 1991 Amendment note below.

Par. (6). Pub. L. 102-550, §217(a), inserted concluding provisions.

Par. (8). Pub. L. 102-550, §218, inserted before period at end “and elder cottage housing opportunity units that are small, free-standing, barrier-free, energy-efficient, removable, and designed to be installed adjacent to existing 1- to 4-family dwellings”.

Par. (14)(C). Pub. L. 102-550, §219, added subpar. (C).

Par. (24). Pub. L. 102-550, §211(a)(1), amended this section to read as if amendment made by Pub. L. 102-230, §2(2), had not been enacted. See 1991 Amendment note below.

Pub. L. 102-486 added par. (24) defining “energy efficient mortgage”.

Par. (25). Pub. L. 102-550, §914(a), added par. (25).

1991—Par. (1). Pub. L. 102-230, §2(1), directed the substitution of “the insular areas” for “Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa, the Federated States of Micronesia and Palau, the Marshall Islands”. See 1992 Amendment note above.

Pub. L. 102-229 struck out “Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa,” after “of a State;”.

Par. (24). Pub. L. 102-230, §2(2), directed the addition of a par. (24) to read as follows: “(24) The term ‘insular areas’ means Guam, the Northern Mariana Islands, the United States Virgin Islands, and American Samoa.” See 1992 Amendment note above.

Pub. L. 102-229 added par. (24) defining “insular area”.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-233 applicable with respect to any amounts made available to carry out subchapter II (§12721 et seq.) of this chapter after Apr. 11, 1994, and any amounts made available to carry out that subchapter before that date that remain uncommitted on that date, with Secretary to issue any regulations necessary to carry out such amendment not later than end of 45-day period beginning on that date, see section 209 of Pub. L. 103-233, set out as a note under section 5301 of this title.

¹ So in original. Probably should be “(22)”.

² So in original. Two pars. (24) have been enacted.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 211(b) of Pub. L. 102-550 provided that: “The amendments made by subsection (a) [amending this section and section 12747 of this title] shall apply with respect to fiscal year 1993 and thereafter.”

Section 223 of title II of Pub. L. 102-550 provided that: “The amendments made by this title [enacting section 12810 of this title and amending this section and sections 12705, 12724, 12742, 12745 to 12748, 12750, 12771, 12773, 12774, 12782, and 12784 of this title] shall apply to unexpended funds allocated under title II of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12721 et seq.] in fiscal year 1992, except as otherwise specifically provided.”

REGULATIONS

Section 222 of title II of Pub. L. 102-550 provided that: “The Secretary of Housing and Urban Development shall issue any final regulations necessary to implement the provisions of this title [enacting section 12810 of this title, amending this section and sections 12705, 12724, 12742, 12745 to 12748, 12750, 12771, 12773, 12774, 12782, and 12784 of this title, and enacting provisions set out as notes under this section and sections 12746, 12747, and 12750 of this title] and the amendments made by this title not later than the expiration of the 180-day period beginning on the date of the enactment of this Act [Oct. 28, 1992], except as expressly provided otherwise in this title and the amendments made by this title. Such regulations shall be issued after notice and opportunity for public comment pursuant to the provisions of section 553 of title 5, United States Code (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section).”

TRANSITION RULE

Section 217(b) of Pub. L. 102-550 provided that: “For the purposes of determining compliance with the requirements of section 104(6) of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12704(6)], the Secretary of Housing and Urban Development may provide an exception for organizations that meet the definition of community housing development organization, except for significant representation of low-income community residents on the board, if such organization fulfills such requirement within 6 months of receiving funds under title II of such Act [42 U.S.C. 12721 et seq.] or September 30, 1993, whichever is sooner.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1437bbb-8, 1472, 11403g, 12773, 12896, 12902 of this title; title 12 section 4116.

§ 12705. State and local housing strategies**(a) In general**

The Secretary shall provide assistance directly to a jurisdiction only if—

- (1) the jurisdiction submits to the Secretary a comprehensive housing affordability strategy (hereafter in this section referred to as the “housing strategy”);
- (2) the jurisdiction submits annual updates of the housing strategy; and
- (3) the housing strategy, and any annual update of such strategy, is approved by the Secretary.

The Secretary shall establish such dates and manner for the submission and approval of housing strategies under this section that the Secretary determines will facilitate orderly program management by jurisdictions and provide for timely investment or other use of funds made available under subchapter II of this chapter and other programs requiring submission of a housing strategy. If the Secretary finds there

is good cause, the Secretary may provide reasonable extensions of any deadlines for submission of a jurisdiction’s housing strategy.

(b) Contents

A housing strategy submitted under this section shall be in a form that the Secretary determines to be appropriate for the assistance the jurisdiction may be provided and shall—

(1) describe the jurisdiction’s estimated housing needs projected for the ensuing 5-year period, and the jurisdiction’s need for assistance for very low-income, low-income, and moderate-income families, specifying such needs for different types of tenure and for different categories of residents, such as very low-income, low-income, and moderate-income families, the elderly, persons with disabilities, single persons, large families, residents of non-metropolitan areas, families who are participating in an organized program to achieve economic independence and self-sufficiency, persons with acquired immunodeficiency syndrome, and other categories of persons residing in or expected to reside in the jurisdiction that the Secretary determines to be appropriate;

(2) describe the nature and extent of homelessness, including rural homelessness, within the jurisdiction, providing an estimate of the special needs of various categories of persons who are homeless or threatened with homelessness, including tabular representation of such information, and a description of the jurisdiction’s strategy for (A) helping low-income families avoid becoming homeless; (B) addressing the emergency shelter and transitional housing needs of homeless persons (including a brief inventory of facilities and services that meet such needs within that jurisdiction); and (C) helping homeless persons make the transition to permanent housing and independent living;

(3) describe the significant characteristics of the jurisdiction’s housing market, indicating how those characteristics will influence the use of funds made available for rental assistance, production of new units, rehabilitation of old units, or acquisition of existing units;

(4) explain whether the cost of housing or the incentives to develop, maintain, or improve affordable housing in the jurisdiction are affected by public policies, particularly by policies of the jurisdiction, including tax policies affecting land and other property, land use controls, zoning ordinances, building codes, fees and charges, growth limits, and policies that affect the return on residential investment, and describe the jurisdiction’s strategy to remove or ameliorate negative effects, if any, of such policies, except that, if a State requires a unit of general local government to submit a regulatory barrier assessment that is substantially equivalent to the information required under this paragraph, as determined by the Secretary, the unit of general local government may submit its assessment submitted to the State to the Secretary and shall be considered to have complied with this paragraph;

(5) explain the institutional structure, including private industry, nonprofit organiza-

tions, and public institutions, through which the jurisdiction will carry out its housing strategy, assessing the strengths and gaps in that delivery system and describing what the jurisdiction will do to overcome those gaps;

(6) indicate resources from private and non-Federal public sources that are reasonably expected to be made available to carry out the purposes of this Act, explaining how funds made available will leverage those additional resources and identifying, where the jurisdiction deems it appropriate, publicly owned land or property located within the jurisdiction that may be utilized to carry out the purposes of this Act;

(7) set forth the jurisdiction's plan for investment or other use of housing funds made available under subchapter II of this chapter, the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], the Housing and Community Development Act of 1974, and the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11301 et seq.], during the ensuing year or such longer period as the Secretary determines to be appropriate, indicating the general priorities for allocating investment geographically within the jurisdiction and among different activities and housing needs;

(8) describe how the jurisdiction's plan will address the housing needs identified pursuant to subparagraphs¹ (1) and (2), describe the reasons for allocation priorities, and identify any obstacles to addressing underserved needs;

(9) describe the means of cooperation and coordination among the State and any units of general local government in the development, submission, and implementation of their housing strategies;

(10) in the case of a unit of local government, describe the number of public housing units in the jurisdiction, the physical condition of such units, the restoration and revitalization needs of public housing projects within the jurisdiction, the public housing agency's strategy for improving the management and operation of such public housing, and the public housing agency's strategy for improving the living environment of low- and very-low-income families residing in public housing;

(11) describe the manner in which the plan of the jurisdiction will help address the needs of public housing;

(12) in the case of a State, describe the strategy to coordinate the Low-Income Tax Credit with development of housing, including public housing, that is affordable to very low-income and low-income families;

(13) describe the jurisdiction's activities to encourage public housing residents to become more involved in management and participate in homeownership;

(14) describe the standards and procedures according to which the jurisdiction will monitor activities authorized under this Act and ensure long-term compliance with the provisions of this Act;

(15) include a certification that the jurisdiction will affirmatively further fair housing;

(16) include a certification that the jurisdiction has in effect and is following a residential

antidisplacement and relocation assistance plan that, in any case of any such displacement in connection with any activity assisted with amounts provided under subchapter II of this chapter, requires the same actions and provides the same rights as required and provided under a residential antidisplacement and relocation assistance plan under section 104(d) of the Housing and Community Development Act of 1974 [42 U.S.C. 5304(d)] in the event of displacement in connection with a development project assisted under section 106 or 119 of such Act [42 U.S.C. 5306, 5318];

(17) estimate the number of housing units within the jurisdiction that are occupied by low-income families or very low-income families and that contain lead-based paint hazards, as defined in section 4851b of this title, outline the actions proposed or being taken to evaluate and reduce lead-based paint hazards, and describe how lead-based paint hazard reduction will be integrated into housing policies and programs;

(18) include the number of families to whom the jurisdiction will provide affordable housing as defined in section 12745 of this title using funds made available;

(19) for any housing strategy submitted for fiscal year 1994 or any fiscal year thereafter and taking into consideration factors over which the jurisdiction has control, describe the jurisdiction's goals, programs, and policies for reducing the number of households with incomes below the poverty line (as defined by the Office of Management and Budget and revised annually), and, in consultation with other appropriate public and private agencies, state how the jurisdiction's goals, programs, and policies for producing and preserving affordable housing set forth in the housing strategy will be coordinated with other programs and services for which the jurisdiction is responsible and the extent to which they will reduce (or assist in reducing) the number of households with incomes below the poverty line; and

(20) describe the jurisdictions activities to enhance coordination between public and assisted housing providers and private and governmental health, mental health, and service agencies.

The Secretary may provide for the submission of abbreviated housing strategies by jurisdictions that are not otherwise expected to be participating jurisdictions under subchapter II of this chapter. Such an abbreviated housing strategy shall be appropriate to the types and amounts of assistance the jurisdiction is to receive as determined by the Secretary.

(c) Approval

(1) In general

The Secretary shall review the housing strategy upon receipt. Not later than 60 days after receipt by the Secretary, the housing strategy shall be approved unless the Secretary determines before that date that (A) the housing strategy is inconsistent with the purposes of this Act, or (B) the information described in subsection (b) of this section has not been provided in a substantially complete

¹ So in original. Probably should be "paragraphs".

manner. For the purpose of the preceding sentence, the adoption or continuation of a public policy identified pursuant to subsection (b)(4) of this section shall not be a basis for the Secretary's disapproval of a housing strategy. During the 18-month period following November 28, 1990, the Secretary may extend the review period to not longer than 90 days.

(2) Actions in case of disapproval

If the Secretary disapproves the housing strategy, the Secretary shall immediately notify the jurisdiction of such disapproval. Not later than 15 days after the Secretary's disapproval, the Secretary shall inform the jurisdiction in writing of (A) the reasons for disapproval, and (B) actions that the jurisdiction could take to meet the criteria for approval. If the Secretary fails to inform the jurisdiction of the reasons for disapproval within such 15-day period, the housing strategy shall be deemed to have been approved.

(3) Amendments and resubmission

The Secretary shall, for a period of not less than 45 days following the date of first disapproval, permit amendments to, or the resubmission of, any housing strategy that is disapproved. The Secretary shall approve or disapprove a housing strategy not less than 30 days after receipt of such amendments or resubmission.

(d) Coordination of State and local housing strategies

The Secretary may establish such requirements as the Secretary deems appropriate to encourage coordination between and among the housing strategies of a State and any participating jurisdictions within the State, except that a unit of general local government shall not be required to have elements of its housing strategy approved by the State.

(e) Consultation with social service agencies

(1) In general

When preparing a housing strategy for submission under this section, a jurisdiction shall make reasonable efforts to confer with appropriate social service agencies regarding the housing needs of children, elderly persons, persons with disabilities, homeless persons, and other persons served by such agencies.

(2) Lead-based paint hazards

When preparing that portion of a housing strategy required by subsection (b)(16) of this section, a jurisdiction shall consult with State or local health and child welfare agencies and examine existing data related to lead-based paint hazards and poisonings, including health department data on the addresses of housing units in which children have been identified as lead poisoned.

(f) Barrier removal

Not later than 4 months after completion of the final report of the Secretary's Advisory Commission on Regulatory Barriers to Affordable Housing, the Secretary shall submit to the Congress a written report outlining the Secretary's recommendations for legislative and administrative actions to facilitate the removal or

modification of excessive, duplicative, or unnecessary regulations or other requirements of Federal, State, or local governments that (1) inflate the costs of or otherwise inhibit the construction, rehabilitation, or management of housing, particularly housing that otherwise could be affordable to low-income and moderate-income families, or (2) contribute to economic or racial discrimination.

(g) Treatment of troubled public housing agencies

(1) Effect of troubled status on CHAS

The comprehensive housing affordability strategy (or any consolidated plan incorporating such strategy) for the State or unit of general local government in which any troubled public housing agency is located shall not be considered to comply with the requirements under this section unless such plan includes a description of the manner in which the State or unit will provide financial or other assistance to such troubled agency in improving its operations to remove such designation.

(2) Definition

For purposes of this subsection, the term "troubled public housing agency" means a public housing agency that, upon the effective date of the Quality Housing and Work Responsibility Act of 1998, is designated under section 6(j)(2) of the United States Housing Act of 1937 [42 U.S.C. 1437d(j)(2)] as a troubled public housing agency.

(Pub. L. 101-625, title I, §105, Nov. 28, 1990, 104 Stat. 4088; Pub. L. 102-550, title II, §220, title VI, §681, title X, §1014, title XII, §1206, Oct. 28, 1992, 106 Stat. 3761, 3830, 3908, 3940; Pub. L. 105-276, title V, §§568, 583, Oct. 21, 1998, 112 Stat. 2634, 2644; Pub. L. 106-400, §2, Oct. 30, 2000, 114 Stat. 1675.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (b)(6), (14) and (c)(1), is Pub. L. 101-625, Nov. 28, 1990, 104 Stat. 4079, known as the Cranston-Gonzalez National Affordable Housing Act. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of this title and Tables.

The United States Housing Act of 1937, referred to in subsec. (b)(7), 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, which is classified generally to chapter 8 (§1437 et seq.) 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.

The Housing and Community Development Act of 1974, referred to in subsec. (b)(7), is Pub. L. 93-383, Aug. 22, 1974, 88 Stat. 633, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

The McKinney-Vento Homeless Assistance Act, referred to in subsec. (b)(7), is Pub. L. 100-77, July 22, 1987, 101 Stat. 482, as amended, which is classified principally to chapter 119 (§11301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of this title and Tables.

The effective date of the Quality Housing and Work Responsibility Act of 1998, referred to in subsec. (g)(2), probably means the general effective date for title V of Pub. L. 105-276, included in section 503 of Pub. L. 105-276 which is set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

AMENDMENTS

2000—Subsec. (b)(7). Pub. L. 106-400 substituted “McKinney-Vento Homeless Assistance Act” for “Stewart B. McKinney Homeless Assistance Act”.

1998—Subsec. (b). Pub. L. 105-276, §583(1), transferred flush provisions relating to abbreviated housing strategies to end of subsection to follow last numbered paragraph.

Subsec. (b)(11) to (15). Pub. L. 105-276, §583(6), (7), added par. (11) and redesignated former pars. (11) to (14) as (12) to (15), respectively. Former par. (15) redesignated (16).

Subsec. (b)(16). Pub. L. 105-276, §583(6), redesignated par. (15) as (16). Former par. (16), relating to housing units that contain lead-based paint hazards, redesignated (17), and former par. (16), relating to number of families to whom jurisdiction will provide affordable housing, redesignated (18).

Pub. L. 105-576, §583(5)(A), substituted “programs;” for “programs.” in par. (16) relating to housing units that contain lead-based paint hazards.

Pub. L. 105-576, §583(4)(A), struck out “and” at end of par. (16) relating to number of families to whom jurisdiction will provide affordable housing.

Subsec. (b)(17). Pub. L. 105-276, §583(5)(B), redesignated par. (16), relating to housing units that contain lead-based paint hazards, as (17). Former par. (17), relating to reducing the number of households within a jurisdiction with incomes below the poverty line, redesignated (19), and former par. (17), relating to activities to enhance coordination, redesignated (20).

Subsec. (b)(18). Pub. L. 105-276, §583(4)(B), redesignated par. (16), relating to number of families to whom jurisdiction will provide affordable housing, as (18).

Subsec. (b)(19). Pub. L. 105-276, §583(3), redesignated par. (17), relating to reducing the number of households within a jurisdiction with incomes below the poverty line, as (19).

Subsec. (b)(20). Pub. L. 105-276, §583(2), redesignated par. (17), relating to activities to enhance coordination, as (20).

Subsec. (g). Pub. L. 105-276, §568, added subsec. (g). 1992—Subsec. (b)(1). Pub. L. 102-550, §681(1), inserted “persons with disabilities,” after “the elderly.”

Subsec. (b)(2). Pub. L. 102-550, §220(a), inserted “, including rural homelessness,” after “extent of homelessness” and “including tabular representation of such information,” after “with homelessness.”

Subsec. (b)(4). Pub. L. 102-550, §1206, inserted before semicolon at end “, except that, if a State requires a unit of general local government to submit a regulatory barrier assessment that is substantially equivalent to the information required under this paragraph, as determined by the Secretary, the unit of general local government may submit its assessment submitted to the State to the Secretary and shall be considered to have complied with this paragraph”.

Subsec. (b)(8). Pub. L. 102-550, §220(c)(2), added par. (8). Former par. (8) redesignated (9).

Subsec. (b)(9) to (13). Pub. L. 102-550, §220(c)(1), redesignated pars. (8) to (12) as (9) to (13), respectively. Former par. (13) redesignated (14).

Subsec. (b)(14). Pub. L. 102-550, §220(c)(1), redesignated par. (13) as (14). Former par. (14) redesignated (15).

Pub. L. 102-550, §220(b)(1), added par. (14) and struck out former par. (14) which read as follows: “include a certification that the jurisdiction is in compliance with a residential antidisplacement and relocation assistance plan under section 104(d) of the Housing and Community Development Act of 1974 (to the extent that such a plan applies to the jurisdiction); and”.

Subsec. (b)(15). Pub. L. 102-550, §220(c)(1), redesignated par. (14) as (15). Former par. (15) redesignated (16).

Subsec. (b)(16). Pub. L. 102-550, §1014(3), added par. (16) relating to housing units that contain lead-based paint hazards.

Pub. L. 102-550, §220(c)(1), redesignated par. (15) as (16). Former par. (16) redesignated (17).

Pub. L. 102-550, §220(b)(3), added at end par. (16) relating to reducing the number of households within a jurisdiction with incomes below the poverty line.

Subsec. (b)(17). Pub. L. 102-550, §681(2), which directed amendment of subsec. (b) by adding “after paragraph (16), as added by the preceding provisions of this Act”, a new par. (17) relating to activities to enhance coordination, was executed by adding that par. (17) after par. (17) (formerly par. (16), relating to reducing the number of households within a jurisdiction with incomes below the poverty line, to reflect the probable intent of Congress.

Pub. L. 102-550, §220(c)(1), redesignated par. (16), relating to reducing the number of households within a jurisdiction with incomes below the poverty line, as (17).

Subsec. (e). Pub. L. 102-550, §1014(4), designated existing provisions as par. (1), inserted heading, and added par. (2).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105-276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105-276, set out as a note under section 1437 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 220 of Pub. L. 102-550 applicable to unexpended funds allocated under subchapter II of this chapter in fiscal year 1992, except as otherwise specifically provided, see section 223 of Pub. L. 102-550, set out as a note under section 12704 of this title.

Amendment by subtitles B through F of title VI [§§ 621-685] of Pub. L. 102-550 applicable upon expiration of 6-month period beginning Oct. 28, 1992, except as otherwise provided, see section 13642 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1437e, 1437f, 1437aaa-1, 1437aaa-2, 1439, 1485, 1490f, 4852, 5304, 5318a, 8013, 11361, 11375, 11386, 11394, 11403c, 11432, 12705b, 12705c, 12708, 12746, 12747, 12752, 12872, 12873, 12892, 12893, 12899b, 12899c, 12903 of this title; title 12 sections 1456, 1701q, 1723a, 4117.

§ 12705a. Purposes of Removal of Regulatory Barriers to Affordable Housing Act

The purposes of sections 12705a to 12705d of this title are—

(1) to encourage State and local governments to further identify and remove regulatory barriers to affordable housing (including barriers that are excessive, unnecessary, duplicative, or exclusionary) that significantly increase housing costs and limit the supply of affordable housing; and

(2) to strengthen the connection between Federal housing assistance and State and local efforts to identify and eliminate regulatory barriers.

(Pub. L. 102-550, title XII, §1202, Oct. 28, 1992, 106 Stat. 3938.)

REFERENCES IN TEXT

Sections 12705a to 12705d of this title, referred to in text, were in the original “this title”, meaning title XII of Pub. L. 102-550, Oct. 28, 1992, 106 Stat. 3938, known as the Removal of Regulatory Barriers to Affordable Housing Act of 1992, which enacted sections 12705a to 12705d of this title, amended sections 5306 and 12705 of this title, and enacted provisions set out as a note below.

CODIFICATION

Section was enacted as part of the Removal of Regulatory Barriers to Affordable Housing Act of 1992, and also as part of the Housing and Community Development Act of 1992, and not as part of the Cranston-Gonzalez National Affordable Housing Act which comprises this chapter.

SHORT TITLE

Section 1201 of title XII of Pub. L. 102-550 provided that: “This title [enacting this section and sections 12705b to 12705d of this title, amending sections 5306 and 12705 of this title, and enacting provisions set out as a note below] may be cited as the ‘Removal of Regulatory Barriers to Affordable Housing Act of 1992.’”

REPORT BY SECRETARY

Pub. L. 102-550, title XII, § 1207, Oct. 28, 1992, 106 Stat. 3941, provided that not later than 2 years after Oct. 28, 1992, the Secretary of Housing and Urban Development submit a report to Congress describing any successful State and local strategies for removal of barriers to affordable housing, assessing impact of identified regulatory barriers on housing patterns of minorities, and describing any strategies developed or implemented by Department of Housing and Urban Development for reducing barriers to affordable housing imposed by Federal Government, prior to repeal by Pub. L. 105-362, title VII, § 701(b), Nov. 10, 1998, 112 Stat. 3287.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12705b of this title.

§ 12705b. Definition of regulatory barriers to affordable housing

For purposes of sections 12705a to 12705d of this title, the terms “regulatory barriers to affordable housing” and “regulatory barriers” mean any public policies (including policies embodied in statutes, ordinances, regulations, or administrative procedures or processes) required to be identified by a jurisdiction in connection with its comprehensive housing affordability strategy under section 12705(b)(4) of this title. Such terms do not include policies relating to rents imposed on a structure by a jurisdiction or policies that have served to create or preserve, or can be shown to create or preserve, housing for low- and very low-income families, including displacement protections, demolition controls, replacement housing requirements, relocation benefits, housing trust funds, dedicated funding sources, waiver of local property taxes and builder fees, inclusionary zoning, rental zoning overlays, long-term use restrictions, and rights of first refusal.

(Pub. L. 102-550, title XII, § 1203, Oct. 28, 1992, 106 Stat. 3938.)

REFERENCES IN TEXT

Sections 12705a to 12705d of this title, referred to in text, were in the original “this title”, meaning title XII of Pub. L. 102-550, Oct. 28, 1992, 106 Stat. 3938, known as the Removal of Regulatory Barriers to Affordable Housing Act of 1992, which enacted sections 12705a to 12705d of this title, amended sections 5306 and 12705 of this title, and enacted provisions set out as notes under section 12705a of this title.

CODIFICATION

Section was enacted as part of the Removal of Regulatory Barriers to Affordable Housing Act of 1992, and also as part of the Housing and Community Develop-

ment Act of 1992, and not as part of the Cranston-Gonzalez National Affordable Housing Act which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12705a, 12705c of this title.

§ 12705c. Grants for regulatory barrier removal strategies and implementation**(a) Funding**

There is authorized to be appropriated for grants under subsections (b) and (c)¹ of this section such sums as may be necessary for each of fiscal years 2001, 2002, 2003, 2004, and 2005.

(b) Grant authority

The Secretary may make grants to States and units of general local government (including consortia of such governments) for the costs of developing and implementing strategies to remove regulatory barriers to affordable housing, including the costs of—

(1) identifying, assessing, and monitoring State and local regulatory barriers;

(2) identifying State and local policies (including laws and regulations) that permit or encourage regulatory barriers;

(3) developing legislation to provide State, local, or regional programs to reduce regulatory barriers and developing a strategy for adoption of such legislation;

(4) developing model State or local standards and ordinances to reduce regulatory barriers and assisting in the adoption and use of the standards and ordinances;

(5) carrying out the simplification and consolidation of administrative procedures and processes constituting regulatory barriers to affordable housing, including the issuance of permits; and

(6) providing technical assistance and information to units of general local government for implementation of legislative and administrative reform programs to remove regulatory barriers to affordable housing.

(c) Repealed. Pub. L. 106-569, title I, § 102(c), Dec. 27, 2000, 114 Stat. 2947**(d) Definitions**

For purposes of this section, the terms “regulatory barriers to affordable housing” and “regulatory barriers” have the meaning given such terms in section 12705b of this title.

(e) Application and selection

The Secretary shall provide for the form and manner of applications for grants under this section, which shall describe how grant amounts will assist the State or unit of general local government in developing and implementing strategies to remove regulatory barriers to affordable housing. The Secretary shall establish criteria for approval of applications under this subsection and such criteria shall require that grant amounts be used in a manner consistent with the strategy contained in the comprehensive housing affordability strategy for the jurisdiction pursuant to section 12705(b)(4) of this title.

¹ See References in Text note below.

(f) Selection of grantees

To the extent amounts are made available to carry out this section, the Secretary shall provide grants on a competitive basis to eligible grantees based on the proposed uses of such amounts, as provided in applications under subsection (e) of this section.

(g) Coordination with clearinghouse

Each State and unit of general local government receiving a grant under this section, shall consult, coordinate, and exchange information with the clearinghouse established under section 12705d of this title.

(h) Reports to Secretary

Each State and unit of general local government receiving a grant under this section shall submit a report to the Secretary, not less than 12 months after receiving the grant, describing any activities carried out with the grant amounts. The report shall contain an assessment of the impact of any regulatory barriers identified by the grantee on the housing patterns of minorities.

(Pub. L. 102-550, title XII, §1204, Oct. 28, 1992, 106 Stat. 3938; Pub. L. 106-569, title I, §102(a)-(e), Dec. 27, 2000, 114 Stat. 2946, 2947.)

REFERENCES IN TEXT

Subsection (c) of this section, referred to in subsec. (a), was repealed by Pub. L. 106-569, title I, §102(c), Dec. 27, 2000, 114 Stat. 2947.

CODIFICATION

Section was enacted as part of the Removal of Regulatory Barriers to Affordable Housing Act of 1992, and also as part of the Housing and Community Development Act of 1992, and not as part of the Cranston-Gonzalez National Affordable Housing Act which comprises this chapter.

Section is comprised of section 1204 of Pub. L. 102-550. Subsection (i) of section 1204 of Pub. L. 102-550 amended section 5306 of this title.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106-569, §102(a), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: “The amounts set aside under section 5307 of this title for the purpose of this subsection shall be available for grants under subsection (b) and (c) of this section.”

Subsec. (b). Pub. L. 106-569, §102(b)(1), (2), substituted “Grant authority” for “State grants” in heading and inserted “and units of general local government (including consortia of such governments)” after “States” in introductory provisions.

Subsec. (b)(3). Pub. L. 106-569, §102(b)(3), substituted “State, local, or regional programs to reduce” for “a State program to reduce State and local”.

Subsec. (b)(4). Pub. L. 106-569, §102(b)(4), inserted “or local” after “State”.

Subsec. (b)(5). Pub. L. 106-569, §102(b)(5), struck out “State” before “administrative procedures”.

Subsec. (c). Pub. L. 106-569, §102(c), struck out heading and text of subsec. (c) which related to local grants.

Subsec. (e). Pub. L. 106-569, §102(d), substituted “and such criteria shall require that grant amounts be used in a manner consistent with the strategy contained in the comprehensive housing affordability strategy for the jurisdiction pursuant to section 12705(b)(4) of this title” for “and for the selection of units of general local government to receive grants under subsection (f)(2) of this section” before period at end.

Subsec. (f). Pub. L. 106-569, §102(e), amended heading and text of subsec. (f) generally, substituting provisions

relating to selection of grantees for provisions relating to allocation of amounts.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12705a, 12705b of this title.

§ 12705d. Regulatory barriers clearinghouse**(a) Establishment**

The Secretary of Housing and Urban Development shall establish a clearinghouse to serve as a national repository to receive, collect, process, assemble, and disseminate information regarding—

(1) State and local laws, regulations, and policies affecting the development, maintenance, improvement, availability, or cost of affordable housing (including tax policies affecting land and other property, land use controls, zoning ordinances, building codes, fees and charges, growth limits, and policies that affect the return on investment in residential property), and the prevalence and effects on affordable housing of such laws, regulations, and policies;

(2) State and local activities, strategies, and plans to remove or ameliorate the negative effects, if any, of such laws, regulations, and policies, including particularly innovative or successful activities, strategies, and plans; and

(3) State and local strategies, activities and plans that promote affordable housing and housing desegregation, including particularly innovative or successful strategies, activities, and plans.

(b) Functions

The clearinghouse established under subsection (a) of this section shall—

(1) respond to inquiries from State and local governments, other organizations, and individuals requesting information regarding State and local laws, regulations, policies, activities, strategies, and plans described in subsection (a) of this section;

(2) provide assistance in identifying, examining, and understanding such laws, regulations, policies, activities, strategies, and plans; and

(3) by making available through a World Wide Web site of the Department, by electronic mail, or otherwise, provide to each housing agency of a unit of general local government that serves an area having a population greater than 100,000, an index of all State and local strategies and plans submitted under subsection (a) of this section to the clearinghouse, which—

(A) shall describe the types of barriers to affordable housing that the strategy or plan was designed to ameliorate or remove; and

(B) shall, not later than 30 days after submission to the clearinghouse of any new strategy or plan, be updated to include the new strategy or plan submitted.

(c) Organization

The clearinghouse under this section shall be established within the Office of Policy Development of the Department of Housing and Urban Development and shall be under the direction of the Assistant Secretary for Policy Development and Research.

(d) Timing

The clearinghouse under this section (as amended by section 103 of the Housing Affordability Barrier Removal Act of 2000) shall be established and commence carrying out the functions of the clearinghouse under this section not later than 1 year after December 27, 2000. The Secretary of Housing and Urban Development may comply with the requirements under this section by reestablishing the clearinghouse that was originally established to comply with this section and updating and improving such clearinghouse to the extent necessary to comply with the requirements of this section as in effect pursuant to the enactment of such Act.

(Pub. L. 102-550, title XII, §1205, Oct. 28, 1992, 106 Stat. 3940; Pub. L. 106-569, title I, §103, Dec. 27, 2000, 114 Stat. 2947.)

REFERENCES IN TEXT

The Housing Affordability Barrier Removal Act of 2000, referred to in subsec. (d), is title I of Pub. L. 106-569, Dec. 27, 2000, 114 Stat. 2946. Section 103 of the Act amended this section. For complete classification of this Act to the Code, see Short Title of 2000 Amendment note set out under section 12701 of this title and Tables.

CODIFICATION

Section was enacted as part of the Removal of Regulatory Barriers to Affordable Housing Act of 1992, and also as part of the Housing and Community Development Act of 1992, and not as part of the Cranston-Gonzalez National Affordable Housing Act which comprises this chapter.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106-569, §103(1)(A), substituted “serve as a national repository to receive, collect, process, assemble, and disseminate” for “receive, collect, process, and assemble” in introductory provisions.

Subsec. (a)(1). Pub. L. 106-569, §103(1)(B), substituted “(including” for “, including” and inserted “), and the prevalence and effects on affordable housing of such laws, regulations, and policies” before semicolon at end.

Subsec. (a)(2). Pub. L. 106-569, §103(1)(C), inserted before semicolon “, including particularly innovative or successful activities, strategies, and plans”.

Subsec. (a)(3). Pub. L. 106-569, §103(1)(D), inserted before period at end “, including particularly innovative or successful strategies, activities, and plans”.

Subsec. (b)(3). Pub. L. 106-569, §103(2), added par. (3).

Subsecs. (c), (d). Pub. L. 106-569, §103(3), added subsecs. (c) and (d).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12705a, 12705b, 12705c of this title.

§ 12706. Certification

The Secretary shall, by regulation or otherwise, as deemed by the Secretary to be appropriate, require any application for housing assistance under subchapter II of this chapter, assistance under the Housing and Community Development Act of 1974, or assistance under the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11301 et seq.], to contain or be accompanied by a certification by an appropriate State or local public official that the proposed housing activities are consistent with the housing strategy of the jurisdiction to be served.

(Pub. L. 101-625, title I, §106, Nov. 28, 1990, 104 Stat. 4091; Pub. L. 106-400, §2, Oct. 30, 2000, 114 Stat. 1675.)

REFERENCES IN TEXT

The Housing and Community Development Act of 1974, referred to in text, is Pub. L. 93-383, Aug. 22, 1974, 88 Stat. 633, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

The McKinney-Vento Homeless Assistance Act, referred to in text, is Pub. L. 100-77, July 22, 1987, 101 Stat. 482, as amended, which is classified principally to chapter 119 (§11301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of this title and Tables.

AMENDMENTS

2000—Pub. L. 106-400 substituted “McKinney-Vento Homeless Assistance Act” for “Stewart B. McKinney Homeless Assistance Act”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12708 of this title.

§ 12707. Citizen participation

(a) In general

Before submitting a housing strategy under this section,¹ a jurisdiction shall—

(1) make available to its citizens, public agencies, and other interested parties information concerning the amount of assistance the jurisdiction expects to receive and the range of investment or other uses of such assistance that the jurisdiction may undertake;

(2) publish a proposed housing strategy in a manner that, in the determination of the Secretary, affords affected citizens, public agencies, and other interested parties a reasonable opportunity to examine its content and to submit comments on the proposed housing strategy;

(3) hold one or more public hearings to obtain the views of citizens, public agencies, and other interested parties on the housing needs of the jurisdiction; and

(4) provide citizens, public agencies, and other interested parties with reasonable access to records regarding any uses of any assistance the jurisdiction may have received during the preceding 5 years.

(b) Notice and comment

Before submitting any performance report or substantial amendment to a housing strategy under this section,¹ a participating jurisdiction shall provide citizens with reasonable notice of, and opportunity to comment on, such performance report or substantial amendment prior to its submission.

(c) Consideration of comments

A participating jurisdiction shall consider any comments or views of citizens in preparing a final housing strategy, amendment to a housing strategy or performance report for submission. A summary of such comments or views shall be attached when a housing strategy, amendment to a housing strategy or performance report is

¹So in original. The words “this section” probably should be “section 12705 of this title”.

submitted. The submitted housing strategy, amendment, or report shall be made available to the public.

(d) Regulations

The Secretary shall by regulation establish procedures appropriate and practicable for providing a fair hearing and timely resolution of citizen complaints related to housing strategies or performance reports.

(Pub. L. 101-625, title I, §107, Nov. 28, 1990, 104 Stat. 4091.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12835 of this title.

§ 12708. Compliance

(a) Performance reports

(1) In general

Each participating jurisdiction shall annually review and report, in a form acceptable to the Secretary, on the progress it has made in carrying out its housing strategy, which report shall include an evaluation of the jurisdiction's progress in meeting its goal established in section 12705(b)(15)¹ of this title, and information on the number and types of households served, including the number of very low-income, low-income, and moderate-income persons served and the racial and ethnic status of persons served that will be assisted with funds made available.

(2) Submission

The Secretary shall (A) establish dates for submission of reports under this subsection, and (B) review such reports and make such recommendations as the Secretary deems appropriate to carry out the purposes of this Act.

(3) Failure to report

If a jurisdiction fails to submit a report satisfactory to the Secretary in a timely manner, assistance to the jurisdiction under subchapter II of this chapter or the other programs referred to in section 12706 of this title may be—

(A) suspended until a report satisfactory to the Secretary is submitted; or

(B) withdrawn and reallocated if the Secretary finds, after notice and opportunity for a hearing, that the jurisdiction will not submit a satisfactory report.

(b) Performance review by Secretary

(1) In general

The Secretary shall ensure that activities of each jurisdiction required to submit a housing strategy under section 12705 of this title are reviewed not less frequently than annually. Such review shall include, insofar as practicable, on-site visits by employees of the Department of Housing and Urban Development and shall include an assessment of the jurisdiction's—

(A) management of funds made available under programs administered by the Secretary;

(B) compliance with its housing strategy;

(C) accuracy in the preparation of performance reports under subsection (a) of this section; and

(D) efforts to ensure that housing assisted under programs administered by the Secretary are in compliance with contractual agreements and the requirements of law.

(2) Report by Secretary

The Secretary shall report on the performance review in writing. The Secretary shall give the jurisdiction not less than 30 days to review and comment on the report. After taking into consideration the comments of the jurisdiction, the Secretary may revise the report and shall make the jurisdiction's comments and the report, with any revisions, readily available to the public within 30 days after receipt of the jurisdiction's comments.

(c) Review by courts

The adequacy of information submitted under section 12705(b)(4) of this title shall not be reviewable by any Federal, State, or other court. Review of a housing strategy by any Federal, State, or other court shall be limited to determining whether the process of development and the content of the strategy are in substantial compliance with the requirements of this Act. During the pendency of any action challenging the adequacy of a housing strategy or the action of the Secretary in approving a strategy, the court shall not have the authority to enjoin activities taken by the jurisdiction to implement an approved housing strategy. Any housing assisted during the pendency of such action shall not be subject to any order of the court resulting from such action.

(Pub. L. 101-625, title I, §108, Nov. 28, 1990, 104 Stat. 4092.)

REFERENCES IN TEXT

Section 12705(b)(15) of this title, referred to in subsec. (a)(1), was redesignated section 12705(b)(16) of this title by Pub. L. 102-550, title II, §220(c)(1), Oct. 28, 1992, 106 Stat. 3762, and was subsequently redesignated section 12705(b)(18) of this title by Pub. L. 105-276, title V, §583(4)(A), Oct. 21, 1998, 112 Stat. 2644.

This Act, referred to in subsecs. (a)(2) and (c), is Pub. L. 101-625, Nov. 28, 1990, 104 Stat. 4079, known as the Cranston-Gonzalez National Affordable Housing Act. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12756 of this title.

§ 12709. Energy efficiency standards

(a) Establishment

(1) In general

The Secretary of Housing and Urban Development and the Secretary of Agriculture shall, not later than 1 year after October 24, 1992, jointly establish, by rule, energy efficiency standards for—

(A) new construction of public and assisted housing and single family and multifamily residential housing (other than manufactured homes) subject to mortgages insured

¹ See References in Text note below.

under the National Housing Act [12 U.S.C. 1701 et seq.]; and

(B) new construction of single family housing (other than manufactured homes) subject to mortgages insured, guaranteed, or made by the Secretary of Agriculture under title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.].

(2) Contents

Such standards shall meet or exceed the requirements of the Council of American Building Officials Model Energy Code, 1992 (hereafter in this section referred to as “CABO Model Energy Code, 1992”), or, in the case of multifamily high rises, the requirements of the American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 90.1-1989 (hereafter in this section referred to as “ASHRAE Standard 90.1-1989”), and shall be cost-effective with respect to construction and operating costs on a life-cycle cost basis. In developing such standards, the Secretaries shall consult with an advisory task force composed of homebuilders, national, State, and local housing agencies (including public housing agencies), energy agencies, building code organizations and agencies, energy efficiency organizations, utility organizations, low-income housing organizations, and other parties designated by the Secretaries.

(b) Model Energy Code

If the Secretaries have not, within 1 year after October 24, 1992, established energy efficiency standards under subsection (a) of this section, all new construction of housing specified in such subsection shall meet the requirements of CABO Model Energy Code, 1992, or, in the case of multifamily high rises, the requirements of ASHRAE Standard 90.1-1989.

(c) Revisions of Model Energy Code

If the requirements of CABO Model Energy Code, 1992, or, in the case of multifamily high rises, ASHRAE Standard 90.1-1989, are revised at any time, the Secretaries shall, not later than 1 year after such revision, amend the standards established under subsection (a) of this section to meet or exceed the requirements of such revised code or standard unless the Secretaries determine that compliance with such revised code or standard would not result in a significant increase in energy efficiency or would not be technologically feasible or economically justified.

(Pub. L. 101-625, title I, §109, Nov. 28, 1990, 104 Stat. 4093; Pub. L. 102-486, title I, §101(c)(1), Oct. 24, 1992, 106 Stat. 2786.)

REFERENCES IN TEXT

The National Housing Act, referred to in subsec. (a)(1)(A), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to chapter 13 (§1701 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

The Housing Act of 1949, referred to in subsec. (a)(1)(B), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended. Title V of the Act is classified generally to subchapter III (§1471 et seq.) of chapter 8A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of this title and Tables.

AMENDMENTS

1992—Pub. L. 102-486 amended section generally. Prior to amendment, section read as follows: “The Secretary of Housing and Urban Development shall, not later than one year after November 28, 1990, promulgate energy efficiency standards for new construction of public and assisted housing and single-family and multifamily residential housing (other than manufactured homes) subject to mortgages under the National Housing Act. Such standards shall meet or exceed the provisions of the most recent edition of the Model Energy Code of the Council of American Building Officials and shall be cost-effective with respect to construction and operating costs. In developing such standards the Secretary shall consult with an advisory task force composed of homebuilders, national, State, and local housing agencies (including public housing agencies), energy agencies and building code organizations and agencies, energy efficiency organizations, utility organizations, low-income housing organizations, and other parties designated by the Secretary.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8013, 12745 of this title; title 12 section 1701q; title 38 section 3704.

§ 12710. Capacity study

(a) In general

The Secretary shall ensure that the Department of Housing and Urban Development has adequate capacity and resources, including staff and training programs, to carry out its mission and responsibilities to implement the provisions of this Act, including the ability of the Department to carry out the multifamily mortgage insurance program, and the ability to respond to areas identified as “material weaknesses” by the Office of the Inspector General in financial audits or other reports.

(b) Report

Not later than 60 days after November 28, 1990, and annually thereafter, the Secretary shall prepare and submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a study detailing the Department’s plan to maintain such capacity, together with any recommendations for legislative and administrative action as the Secretary determines to be appropriate.

(Pub. L. 101-625, title I, §110, Nov. 28, 1990, 104 Stat. 4093; Pub. L. 102-550, title IV, §407, Oct. 28, 1992, 106 Stat. 3778.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), is Pub. L. 101-625, Nov. 28, 1990, 104 Stat. 4079, known as the Cranston-Gonzalez National Affordable Housing Act. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of this title and Tables.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-550 struck out “, and” after “responsibilities” and substituted for period at end “and the ability to respond to areas identified as ‘material weaknesses’ by the Office of the Inspector General in financial audits or other reports.”

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104-14, set

out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 12711. Protection of State and local authority

Notwithstanding any other provision of this subchapter or subchapter II of this chapter, the Secretary shall not establish any criteria for allocating or denying funds made available under programs administered by the Secretary based on the adoption, continuation, or discontinuation by a jurisdiction of any public policy, regulation, or law that is (1) adopted, continued, or discontinued in accordance with the jurisdiction's duly established authority, and (2) not in violation of any Federal law.

(Pub. L. 101-625, title I, §111, Nov. 28, 1990, 104 Stat. 4093.)

§ 12712. 5-year energy efficiency plan

(a) Establishment

The Secretary of Housing and Urban Development shall establish a plan for activities to be undertaken and policies to be adopted by the Secretary within the 5-year period beginning upon the submission of the plan to the Congress under subsection (d) of this section to provide for, encourage, and improve energy efficiency in newly constructed, rehabilitated, and existing housing. In developing the plan, the Secretary shall consider, as appropriate, any energy assessments under section 944.

(b) Initial plan

The Secretary of Housing and Urban Development shall establish the first plan under this section not later than the expiration of the 1-year period beginning on November 28, 1990.

(c) Updates

The Secretary of Housing and Urban Development shall revise and update the plan under this section not less than once for each 2-year period, the first such 2-year period beginning on the date of the submission of the initial plan under subsection (b) of this section to the Congress (as provided in subsection (d) of this section). Each such update shall revise the plan for the 5-year period beginning upon the submission of the updated plan to the Congress.

(d) Submission to Congress

The Secretary of Housing and Urban Development shall submit the initial plan established under subsection (b) of this section and any updated plans under subsection (c) of this section to the Congress not later than the date by which such plans are to be established or updated under such paragraphs.

(Pub. L. 101-625, title IX, §945, Nov. 28, 1990, 104 Stat. 4416.)

REFERENCES IN TEXT

Section 944, referred to in subsec. (a), is section 944 of Pub. L. 101-625, which is set out below.

CODIFICATION

Section was enacted as part of title IX of the Cranston-Gonzalez National Affordable Housing Act, and not as part of title I of such Act which comprises this subchapter.

ENERGY EFFICIENT MORTGAGES PILOT PROGRAM

Pub. L. 102-550, title V, §513, Oct. 28, 1992, 106 Stat. 3786, provided that:

“(a) ESTABLISHMENT OF PILOT PROGRAM.—

“(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act [Oct. 28, 1992], the Secretary of Housing and Urban Development (hereafter referred to as the ‘Secretary’) shall establish an energy efficient mortgage pilot program in 5 States, to promote the purchase of existing energy efficient residential buildings and the installation of cost-effective improvements in existing residential buildings.

“(2) PILOT PROGRAM.—The pilot program established under this subsection shall include the following criteria, where applicable:

“(A) ORIGINATION.—The lender shall originate a housing loan that is insured under title II of the National Housing Act [12 U.S.C. 1707 et seq.] in accordance with the applicable requirements.

“(B) APPROVAL.—The mortgagor's base loan application shall be approved if the mortgagor's income and credit record is found to be satisfactory.

“(C) COST OF IMPROVEMENTS.—The cost of cost-effective energy efficiency improvements shall not exceed the greater of—

“(i) 5 percent of the property value (not to exceed \$8,000); or

“(ii) \$4,000.

“(3) AUTHORITY FOR MORTGAGEES.—In granting mortgages under the pilot program established pursuant to this subsection, the Secretary shall grant mortgagees the authority—

“(A) to permit the final loan amount to exceed the loan limits established under title II of the National Housing Act [12 U.S.C. 1707 et seq.] by an amount not to exceed 100 percent of the cost of the cost-effective energy efficiency improvements, if the mortgagor's request to add the cost of such improvements is received by the mortgagee prior to funding of the base loan;

“(B) to hold in escrow all funds provided to the mortgagor to undertake the energy efficiency improvements until the efficiency improvements are actually installed; and

“(C) to transfer or sell the energy efficient mortgage to the appropriate secondary market agency, after the mortgage is issued, but before the energy efficiency improvements are actually installed.

“(4) PROMOTION OF PILOT PROGRAM.—The Secretary shall encourage participation in the energy efficient mortgage pilot program by—

“(A) making available information to lending agencies and other appropriate authorities regarding the availability and benefits of energy efficient mortgages;

“(B) requiring mortgagees and designated lending authorities to provide written notice of the availability and benefits of the pilot program to mortgagors applying for financing in those States designated by the Secretary as participating under the pilot program; and

“(C) requiring each applicant for a mortgage insured under title II of the National Housing Act [12 U.S.C. 1707 et seq.] in those States participating under the pilot program to sign a statement that such applicant has been informed of the program requirements and understands the benefits of energy efficient mortgages.

“(5) TRAINING PROGRAM.—Not later than 9 months after the date of enactment of this Act [Oct. 28, 1992], the Secretary, in consultation with the Secretary of Energy, shall establish and implement a program for training personnel at relevant lending agencies, real

estate companies, and other appropriate organizations regarding the benefits of energy efficient mortgages and the operation of the pilot program under this subsection.

“(6) REPORT.—Not later than 18 months after the date of enactment of this Act, the Secretary shall prepare and submit a report to the Congress describing the effectiveness and implementation of the energy efficient mortgage pilot program as described under this subsection, and assessing the potential for expanding the pilot program nationwide.

“(b) EXPANSION OF PROGRAM.—Not later than the expiration of the 2-year period beginning on the date of the implementation of the energy efficient mortgage pilot program under this section, the Secretary of Housing and Urban Development shall expand the pilot program on a nationwide basis and shall expand the program to include new residential housing, unless the Secretary determines that either such expansion would not be practicable in which case the Secretary shall submit to the Congress, before the expiration of such period, a report explaining why either expansion would not be practicable.

“(c) DEFINITIONS.—For purposes of this section:

“(1) The term ‘base loan’ means any mortgage loan for a residential building eligible for insurance under title II of the National Housing Act [12 U.S.C. 1707 et seq.] or title 38, United States Code, that does not include the cost of cost-effective energy improvements.

“(2) The term ‘cost-effective’ means, with respect to energy efficiency improvements to a residential building, improvements that result in the total present value cost of the improvements (including any maintenance and repair expenses) being less than the total present value of the energy saved over the useful life of the improvement, when 100 percent of the cost of improvements is added to the base loan. For purposes of this paragraph, savings and cost-effectiveness shall be determined pursuant to a home energy rating report sufficient for purposes of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, or by other technically accurate methods.

“(3) The term ‘energy efficient mortgage’ means a mortgage on a residential building that recognizes the energy savings of a home that has cost-effective energy saving construction or improvements (including solar water heaters, solar-assisted air conditioners and ventilators, super-insulation, and insulating glass and film) and that has the effect of not disqualifying a borrower who, but for the expenditures on energy saving construction or improvements, would otherwise have qualified for a base loan.

“(4) The term ‘residential building’ means any attached or unattached single family residence.

“(d) RULE OF CONSTRUCTION.—This section may not be construed to affect any other programs of the Secretary of Housing and Urban Development for energy-efficient mortgages. The pilot program carried out under this section shall not replace or result in the termination of such other programs.

“(e) REGULATIONS.—The Secretary shall issue any regulations necessary to carry out this section not later than the expiration of the 180-day period beginning on the date of the enactment of this Act [Oct. 28, 1992]. The regulations shall be issued after notice and opportunity for public comment pursuant to the provisions of section 553 of title 5, United States Code (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section).

“(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.”

Similar provisions were contained in Pub. L. 102-486, title I, § 106, Oct. 24, 1992, 106 Stat. 2792.

ENERGY ASSESSMENT REPORT

Section 944 of Pub. L. 101-625 directed Secretary of Housing and Urban Development to submit a report to Congress, not later than one year after Nov. 28, 1990, as-

sessing any activity undertaken by the Secretary to increase energy efficiency in housing, such report to include an analysis of the Aug. 15, 1990, DOE-HUD program to expand energy efficiency and increase affordability of federally-assisted housing, and provided that in such report Secretary of Housing and Urban Development (in consultation with Secretary of Energy) was to establish, and include a description of, a standard measure by which changes over time in residential energy efficiency could be compared.

UNIFORM MORTGAGE FINANCING PLAN FOR ENERGY EFFICIENCY

Section 946 of Pub. L. 101-625, as amended by Pub. L. 102-486, title I, § 105(b), Oct. 24, 1992, 106 Stat. 2792; Pub. L. 102-550, title IX, § 914(b), Oct. 28, 1992, 106 Stat. 3877, provided that:

“(a) UNIFORM PLAN.—The Secretary of Housing and Urban Development, in consultation with the Secretary of Energy, shall promulgate a uniform plan to make housing more affordable through energy efficient mortgages (as such term is defined in section 104 of this Act [42 U.S.C. 12704]). The plan shall be promulgated not later than 2 years after the date of the enactment of the Cranston-Gonzalez National Affordable Housing Act [Nov. 28, 1990].

“(b) TASK FORCE.—To develop the plan, the Secretary shall form a task force to make recommendation[s] on financing energy efficiency in private mortgages, through the policies of Federal agencies and federally chartered financial institutions, mortgage bankers, homebuilders, real estate brokers, private mortgage insurers, energy suppliers, and nonprofit housing and energy organizations. The task force shall include, but not be limited to, individuals representing the Federal Housing Administration mortgage programs of the Department of Housing and Urban Development, the Farmers Home Administration mortgage loan and insurance programs of Department of Agriculture, the Federal Home Loan Mortgage Corporation, and the Federal National Mortgage Association. The Task Force shall determine whether notifying potential home purchasers of the availability of energy efficient mortgages would promote energy efficiency in residential buildings, and if so, the Task Force shall recommend appropriate notification guidelines, and agencies and organizations referred to in the preceding sentence are authorized to implement such guidelines.”

ENERGY EFFICIENCY DEMONSTRATION

Section 961 of Pub. L. 101-625 directed Secretary of Housing and Urban Development to establish a program to demonstrate various methods of improving the energy efficiency of existing housing, provided for funding, provided that the demonstration determine appropriate design, improvement, and rehabilitation methods and practices for increasing residential energy efficiency in housing already constructed, and directed Secretary, as soon as practicable after Sept. 30, 1991, to submit to Congress a report setting forth the findings and recommendations of the Secretary as a result of the demonstration.

§ 12713. Eligibility under first-time homebuyer programs

(a) Eligibility of displaced homemakers and single parents for Federal assistance for first-time homebuyers

(1) Displaced homemakers

No individual who is a displaced homemaker may be denied eligibility under any Federal program to assist first-time homebuyers on the basis that the individual, while a homemaker, owned a home with his or her spouse or resided in a home owned by the spouse.

(2) Single parents

No individual who is a single parent may be denied eligibility under any Federal program

to assist first-time homebuyers on the basis that the individual, while married, owned a home with his or her spouse or resided in a home owned by the spouse.

(b) Definitions

For purposes of this section:

(1) Displaced homemaker

The term “displaced homemaker” means an individual who—

(A) is an adult;

(B) has not worked full-time, full-year in the labor force for a number of years but has, during such years, worked primarily without remuneration to care for the home and family; and

(C) is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

(2) First-time homebuyer

The term “first-time homebuyer” means an individual who has never, or has not during a specified period of time, had any present ownership interest in a principal residence.

(3) Single parent

The term “single parent” means an individual who—

(A) is unmarried or legally separated from a spouse; and

(B)(i) has 1 or more minor children for whom the individual has custody or joint custody; or

(ii) is pregnant.

(c) Applicability

This section shall apply to any Federal program to assist first-time homebuyers, unless the program is exempted from this section by a statute that amends this subsection or explicitly refers to this subsection.

(Pub. L. 101-625, title IX, §956, Nov. 28, 1990, 104 Stat. 4421.)

CODIFICATION

Section was enacted as part of title IX of the Cranston-Gonzalez National Affordable Housing Act, and not as part of title I of such Act which comprises this subchapter.

§ 12714. Repealed. Pub. L. 104-99, title IV, § 404(a), Jan. 26, 1996, 110 Stat. 44

Section, Pub. L. 101-625, title IX, §957, Nov. 28, 1990, 104 Stat. 4422, related to maximum annual limitation on rent increases resulting from employment.

EFFECTIVE DATE OF REPEAL

Section 404(a) of Pub. L. 104-99 provided in part that this section is repealed retroactive to Nov. 28, 1990, and shall be of no effect.

ECONOMIC INDEPENDENCE

Pub. L. 102-550, title IX, §923, Oct. 28, 1992, 106 Stat. 3884, which provided that Secretary of Housing and Urban Development was to immediately implement section 12714 of this title and that other Federal agencies authorized to assist low-income families were to take similar steps to encourage economic independence and the accumulation of assets, was repealed retroactive to Oct. 28, 1992, by Pub. L. 104-99, title IV, §404(b), Jan. 26, 1996, 110 Stat. 44, which further provided that section 923 of Pub. L. 102-550 was to be of no effect.

SUBCHAPTER II—INVESTMENT IN AFFORDABLE HOUSING

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1437d, 1437f, 1439, 3535, 4852, 5305, 12704, 12705, 12706, 12708, 12711 of this title; title 12 sections 1441a, 1831q, 1834a; title 25 section 4183; title 26 section 42.

§ 12721. Findings

The Congress finds that—

(1) the Nation has not made adequate progress toward the goal of national housing policy, as set out in the Housing Act of 1949 [42 U.S.C. 1441 et seq.] and reaffirmed in the Housing and Urban Development Act of 1968, which would provide decent, safe, sanitary, and affordable living environments for all Americans;

(2) the supply of affordable rental housing is diminishing;

(3) the Tax Reform Act of 1986 removed major tax incentives for the production of affordable rental housing;

(4) the living environments of an increasing number of Americans have deteriorated over the past several years as a result of reductions in Federal assistance to low-income and moderate-income families;

(5) many Americans face the possibility of homelessness unless Federal, State, and local governments work together with the private sector to develop and rehabilitate the housing stock of the Nation to provide decent, safe, sanitary, and affordable housing for very low-income and low-income families;

(6) reliable Federal leadership is needed to achieve an adequate supply of affordable housing for all Americans;

(7) to achieve the goal of national housing policy, there is a need to strengthen nationwide a cost-effective community-based housing partnership designed to—

(A) expand the supply of rental housing that is affordable to very low-income and low-income families,

(B) improve homeownership opportunities for low-income families,

(C) carry out comprehensive housing strategies tailored to local housing market conditions, and

(D) protect the Federal, State, and local investment in low-income housing to ensure affordability of the housing for the remaining useful life of the property;

(8) direct assistance to expand the supply of affordable rental housing should be provided in a way that is more cost-effective and targeted than tax incentives;

(9) much of the Nation’s housing system works very well and provides a strong base on which national housing policy should build;

(10) an increasing number of States and local governments have been successful in producing cost-effective low-income and moderate-income housing by working in partnership with the private sector, including nonprofit community development corporations, community action agencies, neighborhood housing services corporations, trade unions, groups sponsored by religious organizations, limited

equity cooperatives, and other tenant organizations;

(11) during the 1980's, nonprofit community housing development organizations, despite severe obstacles caused by inadequate funding, have played an increasingly important role in the production and rehabilitation of affordable housing in communities across the Nation;

(12) additional financial resources and technical skills must be made available in local communities if the Nation is to mobilize the capacity of the private sector, including nonprofit community housing development organizations, to provide a more adequate supply of decent, safe, and sanitary housing that is affordable to very low-income, low-income, and moderate-income families and meets the need for large family units and other additional units that are available to very low-income families receiving rental assistance payments from Federal, State, and local governments; and

(13) the long-term success of efforts to provide more affordable housing depends upon tenants and homeowners being fiscally responsible and able managers.

(Pub. L. 101-625, title II, §202, Nov. 28, 1990, 104 Stat. 4094.)

REFERENCES IN TEXT

The Housing Act of 1949, referred to in par. (1), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended, which is classified principally to chapter 8A (§1441 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of this title and Tables.

The Housing and Urban Development Act of 1968, referred to in par. (1), is Pub. L. 90-448, Aug. 1, 1968, 82 Stat. 476, as amended. For complete classification of this Act to the Code, see Short Title of 1968 Amendments note set out under section 1701 of Title 12, Banks and Banking, and Tables.

The Tax Reform Act of 1986, referred to in par. (3), is Pub. L. 99-514, Oct. 22, 1986, 100 Stat. 2085, as amended. For complete classification of this Act to the Code, see Short Title of 1986 Amendments note set out under section 1 of Title 26, Internal Revenue Code, and Tables.

SHORT TITLE

For short title of this subchapter as the "HOME Investment Partnerships Act", see Short Title note set out under section 12701 of this title.

§ 12722. Purposes

The purposes of this subchapter are—

(1) to expand the supply of decent, safe, sanitary, and affordable housing, with primary attention to rental housing, for very low-income and low-income Americans;

(2) to mobilize and strengthen the abilities of States and units of general local government throughout the United States to design and implement strategies for achieving an adequate supply of decent, safe, sanitary, and affordable housing;

(3) to provide participating jurisdictions, on a coordinated basis, with the various forms of Federal housing assistance, including capital investment, mortgage insurance, rental assistance, and other Federal assistance, needed—

(A) to expand the supply of decent, safe, sanitary, and affordable housing;

(B) to make new construction, rehabilitation, substantial rehabilitation, and acquisition of such housing feasible; and

(C) to promote the development of partnerships among the Federal Government, States and units of general local government, private industry, and nonprofit organizations able to utilize effectively all available resources to provide more of such housing;

(4) to make housing more affordable for very low-income and low-income families through the use of tenant-based rental assistance;

(5) to develop and refine, on an ongoing basis, a selection of model programs incorporating the most effective methods for providing decent, safe, sanitary, and affordable housing, and accelerate the application of such methods where appropriate throughout the United States to achieve the prudent and efficient use of funds made available under this subchapter;

(6) to expand the capacity of nonprofit community housing development organizations to develop and manage decent, safe, sanitary, and affordable housing;

(7) to ensure that Federal investment produces housing stock that is available and affordable to low-income families for the property's remaining useful life, is appropriate to the neighborhood surroundings, and, wherever appropriate, is mixed income housing;

(8) to increase the investment of private capital and the use of private sector resources in the provision of decent, safe, sanitary, and affordable housing;

(9) to allocate Federal funds for investment in affordable housing among participating jurisdictions by formula allocation;

(10) to leverage those funds insofar as practicable with State and local matching contributions and private investment;

(11) to establish for each participating jurisdiction a HOME Investment Trust Fund with a line of credit for investment in affordable housing, with repayments back to its HOME Investment Trust Fund being made available for reinvestment by the jurisdiction;

(12) to provide credit enhancement for affordable housing by utilizing the capacities of existing agencies and mortgage finance institutions when most efficient and supplementing their activities when appropriate; and

(13) to assist very low-income and low-income families to obtain the skills and knowledge necessary to become responsible homeowners and tenants.

(Pub. L. 101-625, title II, §203, Nov. 28, 1990, 104 Stat. 4095.)

§ 12723. Coordinated Federal support for housing strategies

The Secretary shall make assistance under this subchapter available to participating jurisdictions, through the Office of the Assistant Secretary for Housing-FHA Commissioner of the Department of Housing and Urban Development, to the maximum extent practicable, in coordination with mortgage insurance, rental assistance, and other housing assistance appropriate to the

efficient and timely completion of activities under this subchapter.

(Pub. L. 101-625, title II, § 204, Nov. 28, 1990, 104 Stat. 4096.)

§ 12724. Authorization

There are authorized to be appropriated to carry out this subchapter \$2,086,000,000 for fiscal year 1993, and \$2,173,612,000 for fiscal year 1994, of which—

(1) not more than \$14,000,000 for fiscal year 1993, and \$25,000,000 for fiscal year 1994, shall be for community housing partnership activities authorized under section 12773 of this title; and

(2) not more than \$11,000,000 for fiscal year 1993, and \$22,000,000 for fiscal year 1994, shall be for activities in support of State and local housing strategies authorized under part C of this subchapter.

(Pub. L. 101-625, title II, § 205, Nov. 28, 1990, 104 Stat. 4096; Pub. L. 102-550, title II, § 201, Oct. 28, 1992, 106 Stat. 3751; Pub. L. 103-120, § 5, Oct. 27, 1993, 107 Stat. 1148.)

AMENDMENTS

1993—Pub. L. 103-120 substituted “\$25,000,000 for fiscal year 1994” for “\$14,000,000 for fiscal year 1994” in par. (1) and “\$22,000,000 for fiscal year 1994” for “\$11,000,000 for fiscal year 1994” in par. (2).

1992—Pub. L. 102-550 amended section generally. Prior to amendment, section read as follows: “There are authorized to be appropriated to carry out this subchapter \$1,000,000,000 for fiscal year 1991, and \$2,086,000,000 for fiscal year 1992, of which—

“(1) not more than \$14,000,000 for fiscal year 1991, and \$14,000,000 for fiscal year 1992, shall be for community housing partnership activities authorized under section 12773 of this title; and

“(2) not more than \$11,000,000 for fiscal year 1991, and \$11,000,000 for fiscal year 1992, shall be for activities in support of State and local housing strategies authorized under part C of this subchapter.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12746, 12747 of this title.

§ 12725. Notice

The Secretary shall issue regulations to implement the provisions of this subchapter after notice and an opportunity for comment pursuant to section 553 of title 5. Such regulations shall become effective not later than 180 days after November 28, 1990.

(Pub. L. 101-625, title II, § 206, Nov. 28, 1990, 104 Stat. 4096.)

PART A—HOME INVESTMENT PARTNERSHIPS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 12771 of this title.

§ 12741. Authority

The Secretary is authorized to make funds available to participating jurisdictions for investment to increase the number of families served with decent, safe, sanitary, and affordable housing and expand the long-term supply of affordable housing in accordance with provisions of this part.

(Pub. L. 101-625, title II, § 211, Nov. 28, 1990, 104 Stat. 4096.)

§ 12742. Eligible uses of investment

(a) Housing uses

(1) In general

Funds made available under this part may be used by participating jurisdictions to provide incentives to develop and support affordable rental housing and homeownership affordability through the acquisition, new construction, reconstruction, or moderate or substantial rehabilitation of affordable housing, including real property acquisition, site improvement, conversion, demolition, and other expenses, including financing costs, relocation expenses of any displaced persons, families, businesses, or organizations, to provide for the payment of reasonable administrative and planning costs, to provide for the payment of operating expenses of community housing development organizations, and to provide tenant-based rental assistance. For the purpose of this part, the term “affordable housing” includes permanent housing for disabled homeless persons, transitional housing, and single room occupancy housing.

(2) Preference to rehabilitation

A participating jurisdiction shall give preference to rehabilitation of substandard housing unless the jurisdiction determines that—

(A) such rehabilitation is not the most cost effective way to meet the jurisdiction’s need to expand the supply of affordable housing; and

(B) the jurisdiction’s housing needs cannot be met through rehabilitation of the available stock.

The Secretary shall not restrict a participating jurisdiction’s choice of rehabilitation, substantial rehabilitation, new construction, reconstruction, acquisition, or other eligible housing use unless such restriction is explicitly authorized under section 12753(2) of this title.

(3) Tenant-based rental assistance

(A) In general

A participating jurisdiction may use funds provided under this part for tenant-based rental assistance only if—

(i) the jurisdiction certifies that the use of funds under this part for tenant-based rental assistance is an essential element of the jurisdiction’s annual housing strategy for expanding the supply, affordability, and availability of decent, safe, sanitary, and affordable housing, and specifies the local market conditions that lead to the choice of this option; and

(ii) the tenant-based rental assistance is provided in accordance with written tenant selection policies and criteria that are consistent with the purposes of providing housing to very low- and low-income families and are reasonably related to preference rules established under section 1437d(c)(4)(A)¹ of this title.

¹ See References in Text note below.

(B) Fair share not affected

A jurisdiction's section 8 [42 U.S.C. 1437f] fair share allocation shall be unaffected by the use of assistance under this subchapter.

(C) 24-month contracts

Rental assistance contracts made available with assistance under this subchapter shall be for not more than 24 months, except that assistance to a family may be renewed.

(D) Use of section 1437f assistance

In any case where assistance under section 1437f of this title becomes available to a participating jurisdiction, recipients of rental assistance under this subchapter shall qualify for tenant selection preferences to the same extent as when they received the rental assistance under this subchapter. A rental assistance program under this subchapter shall meet minimum criteria prescribed by the Secretary, such as housing quality standards and standards regarding the reasonableness of the rent.

(E) Security deposit assistance

A jurisdiction using funds provided under this part for tenant-based rental assistance may use such funds to provide loans or grants to very low- and low-income families for security deposits for rental of dwelling units. Assistance under this subparagraph does not preclude assistance under any other provision of this paragraph.

(4) Redesignated (3)**(5) Lead-based paint hazards**

A participating jurisdiction may use funds provided under this part for the evaluation and reduction of lead-based paint hazards, as defined in section 4851b of this title.

(b) Investments

Participating jurisdictions shall have discretion to invest funds made available under this part as equity investments, interest-bearing loans or advances, noninterest-bearing loans or advances, interest subsidies or other forms of assistance that the Secretary has determined to be consistent with the purposes of this subchapter. Each participating jurisdiction shall have the right to establish the terms of assistance.

(c) Administrative costs

In each fiscal year, each participating jurisdiction may use not more than 10 percent of the funds made available under this part to the jurisdiction for such year for any administrative and planning costs of the jurisdiction in carrying out this part, including the costs of the salaries of persons engaged in administering and managing activities assisted with funds made available under this part.

(d) Prohibited uses

Funds made available under this part may not be used to—

- (1) defray any administrative cost of a participating jurisdiction that exceed the amount specified under subsection (c) of this section,
- (2) provide tenant-based rental assistance for the special purposes of the existing section 8

[42 U.S.C. 1437f] program, including replacing public housing that is demolished or disposed of, preserving federally assisted housing, assisting in the disposition of housing owned or held by the Secretary, preventing displacement from rental rehabilitation projects, or extending or renewing tenant-based assistance under section 1437f of this title,

(3) provide non-Federal matching contributions required under any other Federal program,

(4) provide assistance authorized under section 1437g of this title,

(5) carry out activities authorized under section 1437g(d)(1)¹ of this title, or

(6) provide assistance to eligible low-income housing under the Emergency Low Income Housing Preservation Act of 1987 or the Low-Income Housing Preservation and Resident Homeownership Act of 1990 [12 U.S.C. 4101 et seq.].

(e) Cost limits**(1) In general**

The Secretary shall establish limits on the amount of funds under this part that may be invested on a per unit basis. For multifamily housing, such limits shall not be less than the per unit dollar amount limitations set forth in section 1715(d)(3)(ii) of title 12, as such limitations may be adjusted in accordance therewith, except that for purposes of this subsection the Secretary shall, by regulation, increase the per unit dollar amount limitations in any geographical area by an amount, not to exceed 140 percent, that equals the amount by which the costs of multifamily housing construction in the area exceed the national average of such costs. The limits shall be established on a market-by-market basis, with adjustments made for number of bedrooms, and shall reflect the actual cost of new construction, reconstruction, or rehabilitation of housing that meets applicable State and local housing and building codes and the cost of land, including necessary site improvements. Adjustments shall be made annually to reflect inflation. Separate limits may be set for different eligible activities.

(2) Criteria

In calculating per unit limits, the Secretary shall take into account that assistance under this subchapter is intended to—

- (A) provide nonluxury housing with suitable amenities;
- (B) operate effectively in all jurisdictions;
- (C) facilitate mixed-income housing; and
- (D) reflect the costs associated with meeting the special needs of tenants or homeowners that the housing is designed to serve.

(3) Consultation

In calculating cost limits, the Secretary shall consult with organizations that have expertise in the development of affordable housing, including national nonprofit organizations and national organizations representing private development firms and State and local governments.

(f) Certification of compliance

The requirements of section 3545(d) of this title shall be satisfied by a certification by a

participating jurisdiction to the Secretary that the combination of Federal assistance provided to any housing project shall not be any more than is necessary to provide affordable housing.

(g) Limitation on operating assistance

A participating jurisdiction may not use more than 5 percent of its allocation under this part for the payment of operating expenses for community housing development organizations.

(Pub. L. 101-625, title II, §212, Nov. 28, 1990, 104 Stat. 4097; Pub. L. 102-550, title II, §§203(a), 204-207(b), (d), title X, §1012(e), Oct. 28, 1992, 106 Stat. 3752-3754, 3905; Pub. L. 105-276, title V, §522(b)(5), Oct. 21, 1998, 112 Stat. 2565.)

REFERENCES IN TEXT

Section 1437d(c)(4)(A) of this title, referred to in subsec. (a)(3)(A)(ii), was in the original "section 6(c)(4)(A) of the Housing Act of 1937", and was translated as reading "section 6(c)(4)(A) of the United States Housing Act of 1937", act Sept. 1, 1937, ch. 896, to reflect the probable intent of Congress.

Section 1437g(d)(1) of this title, referred to in subsec. (d)(5), was in the original "section 9(d)(1) of the Housing Act of 1937", and was translated as reading "section 9(d)(1) of the United States Housing Act of 1937", act Sept. 1, 1937, ch. 896, to reflect the probable intent of Congress.

The Emergency Low Income Housing Preservation Act of 1987, referred to in subsec. (d)(6), is title II of Pub. L. 100-242, Feb. 5, 1988, 102 Stat. 1877, as amended, which was classified principally as a note under section 1715 of Title 12, Banks and Banking. Title II of Pub. L. 100-242, was amended generally by Pub. L. 101-625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4249, and is now known as the Low-Income Housing Preservation and Resident Homeownership Act of 1990, which is classified principally to chapter 42 (§4101 et seq.) of Title 12. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of Title 12 and Tables.

AMENDMENTS

1998—Subsec. (d)(5). Pub. L. 105-276 substituted "section 1437g(d)(1)" for "section 1437l".

1992—Subsec. (a)(1). Pub. L. 102-550, §207(a), inserted "to provide for the payment of reasonable administrative and planning costs, to provide for the payment of operating expenses of community housing development organizations," after "or organizations."

Pub. L. 102-550, §205, inserted at end "For the purpose of this part, the term 'affordable housing' includes permanent housing for disabled homeless persons, transitional housing, and single room occupancy housing."

Subsec. (a)(2). Pub. L. 102-550, §203(a)(1), struck out "under paragraph (3) of this subsection or" after "authorized" in concluding provisions.

Subsec. (a)(3). Pub. L. 102-550, §204(b), added cl. (ii) of par. (3)(A) and struck out former cl. (ii) which read as follows: "the tenant-based rental assistance is provided to persons from the waiting lists eligible for section 8 assistance in accordance with the applicable preferences."

Pub. L. 102-550, §204(a), added subpar. (E).

Pub. L. 102-550, §203(a)(2), (3), redesignated par. (4) as (3) and struck out former par. (3) which provided for conditions for new construction of housing.

Subsec. (a)(4). Pub. L. 102-550, §203(a)(3), redesignated par. (4) as (3).

Subsec. (a)(5). Pub. L. 102-550, §1012(e), added par. (5).

Subsec. (c). Pub. L. 102-550, §207(b)(3), added subsec. (c). Former subsec. (c) redesignated (d).

Pub. L. 102-550, §207(b)(1), inserted before comma at end of par. (1) "that exceed the amount specified under subsection (c) of this section".

Subsec. (d). Pub. L. 102-550, §207(b)(2), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Pub. L. 102-550, §206, inserted after first sentence of par. (1) "For multifamily housing, such limits shall not be less than the per unit dollar amount limitations set forth in section 1715(d)(3)(ii) of title 12, as such limitations may be adjusted in accordance therewith, except that for purposes of this subsection the Secretary shall, by regulation, increase the per unit dollar amount limitations in any geographical area by an amount, not to exceed 140 percent, that equals the amount by which the costs of multifamily housing construction in the area exceed the national average of such costs."

Subsecs. (e), (f). Pub. L. 102-550, §207(b)(2), redesignated subsecs. (d) and (e) as (e) and (f), respectively.

Subsec. (g). Pub. L. 102-550, §207(d), added subsec. (g).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105-276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105-276, set out as a note under section 1437 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by sections 203-207 of Pub. L. 102-550 applicable to unexpended funds allocated under subchapter II of this chapter in fiscal year 1992, except as otherwise specifically provided, see section 223 of Pub. L. 102-550, set out as a note under section 12704 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12747, 12772 of this title; title 12 section 4116.

§ 12743. Development of model programs

(a) In general

The Secretary shall—

(1) in cooperation with participating jurisdictions, government-sponsored mortgage finance corporations, nonprofit organizations, the private sector, and other appropriate parties, develop, test, evaluate, refine, and, as necessary, replace a selection of model programs designed to carry out the purposes of this subchapter;

(2) make available to participating jurisdictions alternative model programs, which shall include suggested guidelines, procedures, forms, legal documents and such other elements as the Secretary determines to be appropriate;

(3) assure, insofar as is feasible, the availability of an appropriate variety of model programs designed for local market conditions, housing problems, project characteristics, and managerial capacities as they differ among participating jurisdictions;

(4) negotiate and enter into agreements with agencies of the Federal Government, participating jurisdictions, private financial institutions, government-sponsored mortgage finance corporations, nonprofit organizations, and other entities to provide such services, products, or financing as may be required for the implementation of a model program;

(5) provide detailed information on model programs as requested by participating jurisdictions, private financial institutions, developers, nonprofit organizations, and other interested parties; and

(6) encourage the use of such model programs to achieve efficiency, economies of

scale, and effectiveness in the investment of funds made available under this part through third-party training, printed materials, and such other means of support as the Secretary determines will achieve the purpose of this subchapter.

(b) Adoption of programs

Except as provided in section 12753(2) of this title, each participating jurisdiction shall have the discretion to adopt one or more model programs, adapt one or more model programs to its own requirements, design additional forms of assistance by itself or in cooperation with other participating jurisdictions, and suggest additional model programs for adoption by the Secretary as the participating jurisdiction may deem appropriate, and the Secretary may assist a participating jurisdiction in adopting, adapting, or designing one or more model programs.

(c) Part D programs

The selection of model programs to be made available for adoption or adaptation shall include programs meeting the criteria set forth in part D of this subchapter.

(Pub. L. 101-625, title II, §213, Nov. 28, 1990, 104 Stat. 4100.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12753, 12801 of this title.

§ 12744. Income targeting

Each participating jurisdiction shall invest funds made available under this part within each fiscal year so that—

(1) with respect to rental assistance and rental units—

(A) not less than 90 percent of (i) the families receiving such rental assistance are families whose incomes do not exceed 60 percent of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, (except that the Secretary may establish income ceilings higher or lower than 60 percent of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction cost or fair market rent, or unusually high or low family income) at the time of occupancy or at the time funds are invested, whichever is later, or (ii) the dwelling units assisted with such funds are occupied by families having such incomes; and

(B) the remainder of (i) the families receiving such rental assistance are households that qualify as low-income families (other than families described in subparagraph (A)) at the time of occupancy or at the time funds are invested, whichever is later, or (ii) the dwelling units assisted with such funds are occupied by such households;

(2) with respect to homeownership assistance, 100 percent of such funds are invested with respect to dwelling units that are occupied by households that qualify as low-income families; and

(3) all such funds are invested with respect to housing that qualifies as affordable housing under section 12745 of this title.

(Pub. L. 101-625, title II, §214, Nov. 28, 1990, 104 Stat. 4101; Pub. L. 103-233, title II, §202, Apr. 11, 1994, 108 Stat. 364; Pub. L. 105-276, title V, §599B(a), Oct. 21, 1998, 112 Stat. 2660.)

AMENDMENTS

1998—Par. (2). Pub. L. 105-276 struck out “at the time of occupancy or at the time funds are invested, whichever is later” before “; and”.

1994—Par. (1)(A). Pub. L. 103-233, §202(1), substituted “(i) the families receiving such rental assistance are” for “such funds are invested with respect to dwelling units that are occupied by”, “, or” for “, and” before cl. (ii), and added cl. (ii).

Par. (1)(B). Pub. L. 103-233, §202(2), substituted “(i) the families receiving such rental assistance are” for “such funds are invested with respect to dwelling units that are occupied by” and added cl. (ii).

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-276, title V, §599B(c), Oct. 21, 1998, 112 Stat. 2660, provided that: “The amendments made by this section [amending this section and section 12745 of this title] are made on, and shall apply beginning upon, the date of the enactment of this Act [Oct. 21, 1998].”

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-233 applicable with respect to any amounts made available to carry out this subchapter after Apr. 11, 1994, and any amounts made available to carry out this subchapter before that date that remain uncommitted on that date, with Secretary to issue any regulations necessary to carry out such amendment not later than end of 45-day period beginning on that date, see section 209 of Pub. L. 103-233, set out as a note under section 5301 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12747, 12802 of this title.

§ 12745. Qualification as affordable housing

(a) Rental housing

(1) Qualification

Housing that is for rental shall qualify as affordable housing under this subchapter only if the housing—

(A) bears rents not greater than the lesser of (i) the existing fair market rent for comparable units in the area as established by the Secretary under section 1437f of this title, or (ii) a rent that does not exceed 30 percent of the adjusted income of a family whose income equals 65 percent of the median income for the area, as determined by the Secretary, with adjustment for number of bedrooms in the unit, except that the Secretary may establish income ceilings higher or lower than 65 percent of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes;

(B) has not less than 20 percent of the units (i) occupied by very low-income families who pay as a contribution toward rent (excluding any Federal or State rental subsidy provided on behalf of the family) not more than 30 percent of the family's monthly adjusted income as determined by the Secretary, or (ii) occupied by very low-income families and bearing rents not greater

than the gross rent for rent-restricted residential units as determined under section 42(g)(2) of title 26;

(C) is occupied only by households that qualify as low-income families;

(D) is not refused for leasing to a holder of a voucher or certificate of eligibility under section 1437f of this title because of the status of the prospective tenant as a holder of such voucher or certificate of eligibility;

(E) will remain affordable, according to binding commitments satisfactory to the Secretary, for the remaining useful life of the property, as determined by the Secretary, without regard to the term of the mortgage or to transfer of ownership, or for such other period that the Secretary determines is the longest feasible period of time consistent with sound economics and the purposes of this Act, except upon a foreclosure by a lender (or upon other transfer in lieu of foreclosure) if such action (i) recognizes any contractual or legal rights of public agencies, nonprofit sponsors, or others to take actions that would avoid termination of low-income affordability in the case of foreclosure or transfer in lieu of foreclosure, and (ii) is not for the purpose of avoiding low income affordability restrictions, as determined by the Secretary; and

(F) if newly constructed, meets the energy efficiency standards promulgated by the Secretary in accordance with section 12709 of this title.

(2) Adjustment of qualifying rent

The Secretary may adjust the qualifying rent established for a project under subparagraph (A) of paragraph (1), only if the Secretary finds that such adjustment is necessary to support the continued financial viability of the project and only by such amount as the Secretary determines is necessary to maintain continued financial viability of the project.

(3) Increases in tenant income

Housing shall qualify as affordable housing despite a temporary noncompliance with subparagraph (B) or (C) of paragraph (1) if such noncompliance is caused by increases in the incomes of existing tenants and if actions satisfactory to the Secretary are being taken to ensure that all vacancies are filled in accordance with paragraph (1) until such noncompliance is corrected. Tenants who no longer qualify as low-income families shall pay as rent the lesser of the amount payable by the tenant under State or local law or 30 percent of the family's adjusted monthly income, as recertified annually. The preceding sentence shall not apply with respect to funds made available under this Act for units that have been allocated a low-income housing tax credit by a housing credit agency pursuant to section 42 of title 26.

(4) Mixed-income project

Housing that accounts for less than 100 percent of the dwelling units in a project shall qualify as affordable housing if such housing meets the criteria of this section.

(5) Mixed-use project

Housing in a project that is designed in part for uses other than residential use shall qualify as affordable housing if such housing meets the criteria of this section.

(6) Waiver of qualifying rent

(A) In general

For the purpose of providing affordable housing appropriate for families described in subparagraph (B), the Secretary may, upon the application of the project owner, waive the applicability of subparagraph (A) of paragraph (1) with respect to a dwelling unit if—

(i) the unit is occupied by such a family, on whose behalf tenant-based assistance is provided under section 1437f of this title;

(ii) the rent for the unit is not greater than the existing fair market rent for comparable units in the area, as established by the Secretary under section 1437f of this title; and

(iii) the Secretary determines that the waiver, together with waivers under this paragraph for other dwelling units in the project, will result in the use of amounts described in clause (iii)¹ in an effective manner that will improve the provision of affordable housing for such families.

(B) Eligible families

A family described in this subparagraph is a family that consists of at least one elderly person (who is the head of household) and one or more of such person's grand² children, great grandchildren, great nieces, great nephews, or great great grandchildren (as defined by the Secretary), but does not include any parent of such grandchildren, great grandchildren, great nieces, great nephews, or great great grandchildren. Such term includes any such grandchildren, great grandchildren, great nieces, great nephews, or great great grandchildren who have been legally adopted by such elderly person.

(b) Homeownership

Housing that is for homeownership shall qualify as affordable housing under this subchapter only if the housing—

(1) has an initial purchase price that does not exceed 95 percent of the median purchase price for the area, as determined by the Secretary with such adjustments for differences in structure, including whether the housing is single-family or multifamily, and for new and old housing as the Secretary determines to be appropriate;

(2) is the principal residence of an owner whose family qualifies as a low-income family—

(A) in the case of a contract to purchase existing housing, at the time of purchase;

(B) in the case of a lease-purchase agreement for existing housing or for housing to be constructed, at the time the agreement is signed; or

¹ So in original.

² So in original. Probably should be "grandchildren".

(C) in the case of a contract to purchase housing to be constructed, at the time the contract is signed;

(3) is subject to resale restrictions that are established by the participating jurisdiction and determined by the Secretary to be appropriate to—

(A) allow for subsequent purchase of the property only by persons who meet the qualifications specified under paragraph (2), at a price which will—

(i) provide the owner with a fair return on investment, including any improvements, and

(ii) ensure that the housing will remain affordable to a reasonable range of low-income homebuyers; or

(B) recapture the investment provided under this subchapter in order to assist other persons in accordance with the requirements of this subchapter, except where there are no net proceeds or where the net proceeds are insufficient to repay the full amount of the assistance; and

(4) if newly constructed, meets the energy efficiency standards promulgated by the Secretary in accordance with section 12709 of this title.

(Pub. L. 101-625, title II, §215, Nov. 28, 1990, 104 Stat. 4101; Pub. L. 102-550, title II, §§208, 209, Oct. 28, 1992, 106 Stat. 3754; Pub. L. 103-233, title II, §203, Apr. 11, 1994, 108 Stat. 364; Pub. L. 105-276, title V, §599B(b), Oct. 21, 1998, 112 Stat. 2660; Pub. L. 106-569, title IX, §904, Dec. 27, 2000, 114 Stat. 3027.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a)(1)(E), (3), is Pub. L. 101-625, Nov. 28, 1990, 104 Stat. 4079, known as the Cranston-Gonzalez National Affordable Housing Act. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of this title and Tables.

AMENDMENTS

2000—Subsec. (a)(6). Pub. L. 106-569 added par. (6).
 1998—Subsec. (b)(2). Pub. L. 105-276 amended par. (2) generally. Prior to amendment, par. (2) read as follows: “is the principal residence of an owner whose family qualifies as a low-income family at the time of purchase;”.

1994—Subsec. (b)(3). Pub. L. 103-233, §203(a), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: “is made available for initial purchase only to first-time homebuyers;”.

Subsec. (b)(3)(B). Pub. L. 103-233, §203(b), substituted “subchapter” for “subsection” after “requirements of this”.

Subsec. (b)(4), (5). Pub. L. 103-233, §203(a)(2), redesignated pars. (4) and (5) as (3) and (4), respectively.

1992—Subsec. (a)(1)(A). Pub. L. 102-550, §208(a)(1), substituted “number of bedrooms in the unit” for “smaller and larger families”.

Subsec. (a)(1)(E). Pub. L. 102-550, §208(b), inserted before semicolon “, except upon a foreclosure by a lender (or upon other transfer in lieu of foreclosure) if such action (i) recognizes any contractual or legal rights of public agencies, nonprofit sponsors, or others to take actions that would avoid termination of low-income affordability in the case of foreclosure or transfer in lieu of foreclosure, and (ii) is not for the purpose of avoiding low income affordability restrictions, as determined by the Secretary”.

Subsec. (a)(3). Pub. L. 102-550, §208(a)(2), (3), substituted “the lesser of the amount payable by the tenant under State or local law or” for “not less than” in second sentence and inserted at end “The preceding sentence shall not apply with respect to funds made available under this Act for units that have been allocated a low-income housing tax credit by a housing credit agency pursuant to section 42 of title 26.”

Subsec. (b)(4). Pub. L. 102-550, §209, added par. (4) and struck out former par. (4) which read as follows: “is made available for subsequent purchase only—

“(A) to persons who meet the qualifications specified under paragraph (2), and

“(B) at a price consistent with guidelines that are established by the participating jurisdiction and determined by the Secretary to be appropriate—

“(i) to provide the owner with a fair return on investment, including any improvements, and

“(ii) to ensure that the housing will remain affordable to a reasonable range of low income homebuyers; and”.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-276 made on, and applicable beginning upon, Oct. 21, 1998, see section 599B(c) of Pub. L. 105-276, set out as a note under section 12744 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-233 applicable with respect to any amounts made available to carry out this subchapter after Apr. 11, 1994, and any amounts made available to carry out this subchapter before that date that remain uncommitted on that date, with Secretary to issue any regulations necessary to carry out such amendment not later than end of 45-day period beginning on that date, see section 209 of Pub. L. 103-233, set out as a note under section 5301 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-550 applicable to unexpended funds allocated under subchapter II of this chapter in fiscal year 1992, except as otherwise specifically provided, see section 223 of Pub. L. 102-550, set out as a note under section 12704 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4851b, 12705, 12750 of this title.

§ 12746. Participation by States and local governments

The Secretary shall designate a State or unit of general local government to be a participating jurisdiction when it complies with procedures that the Secretary shall establish by regulation, which procedures shall only provide for the following:

(1) Allocation

Not later than 20 days after funds to carry out this part become available (or, during the first year after November 28, 1990, not later than 20 days after (A) funds to carry out this part are provided in an appropriations Act, or (B) regulations to implement this part are promulgated, whichever is later), the Secretary shall allocate funds in accordance with section 12747 of this title and promptly notify each jurisdiction receiving a formula allocation of its allocation amount. If a jurisdiction is not already a participating jurisdiction, the Secretary shall inform the jurisdiction in writing how the jurisdiction may become a participating jurisdiction.

(2) Consortia

A consortium of geographically contiguous units of general local government shall be deemed to be a unit of general local government for purposes of this subchapter if the Secretary determines that the consortium—

(A) has sufficient authority and administrative capability to carry out the purposes of this subchapter on behalf of its member jurisdictions, and

(B) will, according to a written certification by the State (or States, if the consortium includes jurisdictions in more than one State), direct its activities to alleviation of housing problems within the State or States.

(3) Eligibility

(A) Except as provided in paragraph (10), a jurisdiction receiving a formula allocation under section 12747 of this title shall be eligible to become a participating jurisdiction if its formula allocation is \$750,000 or greater, or if the Secretary finds that—

(i) the jurisdiction has a local housing authority and has demonstrated a capacity to carry out provisions of this part, and

(ii) the State has authorized the Secretary to transfer to the jurisdiction a portion of the State's allocation that is equal to or greater than the difference between the jurisdiction's formula allocation and \$750,000, or the State or jurisdiction has made available from the State's or jurisdiction's own sources an equal amount for use by the jurisdiction in conformance with the provisions of this part.

(B) If a jurisdiction has met the requirements of subparagraph (A), the jurisdiction's formula allocation for a fiscal year shall subsequently be deemed to equal the sum of the jurisdiction's allocation under section 12747(a)(1) of this title and the amount made available to the jurisdiction under subparagraph (A)(ii).

(4) Notification

If an eligible jurisdiction notifies the Secretary in writing, not later than 30 days after receiving notification under paragraph (1), of its intention to become a participating jurisdiction, the Secretary shall reserve an amount equal to the jurisdiction's allocation (plus any reallocations for which the jurisdiction is eligible under section 12747(d)(1) of this title) pending the jurisdiction's designation as a participating jurisdiction. The Secretary shall reallocate, in accordance with paragraph (6) of this section, any funds reserved under the previous sentence if the Secretary determines that the jurisdiction will not meet the requirements for designation as a participating jurisdiction within a reasonable period of time.

(5) Submission of strategy

Not later than 90 days after providing notification under paragraph (4), an eligible jurisdiction shall submit to the Secretary a comprehensive housing affordability strategy in accordance with section 12705 of this title.

(6) Reallocation

If the Secretary determines that a jurisdiction has failed to meet the requirements of the previous 3 paragraphs or if the Secretary, after providing for amendments and resubmissions in accordance with section 12705(c)(3) of this title, disapproves the jurisdiction's comprehensive housing affordability strategy, the Secretary shall reallocate any funds reserved for the jurisdiction as follows:

(A) State

If a State has failed to meet the requirements, the Secretary shall—

(i) make any funds reserved for the State available by direct reallocation among applications submitted by units of general local government within the State or consortia that include units of general local government within the State, insofar as approvable applications meeting the selection criteria under section 12747(c) of this title are received within 12 months after the funds become available for the direct reallocation, and

(ii) reallocate the remainder by formula in accordance with section 12747(b) of this title.

(B) Local

If a unit of general local government has failed to meet the requirements and is located in a State that is a participating jurisdiction, the Secretary shall reallocate to the State any funds reserved for the locality, with preference going to the provision of affordable housing within the locality.

(C) Direct reallocation

If a unit of general local government has failed to meet the requirements and is located in a State that is not a participating jurisdiction, the Secretary shall—

(i) make any funds reserved for the locality available for use within the State by direct reallocation among units of general local government and community housing development organizations, insofar as approvable applications meeting the selection criteria under section 12747(c) of this title are received within 12 months after the funds become available for the direct reallocation with priority going to applications for affordable housing within the locality, and

(ii) reallocate the remainder in accordance with section 12747(b) of this title.

(D) Certain jurisdictions deemed to be participating jurisdictions

If a State or unit of general local government is meeting the requirements of paragraphs (3), (4), and (5), it shall be deemed to be a participating jurisdiction for purposes of reallocation under this paragraph.

(7) Designation

The Secretary shall designate an eligible jurisdiction to be a participating jurisdiction as soon as its comprehensive housing affordability strategy is approved in accordance with section 12705 of this title.

(8) Continuous designation

Once a State or unit of general local government is designated a participating jurisdiction, it shall remain a participating jurisdiction for subsequent fiscal years, except as provided in paragraph (9). The provisions of paragraphs (3) through (6) shall not apply to participating jurisdictions.

(9) Revocation

The Secretary may revoke a jurisdiction's designation as a participating jurisdiction if—

(A) the Secretary finds, after reasonable notice and opportunity for hearing, that the jurisdiction is unwilling or unable to carry out the provisions of this subchapter, or

(B) the jurisdiction's allocation falls below \$750,000 for 3 consecutive years, below \$625,000 for 2 consecutive years, or the jurisdiction does not receive a formula allocation of \$500,000 or more in any 1 year, except as provided in paragraph (10).

If a jurisdiction's designation as a participating jurisdiction is revoked, any remaining line of credit in the jurisdiction's HOME Investment Trust Fund established under section 12748 of this title shall be reallocated in accordance with paragraph (6) of this section.

(10) Threshold reduction

If the amount appropriated pursuant to section 12724 of this title for any fiscal year is less than \$1,500,000,000, then this section shall be applied during that year—

(A) by substituting “\$500,000” for “\$750,000” both places it appears in paragraph (3); and

(B) by substituting “\$500,000”, “\$410,000”, and “\$335,000” for “\$750,000”, “\$625,000”, and “\$500,000”, respectively, where they appear in paragraph (9).

(Pub. L. 101-625, title II, §216, Nov. 28, 1990, 104 Stat. 4103; Pub. L. 102-550, title II, §202(a), Oct. 28, 1992, 106 Stat. 3751.)

AMENDMENTS

1992—Par. (3)(A). Pub. L. 102-550, §202(a)(1), substituted “Except as provided in paragraph (10), a jurisdiction” for “A jurisdiction”.

Par. (9)(B). Pub. L. 102-550, §202(a)(2), inserted “, except as provided in paragraph (10)” after “in any 1 year”.

Par. (10). Pub. L. 102-550, §202(a)(3), added par. (10).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-550 applicable to unexpended funds allocated under subchapter II of this chapter in fiscal year 1992, except as otherwise specifically provided, see section 223 of Pub. L. 102-550, set out as a note under section 12704 of this title.

APPLICABILITY OF GRANT THRESHOLDS

Section 202(c) of Pub. L. 102-550 provided that: “Notwithstanding any other provision of law, the grant thresholds provided for in section 216 [42 U.S.C. 12746], as amended by this section, and the grant thresholds provided for in section 217(b) of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12747(b)], as amended by this section, shall apply.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12704, 12747, 12750 of this title.

§ 12747. Allocation of resources

(a) In general

(1) States and units of general local government

After reserving amounts under paragraph (3) for the insular areas, the Secretary shall allocate funds approved in an appropriation Act to carry out this subchapter by formula as provided in subsection (b) of this section. Of the funds made available under the preceding sentence, the Secretary shall initially allocate 60 percent among units of general local government and 40 percent among States.

(2) Repealed. Pub. L. 104-330, title V, § 505(a)(1)(B), Oct. 26, 1996, 110 Stat. 4044

(3)¹ Insular areas

For each fiscal year, of any amounts approved in appropriation Acts to carry out this subchapter, the Secretary shall reserve for grants to the insular areas the greater of (A) \$750,000, or (B) 0.2 percent of the amounts appropriated under such Acts. The Secretary shall provide for the distribution of amounts reserved under this paragraph among the insular areas pursuant to specific criteria for such distribution, which shall be contained in a regulation issued by the Secretary.

(b) Formula allocation

(1) In general

(A) Basic formula

The Secretary shall establish in² regulation an allocation formula that reflects each jurisdiction's share of total need among eligible jurisdiction³ for an increased supply of affordable housing for very low-income and low-income families of different size, as identified by objective measures of inadequate housing supply, substandard housing, the number of low-income families in housing likely to be in need of rehabilitation, the costs of producing housing, poverty, and the relative fiscal incapacity of the jurisdiction to carry out housing activities eligible under section 12742 of this title without Federal assistance. Allocation among units of general local government shall take into account the housing needs of metropolitan cities, urban counties, and approved consortia of units of general local government.

(B) Source of data

The data to be used for formula allocation of funds within a fiscal year shall be data obtained from a standard source that are available to the Secretary 90 days prior to the beginning of that fiscal year.

(C) Use of basic formula

The basic formula established under subparagraph (A) shall be used for all formula allocations and reallocations provided for in this part.

(D) Weights

When allocation is made among States, the Secretary shall apply the formula in

¹ See 1992 Amendment note below.

² So in original. Probably should be “by”.

³ So in original. Probably should be “jurisdictions”.

subparagraph (A) giving 20 percent weight to measures of need for the whole State and 80 percent weight to measures of need among units of general local government that are not receiving an allocation under section 12746(1) of this title.

(E) Adjustments

In developing the basic formula in subparagraph (A), the Secretary shall (i) avoid the allocation of an excessively large share of amounts made available under this part to any one State or unit of general local government, and (ii) take into account the need for a geographic distribution of amounts made available under this part that appropriately reflects the housing need in each region of the Nation.

(F) Consultation

The Secretary shall develop the formula in subparagraph (A) in ongoing consultation with (i) the Subcommittee on Housing and Urban Affairs of the Committee on Banking, Housing, and Urban Affairs of the Senate, (ii) the Subcommittee on Housing and Community Development of the Committee on Banking, Finance and Urban Affairs of the House of Representatives, and (iii) organizations representing States and units of general local government. Not less than 60 days prior to publishing a formula for comment, the Secretary shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a copy of the formula the Secretary intends to propose.

(2) Minimum State allocation

(A) In general

If the formula, when applied to funds approved under this section in appropriations Acts for a fiscal year, would allocate less than \$3,000,000 to any State, the allocation for such State shall be \$3,000,000, and the increase shall be deducted pro rata from the allocations of other States.

(B) Increased minimum allocation

If no unit of general local government within a State receives an allocation under paragraph (3), the State's allocation shall be increased by \$500,000. Priority for use of such increased allocation shall go to the provision of affordable housing within the boundaries of metropolitan cities, urban counties, and approved consortia within the State, based on the need for such funds. The increased allocation to a State under the preceding sentence shall be derived by a pro rata deduction from the allocations to units of general local government in all States, except that such pro rata deduction shall not reduce the allocation of any unit of general local government below \$500,000.

(3) Minimum local allocation

The Secretary shall allocate funds available for formula allocation to units of general local government that, as of the end of the previous fiscal year, qualified as metropolitan cities,

urban counties, and consortia approved by the Secretary in accordance with section 12746(2) of this title so that, when all such funds are initially allocated by formula, jurisdictions that are allocated an amount of \$500,000 or more, and participating jurisdictions (other than consortia that fail to renew the membership of all of their member jurisdictions) that are allocated an amount less than \$500,000, shall receive an allocation. Prior to announcing initial allocations, the Secretary shall successively recalculate the allocations to jurisdictions under this subsection so that the maximum number of such jurisdictions can receive initial allocations, except as provided in paragraph (4).

(4) Threshold reduction

If the amount appropriated pursuant to section 12724 of this title for any fiscal year is less than \$1,500,000,000, then this section shall be applied during that year by substituting "\$335,000" for "\$500,000" where it appears in paragraph (3).

(c) Criteria for direct reallocation

The Secretary shall establish objective criteria for making direct reallocations to any participating jurisdiction and other eligible entities. A jurisdiction shall be eligible for a direct reallocation under this subsection only if the jurisdiction, in a form acceptable to the Secretary, submits an application that demonstrates to the satisfaction of the Secretary that the jurisdiction is engaged, or has made good faith efforts to engage, in cooperative efforts between the State and appropriate participating jurisdictions within the State to develop, coordinate, and implement housing strategies under this subchapter. The Secretary shall by regulation establish objective selection criteria for such direct reallocations, which criteria shall take into account—

(1) the applicant's demonstrated commitment to expand the supply of affordable rental housing, including units developed by public housing agencies, as indicated by the additional number of units of affordable housing made available through production or rehabilitation within the previous 2 years, making adjustment for regional variations in construction and rehabilitation costs and giving special consideration to the number of additional units made available under this subchapter through production or rehabilitation, including units developed by public housing agencies, in relation to the amounts made available under this program;

(2) the applicant's actions that—

(A) direct funds made available under this part to benefit very low-income families, with a range of incomes, in amounts that exceed the income targeting requirements of section 12744 of this title, with extra consideration given for activities that expand the supply of affordable housing for very low-income families whose incomes do not exceed 30 percent of the median family income for the area, as determined by the Secretary;

(B) apply the tenant selection preference categories applicable under section 1437f of this title to the selection of tenants for housing assisted under this part;

(C) provide matching resources in excess of funds required under section 12750 of this title; and

(D) stimulate a high degree of investment and participation in development by the private sector, including nonprofit organizations; and

(3) the degree to which the applicant is pursuing policies that—

(A) make existing housing more affordable;

(B) remove or ameliorate any negative effects that public policies identified by the applicant pursuant to section 12705(b)(4) of this title may have on the cost of housing or the incentives to develop, maintain, or improve affordable housing in the jurisdiction;

(C) preserve the affordability of privately-owned housing that is vulnerable to conversion, demolition, disinvestment, or abandonment;

(D) increase the supply of housing that is affordable to very low-income and low-income persons, particularly in areas that are accessible to expanding job opportunities; and

(E) remedy the effects of discrimination and improve housing opportunities for disadvantaged minorities.

(d) Reallocations

(1) In general

The Secretary shall make any reallocations periodically throughout each fiscal year so as to ensure that all funds to be reallocated are made available to eligible jurisdictions as soon as possible, consistent with orderly program administration. Jurisdictions eligible for such reallocations shall include participating jurisdictions and jurisdictions meeting the requirements of paragraphs (3), (4), and (5) of section 12746 of this title.

(2) Commitments

The Secretary shall establish procedures according to which participating jurisdictions may make commitments to invest funds made available under this section. Such procedures shall provide for appropriate stages of commitment of funds to a project from initial reservation through binding commitment. Notwithstanding any other provision of this subchapter, funds that the Secretary determines are needed to fulfill binding commitments shall not be available for reallocation.

(3) Limitation

Unless otherwise specified in this part, any reallocation of funds from a State shall be made only among all participating States, and any reallocation of funds from units of general local government shall be made only among all participating units of general local government.

(Pub. L. 101-625, title II, §217, Nov. 28, 1990, 104 Stat. 4105; Pub. L. 102-229, title I, Dec. 12, 1991, 105 Stat. 1709; Pub. L. 102-230, §1, Dec. 12, 1991, 105 Stat. 1720; Pub. L. 102-273, §1, Apr. 21, 1992, 106 Stat. 113; Pub. L. 102-389, title II, Oct. 6, 1992, 106 Stat. 1581; Pub. L. 102-550, title II, §§202(b), 203(b), 211(a)(2), Oct. 28, 1992, 106 Stat. 3751, 3752,

3756; Pub. L. 104-330, title V, §505(a)(1), Oct. 26, 1996, 110 Stat. 4044; Pub. L. 105-65, title II, §214, Oct. 27, 1997, 111 Stat. 1366.)

AMENDMENTS

1997—Subsec. (b)(3). Pub. L. 105-65, in first sentence, substituted “jurisdictions that are allocated an amount of \$500,000 or more, and participating jurisdictions (other than consortia that fail to renew the membership of all of their member jurisdictions) that are allocated an amount less than \$500,000, shall receive an allocation” for “only those jurisdictions that are allocated an amount of \$500,000 or greater shall receive an allocation”.

1996—Subsec. (a)(1). Pub. L. 104-330, §505(a)(1)(A), struck out “reserving amounts under paragraph (2) for Indian tribes and after” after “After”.

Subsec. (a)(2). Pub. L. 104-330, §505(a)(1)(B), struck out heading and text of par. (2). Text read as follows: “For each fiscal year, of the amount approved in an appropriations Act to carry out this subchapter, the Secretary shall reserve for grants to Indian tribes 1 percent of the amount appropriated under such section. The Secretary shall provide for distribution of amounts under this paragraph to Indian tribes on the basis of a competition conducted pursuant to specific criteria for the selection of Indian tribes to receive such amounts. The criteria shall be contained in a regulation promulgated by the Secretary after notice and public comment.”

1992—Subsec. (a)(1). Pub. L. 102-550, §211(a)(2)(A), added first sentence and struck out former first sentence which read as follows: “After reserving amounts for Indian tribes as required by paragraph (2) of this subsection and after reserving amounts for the insular areas under paragraph (3), the Secretary shall allocate funds approved in an appropriations Act to carry out this subchapter by formula as provided in subsection (b) of this section.”

Pub. L. 102-389 made identical amendment to those made by Pub. L. 102-229 and Pub. L. 102-230, §1(1). See 1991 Amendment note below.

Subsec. (a)(3). Pub. L. 102-550, §211(a)(2)(D), and Pub. L. 102-389 both added new pars. (3) related to insular areas. The text reflects the par. (3) added by Pub. L. 102-550. The par. (3) added by Pub. L. 102-389 read as follows: “For each fiscal year, of any amounts approved in appropriations Acts to carry out this subchapter, the Secretary shall reserve for grants to the insular areas the greater of (A) \$750,000, or (B) 0.2 percent of the amounts appropriated under such Acts. The Secretary shall provide for the distribution of amounts reserved under this paragraph among the insular areas pursuant to specific criteria for such distribution. The criteria shall be contained in a regulation promulgated by the Secretary after notice and public comment.”

Pub. L. 102-550, §211(a)(2)(C), struck out par. (3), as added by Pub. L. 102-230, §1(2), which read as follows:

“(A) IN GENERAL.—For each fiscal year, of any amount approved in an appropriations Act to carry out this subchapter, the Secretary shall reserve for grants to the insular areas an amount that reflects—

“(i) their share of the total population of eligible jurisdictions; and

“(ii) any adjustments that the Secretary determines are reasonable in light of available data that are related to factors set forth in subsection (b)(1)(B) of this section.

“(B) SPECIFIC CRITERIA.—The Secretary shall provide for the distribution of amounts reserved under this paragraph among the insular areas in accordance with specific criteria to be set forth in a regulation promulgated by the Secretary after notice and public comment.

“(C) TRANSITIONAL PROVISIONS.—For fiscal year 1992, the reservation for insular areas specified in subparagraph (A) shall be made from any funds which become available for reallocation in accordance with the provisions of section 12746(6)(A) of this title.”

Pub. L. 102-550, §211(a)(2)(B), struck out par. (3), as added by Pub. L. 102-229, which read as follows: "For each fiscal year, of any amounts approved in appropriations Acts to carry out this subchapter, the Secretary shall reserve for grants to the insular areas the greater of (A) \$750,000, or (B) 0.5 percent of the amounts appropriated under such Acts. The Secretary shall provide for the distribution of amounts reserved under this paragraph among the insular areas pursuant to specific criteria for such distribution. The criteria shall be contained in a regulation promulgated by the Secretary after notice and public comment."

Subsec. (b)(1)(A). Pub. L. 102-550, §203(b)(1), (6), redesignated subpar. (B) as (A) and struck out former subpar. (A) which provided for a formula for allocation of funds for production of affordable rental housing through new construction or substantial rehabilitation.

Pub. L. 102-273 added cl. (iii) reading as follows: "Notwithstanding clauses (i) and (ii), any jurisdiction receiving amounts made available under such clause may, at the discretion of the jurisdiction, use such amounts for other eligible uses in accordance with section 12742 of this title if the jurisdiction determines that such use will better meet the housing needs within the jurisdiction. This clause shall be effective only with respect to funds provided under the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992 (Public Law 102-139; 105 Stat. 744), which suspends the requirement of contributions by participating jurisdictions, and shall become ineffective if such requirement is reimposed."

Subsec. (b)(1)(B), (C). Pub. L. 102-550, §203(b)(6), redesignated subpars. (C) and (D) as (B) and (C), respectively. Former subpar. (B) redesignated (A).

Subsec. (b)(1)(D). Pub. L. 102-550, §203(b)(6), redesignated subpar. (E) as (D). Former subpar. (D) redesignated (C).

Pub. L. 102-550, §203(b)(2), substituted "The basic formula established under subparagraph (A)" for "Except as provided in subparagraph (A), the basic formula established under subparagraph (B)".

Subsec. (b)(1)(E). Pub. L. 102-550, §203(b)(6), redesignated subpar. (F) as (E). Former subpar. (E) redesignated (D).

Pub. L. 102-550, §203(b)(3), substituted "formula in subparagraph (A)" for "formulas in subparagraph (B)".

Subsec. (b)(1)(F). Pub. L. 102-550, §203(b)(6), redesignated subpar. (G) as (F). Former subpar. (F) redesignated (E).

Pub. L. 102-550, §203(b)(4), substituted "basic formula in subparagraph (A)" for "basic formula in subparagraph (B)" and struck out at end "If a jurisdiction receives an allocation under subparagraph (A), the Secretary shall make such adjustments in the jurisdiction's allocation under the formula in subparagraph (B) as may be necessary to ensure that the combined effect of the formulas in subparagraphs (A) and (B) does not reduce the allocation of any jurisdiction below the allocation it would receive if allocations were made according to the formula under subparagraph (B) alone."

Subsec. (b)(1)(G). Pub. L. 102-550, §203(b)(6), redesignated subpar. (G) as (F).

Pub. L. 102-550, §203(b)(5), substituted "formula in subparagraph (A)" for "formulas in subparagraphs (A) and (B)".

Subsec. (b)(3). Pub. L. 102-550, §202(b)(1), inserted before period at end " , except as provided in paragraph (4)".

Subsec. (b)(4). Pub. L. 102-550, §202(b)(2), added par. (4).

1991—Subsec. (a)(1). Pub. L. 102-229 and Pub. L. 102-230, §1(1), amended par. (1) identically, inserting before first comma "and after reserving amounts for the insular areas under paragraph (3)".

Subsec. (a)(3). Pub. L. 102-229 and Pub. L. 102-230, §1(2), which were enacted on the same day, both added new pars. (3) relating to insular areas.

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Com-

mittee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as an Effective Date note under section 4101 of Title 25, Indians.

Section 505(b) of Pub. L. 104-330 provided that: "The amendments under subsection (a) [amending this section and section 12838 of this title] shall apply with respect to amounts made available for assistance under title II of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12721 et seq.] for fiscal year 1998 and fiscal years thereafter."

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 211(a)(2) of Pub. L. 102-550 applicable with respect to fiscal year 1993 and thereafter, see section 211(b) of Pub. L. 102-550, set out as a note under section 12704 of this title.

Amendment by sections 202(b) and 203(b) of Pub. L. 102-550 applicable to unexpended funds allocated under subchapter II of this chapter in fiscal year 1992, except as otherwise specifically provided, see section 223 of Pub. L. 102-550, set out as a note under section 12704 of this title.

APPLICABILITY OF GRANT THRESHOLDS

Grant thresholds provided for in subsec. (b) of this section as amended by Pub. L. 102-550 to apply notwithstanding any other provision of law, see section 202(c) of Pub. L. 102-550, set out as a note under section 12746 of this title.

EXPEDITED ISSUANCE OF REGULATION

Section 211(a)(3) of Pub. L. 102-550 provided that: "The regulation referred to in the amendment made by paragraph (2)(D) [amending this section] shall take effect not later than the expiration of the 90-day period beginning on the date of the enactment of this Act [Oct. 28, 1992]. The regulation shall not be subject to the requirements of subsections (b) and (c) of section 553 of title 5, United States Code, or section 7(o) of the Department of Housing and Urban Development Act [42 U.S.C. 3535(o)]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12746, 12748, 12749, 12771, 12831 of this title.

§ 12748. HOME Investment Trust Funds

(a) Establishment

The Secretary shall establish for each participating jurisdiction a HOME Investment Trust Fund, which shall be an account (or accounts as provided in section 12749(c) of this title) for use solely to invest in affordable housing within the participating jurisdiction's boundaries or within the boundaries of contiguous jurisdictions in joint projects which serve residents from both jurisdictions in accordance with the provisions of this part.

(b) Line of credit

The Secretary shall establish a line of credit in the HOME Investment Trust Fund of each

participating jurisdiction, which line of credit shall include—

- (1) funds allocated or reallocated to the participating jurisdiction under section 12747 of this title, and
- (2) any payment or repayment made pursuant to section 12749 of this title.

(c) Reductions

A participating jurisdiction's line of credit shall be reduced by—

- (1) funds drawn from the HOME Investment Trust Fund by the participating jurisdiction,
- (2) funds expiring under subsection (g) of this section, and
- (3) any penalties assessed by the Secretary under section 12754¹ of this title.

(d) Certification

A participating jurisdiction may draw funds from its HOME Investment Trust Fund, but not to exceed the remaining line of credit, only after providing certification that the funds shall be used pursuant to the participating jurisdiction's approved housing strategy and in compliance with all requirements of this subchapter. When such certification is received, the Secretary shall immediately disburse such funds in accordance with the form of the assistance determined by the participating jurisdiction.

(e) Investment within 15 days

The participating jurisdiction shall, not later than 15 days after funds are drawn from the jurisdiction's HOME Investment Trust Fund, invest such funds, together with any interest earned thereon, in the affordable housing for which the funds were withdrawn.

(f) No interest or fees

The Secretary shall not charge any interest or levy any other fee with regard to funds in a HOME Investment Trust Fund.

(g) Expiration of right to draw funds

If any funds becoming available to a participating jurisdiction under this subchapter are not placed under binding commitment to affordable housing within 24 months after the last day of the month in which such funds are deposited in the jurisdiction's HOME Investment Trust Fund, the jurisdiction's right to draw such funds from the HOME Investment Trust Fund shall expire. The Secretary shall reduce the line of credit in the participating jurisdiction's HOME Investment Trust Fund by the expiring amount and shall reallocate the funds by formula in accordance with section 12747(d) of this title.

(h) Administrative provision

The Secretary shall keep each participating jurisdiction informed of the status of its HOME Investment Trust Fund, including the status of amounts under various stages of commitment.

(Pub. L. 101-625, title II, §218, Nov. 28, 1990, 104 Stat. 4109; Pub. L. 102-550, title II, §§203(c), 221, Oct. 28, 1992, 106 Stat. 3752, 3762.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-550, §221, inserted “or within the boundaries of contiguous jurisdictions in

¹ So in original. Probably should be section “12753”.

joint projects which serve residents from both jurisdictions” after “boundaries”.

Subsec. (g). Pub. L. 102-550, §203(c), substituted “If” for “Except as provided in section 12747(b)(1)(A)(ii) of this title, if”.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-550 applicable to unexpended funds allocated under subchapter II of this chapter in fiscal year 1992, except as otherwise specifically provided, see section 223 of Pub. L. 102-550, set out as a note under section 12704 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12746 of this title.

§ 12749. Repayment of investment

(a) In general

Any repayment of funds drawn from a jurisdiction's HOME Investment Trust Fund, and any payment of interest or other return on the investment of such funds, shall be deposited in such jurisdiction's HOME Investment Trust Fund, except that, if the jurisdiction is not a participating jurisdiction when such payment or repayment is made, the amount of such payment or repayment shall be reallocated in accordance with section 12747(d) of this title.

(b) Assurance of repayment

Each participating jurisdiction shall enter into an agreement with the Secretary ensuring that funds invested in affordable housing under this part are repayable when the housing no longer qualifies as affordable housing. Any repayment under the previous sentence shall be for deposit in the HOME Investment Trust Fund of the jurisdiction making the investment; except that if such jurisdiction is not a participating jurisdiction when such repayment is made, the amount of such repayment shall be reallocated in accordance with section 12747(d) of this title.

(c) Availability

The Secretary shall take such actions as are necessary to ensure that any repayments deposited in a HOME Investment Trust Fund in accordance with this section shall be immediately available to the participating jurisdiction for investment subject to the provisions of this part that apply to funds that are allocated under section 12747 of this title. Actions authorized under the preceding sentence may include authorizing the establishment for a participating jurisdiction of a HOME Investment Trust Fund account outside of the Federal Government that, under arrangements satisfactory to the Secretary, shall be used solely to invest in affordable housing within the participating jurisdiction's boundaries in accordance with the provisions of this subchapter. Such accounts shall be established in such a manner that repayments are not receipts or collections of the Federal Government.

(Pub. L. 101-625, title II, §219, Nov. 28, 1990, 104 Stat. 4110.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12748, 12802 of this title.

§ 12750. Matching requirements**(a) Contribution**

Each participating jurisdiction shall make contributions to housing that qualifies as affordable housing under this subchapter that total, throughout a fiscal year, not less than 25 percent of the funds drawn from the jurisdiction's HOME Investment Trust Fund in such fiscal year. Such contributions shall be in addition to any amounts made available under section 12746(3)(A)(ii) of this title.

(b) Recognition**(1) In general**

A contribution shall be recognized for purposes of subsection (a) of this section only if it—

(A) is made with respect to housing that qualifies as affordable housing under section 12745 of this title; or

(B) is made with respect to any portion of a project not less than 50 percent of the units of which qualify as affordable housing under section 12745 of this title.

(2) Administrative expenses

Contributions for administrative expenses may not be recognized for purposes of subsection (a) of this section.

(c) Form

Such contributions may be in the form of—

(1) cash contributions from non-Federal resources, which may not include funds from a grant made under section 5306(b) or section 5306(d) of this title;

(2) the value of taxes, fees, or other charges that are normally and customarily imposed but are waived, foregone, or deferred in a manner that achieves affordability of housing assisted under this subchapter;

(3) the value of land or other real property as appraised according to procedures acceptable to the Secretary;

(4) the value of investment in on-site and off-site infrastructure directly required for affordable housing assisted under this subchapter;

(5) Redesignated (4)

(6) up to—

(A) 50 percent of proceeds from bond financing validly issued by a State or local government, agency or instrumentality thereof, or political subdivision thereof, and repayable with revenues derived from a multifamily affordable housing project financed, and

(B) 25 percent of proceeds from bond financing validly issued by a State or local government, agency or instrumentality thereof, or political subdivision thereof, and repayable with revenues derived from a single-family project financed,

but not more than 25 percent of the contribution required under subsection (a) of this section may be derived from these sources;

(7) the reasonable value of any site-preparation and construction materials and any donated or voluntary labor in connection with the site-preparation for, or construction or rehabilitation of, affordable housing; and

(8) such other contributions to affordable housing as the Secretary considers appropriate.

(d) Reduction of requirement**(1) In general**

The Secretary shall reduce the matching requirement under subsection (a) of this section with respect to any funds drawn from a jurisdiction's HOME Investment Trust Fund Account during a fiscal year by—

(A) 50 percent for a jurisdiction that certifies that it is in fiscal distress; and

(B) 100 percent for a jurisdiction that certifies that it is in severe fiscal distress.

(2) Definitions

For purposes of this section—

(A) "fiscal distress" means a jurisdiction other than a State that satisfies 1 of the distress criteria set forth in paragraph (3); and

(B) "severe fiscal distress" means a jurisdiction other than a State that satisfies both of the distress criteria set forth in paragraph (3).

(3) Distress criteria

For purposes of a jurisdiction other than a State certifying that it is distressed, the following criteria shall apply:

(A) Poverty rate

The average poverty rate in the jurisdiction for the calendar year immediately preceding the year in which its fiscal year begins was equal to or greater than 125 percent of the average national poverty rate during such calendar year (as determined according to information of the Bureau of the Census).

(B) Per capita income

The average per capita income in the jurisdiction for the calendar year immediately preceding the year in which its fiscal year begins was less than 75 percent of the average national per capita income during such calendar year (as determined according to information of the Bureau of the Census).

(4) States

In determining the degree to which a jurisdiction that is a State is distressed, the Secretary shall take into consideration the State's fiscal capacity and expenditure needs as determined by a national organization which compiles the relevant data.

(5) Waiver in disaster areas

If a participating jurisdiction is located in an area in which a declaration of a disaster pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act [42 U.S.C. 5121 et seq.] is in effect for any part of a fiscal year, the Secretary may reduce the matching requirement for that fiscal year under subsection (a) of this section with respect to any funds drawn from a jurisdiction's HOME Investment Trust Fund Account during that fiscal year by up to 100 percent.

(Pub. L. 101-625, title II, §220, Nov. 28, 1990, 104 Stat. 4111; Pub. L. 102-550, title II, §§207(c), 210(a)-(c), Oct. 28, 1992, 106 Stat. 3753, 3755; Pub. L. 103-233, title II, §204, Apr. 11, 1994, 108 Stat. 364.)

REFERENCES IN TEXT

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (d)(5), is Pub. L. 93-288, May 22, 1974, 88 Stat. 143, as amended, which is classified principally to chapter 68 (§5121 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-233 amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: “Each participating jurisdiction shall make contributions to housing that qualifies as affordable housing under this subchapter that total, throughout a fiscal year, not less than—

“(1) 25 percent of the total funds drawn from the jurisdiction’s HOME Investment Trust Fund in that fiscal year with respect to rental assistance, housing rehabilitation and substantial rehabilitation; and

“(2) 30 percent of the total funds drawn from the jurisdiction’s HOME Investment Trust Fund in that fiscal year with respect to new construction.

Such contributions shall be in addition to any amounts made available under section 12746(3)(A)(ii) of this title.”

1992—Subsec. (a). Pub. L. 102-550, §210(a)(4), substituted “housing that qualifies as affordable housing under this subchapter” for “affordable housing assisted under this subchapter” in introductory provisions.

Subsec. (a)(1). Pub. L. 102-550, §210(a)(1), substituted “, housing rehabilitation and substantial rehabilitation; and” for “and housing rehabilitation;”.

Subsec. (a)(2). Pub. L. 102-550, §210(a)(2), substituted “30” for “33” and “new construction.” for “substantial rehabilitation; and”.

Subsec. (a)(3). Pub. L. 102-550, §210(a)(3), struck out par. (3) which read as follows: “50 percent of the total funds drawn from the jurisdiction’s HOME Investment Trust Fund in that fiscal year with respect to new construction.”

Subsec. (b)(2). Pub. L. 102-550, §207(c)(1), substituted “may not be recognized for purposes of subsection (a) of this section” for “shall be recognized only up to an amount equal to 7 percent of funds provided for investment under this subchapter”.

Subsec. (c)(2). Pub. L. 102-550, §207(c)(2), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: “payment of administrative expenses, as defined by the Secretary, from non-Federal resources, which may include funds from a grant made under section 5306(b) or section 5306(d) of this title;”.

Subsec. (c)(3). Pub. L. 102-550, §210(b)(1), which directed the striking of “and” at end of par. (4), was executed by striking “and” at end of par. (3) to reflect the probable intent of Congress and the redesignation of par. (4) as (3). See below.

Pub. L. 102-550, §207(c)(2)(B), redesignated par. (4) as (3). Former par. (3) redesignated (2).

Subsec. (c)(4). Pub. L. 102-550, §210(b)(2), which directed the substitution of a semicolon for the period at end of par. (5), was executed by making the substitution at end of par. (4) to reflect the probable intent of Congress and the redesignation of par. (5) as (4). See below.

Pub. L. 102-550, §207(c)(2)(B), redesignated par. (5) as (4). Former par. (4) redesignated (3).

Subsec. (c)(5). Pub. L. 102-550, §207(c)(2)(B), redesignated par. (5) as (4).

Subsec. (c)(6) to (8). Pub. L. 102-550, §210(b)(3), added pars. (6) to (8).

Subsec. (d). Pub. L. 102-550, §210(c), added subsec. (d) and struck out former subsec. (d) which read as follows: “If a jurisdiction demonstrates to the satisfaction of the Secretary that a reduction of the matching requirement specified in subsection (a) of this section is necessary to permit the jurisdiction to carry out the purposes of this subchapter, the Secretary may reduce the matching requirement during a period not to exceed 3

years after the jurisdiction is first designated as a participating jurisdiction. Such reduction shall be not more than 75 percent in the first year, not more than 50 percent in the second year, and not more than 25 percent in the third year.”

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-233 applicable with respect to any amounts made available to carry out this subchapter after Apr. 11, 1994, and any amounts made available to carry out this subchapter before that date that remain uncommitted on that date, with Secretary to issue any regulations necessary to carry out such amendment not later than end of 45-day period beginning on that date, see section 209 of Pub. L. 103-233, set out as a note under section 5301 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 210(d) of Pub. L. 102-550 provided that: “The amendments made by this section [amending this section] shall apply with respect to fiscal year 1993 and each fiscal year thereafter.”

Amendment by section 207(c) of Pub. L. 102-550 applicable to unexpended funds allocated under subchapter II of this chapter in fiscal year 1992, except as otherwise specifically provided, see section 223 of Pub. L. 102-550, set out as a note under section 12704 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1437aaa-2, 12747 of this title.

§ 12751. Private-public partnership

Each participating jurisdiction shall make all reasonable efforts, consistent with the purposes of this subchapter, to maximize participation by the private sector, including nonprofit organizations and for-profit entities, in the implementation of the jurisdiction’s housing strategy, including participation in the financing, development, rehabilitation and management of affordable housing. Nothing in the previous sentence shall preclude public housing authorities from fully participating in the implementation of a jurisdiction’s housing strategy.

(Pub. L. 101-625, title II, §221, Nov. 28, 1990, 104 Stat. 4112.)

§ 12752. Distribution of assistance**(a) Local**

Each participating jurisdiction shall, insofar as is feasible, distribute assistance under this part geographically within its boundaries and among different categories of housing need, according to the priorities of housing need identified in the jurisdiction’s approved housing strategy.

(b) State

Participating States shall be responsible for distributing assistance throughout the State according to the State’s assessment of the geographical distribution of the housing need within the State, as identified in the State’s approved housing strategy. Participating States shall distribute assistance to rural areas in amounts that take into account the nonmetropolitan share of the State’s total population and objective measures of rural housing need, such as poverty and substandard housing, as set forth in the State’s housing strategy approved under section 12705 of this title. To the extent the need is within the boundaries of a participating unit

of general local government, the State and the unit of general local government shall coordinate activities to address that need.

(Pub. L. 101-625, title II, §222, Nov. 28, 1990, 104 Stat. 4112.)

§ 12753. Penalties for misuse of funds

If the Secretary finds after reasonable notice and opportunity for hearing that a participating jurisdiction has failed to comply substantially with any provision of this part and until the Secretary is satisfied that there is no longer any such failure to comply, the Secretary shall reduce the line of credit in the participating jurisdiction's HOME Investment Trust Fund by the amount of any expenditures that were not in accordance with the requirements of this subchapter, and the Secretary may—

- (1) prevent withdrawals from the participating jurisdiction's HOME Investment Trust Fund for activities affected by such failure to comply;
- (2) restrict the participating jurisdiction's activities under this subchapter to activities that conform to one or more model programs made available under section 12743 of this title; or
- (3) remove the participating jurisdiction from participation in allocations or reallocations of funds made available under this part.

(Pub. L. 101-625, title II, §223, Nov. 28, 1990, 104 Stat. 4112.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12742, 12743, 12748 of this title.

§ 12754. Limitation on jurisdictions under court order

(a) In general

Notwithstanding any other provision of this Act, the Secretary shall ensure that funds provided under this part are not employed to carry out housing remedies or to pay fines, penalties, or costs associated with an action in which—

- (1) a participating jurisdiction has been adjudicated, by a Federal, State, or local court, to be in violation of title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], the Fair Housing Act [42 U.S.C. 3601 et seq.], or any other Federal, State, or local law promoting fair housing or prohibiting discrimination, or
- (2) a settlement has been entered into in any case where claims of such violations have been asserted against a participating jurisdiction, except to the extent permitted by subsection (b) of this section.

(b) Remedial use of funds permitted

In the case of settlement described in subsection (a)(2) of this section, a jurisdiction may use funds provided under this Act to carry out housing remedies with eligible activities.

(Pub. L. 101-625, title II, §224, Nov. 28, 1990, 104 Stat. 4113.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 101-625, Nov. 28, 1990, 104 Stat. 4079, known as the Cranston-Gonzalez

National Affordable Housing Act. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (a)(1), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Fair Housing Act, referred to in subsec. (a)(1), is title VIII of Pub. L. 90-284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I (§3601 et seq.) of chapter 45 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12748 of this title.

§ 12755. Tenant and participant protections

(a) Lease

The lease between a tenant and an owner of affordable housing assisted under this subchapter for rental shall be for not less than one year, unless by mutual agreement between the tenant and the owner, and shall contain such terms and conditions as the Secretary shall determine to be appropriate.

(b) Termination of tenancy

An owner shall not terminate the tenancy or refuse to renew the lease of a tenant of rental housing assisted under this subchapter except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable Federal, State, or local law, or for other good cause. Any termination or refusal to renew must be preceded by not less than 30 days by the owner's service upon the tenant of a written notice specifying the grounds for the action.

(c) Maintenance and replacement

The owner of rental housing assisted under this subchapter shall maintain the premises in compliance with all applicable housing quality standards and local code requirements.

(d) Tenant selection

The owner of rental housing assisted under this subchapter shall adopt written tenant selection policies and criteria that—

- (1) are consistent with the purpose of providing housing for very low-income and low-income families,
- (2) are reasonably related to program eligibility and the applicant's ability to perform the obligations of the lease,
- (3) give reasonable consideration to the housing needs of families that would have a preference under section 1437d(c)(4)(A) of this title, and
- (4) provide for (A) the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable, and (B) for¹ the prompt notification in writing of any rejected applicant of the grounds for any rejection.

(Pub. L. 101-625, title II, §225, Nov. 28, 1990, 104 Stat. 4113.)

¹ So in original. The word "for" probably should not appear.

§ 12756. Monitoring of compliance

(a) Enforceable agreements

Each participating jurisdiction, through binding contractual agreements with owners and otherwise, shall ensure long-term compliance with the provisions of this subchapter. Such measures shall provide for (1) enforcement of the provisions of this subchapter by the jurisdiction or by the intended beneficiaries, and (2) remedies for the breach of such provisions.

(b) Periodic monitoring

Each participating jurisdiction, not less frequently than annually, shall review the activities of owners of affordable housing assisted under this subchapter for rental to assess compliance with the requirements of this subchapter. Such review shall include on-site inspection to determine compliance with housing codes and other applicable regulations. The results of each review shall be included in the jurisdiction's performance report submitted to the Secretary under section 12708(a) of this title and made available to the public.

(c) Special procedures for certain projects

In the case of small-scale or scattered site housing, the Secretary may provide for such streamlined procedures for achieving the purposes of this section as the Secretary determines to be appropriate.

(Pub. L. 101-625, title II, §226, Nov. 28, 1990, 104 Stat. 4114.)

PART B—COMMUNITY HOUSING PARTNERSHIP

§ 12771. Set-aside for community housing development organizations

(a) In general

For a period of 24 months after funds under part A of this subchapter are made available to a jurisdiction, the jurisdiction shall reserve not less than 15 percent of such funds for investment only in housing to be developed, sponsored, or owned by community housing development organizations. Each participating jurisdiction shall make reasonable efforts to identify community housing development organizations that are capable or can reasonably be expected to become capable of carrying out elements of the jurisdiction's housing strategy and to encourage such community housing development organizations to do so. If during the first 24 months of its participation under this subchapter, a participating jurisdiction is unable to identify a sufficient number of capable community housing development organizations, then up to 20 percent of the funds allocated to that jurisdiction under this section, but not to exceed \$150,000, may be made available to carry out activities that develop the capacity of community housing development organizations in that jurisdiction. A participating jurisdiction is authorized to enter into contracts with community housing development organizations to carry out this section.

(b) Recapture and reuse

If any funds reserved under subsection (a) of this section remain uninvested for a period of 24 months, then the Secretary shall deduct such

funds from the line of credit in the participating jurisdiction's HOME Investment Trust Fund and make such funds available by direct reallocation (1) to other participating jurisdictions for affordable housing developed, sponsored or owned by community housing development organizations, or (2) to nonprofit intermediary organizations to carry out activities that develop the capacity of community housing development organizations consistent with section 12773 of this title, with preference to community housing development organizations serving the jurisdiction from which the funds were recaptured.

(c) Direct reallocation criteria

Insofar as practicable, direct reallocations under this section shall be made according to the selection criteria established under section 12747(c) of this title.

(Pub. L. 101-625, title II, §231, Nov. 28, 1990, 104 Stat. 4114; Pub. L. 102-550, title II, §212(a), (b), Oct. 28, 1992, 106 Stat. 3757.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-550 substituted “24” for “18” in first sentence and inserted after second sentence “If during the first 24 months of its participation under this subchapter, a participating jurisdiction is unable to identify a sufficient number of capable community housing development organizations, then up to 20 percent of the funds allocated to that jurisdiction under this section, but not to exceed \$150,000, may be made available to carry out activities that develop the capacity of community housing development organizations in that jurisdiction.”

Subsec. (b). Pub. L. 102-550, §212(a), substituted “24” for “18”.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-550 applicable to unexpended funds allocated under subchapter II of this chapter in fiscal year 1992, except as otherwise specifically provided, see section 223 of Pub. L. 102-550, set out as a note under section 12704 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12772 of this title.

§ 12772. Project-specific assistance to community housing development organizations

(a) In general

Amounts reserved under section 12771 of this title may be used for activities eligible under section 12742 of this title and, in amounts not to exceed 10 percent of the amounts so reserved, for other activities specified under this section.

(b) Project-specific technical assistance and site control loans

(1) In general

Amounts reserved under section 12771 of this title may be used to provide technical assistance and site control loans to community housing development organizations in the early stages of site development for an eligible project. Such loans shall not exceed amounts that the jurisdiction determines to be customary and reasonable project preparation costs allowable under paragraph (2).

(2) Allowable expenses

A loan under this subsection may be provided to cover project expenses necessary to

determine project feasibility (including costs of an initial feasibility study), consulting fees, costs of preliminary financial applications, legal fees, architectural fees, engineering fees, engagement of a development team, site control and title clearance.

(3) Repayment

A community housing development organization that receives a loan under this subsection shall repay the loan to the participating jurisdiction's HOME Investment Trust Fund from construction loan proceeds or other project income. The participating jurisdiction may waive repayment of the loan, in part or in whole, if there are impediments to project development that the participating jurisdiction determines are reasonably beyond the control of the borrower.

(c) Project-specific seed money loans

(1) In general

Amounts reserved under section 12771 of this title may be used to provide loans to community housing development organizations to cover preconstruction project costs that the jurisdiction determines to be customary and reasonable, including, but not limited to the costs of obtaining firm construction loan commitments, architectural plans and specifications, zoning approvals, engineering studies and legal fees.

(2) Eligible sponsors

A loan under this subsection may be provided only to a community housing development organization that has, with respect to the project concerned, site control, a preliminary financial commitment, and a capable development team.

(3) Repayment

A community housing development organization that receives a loan under this subsection shall repay the loan to the jurisdiction's HOME Investment Trust Fund from construction loan proceeds or other project income. The participating jurisdiction may waive repayment of the loan, in whole or in part, if there are impediments to project development that the participating jurisdiction determines are reasonably beyond the control of the borrower.

(Pub. L. 101-625, title II, § 232, Nov. 28, 1990, 104 Stat. 4115.)

§ 12773. Housing education and organizational support

(a) In general

The Secretary is authorized to provide education and organizational support assistance, in conjunction with other assistance made available under this part—

(1) to facilitate the education of low-income homeowners and tenants;

(2) to promote the ability of community housing development organizations, including community land trusts, to maintain, rehabilitate and construct housing for low-income and moderate-income families in conformance with the requirements of this subchapter; and

(3) to achieve the purposes under paragraphs (1) and (2) by helping women who reside in low- and moderate-income neighborhoods rehabilitate and construct housing in the neighborhoods.

(b) Eligible activities

Assistance under this section may be used only for the following eligible activities:

(1) Organizational support

Organizational support assistance may be made available to community housing development organizations to cover operational expenses and to cover expenses for training and technical, legal, engineering and other assistance to the board of directors, staff, and members of the community housing development organization.

(2) Housing education

Housing education assistance may be made available to community housing development organizations to cover expenses for providing or administering programs for educating, counseling, or organizing homeowners and tenants who are eligible to receive assistance under other provisions of this subchapter.

(3) Program-wide support of nonprofit development and management

Technical assistance, training, and continuing support may be made available to eligible community housing development organizations for managing and conserving properties developed under this subchapter.

(4) Benevolent loan funds

Technical assistance may be made available to increase the investment of private capital in housing for very low-income families, particularly by encouraging the establishment of benevolent loan funds through which private financial institutions will accept deposits at below-market interest rates and make those funds available at favorable rates to developers of low-income housing and to low-income homebuyers.

(5) Community development banks and credit unions

Technical assistance may be made available to establish privately owned, local community development banks and credit unions to finance affordable housing.

(6) Community land trusts

Organizational support, technical assistance, education, training, and continuing support under this subsection may be made available to community land trusts (as such term is defined in subsection (f) of this section) and to community groups for the establishment of community land trusts.

(7) Facilitating women in homebuilding professions

Technical assistance may be made available to businesses, unions, and organizations involved in construction and rehabilitation of housing in low- and moderate-income areas to assist women residing in the area to obtain jobs involving such activities, which may include facilitating access by such women to,

and providing, apprenticeship and other training programs regarding nontraditional skills, recruiting women to participate in such programs, providing continuing support for women at job sites, counseling and educating businesses regarding suitable work environments for women, providing information to such women regarding opportunities for establishing small housing construction and rehabilitation businesses, and providing materials and tools for training such women (in an amount not exceeding 10 percent of any assistance provided under this paragraph). The Secretary shall give priority under this paragraph to providing technical assistance for organizations rehabilitating single family or multi-family housing owned or controlled by the Secretary pursuant to title II of the National Housing Act [12 U.S.C. 1707 et seq.] and which have women members in occupations in which women constitute 25 percent or less of the total number of workers in the occupation (in this section referred to as “nontraditional occupations”).

(c) Delivery of assistance

The Secretary shall provide this assistance only through contract—

(1) with a nonprofit intermediary organization that, in the determination of the Secretary—

(A) customarily provides, in more than one community, services related to the provision of decent housing that is affordable to low-income and moderate-income persons or the revitalization of deteriorating neighborhoods;

(B) has demonstrated experience in providing a range of assistance (such as financing, technical assistance, construction and property management assistance, capacity building and training) to community housing development organizations or similar organizations that engage in community revitalization;

(C) has demonstrated the ability to provide technical assistance and training for community-based developers of affordable housing;

(D) has described the uses to which such assistance will be put and the intended beneficiaries of the assistance; and

(E) in the case of activities under subsection (b)(7) of this section, is a community-based organization (as such term is defined in section 4 of the Job Training Partnership Act) or public housing agency, which has demonstrated experience in preparing women for apprenticeship training in construction or administering programs for training women for construction or other nontraditional occupations (and such organizations may use assistance for activities under such subsection to employ women in housing construction and rehabilitation activities to the extent that the organization has the capacity to conduct such activities); or

(2) with another organization, if a participating jurisdiction demonstrates that the organization is qualified to carry out eligible ac-

tivities and that the jurisdiction would not be served in a timely manner by intermediaries specified under paragraph (1).

Contracts under paragraph (2) shall be for activities specified in an application from the participating jurisdiction, which application shall include a certification that the activities are necessary to the effective implementation of the participating jurisdiction’s housing strategy.

(d) Limitations

Contracts under this section with any one contractor for a fiscal year may not—

(1) exceed 20 percent of the amount appropriated for this section for such fiscal year; or

(2) provide more than 20 percent of the operating budget (which shall not include funds that are passed through to community housing development organizations) of the contracting organization for any one year.

(e) Single-State contractors

Not less than 40 percent of the funds made available for this section in an appropriations Act in any fiscal year shall be made available for eligible contractors that have worked primarily in one State. The Secretary shall provide assistance under this section, to the extent applications are submitted and approved, to contractors in each of the geographic regions having a regional office of the Department of Housing and Urban Development.

(f) “Community land trust” defined

For purposes of this section, the term “community land trust” means a community housing development organization (except that the requirements under subparagraphs (C) and (D) of section 12704(6) of this title shall not apply for purposes of this subsection)—

(1) that is not sponsored by a for-profit organization;

(2) that is established to carry out the activities under paragraph (3);

(3) that—

(A) acquires parcels of land, held in perpetuity, primarily for conveyance under long-term ground leases;

(B) transfers ownership of any structural improvements located on such leased parcels to the lessees; and

(C) retains a preemptive option to purchase any such structural improvement at a price determined by formula that is designed to ensure that the improvement remains affordable to low- and moderate-income families in perpetuity;

(4) whose corporate membership that is open to any adult resident of a particular geographic area specified in the bylaws of the organization; and

(5) whose board of directors—

(A) includes a majority of members who are elected by the corporate membership; and

(B) is composed of equal numbers of (i) lessees pursuant to paragraph (3)(B), (ii) corporate members who are not lessees, and (iii) any other category of persons described in the bylaws of the organization.

(Pub. L. 101-625, title II, §233, Nov. 28, 1990, 104 Stat. 4116; Pub. L. 102-550, title II, §213, Oct. 28, 1992, 106 Stat. 3757.)

REFERENCES IN TEXT

The National Housing Act, referred to in subsec. (b)(7), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended. Title II of the Act is classified principally to subchapter II (§1707 et seq.) of chapter 13 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

Section 4 of the Job Training Partnership Act, referred to in subsec. (c)(1)(E), which was classified to section 1503 of Title 29, Labor, was repealed by Pub. L. 105-220, title I, §199(b)(2), (c)(2)(B), Aug. 7, 1998, 112 Stat. 1059, effective July 1, 2000. Pursuant to section 2940(b) of Title 29, references to a provision of the Job Training Partnership Act, effective Aug. 7, 1998, are deemed to refer to that provision or the corresponding provision of the Workforce Investment Act of 1998, Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 936, and effective July 1, 2000, are deemed to refer to the corresponding provision of the Workforce Investment Act of 1998. For complete classification of the Workforce Investment Act of 1998 to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

AMENDMENTS

1992—Subsec. (a)(2). Pub. L. 102-550, §213(a)(1), inserted “, including community land trusts,” after “organizations”.

Subsec. (a)(3). Pub. L. 102-550, §213(b)(1), added par. (3).

Subsec. (b)(6). Pub. L. 102-550, §213(a)(2), added par. (6).

Subsec. (b)(7). Pub. L. 102-550, §213(b)(2), added par. (7).

Subsec. (c)(1)(E). Pub. L. 102-550, §213(b)(3), added subpar. (E).

Subsec. (e). Pub. L. 102-550, §213(b)(4), inserted at end “The Secretary shall provide assistance under this section, to the extent applications are submitted and approved, to contractors in each of the geographic regions having a regional office of the Department of Housing and Urban Development.”

Subsec. (f). Pub. L. 102-550, §213(a)(3), added subsec. (f).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-550 applicable to unexpended funds allocated under subchapter II of this chapter in fiscal year 1992, except as otherwise specifically provided, see section 223 of Pub. L. 102-550, set out as a note under section 12704 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12724, 12771 of this title.

§ 12774. Other requirements

(a) Tenant participation plan

A community housing development organization that receives assistance under this part shall provide a plan for and follow a program of tenant participation in management decisions and shall adhere to a fair lease and grievance procedure approved by the participating jurisdiction.

(b) Limitation on assistance

A community housing development organization may not receive assistance under this subchapter for any fiscal year in an amount that provides more than 50 percent of the organization's total operating budget in the fiscal year or \$50,000 annually, whichever is greater.

(c) Adjustments of other assistance

The Secretary shall take account of assistance provided to a project under this part when adjusting other assistance to be provided to the project as required by section 3545(d) of this title.

(Pub. L. 101-625, title II, §234, Nov. 28, 1990, 104 Stat. 4117; Pub. L. 102-550, title II, §212(c), Oct. 28, 1992, 106 Stat. 3757.)

AMENDMENTS

1992—Subsec. (b). Pub. L. 102-550 struck out “, together with other Federal assistance,” after “in an amount that” and inserted before period “or \$50,000 annually, whichever is greater”.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-550 applicable to unexpended funds allocated under subchapter II of this chapter in fiscal year 1992, except as otherwise specifically provided, see section 223 of Pub. L. 102-550, set out as a note under section 12704 of this title.

PART C—OTHER SUPPORT FOR STATE AND LOCAL HOUSING STRATEGIES

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 12724 of this title.

§ 12781. Authority

The Secretary shall, insofar as is feasible through contract with eligible organizations, develop the capacity of participating jurisdictions, State and local housing finance agencies, non-profit organizations and for-profit corporations, working in partnership, to identify and meet needs for an increased supply of decent, affordable housing.

(Pub. L. 101-625, title II, §241, Nov. 28, 1990, 104 Stat. 4117.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12782 of this title.

§ 12782. Priorities for capacity development

To carry out section 12781 of this title, the Secretary shall provide assistance under this part to—

(1) facilitate the exchange of information that would help participating jurisdictions carry out the purposes of this subchapter, including information on program design, housing finance, land use controls, and building construction techniques;

(2) improve the ability of States and units of general local government to design and implement comprehensive housing affordability strategies, particularly those States and units of general local government that are relatively inexperienced in the development of affordable housing;

(3) encourage private lenders and for-profit developers of low-income housing to participate in public-private partnerships to achieve the purposes of this subchapter;

(4) improve the ability of States and units of general local government, community housing development organizations, private lenders, and for-profit developers of low-income housing to incorporate energy efficiency into the

planning, design, financing, construction, and operation of affordable housing;

(5) facilitate the establishment and efficient operation of employer-assisted housing programs through research, technical assistance and demonstration projects; and

(6) facilitate the establishment and efficient operation of land bank programs, under which title to vacant and abandoned parcels of real estate located in or causing blighted neighborhoods is cleared for use consistent with the purposes of this subchapter.

(Pub. L. 101-625, title II, §242, Nov. 28, 1990, 104 Stat. 4118; Pub. L. 102-550, title II, §214(a), Oct. 28, 1992, 106 Stat. 3759.)

AMENDMENTS

1992—Par. (6). Pub. L. 102-550 added par. (6).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-550 applicable to unexpended funds allocated under subchapter II of this chapter in fiscal year 1992, except as otherwise specifically provided, see section 223 of Pub. L. 102-550, set out as a note under section 12704 of this title.

§ 12783. Conditions of contracts

(a) Eligible organizations

The Secretary shall carry out this part insofar as is practicable through contract with—

(1) a participating jurisdiction or agency thereof;

(2) a public purpose organization established pursuant to State or local legislation and responsible to the chief elected official of a participating jurisdiction;

(3) an agency or authority established by two or more participating jurisdictions to carry out activities consistent with the purposes of this subchapter;

(4) a national or regional nonprofit organization that has a membership comprised predominantly of entities or officials of entities that qualify under paragraph (1), (2), or (3); or

(5) a professional and technical services company or firm that has demonstrated capacity to provide services under this part.

(b) Contract terms

Contracts under this part shall be for not more than 3 years and shall provide not more than 20 percent of the operating budget of the contracting organization in any one year. Within any fiscal year, contracts with any one organization may not be entered into for a total of more than 20 percent of the funds appropriated under this part in that fiscal year.

(Pub. L. 101-625, title II, §243, Nov. 28, 1990, 104 Stat. 4118.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12784 of this title.

§ 12784. Research in housing affordability

The Secretary is authorized to support, through contracts with eligible organizations and otherwise, such research and to publish such reports as will assist in the achievement of the purposes of this subchapter. Activities author-

ized by the previous sentence may include an ongoing analysis of the impact of public policies at the Federal, State, and local levels, both individually and in the aggregate, on the incentives to expand and maintain the supply of energy-efficient affordable housing in the United States, particularly in areas with severe problems of housing affordability, through the use of cost-saving innovative building technology and construction techniques. For purposes of this section, agencies of the United States, government-sponsored mortgage finance corporations, and qualified research organizations shall be included as eligible organizations in addition to eligible organizations specified under section 12783 of this title.

(Pub. L. 101-625, title II, §244, Nov. 28, 1990, 104 Stat. 4118; Pub. L. 102-550, title II, §215, Oct. 28, 1992, 106 Stat. 3759.)

AMENDMENTS

1992—Pub. L. 102-550 inserted before period at end of second sentence “, through the use of cost-saving innovative building technology and construction techniques”.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-550 applicable to unexpended funds allocated under subchapter II of this chapter in fiscal year 1992, except as otherwise specifically provided, see section 223 of Pub. L. 102-550, set out as a note under section 12704 of this title.

§ 12785. REACH: asset recycling information dissemination

(a) In general

The Secretary shall make available upon request by any participating jurisdiction a list of eligible properties that are located within the jurisdiction and that are owned or controlled by the Department of Housing and Urban Development to facilitate the purchase, development, or rehabilitation of such properties with assistance made available under this subchapter.

(b) Eligible properties

An eligible property under this section shall—

(1) be an unoccupied single-family or multi-family dwelling, such that acquisition and rehabilitation of the dwelling would not result in the displacement of any residents of the dwelling; and

(2) have an appraised value that does not exceed (A) in the case of a 1- to 4-family dwelling, 95 percent of the median purchase price for the area for such dwellings, as determined by the Secretary, or (B) in the case of a dwelling with more than 4 units, the applicable maximum dollar amount limitation under section 1715(d)(3)(ii) of title 12 for elevator-type structures.

(Pub. L. 101-625, title II, §245, Nov. 28, 1990, 104 Stat. 4119.)

PART D—SPECIFIED MODEL PROGRAMS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 12743 of this title.

§ 12801. General authority

Among the alternative model programs that the Secretary shall make available for use by

participating jurisdictions under the provisions of section 12743 of this title shall be model programs specified in this part. The Secretary shall keep these specified model programs under review and submit to Congress such recommendations for change as the Secretary determines to be appropriate.

(Pub. L. 101-625, title II, §251, Nov. 28, 1990, 104 Stat. 4119.)

§ 12802. Rental housing production

(a) Repayable advances

(1) In general

The Secretary shall make available a model program under which repayable advances may be made to public and private project sponsors in constructing, acquiring, or substantially rehabilitating projects to be used as affordable rental housing, including limited equity co-operatives and mutual housing.

(2) Maximum amount of advance

An advance under this model program shall not exceed 50 percent of the total costs associated with the construction, acquisition, or substantial rehabilitation of the project, as determined by the participating jurisdiction.

(3) Terms of repayment

(A) Interest payments

(i) In general

Under the model program, advances shall be repaid with interest calculated at a rate of not more than 3 percent per year, as determined by the participating jurisdiction to be appropriate. Interest shall begin to accrue 1 year after the completion of the construction, acquisition, or substantial rehabilitation of the project and shall be payable in annual installments.

(ii) Exception

Interest and any accrued interest shall be payable only from the surplus cash flow of the project, after a minimum return on equity determined by the participating jurisdiction to be appropriate. As used in the previous sentence, the term "surplus cash flow" means the cash flow of the project after the payment of all amounts due under the first mortgage, operating expenses, and required replacement reserves, as determined by the participating jurisdiction.

(B) Additional interest payments

Under the model program, for any year in which the sum of the surplus cash flow of a project and the return on equity exceeds all interest payments due under subparagraph (A), 50 percent of the excess surplus cash flow shall be paid to the participating jurisdiction's HOME Investment Trust Fund as additional interest.

(C) Principal and unpaid interest

The principal amount of an advance under the model program, and any interest remaining unpaid pursuant to subparagraph (A)(ii) shall be repayable when the housing no longer qualifies as affordable housing in accordance with section 12749(b) of this title.

(b) Selection guidelines

(1) In general

The Secretary shall establish guidelines for the selection of projects by participating jurisdictions for assistance under the model program. Such guidelines shall be designed to select projects in areas and for markets demonstrating the greatest need for the production of affordable rental housing.

(2) Specific requirements

The selection guidelines may include—

(A) the extent of the shortage of rental housing in the area that is available to low-income families;

(B) the extent large families with children will be served by the project;

(C) the extent to which the project provides congregate facilities and has available supportive services that will permit elderly or handicapped residents who become frail and are in need of assistance in living to continue to reside in the project;

(D) the extent of very low-income and low-income occupancy in excess of the income targeting requirements in section 12744 of this title;

(E) the extent of the project sponsor's commitment of equity to the project (except that this criterion shall not apply to or affect the selection of applications submitted by public housing agencies and nonprofit entities);

(F) the extent of the project sponsor's commitment of equity to the project in comparison to the value of all public assistance for the project, including assistance under this subchapter, other Federal assistance and financing, and State and local government contributions (except that this criterion shall not apply to or affect the selection of applications submitted by public housing agencies and nonprofit entities);

(G) the extent of non-Federal public or private assistance to the project;

(H) the extent to which the project provides supportive services for persons with disabilities; and

(I) any other factor determined by the Secretary to be appropriate.

(c) Guidelines

The Secretary shall publish guidelines for the model program under this section not later than 180 days after November 28, 1990.

(Pub. L. 101-625, title II, §252, Nov. 28, 1990, 104 Stat. 4119.)

§ 12803. Rental rehabilitation

(a) In general

The Secretary shall make available a model program to support the rehabilitation of privately owned rental housing located in neighborhoods where the median income does not exceed 80 percent of the area median as determined by the Secretary and where rents can reasonably be expected not to change materially over an extended period of time.

(b) Amount of subsidy

The amount of the rehabilitation subsidy shall be moderate and shall generally not exceed 50

percent of the total costs associated with the rehabilitation of the housing.

(c) Additional restrictions

The guidelines of the model program shall generally comport with the additional protections and restrictions specified under section 1437o(c)¹ of this title.

(Pub. L. 101-625, title II, §253, Nov. 28, 1990, 104 Stat. 4121.)

REFERENCES IN TEXT

Section 1437o of this title, referred to in subsec. (c), was repealed by Pub. L. 101-625, title II, §289(b), Nov. 28, 1990, 104 Stat. 4128.

§ 12804. Rehabilitation loans

(a) In general

The Secretary shall make available a model program to provide direct loans to finance the rehabilitation of low and moderate income single family and multifamily residential properties.

(b) Condition of loans

The Secretary shall establish terms and conditions to ensure that such loans are acceptable risks, taking into consideration the need for rehabilitation, the security for the loan and the ability of the borrower to repay the loan. The Secretary may establish the interest rate for loans under the model program, which shall include special interest rates for loans to borrowers with incomes below 80 percent of the area median income.

(c) Additional restrictions

Guidelines for the model program may require that the property—

- (1) be located in an area that contains a substantial number of dwellings in need of rehabilitation;
- (2) the property¹ is residential and owner-occupied; and
- (3) the property¹ is in need of rehabilitation or concentrated code enforcement within a reasonable time, and the rehabilitation of such property is consistent with a local plan for rehabilitation or code enforcement.

Additional guidelines for the model program shall generally comport with the additional protections and restrictions specified under section 1452b² of this title.

(Pub. L. 101-625, title II, §254, Nov. 28, 1990, 104 Stat. 4121.)

REFERENCES IN TEXT

Section 1452b of this title, referred to in subsec. (c), was repealed by Pub. L. 101-625, title II, §289(b)(1), Nov. 28, 1990, 104 Stat. 4128, which is classified to section 12839(b)(1) of this title.

§ 12805. Sweat equity model program

(a) In general

The Secretary shall make available a model program to provide grants to public and private

nonprofit organizations and community housing development organizations to provide technical and supervisory assistance to low-income and very low-income families, including the homeless, in acquiring, rehabilitating, and constructing housing by the self-help housing method.

(b) Rehabilitation of properties

The program shall target for rehabilitation properties which have been acquired by the Federal, State, or local governments.

(c) Homeownership opportunities through sweat equity

(1) The program shall utilize the skilled or unskilled labor of eligible families in exchange for acquisition of the property.

(2) Training shall be provided to eligible families in building and home maintenance skills.

(d) Rental opportunities through sweat equity

(1) The program shall include rental opportunities for eligible families which will help expand the stock of affordable housing which is most appropriate for the target group.

(2) The use of the tenant's skilled or unskilled labor shall be encouraged in lieu of or as a supplement to rent payments by the tenant.

(e) "Self-help housing" defined

The term "self-help housing" means the same as in section 1490c of this title.

(f) Additional restrictions

The guidelines for the model program shall generally comport with the additional protections and restrictions specified under section 1490c of this title.

(Pub. L. 101-625, title II, §255, Nov. 28, 1990, 104 Stat. 4121.)

ASSISTANCE FOR SELF-HELP HOUSING PROVIDERS

Pub. L. 104-120, §11, Mar. 28, 1996, 110 Stat. 841, as amended by Pub. L. 105-276, title V, §599E(a), Oct. 21, 1998, 112 Stat. 2663; Pub. L. 106-569, title II, §202, Dec. 27, 2000, 114 Stat. 2951, provided that:

“(a) GRANT AUTHORITY.—The Secretary of Housing and Urban Development may, to the extent amounts are available to carry out this section and the requirements of this section are met, make grants for use in accordance with this section to national and regional organizations and consortia that have experience in providing or facilitating self-help housing homeownership opportunities.

“(b) GOALS AND ACCOUNTABILITY.—In making grants under this section, the Secretary shall take such actions as may be necessary to ensure that—

“(1) assistance provided under this section is used to facilitate and encourage innovative homeownership opportunities through the provision of self-help housing, under which the homeowner contributes a significant amount of sweat equity toward the construction of the new dwelling;

“(2) assistance provided under this section for land acquisition and infrastructure development results in the development of not less than 4,000 new dwellings;

“(3) the dwellings constructed in connection with assistance provided under this section are quality dwellings that comply with local building and safety codes and standards and are available at prices below the prevailing market prices;

“(4) the provision of assistance under this section establishes and fosters a partnership between the Federal Government and organizations and consortia, resulting in efficient development of affordable housing with minimal governmental intervention, limited

¹ See References in Text note below.

¹ So in original. The words “the property” probably should not appear.

² See References in Text note below.

governmental regulation, and significant involvement by private entities;

“(5) activities to develop housing assisted pursuant to this section involve community participation in which volunteers assist in the construction of dwellings; and

“(6) dwellings are developed in connection with assistance under this section on a geographically diverse basis, which includes areas having high housing costs, rural areas, and areas underserved by other homeownership opportunities that are populated by low-income families unable to otherwise afford housing.

If, at any time, the Secretary determines that the goals under this subsection cannot be met by providing assistance in accordance with the terms of this section, the Secretary shall immediately notify the applicable Committees in writing of such determination and any proposed changes for such goals or this section.

“(c) NATIONAL COMPETITION.—The Secretary shall select organizations and consortia referred to in subsection (a) to receive grants through a national competitive process, which the Secretary shall establish.

“(d) USE.—

“(1) PURPOSE.—Amounts from grants made under this section, including any recaptured amounts, shall be used only for eligible expenses in connection with developing new decent, safe, and sanitary nonluxury dwellings in the United States for families and persons who otherwise would be unable to afford to purchase a dwelling.

“(2) ELIGIBLE EXPENSES.—For purposes of paragraph (1), the term ‘eligible expenses’ means costs only for the following activities:

“(A) LAND ACQUISITION.—Acquiring land (including financing and closing costs), which may include reimbursing an organization, consortium, or affiliate, upon approval of any required environmental review, for nongrant amounts of the organization, consortium, or affiliate advanced before such review to acquire land.

“(B) INFRASTRUCTURE IMPROVEMENT.—Installing, extending, constructing, rehabilitating, or otherwise improving utilities and other infrastructure. Such term does not include any costs for the rehabilitation, improvement, or construction of dwellings.

“(e) ESTABLISHMENT OF GRANT FUND.—

“(1) IN GENERAL.—Any amounts from any grant made under this section shall be deposited by the grantee organization or consortium in a fund that is established by such organization or consortium for such amounts, administered by such organization or consortium, and available for use only for the purposes under subsection (d). Any interest, fees, or other earnings of the fund shall be deposited in the fund and shall be considered grant amounts for purposes of this section.

“(2) ASSISTANCE TO AFFILIATES.—Any organization or consortia that receives a grant under this section may use amounts in the fund established for such organization or consortia pursuant to paragraph (1) for the purposes under subsection (d) by providing assistance from the fund to local affiliates of such organization or consortia.

“(f) REQUIREMENTS FOR ASSISTANCE.—The Secretary may make a grant to an organization or consortium under subsection (a) only pursuant to—

“(1) an expression of interest by such organization or consortia to the Secretary for a grant for such purposes;

“(2) a determination by the Secretary that the organization or consortia has the capability and has obtained financial commitments (or has the capacity to obtain financial commitments) necessary to—

“(A) develop not less than 30 dwellings in connection with the grant amounts; and

“(B) otherwise comply with a grant agreement under subsection (i); and

“(3) a grant agreement entered into under subsection (i).

“(g) Repealed. Pub. L. 105-276, title V, § 599E(a)(6), Oct. 21, 1998, 112 Stat. 2664.]

“(h) GEOGRAPHICAL DIVERSITY.—In making grants under subsection (a), the Secretary shall ensure that grants are provided and grant amounts are used in a manner that results in national geographic diversity among housing developed using grant amounts under this section.

“(i) GRANT AGREEMENT.—A grant under this section shall be made only pursuant to a grant agreement entered into by the Secretary and the organization or consortia receiving the grant, which shall—

“(1) require such organization or consortia to use grant amounts only as provided in this section;

“(2) provide for the organization or consortia to develop a specific and reasonable number of dwellings using the grant amounts, which number shall be established taking into consideration costs and economic conditions in the areas in which the dwellings will be developed, but in no case shall be less than 30;

“(3) require the organization or consortia to use the grant amounts in a manner that leverages other sources of funding (other than grants under this section), including private or public funds, in developing the dwellings;

“(4) require the organization or consortia to comply with the other provisions of this section;

“(5) provide that the Secretary shall recapture any grant amounts provided to the organization or consortia that are not used within 24 months after such amounts are first disbursed to the organization or consortia, except that such period shall be 36 months in the case of grant amounts from amounts made available for fiscal year 1996 to carry out this section, and in the case of a [sic] grant amounts provided to a local affiliate of the organization or consortia that is developing five or more dwellings in connection with such grant amounts; and

“(6) contain such other terms as the Secretary may require to provide for compliance with subsection (b) and the requirements of this section.

“(j) FULFILLMENT OF GRANT AGREEMENT.—If the Secretary determines that an organization or consortia awarded a grant under this section has not, within 24 months after grant amounts are first made available to the organization or consortia (or, in the case of grant amounts from amounts made available for fiscal year 1996 to carry out this section and grant amounts provided to a local affiliate of the organization or consortia that is developing five or more dwellings in connection with such grant amounts, within 36 months), substantially fulfilled the obligations under the grant agreement, including development of the appropriate number of dwellings under the agreement, the Secretary shall use any such undisbursed amounts remaining from such grant for other grants in accordance with this section.

“(k) RECORDS AND AUDITS.—During the period beginning upon the making of a grant under this section and ending upon close-out of the grant under subsection (l)—

“(1) the organization awarded the grant shall keep such records and adopt such administrative practices as the Secretary may require to ensure compliance with the provisions of this section and the grant agreement; and

“(2) the Secretary and the Comptroller General of the United States, and any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the grantee organization or consortia and its affiliates that are pertinent to the grant made under this section.

“(l) CLOSE-OUT.—The Secretary shall close out a grant made under this section upon determining that the aggregate amount of any assistance provided from the fund established under subsection (e)(1) by the grantee organization or consortium exceeds the amount of the grant. For purposes of this paragraph, any interest, fees, and other earnings of the fund shall be excluded from the amount of the grant.

“(m) ENVIRONMENTAL REVIEW.—A grant under this section shall be considered to be funds for a special project for purposes of section 305(c) of the Multifamily Housing Property Disposition Reform Act of 1994 [42 U.S.C. 3547].

“(n) REPORT TO CONGRESS.—Not later than 90 days after close-out of all grants under this section is completed, the Secretary shall submit a report to the applicable Committees describing the grants made under this section, the grantees, the housing developed in connection with the grant amounts, and the purposes for which the grant amounts were used.

“(o) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

“(1) APPLICABLE COMMITTEES.—The term ‘applicable Committees’ means the Committee on Banking and Financial Services [now Committee on Financial Services] of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

“(2) SECRETARY.—The term ‘Secretary’ means the Secretary of Housing and Urban Development.

“(3) UNITED STATES.—The term ‘United States’ includes the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, and any other territory or possession of the United States.

“(p) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal year 2001.

“(q) REGULATIONS.—The Secretary shall issue any final regulations necessary to carry out this section not later than 30 days after the date of the enactment of this Act [Mar. 28, 1996]. The regulations shall take effect upon issuance and may not exceed, in length, 5 full pages in the Federal Register.”

[Pub. L. 105-276, title V, §599E(b), Oct. 21, 1998, 112 Stat. 2664, provided that: “Notwithstanding the amendments made by subsection (a) [amending section 11 of Pub. L. 104-120, set out above], any grant under section 11 of the Housing Opportunity Program Extension Act of 1996 [Pub. L. 104-120] (42 U.S.C. 12805 note) from amounts appropriated in fiscal year 1998 or any prior fiscal year shall be governed by the provisions of such section 11 as in effect immediately before the enactment of this Act [Oct. 21, 1998], except that the amendments made by paragraphs (8) and (9) of subsection (a) of this section shall apply to such grants.”]

[Pub. L. 105-276, title V, §599E(c), Oct. 21, 1998, 112 Stat. 2664, provided that: “This section [amending section 11 of Pub. L. 104-120, set out above, and enacting provisions set out as a note above] shall take effect, and the amendments made by this section are made on, and shall apply beginning upon, the date of the enactment of this Act [Oct. 21, 1998].”]

FUNDING FOR SELF-HELP HOUSING ASSISTANCE, NATIONAL CITIES IN SCHOOLS COMMUNITY DEVELOPMENT PROGRAM, AND CAPACITY BUILDING THROUGH NATIONAL COMMUNITY DEVELOPMENT INITIATIVE

Pub. L. 104-120, §12, Mar. 28, 1996, 110 Stat. 845, provided that:

“(a) AUTHORITY TO USE ASSISTED HOUSING AMOUNTS.—To the extent and for the purposes specified in subsection (b), the Secretary of Housing and Urban Development may use amounts in the account of the Department of Housing and Urban Development known as the Annual Contributions for Assisted Housing account, but only such amounts which—

“(1) have been appropriated for a fiscal year that occurs before the fiscal year for which the Secretary uses the amounts; and

“(2) have been obligated before becoming available for use under this section.

“(b) FISCAL YEAR 1996.—Of the amounts described in subsection (a), \$60,000,000 shall be available to the Secretary of Housing and Urban Development for fiscal year 1996 in the following amounts for the following purposes:

“(1) SELF-HELP HOUSING ASSISTANCE.—\$40,000,000 for carrying out section 11 of this Act [set out above].

“(2) NATIONAL CITIES IN SCHOOLS COMMUNITY DEVELOPMENT PROGRAM.—\$10,000,000 for carrying out section 930 of the Housing and Community Development Act of 1992 (Public Law 102-550; 106 Stat. 3887).

“(3) CAPACITY BUILDING THROUGH NATIONAL COMMUNITY DEVELOPMENT INITIATIVE.—\$10,000,000 for carrying out section 4 of the HUD Demonstration Act of 1993 (42 U.S.C. 9816 note).”

§ 12806. Home repair services grants for older and disabled homeowners

(a) In general

The Secretary shall make available a model program to provide home repair services for older homeowners and disabled homeowners, including such services as the examination of homes, repair services, and follow-up to ensure the continued effectiveness of the repairs provided.

(b) Eligible recipients

Home repair services shall be provided to homeowners who—

- (1) own and reside in the dwellings for which services are provided;
- (2) are older or disabled; and
- (3) are members of low-income families.

(c) Permitted restrictions

Guidelines for the model program shall require that—

(1) assisted dwelling units be the primary residence of the homeowner for whom services are provided;

(2) preferences be provided for (A) very low-income families, and (B) individuals with intense need characterized by noneconomic factors such as physical and mental disabilities, language barriers, and cultural, social, or geographical isolation caused by racial or ethnic status that restricts the ability of an individual to perform normal daily tasks or that threatens the capacity of the individual to live independently;

(3) any fees charged be based on the income of the individual receiving the home repair services.

(Pub. L. 101-625, title II, §256, Nov. 28, 1990, 104 Stat. 4122.)

§ 12807. Low-income housing conservation and efficiency grant programs

(a) In general

The Secretary shall make available a model program to provide safe, energy-efficient affordable housing for low-income persons.

(b) Activities

The model program shall provide for—

(1) identification of housing that is—

(A) owned and occupied by low-income families who have received, are currently receiving, or are scheduled to receive assistance under the weatherization assistance for low-income persons program under part A of title IV of the Energy Conservation and Production Act [42 U.S.C. 6861 et seq.] (or a comparable Federal or State program);

(B) in danger of becoming uninhabitable within a 5-year period because of structural weaknesses or problems; and

(C) not sufficiently sound to permit energy conservation improvements without other repair or rehabilitation measures to protect such energy investments;

(2) repairs that will significantly prolong the habitability of units identified under paragraph (1), including roofing, electrical, plumbing, furnace, and foundation repairs or replacement that will prolong the use of the unit as a safe and energy-efficient residence for low-income persons; and

(3) reasonable steps to ensure that any units so repaired will remain occupied by persons or families eligible for assistance under this subchapter.

(Pub. L. 101-625, title II, § 257, Nov. 28, 1990, 104 Stat. 4122.)

REFERENCES IN TEXT

The Energy Conservation and Production Act, referred to in subsec. (b)(1)(A), is Pub. L. 94-385, Aug. 14, 1976, 90 Stat. 1142, as amended. Part A of title IV of the Act is classified generally to part A (§ 6861 et seq.) of subchapter III of chapter 81 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6801 of this title and Tables.

§ 12808. Second mortgage assistance for first-time homebuyers

(a) In general

The Secretary shall make available a model program under which units of general local government provide loans (secured by second mortgages) with deferred payment of interest and principal to first-time homebuyers.

(b) Homeownership counseling

The program under this section shall provide for homeownership counseling to first-time homebuyers assisted, which shall include—

- (1) counseling before and after purchase of the property;
- (2) assisting first-time homebuyers in identifying the most suitable and affordable properties;
- (3) providing homebuyers with financial management assistance;
- (4) assisting homebuyers in understanding mortgage transactions and home sales contracts; and
- (5) assisting homebuyers with eliminating any credit problems that may prevent the homebuyers from purchasing the property.

(c) Eligibility requirements

Deferred payment loans secured by second mortgages may be provided under the model program under this section if—

- (1) the homebuyer assisted is a first-time homebuyer;
- (2) the property secured by the second mortgage is a single-family residence and is the principal residence of the homebuyer; and
- (3) the principal obligation of the deferred payment loan secured by a second mortgage does not exceed 30 percent of the acquisition price of the residence to the homebuyer.

(d) Payment terms

(1) Period of deferral

The payment of any principal and interest on a loan under this section shall be deferred

for not less than the 5-year period beginning on the date of the acquisition of the residence by the homebuyer.

(2) Interest rate

The interest rate on the unpaid balance of a loan under this section shall be at least 4 percent.

(3) Repayment period

A deferred payment loan secured by a second mortgage shall be repayable over the 15-year period beginning at the end of the deferral period.

(e) Security

A deferred payment loan assisted with amount¹ provided under a grant under this section shall be secured by a lien on the property involved, which lien shall be subordinate to the first mortgage on the property.

(Pub. L. 101-625, title II, § 258, Nov. 28, 1990, 104 Stat. 4123.)

§ 12809. Rehabilitation of State and local government in rem properties

(a) In general

The Secretary shall make available a model program under which States and units of general local government may convert in rem properties to provide affordable permanent housing for the homeless by leasing such properties to nonprofit organizations and permitting such organizations to rehabilitate the properties.

(b) Target

The program shall target vacant properties for rehabilitation by nonprofit organizations.

(Pub. L. 101-625, title II, § 259, Nov. 28, 1990, 104 Stat. 4124.)

§ 12810. Cost-saving building technologies and construction techniques

(a) In general

The Secretary shall make available a model program to utilize cost-saving building technologies and construction techniques for purposes of providing homeownership and rental opportunities under this subchapter.

(b) Selection criteria

The Secretary shall establish criteria for participating jurisdictions to select projects for assistance under the model program which may include—

- (1) the extent to which innovative, cost-saving building and construction technologies are utilized;
- (2) the extent to which innovative, cost-saving construction techniques are utilized;
- (3) the extent to which units will be made available to low-income families and individuals;
- (4) the extent to which non-Federal public or private assistance is utilized; and
- (5) any other factor, determined by the Secretary to be appropriate.

(c) Guidelines

The Secretary shall publish guidelines for the model program under this section not later than 180 days after October 28, 1992.

¹ So in original. Probably should be "amounts".

(d) Report

The Secretary shall submit a biennial report to the Congress on the utilization of the model program under this section.

(Pub. L. 101-625, title II, §260, as added Pub. L. 102-550, title II, §216, Oct. 28, 1992, 106 Stat. 3760.)

EFFECTIVE DATE

Section applicable to unexpended funds allocated under subchapter II of this chapter in fiscal year 1992, except as otherwise specifically provided, see section 223 of Pub. L. 102-550, set out as an Effective Date of 1992 Amendment note under section 12704 of this title.

PART E—MORTGAGE CREDIT ENHANCEMENT

§ 12821. Report on credit enhancement**(a) In general**

The Comptroller General of the United States shall carry out a study of ways in which financing for affordable housing may be made available to assist in the most efficient implementation of comprehensive housing affordability strategies of participating jurisdictions. In conducting the study, the Comptroller General shall draw upon the expertise of such representatives of State and local government, State and local housing finance agencies, agencies of the United States, government-sponsored mortgage finance corporations, for-profit and nonprofit housing developers, private financial institutions, and sources of long-term mortgage investment, as the Comptroller General determines to be appropriate.

(b) Report

Not later than one year after November 28, 1990, the Comptroller General shall submit to the Congress and the Secretary a report containing any recommendations for legislative or administrative actions needed to improve the availability of mortgage finance for affordable housing. The report shall include, but need not be limited to, an assessment of—

(1) the need for the Department of Housing and Urban Development or other agencies of the United States to provide partial credit enhancement to make financing for affordable housing available efficiently and at the lowest possible cost; and

(2) alternative ways in which—

(A) the Department could provide any needed credit enhancement on a one-stop basis for participating jurisdictions, in coordination with other forms of assistance under this part;

(B) the Department or other agencies of the Federal Government could assist government-sponsored mortgage finance corporations in the financing of mortgages on affordable housing through the development of mortgage-backed securities that are more standardized and readily traded in the capital markets;

(C) the capacities of existing agencies of the United States could be used to provide mortgage finance more efficiently for affordable housing through government-sponsored mortgage finance corporations; and

(D) the interests of the Federal Government could be protected and any risks of

loss could be minimized through requirements for fees, mortgage insurance, risk-sharing, secure collateral, and guarantees by other parties, and through standards relating to minimum capital and prior experience with underwriting, origination and servicing.

(Pub. L. 101-625, title II, §271, Nov. 28, 1990, 104 Stat. 4124.)

PART F—GENERAL PROVISIONS

§ 12831. Equal opportunity**(a) Solicitation of contracts**

Each participating jurisdiction shall prescribe procedures acceptable to the Secretary to establish and oversee a minority outreach program within each such jurisdiction to ensure the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, including, without limitation, real estate firms, construction firms, appraisal firms, management firms, financial institutions, investment banking firms, underwriters, accountants, and providers of legal services, in all contracts, entered into by the participating jurisdiction with such persons or entities, public and private, in order to facilitate the activities of the participating jurisdiction to provide affordable housing authorized under this Act or any other Federal housing law applicable to such jurisdiction.

(b) Report to Congress

Before the end of the 180-day period beginning on the date the first allocation of funds is made under section 12747 of this title, the Secretary shall submit to the Congress a report containing a description of the actions taken by each participating jurisdiction pursuant to subsection (a) of this section and such recommendations for administrative and legislative action as the Secretary may determine to be appropriate to carry out the purposes of such subsection.

(Pub. L. 101-625, title II, §281, Nov. 28, 1990, 104 Stat. 4125.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), is Pub. L. 101-625, Nov. 28, 1990, 104 Stat. 4079, known as the Cranston-Gonzalez National Affordable Housing Act. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of this title and Tables.

§ 12832. Nondiscrimination

No person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this subchapter. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.] or with respect to an otherwise qualified handicapped individual as provided in section 794 of title 29 shall also apply to any such program or activity. The Secretary may waive this section in connection with the use of funds made available under this subchapter on lands set aside

under the Hawaiian Homes Commission Act, 1920 (42 Stat. 108).

(Pub. L. 101-625, title II, §282, Nov. 28, 1990, 104 Stat. 4125; Pub. L. 104-204, title II, §213, Sept. 26, 1996, 110 Stat. 2904.)

REFERENCES IN TEXT

The Age Discrimination Act of 1975, referred to in text, is title III of Pub. L. 94-135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

The Hawaiian Homes Commission Act, 1920, referred to in text, is act July 9, 1921, ch. 42, 42 Stat. 108, as amended, which was classified generally to sections 691 to 718 of Title 48, Territories and Insular Possessions, and was omitted from the Code.

AMENDMENTS

1996—Pub. L. 104-204 inserted at end “The Secretary may waive this section in connection with the use of funds made available under this subchapter on lands set aside under the Hawaiian Homes Commission Act, 1920 (42 Stat. 108).”

§ 12833. Audits by Comptroller General

(a) Audits of HOME Investment Partnerships program

The Comptroller General, when the Comptroller General deems it to be appropriate or when requested by the Committee on Banking, Housing, and Urban Affairs of the Senate or the Committee on Banking, Finance and Urban Affairs of the House of Representatives, shall conduct a full financial audit of the records of the HOME Investment Partnerships program for any fiscal year. The report of the Comptroller General shall be submitted promptly to the Secretary and the Congress and shall be published.

(b) Audits of recipients

The financial transactions of participating jurisdictions and of other recipients of funds provided under this subchapter may, insofar as they relate to funds provided under this subchapter, be audited by the General Accounting Office under such rules and regulations as may be prescribed by the Comptroller General of the United States. The representatives of the General Accounting Office shall have access to all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by such recipients pertaining to such financial transactions and necessary to facilitate the audit.

(Pub. L. 101-625, title II, §283, Nov. 28, 1990, 104 Stat. 4125; Pub. L. 103-233, title II, §205, Apr. 11, 1994, 108 Stat. 364.)

AMENDMENTS

1994—Pub. L. 103-233, §205(1), substituted “Audits by Comptroller General” for “Annual audits and accountability” in section catchline.

Subsec. (a). Pub. L. 103-233, §205(4), struck out after first sentence “The initiation of an audit for a fiscal year under the previous sentence shall obviate the requirement for an audit by an independent accounting firm under paragraph (a) for that fiscal year.”

Pub. L. 103-233, §205(3)(B), (C), redesignated subsec. (b)(1) as (a) and realigned margins.

Pub. L. 103-233, §205(2), struck out heading and text of subsec. (a). Text read as follows: “The Secretary, ex-

cept as provided in paragraph (b)(1), shall contract annually with an independent accounting firm to provide for a full financial audit of the records of the HOME Investment Partnerships program for each fiscal year. Funds available for departmental administration may be used to provide for such audits. Each audit shall be performed as soon as practicable after the close of the fiscal year and in accordance with generally accepted Government auditing standards approved by the Comptroller General of the United States (hereinafter referred to as the ‘Comptroller General’), and shall be consistent with the requirements of sections 9105 and 9106 of title 31. The Secretary shall promptly submit the report of the independent accounting firm to the Congress, consistent with the requirements of section 9106 of title 31, and such report shall be published. The requirement for an audit under this section shall be in lieu of the requirement for an audit by the Comptroller General under section 9105(a) of title 31.”

Subsec. (b). Pub. L. 103-233, §205(3), struck out heading “AUDITS BY THE COMPTROLLER GENERAL.—”, redesignated subsec. (b)(2) as (b), and realigned margins.

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-233 applicable with respect to any amounts made available to carry out this subchapter after Apr. 11, 1994, and any amounts made available to carry out this subchapter before that date that remain uncommitted on that date, with Secretary to issue any regulations necessary to carry out such amendment not later than end of 45-day period beginning on that date, see section 209 of Pub. L. 103-233, set out as a note under section 5301 of this title.

§ 12834. Uniform recordkeeping and reports to Congress

(a) Uniform requirements

The Secretary shall develop and establish uniform recordkeeping, performance reporting, and auditing requirements for use by participating jurisdictions.

(b) Omitted

(Pub. L. 101-625, title II, §284, Nov. 28, 1990, 104 Stat. 4126.)

CODIFICATION

Subsec. (b) of this section, which required the Secretary to make an annual report to Congress that summarizes and assesses the results of reports provided under this section, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 3rd item on page 102 of House Document No. 103-7.

§ 12835. Citizen participation

The Secretary shall ensure that each participating jurisdiction, and each jurisdiction seeking to become a participating jurisdiction, complies with the requirements of section 12707 of this title.

(Pub. L. 101-625, title II, §285, Nov. 28, 1990, 104 Stat. 4126.)

§ 12836. Labor

(a) In general

Any contract for the construction of affordable housing with 12 or more units assisted with funds made available under this part shall contain a provision requiring that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a-276a-5), shall be paid to all laborers and mechanics employed in the development of affordable housing involved, and participating jurisdictions shall require certification as to compliance with the provisions of this section prior to making any payment under such contract.

(b) Waiver

Subsection (a) of this section shall not apply if the individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered and such persons are not otherwise employed at any time in the construction work.

(Pub. L. 101-625, title II, §286, Nov. 28, 1990, 104 Stat. 4126.)

REFERENCES IN TEXT

The Davis-Bacon Act, referred to in subsec. (a), is act Mar. 3, 1931, ch. 411, 46 Stat. 1494, as amended, which is classified generally to sections 276a to 276a-5 of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 276a of Title 40 and Tables.

§ 12837. Interstate agreements

The consent of the Congress is hereby given to any two or more States to enter into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this subchapter as they pertain to interstate areas and to localities within such States, and to establish such agencies, joint or otherwise, as they may deem desirable for making such agreements and compacts effective.

(Pub. L. 101-625, title II, §287, Nov. 28, 1990, 104 Stat. 4127.)

§ 12838. Environmental review

(a) In general

In order to assure that the policies of the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and other provisions of law which further the purposes of such Act (as specified in regulations issued by the Secretary) are most effectively implemented in connection with the expenditure of funds under this subchapter, and to assure to the public undiminished protection of the environment, the Secretary, in lieu of the environmental protection procedures otherwise applicable, may under regulations provide for the release of funds for particular projects to jurisdictions or insular areas under this subchapter who assume all of the responsibilities for environmental review, deci-

sionmaking, and action pursuant to such Act, and such other provisions of law as the regulations of the Secretary specify, that would apply to the Secretary were he to undertake such projects as Federal projects. The Secretary shall issue regulations to carry out this section only after consultation with the Council on Environmental Quality. The regulations shall provide—

(1) for the monitoring of the environmental reviews performed under this section;

(2) in the discretion of the Secretary, to facilitate training for the performance of such reviews; and

(3) for the suspension or termination of the assumption under this section.

The Secretary's duty under the preceding sentence shall not be construed to limit or reduce any responsibility assumed by a State or unit of general local government with respect to any particular release of funds.

(b) Procedure

The Secretary shall approve the release of funds subject to the procedures authorized by this section only if, at least 15 days prior to such approval and prior to any commitment of funds to such projects¹ the jurisdiction or insular area has submitted to the Secretary a request for such release accompanied by a certification which meets the requirements of subsection (c) of this section. The Secretary's approval of any such certification shall be deemed to satisfy his responsibilities under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and such other provisions of law as the regulations of the Secretary specify insofar as those responsibilities relate to the release of funds for projects to be carried out pursuant thereto which are covered by such certification.

(c) Certification

A certification under the procedures authorized by this section shall—

(1) be in a form acceptable to the Secretary,

(2) be executed by the chief executive officer or other officer of the recipient of assistance under this subchapter qualified under regulations of the Secretary,

(3) specify that the recipient of assistance under this subchapter has fully carried out its responsibilities as described under subsection (a) of this section, and

(4) specify that the certifying officer (A) consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and each provision of law specified in regulations issued by the Secretary insofar as the provisions of such Act or other such provision of law apply pursuant to subsection (a) of this section, and (B) is authorized and consents on behalf of the jurisdiction or insular area and himself to accept the jurisdiction of the Federal courts for the purpose of enforcement of his responsibilities as such an official.

(d) Assistance to units of general local government from a State

In the case of assistance to units of general local government from a State, the State shall

¹ So in original. Probably should be followed by a comma.

perform those actions of the Secretary described in subsection (b) of this section and the performance of such actions shall be deemed to satisfy the Secretary's responsibilities referred to in the second sentence of such subsection.

(Pub. L. 101-625, title II, § 288, Nov. 28, 1990, 104 Stat. 4127; Pub. L. 103-233, title II, § 206, Apr. 11, 1994, 108 Stat. 365; Pub. L. 104-330, title V, § 505(a)(2), Oct. 26, 1996, 110 Stat. 4044.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsecs. (a), (b), and (c)(4), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104-330, § 505(a)(2)(A), struck out “, Indian tribes,” after “projects to jurisdictions” in introductory provisions.

Subsecs. (b), (c)(4). Pub. L. 104-330, § 505(a)(2)(B), (C), struck out “, Indian tribe,” after “the jurisdiction”.

1994—Subsec. (a). Pub. L. 103-233, § 206(1), substituted “jurisdictions, Indian tribes, or insular areas” for “participating jurisdictions” and inserted before period at end “The regulations shall provide—

“(1) for the monitoring of the environmental reviews performed under this section;

“(2) in the discretion of the Secretary, to facilitate training for the performance of such reviews; and

“(3) for the suspension or termination of the assumption under this section.

The Secretary's duty under the preceding sentence shall not be construed to limit or reduce any responsibility assumed by a State or unit of general local government with respect to any particular release of funds.”

Subsec. (b). Pub. L. 103-233, § 206(2), substituted “jurisdiction, Indian tribe, or insular area” for “participating jurisdiction”.

Subsec. (c)(4)(B). Pub. L. 103-233, § 206(3), substituted “jurisdiction, Indian tribe, or insular area” for “participating jurisdiction”.

Subsec. (d). Pub. L. 103-233, § 206(4), substituted “Assistance to units of general local government from a State” for “Assistance to a State” in heading and “In the case of assistance to units of general local government from a State” for “In the case of assistance to States” in text.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as an Effective Date note under section 4101 of Title 25, Indians.

Amendment by Pub. L. 104-330 applicable with respect to amounts made available for assistance under this subchapter for fiscal year 1998 and fiscal years thereafter, see section 505(b) of Pub. L. 104-330, set out as a note under section 12747 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-233 applicable with respect to any amounts made available to carry out this subchapter after Apr. 11, 1994, and any amounts made available to carry out this subchapter before that date that remain uncommitted on that date, with Secretary to issue any regulations necessary to carry out such amendment not later than end of 45-day period beginning on that date, see section 209 of Pub. L. 103-233, set out as a note under section 5301 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4852 of this title.

§ 12839. Termination of existing housing programs

(a) In general

Except with respect to projects and programs for which binding commitments have been entered into prior to October 1, 1991, no new grants or loans shall be made after October 1, 1991, under—

(1) section 17 of the United States Housing Act of 1937 [42 U.S.C. 1437o];

(2) section 312 of the Housing Act of 1964 [42 U.S.C. 1452b];

(3) title VI of the Housing and Community Development Act of 1987;

(4) section 8(e)(2) of the United States Housing Act of 1937 [42 U.S.C. 1437f(e)(2)], except for funds allocated under such section for single room occupancy dwellings as authorized by title IV of the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11361 et seq.]; and

(5) section 810 of the Housing and Community Development Act of 1974 [12 U.S.C. 1706e].

(b) Repeals

(1) In general

Except as provided in paragraph (2), effective on October 1, 1991, the provisions of law referred to in subsection (a) of this section are repealed.

(2) No effect on SRO program

The provision of law referred to in subsection (a)(4) of this section shall remain in effect with respect to single room occupancy dwellings as authorized by title IV of the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11361 et seq.].

(c) Disposition of repayments

Any amounts received on or after October 1, 1991, as repayments or recaptures in connection with the programs referred to in subsection (a) of this section and any other amounts for such programs that remain or become unobligated on or after such date, shall be paid into the general fund of the Treasury.

(Pub. L. 101-625, title II, § 289, Nov. 28, 1990, 104 Stat. 4128; Pub. L. 106-400, § 2, Oct. 30, 2000, 114 Stat. 1675.)

REFERENCES IN TEXT

Title VI of the Housing and Community Development Act of 1987 [Pub. L. 100-242], referred to in subsec. (a)(3), is set out as a note under section 1715l of Title 12, Banks and Banking.

The McKinney-Vento Homeless Assistance Act, referred to in subsecs. (a)(4), (b)(2), is Pub. L. 100-77, July 22, 1987, 101 Stat. 482, as amended. Title IV of the Act is classified principally to subchapter IV (§ 11361 et seq.) of chapter 119 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of this title and Tables.

AMENDMENTS

2000—Subsecs. (a)(4), (b)(2). Pub. L. 106-400 substituted “McKinney-Vento Homeless Assistance Act” for “Stewart B. McKinney Homeless Assistance Act”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 12 section 3752.

§ 12840. Suspension of requirements for disaster areas

For funds designated under this subchapter by a recipient to address the damage in an area for

which the President has declared a disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act [42 U.S.C. 5170 et seq.], the Secretary may suspend all statutory requirements for purposes of assistance under this subchapter for that area, except for those related to public notice of funding availability, nondiscrimination, fair housing, labor standards, environmental standards, and low-income housing affordability.

(Pub. L. 101-625, title II, §290, as added Pub. L. 103-233, title II, §208, Apr. 11, 1994, 108 Stat. 366.)

REFERENCES IN TEXT

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in text, is Pub. L. 93-288, May 22, 1974, 88 Stat. 143, as amended. Title IV of the Act is classified generally to subchapter IV (§5170 et seq.) of chapter 68 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

EFFECTIVE DATE

Section applicable with respect to any amounts made available to carry out this subchapter after Apr. 11, 1994, and any amounts made available to carry out this subchapter before that date that remain uncommitted on that date, with Secretary to issue any regulations necessary to carry out this section not later than end of 45-day period beginning on that date, see section 209 of Pub. L. 103-233, set out as an Effective Date of 1994 Amendment note under section 5301 of this title.

SUBCHAPTER III—NATIONAL HOMEOWNERSHIP TRUST DEMONSTRATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1436a, 3535 of this title.

§ 12851. National Homeownership Trust

(a) Establishment

There is established the National Homeownership Trust, which shall be in the Department of Housing and Urban Development and shall provide assistance to first-time homebuyers in accordance with this subchapter.

(b) Board of Directors

The Trust shall be governed by a Board of Directors, which shall be composed of—

- (1) the Secretary of Housing and Urban Development, who shall be the chairperson of the Board;
- (2) the Secretary of the Treasury;
- (3) the chairperson of the Board of Directors of the Federal Deposit Insurance Corporation;
- (4) the chairperson of the Federal Housing Finance Board;
- (5) the chairperson of the Board of Directors of the Federal National Mortgage Association;
- (6) the chairperson of the Board of Directors of the Federal Home Loan Mortgage Corporation; and
- (7) 1 individual representing consumer interests, who shall be appointed by the President of the United States, by and with the advice and consent of the Senate.

(c) Powers of Trust

The Trust shall have the same powers as the powers given the Government National Mortgage Association in section 1723a(a) of title 12.

(d) Travel and per diem

Members of the Board of Directors shall receive no additional compensation by reason of service on the Board, but shall be allowed travel expenses, including per diem in lieu of subsistence, as provided for employees of the Federal Government or in the same manner as persons employed intermittently in the Government service are allowed under section 5703 of title 5, as appropriate.

(e) Director and staff

(1) Director

The Board of Directors may appoint an executive director of the Trust and fix the compensation of the executive director, which shall be paid from amounts in the National Homeownership Trust Fund.

(2) Staff

Subject to such rules as the Board of Directors may prescribe, the Trust may appoint and hire such staff and provide for offices as may be necessary to carry out its duties. The Trust may fix the compensation of the staff, which shall be paid from amounts in the National Homeownership Trust Fund.

(Pub. L. 101-625, title III, §302, Nov. 28, 1990, 104 Stat. 4129.)

SHORT TITLE

For short title of this subchapter as the “National Homeownership Trust Act”, see Short Title note set out under section 12701 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12854 of this title.

§ 12852. Assistance for first-time homebuyers

(a) In general

The Trust shall provide assistance payments for first-time homebuyers (including homebuyers buying shares in limited equity cooperatives) in the following manners:

(1) Interest rate buydowns

Assistance payments so that the rate of interest payable on the mortgages by the homebuyers does not exceed 6 percent.

(2) Downpayment assistance

Assistance payments to provide amounts for downpayments (including closing costs and other costs payable at the time of closing) on mortgages for such homebuyers.

(3) Assistance in connection with mortgage revenue bonds financing

Interest rate buydowns and downpayment assistance in the manner provided in subsection (e) of this section.

(4) Second mortgage assistance

Assistance payments to provide loans (secured by second mortgages) with deferred payment of interest and principal; and¹

(5) Capitalization of revolving loan funds

Grants to public organizations or agencies to establish revolving loan funds to provide

¹ So in original. The “; and” probably should be a period.

homeownership assistance to eligible first-time homebuyers consistent with the requirements of this subchapter. Such grants shall be matched by an equal amount of local investment in such revolving loan funds. Any proceeds or repayments from loans made under this paragraph shall be returned to the revolving loan fund established under this paragraph to be used for purposes related to this section.

(b) Eligibility requirements

Assistance payments under this subchapter may be made only to homebuyers and for mortgages meeting the following requirements:

(1) First-time homebuyer

The homebuyer is an individual who—

(A) (and whose spouse) has had no ownership in a principal residence during the 3-year period ending on the date of purchase of the property with respect to which assistance payments are made under this subchapter;

(B) is a displaced homemaker who, except for owning a home with his or her spouse or residing in a home owned by the spouse, meets the requirements of subparagraph (A);

(C) is a single parent who, except for owning a home with his or her spouse or residing in a home owned by the spouse while married, meets the requirements of subparagraph (A); or

(D) meets the requirements of subparagraph (A), (B), or (C), except for owning, as a principal residence, a dwelling unit whose structure is—

(i) not permanently affixed to a permanent foundation in accordance with local or other applicable regulations; or

(ii) not in compliance with State, local, or model building codes, or other applicable codes, and cannot be brought into compliance with such codes for less than the cost of constructing a permanent structure.

(2) Maximum income of homebuyer

The aggregate annual income of the homebuyer and the members of the family of the homebuyer residing with the homebuyer, for the 12-month period preceding the date of the application of the homebuyer for assistance under this subchapter, does not exceed—

(A) 95 percent of the median income for a family of 4 persons (adjusted by family size) in the applicable metropolitan statistical area (or such other area that the Board of Directors determines for areas outside of metropolitan statistical areas); or

(B) 115 percent of such median income (adjusted by family size) in the case of an area that is subject to a high cost area mortgage limit under title II of the National Housing Act [12 U.S.C. 1707 et seq.].

The Board of Directors shall provide for certification of such income for purposes of initial eligibility for assistance payments under this subchapter and shall provide for recertification of homebuyers (and families of homebuyers) so assisted not less than every 2 years thereafter.

(3) Certification

The homebuyer (and spouse, where applicable) shall certify that the homebuyer has made a good faith effort to obtain a market rate mortgage and has been denied because the annual income of the homebuyer and the members of the family of the homebuyer residing with the homebuyer is insufficient.

(4) Principal residence

The property securing the mortgage is a single-family residence or unit in a cooperative and is the principal residence of the homebuyer.

(5) Maximum mortgage amount

The principal obligation of the mortgage does not exceed the principal amount that could be insured with respect to the property under the National Housing Act [12 U.S.C. 1701 et seq.].

(6) Maximum interest rate

The interest payable on the mortgage is established at a fixed rate that does not exceed a maximum rate of interest established by the Trust taking into consideration prevailing interest rates on similar mortgages.

(7) Responsible mortgagee

The mortgage has been made to, and is held by, a mortgagee that is federally insured or that is otherwise approved by the Trust as responsible and able to service the mortgage properly.

(8) Minimum downpayment

For a first-time homebuyer to receive downpayment assistance under subsection (a)(2) of this section, the homebuyer shall have paid not less than 1 percent of the cost of acquisition of the property (excluding any mortgage insurance premium paid at the time the mortgage is insured), as such cost is estimated by the Board of Directors.

(c) Terms of assistance

(1) Security

Assistance payments under this subchapter shall be secured by a lien on the property involved. The lien shall be subordinate to all mortgages existing on the property on the date on which the first assistance payment is made.

(2) Repayment upon sale

Assistance payments under this subchapter shall be repayable from the net proceeds of the sale, without interest, upon the sale of the property for which the assistance payments are made. If the sale results in no net proceeds or the net proceeds are insufficient to repay the amount of the assistance payments in full, the Board of Directors shall release the lien to the extent that the debt secured by the lien remains unpaid.

(3) Repayment upon increased income

If the aggregate annual income of the homebuyer (and family of the homebuyer) assisted under this subchapter exceeds the applicable maximum income allowable under subsection (b)(2) of this section for any 2-year period after

such assistance is provided, the Board of Directors may provide for the repayment, on a monthly basis, of all or a portion of such assistance payments, based on the amount of assistance provided and the income of the homebuyer (and family of the homebuyer).

(4) Repayment if property ceases to be principal residence

If the property for which assistance payments are made ceases to be the principal residence of the first-time homebuyer (or the family of the homebuyer), the Board of Directors may provide for the repayment of all or a portion of the assistance payments.

(5) Available assistance

The Trust may make assistance payments under paragraphs (1) and (2) of subsection (a) of this section with respect to a single mortgage of an eligible homebuyer.

(d) Allocation formula

Amounts available in any fiscal year for assistance under this subchapter shall be allocated for homebuyers in each State on the basis of the need of eligible first-time homebuyers in each State for such assistance in comparison with the need of eligible first-time homebuyers for such assistance among all States.

(e) Assistance in connection with housing financed with mortgage revenue bonds

(1) Authority

The Trust shall provide assistance for first-time homebuyers in the form of interest rate buydowns and downpayment assistance under this subsection. Such assistance shall be available only with respect to mortgages for the purchase of residences (A) financed with the proceeds of a qualified mortgage bond (as such term is defined in section 143 of title 26), or (B) for which a credit is allowable under section 25 of title 26.

(2) Eligibility

To be eligible for assistance under this subsection, homebuyers and mortgages shall also meet the requirements under subsection (b) of this section, except that—

(A) the certification under subsection (b)(3) of this section shall not be required for assistance under this subsection;

(B) the provisions of subsection (b)(2) of this section shall not apply to assistance under this section; and

(C) the aggregate income of the homebuyer and the members of the family of the homebuyer residing with the homebuyer, for the 12-month period preceding the date of the application of the homebuyer for assistance under this subsection, shall not exceed 80 percent of the median income for a family of 4 persons (as adjusted for family size) in the applicable metropolitan statistical area.

(3) Limitation of assistance

Notwithstanding subsection (a) of this section, assistance payments for first-time homebuyers under this subsection shall be provided in the following manners:

(A) Interest rate buydowns

Assistance payments to decrease the rate of interest payable on the mortgages by the homebuyers, in an amount not exceeding—

(i) in the first year of the mortgage, 2.0 percent of the total principal obligation of the mortgage;

(ii) in the second year of the mortgage, 1.5 percent of the total principal obligation of the mortgage;

(iii) in the third year of the mortgage, 1.0 percent of the total principal obligation of the mortgage; and

(iv) in the fourth year of the mortgage, 0.5 percent of the total principal obligation of the mortgage.

(B) Downpayment assistance

Assistance payments to provide amounts for downpayments on mortgages by the homebuyers, in an amount not exceeding 2.5 percent of the principal obligation of the mortgage.

(3)² Availability

The Trust may make assistance payments under subparagraphs (A) and (B) of paragraph (3) with respect to a single mortgage of a homebuyer.

(Pub. L. 101-625, title III, § 303, Nov. 28, 1990, 104 Stat. 4130; Pub. L. 102-550, title I, § 182(c)-(e), Oct. 28, 1992, 106 Stat. 3737, 3738.)

REFERENCES IN TEXT

The National Housing Act, referred to in subsec. (b)(2)(B), (5), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to chapter 13 (§1701 et seq.) of Title 12, Banks and Banking. Title II of the Act is classified principally to subchapter II (§1707 et seq.) of chapter 13 of Title 12. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

AMENDMENTS

1992—Subsec. (a)(3). Pub. L. 102-550, § 182(c)(2), added par. (3).

Subsec. (a)(4), (5). Pub. L. 102-550, § 182(e), added pars. (4) and (5).

Subsec. (b)(1)(D). Pub. L. 102-550, § 182(d), added subpar. (D).

Subsec. (e). Pub. L. 102-550, § 182(c)(1), added subsec. (e).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12857 of this title; title 12 section 1701x.

§ 12853. National Homeownership Trust Fund

(a) Establishment

There is established in the Treasury of the United States a revolving fund, to be known as the National Homeownership Trust Fund.

(b) Assets

The Fund shall consist of—

(1) any amount approved in appropriation Acts under section 12857 of this title for purposes of carrying out this subchapter;

(2) any amount received by the Trust as repayment for payments made under this subchapter; and

²So in original. Probably should be "(4)".

(3) any amount received by the Trust under subsection (d) of this section.

(c) Use of amounts

The Fund shall, to the extent approved in appropriations Acts, be available to the Trust for purposes of carrying out this subchapter.

(d) Investment of excess amounts

Any amounts in the Fund determined by the Trust to be in excess of the amounts currently required to carry out the provisions of this subchapter shall be invested by the Trust in obligations of, or obligations guaranteed as to both principal and interest by, the United States or any agency of the United States.

(e) Demonstration programs

Using not more than \$20,000,000 of any amounts appropriated for the Fund under section 12857 of this title in fiscal year 1991, the Secretary shall carry out demonstration programs for combining housing activities and economic development activities, as follows:

(1) In Milwaukee, Wisconsin, in an amount not to exceed \$4,200,000, for development, rehabilitation, and revitalization of 2 vacant structures in a blighted minority neighborhood.

(2) In Washington, District of Columbia, in an amount not to exceed \$10,000,000, for non-profit neighborhood-based groups to acquire and rehabilitate vacant public and private housing for resale or rent to low- and moderate-income families and to the extent of and subject to engage in neighborhood-based economic development activities.

(3) In Philadelphia, Pennsylvania, in an amount not to exceed \$1,000,000, for technical assistance and organizational support for a community development corporation that is a city-wide public/private partnership engaged in the provision of technical assistance to neighborhood community development corporations.

(4) In other areas, as the Secretary may determine.

(Pub. L. 101-625, title III, §304, Nov. 28, 1990, 104 Stat. 4132.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12854 of this title.

§ 12854. Definitions

For purposes of this subchapter:

(1) Board of Directors

The term “Board of Directors” or “Board” means the Board of Directors of the National Homeownership Trust under section 12851(b) of this title.

(2) Displaced homemaker

The term “displaced homemaker” means an individual who—

(A) is an adult;

(B) has not worked full-time full-year in the labor force for a number of years, but has during such years, worked primarily without remuneration to care for the home and family; and

(C) is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

(3) Fund

The term “Fund” means the National Homeownership Trust Fund established in section 12853 of this title.

(4) Single parent

The term “single parent” means an individual who—

(A) is unmarried or legally separated from a spouse; and

(B)(i) has 1 or more minor children for whom the individual has custody or joint custody; or

(ii) is pregnant.

(5) State

The term “State” means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(6) Trust

The term “Trust” means the National Homeownership Trust established in section 12851 of this title.

(Pub. L. 101-625, title III, §305, Nov. 28, 1990, 104 Stat. 4132.)

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 12855. Regulations

The Board of Directors shall issue any regulations necessary to carry out this subchapter.

(Pub. L. 101-625, title III, §306, Nov. 28, 1990, 104 Stat. 4133.)

§ 12856. Report

The Board of Directors shall submit to the Congress, not later than the expiration of the 90-day period beginning on the date of the termination of the Trust under section 12859 of this title, a report containing a description of the activities of the Trust and an analysis of the effectiveness of the Trust in assisting first-time homebuyers.

(Pub. L. 101-625, title III, §307, Nov. 28, 1990, 104 Stat. 4133.)

§ 12857. Authorization of appropriations

There are authorized to be appropriated for assistance payments under this subchapter \$520,665,600 for fiscal year 1993 and \$542,533,555 for fiscal year 1994, of which such sums as may be necessary shall be available in each such fiscal year for use under section 12852(e) of this title. Any amount appropriated under this section shall be deposited in the Fund and shall remain available until expended, subject to the provisions of section 12858¹ of this title.

(Pub. L. 101-625, title III, §308, Nov. 28, 1990, 104 Stat. 4133; Pub. L. 102-550, title I, §182(b), Oct. 28, 1992, 106 Stat. 3736.)

¹ See References in Text note below.

REFERENCES IN TEXT

Section 12858 of this title, referred to in text, was in the original "section 311", and was translated as reading "section 309", meaning section 309 of Pub. L. 101-625, to reflect the probable intent of Congress, because Pub. L. 101-625 does not contain a section 311.

AMENDMENTS

1992—Pub. L. 102-550 amended section generally. Prior to amendment, section read as follows: "There are authorized to be appropriated to carry out this subchapter \$250,000,000 for fiscal year 1991 and \$521,500,000 for fiscal year 1992. Any amount appropriated under this section shall be deposited in the Fund and remain available until expended, subject to the provisions of section 12858 of this title."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12853 of this title.

§ 12858. Transition**(a) Authority of Secretary**

Upon the termination of the Trust as provided in section 12859 of this title, the Secretary of Housing and Urban Development shall exercise any authority of the Board of Directors and the Trust in accordance with the provisions of this subchapter as may be necessary to provide for the conclusion of the outstanding affairs of the Trust.

(b) Applicability of Trust provisions

Any assistance under this subchapter shall, after termination of the Trust, be subject to the provisions of this subchapter that would have applied to such assistance if the termination had not occurred.

(c) Certification of Fund to Treasury

Upon a determination by the Secretary of Housing and Urban Development that the National Homeownership Trust Fund is no longer necessary, the Secretary shall certify any amounts remaining in the Fund to the Secretary of the Treasury and the Secretary of the Treasury shall deposit into the general fund of the Treasury as miscellaneous receipts any amounts remaining in the Fund.

(Pub. L. 101-625, title III, § 309, Nov. 28, 1990, 104 Stat. 4133.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12857 of this title.

§ 12859. Termination

The Trust shall terminate September 30, 1994. (Pub. L. 101-625, title III, § 310, Nov. 28, 1990, 104 Stat. 4133; Pub. L. 102-550, title I, § 182(a), Oct. 28, 1992, 106 Stat. 3736.)

AMENDMENTS

1992—Pub. L. 102-550 substituted "September 30, 1994" for "on September 30, 1993".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12856, 12858 of this title.

SUBCHAPTER IV—HOPE FOR HOMEOWNERSHIP OF MULTIFAMILY AND SINGLE FAMILY HOMES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1437f, 3535 of this title; title 12 sections 1831q, 1834a.

§ 12870. Authorization of appropriations**(a) Fiscal year 1993**

There are authorized to be appropriated for grants under this title¹ \$855,000,000 for fiscal year 1993, of which—

(1) \$285,000,000 shall be available for activities authorized under title III of the United States Housing Act of 1937 [42 U.S.C. 1437aaa et seq.], of which up to \$4,500,000 of any amounts appropriated may be made available for technical assistance to potential applicants, applicants and recipients of assistance under this² title;

(2) \$285,000,000 shall be available for activities authorized under part A of this subchapter, of which up to \$3,250,000 of any amounts appropriated may be made available for technical assistance to potential applicants, applicants and recipients of assistance under this² part; and

(3) \$285,000,000 shall be available for activities under part B of this subchapter, of which up to \$2,250,000 of any amounts appropriated may be made available for technical assistance to potential applicants, applicants and recipients of assistance under this² part.

Of the amounts appropriated pursuant to this subsection, up to \$40,000,000, but not less than 5 percent, shall be available for activities authorized under part C of this subchapter. Any amount appropriated pursuant to this subsection shall remain available until expended.

(b) Fiscal year 1994

There are authorized to be appropriated for grants under this title¹ \$883,641,000 for fiscal year 1994, of which—

(1) \$294,547,000 shall be available for activities authorized under title III of the United States Housing Act of 1937 [42 U.S.C. 1437aaa et seq.], up to \$4,500,000 of which may be made available for technical assistance to potential applicants, applicants and recipients of assistance under this² title;

(2) \$294,547,000 shall be available for activities authorized under part A of this subchapter, up to \$3,250,000 of which may be made available for technical assistance to potential applicants, applicants and recipients of assistance under this² part; and

(3) \$294,547,000 shall be available for activities under part B of this subchapter, up to \$2,250,000 of which may be made available for technical assistance to potential applicants, applicants and recipients of assistance under this² part.

Of the amounts appropriated pursuant to this subsection, up to \$41,680,000, but not less than 5 percent, shall be available for activities author-

¹ See References in Text note below.

² So in original. Probably should be "such".

ized under part C of this subchapter. Any amount appropriated pursuant to this subsection shall remain available until expended.

(c) Technical assistance

Technical assistance made available under title III of the United States Housing Act of 1937 [42 U.S.C. 1437aaa et seq.] or part A of this subchapter or part B of this subchapter may include, but shall not be limited to, training, clearinghouse services, the collection, processing and dissemination of program information useful for local and national program management, and provision of seed money. Such technical assistance may be made available directly, or indirectly under contracts and grants, as appropriate. In any fiscal year, no single applicant, potential applicant, or recipient under title III of the United States Housing Act of 1937, or part A of this subchapter or part B of this subchapter may receive technical assistance in an amount exceeding 20 percent of the total amount made available for technical assistance under such title or part for the fiscal year.

(Pub. L. 101-625, title IV, § 402, as added Pub. L. 102-550, title I, § 181(a)(1), Oct. 28, 1992, 106 Stat. 3734.)

REFERENCES IN TEXT

This title, referred to in introductory provisions of subsecs. (a) and (b), is title IV of Pub. L. 101-625, Nov. 28, 1990, 104 Stat. 4148, known as the Homeownership and Opportunity Through HOPE Act, which enacted this subchapter and subchapter II-A (§1437aaa et seq.) of chapter 8 of this title, amended sections 1437c, 1437f, 1437l, 1437p, 1437r, and 1437s of this title and section 1709 of Title 12, Banks and Banking, and enacted provisions set out as notes under sections 1437c, 1437aa, and 1437aaa of this title. For complete classification of title IV to the Code, see Short Title note set out under section 1437aaa of this title and Tables.

The United States Housing Act of 1937, referred to in subsecs. (a)(1), (b)(1), and (c), 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. Title III of the Act is classified generally to subchapter II-A (§1437aaa 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.

GAO AUDIT OF TECHNICAL ASSISTANCE CONTRACTS

Section 181(a)(3) of Pub. L. 102-550 provided that: "The Comptroller General of the United States shall conduct an audit of all of the technical assistance contracts awarded for fiscal years 1993 and 1994 pursuant to section 402 of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12870]. The Comptroller General shall submit a report to the Congress describing the results of such audit not later than September 30, 1994."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12899g of this title.

PART A—HOPE FOR HOMEOWNERSHIP OF MULTIFAMILY UNITS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 12870, 12899c, 12899d of this title; title 12 sections 1701z-11, 1709.

§ 12871. Program authority

(a) In general

The Secretary is authorized to make—

(1) planning grants to enable applicants to develop homeownership programs; and

(2) implementation grants to enable applicants to carry out homeownership programs.

(b) Authority to reserve housing assistance

In connection with a grant under this part, the Secretary may reserve authority to provide assistance under section 1437f of this title to the extent necessary to provide rental assistance for a nonpurchasing tenant who resides in the project on the date the Secretary approves the application for an implementation grant, for use by the tenant in another project.

(Pub. L. 101-625, title IV, § 421, Nov. 28, 1990, 104 Stat. 4162; Pub. L. 102-550, title I, § 181(a)(2)(B)(i), Oct. 28, 1992, 106 Stat. 3735.)

REFERENCES IN TEXT

This part, referred to in subsec. (b), was in the original "this subtitle", meaning subtitle B (§§ 421-431) of title IV of Pub. L. 101-625, Nov. 28, 1990, 104 Stat. 4162, which enacted this part and amended section 1709 of Title 12, Banks and Banking.

AMENDMENTS

1992—Subsec. (c). Pub. L. 102-550 struck out subsec. (c) which read as follows: "AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for grants under this part \$51,000,000 for fiscal year 1991 and \$280,000,000 for fiscal year 1992. Any amounts appropriated pursuant to this subsection shall remain available until expended."

§ 12872. Planning grants

(a) Grants

The Secretary is authorized to make planning grants to applicants for the purpose of developing homeownership programs under this part. The amount of a planning grant under this section may not exceed \$200,000, except that the Secretary may for good cause approve a grant in a higher amount.

(b) Eligible activities

Planning grants may be used for activities to develop homeownership programs (which may include programs for cooperative ownership), including—

(1) development of resident management corporations and resident councils;

(2) training and technical assistance of applicants related to the development of a specific homeownership program;

(3) studies of the feasibility of a homeownership program;

(4) inspection for lead-based paint hazards, as required by section 4822(a) of this title;

(5) preliminary architectural and engineering work;

(6) tenant and homebuyer counseling and training;

(7) planning for economic development, job training, and self-sufficiency activities that promote economic self-sufficiency for homebuyers and homeowners under the homeownership program;

(8) development of security plans; and

(9) preparation of an application for an implementation grant under this part.

(c) Application

(1) Form and procedures

An application for a planning grant shall be submitted by an applicant in such form and in

accordance with such procedures as the Secretary shall establish.

(2) Minimum requirements

The Secretary shall require that an application contain at a minimum—

(A) a request for a planning grant, specifying the activities proposed to be carried out, the schedule for completing the activities, the personnel necessary to complete the activities, and the amount of the grant requested;

(B) a description of the applicant and a statement of its qualifications;

(C) identification and description of the eligible property involved, and a description of the composition of the tenants, including family size and income;

(D) a certification by the public official responsible for submitting the comprehensive housing affordability strategy under section 12705 of this title that the proposed activities are consistent with the approved housing strategy of the State or unit of general local government within which the project is located (or, during the first 12 months after November 28, 1990, that the application is consistent with such other existing State or local housing plan or strategy that the Secretary shall determine to be appropriate); and

(E) a certification that the applicant will comply with the requirements of the Fair Housing Act [42 U.S.C. 3601 et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], and the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], and will affirmatively further fair housing.

(d) Selection criteria

The Secretary shall, by regulation, establish selection criteria for a national competition for assistance under this section, which shall include—

(1) the qualifications or potential capabilities of the applicant;

(2) the extent of tenant interest in the development of a homeownership program for the property;

(3) the potential of the applicant for developing a successful and affordable homeownership program and the suitability of the property for homeownership;

(4) national geographic diversity among housing for which applicants are selected to receive assistance; and

(5) such other factors that the Secretary shall require that (in the determination of the Secretary) are appropriate for purposes of carrying out the program established by this part in an effective and efficient manner.

(Pub. L. 101-625, title IV, §422, Nov. 28, 1990, 104 Stat. 4162; Pub. L. 102-550, title X, §1012(i)(1), Oct. 28, 1992, 106 Stat. 3906.)

REFERENCES IN TEXT

The Fair Housing Act, referred to in subsec. (c)(2)(E), is title VIII of Pub. L. 90-284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I (§3601 et seq.) of chapter 45 of this title. For

complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (c)(2)(E), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Age Discrimination Act of 1975, referred to in subsec. (c)(2)(E), is title III of Pub. L. 94-135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

AMENDMENTS

1992—Subsec. (b)(4) to (9). Pub. L. 102-550 added par. (4) and redesignated former pars. (4) to (8) as (5) to (9), respectively.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12873, 12875 of this title.

§ 12873. Implementation grants

(a) Grants

The Secretary is authorized to make implementation grants to applicants for the purpose of carrying out homeownership programs approved under this part.

(b) Eligible activities

Implementation grants may be used for activities to carry out homeownership programs (including programs for cooperative ownership), including the following activities:

(1) Architectural and engineering work.

(2) Acquisition of the eligible property for the purpose of transferring ownership to eligible families in accordance with a homeownership program that meets the requirements under this part.

(3) Rehabilitation of any property covered by the homeownership program, in accordance with standards established by the Secretary.

(4) Abatement of lead-based paint hazards, as required by section 4822(a) of this title.

(5) Administrative costs of the applicant, which may not exceed 15 percent of the amount of the assistance provided under this section.

(6) Development of resident management corporations and resident management councils, but only if the applicant has not received assistance under section 12872¹ of this title for such activities.

(7) Counseling and training of homebuyers and homeowners under the homeownership program.

(8) Relocation of tenants who elect to move.

(9) Any necessary temporary relocation of tenants during rehabilitation.

(10) Planning for establishment of for- or not-for-profit small businesses by or on behalf of residents, job training, and other activities that promote economic self-sufficiency of homebuyers and homeowners of the property covered by the homeownership program and economic development of the neighborhood.

¹ See References in Text note below.

(11) Funding of operating expenses and replacement reserves of the property covered by the homeownership program.

(12) Legal fees.

(13) Defraying costs for the ongoing training needs of the recipient that are related to developing and carrying out the homeownership program.

(14) Economic development activities that promote economic self-sufficiency of homebuyers, residents, and homeowners under the homeownership program.

(c) Matching funding

(1) In general

Each recipient shall assure that contributions equal to not less than 33 percent of the grant amounts made available under this section, excluding any amounts provided for post-sale operating expense, shall be provided from non-Federal sources to carry out the homeownership program.

(2) Form

Such contributions may be in the form of—

(A) cash contributions from non-Federal resources, which may not include funds from a grant made under section 5306(b) or section 5306(d) of this title;

(B) payment of administrative expenses, as defined by the Secretary, from non-Federal resources, including funds from a grant made under section 5306(b) or section 5306(d) of this title;

(C) the value of taxes, fees, or other charges that are normally and customarily imposed but are waived, foregone, or deferred in a manner that facilitates the implementation of a homeownership program assisted under this part;

(D) the value of land or other real property as appraised according to procedures acceptable to the Secretary;

(E) the value of investment in on-site and off-site infrastructure required for a homeownership program assisted under this part; or

(F) such other in-kind contributions as the Secretary may approve.

Contributions for administrative expenses shall be recognized only up to an amount equal to 7 percent of the total amount of grants made available under this section.

(d)² Application

(1) Form and procedure

An application for an implementation grant shall be submitted by an applicant in such form and in accordance with such procedures as the Secretary shall establish.

(2) Minimum requirements

The Secretary shall require that an application contain at a minimum—

(A) a request for an implementation grant, specifying the amount of the grant requested and its proposed uses;

(B) if applicable, an application for assistance under section 1437f of this title, specifying

the proposed uses of such assistance and the period during which the assistance will be needed;

(C) a description of the qualifications and experience of the applicant in providing low-income housing;

(D) a description of the proposed homeownership program, consistent with section 12874³ of this title and the other requirements of this part, specifying the activities proposed to be carried out and their estimated costs, identifying reasonable schedules for carrying it out, and demonstrating the program will comply with the affordability requirements under section 12874(b)³ of this title;

(E) identification and description of the property involved, and a description of the composition of the tenants, including family size and income;

(F) a description of and commitment for the resources that are expected to be made available to provide the matching funding required under subsection (c) of this section and of other resources that are expected to be made available in support of the homeownership program;

(G) identification and description of the financing proposed for any (i) rehabilitation and (ii) acquisition (I) of the property, by an entity for transfer to eligible families, and (II) by eligible families of ownership interests in, or shares representing, units in the project;

(H) the proposed sales price, the basis for such price determination, and terms to an entity, if any, that will purchase the property for resale to eligible families;

(I) the proposed sales prices, if any, and terms to eligible families;

(J) any proposed restrictions on the resale of units under a homeownership program;

(K) identification and description of the entity that will operate and manage the property;

(L) a certification by the public official responsible for submitting the comprehensive housing affordability strategy under section 12705 of this title that the proposed activities are consistent with the approved housing strategy of the State or unit of general local government within which the project is located (or, during the first 12 months after November 28, 1990, that the application is consistent with such other existing State or local housing plan or strategy that the Secretary shall determine to be appropriate); and

(M) a certification that the applicant will comply with the requirements of the Fair Housing Act [42 U.S.C. 3601 et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], and the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], and will affirmatively further fair housing.

²So in original. Two subsecs. (d) have been enacted.

³See References in Text note below.

(d)⁴ Selection criteria

The Secretary shall establish selection criteria for assistance under this section, which shall include—

- (1) the qualifications or potential capabilities of the applicant;
- (2) the feasibility of the homeownership program;
- (3) the extent of tenant interest in the development of a homeownership program for the property;
- (4) the potential for developing an affordable homeownership program and the suitability of the property for homeownership;
- (5) national geographic diversity among housing for which applicants are selected to receive assistance;
- (6) the extent to which a sufficient supply of affordable rental housing of the type assisted under this title⁵ exists in the locality, so that the implementation of the homeownership program will not appreciably reduce the number of such rental units available to residents currently residing in such units or eligible for residency in such units; and
- (7) such other factors as the Secretary determines to be appropriate for purposes of carrying out the program established by the⁶ part in an effective and efficient manner.

(e) Approval

The Secretary shall notify each applicant, not later than 6 months after the date of the submission of the application, whether the application is approved or not approved. The Secretary may approve the application for an implementation grant with a statement that the application for the section 8 [42 U.S.C. 1437f] assistance for residents of the project not purchasing units is conditionally approved, subject to the availability of appropriations in subsequent fiscal years.

(Pub. L. 101-625, title IV, § 423, Nov. 28, 1990, 104 Stat. 4163; Pub. L. 102-550, title X, § 1012(i)(2), Oct. 28, 1992, 106 Stat. 3906.)

REFERENCES IN TEXT

Section 12872 of this title, referred to in subsec. (b)(6), was in the original “section 322” and was translated as reading “section 422”, meaning section 422 of Pub. L. 101-625, to reflect the probable intent of Congress. Section 322 of Pub. L. 101-625 amended section 1708 of Title 12, Banks and Banking.

Section 12874 of this title and section 12874(b) of this title, referred to in subsec. (d)(2)(D), were in the original “section 324” and “section 324(b)”, respectively, and were translated as reading “section 424” and “section 424(b)”, respectively, meaning section 424 of Pub. L. 101-625, to reflect the probable intent of Congress. Section 324 of Pub. L. 101-625, which proposed an amendment to section 1709 of Title 12, never took effect pursuant to section 351 of Pub. L. 101-625. Such section 324 did not contain a subsec. (b).

The Fair Housing Act, referred to in subsec. (d)(2)(M), is title VIII of Pub. L. 90-284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I (§3601 et seq.) of chapter 45 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

⁴ So in original. Two subsecs. (d) have been enacted.

⁵ See References in Text note below.

⁶ So in original. Probably should be “this”.

The Civil Rights Act of 1964, referred to in subsec. (d)(2)(M), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Age Discrimination Act of 1975, referred to in subsec. (d)(2)(M), is title III of Pub. L. 94-135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

This title, referred to in subsec. (d)(6), means title IV of Pub. L. 101-625, known as the Homeownership and Opportunity Through HOPE Act, and probably should have been “this subtitle”, meaning subtitle B (§§ 421-431) of title IV of Pub. L. 101-625, which is classified principally to this part. For complete classification of title IV of Pub. L. 101-625 to the Code, see Short Title note set out under section 1437aaa of this title and Tables.

AMENDMENTS

1992—Subsec. (b)(4) to (14), Pub. L. 102-550 added par. (4) and redesignated former pars. (4) to (13) as (5) to (14), respectively.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12875 of this title.

§ 12874. Homeownership program requirements**(a) In general**

A homeownership program under this part shall provide for acquisition by eligible families of ownership interest in, or shares representing, the units in an eligible property under any arrangement determined by the Secretary to be appropriate, such as cooperative ownership (including limited equity cooperative ownership) and fee simple ownership (including condominium ownership), for occupancy by the eligible families.

(b) Affordability

A homeownership program under this part shall provide for the establishment of sales prices (including principal, insurance, taxes, and interest and closing costs) for initial acquisition of the property, and for sales to eligible families, such that the eligible family shall not be required to expend more than 30 percent of the adjusted income of the family per month to complete a sale under the homeownership program.

(c) Plan

A homeownership program under this part shall provide, and include a plan, for—

- (1) identifying and selecting eligible families to participate in the homeownership program;
- (2) providing relocation assistance to families who elect to move;
- (3) ensuring continued affordability by tenants, homebuyers, and homeowners in the property; and
- (4) providing ongoing training and counseling for homebuyers and homeowners.

(d) Acquisition and rehabilitation limitation

Acquisition or rehabilitation of a property under a homeownership program under this part

may not consist of acquisition or rehabilitation of less than all of the units in the property. The provisions of this subsection may be waived upon a finding by the Secretary that the sale of less than all the buildings in a project is feasible and will not result in a hardship to any tenants of the project who are not included in the homeownership program.

(e) Financing

(1) In general

The application shall identify and describe the proposed financing for (A) any rehabilitation, and (B) acquisition (i) of the project, where applicable, by an entity for transfer to eligible families, and (ii) by eligible families of ownership interests in, or shares representing, units in the project. Financing may include use of the implementation grant, sale for cash, or other sources of financing (subject to applicable requirements), including conventional mortgage loans and mortgage loans insured under title II of the National Housing Act [12 U.S.C. 1707 et seq.].

(2) Prohibition against pledges

Property transferred under this part shall not be pledged as collateral for debt or otherwise encumbered except when the Secretary determines that—

(A) such encumbrance will not threaten the long-term availability of the property for occupancy by low-income families;

(B) neither the Federal Government nor the public housing agency will be exposed to undue risks related to action that may have to be taken pursuant to paragraph (3);

(C) any debt obligation can be serviced from project income, including operating assistance; and

(D) the proceeds of such encumbrance will be used only to meet housing standards in accordance with subsection (f) of this section or to make such additional capital improvements as the Secretary determines to be consistent with the purposes of this part.

(3) Opportunity to cure

Any lender that provides financing in connection with a homeownership program under this part shall give the public housing agency, resident management corporation, individual owner, or other appropriate entity a reasonable opportunity to cure a financial default before foreclosing on the property, or taking other action as a result of the default.

(f) Housing quality standards

The application shall include a plan ensuring that the unit—

(1) will be free from any defects that pose a danger to health or safety before transfer of an ownership interest in, or shares representing, a unit to an eligible family; and

(2) will, not later than 2 years after the transfer to an eligible family, meet minimum housing standards established by the Secretary for the purpose of this title.¹

¹ See References in Text note below.

(g) Protection of nonpurchasing families

(1) In general

No tenant residing in a dwelling unit in a property on the date the Secretary approves an application for an implementation grant may be evicted by reason of a homeownership program approved under this part.

(2) Rental assistance

If a tenant decides not to purchase a unit, or is not qualified to do so, the Secretary shall, subject to the availability of appropriations, ensure that rental assistance under section 1437f of this title is available for use by each otherwise qualified tenant in that or another property.

(3) Relocation assistance

The recipient shall also inform each such tenant that if the tenant chooses to move, the recipient will pay relocation assistance in accordance with the approved homeownership program.

(Pub. L. 101-625, title IV, § 424, Nov. 28, 1990, 104 Stat. 4166.)

REFERENCES IN TEXT

The National Housing Act, referred to in subsec. (e)(1), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended. Title II of the Act is classified principally to subchapter II (§1707 et seq.) of chapter 13 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

This title, referred to in subsec. (f)(2), is title IV of Pub. L. 101-625, Nov. 28, 1990, 104 Stat. 4148, known as the Homeownership and Opportunity Through HOPE Act, which enacted this subchapter and subchapter II-A (§1437aaa et seq.) of chapter 8 of this title, amended sections 1437c, 1437f, 1437i, 1437p, 1437r, and 1437s of this title and section 1709 of Title 12, and enacted provisions set out as notes under sections 1437c, 1437aa, and 1437aaa of this title. For complete classification of title IV to the Code, see Short Title note set out under section 1437aaa of this title and Tables.

Section 1437f of this title, referred to in subsec. (g)(2), was in the original "section 8", and was translated as reading "section 8 of the United States Housing Act of 1937" to reflect the probable intent of Congress.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12873 of this title.

§ 12875. Other program requirements

(a) Preferences

In selecting eligible families for homeownership, the recipient shall give a first preference to otherwise qualified current tenants and a second preference to otherwise qualified eligible families who have completed participation in an economic self-sufficiency program specified by the Secretary.

(b) Cost limitations

The Secretary may establish cost limitations on eligible activities under this part, subject to the provisions of this part.

(c) Use of proceeds from sales to eligible families

The entity that transfers ownership interests in, or shares representing, units to eligible families, or another entity specified in the approved application, shall use the proceeds, if any, from

the initial sale for costs of the homeownership program, including operating expenses, improvements to the project, business opportunities for low-income families, supportive services related to the homeownership program, additional homeownership opportunities, and other activities approved by the Secretary.

(d) Restrictions on resale by homeowners

(1) In general

(A) Transfer permitted

A homeowner under a homeownership program may transfer the homeowner's ownership interest in, or shares representing, the unit, except that a homeownership program may establish restrictions on the resale of units under the program.

(B) Right to purchase

Where a resident management corporation, resident council, or cooperative has jurisdiction over the unit, the corporation, council, or cooperative shall have the right to purchase the ownership interest in, or shares representing, the unit from the homeowner for the amount specified in a firm contract between the homeowner and a prospective buyer. If such an entity does not have jurisdiction over the unit or elects not to purchase and if the prospective buyer is not a low-income family, the public housing agency or the implementation grant recipient shall have the right to purchase the ownership interest in, or shares representing, the unit for the same amount.

(C) Promissory note required

The homeowner shall execute a promissory note equal to the difference between the market value and the purchase price, payable to the public housing agency or other entity designated in the homeownership plan, together with a mortgage securing the obligation of the note.

(2) 6 years or less

In the case of a transfer within 6 years of the acquisition under the program, the homeownership program shall provide for appropriate restrictions to assure that an eligible family may not receive any undue profit. The plan shall provide for limiting the family's consideration for its interest in the property to the total of—

(A) the contribution to equity paid by the family;

(B) the value, as determined by such means as the Secretary shall determine through regulation, of any improvements installed at the expense of the family during the family's tenure as owner; and

(C) the appreciated value determined by an inflation allowance at a rate which may be based on a cost-of-living index, an income index, or market index as determined by the Secretary through regulation and agreed to by the purchaser and the entity that transfers ownership interests in, or shares representing, units to eligible families (or another entity specified in the approved application), at the time of initial sale, and applied against the contribution to equity.

Such an entity may, at the time of initial sale, enter into an agreement with the family to set a maximum amount which this appreciation may not exceed.

(3) 6–20 years

In the case of a transfer during the period beginning 6 years after the acquisition and ending 20 years after the acquisition, the homeownership program shall provide for the recapture by the Secretary or the program of an amount equal to the amount of the declining balance on the note described in paragraph (1)(C).

(4) Use of recaptured funds

Fifty percent of any portion of the net sales proceeds that may not be retained by the homeowner under the plan approved pursuant to this subsection shall be paid to the entity that transferred ownership interests in, or shares representing, units to eligible families, or another entity specified in the approved application, for use for improvements to the project, business opportunities for low-income families, supportive services related to the homeownership program, additional homeownership opportunities, and other activities approved by the Secretary. The remaining 50 percent shall be returned to the Secretary for use under this part, subject to limitations contained in appropriations Acts. Such entity shall keep and make available to the Secretary all records necessary to calculate accurately payments due the Secretary under this subsection.

(e) Third party rights

The requirements under this part regarding quality standards, resale, or transfer of the ownership interest of a homeowner shall be judicially enforceable against the grant recipient with respect to actions involving rehabilitation, and against purchasers of property under this subsection or their successors in interest with respect to other actions by affected low-income families, resident management corporations, resident councils, public housing agencies, and any agency, corporation, or authority of the United States Government. The parties specified in the preceding sentence shall be entitled to reasonable attorney fees upon prevailing in any such judicial action.

(f) Dollar limitation on economic development activities

Not more than an aggregate of \$250,000 from amounts made available under sections 12872 and 12873 of this title may be used for economic development activities under sections 12872(b)(6) and 12873(b)(9)¹ of this title for any project.

(g) Timely homeownership

Recipients shall transfer ownership of the property to tenants within a specified period of time that the Secretary determines to be reasonable. During the interim period when the property continues to be operated and managed as rental housing, the recipient shall utilize written tenant selection policies and criteria that are approved by the Secretary as consistent

¹ See References in Text note below.

with the purpose of improving housing opportunities for low-income families. The recipient shall promptly notify in writing any rejected applicant of the grounds for any rejection.

(h) Records and audit of recipients of assistance

(1) In general

Each recipient shall keep such records as may be reasonably necessary to fully disclose the amount and the disposition by such recipient of the proceeds of assistance received under this part (and any proceeds from financing obtained or sales under subsections (c) and (d) of this section), the total cost of the homeownership program in connection with which such assistance is given or used, and the amount and nature of that portion of the program supplied by other sources, and such other sources as will facilitate an effective audit.

(2) Access by Secretary

The Secretary shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient that are pertinent to assistance received under this part.

(3) Access by Comptroller General

The Comptroller General of the United States, or any of the duly authorized representatives of the Comptroller General, shall also have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient that are pertinent to assistance received under this part.

(i) Certain entities not eligible

Any entity that assumes, as determined by the Secretary, a mortgage covering eligible property in connection with the acquisition of the property from an owner under this section must comply with any low-income affordability restrictions for the remaining term of the mortgage. This requirement shall only apply to an entity, such as a cooperative association, that, as determined by the Secretary, intends to own the housing on a permanent basis.

(Pub. L. 101-625, title IV, § 425, Nov. 28, 1990, 104 Stat. 4168.)

REFERENCES IN TEXT

Sections 12872(b)(6) and 12873(b)(9) of this title, referred to in subsec. (f), were redesignated sections 12872(b)(7) and 12873(b)(10) of this title, respectively, by Pub. L. 102-550, title X, § 1012(i), Oct. 28, 1992, 106 Stat. 3906.

§ 12876. Definitions

For purposes of this part:

(1) The term “applicant” means the following entities that may represent the tenants of the housing:

(A) A resident management corporation established in accordance with the requirements of the Secretary under section 1437r of this title.

(B) A resident council.

(C) A cooperative association.

(D) A public or private nonprofit organization.

(E) A public body (including an agency or instrumentality thereof).

(F) A public housing agency (including an Indian housing authority).

(G) A mutual housing association.

(2) The term “eligible family” means a family or individual—

(A) who is a tenant of the eligible property on the date the Secretary approves an implementation grant; or

(B) whose income does not exceed 80 percent of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families.

(3) The term “eligible property” means a multifamily rental property, containing 5 or more units, that is—

(A) owned or held by the Secretary;

(B) financed by a loan or mortgage held by the Secretary or insured by the Secretary;

(C) determined by the Secretary to have serious physical or financial problems under the terms of an insurance or loan program administered by the Secretary; or

(D) owned or held by the Secretary of Agriculture, the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, the Secretary of Defense, the Secretary of Transportation, the General Services Administration, any other Federal agency, or a State or local government or an agency or instrumentality thereof.

(4) The term “homeownership program” means a program for homeownership under this part.

(5) The term “Indian housing authority” has the meaning given such term in section 1437a(b)(11)¹ of this title.

(6) The term “low-income family” has the meaning given such term in section 1437a(b)(2) of this title.

(7) The term “public housing agency” has the meaning given such term in section 1437a(b)(6) of this title.

(8) The term “recipient” means an applicant approved to receive a grant under this title¹ or such other entity specified in the approved application that will assume the obligations of the recipient under this part.

(9) The term “resident council” means any incorporated nonprofit organization or association that—

(A) is representative of the tenants of the housing;

(B) adopts written procedures providing for the election of officers on a regular basis; and

(C) has a democratically elected governing board, elected by the tenants of the housing.

(10) The term “Secretary” means the Secretary of Housing and Urban Development.

(Pub. L. 101-625, title IV, § 426, Nov. 28, 1990, 104 Stat. 4170; Pub. L. 102-550, title I, § 181(d), (e), (h), Oct. 28, 1992, 106 Stat. 3735, 3736.)

REFERENCES IN TEXT

Section 1437a(b)(11) of this title, referred to in par. (5), was repealed by Pub. L. 104-330, title V, § 501(b)(1)(D), Oct. 26, 1996, 110 Stat. 4041, and a new sec-

¹ See References in Text note below.

tion 1437a(b)(11), defining “public housing agency plan”, was enacted by Pub. L. 105-276, title V, § 506(4), Oct. 21, 1998, 112 Stat. 2524.

This title, referred to in par. (8), means title IV of Pub. L. 101-625, known as the Homeownership and Opportunity Through HOPE Act, and probably should have been “this subtitle”, meaning subtitle B (§§ 421-431) of title IV of Pub. L. 101-625, which is classified principally to this part. For complete classification of title IV of Pub. L. 101-625 to the Code, see Short Title note set out under section 1437aaa of this title and Tables.

AMENDMENTS

1992—Par. (1)(G). Pub. L. 102-550, § 181(d), added subpar. (G).

Par. (3)(D). Pub. L. 102-550, § 181(e), (h), inserted “the Federal Deposit Insurance Corporation, the Secretary of Defense, the Secretary of Transportation, the General Services Administration, any other Federal agency,” after “Corporation,” and “or an agency or instrumentality thereof” before period at end.

§ 12877. Exemption

Eligible property covered by a homeownership program approved under this part shall not be subject to—

- (1) the Low-Income Housing Preservation and Resident Homeownership Act of 1990 [12 U.S.C. 4101 et seq.], or
- (2) the requirements of section 1701z-11 of title 12 applicable to the sale of projects either at foreclosure or after acquisition by the Secretary.

(Pub. L. 101-625, title IV, § 427, Nov. 28, 1990, 104 Stat. 4171.)

REFERENCES IN TEXT

The Low-Income Housing Preservation and Resident Homeownership Act of 1990, referred to in par. (1), is title II of Pub. L. 100-242, as amended by Pub. L. 101-625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4249, which is classified principally to chapter 42 (§ 4101 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of Title 12 and Tables.

§ 12878. Limitation on selection criteria

In establishing criteria for selecting applicants to receive assistance under this part, the Secretary may not establish any selection criterion or criteria that grant or deny such assistance to an applicant (or have the effect of granting or denying assistance) based on the implementation, continuation, or discontinuation of any public policy, regulation, or law of any jurisdiction in which the applicant or project is located.

(Pub. L. 101-625, title IV, § 428, Nov. 28, 1990, 104 Stat. 4171.)

§ 12879. Implementation

Not later than the expiration of the 180-day period beginning on the date that funds authorized under this part first become available for obligation, the Secretary shall by notice establish such requirements as may be necessary to carry out the provisions of this part. Such requirements shall be subject to section 553 of title 5. The Secretary shall issue regulations based on the initial notice before the expiration of the 8-month period beginning on the date of the notice.

(Pub. L. 101-625, title IV, § 430, Nov. 28, 1990, 104 Stat. 4172.)

§ 12880. Report

The Secretary shall no later than December 31, 1995, submit to the Congress a report setting forth—

- (1) the number, type and cost of eligible properties transferred pursuant to this part;
- (2) the income, race, gender, children and other characteristics of families participating (or not participating) in homeownership programs funded under this part;
- (3) the amount and type of financial assistance provided under and in conjunction with this part;
- (4) the amount of financial assistance provided under this part that was needed to ensure continued affordability and meet future maintenance and repair costs; and
- (5) the recommendations of the Secretary for statutory and regulatory improvements to the program.

(Pub. L. 101-625, title IV, § 431, Nov. 28, 1990, 104 Stat. 4172; Pub. L. 104-66, title I, § 1072(a), Dec. 21, 1995, 109 Stat. 721.)

AMENDMENTS

1995—Pub. L. 104-66 in section catchline substituted “Report” for “Annual report”, and in introductory provisions substituted “The Secretary shall no later than December 31, 1995,” for “The Secretary shall annually”.

PART B—HOPE FOR HOMEOWNERSHIP OF SINGLE FAMILY HOMES

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 12870, 12899c, 12899d of this title; title 12 sections 1709, 1834a.

§ 12891. Program authority

The Secretary is authorized to make—

- (1) planning grants to help applicants develop homeownership programs in accordance with this part; and
- (2) implementation grants to enable applicants to carry out homeownership programs in accordance with this part.

(Pub. L. 101-625, title IV, § 441, Nov. 28, 1990, 104 Stat. 4172; Pub. L. 102-550, title I, § 181(a)(2)(B)(ii), Oct. 28, 1992, 106 Stat. 3735.)

AMENDMENTS

1992—Pub. L. 102-550 struck out “(a) IN GENERAL” before “The Secretary is authorized” and subsec. (b) which read as follows: “AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for grants under this part \$36,000,000 for fiscal year 1991, and \$195,000,000 for fiscal year 1992. Any amounts appropriated pursuant to this subsection shall remain available until expended.”

§ 12892. Planning grants

(a) Grants

The Secretary is authorized to make planning grants to applicants for the purpose of developing homeownership programs under this part. The amount of a planning grant under this section may not exceed \$200,000, except that the Secretary may for good cause approve a grant in a higher amount.

(b) Eligible activities

Planning grants may be used for activities to develop homeownership programs (which may include programs for cooperative ownership), including—

- (1) identifying eligible properties;
- (2) training and technical assistance of applicants related to the development of a specific homeownership program;
- (3) studies of the feasibility of specific homeownership programs;
- (4) inspection for lead-based paint hazards, as required by section 4822(a) of this title;
- (5) preliminary architectural and engineering work;
- (6) homebuyer counseling and training;
- (7) planning for economic development, job training, and self-sufficiency activities that promote economic self-sufficiency for homebuyers and homeowners under the homeownership program;
- (8) development of security plans; and
- (9) preparation of an application for an implementation grant under this part.

(c) Application**(1) Form and procedures**

An application for a planning grant shall be submitted by an applicant in such form and in accordance with such procedures as the Secretary shall establish.

(2) Minimum requirements

The Secretary shall require that an application contain at a minimum—

- (A) a request for a planning grant, specifying the activities proposed to be carried out, the schedule for completing the activities, the personnel necessary to complete the activities, and the amount of the grant requested;
- (B) a description of the applicant and a statement of its qualifications;
- (C) identification and description of the eligible properties likely to be involved, and a description of the composition of the potential homebuyers and residents of the areas in which such eligible properties are located, including family size and income;
- (D) a certification by the public official responsible for submitting the comprehensive housing affordability strategy under section 12705 of this title that the proposed activities are consistent with the approved housing strategy of the State or unit of general local government within which the project is located (or, during the first 12 months after November 28, 1990, that the application is consistent with such other existing State or local housing plan or strategy that the Secretary shall determine to be appropriate); and
- (E) a certification that the applicant will comply with the requirements of the Fair Housing Act [42 U.S.C. 3601 et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], and the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], and will affirmatively further fair housing.

(d) Selection criteria

The Secretary shall, by regulation, establish selection criteria for a national competition for assistance under this section, which shall include—

- (1) the qualifications or potential capabilities of the applicant;
- (2) the extent of interest in the development of a homeownership program;
- (3) the potential of the applicant for developing a successful and affordable homeownership program and the availability and suitability of eligible properties in the applicable geographic area with respect to the application;
- (4) national geographic diversity among housing for which applicants are selected to receive assistance; and
- (5) such other factors that the Secretary shall require that (in the determination of the Secretary) are appropriate for purposes of carrying out the program established by this part in an effective and efficient manner.

(Pub. L. 101-625, title IV, § 442, Nov. 28, 1990, 104 Stat. 4172; Pub. L. 102-550, title X, § 1012(j)(1), Oct. 28, 1992, 106 Stat. 3906.)

REFERENCES IN TEXT

The Fair Housing Act, referred to in subsec. (c)(2)(E), is title VIII of Pub. L. 90-284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I (§3601 et seq.) of chapter 45 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (c)(2)(E), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Age Discrimination Act of 1975, referred to in subsec. (c)(2)(E), is title III of Pub. L. 94-135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

AMENDMENTS

1992—Subsec. (b)(4) to (9). Pub. L. 102-550 added par. (4) and redesignated former pars. (4) to (8) as (5) to (9), respectively.

§ 12893. Implementation grants**(a) Grants**

The Secretary is authorized to make implementation grants to applicants for the purpose of carrying out homeownership programs approved under this part.

(b) Eligible activities

Implementation grants may be used for activities to carry out homeownership programs (which may include programs for cooperative ownership), including the following activities:

- (1) Architectural and engineering work.
- (2) Acquisition of the property for the purpose of transferring ownership to eligible families in accordance with a homeownership program meeting the requirements of this part.
- (3) Rehabilitation of the property covered by the homeownership program, in accordance with standards established by the Secretary.

(4) Abatement of lead-based paint hazards, as required by section 4822(a) of this title.

(5) Administrative costs of the applicant, which may not exceed 15 percent of the amount of assistance provided under this section.

(6) Counseling and training of homebuyers and homeowners under the homeownership program.

(7) Relocation of eligible families who elect to move.

(8) Any necessary temporary relocation of homebuyers during rehabilitation.

(9) Legal fees.

(10) Defraying costs for the ongoing training needs of the recipient that are related to developing and carrying out the homeownership program.

(11) Economic development activities that promote economic self-sufficiency of homebuyers and homeowners under the homeownership program.

(c) Matching funding

(1) In general

Each recipient shall assure that contributions equal to not less than 25 percent of the grant amounts under this section are provided from non-Federal sources to carry out the homeownership program.

(2) Form

Such contributions may be in the form of—

(A) cash contributions from non-Federal resources which may not include funds from a grant made under section 5306(b) or section 5306(d) of this title;

(B) payment of administrative expenses, as defined by the Secretary, from non-Federal resources, including funds from a grant made under section 5306(b) or section 5306(d) of this title;

(C) the value of taxes, fees, or other charges that are normally and customarily imposed but are waived, foregone, or deferred in a manner that facilitates the implementation of a homeownership program assisted under this part;

(D) the value of investment in on-site and off-site infrastructure required for a homeownership program assisted under this part; or

(E) such other in-kind contributions as the Secretary may approve.

Contributions for administrative expenses shall be recognized only up to an amount equal to 7 percent of the total amount of grants made available under this section.

(d) Application

(1) Form and procedure

An application for an implementation grant shall be submitted by an applicant in such form and in accordance with such procedures as the Secretary shall establish.

(2) Minimum requirements

The Secretary shall require that an application contain at a minimum—

(A) a request for an implementation grant, specifying the amount of the grant requested and its proposed uses;

(B) a description of the qualifications and experience of the applicant in providing low-income housing;

(C) a description of the proposed homeownership program, consistent with section 12894 of this title and the other requirements of this part specifying the activities proposed to be carried out and their estimated costs, identifying reasonable schedules for carrying it out, and demonstrating that the program will comply with the affordability requirements under section 12894(b) of this title;

(D) an identification and description of the properties to be acquired under the homeownership program and a description of the composition of potential eligible families, including family size and income;

(E) a description of and commitment for the resources that are expected to be made available to provide the matching funding required under subsection (c) of this section and of other resources that are expected to be made available in support of the homeownership program;

(F) identification and description of the financing proposed for any (i) rehabilitation and (ii) acquisition (I) of the project, where applicable, by an entity for transfer to eligible families, and (II) by eligible families of ownership interests in, or shares representing, units in the project;

(G) the proposed sales prices for the properties, the basis for such price determinations, and terms to an entity, if any, that will purchase that property for resale to eligible families;

(H) the proposed sales prices, if any, and terms to eligible families;

(I) identification and description of the entity that will operate and manage the property;

(J) a certification by the public official responsible for submitting the comprehensive housing affordability strategy under section 12705 of this title that the proposed activities are consistent with the approved housing strategy of the State or unit of general local government within which the project is located (or, during the first 12 months after November 28, 1990, that the application is consistent with such other existing State or local housing plan or strategy that the Secretary shall determine to be appropriate); and

(K) a certification that the applicant will comply with the requirements of the Fair Housing Act [42 U.S.C. 3601 et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], and the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], and will affirmatively further fair housing.

(e) Selection criteria

The Secretary shall establish selection criteria for assistance under this part, which shall include—

(1) the ability of the applicant to develop and carry out the proposed homeownership

program, taking into account the qualifications and experience of the applicant and the quality of any related ongoing program of the applicant;

(2) the feasibility of the homeownership program;

(3) the quality and viability of the proposed homeownership program;

(4) the extent to which suitable eligible property is available for use under the program in the area to be served, and the extent to which the types of property expected to be covered by the proposed homeownership program are federally owned;

(5) whether the approved comprehensive housing affordability strategy for the jurisdiction within which the eligible property is located includes the proposed homeownership program as one of the general priorities identified pursuant to section 12705(b)(7) of this title;

(6) national geographic diversity among housing for which applicants are selected to receive assistance; and

(7) the extent to which a sufficient supply of affordable rental housing of the type assisted under this part exists in the locality, so that the implementation of the homeownership program will not appreciably reduce the number of such rental units available to residents currently residing in such units or eligible for residency in such units.

(f) Approval

The Secretary shall notify each applicant, not later than 6 months after the date of the submission of the application, whether the application is approved or not approved.

(Pub. L. 101-625, title IV, §443, Nov. 28, 1990, 104 Stat. 4174; Pub. L. 102-550, title X, §1012(j)(2), Oct. 28, 1992, 106 Stat. 3906; Pub. L. 103-233, title II, §221, Apr. 11, 1994, 108 Stat. 366.)

REFERENCES IN TEXT

The Fair Housing Act, referred to in subsec. (d)(2)(K), is title VIII of Pub. L. 90-284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I (§3601 et seq.) of chapter 45 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (d)(2)(K), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Age Discrimination Act of 1975, referred to in subsec. (d)(2)(K), is title III of Pub. L. 94-135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

AMENDMENTS

1994—Subsec. (c)(1). Pub. L. 103-233 substituted “25 percent” for “33 percent”.

1992—Subsec. (b)(4) to (11). Pub. L. 102-550 added par. (4) and redesignated former pars. (4) to (10) as (5) to (11), respectively.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-233 applicable with respect to any amounts made available to carry out sub-

chapter II (§12721 et seq.) of this chapter after Apr. 11, 1994, and any amounts made available to carry out that subchapter before that date that remain uncommitted on that date, with Secretary to issue any regulations necessary to carry out such amendment not later than end of 45-day period beginning on that date, see section 209 of Pub. L. 103-233, set out as a note under section 5301 of this title.

§ 12894. Homeownership program requirements

(a) In general

A homeownership program under this part shall provide for acquisition by eligible families of ownership interests in, or shares representing, units in an eligible property under any arrangement determined by the Secretary to be appropriate, such as cooperative ownership (including limited equity cooperative ownership) and fee simple ownership (including condominium ownership), for occupancy by the eligible families.

(b) Affordability

A homeownership program under this part shall provide for the establishment of sales prices (including principal, insurance, taxes, and interest and closing costs) for initial acquisition of the property, and for sales to eligible families, such that the eligible family shall not be required to expend more than 30 percent of the adjusted income of the family per month to complete a sale under the homeownership program.

(c) Eligible property

A property may not participate in a homeownership program under this part unless all tenants or occupants of the property (at the time of¹ the application for the implementation grant covering the property is filed with the Secretary) participate in the homeownership program.

(d) Plan

A homeownership program under this part shall provide, and include a plan, for—

(1) identifying and selecting eligible families to participate in the homeownership program;

(2) providing relocation assistance to families who elect to move; and

(3) ensuring continued affordability of the property to homebuyers and homeowners.

(e) Housing quality standards

The application shall include a plan ensuring that the unit—

(1) will be free from any defects that pose a danger to health or safety before transfer of an ownership interest in, or shares representing, a unit to an eligible family; and

(2) will, not later than 2 years after the transfer to an eligible family, meet minimum housing standards established by the Secretary for the purpose of this title.²

(f) Preference for acquisition of vacant units

Each homeownership program under this part shall provide that, in making vacant units in eligible properties available for acquisition by eligible families, preference shall be given to eligible families who reside in public or Indian housing.

¹ So in original. The word “of” probably should not appear.

² So in original. See References in Text note below.

(Pub. L. 101-625, title IV, §444, Nov. 28, 1990, 104 Stat. 4176; Pub. L. 102-550, title I, §181(f), Oct. 28, 1992, 106 Stat. 3736.)

REFERENCES IN TEXT

This title, referred to in subsec. (e)(2), is title IV of Pub. L. 101-625, Nov. 28, 1990, 104 Stat. 4148, known as the Homeownership and Opportunity Through HOPE Act, which enacted this subchapter and subchapter II-A (§1437aaa et seq.) of chapter 8 of this title, amended sections 1437c, 1437f, 1437l, 1437p, 1437r, and 1437s of this title and section 1709 of Title 12, Banks and Banking, and enacted provisions set out as notes under sections 1437c, 1437aa, and 1437aaa of this title. For complete classification of title IV to the Code, see Short Title note set out under section 1437aaa of this title and Tables.

AMENDMENTS

1992—Subsec. (f). Pub. L. 102-550 added subsec. (f).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12893 of this title.

§ 12895. Other program requirements

(a) Cost limitations

The Secretary may establish cost limitations on eligible activities under this part, subject to the provisions of this part.

(b) Use of proceeds from sales to eligible families

Any entity that transfers ownership interests in, or shares representing, units to eligible families, or another entity specified in the approved application, may use the proceeds, if any, from the initial sale for costs of the homeownership program, including operating expenses, improvements to the project, business opportunities for low-income families, supportive services related to the homeownership program, additional homeownership opportunities, and other activities approved by the Secretary.

(c) Restrictions on resale by homeowners

(1) In general

(A) Transfer permitted

A homeowner under a homeownership program may transfer the homeowner's ownership interest in, or shares representing, the unit, except that a homeownership program may establish restrictions on the resale of units under the program.

(B) Right to purchase

Where a resident management corporation, resident council, or cooperative has jurisdiction over the unit, the corporation, council, or cooperative shall have the right to purchase the ownership interest in, or shares representing, the unit from the homeowner for the amount specified in a firm contract between the homeowner and a prospective buyer. If such an entity does not have jurisdiction over the unit or elects not to purchase and if the prospective buyer is not a low-income family, the public housing agency or the implementation grant recipient shall have the right to purchase the ownership interest in, or shares representing, the unit for the same amount.

(C) Promissory note required

The homeowner shall execute a promissory note equal to the difference between the

market value and the purchase price, payable to the public housing agency or other entity designated in the homeownership plan, together with a mortgage securing the obligation of the note.

(2) 6 years or less

In the case of a transfer within 6 years of the acquisition under the program, the homeownership program shall provide for appropriate restrictions to assure that an eligible family may not receive any undue profit. The plan shall provide for limiting the family's consideration for its interest in the property to the total of—

(A) the contribution to equity paid by the family;

(B) the value, as determined by such means as the Secretary shall determine through regulation, of any improvements installed at the expense of the family during the family's tenure as owner; and

(C) the appreciated value determined by an inflation allowance at a rate which may be based on a cost-of-living index, an income index, or market index as determined by the Secretary through regulation and agreed to by the purchaser and the entity that transfers ownership interests in, or shares representing, units to eligible families (or another entity specified in the approved application), at the time of initial sale, and applied against the contribution to equity.

Such an entity may, at the time of initial sale, enter into an agreement with the family to set a maximum amount which this appreciation may not exceed.

(3) 6-20 years

In the case of a transfer during the period beginning 6 years after the acquisition and ending 20 years after the acquisition, the homeownership program shall provide for the recapture by the Secretary or the program of an amount equal to the amount of the declining balance on the note described in paragraph (1)(C).

(4) Use of recaptured funds

Fifty percent of any portion of the net sales proceeds that may not be retained by the homeowner under the plan approved pursuant to this subsection shall be paid to the entity that transferred ownership interests in, or shares representing, units to eligible families, or another entity specified in the approved application, for use for improvements to the project, business opportunities for low-income families, supportive services related to the homeownership program, additional homeownership opportunities, and other activities approved by the Secretary. The remaining 50 percent shall be returned to the Secretary for use under this part, subject to limitations contained in appropriations Acts. Such entity shall keep and make available to the Secretary all records necessary to calculate accurately payments due the Secretary under this subsection.

(d) Third party rights

The requirements under this part regarding quality standards, resale, or transfer of the own-

ership interest of a homeowner shall be judicially enforceable against the grant recipient with respect to actions involving rehabilitation, and against purchasers of property under this subsection or their successors in interest with respect to other actions by affected low-income families, resident management corporations, resident councils, public housing agencies, and any agency, corporation, or authority of the United States Government. The parties specified in the preceding sentence shall be entitled to reasonable attorney fees upon prevailing in any such judicial action.

(e) Protection of nonpurchasing families

No tenant residing in a dwelling unit in a property on the date the Secretary approves an application for an implementation grant may be evicted by reason of a homeownership program approved under this part.

(h)¹ Records and audit of recipients of assistance

(1) In general

Each recipient shall keep such records as may be reasonably necessary to fully disclose the amount and the disposition by such recipient of the proceeds of assistance received under this part (and any proceeds from financing obtained or sales under subsections (b) and (c) of this section), the total cost of the homeownership program in connection with which such assistance is given or used, and the amount and nature of that portion of the program supplied by other sources, and such other sources as will facilitate an effective audit.

(2) Access by Secretary

The Secretary shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient that are pertinent to assistance received under this part.

(3) Access by Comptroller General

The Comptroller General of the United States, or any of the duly authorized representatives of the Comptroller General, shall also have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient that are pertinent to assistance received under this part.

(Pub. L. 101-625, title IV, §445, Nov. 28, 1990, 104 Stat. 4177.)

§ 12896. Definitions

For purposes of this part:

(1) The term "applicant" means a private nonprofit organization, cooperative association, or a public agency (including an agency or instrumentality thereof) in cooperation with a private nonprofit organization.

(2) The term "displaced homemaker" has the same meaning as in section 12704 of this title.

(3) The term "eligible family" means a family or individual who—

(A) has an income that does not exceed 80 percent of the median income for the area,

as determined by the Secretary with adjustments for smaller and larger families; and

(B) is a first-time homebuyer.

(4) The term "eligible property" means a single family property, containing no more than four units, that is owned or held by the Secretary, the Secretary of Veterans Affairs, the Secretary of Agriculture, the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, the Secretary of Defense, the Secretary of Transportation, the General Services Administration, any other Federal agency, a State or local government (including any in rem property), or a public housing agency or an Indian housing authority (excluding public or Indian housing under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] and including properties held by institutions within the jurisdiction of the Resolution Trust Corporation).

(5) The term "first-time homebuyer" has the same meaning as in section 12704 of this title.

(6) The term "homeownership program" means a program for homeownership under this part.

(7) The term "Indian housing authority" has the meaning given such term in section 3(b)(11)¹ of the United States Housing Act of 1937.

(8) The term "low-income family" has the meaning given such term in section 3(b)(2) of the United States Housing Act of 1937 [42 U.S.C. 1437a(b)(2)].

(9) The term "public housing agency" has the meaning given such term in section 3(b)(6) of the United States Housing Act of 1937 [42 U.S.C. 1437a(b)(6)].

(10) The term "recipient" means an applicant approved to receive a grant under this part or such other entity specified in the approved application that will assume the obligations of the recipient under this part.

(11) The term "Secretary" means the Secretary of Housing and Urban Development.

(12) The term "single parent" means an individual who—

(A) is unmarried or legally separated from a spouse; and

(B)(i) has 1 or more minor children for whom the individual has custody or joint custody; or

(ii) is pregnant.

(Pub. L. 101-625, title IV, §446, Nov. 28, 1990, 104 Stat. 4179; Pub. L. 102-550, title I, §181(g)(2), (h), Oct. 28, 1992, 106 Stat. 3736.)

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in par. (4), 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, which is classified generally to chapter 8 (§1437 et seq.) 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.

Section 3(b)(11) of the United States Housing Act of 1937, referred to in par. (7), was classified to section 1437a(b)(11) of this title prior to repeal by Pub. L. 104-330, title V, §501(b)(1)(D), Oct. 26, 1996, 110 Stat. 4041, and a new section 1437a(b)(11), defining "public housing

¹ So in original. Probably should be "(f)".

¹ See References in Text note below.

agency plan”, was enacted by Pub. L. 105-276, title V, §506(4), Oct. 21, 1998, 112 Stat. 2524.

AMENDMENTS

1992—Par. (4). Pub. L. 102-550 inserted “the Federal Deposit Insurance Corporation, the Secretary of Defense, the Secretary of Transportation, the General Services Administration, any other Federal agency,” after “Corporation,” and substituted “(excluding public or Indian housing under the United States Housing Act of 1937 and including” for “(including scattered site single family properties, and”.

§ 12897. Limitation on selection criteria

In establishing criteria for selecting applicants to receive assistance under this part, the Secretary may not establish any selection criterion or criteria that grant or deny such assistance to an applicant (or have the effect of granting or denying assistance) based on the implementation, continuation, or discontinuation of any public policy, regulation, or law of any jurisdiction in which the applicant or project is located.

(Pub. L. 101-625, title IV, §447, Nov. 28, 1990, 104 Stat. 4180.)

§ 12898. Implementation

Not later than the expiration of the 180-day period beginning on the date funds authorized under this part first become available for obligation, the Secretary shall by notice establish such requirements as may be necessary to carry out the provisions of this part. Such requirements shall be subject to section 553 of title 5. The Secretary shall issue regulations based on the initial notice before the expiration of the 8-month period beginning on the date of the notice.

(Pub. L. 101-625, title IV, §448, Nov. 28, 1990, 104 Stat. 4180.)

§ 12898a. Enterprise zone homeownership opportunity grants

(a) Statement of purpose

It is the purpose of this section—

- (1) to encourage homeownership by families in the United States who are not otherwise able to afford homeownership;
- (2) to encourage the redevelopment of economically depressed areas; and
- (3) to provide better housing opportunities in federally approved and equivalent State-approved enterprise zones.

(b) Definitions

For purposes of this section the following definitions shall apply:

(1) Home

The term “home” means any 1- to 4-family dwelling. Such term includes any dwelling unit in a condominium project or cooperative project consisting of not more than 4 dwelling units, any town house, and any manufactured home.

(2) Metropolitan statistical area

The term “metropolitan statistical area” means a metropolitan statistical area as established by the Office of Management and Budget.

(3) Nonprofit organization

The term “nonprofit organization” means a private nonprofit corporation, or other private nonprofit legal entity, that is approved by the Secretary as to financial responsibility.

(4) Secretary

The term “Secretary” means the Secretary of Housing and Urban Development.

(5) State

The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(6) Unit of general local government

The term “unit of general local government” means any borough, city, county, parish, town, township, village, or other general purpose political subdivision of a State.

(c) Assistance to nonprofit organizations

(1) In general

The Secretary may provide assistance to nonprofit organizations to carry out enterprise zone homeownership opportunity programs to promote homeownership in federally approved and equivalent State-approved enterprise zones in accordance with the provisions of this section. Such assistance shall be made in the form of grants.

(2) Applications

Applications for assistance under this section shall be made in such form, and in accordance with such procedures, as the Secretary may prescribe.

(d) Eligible uses of assistance

(1) In general

Any nonprofit organization receiving assistance under this section shall use such assistance to provide loans to families purchasing homes constructed or rehabilitated in accordance with an enterprise zone homeownership opportunity program approved under this section.

(2) Specific requirements

Each loan made to a family under this subsection shall—

- (A) be secured by a second mortgage held by the Secretary on the property involved;
- (B) be in an amount not exceeding \$15,000;
- (C) bear no interest; and
- (D) be repayable to the Secretary upon the sales, lease, or other transfer of such property.

(e) Program requirements

(1) In general

Assistance provided under this section may be used only in connection with an enterprise zone homeownership opportunity program of construction or rehabilitation of homes.

(2) Family need

Each family purchasing a home under this section shall—

(A) have a family income on the date of such purchase that is not more than the median income for a family of 4 persons (adjusted for family size) in the metropolitan statistical area in which a federally approved or equivalent State-approved enterprise zone is located; and

(B) not have owned a home during the 3-year period preceding such purchase.

(3) Downpayment

Each family purchasing a home under this section shall make a downpayment of not less than 5 percent of the sale price of such home.

(4) Leasing prohibition

No family purchasing a home under this section may lease such home.

(f) Terms and conditions of assistance

(1) Local consultation

No proposed enterprise zone homeownership opportunity program may be approved by the Secretary under this section unless the applicant involved demonstrates to the satisfaction of the Secretary that—

(A) it has consulted with and received the support of residents of the neighborhood in which such program is to be located; and

(B) it has the approval of each unit of general local government in which such program is to be located.

(2) Program schedule

Each applicant for assistance under this section shall submit to the Secretary an estimated schedule for completion of its proposed enterprise zone homeownership opportunity program, which schedule shall have been agreed to by each unit of general local government in which such program is to be located.

(3) Location

All homes constructed or rehabilitated under such program will be located in federally approved or equivalent State-approved enterprise zones.

(4) Sales contracts

Sales contracts entered into under such program will contain provisions requiring repayment of any loan made under this section upon the sale or other transfer of the home involved, unless the Secretary approves a transfer of such home without repayment (in which case the second mortgage held by the Secretary on such home shall remain in force until such loan is fully repaid).

(g) Program selection criteria

(1) In general

In selecting enterprise zone homeownership opportunity programs for assistance under this section from among eligible programs, the Secretary shall make such selection on the basis of the extent to which—

(A) non-Federal public or private entities will contribute land necessary to make each program feasible;

(B) non-Federal public and private financial or other contributions (including tax abatements, waivers of fees related to development, waivers of construction, develop-

ment, or zoning requirements, and direct financial contributions) will reduce the cost of home¹ constructed or rehabilitated under each program;

(C) each program will produce the greatest number of units for the least amount of assistance provided under this section, taking into consideration the cost differences among different market areas; and

(D) each program provides for the involvement of local residents in the planning, and construction or rehabilitation, of homes.

(2) Exception

To the extent that non-Federal public entities are prohibited by the law of any State from making any form of contribution described in subparagraph (A) or (B) of paragraph (1), the Secretary shall not consider such form of contribution in evaluating such program.

(h) Regulations

Not later than 180 days after October 28, 1992, the Secretary shall issue final regulations to carry out the provisions of this title.² Any such regulations shall be issued in accordance with section 553 of title 5, notwithstanding the provisions of subsection (a)(2) of such section.

(i) Funding

There are authorized to be appropriated to carry out this section \$30,000,000 in each of fiscal years 1993 and 1994.

(Pub. L. 102-550, title I, §186, Oct. 28, 1992, 106 Stat. 3748.)

CODIFICATION

Section was enacted as part of the Housing and Community Development Act of 1992, and not as part of subtitle C (§§441-448) of title IV of Pub. L. 101-625 which comprises this part.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

PART C—HOPE FOR YOUTH: YOUTHBUILD

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 12870 of this title; title 12 section 1701u; title 25 section 4183.

§ 12899. Statement of purpose

It is the purpose of this part—

(1) to expand the supply of permanent affordable housing for homeless individuals and members of low- and very low-income families by utilizing the energies and talents of economically disadvantaged young adults;

(2) to provide economically disadvantaged young adults with opportunities for meaningful work and service to their communities in helping to meet the housing needs of homeless individuals and members of low- and very low-income families;

(3) to enable economically disadvantaged young adults to obtain the education and em-

¹ So in original. Probably should be "homes".

² So in original. Probably should be "this section."

ployment skills necessary to achieve economic self-sufficiency; and

(4) to foster the development of leadership skills and commitment to community development among young adults in low-income communities.

(Pub. L. 101-625, title IV, § 451, as added Pub. L. 102-550, title I, § 164, Oct. 28, 1992, 106 Stat. 3723.)

§ 12899a. Program authority

The Secretary may make—

(1) planning grants to enable applicants to develop Youthbuild programs; and

(2) implementation grants to enable applicants to carry out Youthbuild programs.

(Pub. L. 101-625, title IV, § 452, as added Pub. L. 102-550, title I, § 164, Oct. 28, 1992, 106 Stat. 3723.)

§ 12899b. Planning grants

(a) Grants

The Secretary is authorized to make planning grants to applicants for the purpose of developing Youthbuild programs under this part. The amount of a planning grant under this section may not exceed \$150,000, except that the Secretary may for good cause approve a grant in a higher amount.

(b) Eligible activities

Planning grants may be used for activities to develop Youthbuild programs including—

(1) studies of the feasibility of a Youthbuild program;

(2) establishment of consortia between youth training and education programs and housing owners or developers, including any organizations specified in section 12899(2) of this title, which will participate in the Youthbuild program;

(3) identification and selection of a site for the Youthbuild program;

(4) preliminary architectural and engineering work for the Youthbuild program;

(5) identification and training of staff for the Youthbuild program;

(6) planning for education, job training, and other services that will be provided as part of the Youthbuild program;

(7) other planning, training, or technical assistance necessary in advance of commencing the Youthbuild program; and

(8) preparation of an application for an implementation grant under this part.

(c) Application

(1) Form and procedures

An application for a planning grant shall be submitted by an applicant in such form and in accordance with such procedures as the Secretary shall establish.

(2) Minimum requirements

The Secretary shall require that an application contain at a minimum—

(A) a request for a planning grant, specifying the activities proposed to be carried out, the schedule for completing the activities, the personnel necessary to complete the activities, and the amount of the grant requested;

(B) a description of the applicant and a statement of its qualifications, including a description of the applicant's past experience with housing rehabilitation or construction and with youth and youth education and employment training programs, and its relationship with local unions and apprenticeship programs, and other community groups;

(C) identification and description of potential sites for the program and the construction or rehabilitation activities that would be undertaken at such sites; potential methods for identifying and recruiting youth participants; potential educational and job training activities, work opportunities and other services for participants; and potential coordination with other Federal, State, and local housing and youth education and employment training activities including activities conducted by Indian tribes;

(D) a certification by the public official responsible for submitting the comprehensive housing affordability strategy under section 12705 of this title that the proposed activities are consistent with the approved housing strategy of the State or unit of general local government within which the project is located; and

(E) a certification that the applicant will comply with the requirements of the Fair Housing Act [42 U.S.C. 3601 et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], and the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], and will affirmatively further fair housing.

(d) Selection criteria

The Secretary shall, by regulation, establish selection criteria for a national competition for assistance under this section, which shall include—

(1) the qualifications or potential capabilities of the applicant;

(2) the potential of the applicant for developing a successful and affordable Youthbuild program;

(3) the need for the prospective program, as determined by the degree of economic distress—

(A) of the community from which participants would be recruited (such as poverty, youth unemployment, and number of individuals who have dropped out of high school); and

(B) of the community in which the housing proposed to be constructed or rehabilitated would be located (such as incidence of homelessness, shortage of affordable housing, and poverty); and

(4) such other factors that the Secretary shall require that (in the determination of the Secretary) are appropriate for purposes of carrying out the program established by this part in an effective and efficient manner.

(Pub. L. 101-625, title IV, § 453, as added Pub. L. 102-550, title I, § 164, Oct. 28, 1992, 106 Stat. 3723.)

REFERENCES IN TEXT

The Fair Housing Act, referred to in subsec. (c)(2)(E), is title VIII of Pub. L. 90-284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I (§3601 et seq.) of chapter 45 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (c)(2)(E), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Age Discrimination Act of 1975, referred to in subsec. (c)(2)(E), is title III of Pub. L. 94-135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

§ 12899c. Implementation grants

(a) Grants

The Secretary is authorized to make implementation grants to applicants for the purpose of carrying out Youthbuild programs approved under this part.

(b) Eligible activities

Implementation grants may be used to carry out Youthbuild programs, including the following activities:

(1) Architectural and engineering work.

(2) Acquisition, rehabilitation, acquisition and rehabilitation, or construction of housing and related facilities to be used for the purposes of providing homeownership under part A and part B of this subchapter, residential housing for homeless individuals, and low- and very low-income families, or transitional housing for persons who are homeless, have disabilities, are ill, are deinstitutionalized, or have other special needs.

(3) Administrative costs of the applicant, which may not exceed 15 percent of the amount of assistance provided under this section, or such higher percentage as the Secretary determines is necessary to support capacity development by a private nonprofit organization.

(4) Education and job training services and activities including—

(A) work experience and skills training, coordinated, to the maximum extent feasible, with preapprenticeship and apprenticeship programs, in the construction and rehabilitation activities described in subsection (b)(2) of this section;

(B) services and activities designed to meet the educational needs of participants, including—

(i) basic skills instruction and remedial education;

(ii) bilingual education for individuals with limited-English proficiency;

(iii) secondary education services and activities designed to lead to the attainment of a high school diploma or its equivalent; and

(iv) counseling and assistance in attaining post-secondary education and required financial aid;

(C) counseling services and related activities;

(D) activities designed to develop employment and leadership skills, including support for youth councils; and

(E) support services and need-based stipends necessary to enable individuals to participate in the program and, for a period not to exceed 12 months after completion of training, to assist participants through support services in retaining employment.

(5) Wage stipends and benefits provided to participants.

(6) Funding of operating expenses and replacement reserves of the property covered by the Youthbuild program.

(7) Legal fees.

(8) Defraying costs for the ongoing training and technical assistance needs of the recipient that are related to developing and carrying out the Youthbuild program.

(c) Application

(1) Form and procedure

An application for an implementation grant shall be submitted by an applicant in such form and in accordance with such procedures as the Secretary shall establish.

(2) Minimum requirements

The Secretary shall require that an application contain at a minimum—

(A) a request for an implementation grant, specifying the amount of the grant requested and its proposed uses;

(B) a description of the applicant and a statement of its qualifications, including a description of the applicant's past experience with housing rehabilitation or construction and with youth and youth education and employment training programs, and its relationship with local unions and apprenticeship programs, and other community groups;

(C) a description of the proposed site for the program;

(D) a description of the educational and job training activities, work opportunities, and other services that will be provided to participants;

(E) a description of the proposed construction or rehabilitation activities to be undertaken and the anticipated schedule for carrying out such activities;

(F) a description of the manner in which eligible youths will be recruited and selected, including a description of arrangements which will be made with community-based organizations, State and local educational agencies, including agencies of Indian tribes, public assistance agencies, the courts of jurisdiction for status and youth offenders, shelters for homeless individuals and other agencies that serve homeless youth, foster care agencies, and other appropriate public and private agencies;

(G) a description of the special outreach efforts that will be undertaken to recruit eligible young women (including young women with dependent children);

(H) a description of how the proposed program will be coordinated with other Federal,

State, and local activities and activities conducted by Indian tribes, including vocational, adult and bilingual education programs, job training provided with funds available under title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.] and the Family Support Act of 1988, and housing and community development programs, including programs that receive assistance under section 5306 of this title;

(I) assurances that there will be a sufficient number of adequately trained supervisory personnel in the program who have attained the level of journeyman or its equivalent;

(J) a description of the applicant's relationship with local building trade unions regarding their involvement in training, and the relationship of the Youthbuild program with established apprenticeship programs;

(K) a description of activities that will be undertaken to develop the leadership skills of participants;

(L) a detailed budget and a description of the system of fiscal controls and auditing and accountability procedures that will be used to ensure fiscal soundness;

(M) a description of the commitments for any additional resources to be made available to the program from the applicant, from recipients of other Federal, State or local housing and community development assistance who will sponsor any part of the construction, rehabilitation, operation and maintenance, or other housing and community development activities undertaken as part of the program, or from other Federal, State or local activities and activities conducted by Indian tribes, including, but not limited to, vocational, adult and bilingual education programs, and job training provided with funds available under title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.] and the Family Support Act of 1988;

(N) identification and description of the financing proposed for any—

- (i) rehabilitation;
- (ii) acquisition of the property; or
- (iii) construction;

(O) identification and description of the entity that will operate and manage the property;

(P) a certification by the public official responsible for submitting the comprehensive housing affordability strategy under section 12705 of this title that the proposed activities are consistent with the approved housing strategy of the State or unit of general local government within which the project is located; and

(Q) a certification that the applicant will comply with the requirements of the Fair Housing Act [42 U.S.C. 3601 et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], and the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], and will affirmatively further fair housing.

(d) Selection criteria

The Secretary shall establish selection criteria for assistance under this section, which shall include—

(1) the qualifications or potential capabilities of the applicant;

(2) the feasibility of the Youthbuild program;

(3) the potential for developing a successful Youthbuild program;

(4) the need for the prospective project, as determined by the degree of economic distress of the community from which participants would be recruited (such as poverty, youth unemployment, number of individuals who have dropped out of high school) and of the community in which the housing proposed to be constructed or rehabilitated would be located (such as incidence of homelessness, shortage of affordable housing, poverty);

(5) the apparent commitment of the applicant to leadership development, education, and training of participants;

(6) the inclusion of previously homeless tenants in the housing provided;

(7) the commitment of other resources to the program by the applicant and by recipients of other Federal, State or local housing and community development assistance who will sponsor any part of the construction, rehabilitation, operation and maintenance, or other housing and community development activities undertaken as part of the program, or by other Federal, State or local activities and activities conducted by Indian tribes, including, but not limited to, vocational, adult and bilingual education programs, and job training provided with funds available under title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.] and the Family Support Act of 1988; and

(8) such other factors as the Secretary determines to be appropriate for purposes of carrying out the program established by this part in an effective and efficient manner.

(e) Priority for applicants who obtain housing money from other sources

The Secretary shall give priority in the award of grants under this section to applicants to the extent that they propose to finance activities described in paragraphs (1), (2), and (6) of subsection (b) of this section from funds provided from Federal, State, local, or private sources other than assistance under this part.

(f) Approval

The Secretary shall notify each applicant, not later than 4 months after the date of the submission of the application, whether the application is approved or not approved.

(g) Combined planning and implementation grant application procedure

The Secretary shall develop a procedure under which an applicant may apply at the same time and in a single application for a planning grant and an implementation grant, with receipt of the implementation grant conditioned on successful completion of the activities funded by the planning grant.

(Pub. L. 101-625, title IV, § 454, as added Pub. L. 102-550, title I, § 164, Oct. 28, 1992, 106 Stat. 3725;

amended Pub. L. 105-277, div. A, §101(f) [title VIII, §405(d)(43)(A), (f)(34)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-428, 2681-434.)

REFERENCES IN TEXT

The Workforce Investment Act of 1998, referred to in subsecs. (c)(2)(H), (M) and (d)(7), is Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 936, as amended. Title I of the Act is classified principally to chapter 30 (§2801 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

The Family Support Act of 1988, referred to in subsecs. (c)(2)(H), (M) and (d)(7), is Pub. L. 100-485, Oct. 13, 1988, 102 Stat. 2343, as amended. For complete classification of this Act to the Code, see Short Title of 1988 Amendment note under section 1305 of this title and Tables.

The Fair Housing Act, referred to in subsec. (c)(2)(Q), is title VIII of Pub. L. 90-284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I (§3601 et seq.) of chapter 45 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (c)(2)(Q), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Age Discrimination Act of 1975, referred to in subsec. (c)(2)(Q), is title III of Pub. L. 94-135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

AMENDMENTS

1998—Subsecs. (c)(2)(H), (M), (d)(7). Pub. L. 105-277, §101(f) [title VIII, §405(f)(34)], struck out “the Job Training Partnership Act and” before “title I of the Workforce”.

Pub. L. 105-277, §101(f) [title VIII, §405(d)(43)(A)], substituted “the Job Training Partnership Act and title I of the Workforce Investment Act of 1998” for “the Job Training Partnership Act”.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 101(f) [title VIII, §405(d)(43)(A)] of Pub. L. 105-277 effective Oct. 21, 1998, and amendment by section 101(f) [title VIII, §405(f)(34)] of Pub. L. 105-277 effective July 1, 2000, see section 101(f) [title VIII, §405(g)(1), (2)(B)] of Pub. L. 105-277, set out as a note under section 3502 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12899e of this title.

§ 12899d. Youthbuild program requirements

(a) Residential rental housing

Each residential rental housing project receiving assistance under this part shall meet the following requirements:

(1) Occupancy by low- and very low-income families

In the project—

(A) at least 90 percent of the units shall be occupied, or available for occupancy, by individuals and families with incomes less than 60 percent of the area median income, adjusted for family size; and

(B) the remaining units shall be occupied, or available for occupancy, by low-income families.

(2) Tenant protections

(A) Lease

The lease between a tenant and an owner of residential rental housing assisted under this part shall be for not less than 1 year, unless otherwise mutually agreed to by the tenant and the owner, and shall contain such terms and conditions as the Secretary shall determine to be appropriate.

(B) Termination of tenancy

An owner shall not terminate the tenancy or refuse to renew the lease of a tenant of residential rental housing assisted under this title¹ except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable Federal, State, or local law, or for other good cause. Any termination or refusal to renew must be preceded by not less than 30 days by the owner's service upon the tenant of a written notice specifying the grounds for the action.

(C) Maintenance and replacement

The owner of residential rental housing assisted under this part shall maintain the premises in compliance with all applicable housing quality standards and local code requirements.

(D) Tenant selection

The owner of residential rental housing assisted under this part shall adopt written tenant selection policies and criteria that—

(i) are consistent with the purpose of providing housing for very low-income and low-income families and individuals;

(ii) are reasonably related to program eligibility and the applicant's ability to perform the obligations of the lease;

(iii) give reasonable consideration to the housing needs of families that would qualify for a preference under any system of preferences established under section 1437d(c)(1) of this title; and

(iv) provide for (I) the selection of tenants from a written waiting list in the chronological order of their application, to the extent practicable, and (II) for the prompt notification in writing of any rejected applicant of the grounds for any rejection.

(3) Limitation on rental payments

Tenants in each project shall not be required to pay rent in excess of the amount provided under section 1437a(a) of this title.

(4) Tenant participation plan

For each project owned by a nonprofit organization, the organization shall provide a plan for and follow a program of tenant participation in management decisions.

(5) Prohibition against discrimination

A unit in a project assisted under this part may not be refused for leasing to a family

¹ See References in Text note below.

holding tenant-based assistance under section 1437f of this title because of the status of the prospective tenant as a holder of such assistance.

(b) Transitional housing

Each transitional housing project receiving assistance under this part shall adhere to the requirements regarding service delivery, housing standards, and rent limitations applicable to comparable housing receiving assistance under title IV of the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11361 et seq.].

(c) Limitations on profits for rental and transitional housing

(1) Monthly rental limitation

The aggregate monthly rental for each eligible project may not exceed the operating costs of the project (including debt service, management, adequate reserves, and other operating costs) plus a 6 percent return on any equity investment of the project owner.

(2) Profit limitations on partners

A nonprofit organization that receives assistance under this part for a project shall agree to use any profit received from the operation, sale, or other disposition of the project for the purpose of providing housing for low- and moderate-income families. Profit-motivated partners in a nonprofit partnership may receive—

(A) not more than a 6 percent return on their equity investment from project operations; and

(B) upon disposition of the project, not more than an amount equal to their initial equity investment plus a return on that investment equal to the increase in the Consumer Price Index for the geographic location of the project since the time of the initial investment of such partner in the project.

(d) Homeownership

Each homeownership project that receives assistance under this part shall comply with the requirements of part A or part B of this subchapter.

(e) Restrictions on conveyance

The ownership interest in a project that receives assistance under this part may not be conveyed unless the instrument of conveyance requires a subsequent owner to comply with the same restrictions imposed upon the original owner.

(f) Conversion of transitional housing

The Secretary may waive the requirements of subsection (b) of this section to permit the conversion of a transitional housing project to a permanent housing project only if such housing would meet the requirements for residential rental housing specified in this section.

(g) Period of restrictions

A project that receives assistance under this part shall comply with the requirements of this section for the remaining useful life of the property.

(Pub. L. 101-625, title IV, §455, as added Pub. L. 102-550, title I, §164, Oct. 28, 1992, 106 Stat. 3728;

amended Pub. L. 105-276, title V, §514(a)(2)(B), Oct. 21, 1998, 112 Stat. 2547; Pub. L. 106-400, §2, Oct. 30, 2000, 114 Stat. 1675.)

REFERENCES IN TEXT

This title, referred to in subsec. (a)(2)(B), means title IV of Pub. L. 101-625, known as the Homeownership and Opportunity Through HOPE Act, and probably should have been “this subtitle”, meaning subtitle D of title IV of Pub. L. 101-625, as added by Pub. L. 102-550, which is classified generally to this part. For complete classification of title IV of Pub. L. 101-625 to the Code, see Short Title note set out under section 1437aaa of this title and Tables.

The McKinney-Vento Homeless Assistance Act, referred to in subsec. (b), is Pub. L. 100-77, July 22, 1987, 101 Stat. 482, as amended. Title IV of the Act is classified principally to subchapter IV (§11361 et seq.) of chapter 119 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of this title and Tables.

AMENDMENTS

2000—Subsec. (b). Pub. L. 106-400 substituted “McKinney-Vento Homeless Assistance Act” for “Stewart B. McKinney Homeless Assistance Act”.

1998—Subsec. (a)(2)(D)(iii). Pub. L. 105-276 substituted “any system of preferences established under section 1437d(c)(1) of this title” for “section 1437d(c)(4)(A) of this title”.

§ 12899e. Additional program requirements

(a) Eligible participants

(1) In general

Except as provided in paragraph (2), an individual may participate in a Youthbuild program receiving assistance under this part only if such individual is—

(A) 16 to 24 years of age, inclusive;

(B) a very low-income individual or a member of a very low-income family; and

(C) an individual who has dropped out of high school.

(2) Exception for individuals not meeting income or educational need requirements

Not more than 25 percent of the participants in such program may be individuals who do not meet the requirements of either paragraphs¹ (1)(B) or (C), but who have educational needs despite attainment of a high school diploma or its equivalent.

(3) Participation limitation

Any eligible individual selected for full-time participation in a Youthbuild program may be offered full-time participation for a period of not less than 6 months and not more than 24 months.

(b) Minimum time devoted to educational services and activities

A Youthbuild program receiving assistance under this part shall be structured so that 50 percent of the time spent by participants in the program is devoted to educational services and activities, such as those specified in subparagraphs (B) through (F)² of section 12899c(b)(4) of this title.

(c) Authority restriction

No provision of this part may be construed to authorize any agency, officer, or employee of

¹So in original. Probably should be “paragraph”.

²So in original. Section 12899c(b)(4) of this title does not contain a subpar. (F).

the United States to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system, or over the selection of library resources, textbooks, or other printed or published instructional materials by any educational institution or school system.

(d) State and local standards

All educational programs and activities supported with funds provided under this part shall be consistent with applicable State and local educational standards. Standards and procedures with respect to the awarding of academic credit and certifying educational attainment in such programs shall be consistent with applicable State and local educational standards.

(e) Wages, labor standards, and nondiscrimination

To the extent consistent with the provisions of this part, sections 142, 143 and 167 of the Job Training Partnership Act (as in effect on the day before August 7, 1998), relating to wages and benefits, labor standards, and nondiscrimination, shall apply to the programs conducted under this part as if such programs were conducted under the Job Training Partnership Act (as in effect on the day before August 7, 1998). This section may not be construed to prevent a recipient of a grant under this part from using funds from non-Federal sources to increase wages and benefits under such programs, if appropriate.

(Pub. L. 101-625, title IV, §456, as added Pub. L. 102-550, title I, §164, Oct. 28, 1992, 106 Stat. 3730; amended Pub. L. 105-277, div. A, §101(f) [title VIII, §405(d)(43)(B)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-428.)

REFERENCES IN TEXT

The Job Training Partnership Act, referred to in subsec. (e), is Pub. L. 97-300, Oct. 13, 1982, 96 Stat. 1322, as amended, which was classified generally to chapter 19 (§1501 et seq.) of Title 29, Labor, prior to repeal by Pub. L. 105-220, title I, §199(b)(2), (c)(2)(B), Aug. 7, 1998, 112 Stat. 1059, effective July 1, 2000. Sections 142, 143, and 167 of the Act were classified to sections 1552, 1553, and 1577, respectively, of Title 29 prior to repeal. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1998—Subsec. (e). Pub. L. 105-277 inserted “(as in effect on the day before August 7, 1998)” after “the Job Training Partnership Act” in two places.

§ 12899f. Definitions

For purposes of this part:

(1) Adjusted income

The term “adjusted income” has the meaning given the term in section 1437a(b) of this title.

(2) Applicant

The term “applicant” means a public or private nonprofit agency, including—

- (A) a community-based organization;
- (B) an administrative entity designated under section 103(b)(1)(B) of the Job Training Partnership Act;
- (C) a community action agency;

(D) a State and local housing development agency;

(E) a community development corporation;

(F) a State and local youth service and conservation corps; and

(G) any other entity eligible to provide education and employment training under other Federal employment training programs.

(3) Community-based organization

The term “community-based organization” means a private nonprofit organization that—

(A) maintains, through significant representation on the organization’s governing board or otherwise, accountability to low-income community residents and, to the extent practicable, low-income beneficiaries of programs receiving assistance under this part; and

(B) has a history of serving the local community or communities where a program receiving assistance under this part is located.

(4) Homeless individual

The term “homeless individual” has the meaning given the term in section 11302 of this title.

(5) Housing development agency

The term “housing development agency” means any agency of a State or local government, or any private nonprofit organization that is engaged in providing housing for homeless or low-income families.

(6) Income

The term “income” has the meaning given the term in section 1437a(b) of this title.

(7) Indian tribe

The term “Indian tribe” has the same meaning given such term in section 5302(a)(17) of this title.

(8) Individual who has dropped out of high school

The term “individual who has dropped out of high school” means an individual who is neither attending any school nor subject to a compulsory attendance law and who has not received a secondary school diploma or a certificate of equivalency for such diploma.

(9) Institution of higher education

The term “institution of higher education” has the meaning given the term in section 1001 of title 20.

(10) Limited-English proficiency

The term “limited-English proficiency” has the meaning given the term in section 7601(8)¹ of title 20.

(11) Low-income family

The term “low-income family” has the meaning given the term in section 1437a(b) of this title.

(12) Offender

The term “offender” means any adult or juvenile with a record of arrest or conviction for a criminal offense.

¹ See References in Text note below.

(13) Qualified nonprofit agency

The term “qualified public or private nonprofit agency” means any nonprofit agency that has significant prior experience in the operation of projects similar to the Youthbuild program authorized under this part and that has the capacity to provide effective technical assistance.

(14) Related facilities

The term “related facilities” includes cafeterias or dining halls, community rooms or buildings, appropriate recreation facilities, and other essential service facilities.

(15) Secretary

The term “Secretary” means the Secretary of Housing and Urban Development.

(16) State

The term “State” means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Trust Territories of the Pacific Islands, or any other territory or possession of the United States.

(17) Transitional housing

The term “transitional housing” means a project that has as its purpose facilitating the movement of homeless individuals and families to independent living within a reasonable amount of time. Transitional housing includes housing primarily designed to serve deinstitutionalized homeless individuals and other homeless individuals with mental or physical disabilities and homeless families with children.

(18) Very low-income family

The term “very low-income family” has the meaning given the term in section 1437a(b) of this title.

(19) Youthbuild program

The term “Youthbuild program” means any program that receives assistance under this part and provides disadvantaged youth with opportunities for employment, education, leadership development, and training in the construction or rehabilitation of housing for homeless individuals and members of low- and very low-income families.

(Pub. L. 101-625, title IV, §457, as added Pub. L. 102-550, title I, §164, Oct. 28, 1992, 106 Stat. 3731; amended Pub. L. 103-382, title III, §394(d), Oct. 20, 1994, 108 Stat. 4027; Pub. L. 105-244, title I, §102(a)(13)(M), Oct. 7, 1998, 112 Stat. 1621; Pub. L. 106-400, §2, Oct. 30, 2000, 114 Stat. 1675.)

REFERENCES IN TEXT

Section 103(b)(1)(B) of the Job Training Partnership Act, referred to in par. (2)(B), which was classified to section 1513(b)(1)(B) of Title 29, Labor, was repealed by Pub. L. 105-220, title I, §199(b)(2), (c)(2)(B), Aug. 7, 1998, 112 Stat. 1059, effective July 1, 2000. Pursuant to section 2940(b) of Title 29, references to a provision of the Job Training Partnership Act, effective Aug. 7, 1998, are deemed to refer to that provision or the corresponding provision of the Workforce Investment Act of 1998, Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 936, and effective July 1, 2000, are deemed to refer to the corresponding provi-

sion of the Workforce Investment Act of 1998. For complete classification of the Workforce Investment Act of 1998 to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

Section 7601(8) of title 20, referred to in par. (10), was in the original section 7004(a) of the Elementary and Secondary Education Act of 1965, and was translated as if it read section 7501(8) of that Act to reflect the probable intent of Congress, because the Elementary and Secondary Education Act of 1965 did not contain a section 7004, but did contain a section 7501(8) which defined limited English proficiency. The section was omitted in the general amendment of title VII of the Elementary and Secondary Education Act of 1965 by Pub. L. 107-110, title VII, §701, Jan. 8, 2002, 115 Stat. 1907.

AMENDMENTS

2000—Par. (4). Pub. L. 106-400 made technical amendment to reference in original act which appears in text as reference to section 11302 of this title.

1998—Par. (9). Pub. L. 105-244 substituted “section 1001” for “section 1141(a)”.

1994—Par. (10). Pub. L. 103-382 substituted “section 7601(8) of title 20” for “section 3283 of title 20”.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of Title 20, Education.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12899b of this title.

§ 12899g. Management and technical assistance**(a) Secretary assistance**

The Secretary may enter into contracts with a qualified public or private nonprofit agency to provide assistance to the Secretary in the management, supervision, and coordination of Youthbuild programs receiving assistance under this part.

(b) Sponsor assistance

The Secretary shall enter into contracts with a qualified public or private nonprofit agency to provide appropriate training, information, and technical assistance to sponsors of programs assisted under this part.

(c) Application preparation

Technical assistance may also be provided in the development of program proposals and the preparation of applications for assistance under this part to eligible entities which intend or desire to submit such applications. Community-based organizations shall be given first priority in the provision of such assistance.

(d) Reservation of funds

In each fiscal year, the Secretary shall reserve 5 percent of the amounts available for activities under this part pursuant to section 12870 of this title to carry out subsections (b) and (c) of this section.

(Pub. L. 101-625, title IV, §458, as added Pub. L. 102-550, title I, §164, Oct. 28, 1992, 106 Stat. 3733.)

§ 12899h. Contracts

Each Youthbuild program shall carry out the services and activities under this part directly or through arrangements or under contracts with administrative entities designated under section 103(b)(1)(B) of the Job Training Partnership Act, with State and local educational agencies, institutions of higher education, State and local housing development agencies, or with other public agencies, including agencies of Indian tribes, and private organizations.

(Pub. L. 101-625, title IV, § 459, as added Pub. L. 102-550, title I, § 164, Oct. 28, 1992, 106 Stat. 3733.)

REFERENCES IN TEXT

Section 103(b)(1)(B) of the Job Training Partnership Act, referred to in text, which was classified to section 1513(b)(1)(B) of Title 29, Labor, was repealed by Pub. L. 105-220, title I, § 199(b)(2), (c)(2)(B), Aug. 7, 1998, 112 Stat. 1059, effective July 1, 2000. Pursuant to section 2940(b) of Title 29, references to a provision of the Job Training Partnership Act, effective Aug. 7, 1998, are deemed to refer to that provision or the corresponding provision of the Workforce Investment Act of 1998, Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 936, and effective July 1, 2000, are deemed to refer to the corresponding provision of the Workforce Investment Act of 1998. For complete classification of the Workforce Investment Act of 1998 to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

§ 12899h-1. Ineligibility of Indian tribes

Indian tribes, Indian housing authorities, and other agencies primarily serving Indians or Indian areas shall not be eligible applicants for amounts made available for assistance under this part for fiscal year 1998 and fiscal years thereafter.

(Pub. L. 101-625, title IV, § 460, as added Pub. L. 104-330, title V, § 504(a)(2), Oct. 26, 1996, 110 Stat. 4044; amended Pub. L. 105-276, title V, § 595(e)(15), Oct. 21, 1998, 112 Stat. 2659.)

PRIOR PROVISIONS

A prior section 460 of Pub. L. 101-625 was renumbered section 461, and is classified to section 12899i of this title.

AMENDMENTS

1998—Pub. L. 105-276 substituted “1998” for “1997”.

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 Title 25, Indians.

Section 504(b) of Pub. L. 104-330 provided that: “The amendments under subsection (a) [enacting this section] shall apply with respect to amounts made available for assistance under subtitle D of title II of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12899 et seq.] for fiscal year 1998 and fiscal years thereafter.”

§ 12899i. Regulations

The Secretary shall issue any regulations necessary to carry out this part.

(Pub. L. 101-625, title IV, § 461, formerly § 460, as added Pub. L. 102-550, title I, § 164, Oct. 28, 1992, 106 Stat. 3733; renumbered § 461, Pub. L. 104-330, title V, § 504(a)(1), Oct. 26, 1996, 110 Stat. 4043.)

CHAPTER 131—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

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§ 12901. Purpose

The purpose of this chapter¹ is to provide States and localities with the resources and incentives to devise long-term comprehensive strategies for meeting the housing needs of persons with acquired immunodeficiency syndrome and families of such persons.

(Pub. L. 101-625, title VIII, § 852, Nov. 28, 1990, 104 Stat. 4375; Pub. L. 102-550, title VI, § 606(j)(1), Oct. 28, 1992, 106 Stat. 3810.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this title”, and was translated as reading “this subtitle”, meaning subtitle D (§§ 851-863) of title VIII of Pub. L. 101-625, to reflect the probable intent of Congress.

AMENDMENTS

1992—Pub. L. 102-550 inserted before period at end “and families of such persons”.

SHORT TITLE

Section 851 of Pub. L. 101-625 provided that: “This subtitle [subtitle D (§§ 851-863) of title VIII of Pub. L. 101-625, enacting this chapter] may be cited as the ‘AIDS Housing Opportunity Act.’”

¹ See References in Text note below.

REGULATIONS

Section 606(k) of Pub. L. 102-550 provided that:

“(1) INTERIM REGULATIONS.—Not later than the expiration of the 30-day period beginning on the date of the enactment of this Act [Oct. 28, 1992], the Secretary of Housing and Urban Development shall submit to the Congress a copy of proposed interim regulations implementing subtitle D of title VIII of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12901 et seq.] (as amended by this section). Not later than the expiration of the 45-day period beginning on the date of the enactment of this Act, but not before the expiration of the 15-day period beginning upon the submission of the proposed interim regulations to the Congress, the Secretary shall publish interim regulations implementing such subtitle (as amended), which shall take effect upon publication.

“(2) FINAL REGULATIONS.—Not later than the expiration of the 90-day period beginning upon the publication of interim regulations under paragraph (1), the Secretary shall issue final regulations implementing subtitle D of title VIII of the Cranston-Gonzalez National Affordable Housing Act (as amended by this section) after notice and opportunity for public comment regarding the interim regulations, pursuant to the provisions of section 553 of title 5, United States Code (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section). The duration of the period for public comment under such section 553 shall be not less than 60 days, and the final regulations shall take effect upon issuance.”

§ 12902. Definitions

For purposes of this chapter:

(1) The term “acquired immunodeficiency syndrome and related diseases” means the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome.

(2) The term “applicant” means a State, a unit of general local government, or a nonprofit organization eligible to receive assistance under this chapter.

(3) The term “low-income individual” means any individual or family whose incomes do not exceed 80 percent of the median income for the area, as determined by the Secretary of Housing and Urban Development, with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 percent of the median income for the area if the Secretary finds that such variations are necessary because of prevailing levels of construction costs or unusually high or low family incomes.

(4) The term “grantee” means a State or unit of general local government receiving grants from the Secretary under this chapter.

(5) The term “metropolitan statistical area” means a metropolitan statistical area as established by the Office of Management and Budget. Such term includes the District of Columbia.

(6) The term “locality” means the geographical area within the jurisdiction of a local government.

(7) The term “recipient” means a grantee or other applicant receiving funds under this chapter.¹

(8) The term “Secretary” means the Secretary of Housing and Urban Development.

(9) The term “State” means a State of the United States, the District of Columbia, and the Commonwealth of Puerto Rico, or any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive to act on behalf of the jurisdiction with regard to provisions of this chapter.

(10) The term “unit of general local government” has the same meaning as in section 12704 of this title.

(11) The term “city” has the meaning given the term in section 5302(a) of this title.

(12) The term “eligible person” means a person with acquired immunodeficiency syndrome or a related disease and the family of such person.

(13) The term “nonprofit organization” means any nonprofit organization (including a State or locally chartered, nonprofit organization) that—

(A) is organized under State or local laws;

(B) has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual;

(C) complies with standards of financial accountability acceptable to the Secretary; and

(D) has among its purposes significant activities related to providing services or housing to persons with acquired immunodeficiency syndrome or related diseases.

(14) The term “project sponsor” means a nonprofit organization or a housing agency of a State or unit of general local government that contracts with a grantee to receive assistance under this chapter.

(Pub. L. 101-625, title VIII, §853, Nov. 28, 1990, 104 Stat. 4375; Pub. L. 102-550, title VI, §606(c), Oct. 28, 1992, 106 Stat. 3807.)

REFERENCES IN TEXT

This chapter, referred to in par. (7), was in the original “this title”, and was translated as reading “this subtitle”, meaning subtitle D (§§851-863) of title VIII of Pub. L. 101-625, to reflect the probable intent of Congress.

AMENDMENTS

1992—Par. (2). Pub. L. 102-550, §606(c)(1), substituted “organization eligible to receive assistance under this chapter” for “sponsor receiving assistance from a grantee”.

Par. (5). Pub. L. 102-550, §606(c)(2), substituted “term ‘metropolitan statistical area’ means” for “term ‘metropolitan area’ means”.

Pars. (11) to (14). Pub. L. 102-550, §606(c)(3), added pars. (11) to (14).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11403g of this title.

§ 12903. General authority**(a) Grants authorized**

The Secretary shall, to the extent of amounts approved in appropriations Acts under section 12912 of this title, make grants to States, units of general local government, and nonprofit organizations.

(b) Implementation of eligible activities

A grantee shall carry out eligible activities under section 12904 of this title through project

¹ See References in Text note below.

sponsors. Any grantee that is a State that enters into a contract with a nonprofit organization to carry out eligible activities in a locality shall obtain the approval of the unit of general local government for the locality before entering into the contract.

(c) Allocation of resources

(1) Formula allocation

The Secretary shall allocate 90 percent of the amounts approved in appropriation Acts under section 12912 of this title among States and cities whose most recent comprehensive housing affordability strategy (or abbreviated strategy) has been approved by the Secretary under section 12705 of this title. Such amounts shall be allocated as follows:

(A) 75 percent among—

(i) cities that are the most populous unit of general local government in a metropolitan statistical area having a population greater than 500,000 and more than 1,500 cases of acquired immunodeficiency syndrome; and

(ii) States with more than 1,500 cases of acquired immunodeficiency syndrome outside of metropolitan statistical areas described in clause (i); and

(B) 25 percent among cities that (i) are the most populous unit of general local government in a metropolitan statistical area having a population greater than 500,000 and more than 1,500 cases of acquired immunodeficiency syndrome, and (ii) have a higher than average per capita incidence of acquired immunodeficiency syndrome.

A single city may receive assistance allocated under subparagraph (A) and subparagraph (B). For purposes of allocating amounts under this paragraph for any fiscal year, the number of cases of acquired immunodeficiency syndrome shall be the number of such cases reported to and confirmed by the Director of the Centers for Disease Control of the Public Health Service as of March 31 of the fiscal year immediately preceding the fiscal year for which the amounts are appropriated and to be allocated.

(2) Minimum grant

Subject only to the availability of amounts pursuant to appropriations Acts under section 12912 of this title, for each fiscal year each eligible grantee under paragraph (1) shall receive funding according to its proportionate share of the total, except that each entity shall receive a minimum allocation of \$200,000 from subparagraphs (A) and (B) of paragraph (1) combined, and any increase this entails from the formula amount will be deducted from all other allocations exceeding \$200,000 on a pro rata basis. If allocation under subparagraph (A) of paragraph (1) would allocate less than \$200,000 for any State, the allocation for such State shall be \$200,000 and the amount of the increase under this sentence shall be deducted on a pro rata basis from the allocations of the other States, except that a reduction under this subparagraph may not reduce the amount allocated to any eligible entity to less than \$200,000.

(3) Nonformula allocation

(A) In general

The Secretary shall allocate 10 percent of the amounts appropriated under section 12912 of this title among—

(i) States and units of general local government that do not qualify for allocation of amounts under paragraph (1); and

(ii) States, units of general local government, and nonprofit organizations, to fund special projects of national significance.

(B) Selection

In selecting projects under this paragraph, the Secretary shall consider (i) relative numbers of acquired immunodeficiency syndrome cases and per capita acquired immunodeficiency syndrome incidence; (ii) housing needs of eligible persons in the community; (iii) extent of local planning and coordination of housing programs for eligible persons; and (iv) the likelihood of the continuation of State and local efforts.

(C) National significance projects

For the purpose of subparagraph (A)(ii), in selecting projects of national significance the Secretary shall consider (i) the need to assess the effectiveness of a particular model for providing supportive housing for eligible persons; (ii) the innovative nature of the proposed activity; and (iii) the potential replicability of the proposed activity in other similar localities or nationally.

(d) Applications

Funds made available under this section shall be allocated among applications submitted by applicants and approved by the Secretary. Applications for assistance under this section shall be submitted by an applicant in such form and in accordance with such procedures as the Secretary shall establish. Such applications shall contain—

(1) a description of the proposed activities;

(2) a description of the size and characteristics of the population that would be served by the proposed activities;

(3) a description of the public and private resources that are expected to be made available in connection with the proposed activities;

(4) assurances satisfactory to the Secretary that any property purchased, leased, rehabilitated, renovated, or converted with assistance under this section shall be operated for not less than 10 years for the purpose specified in the application, except as otherwise specified in this chapter;

(5) evidence in a form acceptable to the Secretary that the proposed activities will meet urgent needs that are not being met by available public and private sources; and

(6) such other information or certifications that the Secretary determines to be necessary to achieve the purposes of this section.

(e) Additional requirement for metropolitan areas

In addition to the other requirements of this section, to be eligible for a grant to a metropolitan area under this section, the major city, urban county, and any city with a population of

50,000 or more in that metropolitan area shall establish or designate a governmental agency or organization for receipt and use of amounts received from a grant under this section and shall submit to the Secretary, together with the application under subsection (d) of this section a proposal for the operation of such agency or organization.

(f) Additional requirement for city formula grantees

In addition to the other requirements of this section, to be eligible for a grant pursuant to subsection (c)(1) of this section, a city shall provide such assurances as the Secretary may require that any grant amounts received will be allocated among eligible activities in a manner that addresses the needs within the metropolitan statistical area in which the city is located, including areas not within the jurisdiction of the city. Any such city shall coordinate with other units of general local government located within the metropolitan statistical area to provide such assurances and comply with the assurances.

(Pub. L. 101-625, title VIII, § 854, Nov. 28, 1990, 104 Stat. 4376; Pub. L. 102-550, title VI, § 606(d), (j)(2), Oct. 28, 1992, 106 Stat. 3807, 3810.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-550, § 606(d)(1), substituted “, units of general local government, and nonprofit organizations” for “and units of general local government”.

Subsec. (b). Pub. L. 102-550, § 606(d)(2), added subsec. (b) and struck out former subsec. (b) which read as follows: “ELIGIBILITY.—A jurisdiction shall be eligible to receive a grant only if it has obtained an approved housing strategy (or an approved abbreviated housing strategy) in accordance with section 12705 of this title. A grantee shall carry out activities authorized under this chapter through contracts with project sponsors, except that a grantee that is a State shall obtain the approval of the unit of general local government for the locality in which a project is to be located prior to entering into such contracts.”

Subsec. (c)(1). Pub. L. 102-550, § 606(d)(3), added par. (1) and struck out former par. (1) which read as follows: “IN GENERAL.—90 percent of the amounts approved in appropriations Acts under section 12912 of this title shall be allocated among eligible grantees on the basis of the incidence of acquired immunodeficiency syndrome. Of the amounts made available under the previous sentence, the Secretary shall allocate—

“(A) 75 percent among units of general local government located in metropolitan statistical areas with populations in excess of 500,000 and more than 1,500 cases of acquired immunodeficiency syndrome and States with more than 1,500 cases of acquired immunodeficiency syndrome outside of metropolitan statistical areas described in subparagraph (A), and

“(B) 25 percent among units of general local government in metropolitan statistical areas with populations in excess of 500,000 and more than 1,500 cases of acquired immunodeficiency syndrome, that have a higher than average per capita incidence of acquired immunodeficiency syndrome.”

Subsec. (c)(3). Pub. L. 102-550, § 606(d)(4)(A), substituted “Nonformula allocation” for “Noneligible grantees” in heading.

Subsec. (c)(3)(A). Pub. L. 102-550, § 606(d)(4)(B), added subpar. (A) and struck out former subpar. (A) which read as follows: “IN GENERAL.—10 percent of the amounts appropriated under section 12912 of this title shall be distributed to grantees and recipients by the Secretary—

“(i) to meet housing needs in States and localities that do not qualify under paragraph (1), or that do qualify under paragraph (1) but do not have an approved housing strategy under section 12705 of this title, and

“(ii) to fund special projects of national significance.”

Subsec. (c)(3)(B), (C). Pub. L. 102-550, § 606(j)(2), substituted “eligible persons” for “persons with acquired immunodeficiency syndrome” wherever appearing.

Subsec. (d). Pub. L. 102-550, § 606(d)(5), substituted “applications submitted by applicants and approved by the Secretary” for “approvable applications submitted by eligible applicants” in first sentence.

Subsec. (e). Pub. L. 102-550, § 606(d)(6), substituted “other requirements of this section” for “requirements of subsection (b) of this section”.

Subsec. (f). Pub. L. 102-550, § 606(d)(7), added subsec. (f).

CHANGE OF NAME

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102-531, title III, § 312, Oct. 27, 1992, 106 Stat. 3504.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12904 of this title.

§ 12904. Eligible activities

Grants allocated under this chapter shall be available only for approved activities to carry out strategies designed to prevent homelessness among eligible persons. Approved activities shall include activities that—

(1) enable public and nonprofit organizations or agencies to provide housing information to such persons and coordinate efforts to expand housing assistance resources for such persons under section 12906 of this title;

(2) facilitate the development and operation of shelter and services for such persons under section 12907 of this title;

(3) provide rental assistance to such persons under section 12908 of this title;

(4) facilitate (through project-based rental assistance or other means) the moderate rehabilitation of single room occupancy dwellings (SROs) that would be made available only to such persons under section 12909 of this title;

(5) facilitate the development of community residences for eligible persons under section 12910 of this title;

(6) carry out other activities that the Secretary develops in cooperation with eligible States and localities, except that activities developed under this paragraph may be assisted only with amounts provided under section 12903(c)(3) of this title.

The Secretary shall establish standards and guidelines for approved activities. The Secretary shall permit grantees to refine and adapt such standards and guidelines for individual projects, where such refinements and adaptations are made necessary by local circumstances.

(Pub. L. 101-625, title VIII, § 855, Nov. 28, 1990, 104 Stat. 4378; Pub. L. 102-550, title VI, § 606(e), (h)(2), (j)(3), Oct. 28, 1992, 106 Stat. 3808, 3810.)

AMENDMENTS

1992—Pub. L. 102-550, § 606(j)(3)(A), in introductory provisions, substituted “eligible persons” for “such persons with acquired immunodeficiency syndrome”.

Par. (3). Pub. L. 102-550, § 606(h)(2), struck out “short-term” after “provide”.

Par. (5). Pub. L. 102-550, § 606(j)(3)(B), struck out “with acquired immunodeficiency syndrome” after “persons”.

Par. (6). Pub. L. 102-550, § 606(e), inserted before period at end “, except that activities developed under this paragraph may be assisted only with amounts provided under section 12903(c)(3) of this title”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12903, 12905 of this title.

§ 12905. Responsibilities of grantees

(a) Prohibition of substitution of funds

Amounts received from grants under this chapter may not be used to replace other amounts made available or designated by State or local governments for use for the purposes under this chapter.

(b) Capability

The recipient shall have, in the determination of the grantee or the Secretary, the capacity and capability to effectively administer a grant under this chapter.

(c) Cooperation

The recipient shall agree to cooperate and coordinate in providing assistance under this chapter with the agencies of the relevant State and local governments responsible for services in the area served by the applicant for eligible persons and other public and private organizations and agencies providing services for such eligible persons.

(d) Prohibition of fees

The recipient shall agree that no fee will be charged to any eligible person for any housing or services provided with amounts from a grant under this chapter.

(e) Confidentiality

The recipient shall agree to ensure the confidentiality of the name of any individual assisted with amounts from a grant under this chapter and any other information regarding individuals receiving such assistance.

(f) Financial records

The recipient shall agree to maintain and provide the grantee or the Secretary with financial records sufficient, in the determination of the Secretary, to ensure proper accounting and disbursing of amounts received from a grant under this chapter.

(g) Administrative expenses

(1) Grantees

Notwithstanding any other provision of this chapter, each grantee may use not more than 3 percent of the grant amount for administrative costs relating to administering grant amounts and allocating such amounts to project sponsors.

(2) Project sponsors

Notwithstanding any other provision of this chapter, each project sponsor receiving amounts from grants made under this chapter¹ may use not more than 7 percent of the

amounts received for administrative costs relating to carrying out eligible activities under section 12904 of this title, including the costs of staff necessary to carry out eligible activities.

(h) Environmental review

For purposes of environmental review, a grant under this chapter shall be treated as assistance for a special project that is subject to section 3547 of this title, and shall be subject to the regulations issued by the Secretary to implement such section.

(Pub. L. 101-625, title VIII, § 856, Nov. 28, 1990, 104 Stat. 4378; Pub. L. 102-550, title VI, § 606(f), (j)(4), (11)(A), Oct. 28, 1992, 106 Stat. 3809-3811; Pub. L. 106-377, § 1(a)(1) [title II, § 203(c)], Oct. 27, 2000, 114 Stat. 1441, 1441A-24.)

REFERENCES IN TEXT

Under this chapter, referred to in subsec. (g)(2), was in the original “under this title”, and was translated as reading “under this subtitle”, meaning under subtitle D (§§ 851-863) of title VIII of Pub. L. 101-625, to reflect the probable intent of Congress.

AMENDMENTS

2000—Subsec. (h). Pub. L. 106-377 added subsec. (h).

1992—Subsec. (c). Pub. L. 102-550, § 606(j)(4), (11)(A), substituted “eligible persons” for “individuals with acquired immunodeficiency syndrome or related diseases” and “services for such eligible persons” for “services for such individuals”.

Subsec. (d). Pub. L. 102-550, § 606(f)(1), added subsec. (d) and struck out former subsec. (d) which read as follows: “No FEE.—The recipient shall agree that no fee will be charged of any low-income individual for any services provided with amounts from a grant under this chapter and that if fees are charged of any other individuals, the fees will be based on the income and resources of the individual.”

Subsec. (g). Pub. L. 102-550, § 606(f)(2), added subsec. (g).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12907, 12908, 12910 of this title.

§ 12906. Grants for AIDS housing information and coordination services

Grants under this section may only be used for the following activities:

(1) Housing information services

To provide (or contract to provide) counseling, information, and referral services to assist eligible persons to locate, acquire, finance, and maintain housing and meet their housing needs.

(2) Resource identification

To identify, coordinate, and develop housing assistance resources (including conducting preliminary research and making expenditures necessary to determine the feasibility of specific housing-related initiatives) for eligible persons.

(Pub. L. 101-625, title VIII, § 857, Nov. 28, 1990, 104 Stat. 4379; Pub. L. 102-550, title VI, § 606(j)(11)(B), Oct. 28, 1992, 106 Stat. 3811.)

AMENDMENTS

1992—Pars. (1), (2). Pub. L. 102-550 substituted “eligible persons” for “individuals with acquired immunodeficiency syndrome or related diseases”.

¹ See References in Text note below.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12904 of this title.

§ 12907. AIDS short-term supported housing and services

(a) Use of grants

Any amounts received from grants under this section may only be used to carry out a program to provide (or contract to provide) assistance to eligible persons who are homeless or in need of housing assistance to prevent homelessness, which may include the following activities:

(1) Short-term supported housing

Purchasing, leasing, renovating, repairing, and converting facilities to provide short-term shelter and services.

(2) Short-term housing payments assistance

Providing rent assistance payments for short-term supported housing and rent, mortgage, and utilities payments to prevent homelessness of the tenant or mortgagor of a dwelling.

(3) Supportive services

Providing supportive services, to eligible persons assisted under paragraphs (1) and (2), including health, mental health, assessment, permanent housing placement, drug and alcohol abuse treatment and counseling, day care, and nutritional services (except that health services under this paragraph may only be provided to individuals with acquired immunodeficiency syndrome or related diseases), and providing technical assistance to eligible persons to provide assistance in gaining access to benefits and services for homeless individuals provided by the Federal Government and State and local governments.

(4) Operation

Providing for the operation of short-term supported housing provided under this section, including the costs of security, operation insurance, utilities, furnishings, equipment, supplies, and other incidental costs.

(5) Administration

Providing staff to carry out the program under this section (subject to the provisions of section 12905(g) of this title).

(b) Program requirements

(1) Minimum use period for structures

(A) In general

Any building or structure assisted with amounts from a grant under this section shall be maintained as a facility to provide short-term supported housing or assistance for eligible persons—

(i) in the case of assistance involving substantial rehabilitation or acquisition of the building, for a period of not less than 10 years; and

(ii) in the case of assistance under paragraph (1), (3), or (4) of subsection (a) of this section, for a period of not less than 3 years.

(B) Waiver

The Secretary may waive the requirement under subparagraph (A) with respect to any

building or structure if the organization or agency that received the grant under which the building was assisted demonstrates, to the satisfaction of the Secretary, that—

(i) the structure is no longer needed to provide short-term supported housing or assistance or the continued operation of the structure for such purposes is no longer feasible; and

(ii) the structure will be used to benefit individuals or families whose incomes do not exceed 80 percent of the median income for the area, as determined by the Secretary, with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 percent of the median income for the area if the Secretary finds that such variations are necessary because of prevailing levels of construction costs or unusually high or low family incomes.

(2) Residency and location limitations on short-term supported housing

(A) Residency

A short-term supported housing facility assisted with amounts from a grant under this section may not provide shelter or housing at any single time for more than 50 families or individuals.

(B) Waiver

The Secretary may, as the Secretary determines appropriate, waive the limitation under subparagraph (A) for any program or short-term supported housing facility.

(3) Term of assistance

(A) Supported housing assistance

A program assisted under this section may not provide residence in a short-term housing facility assisted under this section to any individual for a sum of more than 60 days during any 6-month period.

(B) Housing payments assistance

A program assisted under this section may not provide assistance for rent, mortgage, or utilities payments to any individual for rent, mortgage, or utilities costs accruing over a period of more than 21 weeks of any 52-week period.

(C) Waiver

Notwithstanding subparagraphs (A) and (B), the Secretary may waive the applicability of the requirements under such subparagraphs with respect to any individual for which the project sponsor has made a good faith effort to acquire permanent housing (in accordance with paragraph (4)) and has been unable to do so.

(4) Placement

A program assisted under this section shall provide for any individual who has remained in short-term supported housing assisted under the demonstration program, to the maximum extent practicable, the opportunity for placement in permanent housing or an environment appropriate to the health and social needs of the individual.

(5) Presumption for independent living

In providing assistance under this section in any case in which the residence of an individual is appropriate to the needs of the individual, a program assisted under this section shall, when reasonable, provide for assistance in a manner appropriate to maintain the individual in such residence.

(6) Case management services

A program assisted under this section shall provide each individual assisted under the program with an opportunity, if eligible, to receive case management services available from the appropriate social service agencies.

(Pub. L. 101-625, title VIII, § 858, Nov. 28, 1990, 104 Stat. 4379; Pub. L. 102-550, title VI, § 606(g), (j)(5), (11)(C), Oct. 28, 1992, 106 Stat. 3809-3811.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-550, § 606(j)(11)(C)(i), substituted “eligible persons” for “individuals with acquired immunodeficiency syndrome or related diseases” in introductory provisions.

Subsec. (a)(3). Pub. L. 102-550, § 606(g)(1)(A), (j)(5), substituted “to eligible persons assisted under” for “to individuals assisted under” and inserted before period at end “(except that health services under this paragraph may only be provided to individuals with acquired immunodeficiency syndrome or related diseases), and providing technical assistance to eligible persons to provide assistance in gaining access to benefits and services for homeless individuals provided by the Federal Government and State and local governments”.

Subsec. (a)(4), (5). Pub. L. 102-550, § 606(g)(1)(B), (C), added pars. (4) and (5) and struck out former pars. (4) and (5) which read as follows:

“(4) MAINTENANCE AND ADMINISTRATION.—Providing for maintenance, administration, security, operation, insurance, utilities, furnishings, equipment, supplies, and other incidental costs relating to any short-term supported housing provided under the demonstration program under this section.

“(5) TECHNICAL ASSISTANCE.—Providing technical assistance to such individuals to provide assistance in gaining access to benefits and services for homeless individuals provided by the Federal Government and State and local governments.”

Subsec. (b)(1)(A). Pub. L. 102-550, § 606(j)(11)(C)(ii), substituted “eligible persons” for “individuals with acquired immunodeficiency syndrome or related diseases” in introductory provisions.

Subsec. (b)(2)(B). Pub. L. 102-550, § 606(g)(2)(A)(i), (iii), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: “LOCATION.—A facility for short-term supported housing assisted with amounts from a grant under this section may not be located in or contiguous to any other facility for emergency or short-term housing that is not limited to use by individuals with acquired immunodeficiency syndrome or related diseases.”

Subsec. (b)(2)(C). Pub. L. 102-550, § 606(g)(2)(A)(ii), (iii), substituted “limitation under subparagraph (A)” for “limitations under subparagraphs (A) and (B)” and redesignated subpar. (C) as (B).

Subsec. (b)(3)(C). Pub. L. 102-550, § 606(g)(2)(B), added subpar. (C).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12904 of this title.

§ 12908. Rental assistance**(a) Use of funds****(1) In general**

Grants under this section may be used only for assistance to provide rental assistance for

low-income eligible persons. Such assistance may be project based or tenant based and shall be provided to the extent practicable in the manner provided for under section 1437f of this title. Grantees shall ensure that the housing provided is decent, safe, and sanitary.

(2) Shared housing arrangements

Grants under this section may be used to assist individuals who elect to reside in shared housing arrangements in the manner provided under section 1437f(p) of this title, except that, notwithstanding such section, assistance under this section may be made available to nonelderly individuals. The Secretary shall issue any standards for shared housing under this paragraph that vary from standards issued under section 1437f(p) of this title only to the extent necessary to provide for circumstances of shared housing arrangements under this paragraph that differ from circumstances of shared housing arrangements for elderly families under section 1437f(p) of this title.

(b) Limitations

A recipient under this section shall comply with the following requirements:

(1) Services

The recipient shall provide for qualified service providers in the area to provide appropriate services to the eligible persons assisted under this section.

(2) Intensive assistance

For any individual with acquired immunodeficiency syndrome or related diseases who requires more care than can be provided in housing assisted under this section, the recipient shall provide for the locating of a care provider who can appropriately care for the individual and referral of the individual to the care provider.

(c) Administrative costs

A project sponsor providing rental assistance under this section may use amounts from any grant received under this section for administrative expenses involved in providing such assistance, subject to the provisions of 12905(g)(2)¹ of this title.

(Pub. L. 101-625, title VIII, § 859, Nov. 28, 1990, 104 Stat. 4381; Pub. L. 102-550, title VI, § 606(h)(1), (j)(6), (7), (11)(D), Oct. 28, 1992, 106 Stat. 3810, 3811.)

AMENDMENTS

1992—Pub. L. 102-550, § 606(h)(1)(A), substituted “Rental assistance” for “Short-term rental assistance” in section catchline.

Subsec. (a)(1). Pub. L. 102-550, § 606(h)(1)(B), (j)(11)(D), struck out “short-term” before “rental assistance” and substituted “eligible persons” for “individuals with acquired immunodeficiency syndrome or related diseases”.

Subsec. (b)(1). Pub. L. 102-550, § 606(j)(6), substituted “eligible persons” for “individuals”.

Subsec. (b)(2). Pub. L. 102-550, § 606(j)(7), inserted “with acquired immunodeficiency syndrome or related diseases” after “any individual”.

Subsec. (c). Pub. L. 102-550, § 606(h)(1)(C), added subsec. (c).

¹ So in original. Probably should be preceded by “section”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12904 of this title.

§ 12909. Single room occupancy dwellings**(a) Use of grants**

Grants under this section may be used to provide project-based rental assistance or grants to facilitate the development of single room occupancy dwellings. To the extent practicable, a program under this section shall be carried out in the manner provided for under section 1437f(n)¹ of this title.

(b) Limitation

Recipients under this section shall require the provision to individuals assisted under this section of the following assistance:

(1) Services

Appropriate services provided by qualified service providers in the area.

(2) Intensive assistance

For any individual with acquired immunodeficiency syndrome or related diseases who requires more care than can be provided in housing assisted under this section, locating a care provider who can appropriately care for the individual and referral of the individual to the care provider.

(Pub. L. 101-625, title VIII, § 860, Nov. 28, 1990, 104 Stat. 4381; Pub. L. 102-550, title VI, § 606(j)(7), Oct. 28, 1992, 106 Stat. 3810.)

REFERENCES IN TEXT

Section 1437f(n) of this title, referred to in subsec. (a), was repealed by Pub. L. 105-276, title V, § 550(a)(7), Oct. 21, 1998, 112 Stat. 2609.

AMENDMENTS

1992—Subsec. (b)(2). Pub. L. 102-550 inserted “with acquired immunodeficiency syndrome or related diseases” after “any individual”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12904 of this title.

§ 12910. Grants for community residences and services**(a) Grant authority**

The Secretary of Housing and Urban Development may make grants to States and metropolitan areas to develop and operate community residences and provide services for eligible persons.

(b) Community residences and services**(1) Community residences****(A) In general**

A community residence under this section shall be a multiunit residence designed for eligible persons for the following purposes:

(i) To provide a lower cost residential alternative to institutional care and to prevent or delay the need for institutional care.

(ii) To provide a permanent or transitional residential setting with appropriate

services that enhances the quality of life for individuals who are unable to live independently.

(iii) To prevent homelessness among eligible persons by increasing available suitable housing resources.

(iv) To integrate eligible persons into local communities and provide services to maintain the abilities of such eligible persons to participate as fully as possible in community life.

(B) Rent

Except to the extent that the costs of providing residence are reimbursed or provided by any other assistance from Federal or non-Federal public sources, each resident in a community residence shall pay as rent for a dwelling unit an amount equal to the following:

(i) For low-income individuals, the amount of rent paid under section 3(a) of the United States Housing Act of 1937 (42 U.S.C. 1437a(a)) by a low-income family (as the term is defined in section 3(b)(2) of such Act (42 U.S.C. 1437a(b)(2))) for a dwelling unit assisted under such Act [42 U.S.C. 1437 et seq.].

(ii) For any resident that is not a low-income resident, an amount based on a formula, which shall be determined by the Secretary, under which rent is determined by the income and resources of the resident.

(C) Fees

Fees may be charged for any services provided under subsection (c)(2) of this section to residents of a community residence, except that any fees charged shall be based on the income and resources of the resident and the provision of services to any resident of a community residence may not be withheld because of an inability of the resident to pay such fee.

(D) Section 1437f assistance

Assistance made available under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) may be used in conjunction with a community residence under this subsection for tenant-based assistance.

(2) Services

Services provided with a grant under this section shall consist of services appropriate in assisting eligible persons to enhance their quality of life, enable such individuals to more fully participate in community life, and delay or prevent the placement of such individuals in hospitals or other institutions.

(c) Use of grants

Any amounts received from a grant under this section may be used only as follows:

(1) Community residences

For providing assistance in connection with community residences under subsection (b)(1) of this section for the following activities:

(A) Physical improvements

Construction, acquisition, rehabilitation, conversion, retrofitting, and other physical

¹ See References in Text note below.

improvements necessary to make a structure suitable for use as a community residence.

(B) Operating costs

Operating costs for a community residence.

(C) Technical assistance

Technical assistance in establishing and operating a community residence, which may include planning and other pre-development or preconstruction expenses, and expenses relating to community outreach and educational activities regarding acquired immunodeficiency syndrome and related diseases provided for individuals residing in proximity of eligible persons assisted under this chapter.

(D) In-house services

Services appropriate for individuals residing in a community residence, which may include staff training and recruitment.

(2) Services

For providing services under subsection (b)(2) of this section to any individuals assisted under this chapter.

(3) Administrative expenses

For administrative expenses related to the planning and carrying out activities under this section (subject to the provisions of section 12905(g) of this title).

(d) Limitations on use of grants

(1) Community residences

Any jurisdiction that receives a grant under this section may not use any amounts received under the grant for the purposes under subsection (c)(1) of this section, except for planning and other expenses preliminary to construction or other physical improvement under subsection (c)(1)(A) of this section, unless the jurisdiction certifies to the Secretary, as the Secretary shall require, the following:

(A) Service agreement

That the jurisdiction has entered into a written agreement with service providers qualified to deliver any services included in the proposal under subsection (c) of this section to provide such services to eligible persons assisted by the community residence.

(B) Funding and capability

That the jurisdiction will have sufficient funding for such services and the service providers are qualified to assist eligible persons.

(C) Zoning and building codes

That any construction or physical improvements carried out with amounts received from the grant will comply with any applicable State and local housing codes and licensing requirements in the jurisdiction in which the building or structure is located.

(D) Intensive assistance

That, for any individual with acquired immunodeficiency syndrome or related diseases who resides in a community residence

assisted under the grant and who requires more intensive care than can be provided by the community residence, the jurisdiction will locate for and refer the individual to a service provider who can appropriately care for the individual.

(2) Services

Any jurisdiction that receives a grant under this section may use any amounts received under the grant for the purposes under subsection (c)(2) of this section only for the provision of services by service providers qualified to provide such services to eligible persons.

(Pub. L. 101-625, title VIII, § 861, Nov. 28, 1990, 104 Stat. 4382; Pub. L. 102-550, title VI, § 606(i), (j)(8)-(10), (11)(E), Oct. 28, 1992, 106 Stat. 3810, 3811; Pub. L. 105-276, title V, § 550(b), Oct. 21, 1998, 112 Stat. 2609.)

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in subsec. (b)(1)(B)(i), 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, which is classified generally to chapter 8 (§1437 et seq.) 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.

AMENDMENTS

1998—Subsec. (b)(1)(D). Pub. L. 105-276 substituted “assistance” for “certificates or vouchers”.

1992—Subsec. (a). Pub. L. 102-550, § 606(j)(8), substituted “eligible persons” for “persons with acquired immunodeficiency syndrome or related diseases”.

Subsec. (b)(1)(A). Pub. L. 102-550, § 606(j)(11)(E)(i), substituted “eligible persons” for “individuals with acquired immunodeficiency syndrome or related diseases” in introductory provisions and cl. (iii).

Subsec. (b)(1)(A)(iv). Pub. L. 102-550, § 606(j)(9), (11)(E)(i), substituted “eligible persons” for “individuals with acquired immunodeficiency syndrome or related diseases” and “such eligible persons” for “such individuals”.

Subsec. (b)(2). Pub. L. 102-550, § 606(j)(11)(E)(i), which directed the substitution of “eligible persons” for “individuals with acquired immunodeficiency syndrome or related diseases” wherever appearing in subsec. (b), was executed by making the substitution for “individuals with acquired immunodeficiency syndrome and related diseases” in par. (2) to reflect the probable intent of Congress.

Subsec. (c)(1)(C). Pub. L. 102-550, § 606(i)(1), inserted before period at end “, and expenses relating to community outreach and educational activities regarding acquired immunodeficiency syndrome and related diseases provided for individuals residing in proximity of eligible persons assisted under this chapter”.

Subsec. (c)(3). Pub. L. 102-550, § 606(i)(2), added par. (3) and struck out former par. (3) which read as follows: “For administrative expenses related to the planning and execution of activities under this section, except that a jurisdiction that receives a grant under this section may expend not more than 10 percent of the amount received under the grant for such administrative expenses. Administrative expenses under this paragraph may include expenses relating to community outreach and educational activities regarding acquired immunodeficiency syndrome and related diseases, for staff carrying out activities assisted with a grant under this section and for individuals who reside in proximity of individuals assisted under this chapter.”

Subsec. (d). Pub. L. 102-550, § 606(j)(11)(E)(ii), which directed the substitution of “eligible persons” for “individuals with acquired immunodeficiency syndrome or related diseases” wherever appearing in subsec. (d), was

executed by making the substitution for “individuals with acquired immunodeficiency syndrome and related diseases” in pars. (1)(B) and (2) to reflect the probable intent of Congress.

Subsec. (d)(1)(A). Pub. L. 102-550, § 606(j)(10)(A), substituted “eligible persons” for “individuals”.

Subsec. (d)(1)(D). Pub. L. 102-550, § 606(j)(10)(B), inserted “with acquired immunodeficiency syndrome or related diseases” after “any individual”.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105-276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105-276, set out as a note under section 1437 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12904 of this title.

§ 12911. Report

Any organization or agency that receives a grant under this chapter shall submit to the Secretary, for any fiscal year in which the organization or agency receives a grant under this chapter, a report describing the use of the amounts received, which shall include the number of individuals assisted, the types of assistance provided, and any other information that the Secretary determines to be appropriate.

(Pub. L. 101-625, title VIII, § 862, Nov. 28, 1990, 104 Stat. 4384.)

§ 12912. Authorization of appropriations

There are authorized to be appropriated to carry out this chapter \$150,000,000 for fiscal year 1993 and \$156,300,000 for fiscal year 1994.

(Pub. L. 101-625, title VIII, § 863, Nov. 28, 1990, 104 Stat. 4384; Pub. L. 102-550, title VI, § 606(b), Oct. 28, 1992, 106 Stat. 3806.)

AMENDMENTS

1992—Pub. L. 102-550 amended section generally. Prior to amendment, section read as follows: “There are authorized to be appropriated to carry out this chapter \$75,000,000 for fiscal year 1991, and \$156,500,000 for fiscal year 1992.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12903 of this title.

CHAPTER 132—VICTIMS OF CHILD ABUSE

SUBCHAPTER I—IMPROVING INVESTIGATION AND PROSECUTION OF CHILD ABUSE CASES

- Sec.
- 13001. Findings.
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13051 to 13055. Repealed.

SUBCHAPTER I—IMPROVING INVESTIGATION AND PROSECUTION OF CHILD ABUSE CASES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 13023 of this title.

§ 13001. Findings

The Congress finds that—

(1) over 2,000,000 reports of suspected child abuse and neglect are made each year, and drug abuse is associated with a significant portion of these;

(2) the investigation and prosecution of child abuse cases is extremely complex, involving numerous agencies and dozens of personnel;

(3) traditionally, community agencies and professionals have different roles in the prevention, investigation, and intervention process;

(4) in such cases, too often the system does not pay sufficient attention to the needs and welfare of the child victim, aggravating the trauma that the child victim has already experienced;

(5) there is a national need to enhance coordination among community agencies and professionals involved in the intervention system;

(6) multidisciplinary child abuse investigation and prosecution programs have been developed that increase the reporting of child abuse cases, reduce the trauma to the child victim, and increase the successful prosecution of child abuse offenders; and

(7) such programs have proven effective, and with targeted Federal assistance, could be duplicated in many jurisdictions throughout the country.

(Pub. L. 101-647, title II, §211, Nov. 29, 1990, 104 Stat. 4792; Pub. L. 102-586, §6(a), Nov. 4, 1992, 106 Stat. 5029.)

AMENDMENTS

1992—Pars. (3) to (7). Pub. L. 102-586 added pars. (3) and (5) and redesignated former pars. (3), (4), and (5) as (4), (6), and (7), respectively.

SHORT TITLE

Section 201 of title II of Pub. L. 101-647 provided that: "This title [enacting this chapter, sections 3796aa to 3796aa-8 of this title, and sections 403, 2258, and 3509 of Title 18, Crimes and Criminal Procedure, and amending sections 3742, 3782, 3783, 3789, 3793, and 3797 of this title] may be cited as the 'Victims of Child Abuse Act of 1990'."

§ 13001a. Definitions

For purposes of this subchapter—

(1) the term "Administrator" means the agency head designated under section 5611(b) of this title;

(2) the term "applicant" means a child protective service, law enforcement, legal, medical and mental health agency or other agency that responds to child abuse cases;

(3) the term "board" means the Children's Advocacy Advisory Board established under section 13001b(e) of this title;

(4) the term "census region" means 1 of the 4 census regions (northeast, south, midwest,

and west) that are designated as census regions by the Bureau of the Census as of November 4, 1992;

(5) the term "child abuse" means physical or sexual abuse or neglect of a child;

(6) the term "Director" means the Director of the National Center on Child Abuse and Neglect;

(7) the term "multidisciplinary response to child abuse" means a response to child abuse that is based on mutually agreed upon procedures among the community agencies and professionals involved in the intervention, prevention, prosecution, and investigation systems that best meets the needs of child victims and their nonoffending family members;

(8) the term "nonoffending family member" means a member of the family of a victim of child abuse other than a member who has been convicted or accused of committing an act of child abuse; and

(9) the term "regional children's advocacy program" means the children's advocacy program established under section 13001b(a) of this title.

(Pub. L. 101-647, title II, §212, as added Pub. L. 102-586, §6(b)(2), Nov. 4, 1992, 106 Stat. 5029.)

PRIOR PROVISIONS

A prior section 212 of Pub. L. 101-647 was renumbered section 214 and is classified to section 13002 of this title.

§ 13001b. Regional children's advocacy centers

(a) Establishment of regional children's advocacy program

The Administrator, in coordination with the Director and with the Director of the Office of Victims of Crime, shall establish a children's advocacy program to—

(1) focus attention on child victims by assisting communities in developing child-focused, community-oriented, facility-based programs designed to improve the resources available to children and families;

(2) provide support for nonoffending family members;

(3) enhance coordination among community agencies and professionals involved in the intervention, prevention, prosecution, and investigation systems that respond to child abuse cases; and

(4) train physicians and other health care and mental health care professionals in the multidisciplinary approach to child abuse so that trained medical personnel will be available to provide medical support to community agencies and professionals involved in the intervention, prevention, prosecution, and investigation systems that respond to child abuse cases.

(b) Activities of regional children's advocacy program

(1) Administrator

The Administrator, in coordination with the Director, shall—

(A) establish regional children's advocacy program centers;

(B) fund existing regional centers with expertise in the prevention, judicial handling,

and treatment of child abuse and neglect; and

(C) fund the establishment of freestanding facilities in multidisciplinary programs within communities that have yet to establish such facilities,

for the purpose of enabling grant recipients to provide information, services, and technical assistance to aid communities in establishing multidisciplinary programs that respond to child abuse.

(2) Grant recipients

A grant recipient under this section shall—

(A) assist communities—

(i) in developing a comprehensive, multidisciplinary response to child abuse that is designed to meet the needs of child victims and their families;

(ii) in establishing a freestanding facility where interviews of and services for abused children can be provided;

(iii) in preventing or reducing trauma to children caused by multiple contacts with community professionals;

(iv) in providing families with needed services and assisting them in regaining maximum functioning;

(v) in maintaining open communication and case coordination among community professionals and agencies involved in child protection efforts;

(vi) in coordinating and tracking investigative, preventive, prosecutorial, and treatment efforts;

(vii) in obtaining information useful for criminal and civil proceedings;

(viii) in holding offenders accountable through improved prosecution of child abuse cases;

(ix) in enhancing professional skills necessary to effectively respond to cases of child abuse through training; and

(x) in enhancing community understanding of child abuse; and

(B) provide training and technical assistance to local children's advocacy centers in its census region that are grant recipients under section 13002 of this title.

(c) Operation of regional children's advocacy program

(1) Solicitation of proposals

Not later than 1 year after November 4, 1992, the Administrator shall solicit proposals for assistance under this section.

(2) Minimum qualifications

In order for a proposal to be selected, the Administrator may require an applicant to have in existence, at the time the proposal is submitted, 1 or more of the following:

(A) A proven record in conducting activities of the kinds described in subsection (c) of this section.

(B) A facility where children who are victims of sexual or physical abuse and their nonoffending family members can go for the purpose of evaluation, intervention, evidence gathering, and counseling.

(C) Multidisciplinary staff experienced in providing remedial counseling to children and families.

(D) Experience in serving as a center for training and education and as a resource facility.

(E) National expertise in providing technical assistance to communities with respect to the judicial handling of child abuse and neglect.

(3) Proposal requirements

(A) In general

A proposal submitted in response to the solicitation under paragraph (1) shall—

(i) include a single or multiyear management plan that outlines how the applicant will provide information, services, and technical assistance to communities so that communities can establish multidisciplinary programs that respond to child abuse;

(ii) demonstrate the ability of the applicant to operate successfully a multidisciplinary child abuse program or provide training to allow others to do so; and

(iii) state the annual cost of the proposal and a breakdown of those costs.

(B) Content of management plan

A management plan described in paragraph (3)(A) shall—

(i) outline the basic activities expected to be performed;

(ii) describe the entities that will conduct the basic activities;

(iii) establish the period of time over which the basic activities will take place; and

(iv) define the overall program management and direction by—

(I) identifying managerial, organizational, and administrative procedures and responsibilities;

(II) demonstrating how implementation and monitoring of the progress of the children's advocacy program after receipt of funding will be achieved; and

(III) providing sufficient rationale to support the costs of the plan.

(4) Selection of proposals

(A) Competitive basis

Proposals shall be selected under this section on a competitive basis.

(B) Criteria

The Administrator, in coordination with the Director, shall select proposals for funding that—

(i) best result in developing and establishing multidisciplinary programs that respond to child abuse by assisting, training, and teaching community agencies and professionals called upon to respond to child abuse cases;

(ii) assist in resolving problems that may occur during the development, operation, and implementation of a multidisciplinary program that responds to child abuse; and

(iii) carry out the objectives developed by the Board¹ under subsection (e)(2)(A) of this section;

¹ So in original. Probably should not be capitalized.

(C)² to the greatest extent possible and subject to available appropriations, ensure that at least 1 applicant is selected from each of the 4 census regions of the country; and

(D)² otherwise best carry out the purposes of this section.

(5) Funding of program

From amounts made available in separate appropriation Acts, the Administrator shall provide to each grant recipient the financial and technical assistance and other incentives that are necessary and appropriate to carry out this section.

(6) Coordination of effort

In order to carry out activities that are in the best interests of abused and neglected children, a grant recipient shall consult with other grant recipients on a regular basis to exchange ideas, share information, and review children's advocacy program activities.

(d) Review

(1) Evaluation of regional children's advocacy program activities

The Administrator, in coordination with the Director, shall regularly monitor and evaluate the activities of grant recipients and shall determine whether each grant recipient has complied with the original proposal and any modifications.

(2) Annual report

A grant recipient shall provide an annual report to the Administrator and the Director that—

(A) describes the progress made in satisfying the purpose of the children's advocacy program; and

(B) states whether changes are needed and are being made to carry out the purpose of the children's advocacy program.

(3) Discontinuation of funding

(A) Failure to implement program activities

If a grant recipient under this section substantially fails in the implementation of the program activities, the Administrator shall not discontinue funding until reasonable notice and an opportunity for reconsideration is given.

(B) Solicitation of new proposals

Upon discontinuation of funding of a grant recipient under this section, the Administrator shall solicit new proposals in accordance with subsection (c) of this section.

(e) Children's advocacy advisory board

(1) Establishment of board

(A) In general

Not later than 120 days after November 4, 1992, the Administrator and the Director, after consulting with representatives of community agencies that respond to child abuse cases, shall establish a children's advocacy advisory board to provide guidance

²So in original. Subpars. (C) and (D) probably should be cls. (iv) and (v), respectively, of subpar. (B).

and oversight in implementing the selection criteria and operation of the regional children's advocacy program.

(B) Membership

(i) The board—

(I) shall be composed of 12 members who are selected by the Administrator, in coordination with the Director, a majority of whom shall be individuals experienced in the child abuse investigation, prosecution, prevention, and intervention systems;

(II) shall include at least 1 member from each of the 4 census regions; and

(III) shall have members appointed for a term not to exceed 3 years.

(ii) Members of the Board³ may be reappointed for successive terms.

(2) Review and recommendations

(A) Objectives

Not later than 180 days after November 4, 1992, and annually thereafter, the Board³ shall develop and submit to the Administrator and the Director objectives for the implementation of the children's advocacy program activities described in subsection (b) of this section.

(B) Review

The board shall annually—

(i) review the solicitation and selection of children's advocacy program proposals and make recommendations concerning how each such activity can be altered so as to better achieve the purposes of this section; and

(ii) review the program activities and management plan of each grant recipient and report its findings and recommendations to the Administrator and the Director.

(3) Rules and regulations

The Board³ shall promulgate such rules and regulations as it deems necessary to carry out its duties under this section.

(f) Reporting

The Attorney General and the Secretary of Health and Human Services shall submit to Congress, by March 1 of each year, a detailed review of the progress of the regional children's advocacy program activities.

(Pub. L. 101-647, title II, §213, as added Pub. L. 102-586, §6(b)(2), Nov. 4, 1992, 106 Stat. 5030.)

PRIOR PROVISIONS

A prior section 213 of Pub. L. 101-647 was renumbered section 214A and is classified to section 13003 of this title.

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board estab-

³So in original. Probably should not be capitalized.

lished by Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13001a, 13002, 13004 of this title.

§ 13002. Local children's advocacy centers

(a) In general

The Administrator, in coordination with the Director and with the Director of the Office of Victims of Crime, shall make grants to develop and implement multidisciplinary child abuse investigation and prosecution programs.

(b) Grant criteria

(1) The Director shall establish the criteria to be used in evaluating applications for grants under this section consistent with sections 5665a, 5673,¹ and 5676¹ of this title.

(2) In general, the grant criteria established pursuant to paragraph (1) may require that a program include any of the following elements:

(A) A written agreement between local law enforcement, social service, health, and other related agencies to coordinate child abuse investigation, prosecution, treatment, and counseling services.

(B) An appropriate site for referring, interviewing, treating, and counseling child victims of sexual and serious physical abuse and neglect and nonoffending family members (referred to as the "counseling center").

(C) Referral of all sexual and serious physical abuse and neglect cases to the counseling center not later than 24 hours after notification of an incident of abuse.

(D) Joint initial investigative interviews of child victims by personnel from law enforcement, health, and social service agencies.

(E) A requirement that, to the extent practicable, the same agency representative who conducts an initial interview conduct all subsequent interviews.

(F) A requirement that, to the extent practicable, all interviews and meetings with a child victim occur at the counseling center.

(G) Coordination of each step of the investigation process to minimize the number of interviews that a child victim must attend.

(H) Designation of a director for the multidisciplinary program.

(I) Assignment of a volunteer or staff advocate to each child in order to assist the child and, when appropriate, the child's family, throughout each step of judicial proceedings.

(J) Such other criteria as the Director shall establish by regulation.

(c) Distribution of grants

In awarding grants under this section, the Director shall ensure that grants are distributed to both large and small States and to rural, suburban, and urban jurisdictions.

(d) Consultation with regional children's advocacy centers

A grant recipient under this section shall consult from time to time with regional children's

advocacy centers in its census region that are grant recipients under section 13001b of this title.

(Pub. L. 101-647, title II, §214, formerly §212, Nov. 29, 1990, 104 Stat. 4793; renumbered §214 and amended Pub. L. 102-586, §6(b)(1), (c), Nov. 4, 1992, 106 Stat. 5029, 5034.)

REFERENCES IN TEXT

Sections 5673 and 5676 of this title, referred to in subsec. (b)(1), was in the original a reference to sections 293 and 296 of the Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. 93-415. Sections 293 and 296 of the Act were renumbered sections 299B and 299E, respectively, by Pub. L. 102-586, §2(i)(1)(B), Nov. 4, 1992, 106 Stat. 5006.

PRIOR PROVISIONS

A prior section 214 of Pub. L. 101-647 was renumbered section 214B and is classified to section 13004 of this title.

AMENDMENTS

1992—Pub. L. 102-586, §6(c)(1), substituted "Local children's advocacy centers" for "Authority of Director to make grants" in section catchline.

Subsec. (a). Pub. L. 102-586, §6(c)(2), substituted "The Administrator, in coordination with the Director and with the Director of the Office of Victims of Crime," for "The Director of the Office of Victims of Crime (hereinafter in this subchapter referred to as the 'Director'), in consultation with officials of the Department of Health and Human Services,".

Subsec. (b)(2)(B). Pub. L. 102-586, §6(c)(3), inserted "and nonoffending family members" after "neglect".

Subsec. (d). Pub. L. 102-586, §6(c)(4), added subsec. (d).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13001b, 13004 of this title.

§ 13003. Grants for specialized technical assistance and training programs

(a) In general

The Administrator shall make grants to national organizations to provide technical assistance and training to attorneys and others instrumental to the criminal prosecution of child abuse cases in State or Federal courts, for the purpose of improving the quality of criminal prosecution of such cases.

(b) Grantee organizations

An organization to which a grant is made pursuant to subsection (a) of this section shall be one that has, or is affiliated with one that has, broad membership among attorneys who prosecute criminal cases in State courts and has demonstrated experience in providing training and technical assistance for prosecutors.

(c) Grant criteria

(1) The Administrator shall establish the criteria to be used for evaluating applications for grants under this section, consistent with sections 5665a, 5673,¹ and 5676¹ of this title.

(2) The grant criteria established pursuant to paragraph (1) shall require that a program provide training and technical assistance that includes information regarding improved child interview techniques, thorough investigative

¹ See References in Text note below.

¹ See References in Text note below.

methods, interagency coordination and effective presentation of evidence in court, including the use of alternative courtroom procedures described in this title.¹

(Pub. L. 101-647, title II, §214A, formerly §213, Nov. 29, 1990, 104 Stat. 4793; renumbered §214A and amended Pub. L. 102-586, §6(b)(1), (d), Nov. 4, 1992, 106 Stat. 5029, 5034.)

REFERENCES IN TEXT

Sections 5673 and 5676 of this title, referred to in subsec. (c)(1), was in the original a reference to sections 293 and 296 of the Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. 93-415. Sections 293 and 296 of the Act were renumbered sections 299B and 299E, respectively, by Pub. L. 102-586, §2(i)(1)(B), Nov. 4, 1992, 106 Stat. 5006.

This title, referred to in subsec. (c)(2), means title II of Pub. L. 101-647, known as the Victims of Child Abuse Act of 1990, which is classified principally to this chapter. For complete classification of title II to the Code, see Short Title note set out under section 13001 of this title and Tables.

AMENDMENTS

1992—Subsecs. (a), (c)(1). Pub. L. 102-586, §6(d), substituted “Administrator” for “Director”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13004 of this title.

§ 13004. Authorization of appropriations

(a) Sections 13001b and 13002

There are authorized to be appropriated to carry out sections 13001b and 13002 of this title—

- (1) \$15,000,000 for fiscal year 1993; and
- (2) such sums as are necessary for fiscal years 1994, 1995, 1996, and each of the fiscal years 1997 through 2000.

(b) Section 13003

There are authorized to be appropriated to carry out section 13003 of this title—

- (1) \$5,000,000 for fiscal year 1993; and
- (2) such sums as are necessary for fiscal years 1994, 1995, 1996, and each of the fiscal years 1997 through 2000.

(Pub. L. 101-647, title II, §214B, formerly §214, Nov. 29, 1990, 104 Stat. 4794; renumbered §214B and amended Pub. L. 102-586, §6(b)(1), (e), Nov. 4, 1992, 106 Stat. 5029, 5034; Pub. L. 104-235, title II, §232, Oct. 3, 1996, 110 Stat. 3092.)

AMENDMENTS

1996—Subsecs. (a)(2), (b)(2). Pub. L. 104-235 substituted “1996, and each of the fiscal years 1997 through 2000” for “and 1996”.

1992—Pub. L. 102-586, §6(e), amended section generally. Prior to amendment, section authorized appropriations to carry out this subchapter of \$20,000,000 in fiscal year 1991 and such sums as may be necessary in fiscal years 1992 and 1993 and provided that not less than 90 percent was to be used for grants under section 13002 of this title.

SUBCHAPTER II—COURT-APPOINTED SPECIAL ADVOCATE PROGRAM

§ 13011. Findings

The Congress finds that—

- (1) the National Court-Appointed Special Advocate provides training and technical assist-

ance to a network of 13,000 volunteers in 377 programs operating in 47 States; and

(2) in 1988, these volunteers represented 40,000 children, representing approximately 15 percent of the estimated 270,000 cases of child abuse and neglect in juvenile and family courts.

(Pub. L. 101-647, title II, §215, Nov. 29, 1990, 104 Stat. 4794.)

§ 13012. Purpose

The purpose of this subchapter is to ensure that by January 1, 1995, a court-appointed special advocate shall be available to every victim of child abuse or neglect in the United States that needs such an advocate.

(Pub. L. 101-647, title II, §216, Nov. 29, 1990, 104 Stat. 4794; Pub. L. 103-322, title IV, §40156(a)(2), Sept. 13, 1994, 108 Stat. 1923.)

AMENDMENTS

1994—Pub. L. 103-322 made technical amendment to reference to this subchapter to correct reference to corresponding provision of original act.

§ 13013. Strengthening of court-appointed special advocate program

(a) In general

The Administrator of the Office of Juvenile Justice and Delinquency Prevention shall make grants to expand the court-appointed special advocate program.

(b) Grantee organizations

(1) An organization to which a grant is made pursuant to subsection (a) of this section shall be a national organization that has broad membership among court-appointed special advocates and has demonstrated experience in grant administration of court-appointed special advocate programs and in providing training and technical assistance to court-appointed special advocate program; or (2) may be a local public or not-for-profit agency that has demonstrated the willingness to initiate or expand a court-appointed special advocate program.

(2) An organization described in paragraph (1)(a) that receives a grant may be authorized to make subgrants and enter into contracts with public and not-for-profit agencies to initiate and to expand the court-appointed special advocate program. Should a grant be made to a national organization for this purpose, the Administrator shall specify an amount not exceeding 5 percent that can be used for administrative purposes by the national organization.

(c) Grant criteria

(1) The Administrator shall establish criteria to be used in evaluating applications for grants under this section, consistent with sections 5665a, 5673,¹ and 5676¹ of this title.

(2) In general, the grant criteria established pursuant to paragraph (1) shall require that a court-appointed special advocate program provide screening, training, and supervision of court-appointed special advocates in accordance with standards developed by the National Court-

¹ See References in Text note below.

Appointed Special Advocate Association. Such criteria may include the requirements that—

(A) a court-appointed special advocate association program have a mission and purpose in keeping with the mission and purpose of the National Court-Appointed Special Advocate Association and that it abide by the National Court-Appointed Special Advocate Association Code of Ethics;

(B) a court-appointed special advocate association program operate with access to legal counsel;

(C) the management and operation of a court-appointed special advocate program assure adequate supervision of court-appointed special advocate volunteers;

(D) a court-appointed special advocate program keep written records on the operation of the program in general and on each applicant, volunteer, and case;

(E) a court-appointed special advocate program have written management and personnel policies and procedures, screening requirements, and training curriculum;

(F) a court-appointed special advocate program not accept volunteers who have been convicted of, have charges pending for, or have in the past been charged with, a felony or misdemeanor involving a sex offense, violent act, child abuse or neglect, or related acts that would pose risks to children or to the court-appointed special advocate program's credibility;

(G) a court-appointed special advocate program have an established procedure to allow the immediate reporting to a court or appropriate agency of a situation in which a court-appointed special advocate volunteer has reason to believe that a child is in imminent danger;

(H) a court-appointed special advocate volunteer be an individual who has been screened and trained by a recognized court-appointed special advocate program and appointed by the court to advocate for children who come into the court system primarily as a result of abuse or neglect; and

(I) a court-appointed special advocate volunteer serve the function of reviewing records, facilitating prompt, thorough review of cases, and interviewing appropriate parties in order to make recommendations on what would be in the best interests of the child.

(3) In awarding grants under this section, the Administrator shall ensure that grants are distributed to localities that have no existing court-appointed special advocate program and to programs in need of expansion.

(Pub. L. 101-647, title II, §217, Nov. 29, 1990, 104 Stat. 4794.)

REFERENCES IN TEXT

Sections 5673 and 5676 of this title, referred to in subsec. (c)(1), was in the original a reference to sections 293 and 296 of the Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. 93-415. Sections 293 and 296 of the Act were renumbered sections 299B and 299E, respectively, by Pub. L. 102-586, §2(i)(1)(B), Nov. 4, 1992, 106 Stat. 5006.

§ 13014. Authorization of appropriations

(a) Authorization

There is authorized to be appropriated to carry out this subchapter \$12,000,000 for each of fiscal years 2001 through 2005.

(b) Limitation

No funds are authorized to be appropriated for a fiscal year to carry out this subchapter unless the aggregate amount appropriated to carry out title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5611 et seq.) for such fiscal year is not less than the aggregate amount appropriated to carry out such title for the preceding fiscal year.

(Pub. L. 101-647, title II, §218, Nov. 29, 1990, 104 Stat. 4796; Pub. L. 103-322, title IV, §40156(a)(1), Sept. 13, 1994, 108 Stat. 1922; Pub. L. 106-386, div. B, title III, §1302(a), Oct. 28, 2000, 114 Stat. 1511.)

REFERENCES IN TEXT

The Juvenile Justice and Delinquency Prevention Act of 1974, referred to in subsec. (b), is Pub. L. 93-415, Sept. 7, 1974, 88 Stat. 1109, as amended. Title II of the Act is classified principally to subchapter II (§5611 et seq.) of chapter 72 of this title. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106-386 added subsec. (a) and struck out heading and text of former subsec. (a). Text read as follows: "There are authorized to be appropriated to carry out this subchapter—

"(1) \$6,000,000 for fiscal year 1996;

"(2) \$6,000,000 for fiscal year 1997;

"(3) \$7,000,000 for fiscal year 1998;

"(4) \$9,000,000 for fiscal year 1999; and

"(5) \$10,000,000 for fiscal year 2000."

1994—Subsec. (a). Pub. L. 103-322 amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: "There are authorized to be appropriated to carry out this chapter—

"(1) \$5,000,000 in fiscal year 1991; and

"(2) such sums as may be necessary to carry out this subchapter in each of fiscal years 1992, 1993, and 1994."

SUBCHAPTER III—CHILD ABUSE TRAINING PROGRAMS FOR JUDICIAL PERSONNEL AND PRACTITIONERS

§ 13021. Findings and purpose

(a) Findings

The Congress finds that—

(1) a large number of juvenile and family courts are inundated with increasing numbers of cases due to increased reports of abuse and neglect, increasing drug-related maltreatment, and insufficient court resources;

(2) the amendments made to the Social Security Act [42 U.S.C. 301 et seq.] by the Adoption Assistance and Child Welfare Act of 1980 make substantial demands on the courts handling abuse and neglect cases, but provide no assistance to the courts to meet those demands;

(3) the Adoption¹ and Child Welfare Act of 1980 requires courts to—

(A) determine whether the agency made reasonable efforts to prevent foster care placement;

¹ So in original. Probably should be "Adoption Assistance".

(B) approve voluntary nonjudicial placement; and

(C) provide procedural safeguards for parents when their parent-child relationship is affected;

(4) social welfare agencies press the courts to meet such requirements, yet scarce resources often dictate that courts comply pro forma without undertaking the meaningful judicial inquiry contemplated by Congress in the Adoption¹ and Child Welfare Act of 1980;

(5) compliance with the Adoption¹ and Child Welfare Act of 1980 and overall improvements in the judicial response to abuse and neglect cases can best come about through action by top level court administrators and judges with administrative functions who understand the unique aspects of decisions required in child abuse and neglect cases; and

(6) the Adoption¹ and Child Welfare Act of 1980 provides financial incentives to train welfare agency staff to meet the requirements, but provides no resources to train judges.

(b) Purpose

The purpose of this subchapter is to provide expanded technical assistance and training to judicial personnel and attorneys, particularly personnel and practitioners in juvenile and family courts, to improve the judicial system's handling of child abuse and neglect cases with specific emphasis on the role of the courts in addressing reasonable efforts that can safely avoid unnecessary and unnecessarily prolonged foster care placement.

(Pub. L. 101-647, title II, § 221, Nov. 29, 1990, 104 Stat. 4796; Pub. L. 103-322, title IV, § 40156(b)(2), Sept. 13, 1994, 108 Stat. 1923.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(2), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Adoption Assistance and Child Welfare Act of 1980, referred to in subsec. (a), is Pub. L. 96-272, June 17, 1980, 94 Stat. 500, as amended. For complete classification of this Act to the Code, see Short Title of 1980 Amendments note set out under section 1305 of this title and Tables.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103-322 made technical amendment to reference to this subchapter to correct reference to corresponding provision of original act.

§ 13022. Grants for juvenile and family court personnel

In order to improve the judicial system's handling of child abuse and neglect cases, the Administrator of the Office of Juvenile Justice and Delinquency Prevention shall make grants for the purpose of providing—

(1) technical assistance and training to judicial personnel and attorneys, particularly personnel and practitioners in juvenile and family courts; and

(2) administrative reform in juvenile and family courts.

(Pub. L. 101-647, title II, § 222, Nov. 29, 1990, 104 Stat. 4797.)

§ 13023. Specialized technical assistance and training programs

(a) Grants to develop model programs

(1) The Administrator shall make grants to national organizations to develop 1 or more model technical assistance and training programs to improve the judicial system's handling of child abuse and neglect cases.

(2) An organization to which a grant is made pursuant to paragraph (1) shall be one that has broad membership among juvenile and family court judges and has demonstrated experience in providing training and technical assistance for judges, attorneys, child welfare personnel, and lay child advocates.

(b) Grants to juvenile and family courts

(1) In order to improve the judicial system's handling of child abuse and neglect cases, the Administrator shall make grants to State courts or judicial administrators for programs that provide or contract for, the implementation of—

(A) training and technical assistance to judicial personnel and attorneys in juvenile and family courts; and

(B) administrative reform in juvenile and family courts.

(2) The criteria established for the making of grants pursuant to paragraph (1) shall give priority to programs that improve—

(A) procedures for determining whether child service agencies have made reasonable efforts to prevent placement of children in foster care;

(B) procedures for determining whether child service agencies have, after placement of children in foster care, made reasonable efforts to reunite the family; and

(C) procedures for coordinating information and services among health professionals, social workers, law enforcement professionals, prosecutors, defense attorneys, and juvenile and family court personnel, consistent with subchapter I of this chapter.

(c) Grant criteria

The Administrator shall make grants under subsections (a) and (b) of this section consistent with section¹ 5665a, 5673,² and 5676² of this title.

(Pub. L. 101-647, title II, § 223, Nov. 29, 1990, 104 Stat. 4797.)

REFERENCES IN TEXT

Sections 5673 and 5676 of this title, referred to in subsec. (c), was in the original a reference to sections 293 and 296 of the Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. 93-415. Sections 293 and 296 of the Act were renumbered sections 299B and 299E, respectively, by Pub. L. 102-586, § 2(i)(1)(B), Nov. 4, 1992, 106 Stat. 5006.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13024 of this title.

§ 13024. Authorization of appropriations

(a) Authorization

There is authorized to be appropriated to carry out this subchapter \$2,300,000 for each of fiscal years 2001 through 2005.

¹ So in original. Probably should be "sections".

² See References in Text note below.

(b) Use of funds

Of the amounts appropriated in subsection (a) of this section, not less than 80 percent shall be used for grants under section 13023(b) of this title.

(c) Limitation

No funds are authorized to be appropriated for a fiscal year to carry out this subchapter unless the aggregate amount appropriated to carry out title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5611 et seq.) for such fiscal year is not less than the aggregate amount appropriated to carry out such title for the preceding fiscal year.

(Pub. L. 101-647, title II, §224, Nov. 29, 1990, 104 Stat. 4798; Pub. L. 103-322, title IV, §40156(b)(1), Sept. 13, 1994, 108 Stat. 1923; Pub. L. 106-386, div. B, title III, §1302(b), Oct. 28, 2000, 114 Stat. 1511.)

REFERENCES IN TEXT

The Juvenile Justice and Delinquency Prevention Act of 1974, referred to in subsec. (c), is Pub. L. 93-415, Sept. 7, 1974, 88 Stat. 1109, as amended. Title II of the Act is classified principally to subchapter II (§5611 et seq.) of chapter 72 of this title. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106-386 added subsec. (a) and struck out heading and text of former subsec. (a). Text read as follows: “There are authorized to be appropriated to carry out this subchapter—

- “(1) \$750,000 for fiscal year 1996;
- “(2) \$1,000,000 for fiscal year 1997;
- “(3) \$2,000,000 for fiscal year 1998;
- “(4) \$2,000,000 for fiscal year 1999; and
- “(5) \$2,300,000 for fiscal year 2000.”

1994—Subsec. (a). Pub. L. 103-322 amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: “There are authorized to be appropriated to carry out this chapter—

- “(1) \$10,000,000 in fiscal year 1991; and
- “(2) such sums as may be necessary to carry out this chapter in each of fiscal years 1992, 1993, and 1994.”

SUBCHAPTER IV—REPORTING REQUIREMENTS

§ 13031. Child abuse reporting

(a) In general

A person who, while engaged in a professional capacity or activity described in subsection (b) of this section on Federal land or in a federally operated (or contracted) facility, learns of facts that give reason to suspect that a child has suffered an incident of child abuse, shall as soon as possible make a report of the suspected abuse to the agency designated under subsection (d) of this section.

(b) Covered professionals

Persons engaged in the following professions and activities are subject to the requirements of subsection (a) of this section:

- (1) Physicians, dentists, medical residents or interns, hospital personnel and administrators, nurses, health care practitioners, chiropractors, osteopaths, pharmacists, optometrists, podiatrists, emergency medical technicians, ambulance drivers, undertakers, coroners, medical examiners, alcohol or drug

treatment personnel, and persons performing a healing role or practicing the healing arts.

(2) Psychologists, psychiatrists, and mental health professionals.

(3) Social workers, licensed or unlicensed marriage, family, and individual counselors.

(4) Teachers, teacher’s aides or assistants, school counselors and guidance personnel, school officials, and school administrators.

(5) Child care workers and administrators.

(6) Law enforcement personnel, probation officers, criminal prosecutors, and juvenile rehabilitation or detention facility employees.

(7) Foster parents.

(8) Commercial film and photo processors.

(c) Definitions

For the purposes of this section—

(1) the term “child abuse” means the physical or mental injury, sexual abuse or exploitation, or negligent treatment of a child;

(2) the term “physical injury” includes but is not limited to lacerations, fractured bones, burns, internal injuries, severe bruising or serious bodily harm;

(3) the term “mental injury” means harm to a child’s psychological or intellectual functioning which may be exhibited by severe anxiety, depression, withdrawal or outward aggressive behavior, or a combination of those behaviors, which may be demonstrated by a change in behavior, emotional response or cognition;

(4) the term “sexual abuse” includes the employment, use, persuasion, inducement, enticement, or coercion of a child to engage in, or assist another person to engage in, sexually explicit conduct or the rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children;

(5) the term “sexually explicit conduct” means actual or simulated—

- (A) sexual intercourse, including sexual contact in the manner of genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between persons of the same or of opposite sex; sexual contact means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify sexual desire of any person;
- (B) bestiality;
- (C) masturbation;
- (D) lascivious exhibition of the genitals or pubic area of a person or animal; or
- (E) sadistic or masochistic abuse;

(6) the term “exploitation” means child pornography or child prostitution;

(7) the term “negligent treatment” means the failure to provide, for reasons other than poverty, adequate food, clothing, shelter, or medical care so as to seriously endanger the physical health of the child; and

(8) the term “child abuse” shall not include discipline administered by a parent or legal guardian to his or her child provided it is reasonable in manner and moderate in degree and otherwise does not constitute cruelty.

(d) Agency designated to receive report and action to be taken

For all Federal lands and all federally operated (or contracted) facilities in which children are cared for or reside, the Attorney General shall designate an agency to receive and investigate the reports described in subsection (a) of this section. By formal written agreement, the designated agency may be a non-Federal agency. When such reports are received by social services or health care agencies, and involve allegations of sexual abuse, serious physical injury, or life-threatening neglect of a child, there shall be an immediate referral of the report to a law enforcement agency with authority to take emergency action to protect the child. All reports received shall be promptly investigated, and whenever appropriate, investigations shall be conducted jointly by social services and law enforcement personnel, with a view toward avoiding unnecessary multiple interviews with the child.

(e) Reporting form

In every federally operated (or contracted) facility, and on all Federal lands, a standard written reporting form, with instructions, shall be disseminated to all mandated reporter groups. Use of the form shall be encouraged, but its use shall not take the place of the immediate making of oral reports, telephonically or otherwise, when circumstances dictate.

(f) Immunity for good faith reporting and associated actions

All persons who, acting in good faith, make a report by subsection (a) of this section, or otherwise provide information or assistance in connection with a report, investigation, or legal intervention pursuant to a report, shall be immune from civil and criminal liability arising out of such actions. There shall be a presumption that any such persons acted in good faith. If a person is sued because of the person's performance of one of the above functions, and the defendant prevails in the litigation, the court may order that the plaintiff pay the defendant's legal expenses. Immunity shall not be accorded to persons acting in bad faith.

(g) Omitted**(h) Training of prospective reporters**

All individuals in the occupations listed in subsection (b)(1) of this section who work on Federal lands, or are employed in federally operated (or contracted) facilities, shall receive periodic training in the obligation to report, as well as in the identification of abused and neglected children.

(Pub. L. 101-647, title II, §226, Nov. 29, 1990, 104 Stat. 4806.)

CODIFICATION

Section is comprised of section 226 of Pub. L. 101-647. Subsec. (g) of section 226 of Pub. L. 101-647 enacted section 2258 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 2258.

§ 13032. Reporting of child pornography by electronic communication service providers**(a) Definitions**

In this section—

(1) the term “electronic communication service” has the meaning given the term in section 2510 of title 18; and

(2) the term “remote computing service” has the meaning given the term in section 2711 of title 18.

(b) Requirements**(1) Duty to report**

Whoever, while engaged in providing an electronic communication service or a remote computing service to the public, through a facility or means of interstate or foreign commerce, obtains knowledge of facts or circumstances from which a violation of section 2251, 2251A, 2252, 2252A, or 2260 of title 18, involving child pornography (as defined in section 2256 of that title), is apparent, shall, as soon as reasonably possible, make a report of such facts or circumstances to the Cyber Tip Line at the National Center for Missing and Exploited Children, which shall forward that report to a law enforcement agency or agencies designated by the Attorney General.

(2) Designation of agencies

Not later than 180 days after October 30, 1998, the Attorney General shall designate the law enforcement agency or agencies to which a report shall be forwarded under paragraph (1).

(3) Failure to report

A provider of electronic communication services or remote computing services described in paragraph (1) who knowingly and willfully fails to make a report under that paragraph shall be fined—

(A) in the case of an initial failure to make a report, not more than \$50,000; and

(B) in the case of any second or subsequent failure to make a report, not more than \$100,000.

(c) Civil liability

No provider or user of an electronic communication service or a remote computing service to the public shall be held liable on account of any action taken in good faith to comply with this section.

(d) Limitation of information or material required in report

A report under subsection (b)(1) of this section may include additional information or material developed by an electronic communication service or remote computing service, except that the Federal Government may not require the production of such information or material in that report.

(e) Monitoring not required

Nothing in this section may be construed to require a provider of electronic communication services or remote computing services to engage in the monitoring of any user, subscriber, or customer of that provider, or the content of any communication of any such person.

(f) Conditions of disclosure of information contained within report

(1) In general

No law enforcement agency that receives a report under subsection (b)(1) of this section shall disclose any information contained in that report, except that disclosure of such information may be made—

(A) to an attorney for the government for use in the performance of the official duties of the attorney;

(B) to such officers and employees of the law enforcement agency, as may be necessary in the performance of their investigative and recordkeeping functions;

(C) to such other government personnel (including personnel of a State or subdivision of a State) as are determined to be necessary by an attorney for the government to assist the attorney in the performance of the official duties of the attorney in enforcing Federal criminal law; or

(D) as permitted by a court at the request of an attorney for the government, upon a showing that such information may disclose a violation of State criminal law, to an appropriate official of a State or subdivision of a State for the purpose of enforcing such State law.

(2) Definitions

In this subsection, the terms “attorney for the government” and “State” have the meanings given those terms in Rule 54 of the Federal Rules of Criminal Procedure.

(Pub. L. 101-647, title II, §227, as added Pub. L. 105-314, title VI, §604(a), Oct. 30, 1998, 112 Stat. 2983; amended Pub. L. 106-113, div. B, §1000(a)(1) [title I, §121], Nov. 29, 1999, 113 Stat. 1535, 1501A-23.)

REFERENCES IN TEXT

Rule 54 of the Federal Rules of Criminal Procedure, referred to in subsec. (f)(2), is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

AMENDMENTS

1999—Subsec. (b)(1). Pub. L. 106-113, §1000(a)(1) [title I, §121(a)], inserted “to the Cyber Tip Line at the National Center for Missing and Exploited Children, which shall forward that report” after “such facts or circumstances”.

Subsec. (b)(2). Pub. L. 106-113, §1000(a)(1) [title I, §121(b)], substituted “forwarded” for “made”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 2702.

SUBCHAPTER V—CHILD CARE WORKER
EMPLOYEE BACKGROUND CHECKS

§ 13041. Requirement for background checks

(a) In general

(1) Each agency of the Federal Government, and every facility operated by the Federal Government (or operated under contract with the Federal Government), that hires (or contracts for hire) individuals involved with the provision to children under the age of 18 of child care services shall assure that all existing and newly-hired employees undergo a criminal history

background check. All existing staff shall receive such checks not later than May 29, 1991. Except as provided in subsection (b)(3) of this section, no additional staff shall be hired without a check having been completed.

(2) For the purposes of this section, the term “child care services” means child protective services (including the investigation of child abuse and neglect reports), social services, health and mental health care, child (day) care, education (whether or not directly involved in teaching), foster care, residential care, recreational or rehabilitative programs, and detention, correctional, or treatment services.

(b) Criminal history check

(1) A background check required by subsection (a) of this section shall be—

(A) based on a set of the employee’s fingerprints obtained by a law enforcement officer and on other identifying information;

(B) conducted through the Identification Division of the Federal Bureau of Investigation and through the State criminal history repositories of all States that an employee or prospective employee lists as current and former residences in an employment application; and

(C) initiated through the personnel programs of the applicable Federal agencies.

(2) The results of the background check shall be communicated to the employing agency.

(3) An agency or facility described in subsection (a)(1) of this section may hire a staff person provisionally prior to the completion of a background check if, at all times prior to receipt of the background check during which children are in the care of the person, the person is within the sight and under the supervision of a staff person with respect to whom a background check has been completed.

(c) Applicable criminal histories

Any conviction for a sex crime, an offense involving a child victim, or a drug felony, may be ground for denying employment or for dismissal of an employee in any of the positions listed in subsection (a)(2) of this section. In the case of an incident in which an individual has been charged with one of those offenses, when the charge has not yet been disposed of, an employer may suspend an employee from having any contact with children while on the job until the case is resolved. Conviction of a crime other than a sex crime may be considered if it bears on an individual’s fitness to have responsibility for the safety and well-being of children.

(d) Employment applications

(1) Employment applications for individuals who are seeking work for an agency of the Federal Government, or for a facility or program operated by (or through contract with) the Federal Government, in any of the positions listed in subsection (a)(1) of this section, shall contain a question asking whether the individual has ever been arrested for or charged with a crime involving a child, and if so requiring a description of the disposition of the arrest or charge. An application shall state that it is being signed under penalty of perjury, with the applicable Federal punishment for perjury stated on the application.

(2) A Federal agency seeking a criminal history record check shall first obtain the signature of the employee or prospective employee indicating that the employee or prospective employee has been notified of the employer's obligation to require a record check as a condition of employment and the employee's right to obtain a copy of the criminal history report made available to the employing Federal agency and the right to challenge the accuracy and completeness of any information contained in the report.

(e) Encouragement of voluntary criminal history checks for others who may have contact with children

Federal agencies and facilities are encouraged to submit identifying information for criminal history checks on volunteers working in any of the positions listed in subsection (a) of this section and on adult household members in places where child care or foster care services are being provided in a home.

(Pub. L. 101-647, title II, §231, Nov. 29, 1990, 104 Stat. 4808; Pub. L. 102-190, div. A, title X, §1094(a), Dec. 5, 1991, 105 Stat. 1488.)

AMENDMENTS

1991—Subsec. (a)(1). Pub. L. 102-190, §1094(a)(1), substituted "May 29, 1991. Except as provided in subsection (b)(3) of this section, no additional staff" for "6 months after November 29, 1990, and no additional staff".

Subsec. (b)(3). Pub. L. 102-190, §1094(a)(2), added par. (3).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 40 section 490b.

SUBCHAPTER VI—TREATMENT FOR JUVENILE OFFENDERS WHO ARE VICTIMS OF CHILD ABUSE OR NEGLECT

§§ 13051 to 13055. Repealed. Pub. L. 102-586, §2(i)(2), Nov. 4, 1992, 106 Stat. 5015

Section 13051, Pub. L. 101-647, title II, §251, Nov. 29, 1990, 104 Stat. 4814, authorized Administrator to make grants to public and nonprofit private organizations to develop, establish, and support projects for juvenile offenders who are victims of child abuse or neglect.

Section 13052, Pub. L. 101-647, title II, §252, Nov. 29, 1990, 104 Stat. 4815, related to administrative requirements.

Section 13053, Pub. L. 101-647, title II, §253, Nov. 29, 1990, 104 Stat. 4815, provided that Administrator in making grants give priority to applicants with experience and not disapprove an application solely because applicant proposes treating or serving juveniles whose offenses were not serious crimes.

Section 13054, Pub. L. 101-647, title II, §254, Nov. 29, 1990, 104 Stat. 4815, authorized appropriations to carry out this subchapter.

Section 13055, Pub. L. 101-647, title II, §255, Nov. 29, 1990, 104 Stat. 4815, defined "Administrator" and "juvenile" for purposes of this subchapter.

EFFECTIVE DATE OF REPEAL

Section 2(i)(2) of Pub. L. 102-586 provided that the repeal by that section is effective Sept. 30, 1993.

CHAPTER 133—POLLUTION PREVENTION

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§ 13101. Findings and policy

(a) Findings

The Congress finds that:

(1) The United States of America annually produces millions of tons of pollution and spends tens of billions of dollars per year controlling this pollution.

(2) There are significant opportunities for industry to reduce or prevent pollution at the source through cost-effective changes in production, operation, and raw materials use. Such changes offer industry substantial savings in reduced raw material, pollution control, and liability costs as well as help protect the environment and reduce risks to worker health and safety.

(3) The opportunities for source reduction are often not realized because existing regulations, and the industrial resources they require for compliance, focus upon treatment and disposal, rather than source reduction; existing regulations do not emphasize multimedia management of pollution; and businesses need information and technical assistance to overcome institutional barriers to the adoption of source reduction practices.

(4) Source reduction is fundamentally different and more desirable than waste management and pollution control. The Environmental Protection Agency needs to address the historical lack of attention to source reduction.

(5) As a first step in preventing pollution through source reduction, the Environmental Protection Agency must establish a source reduction program which collects and disseminates information, provides financial assistance to States, and implements the other activities provided for in this chapter.

(b) Policy

The Congress hereby declares it to be the national policy of the United States that pollution should be prevented or reduced at the source whenever feasible; pollution that cannot be prevented should be recycled in an environmentally

safe manner, whenever feasible; pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible; and disposal or other release into the environment should be employed only as a last resort and should be conducted in an environmentally safe manner.

(Pub. L. 101-508, title VI, §6602, Nov. 5, 1990, 104 Stat. 1388-321.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(5), was in the original "this subtitle", meaning subtitle F (§§ 6501, 6601-6610) of title VI, Pub. L. 101-508, which is classified generally to this chapter. For complete classification of subtitle F to the Code, see Short Title note below and Tables.

SHORT TITLE

Section 6601 of Pub. L. 101-508 provided that: "This subtitle [subtitle F (§§ 6501, 6601-6610) of title VI of Pub. L. 101-508, enacting this chapter and section 4370c of this title] may be cited as the 'Pollution Prevention Act of 1990'."

§ 13102. Definitions

For purposes of this chapter—

(1) The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) The term "Agency" means the Environmental Protection Agency.

(3) The term "toxic chemical" means any substance on the list described in section 11023(c) of this title.

(4) The term "release" has the same meaning as provided by section 11049(8) of this title.

(5)(A) The term "source reduction" means any practice which—

(i) reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal; and

(ii) reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants.

The term includes equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control.

(B) The term "source reduction" does not include any practice which alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity which itself is not integral to and necessary for the production of a product or the providing of a service.

(6) The term "multi-media" means water, air, and land.

(7) The term "SIC codes" refers to the 2-digit code numbers used for classification of economic activity in the Standard Industrial Classification Manual.

(Pub. L. 101-508, title VI, §6603, Nov. 5, 1990, 104 Stat. 1388-321.)

§ 13103. EPA activities

(a) Authorities

The Administrator shall establish in the Agency an office to carry out the functions of the Administrator under this chapter. The office shall be independent of the Agency's single-medium program offices but shall have the authority to review and advise such offices on their activities to promote a multi-media approach to source reduction. The office shall be under the direction of such officer of the Agency as the Administrator shall designate.

(b) Functions

The Administrator shall develop and implement a strategy to promote source reduction. As part of the strategy, the Administrator shall—

(1) establish standard methods of measurement of source reduction;

(2) ensure that the Agency considers the effect of its existing and proposed programs on source reduction efforts and shall review regulations of the Agency prior and subsequent to their proposal to determine their effect on source reduction;

(3) coordinate source reduction activities in each Agency Office¹ and coordinate with appropriate offices to promote source reduction practices in other Federal agencies, and generic research and development on techniques and processes which have broad applicability;

(4) develop improved methods of coordinating, streamlining and assuring public access to data collected under Federal environmental statutes;

(5) facilitate the adoption of source reduction techniques by businesses. This strategy shall include the use of the Source Reduction Clearinghouse and State matching grants provided in this chapter to foster the exchange of information regarding source reduction techniques, the dissemination of such information to businesses, and the provision of technical assistance to businesses. The strategy shall also consider the capabilities of various businesses to make use of source reduction techniques;

(6) identify, where appropriate, measurable goals which reflect the policy of this chapter, the tasks necessary to achieve the goals, dates at which the principal tasks are to be accomplished, required resources, organizational responsibilities, and the means by which progress in meeting the goals will be measured;

(8)² establish an advisory panel of technical experts comprised of representatives from industry, the States, and public interest groups, to advise the Administrator on ways to improve collection and dissemination of data;

(9) establish a training program on source reduction opportunities, including workshops and guidance documents, for State and Federal permit issuance, enforcement, and inspection officials working within all agency program offices.³

(10) identify and make recommendations to Congress to eliminate barriers to source re-

¹ So in original. Probably should not be capitalized.

² So in original. Subsec. (b) enacted without a par. (7).

³ So in original. The period probably should be a semicolon.

duction including the use of incentives and disincentives;

(11) identify opportunities to use Federal procurement to encourage source reduction;

(12) develop, test and disseminate model source reduction auditing procedures designed to highlight source reduction opportunities; and

(13) establish an annual award program to recognize a company or companies which operate outstanding or innovative source reduction programs.

(Pub. L. 101-508, title VI, §6604, Nov. 5, 1990, 104 Stat. 1388-322.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13107 of this title.

§ 13104. Grants to States for State technical assistance programs

(a) General authority

The Administrator shall make matching grants to States for programs to promote the use of source reduction techniques by businesses.

(b) Criteria

When evaluating the requests for grants under this section, the Administrator shall consider, among other things, whether the proposed State program would accomplish the following:

(1) Make specific technical assistance available to businesses seeking information about source reduction opportunities, including funding for experts to provide onsite technical advice to business¹ seeking assistance and to assist in the development of source reduction plans.

(2) Target assistance to businesses for whom lack of information is an impediment to source reduction.

(3) Provide training in source reduction techniques. Such training may be provided through local engineering schools or any other appropriate means.

(c) Matching funds

Federal funds used in any State program under this section shall provide no more than 50 per centum of the funds made available to a State in each year of that State's participation in the program.

(d) Effectiveness

The Administrator shall establish appropriate means for measuring the effectiveness of the State grants made under this section in promoting the use of source reduction techniques by businesses.

(e) Information

States receiving grants under this section shall make information generated under the grants available to the Administrator.

(Pub. L. 101-508, title VI, §6605, Nov. 5, 1990, 104 Stat. 1388-323.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13105, 13109 of this title.

¹ So in original. Probably should be "businesses".

§ 13105. Source Reduction Clearinghouse

(a) Authority

The Administrator shall establish a Source Reduction Clearinghouse to compile information including a computer data base which contains information on management, technical, and operational approaches to source reduction. The Administrator shall use the clearinghouse to—

(1) serve as a center for source reduction technology transfer;

(2) mount active outreach and education programs by the States to further the adoption of source reduction technologies; and

(3) collect and compile information reported by States receiving grants under section 13104 of this title on the operation and success of State source reduction programs.

(b) Public availability

The Administrator shall make available to the public such information on source reduction as is gathered pursuant to this chapter and such other pertinent information and analysis regarding source reduction as may be available to the Administrator. The data base shall permit entry and retrieval of information to any person.

(Pub. L. 101-508, title VI, §6606, Nov. 5, 1990, 104 Stat. 1388-324.)

§ 13106. Source reduction and recycling data collection

(a) Reporting requirements

Each owner or operator of a facility required to file an annual toxic chemical release form under section 11023 of this title for any toxic chemical shall include with each such annual filing a toxic chemical source reduction and recycling report for the preceeding¹ calendar year. The toxic chemical source reduction and recycling report shall cover each toxic chemical required to be reported in the annual toxic chemical release form filed by the owner or operator under section 11023(c) of this title. This section shall take effect with the annual report filed under section 11023 of this title for the first full calendar year beginning after November 5, 1990.

(b) Items included in report

The toxic chemical source reduction and recycling report required under subsection (a) of this section shall set forth each of the following on a facility-by-facility basis for each toxic chemical:

(1) The quantity of the chemical entering any waste stream (or otherwise released into the environment) prior to recycling, treatment, or disposal during the calendar year for which the report is filed and the percentage change from the previous year. The quantity reported shall not include any amount reported under paragraph (7). When actual measurements of the quantity of a toxic chemical entering the waste streams are not readily available, reasonable estimates should be made based on best engineering judgment.

(2) The amount of the chemical from the facility which is recycled (at the facility or else-

¹ So in original. Probably should be "preceding".

where) during such calendar year, the percentage change from the previous year, and the process of recycling used.

(3) The source reduction practices used with respect to that chemical during such year at the facility. Such practices shall be reported in accordance with the following categories unless the Administrator finds other categories to be more appropriate.

(A) Equipment, technology, process, or procedure modifications.

(B) Reformulation or redesign of products.

(C) Substitution of raw materials.

(D) Improvement in management, training, inventory control, materials handling, or other general operational phases of industrial facilities.

(4) The amount expected to be reported under paragraph² (1) and (2) for the two calendar years immediately following the calendar year for which the report is filed. Such amount shall be expressed as a percentage change from the amount reported in paragraphs (1) and (2).

(5) A ratio of production in the reporting year to production in the previous year. The ratio should be calculated to most closely reflect all activities involving the toxic chemical. In specific industrial classifications subject to this section, where a feedstock or some variable other than production is the primary influence on waste characteristics or volumes, the report may provide an index based on that primary variable for each toxic chemical. The Administrator is encouraged to develop production indexes to accommodate individual industries for use on a voluntary basis.

(6) The techniques which were used to identify source reduction opportunities. Techniques listed should include, but are not limited to, employee recommendations, external and internal audits, participative team management, and material balance audits. Each type of source reduction listed under paragraph (3) should be associated with the techniques or multiples of techniques used to identify the source reduction technique.

(7) The amount of any toxic chemical released into the environment which resulted from a catastrophic event, remedial action, or other one-time event, and is not associated with production processes during the reporting year.

(8) The amount of the chemical from the facility which is treated (at the facility or elsewhere) during such calendar year and the percentage change from the previous year. For the first year of reporting under this subsection, comparison with the previous year is required only to the extent such information is available.

(c) SARA provisions

The provisions of sections 11042, 11045(c), and 11046 of this title shall apply to the reporting requirements of this section in the same manner as to the reports required under section 11023 of this title. The Administrator may modify the form required for purposes of reporting informa-

tion under section 11023 of this title to the extent he deems necessary to include the additional information required under this section.

(d) Additional optional information

Any person filing a report under this section for any year may include with the report additional information regarding source reduction, recycling, and other pollution control techniques in earlier years.

(e) Availability of data

Subject to section 11042 of this title, the Administrator shall make data collected under this section publicly available in the same manner as the data collected under section 11023 of this title.

(Pub. L. 101-508, title VI, §6607, Nov. 5, 1990, 104 Stat. 1388-324.)

REFERENCES IN TEXT

SARA, referred to in the heading of subsec. (c), means the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499, Oct. 17, 1986, 100 Stat. 1613, as amended. For complete classification of this Act to the Code, see Short Title of 1986 Amendment note set out under section 9601 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13107 of this title.

§ 13107. EPA report

(a) Biennial reports

The Administrator shall provide Congress with a report within eighteen months after November 5, 1990, and biennially thereafter, containing a detailed description of the actions taken to implement the strategy to promote source reduction developed under section 13103(b)¹ of this title and of the results of such actions. The report shall include an assessment of the effectiveness of the clearinghouse and grant program established under this chapter in promoting the goals of the strategy, and shall evaluate data gaps and data duplication with respect to data collected under Federal environmental statutes.

(b) Subsequent reports

Each biennial report submitted under subsection (a) of this section after the first report shall contain each of the following:

(1) An analysis of the data collected under section 13106 of this title on an industry-by-industry basis for not less than five SIC codes or other categories as the Administrator deems appropriate. The analysis shall begin with those SIC codes or other categories of facilities which generate the largest quantities of toxic chemical waste. The analysis shall include an evaluation of trends in source reduction by industry, firm size, production, or other useful means. Each such subsequent report shall cover five SIC codes or other categories which were not covered in a prior report until all SIC codes or other categories have been covered.

(2) An analysis of the usefulness and validity of the data collected under section 13106 of

²So in original. Probably should be "paragraphs".

¹See References in Text note below.

this title for measuring trends in source reduction and the adoption of source reduction by business.

(3) Identification of regulatory and non-regulatory barriers to source reduction, and of opportunities for using existing regulatory programs, and incentives and disincentives to promote and assist source reduction.

(4) Identification of industries and pollutants that require priority assistance in multimedia source reduction²

(5) Recommendations as to incentives needed to encourage investment and research and development in source reduction.

(6) Identification of opportunities and development of priorities for research and development in source reduction methods and techniques.

(7) An evaluation of the cost and technical feasibility, by industry and processes, of source reduction opportunities and current activities and an identification of any industries for which there are significant barriers to source reduction with an analysis of the basis of this identification.

(8) An evaluation of methods of coordinating, streamlining, and improving public access to data collected under Federal environmental statutes.

(9) An evaluation of data gaps and data duplication with respect to data collected under Federal environmental statutes.

In the report following the first biennial report provided for under this subsection, paragraphs (3) through (9) may be included at the discretion of the Administrator.

(Pub. L. 101-508, title VI, § 6608, Nov. 5, 1990, 104 Stat. 1388-326.)

REFERENCES IN TEXT

Section 13103(b) of this title, referred to in subsec. (a), was in the original "section 4(b)" and was translated as reading "section 6604(b)", meaning section 6604(b) of Pub. L. 101-508, because Pub. L. 101-508 has no section 4 but section 6604(b) of Pub. L. 101-508 relates to development of a strategy to promote source reduction.

§ 13108. Savings provisions

(a) Nothing in this chapter shall be construed to modify or interfere with the implementation of title III of the Superfund Amendments and Reauthorization Act of 1986 [42 U.S.C. 11001 et seq.].

(b) Nothing contained in this chapter shall be construed, interpreted or applied to supplant, displace, preempt or otherwise diminish the responsibilities and liabilities under other State or Federal law, whether statutory or common.

(Pub. L. 101-508, title VI, § 6609, Nov. 5, 1990, 104 Stat. 1388-327.)

REFERENCES IN TEXT

Title III of the Superfund Amendments and Reauthorization Act of 1986, referred to in subsec. (a), is title III of Pub. L. 99-499, Oct. 17, 1986, 100 Stat. 1728, known as the Emergency Planning and Community Right-To-Know Act of 1986, which is classified generally to chapter 116 (§ 11001 et seq.) of this title. For complete classification of title III to the Code, see Short

Title note set out under section 11001 of this title and Tables.

§ 13109. Authorization of appropriations

There is authorized to be appropriated to the Administrator \$8,000,000 for each of the fiscal years 1991, 1992, and 1993 for functions carried out under this chapter (other than State Grants),¹ and \$8,000,000 for each of the fiscal years 1991, 1992, and 1993, for grant programs to States issued pursuant to section 13104 of this title.

(Pub. L. 101-508, title VI, § 6610, Nov. 5, 1990, 104 Stat. 1388-327.)

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² So in original. Probably should be followed by a period.

¹ So in original. Probably should not be capitalized.

<p>Sec.</p> <p>(b) Federal assistance to States. (c) General provisions. (d) Definitions. (e) Authorization of appropriations.</p> <p>13236. Alternative fuel bus program. (a) Cooperative agreements and joint ventures. (b) Limitations. (c) School buses. (d) Authorization of appropriations.</p> <p>13237. Certification of training programs.</p> <p>13238. Alternative fuel use in nonroad vehicles and engines. (a) Nonroad vehicles and engines. (b) Definition of nonroad vehicles and engines. (c) Designation.</p> <p>13239. Low interest loan program. (a) Establishment. (b) Loan terms. (c) Criteria. (d) Priorities. (e) Authorization of appropriations.</p> <p>SUBCHAPTER III—AVAILABILITY AND USE OF REPLACEMENT FUELS, ALTERNATIVE FUELS, AND ALTERNATIVE FUELED PRIVATE VEHICLES</p> <p>13251. Mandate for alternative fuel providers. (a) In general. (b) Revisions and extensions. (c) Option for electric utilities. (d) Report to Congress.</p> <p>13252. Replacement fuel supply and demand program. (a) Establishment of program. (b) Development plan and production goals.</p> <p>13253. Replacement fuel demand estimates and supply information. (a) Estimates. (b) Information. (c) Protection of information.</p> <p>13254. Modification of goals; additional rulemaking authority. (a) Examination of goals. (b) Modification of goals. (c) Additional rulemaking authority.</p> <p>13255. Voluntary supply commitments.</p> <p>13256. Technical and policy analysis. (a) Requirement. (b) Purposes. (c) Publication.</p> <p>13257. Fleet requirement program. (a) Fleet program purchase goals. (b) Early rulemaking. (c) Advance notice of proposed rulemaking. (d) Proposed rule. (e) Determination. (f) Explanation of determination that fleet requirement program is not necessary. (g) Fleet requirement program. (h) Extension of deadlines. (i) Exemptions. (j) Conversions. (k) Inclusion of law enforcement vehicles and urban buses. (l) Consideration of factors. (m) Consultation and participation of other Federal agencies. (n) Petitions. (o) Mandatory State fleet programs.</p> <p>13258. Credits. (a) In general. (b) Allocation. (c) Use of credits. (d) Transferability.</p>	<p>Sec.</p> <p>13259. Secretary's recommendations to Congress. (a) Recommendations to require availability or acquisition. (b) Fair and equitable application.</p> <p>13260. Effect on other laws. (a) In general. (b) Compliance by alternative fueled vehicles.</p> <p>13261. Prohibited acts.</p> <p>13262. Enforcement. (a) Violation. (b) Willful violation. (c) Knowing and willful violation following prior violation and penalty.</p> <p>13263. Powers of Secretary.</p> <p>13264. Authorization of appropriations.</p> <p>SUBCHAPTER IV—ELECTRIC MOTOR VEHICLES</p> <p>13271. Definitions.</p> <p>PART A—ELECTRIC MOTOR VEHICLE COMMERCIAL DEMONSTRATION PROGRAM</p> <p>13281. Program and solicitation. (a) Program. (b) Solicitation.</p> <p>13282. Selection of proposals. (a) Selection. (b) Criteria. (c) Conditions.</p> <p>13283. Discount payments. (a) Certification. (b) Payment. (c) Calculations of discount payments.</p> <p>13284. Cost-sharing. (a) Requirement. (b) Reduction.</p> <p>13285. Reports to Congress. (a) Progress reports. (b) Report on encouraging purchase and use of electric motor vehicles.</p> <p>13286. Authorization of appropriations.</p> <p>PART B—ELECTRIC MOTOR VEHICLE INFRASTRUCTURE AND SUPPORT SYSTEMS DEVELOPMENT PROGRAM</p> <p>13291. General authority. (a) Program. (b) Eligibility. (c) Coordination.</p> <p>13292. Proposals. (a) Solicitation. (b) Criteria. (c) Projects.</p> <p>13293. Protection of proprietary information. (a) In general. (b) "Domestic companies" defined.</p> <p>13294. Compliance with existing law.</p> <p>13295. Repealed.</p> <p>13296. Authorization of appropriations.</p> <p>SUBCHAPTER V—RENEWABLE ENERGY</p> <p>13311. Purposes.</p> <p>13312. Renewable energy export technology training. (a) Establishment of program. (b) Purpose. (c) Authorization of appropriations.</p> <p>13313. Renewable Energy Advancement Awards. (a) Authority. (b) Selection criteria. (c) Selection. (d) Eligibility. (e) Authorization of appropriations. (f) Awards made in absence of appropriations.</p> <p>13314. Study of tax and rate treatment of renewable energy projects.</p> <p>13315. Data system and energy technology evaluation.</p>
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§ 13201. "Secretary" defined

For purposes of this Act, the term "Secretary" means the Secretary of Energy.

(Pub. L. 102-486, § 2, Oct. 24, 1992, 106 Stat. 2782.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 102-486, Oct. 24, 1992, 106 Stat. 2776, known as the Energy Policy Act of 1992. For complete classification of this Act to the Code, see Short Title note below and Tables.

SHORT TITLE

Section 1(a) of Pub. L. 102-486 provided that: "This Act [see Tables for classification] may be cited as the 'Energy Policy Act of 1992'."

EX. ORD. NO. 13211. ACTIONS CONCERNING REGULATIONS THAT SIGNIFICANTLY AFFECT ENERGY SUPPLY, DISTRIBUTION, OR USE

Ex. Ord. No. 13211, May 18, 2001, 66 F.R. 28355, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to appropriately weigh and consider the effects of the Federal Government's regulations on the supply, distribution, and use of energy, it is hereby ordered as follows:

SECTION 1. Policy. The Federal Government can significantly affect the supply, distribution, and use of energy. Yet there is often too little information regarding the effects that governmental regulatory action can have on energy. In order to provide more useful energy-related information and hence improve the quality of agency decisionmaking, I am requiring that agencies shall prepare a Statement of Energy Effects when undertaking certain agency actions. As described more fully below, such Statements of Energy Effects shall describe the effects of certain regulatory actions on energy supply, distribution, or use.

SEC. 2. Preparation of a Statement of Energy Effects. (a) To the extent permitted by law, agencies shall prepare and submit a Statement of Energy Effects to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for those matters identified as significant energy actions.

(b) A Statement of Energy Effects shall consist of a detailed statement by the agency responsible for the significant energy action relating to:

- (i) any adverse effects on energy supply, distribution, or use (including a shortfall in supply, price increases, and increased use of foreign supplies) should the proposal be implemented, and
- (ii) reasonable alternatives to the action with adverse energy effects and the expected effects of such alternatives on energy supply, distribution, and use.

(c) The Administrator of the Office of Information and Regulatory Affairs shall provide guidance to the agencies on the implementation of this order and shall consult with other agencies as appropriate in the implementation of this order.

SEC. 3. Submission and Publication of Statements. (a) Agencies shall submit their Statements of Energy Effects to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, whenever they present the related submission under Executive Order 12866 of September 30, 1993 [5 U.S.C. 601 note], or any successor order.

(b) Agencies shall publish their Statements of Energy Effects, or a summary thereof, in each related Notice of Proposed Rulemaking and in any resulting Final Rule.

SEC. 4. Definitions. For purposes of this order:

(a) "Regulation" and "rule" have the same meaning as they do in Executive Order 12866 [5 U.S.C. 601 note] or any successor order.

(b) "Significant energy action" means any action by an agency (normally published in the Federal Register) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking:

- (1)(i) that is a significant regulatory action under Executive Order 12866 or any successor order, and
- (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or
- (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

(c) "Agency" means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

SEC. 5. Judicial Review. Nothing in this order shall affect any otherwise available judicial review of agency action. This order is intended only to improve the internal management of the Federal Government and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

GEORGE W. BUSH.

EX. ORD. NO. 13212. ACTIONS TO EXPEDITE ENERGY-RELATED PROJECTS

Ex. Ord. No. 13212, May 18, 2001, 66 F.R. 28357, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to take additional steps to expedite the increased supply and availability of energy to our Nation, it is hereby ordered as follows:

SECTION 1. Policy. The increased production and transmission of energy in a safe and environmentally sound manner is essential to the well-being of the American people. In general, it is the policy of this Administration that executive departments and agencies (agencies) shall take appropriate actions, to the extent consistent with applicable law, to expedite projects that will increase the production, transmission, or conservation of energy.

SEC. 2. Actions to Expedite Energy-Related Projects. For energy-related projects, agencies shall expedite their review of permits or take other actions as necessary to accelerate the completion of such projects, while maintaining safety, public health, and environmental protections. The agencies shall take such actions to the extent permitted by law and regulation, and where appropriate.

SEC. 3. Interagency Task Force. There is established an interagency task force (Task Force) to monitor and assist the agencies in their efforts to expedite their review of permits or similar actions, as necessary, to accelerate the completion of energy-related projects, increase energy production and conservation, and improve transmission of energy. The Task Force also shall monitor and assist agencies in setting up appropriate mechanisms to coordinate Federal, State, tribal, and local permitting in geographic areas where increased permitting activity is expected. The Task Force shall be composed of representatives from the Departments of State, the Treasury, Defense, Agriculture, Housing and Urban Development, Justice, Commerce, Transportation, the Interior, Labor, Education, Health and Human Services, Energy, Veterans Affairs, the Environmental Protection Agency, Central Intelligence Agency, General Services Administration, Office of Management and Budget, Council of Economic Advisers, Domestic Policy Council, National Economic Council, and such other representatives as may be determined by the Chairman of the Council on Environ-

mental Quality. The Task Force shall be chaired by the Chairman of the Council on Environmental Quality and housed at the Department of Energy for administrative purposes.

SEC. 4. *Judicial Review.* Nothing in this order shall affect any otherwise available judicial review of agency action. This order is intended only to improve the internal management of the Federal Government and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

GEORGE W. BUSH.

SUBCHAPTER I—ALTERNATIVE FUELS— GENERAL

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 13263 of this title.

§ 13211. Definitions

For purposes of this subchapter, subchapter II of this chapter, and subchapter III of this chapter (unless otherwise specified)—

(1) the term “Administrator” means the Administrator of the Environmental Protection Agency;

(2) the term “alternative fuel” means methanol, denatured ethanol, and other alcohols; mixtures containing 85 percent or more (or such other percentage, but not less than 70 percent, as determined by the Secretary, by rule, to provide for requirements relating to cold start, safety, or vehicle functions) by volume of methanol, denatured ethanol, and other alcohols with gasoline or other fuels; natural gas, including liquid fuels domestically produced from natural gas; liquefied petroleum gas; hydrogen; coal-derived liquid fuels; fuels (other than alcohol) derived from biological materials; electricity (including electricity from solar energy); and any other fuel the Secretary determines, by rule, is substantially not petroleum and would yield substantial energy security benefits and substantial environmental benefits;

(3) the term “alternative fueled vehicle” means a dedicated vehicle or a dual fueled vehicle;

(4) the term “comparable conventionally fueled motor vehicle” means a motor vehicle which is, as determined by the Secretary—

(A) commercially available at the time the comparability of the vehicle is being assessed;

(B) powered by an internal combustion engine that utilizes gasoline or diesel fuel as its fuel source; and

(C) provides passenger capacity or payload capacity the same or similar to the alternative fueled vehicle to which it is being compared;

(5) “covered person” means a person that owns, operates, leases, or otherwise controls—

(A) a fleet that contains at least 20 motor vehicles that are centrally fueled or capable of being centrally fueled, and are used primarily within a metropolitan statistical area or a consolidated metropolitan statistical area, as established by the Bureau of the Census, with a 1980 population of 250,000 or more; and

(B) at least 50 motor vehicles within the United States;

(6) the term “dedicated vehicle” means—

(A) a dedicated automobile, as such term is defined in section 32901(a)(7) of title 49; or

(B) a motor vehicle, other than an automobile, that operates solely on alternative fuel;

(7) the term “domestic” means derived from resources within the several States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or any other Commonwealth, territory, or possession of the United States, including the outer Continental Shelf, as such term is defined in the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.], or from resources within a Nation with which there is in effect a free trade agreement requiring national treatment for trade;

(8) the term “dual fueled vehicle” means—

(A) dual fueled automobile, as such term is defined in section 32901(a)(8) of title 49; or

(B) a motor vehicle, other than an automobile, that is capable of operating on alternative fuel and is capable of operating on gasoline or diesel fuel;

(9) the term “fleet” means a group of 20 or more light duty motor vehicles, used primarily in a metropolitan statistical area or consolidated metropolitan statistical area, as established by the Bureau of the Census, with a 1980 population of more than 250,000, that are centrally fueled or capable of being centrally fueled and are owned, operated, leased, or otherwise controlled by a governmental entity or other person who owns, operates, leases, or otherwise controls 50 or more such vehicles, by any person who controls such person, by any person controlled by such person, and by any person under common control with such person, except that such term does not include—

(A) motor vehicles held for lease or rental to the general public;

(B) motor vehicles held for sale by motor vehicle dealers, including demonstration motor vehicles;

(C) motor vehicles used for motor vehicle manufacturer product evaluations or tests;

(D) law enforcement motor vehicles;

(E) emergency motor vehicles;

(F) motor vehicles acquired and used for military purposes that the Secretary of Defense has certified to the Secretary must be exempt for national security reasons;

(G) nonroad vehicles, including farm and construction motor vehicles; or

(H) motor vehicles which under normal operations are garaged at personal residences at night;

(10) the term “fuel supplier” means—

(A) any person engaged in the importing, refining, or processing of crude oil to produce motor fuel;

(B) any person engaged in the importation, production, storage, transportation, distribution, or sale of motor fuel; and

(C) any person engaged in generating, transmitting, importing, or selling at wholesale or retail electricity;

(11) the term “light duty motor vehicle” means a light duty truck or light duty vehicle, as such terms are defined under section 7550(7) of this title, of less than or equal to 8,500 pounds gross vehicle weight rating;

(12) the term “motor fuel” means any substance suitable as a fuel for a motor vehicle;

(13) the term “motor vehicle” has the meaning given such term under section 7550(2) of this title; and

(14) the term “replacement fuel” means the portion of any motor fuel that is methanol, ethanol, or other alcohols, natural gas, liquefied petroleum gas, hydrogen, coal derived liquid fuels, fuels (other than alcohol) derived from biological materials, electricity (including electricity from solar energy), ethers, or any other fuel the Secretary determines, by rule, is substantially not petroleum and would yield substantial energy security benefits and substantial environmental benefits.

(Pub. L. 102-486, title III, §301, Oct. 24, 1992, 106 Stat. 2866; Pub. L. 106-554, §1(a)(4) [div. B, title I, §122], Dec. 21, 2000, 114 Stat. 2763, 2763A-229.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original “this title” meaning title III of Pub. L. 102-486, Oct. 24, 1992, 106 Stat. 2866, which enacted this subchapter, amended section 6374 of this title, and repealed provisions set out as a note under section 6374 of this title.

Subchapter II of this chapter, referred to in text, was in the original “title IV” meaning title IV of Pub. L. 102-486, Oct. 24, 1992, 106 Stat. 2875, which enacted subchapter II of this chapter, amended sections 6374a to 6374c of this title and sections 717, 717a, 2001, 2002, 2006, and 2013 of Title 15, Commerce and Trade, enacted provisions set out as notes under sections 79b and 717 of Title 15, and repealed provisions set out as a note under section 717c of Title 15.

The Outer Continental Shelf Lands Act, referred to in par. (7), is act Aug. 7, 1953, ch. 345, 67 Stat. 462, as amended, which is classified generally to subchapter III (§1331 et seq.) of chapter 29 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1331 of Title 43 and Tables.

CODIFICATION

In pars. (6)(A) and (8)(A), “section 32901(a)(7) of title 49” substituted for “section 513(h)(1)(C) of the Motor Vehicle Information and Cost Savings Act” and “section 32901(a)(8) of title 49” substituted for “section 513(h)(1)(D) of the Motor Vehicle Information and Cost Savings Act” on authority of Pub. L. 103-272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

AMENDMENTS

2000—Par. (2). Pub. L. 106-554 inserted “, including liquid fuels domestically produced from natural gas” after “natural gas”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6374 of this title.

§ 13212. Minimum Federal fleet requirement

(a) General requirements

(1) The Federal Government shall acquire at least—

(A) 5,000 light duty alternative fueled vehicles in fiscal year 1993;

(B) 7,500 light duty alternative fueled vehicles in fiscal year 1994; and

(C) 10,000 light duty alternative fueled vehicles in fiscal year 1995.

(2) The Secretary shall allocate the acquisitions necessary to meet the requirements under paragraph (1).

(b) Percentage requirements

(1) Of the total number of vehicles acquired by a Federal fleet, at least—

(A) 25 percent in fiscal year 1996;

(B) 33 percent in fiscal year 1997;

(C) 50 percent in fiscal year 1998; and

(D) 75 percent in fiscal year 1999 and thereafter,

shall be alternative fueled vehicles.

(2) The Secretary, in consultation with the Administrator of General Services where appropriate, may permit a Federal fleet to acquire a smaller percentage than is required in paragraph (1), so long as the aggregate percentage acquired by all Federal fleets is at least equal to the required percentage.

(3) For purposes of this subsection, the term “Federal fleet” means 20 or more light duty motor vehicles, located in a metropolitan statistical area or consolidated metropolitan statistical area, as established by the Bureau of the Census, with a 1980 population of more than 250,000, that are centrally fueled or capable of being centrally fueled and are owned, operated, leased, or otherwise controlled by or assigned to any Federal executive department, military department, Government corporation, independent establishment, or executive agency, the United States Postal Service, the Congress, the courts of the United States, or the Executive Office of the President. Such term does not include—

(A) motor vehicles held for lease or rental to the general public;

(B) motor vehicles used for motor vehicle manufacturer product evaluations or tests;

(C) law enforcement vehicles;

(D) emergency vehicles;

(E) motor vehicles acquired and used for military purposes that the Secretary of Defense has certified to the Secretary must be exempt for national security reasons; or

(F) nonroad vehicles, including farm and construction vehicles.

(c) Allocation of incremental costs

The General Services Administration and any other Federal agency that procures motor vehicles for distribution to other Federal agencies may allocate the incremental cost of alternative fueled vehicles over the cost of comparable gasoline vehicles across the entire fleet of motor vehicles distributed by such agency.

(d) Application of requirements

The provisions of section 6374 of this title relating to the Federal acquisition of alternative fueled vehicles shall apply to the acquisition of vehicles pursuant to this section.

(e) Resale

The Administrator of General Services shall take all feasible steps to ensure that all alternative fueled vehicles sold by the Federal Government shall remain alternative fueled vehicles at time of sale.

(f) Authorization of appropriations

There are authorized to be appropriated for carrying out this section, such sums as may be necessary for fiscal years 1993 through 1998, to remain available until expended.

(Pub. L. 102-486, title III, §303, Oct. 24, 1992, 106 Stat. 2871.)

EXECUTIVE ORDER NO. 12844

Ex. Ord. No. 12844, Apr. 21, 1993, 58 F.R. 21885, as amended by Ex. Ord. No. 12974, §3(b), Sept. 29, 1995, 60 F.R. 51876, which required the Federal Government to institute a Federal fleet vehicle acquisition program and established the Federal Fleet Conversion Task Force to advise on implementation of the program, was revoked by Ex. Ord. No. 13031, §9, Dec. 13, 1996, 61 F.R. 66531, formerly set out below.

EXECUTIVE ORDER NO. 13031

Ex. Ord. No. 13031, Dec. 13, 1996, 61 F.R. 66529, which provided that the Federal Government exercise leadership in the use of alternative fueled vehicles, was revoked by Ex. Ord. 13149, §501, Apr. 21, 2000, 65 F.R. 24610, set out below.

EX. ORD. NO. 13149. GREENING THE GOVERNMENT THROUGH FEDERAL FLEET AND TRANSPORTATION EFFICIENCY

Ex. Ord. No. 13149, Apr. 21, 2000, 65 F.R. 24607, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Energy Policy and Conservation Act, as amended (42 U.S.C. 6201 *et seq.*), the Energy Policy Act of 1992 (Public Law 102-486) [see Tables for classification], section 301 of title 3, United States Code, and the Energy Conservation Reauthorization Act of 1998 (Public Law 105-388) [see Short Title of 1998 Amendment note set out under 42 U.S.C. 6201], it is hereby ordered as follows:

PART 1 PREAMBLE

SECTION 101. *Federal Leadership.* The purpose of this order is to ensure that the Federal Government exercises leadership in the reduction of petroleum consumption through improvements in fleet fuel efficiency and the use of alternative fuel vehicles (AFVs) and alternative fuels. Reduced petroleum use and the displacement of petroleum by alternative fuels will help promote markets for more alternative fuel and fuel efficient vehicles, encourage new technologies, enhance the United States' energy self-sufficiency and security, and ensure a healthier environment through the reduction of greenhouse gases and other pollutants in the atmosphere.

PART 2 GOALS

SEC. 201. *Reduced Petroleum Fuel Consumption.* Each agency operating 20 or more motor vehicles within the United States shall reduce its entire vehicle fleet's annual petroleum consumption by at least 20 percent by the end of FY 2005, compared with FY 1999 petroleum consumption levels.

SEC. 202. *Performance Strategies.* Agencies have numerous options for developing a strategy to meet the petroleum reduction levels established in section 201 of this order. Measures include: the use of alternative fuels in light, medium, and heavy-duty vehicles; the acquisition of vehicles with higher fuel economy, including hybrid vehicles; the substitution of cars for light trucks; an increase in vehicle load factors; a decrease in vehicle miles traveled; and a decrease in fleet size. Each agency will need a strategy that includes most, if not all, of these measures, but can develop a strategy that fits its unique fleet configuration and mission requirements. As part of the strategy, each agency should attempt to accelerate the introduction of vehi-

cles meeting Tier 2 standards. Where feasible, agencies should also consider procurement of innovative vehicles, such as hybrid electric vehicles, capable of large improvements in fuel economy. The strategy should also attempt to minimize costs in achieving the objectives of this order. In developing its strategy, each agency shall include the following:

(a) AFV Acquisition and Use of Alternative Fuels. Each agency shall fulfill the acquisition requirements for AFVs established by section 303 of the Energy Policy Act of 1992 [42 U.S.C. 13212]. Agencies shall use alternative fuels to meet a majority of the fuel requirements of those motor vehicles by the end of FY 2005. Section 402 of this order addresses related issues of alternative fuel infrastructure availability and the ability to track alternative fuel usage data; and

(b) Acquisition of Higher Fuel Economy Vehicles. Agencies shall increase the average EPA fuel economy rating of passenger cars and light trucks acquired by at least 1 mile per gallon (mpg) by the end of FY 2002 and at least 3 mpg by the end of FY 2005 compared to FY 1999 acquisitions.

PART 3 ORGANIZATION AND ACCOUNTABILITY

SEC. 301. *Leadership Responsibilities.* The Office of Management and Budget (OMB), the Department of Energy (DOE), the Environmental Protection Agency (EPA), and the General Services Administration (GSA) shall be responsible for providing leadership to the other Federal agencies in implementing programs to meet the goals of this order. Therefore, they shall perform the following activities:

(a) OMB shall:

(1) designate a senior official to assume the responsibility for coordinating the collection of agency budget and data submissions pursuant to this order;

(2) amend and issue budget guidance to the agencies that requires each agency to identify in its annual budget submission the funding necessary to meet the requirements of this order;

(3) review annual agency budget submissions to determine adequacy in meeting the goal of this order and to balance requests for increased funding to support achievement of the goals against other mission priorities for the agency; and

(4) review agency submissions for the annual report to the Congress, after budget decisions are made.

(b) DOE shall:

(1) issue guidance to agencies, within 90 days of the issuance of this order, on preparation and submission of agency strategies for complying with this order and the collection and annual reporting of data to demonstrate compliance with this order;

(2) review and evaluate agency strategies prior to their submission to OMB;

(3) provide OMB with copies of the agency strategy evaluations;

(4) provide whatever other support OMB requires to facilitate performance of OMB's role;

(5) establish the data collection and reporting system outlined in the DOE guidance for collecting annual agency performance data on meeting the goals of this order and other applicable statutes and policies;

(6) educate personnel from other agencies on the requirements of this order, the data collection and reporting system, best practices for improving fleet fuel efficiency, and methods for successfully acquiring and using AFVs;

(7) review agencies' annual data submissions for accuracy and produce a scorecard of agency and overall Federal compliance with this order and other applicable statutes and policies; and

(8) report to the President annually on compliance with the order, including the scorecard and level of performance in meeting the goals of the agencies' strategies.

(c) EPA shall support DOE and GSA in their efforts to assist the agencies in the accelerated purchase of Tier 2 vehicles.

(d) GSA shall develop and implement strategies that will ease agencies' financial and administrative burdens associated with the acquisition of AFVs, including:

(1) Agencies shall be allowed to replace their conventionally-fueled vehicles with AFVs by making an initial lump-sum payment for the additional acquisition cost of the AFV and shall be allowed to contribute to the higher replacement costs of the AFV incrementally over the term of the lease, and have the option of averaging AFV incremental costs across the agency fleet as provided by the Energy Policy Act of 1992.

(2) Within 120 days of this order, the Administrator of GSA, in consultation with other agencies, shall:

(A) provide a summary of agency AFV acquisition plans to potential AFV manufacturers to assist in their production planning. At least 4 months in advance of agency vehicle ordering cycles, GSA must provide to agencies the best available information on the production plans of AFV manufacturers;

(B) develop, in coordination with DOE and EPA, methods that will help Federal fleet managers to select vehicles to improve fleet fuel efficiency and to meet Tier 2 vehicle standards; and

(C) collaborate with its customer agencies and their procurement staff and officials to discuss and plan efforts to ensure that the GSA-leased fleet is making progress toward the goals of this order.

SEC. 302. *Designation of Senior Agency Official.* Within 90 days of the date of this order, the head of each agency shall designate a senior official to assume responsibility for the agency's AFV and fleet fuel efficiency programs, and for meeting the requirements of this order. Each senior agency official designated by an agency shall be responsible for:

(a) preparing an agency strategy for meeting the goals of this order, in accordance with guidance issued by DOE;

(b) submitting the agency strategy to DOE within 180 days of the issuance of this order for evaluation and submission to OMB;

(c) implementing the data collection and reporting system outlined in the DOE guidance for collecting annual agency performance data on meeting the goals of this order and reporting the data to DOE;

(d) ensuring the agency's strategy for meeting the goals of this order is incorporated in the annual budget submission to OMB; and

(e) assembling the appropriate team and resources in the agency necessary to attain the goals of this order.

SEC. 303. *Management and Government Performance.* Agencies may use the following management strategies to assist them in meeting the goals of this order:

(a) *Awards.* Agencies may use employee incentive programs to reward exceptional performance in implementing this order.

(b) *Performance Evaluations.* Agencies shall, where appropriate, include successful implementation of the provisions of this order in the position descriptions and performance evaluations of agency heads, the senior official, fleet managers, their superiors, and other relevant employees.

SEC. 304. *Applicability.* This order applies to each agency operating 20 or more motor vehicles within the United States. Agency means an executive agency as defined in 5 U.S.C. 105. For the purpose of this order, military departments, as defined in 5 U.S.C. 102, are covered under the auspices of the Department of Defense.

PART 4 IMPLEMENTATION

SEC. 401. *Vehicle Reporting Credits.* When preparing the annual report to DOE and OMB, each agency acquisition of an alternative fuel light-duty vehicle, regardless of geographic placement, shall count as one credit towards fulfilling the AFV acquisition requirements of the Energy Policy Act of 1992. Agencies shall receive one additional credit for each light-duty AFV that exclusively uses an alternative fuel and for each Zero

Emission Vehicle of any size. Agencies shall receive three credits for dedicated medium-duty AFVs and four credits for dedicated heavy-duty AFVs. Agencies can also receive one credit for every 450 gallons of pure biodiesel used in diesel vehicles.

SEC. 402. *Infrastructure.* To support the use of alternative fuel in AFVs, agencies should arrange for fueling at commercial facilities that offer alternative fuels for sale to the public.

(a) Agencies should team with State, local, and private entities to support the expansion and use of public access alternative fuel refueling stations;

(b) Agencies should use the authority granted to them in section 304 of the Energy Policy Act of 1992 [42 U.S.C. 13213] to establish nonpublic access alternative fuel infrastructure for fueling Federal AFVs where public fueling is unavailable.

(c) Agencies are encouraged to work with DOE and GSA to resolve alternative fuel usage tracking issues with alternative and petroleum fuel providers.

SEC. 403. *Procurement of Environmentally Preferable Motor Vehicle Products.*

(a) Consistent with Executive Order 13101 [42 U.S.C. 6961 note] and section 6002 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6962, effective 6 months after the date of this order, no Federal agency shall purchase, sell, or arrange for the purchase of virgin petroleum motor vehicle lubricating oils when re-refined motor vehicle lubricating oils are reasonably available and meet the vehicle manufacturer's recommended performance standards.

(b) Consistent with Executive Order 13101 and RCRA section 6962, in acquiring and maintaining motor vehicles, agencies shall acquire and use United States EPA-designated Comprehensive Procurement Guideline items, including but not limited to retread tires, when such products are reasonably available and meet applicable performance standards. In addition, Federal agencies should consider acquiring other recycled content products, such as tires containing a minimum of 5-10 percent post-consumer recovered rubber.

(c) Consistent with Executive Order 13101, Federal agencies are encouraged to use biobased motor vehicle products when such products are reasonably available and meet applicable performance standards.

PART 5 GENERAL PROVISIONS

SEC. 501. *Revocation.* Executive Order 13031 of December 13, 1996, is revoked.

SEC. 502. *Statutory Authority.* Agencies must carry out the provisions of this order to the extent consistent with their statutory authority.

SEC. 503. *Limitations.* This order is intended only to improve the internal management of the executive branch and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any other person.

SEC. 504. *Independent Agencies.* Independent agencies and agencies excepted from coverage by section 304 are encouraged to comply with the provisions of this order.

SEC. 505. *Government-Owned Contractor-Operated Vehicles.* Agencies must ensure that all Government-owned contractor-operated vehicles comply with all applicable goals and other requirements of this order and that these goals and requirements are incorporated into each contractor's management contract.

SEC. 506. *Exemptions for Military Tactical, Law Enforcement, and Emergency Vehicles.* Department of Defense military tactical vehicles are exempt from this order. Law enforcement, emergency, and any other vehicle class or type determined by OMB, in consultation with DOE, are exempted from this order's requirements for Federal fleet fuel efficiency and alternative fuel vehicle acquisition. Agencies claiming vehicle exemptions must provide information on the number of each class or type of vehicle claimed as exempt as well as an estimate of total fuel consumption of exempt vehicles on an annual basis. Agencies should examine options for increasing fuel efficiency in these exempt vehicles and

should report actions taken to increase fuel efficiency in these vehicles or fleets. All information required by this section must be submitted annually under Part 3 of this order.

SEC. 507. *Compliance.* (a) If an agency fails to meet requirements of the Energy Policy Act of 1992 or this order, its report to the DOE and OMB under section 302(c) must include an explanation for such failure and an updated strategy for achieving compliance using the agency's current and requested budgets.

(b) OMB, in consultation with DOE, may modify the compliance requirements for an agency under Part 2 of this order, if the agency is unable to comply with the requirements of that part. An agency requesting modification must show that it has made substantial good faith efforts to comply with that part. The availability and costs of alternative fuels and AFVs can be a factor in OMB's decision to modify the agency's compliance with Part 2 of this order.

SEC. 508. *Definitions.* Terms used in this order shall have the same definitions as those in the Energy Policy Act of 1992 [see 42 U.S.C. 13211] and Executive Order 13101 [42 U.S.C. 6961 note], unless specifically changed in guidance to be issued by DOE under section 301(b) of this order.

WILLIAM J. CLINTON.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6374, 13213, 13214 of this title.

§ 13213. Refueling

(a) In general

Federal agencies shall, to the maximum extent practicable, arrange for the fueling of alternative fueled vehicles acquired under section 13212 of this title at commercial fueling facilities that offer alternative fuels for sale to the public. If publicly available fueling facilities are not convenient or accessible to the location of Federal alternative fueled vehicles purchased under section 13212 of this title, Federal agencies are authorized to enter into commercial arrangements for the purposes of fueling Federal alternative fueled vehicles, including, as appropriate, purchase, lease, contract, construction, or other arrangements in which the Federal Government is a participant.

(b) Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this section such sums as may be necessary for fiscal years 1993 through 1998, to remain available until expended.

(Pub. L. 102-486, title III, §304, Oct. 24, 1992, 106 Stat. 2872.)

§ 13214. Federal agency promotion, education, and coordination

(a) Promotion and education

The Secretary, in cooperation with the Administrator of General Services, shall promote programs and educate officials and employees of Federal agencies on the merits of alternative fueled vehicles. The Secretary, in cooperation with the Administrator of General Services, shall provide and disseminate information to Federal agencies on—

- (1) the location of refueling and maintenance facilities available to alternative fueled vehicles in the Federal fleet;

- (2) the range and performance capabilities of alternative fueled vehicles;

- (3) State and local government and commercial alternative fueled vehicle programs;

- (4) Federal alternative fueled vehicle purchases and placements;

- (5) the operation and maintenance of alternative fueled vehicles in accordance with the manufacturer's standards and recommendations; and

- (6) incentive programs established pursuant to sections 13215 and 13216 of this title.

(b) Assistance in procurement and placement

The Secretary, in cooperation with the Administrator of General Services, shall provide guidance, coordination and technical assistance to Federal agencies in the procurement and geographic location of alternative fueled vehicles purchased through the Administrator of General Services. The procurement and geographic location of such vehicles shall comply with the purchase requirements under section 13212 of this title.

(Pub. L. 102-486, title III, §305, Oct. 24, 1992, 106 Stat. 2872.)

§ 13215. Agency incentives program

(a) Reduction in rates

To encourage and promote use of alternative fueled vehicles in Federal agencies, the Administrator of General Services may offer a reduction in fees charged to agencies for the lease of alternative fueled vehicles below those fees charged for the lease of comparable conventionally fueled motor vehicles.

(b) Sunset provision

This section shall cease to be effective 3 years after October 24, 1992.

(Pub. L. 102-486, title III, §306, Oct. 24, 1992, 106 Stat. 2873.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13214 of this title.

§ 13216. Recognition and incentive awards program

(a) Awards program

The Administrator of General Services shall establish annual awards program to recognize those Federal employees who demonstrate the strongest commitment to the use of alternative fuels and fuel conservation in Federal motor vehicles.

(b) Criteria

The Administrator of General Services shall provide annual awards to Federal employees who best demonstrate a commitment—

- (1) to the success of the Federal alternative fueled vehicle program through—

- (A) exemplary promotion of alternative fueled vehicle use within Federal agencies;

- (B) proper alternative fueled vehicle care and maintenance;

- (C) coordination with Federal, State, and local efforts;

- (D) innovative alternative fueled vehicle procurement, refueling, and maintenance arrangements with commercial entities;

(E) making regular requests for alternative fueled vehicles for agency use; and

(F) maintaining a high number of alternative fueled vehicles used relative to comparable conventionally fueled motor vehicles used; and

(2) to fuel efficiency in Federal motor vehicle use through the promotion of such measures as increased use of fuel-efficient vehicles, carpooling, ride-sharing, regular maintenance, and other conservation and awareness measures.

(c) Authorization of appropriations

There are authorized to be appropriated for the purpose of carrying out this section not more than \$35,000 for fiscal year 1994 and such sums as may be necessary for each of the fiscal years 1995 and 1996.

(Pub. L. 102-486, title III, §307, Oct. 24, 1992, 106 Stat. 2873.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13214 of this title.

§ 13217. Measurement of alternative fuel use

The Administrator of General Services shall use such means as may be necessary to measure the percentage of alternative fuel use in dual-fueled vehicles procured by the Administrator of General Services. Not later than one year after October 24, 1992, the Secretary, in consultation with the Administrator of General Services, shall issue guidelines to Federal agencies for use in measuring the aggregate percentage of alternative fuel use in dual-fueled vehicles in their fleets.

(Pub. L. 102-486, title III, §308, Oct. 24, 1992, 106 Stat. 2874.)

§ 13218. Reports

(a) Omitted

(b) Compliance report

(1) In general

Not later than 1 year after November 13, 1998, and annually thereafter for the next 14 years, the head of each Federal agency which is subject to this Act and Executive Order No. 13031 shall prepare, and submit to Congress, a report that—

(A) summarizes the compliance by such Federal agency with the alternative fuel purchasing requirements for Federal fleets under this Act and Executive Order No. 13031; and

(B) includes a plan of compliance that contains specific dates for achieving compliance using reasonable means.

(2) Contents

(A) In general

Each report submitted under paragraph (1) shall include—

(i) any information on any failure to meet statutory requirements or requirements under Executive Order No. 13031;

(ii)(I) any plan of compliance that the agency head is required to submit under Executive Order No. 13031; or

(II) if a plan of compliance referred to in subclause (I) does not contain specific dates by which the Federal agency is to achieve compliance, a revised plan of compliance that contains specific dates for achieving compliance; and

(iii) any related information the agency head is required to submit to the Director of the Office of Management and Budget under Executive Order No. 13031.

(B) Penultimate report

The penultimate report submitted under paragraph (1) shall include an announcement that the report for the next year shall be the final report submitted under paragraph (1).

(3) Public dissemination of report

Each report submitted under paragraph (1) shall be made public, including—

(A) placing such report on a publicly available website on the Internet; and

(B) publishing the availability of the report, including such website address, in the Federal Register.

(Pub. L. 102-486, title III, §310, Oct. 24, 1992, 106 Stat. 2874; Pub. L. 105-388, §8(a), Nov. 13, 1998, 112 Stat. 3481.)

REFERENCES IN TEXT

This Act, referred to in subsec. (b)(1), is Pub. L. 102-486, Oct. 24, 1992, 102 Stat. 2776, known as the Energy Policy Act of 1992. For complete classification of this Act to the Code, see Short Title note set out under section 13201 of this title and Tables.

Executive Order No. 13031, referred to in subsec. (b)(1), (2)(A), was Ex. Ord. No. 13031, Dec. 13, 1996, 61 F.R. 66529, which was set out as a note under section 13212 of this title prior to revocation by Ex. Ord. No. 13149, §501, Apr. 21, 2000, 65 F.R. 24610, set out as a note under section 13212 of this title.

CODIFICATION

Subsec. (a) of this section, which required the Administrator of General Services to report biennially to Congress on the General Services Administration's alternative fueled vehicle program under the Energy Policy Act of 1992, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 4th item on page 173 of House Document No. 103-7.

AMENDMENTS

1998—Pub. L. 105-388 substituted “Reports” for “General Services Administration report” in section catchline, designated existing provisions as subsec. (a) and inserted heading, and added subsec. (b).

§ 13219. United States Postal Service

(a) Omitted

(b) Coordination

To the maximum extent practicable, the Postmaster General shall coordinate the Postal Service's alternative fueled vehicle procurement, placement, refueling, and maintenance programs with those at the Federal, State, and local level. The Postmaster General shall communicate, share, and disseminate, on a regular basis, information on such programs with the Secretary, the Administrator of General Services, and heads of appropriate Federal agencies.

(c) Program criteria

The Postmaster General shall consider the following criteria in the procurement and placement of alternative fueled vehicles:

- (1) The procurement plans of State and local governments and other public and private institutions.
- (2) The current and future availability of refueling and repair facilities.
- (3) The reduction in emissions of the Postal fleet.
- (4) Whether the vehicle is to be used in a nonattainment area as specified in the Clean Air Act Amendments of 1990.
- (5) The operational requirements of the Postal fleet.
- (6) The contribution to the reduction in the consumption of oil in the transportation sector.

(Pub. L. 102-486, title III, §311, Oct. 24, 1992, 106 Stat. 2874.)

REFERENCES IN TEXT

The Clean Air Act Amendments of 1990, referred to in subsec. (c)(4), probably means Pub. L. 101-549, Nov. 15, 1990, 104 Stat. 2399. For complete classification of this Act to the Code, see Short Title of 1990 Amendment note set out under section 7401 of this title and Tables.

CODIFICATION

Subsec. (a) of this section, which required the Postmaster General to biennially submit to Congress a report on the Postal Service's alternative fueled vehicle program, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 15th item on page 194 of House Document No. 103-7.

§ 13220. Biodiesel fuel use credits**(a) Allocation of credits****(1) In general**

The Secretary shall allocate one credit under this section to a fleet or covered person for each qualifying volume of the biodiesel component of fuel containing at least 20 percent biodiesel by volume purchased after the date of the enactment of this section, for use by the fleet or covered person in vehicles owned or operated by the fleet or covered person that weigh more than 8,500 pounds gross vehicle weight rating.

(2) Exceptions

No credits shall be allocated under paragraph (1) for a purchase of biodiesel—

- (A) for use in alternative fueled vehicles; or
- (B) that is required by Federal or State law.

(3) Authority to modify percentage

The Secretary may, by rule, lower the 20 percent biodiesel volume requirement in paragraph (1) for reasons related to cold start, safety, or vehicle function considerations.

(4) Documentation

A fleet or covered person seeking a credit under this section shall provide written documentation to the Secretary supporting the allocation of a credit to such fleet or covered person under paragraph (1).

(b) Use of credits**(1) In general**

At the request of a fleet or covered person allocated a credit under subsection (a) of this section, the Secretary shall, for the year in which the purchase of a qualifying volume is made, treat that purchase as the acquisition of one alternative fueled vehicle the fleet or covered person is required to acquire under this subchapter, subchapter II of this chapter, or subchapter III of this chapter.

(2) Limitation

Credits allocated under subsection (a) of this section may not be used to satisfy more than 50 percent of the alternative fueled vehicle requirements of a fleet or covered person under this subchapter, subchapter II of this chapter, and subchapter III of this chapter. This paragraph shall not apply to a fleet or covered person that is a biodiesel alternative fuel provider described in section 13251(a)(2)(A) of this title.

(c) Credit not a section 13258 credit

A credit under this section shall not be considered a credit under section 13258 of this title.

(d) Issuance of rule

The Secretary shall, before January 1, 1999, issue a rule establishing procedures for the implementation of this section.

(e) Collection of data

The Secretary shall collect such data as are required to make a determination described in subsection (f)(2)(B) of this section.

(f) Definitions

For purposes of this section—

(1) the term “biodiesel” means a diesel fuel substitute produced from nonpetroleum renewable resources that meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 7545 of this title; and

(2) the term “qualifying volume” means—

- (A) 450 gallons; or
- (B) if the Secretary determines by rule that the average annual alternative fuel use in light duty vehicles by fleets and covered persons exceeds 450 gallons or gallon equivalents, the amount of such average annual alternative fuel use.

(Pub. L. 102-486, title III, §312, as added Pub. L. 105-277, div. A, §101(a) [title XII, §1201(a)], Oct. 21, 1998, 112 Stat. 2681, 2681-48; Pub. L. 105-388, §7(a), Nov. 13, 1998, 112 Stat. 3480.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (a)(1), probably means October 21, 1998, the date of the enactment of this section by Pub. L. 105-277, rather than Nov. 13, 1998, the date of the enactment of this section by Pub. L. 105-388.

CODIFICATION

Pub. L. 105-277 and Pub. L. 105-388 enacted identical sections.

SUBCHAPTER II—ALTERNATIVE FUELS—
NON-FEDERAL PROGRAMS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 13211, 13220, 13263 of this title.

§ 13231. Public information program

The Secretary, in consultation with appropriate Federal agencies and individuals and organizations with practical experience in the production and use of alternative fuels and alternative fueled vehicles, shall, for the purposes of promoting the use of alternative fuels and alternative fueled vehicles, establish a public information program on the benefits and costs of the use of alternative fuels in motor vehicles. Within 18 months after October 24, 1992, the Secretary shall produce and make available an information package for consumers to assist them in choosing among alternative fuels and alternative fueled vehicles. Such information package shall provide relevant and objective information on motor vehicle characteristics and fuel characteristics as compared to gasoline, on a life cycle basis, including environmental performance, energy efficiency, domestic content, cost, maintenance requirements, reliability, and safety. Such information package shall also include information with respect to the conversion of conventional motor vehicles to alternative fueled vehicles. The Secretary shall include such other information as the Secretary determines is reasonable and necessary to help promote the use of alternative fuels in motor vehicles. Such information package shall be updated annually to reflect the most recent available information.

(Pub. L. 102-486, title IV, §405, Oct. 24, 1992, 106 Stat. 2880.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13232 of this title.

§ 13232. Labeling requirements**(a) Establishment of requirements**

The Federal Trade Commission, in consultation with the Secretary, the Administrator of the Environmental Protection Agency, and the Secretary of Transportation, shall, within 18 months after October 24, 1992, issue a notice of proposed rulemaking for a rule to establish uniform labeling requirements, to the greatest extent practicable, for alternative fuels and alternative fueled vehicles, including requirements for appropriate information with respect to costs and benefits, so as to reasonably enable the consumer to make choices and comparisons. Required labeling under the rule shall be simple and, where appropriate, consolidated with other labels providing information to the consumer. In formulating the rule, the Federal Trade Commission shall give consideration to the problems associated with developing and publishing useful and timely cost and benefit information, taking into account lead time, costs, the frequency of changes in costs and benefits that may occur, and other relevant factors. The Commission shall obtain the views of affected industries, consumer organizations, Federal and State agencies, and others in formulating the rule. A final rule shall be issued within 1 year after the notice of proposed rulemaking is issued. Such rule shall be updated periodically to reflect the most recent available information.

(b) Technical assistance and coordination

The Secretary shall provide technical assistance to the Federal Trade Commission in developing labeling requirements under subsection (a) of this section. The Secretary shall coordinate activities under this section with activities under section 13231 of this title.

(Pub. L. 102-486, title IV, §406, Oct. 24, 1992, 106 Stat. 2880.)

§ 13233. Data acquisition program

(a) Not later than one year after October 24, 1992, the Secretary, through the Energy Information Administration, and in cooperation with appropriate State, regional, and local authorities, shall establish a data collection program to be conducted in at least 5 geographically and climatically diverse regions of the United States for the purpose of collecting data which would be useful to persons seeking to manufacture, convert, sell, own, or operate alternative fueled vehicles or alternative fueling facilities. Such data shall include—

(1) identification of the number and types of motor vehicle trips made daily and miles driven per trip, including commuting, business, and recreational trips;

(2) the projections of the Secretary as to the most likely combination of alternative fueled vehicle use and other forms of transit, including rail and other forms of mass transit;

(3) cost, performance, environmental, energy, and safety data on alternative fuels and alternative fueled vehicles; and

(4) other appropriate demographic information and consumer preferences.

(b) The Secretary shall consult with interested parties, including other appropriate Federal agencies, manufacturers, public utilities, owners and operators of fleets of light duty motor vehicles, and State or local governmental entities, to determine the types of data to be collected and analyzed under subsection (a) of this section.

(Pub. L. 102-486, title IV, §407, Oct. 24, 1992, 106 Stat. 2881.)

§ 13234. Federal Energy Regulatory Commission authority to approve recovery of certain expenses in advance**(a) Natural gas motor vehicles**

The Federal Energy Regulatory Commission may, under section 717c of title 15, allow recovery of expenses in advance by natural-gas companies for research, development, and demonstration activities by the Gas Research Institute for projects on the use of natural gas, including fuels derived from natural gas, for transportation, and projects on the use of natural gas to control pollutants and to control emissions from the combustion of other fuels, if the Commission finds that the benefits, including environmental benefits, to existing and future ratepayers resulting from such activities exceed all direct costs to existing and future ratepayers. To the maximum extent practicable, through the establishment of cofunding requirements applicable to such projects, the Commission shall

ensure that the costs of such activities shall be provided in part, through contributions of cash, personnel, services, equipment, and other resources, by sources other than the recovery of expenses pursuant to this section.

(b) Electric motor vehicles

The Federal Energy Regulatory Commission may, under section 824d of title 16, allow recovery of expenses in advance by electric utilities for research, development, and demonstration activities by the Electric Power Research Institute for projects on electric motor vehicles, if the Commission finds that the benefits, including environmental benefits, to existing and future ratepayers resulting from such activities exceed all direct costs to existing and future ratepayers. To the maximum extent practicable, through the establishment of cofunding requirements applicable to each project, the costs of such activities shall be provided, in part, through contributions of cash, personnel, services, equipment, and other resources, by sources other than the recovery of expenses pursuant to this section.

(Pub. L. 102-486, title IV, §408, Oct. 24, 1992, 106 Stat. 2881.)

CODIFICATION

Section is comprised of section 408 of Pub. L. 102-486. Subsec. (c) of section 408 of Pub. L. 102-486 repealed provisions of title III of Pub. L. 102-104, formerly set out as a note under section 717c of Title 15, Commerce and Trade.

§ 13235. State and local incentives programs

(a) Establishment of program

(1) The Secretary shall, within one year after October 24, 1992, issue regulations establishing guidelines for comprehensive State alternative fuels and alternative fueled vehicle incentives and program plans designed to accelerate the introduction and use of such fuels and vehicles. Such guideline¹ shall address the development, modification, and implementation of such State plans and shall describe those program elements, as described in paragraph (3), to be addressed in such plans.

(2) The Secretary, after consultation with the Secretary of Transportation and the Administrator of the Environmental Protection Agency, shall invite the Governor of each State to submit to the Secretary a State plan within one year after the effective date of the regulations issued under paragraph (1). Such plan shall include—

(A) provisions designed to result in scheduled progress toward, and achievement of, the goal of introducing substantial numbers of alternative fueled vehicles in such State by the year 2000; and

(B) a detailed description of the requirements, including the estimated cost of implementation, of such plan.

(3) Each proposed State plan, in order to be eligible for Federal assistance under this section, shall describe the manner in which coordination shall be achieved with Federal and local govern-

mental entities in implementing such plan, and shall include an examination of—

(A) exemption from State sales tax or other State or local taxes or surcharges (other than such taxes or surcharges which are dedicated for transportation purposes) with respect to alternative fueled vehicles, alternative fuels, or alternative fueling facilities;

(B) the introduction of alternative fueled vehicles into State-owned or operated motor vehicle fleets;

(C) special parking at public buildings and airport and transportation facilities;

(D) programs of public education to promote the use of alternative fueled vehicles;

(E) the treatment of sales of alternative fuels for use in alternative fueled vehicles;

(F) methods by which State and local governments might facilitate—

(i) the availability of alternative fuels; and

(ii) the ability to recharge electric motor vehicles at public locations;

(G) allowing public utilities to include in rates the incremental cost of—

(i) new alternative fueled vehicles;

(ii) converting conventional vehicles to operate on alternative fuels; and

(iii) installing alternative fuel fueling facilities,

but only to the extent that the inclusion of such costs in rates would not create competitive disadvantages for other market participants, and taking into consideration the effect inclusion of such costs would have on rates, service, and reliability to other utility customers;

(H) such other programs and incentives as the State may describe;

(I) whether accomplishing any of the goals in this subsection would require amendment to State law or regulation, including traffic safety prohibitions;

(J) services provided by municipal, county, and regional transit authorities; and

(K) effects of such plan on programs authorized by the Intermodal Surface Transportation Efficiency Act of 1991 and amendments made by that Act.

(b) Federal assistance to States

(1) Upon request of the Governor of any State with a plan approved under this section, the Secretary may provide to such State—

(A) information and technical assistance, including model State laws and proposed regulations relating to alternative fueled vehicles;

(B) grants of Federal financial assistance for the purpose of assisting such State in the implementation of such plan or any part thereof; and

(C) grants of Federal financial assistance for the acquisition of alternative fueled vehicles.

(2) In determining whether to approve a State plan submitted under subsection (a) of this section, and in determining the amount of Federal financial assistance, if any, to be provided to any State under this subsection, the Secretary shall take into account—

(A) the energy-related and environmental-related impacts, on a life cycle basis, of the in-

¹ So in original. Probably should be "guidelines".

roduction and use of alternative fueled vehicles included in the plan compared to conventional motor vehicles;

(B) the number of alternative fueled vehicles likely to be introduced by the year 2000, as a result of successful implementation of the plan; and

(C) such other factors as the Secretary considers appropriate.

(3) The Secretary, in consultation with the Administrator of General Services, shall provide assistance to States in procuring alternative fueled vehicles, including coordination with Federal procurements of such vehicles.

(4) The Secretary may not approve a State plan submitted under subsection (a) of this section unless the State agrees to provide at least 20 percent of the cost of activities for which assistance is provided under paragraph (1).

(c) General provisions

(1) In carrying out this section, the Secretary shall consult with the Secretary of Transportation on matters relating to transportation and with other appropriate Federal and State departments and agencies.

(2) The Secretary shall report annually to the President and the Congress, and shall furnish copies of such report to the Governor of each State participating in the program, on the operation of the program under this section. Such report shall include—

(A) an estimate of the number of alternative fueled vehicles in use in each State;

(B) the degree of each State's participation in the program;

(C) a description of Federal, State, and local programs undertaken in the various States, whether pursuant to a State plan under this section or not, to provide incentives for introduction of alternative fueled vehicles;

(D) an estimate of the energy and environmental benefits of the program; and

(E) the recommendations of the Secretary, if any, for additional action by the Federal Government.

(d) Definitions

For the purposes of this section, the following definitions apply:

(1) Governor

The term "Governor" means the chief executive of a State.

(2) State

The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other Commonwealth, territory, or possession of the United States.

(e) Authorization of appropriations

There are authorized to be appropriated for carrying out this section, \$10,000,000 for each of the 5 fiscal years beginning after October 24, 1992.

(Pub. L. 102-486, title IV, §409, Oct. 24, 1992, 106 Stat. 2882.)

REFERENCES IN TEXT

The Intermodal Surface Transportation Efficiency Act of 1991, referred to in subsec. (a)(3)(K), is Pub. L.

102-240, Dec. 18, 1991, 105 Stat. 1914. For complete classification of this Act to the Code, see Short Title of 1991 Amendment note set out under section 101 of Title 49, Transportation, and Tables.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (c)(2) of this section relating to annual reports to Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 8th item on page 86 of House Document No. 103-7.

§ 13236. Alternative fuel bus program

(a) Cooperative agreements and joint ventures

(1) The Secretary of Transportation, in consultation with the Secretary, may enter into cooperative agreements and joint ventures proposed by any municipal, county, or regional transit authority in an urban area with a population over 100,000 (according to latest available census information) to demonstrate the feasibility of commercial application, including safety of specific vehicle design, of using alternative fuels for urban buses and other motor vehicles used for mass transit.

(2) The cooperative agreements and joint ventures under paragraph (1) may include interested or affected private firms willing to provide assistance in cash, or in kind, for any such demonstration.

(3) Federal assistance provided under cooperative agreements and joint ventures entered into under paragraph (1) to demonstrate the feasibility of commercial application of using alternative fuels for urban buses shall be in addition to Federal assistance provided under any other law for such purpose.

(b) Limitations

(1) The Secretary of Transportation may not enter into cooperative agreement or joint venture under subsection (a) of this section with any municipal, county, or regional transit authority, unless such government body agrees to provide 20 percent of the costs of such demonstration.

(2) The Secretary of Transportation may grant such priority under this section to any entity that demonstrates that the use of alternative fuels for transportation would have a significant beneficial effect on the environment.

(c) School buses

The Secretary of Transportation may also provide, in accordance with such rules as he may prescribe, financial assistance to any agency, municipality, or political subdivision in an urban area referred to in subsection (a) of this section, of any State or the District of Columbia for the purpose of meeting the incremental costs of school buses that are dedicated vehicles and used regularly for such transportation during the school term. Such costs may include the purchase and installation of alternative fuel refueling facilities to be used for school bus refueling, and the conversion of school buses to dedicated vehicles. The Secretary of Transportation may provide such assistance directly to a person who is a contractor of such agency, municipality, or political subdivision, upon the request of the agency, municipality, or political subdivi-

sion, and who, under such contract, provides for such transportation. Any conversion under this subsection shall comply with the warranty and safety requirements for alternative fuel conversions contained in section 7587¹ of this title.

(d) Authorization of appropriations

There are authorized to be appropriated not more than \$30,000,000 for each of the fiscal years 1993, 1994, and 1995 for purposes of this section.

(Pub. L. 102-486, title IV, §410, Oct. 24, 1992, 106 Stat. 2884.)

REFERENCES IN TEXT

Section 7587 of this title, referred to in subsec. (c), was in the original "section 247 of the Clean Air Act Amendments of 1990", Pub. L. 101-549, and was translated as reading "section 247 of the Clean Air Act", meaning section 247 of act July 14, 1955, ch. 360, title II, as added Nov. 15, 1990, Pub. L. 101-549, title II, §229(a), 104 Stat. 2523, to reflect the probable intent of Congress, because the Clean Air Act Amendments of 1990 does not contain a section 247, and section 247 of the Clean Air Act relates to alternate fuel conversions for vehicles.

§ 13237. Certification of training programs

The Secretary shall ensure that the Federal Government establishes and carries out a program for the certification of training programs for technicians who are responsible for motor vehicle installation of equipment that converts gasoline or diesel-fueled motor vehicles into dedicated vehicles or dual fueled vehicles, and for the maintenance of such converted motor vehicles. A training program shall not be certified under the program established under this section unless it provides technicians with instruction on the proper and safe installation procedures and techniques, adherence to specifications (including original equipment manufacturer specifications), motor vehicle operating procedures, emissions testing, and other appropriate mechanical concerns applicable to these motor vehicle conversions. The Secretary shall ensure that, in the development of the program required under this section, original equipment manufacturers, fuel suppliers, companies that convert conventional vehicles to use alternative fuels, and other affected persons are consulted.

(Pub. L. 102-486, title IV, §411, Oct. 24, 1992, 106 Stat. 2885.)

§ 13238. Alternative fuel use in nonroad vehicles and engines

(a) Nonroad vehicles and engines

(1) The Secretary shall conduct a study to determine whether the use of alternative fuels in nonroad vehicles and engines would contribute substantially to reduced reliance on imported energy sources. Such study shall be completed, and the results thereof reported to Congress, within 2 years after October 24, 1992.

(2) The study shall assess the potential of nonroad vehicles and engines to run on alternative fuels. Taking into account the nonroad vehicles and engines for which running on alternative fuels is feasible, the study shall assess the potential reduction in reliance on foreign

energy sources that could be achieved if such vehicles were to run on alternative fuels.

(3) The report required under paragraph (1) may include the Secretary's recommendations for encouraging or requiring nonroad vehicles and engines which can feasibly be run on alternative fuels, to utilize such alternative fuels.

(b) Definition of nonroad vehicles and engines

Nonroad vehicles and engines, for purposes of this section, shall include nonroad vehicles and engines used for surface transportation or principally for industrial or commercial purposes, vehicles used for rail transportation, vehicles used at airports, vehicles or engines used for marine purposes, and other vehicles or engines at the discretion of the Secretary.

(c) Designation

Upon completion of the study required pursuant to subsection (a) of this section, the Secretary may designate such vehicles and engines as qualifying for loans pursuant to section 13239 of this title.

(Pub. L. 102-486, title IV, §412, Oct. 24, 1992, 106 Stat. 2886.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13239 of this title.

§ 13239. Low interest loan program

(a) Establishment

Within 1 year after October 24, 1992, the Secretary shall establish a program for making low interest loans, giving preference to small businesses that own or operate fleets, for—

(1) the conversion of motor vehicles to operation on alternative fuels;

(2) covering the incremental costs of the purchase of motor vehicles which operate on alternative fuels, when compared with purchase costs of comparable conventionally fueled motor vehicles; or

(3) covering the incremental costs of purchase of non-road vehicles and engines designated by the Secretary pursuant to section 13238(c) of this title.

(b) Loan terms

The Secretary, to the extent practicable, shall establish reasonable terms for loans made under this subsection, with preference given to repayment schedules that enable such loans to be repaid by the borrower from the cost differential between gasoline and the alternative fuel on which the motor vehicle operates.

(c) Criteria

In deciding to whom loans shall be made under this subsection, the Secretary shall consider—

(1) the financial need of the applicant;

(2) the goal of assisting the greatest number of applicants; and

(3) the ability of an applicant to repay the loan, taking into account the fuel cost savings likely to accrue to the applicant.

(d) Priorities

Priority shall be given under this section to fleets where the use of alternative fuels would have a significant beneficial effect on energy security and the environment.

¹ See References in Text note below.

(e) Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this section, \$25,000,000 for each of the fiscal years 1993, 1994, and 1995.

(Pub. L. 102-486, title IV, §414, Oct. 24, 1992, 106 Stat. 2886.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13238 of this title.

SUBCHAPTER III—AVAILABILITY AND USE OF REPLACEMENT FUELS, ALTERNATIVE FUELS, AND ALTERNATIVE FUELED PRIVATE VEHICLES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 13211, 13220 of this title.

§ 13251. Mandate for alternative fuel providers**(a) In general**

(1) The Secretary shall, before January 1, 1994, issue regulations requiring that of the new light duty motor vehicles acquired by a covered person described in paragraph (2), the following percentages shall be alternative fueled vehicles for the following model years:

- (A) 30 percent for model year 1996.
- (B) 50 percent for model year 1997.
- (C) 70 percent for model year 1998.
- (D) 90 percent for model year 1999 and thereafter.

(2) For purposes of this section, a person referred to in paragraph (1) is—

(A) a covered person whose principal business is producing, storing, refining, processing, transporting, distributing, importing, or selling at wholesale or retail any alternative fuel other than electricity;

(B) a non-Federal covered person whose principal business is generating, transmitting, importing, or selling at wholesale or retail electricity; or

(C) a covered person—

(i) who produces, imports, or produces and imports in combination, an average of 50,000 barrels per day or more of petroleum; and

(ii) a substantial portion of whose business is producing alternative fuels.

(3)(A) In the case of a covered person described in paragraph (2) with more than one affiliate, division, or other business unit, only an affiliate, division, or business unit which is substantially engaged in the alternative fuels business (as determined by the Secretary by rule) shall be subject to this subsection.

(B) No covered person or affiliate, division, or other business unit of such person whose principal business is—

(i) transforming alternative fuels into a product that is not an alternative fuel; or

(ii) consuming alternative fuels as a feedstock or fuel in the manufacture of a product that is not an alternative fuel,

shall be subject to this subsection.

(4) The vehicles purchased pursuant to this section shall be operated solely on alternative

fuels except when operating in an area where the appropriate alternative fuel is unavailable.

(5) Regulations issued under paragraph (1) shall provide for the prompt exemption by the Secretary, through a simple and reasonable process, from the requirements of paragraph (1) of any covered person, in whole or in part, if such person demonstrates to the satisfaction of the Secretary that—

(A) alternative fueled vehicles that meet the normal requirements and practices of the principal business of that person are not reasonably available for acquisition; or

(B) alternative fuels that meet the normal requirements and practices of the principal business of that person are not available in the area in which the vehicles are to be operated.

(b) Revisions and extensions

With respect to model years 1997 and thereafter, the Secretary may—

(1) revise the percentage requirements under subsection (a)(1) of this section downward, except that under no circumstances shall the percentage requirement for a model year be less than 20 percent; and

(2) extend the time under subsection (a)(1) of this section for up to 2 model years.

(c) Option for electric utilities

The Secretary shall, within 1 year after October 24, 1992, issue regulations requiring that, in the case of a covered person whose principal business is generating, transmitting, importing, or selling at wholesale or retail electricity, the requirements of subsection (a)(1) of this section shall not apply until after December 31, 1997, with respect to electric motor vehicles. Any covered person described in this subsection which plans to acquire electric motor vehicles to comply with the requirements of this section shall so notify the Secretary before January 1, 1996.

(d) Report to Congress

The Secretary shall, before January 1, 1998, submit a report to the Congress providing detailed information on actions taken to carry out this section, and the progress made and problems encountered thereunder.

(Pub. L. 102-486, title V, §501, Oct. 24, 1992, 106 Stat. 2887.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13220, 13257, 13258, 13261 of this title.

§ 13252. Replacement fuel supply and demand program**(a) Establishment of program**

The Secretary shall establish a program to promote the development and use in light duty motor vehicles of domestic replacement fuels. Such program shall promote the replacement of petroleum motor fuels with replacement fuels to the maximum extent practicable. Such program shall, to the extent practicable, ensure the availability of those replacement fuels that will have the greatest impact in reducing oil imports, improving the health of our Nation's economy and reducing greenhouse gas emissions.

(b) Development plan and production goals

Under the program established under subsection (a) of this section, the Secretary, before October 1, 1993, in consultation with the Administrator, the Secretary of Transportation, the Secretary of Agriculture, the Secretary of Commerce, and the heads of other appropriate agencies, shall review appropriate information and—

- (1) estimate the domestic and nondomestic production capacity for replacement fuels and alternative fueled vehicles needed to implement this section;
- (2) determine the technical and economic feasibility of achieving the goals of producing sufficient replacement fuels to replace, on an energy equivalent basis—
 - (A) at least 10 percent by the year 2000; and
 - (B) at least 30 percent by the year 2010,

of the projected consumption of motor fuel in the United States for each such year, with at least one half of such replacement fuels being domestic fuels;

- (3) determine the most suitable means and methods of developing and encouraging the production, distribution, and use of replacement fuels and alternative fueled vehicles in a manner that would meet the program goals described in subsection (a) of this section;

- (4) identify ways to encourage the development of reliable replacement fuels and alternative fueled vehicle industries in the United States, and the technical, economic, and institutional barriers to such development; and

- (5) determine the greenhouse gas emission implications of increasing the use of replacement fuels, including an estimate of the maximum feasible reduction in such emissions from the use of replacement fuels.

The Secretary shall publish in the Federal Register the results of actions taken under this subsection, and provide for an opportunity for public comment.

(Pub. L. 102-486, title V, §502, Oct. 24, 1992, 106 Stat. 2888.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13254, 13255, 13256, 13257 of this title.

§ 13253. Replacement fuel demand estimates and supply information**(a) Estimates**

Not later than October 1, 1993, and annually thereafter, the Secretary, in consultation with the Administrator, the Secretary of Transportation, and other appropriate State and Federal officials, shall estimate for the following calendar year—

- (1) the number of each type of alternative fueled vehicle likely to be in use in the United States;
- (2) the probable geographic distribution of such vehicles;
- (3) the amount and distribution of each type of replacement fuel; and
- (4) the greenhouse gas emissions likely to result from replacement fuel use.

(b) Information

Beginning on October 1, 1994, the Secretary shall annually require—

- (1) fuel suppliers to report to the Secretary on the amount of each type of replacement fuel that such supplier—

- (A) has supplied in the previous calendar year; and

- (B) plans to supply for the following calendar year;

- (2) suppliers of alternative fueled vehicles to report to the Secretary on the number of each type of alternative fueled vehicle that such supplier—

- (A) has made available in the previous calendar year; and

- (B) plans to make available for the following calendar year; and

- (3) such fuel suppliers to provide the Secretary information necessary to determine the greenhouse gas emissions from the replacement fuels used, taking into account the entire fuel cycle.

(c) Protection of information

Information provided to the Secretary under subsection (b) of this section shall be subject to applicable provisions of law protecting the confidentiality of trade secrets and business and financial information, including section 1905 of title 18.

(Pub. L. 102-486, title V, §503, Oct. 24, 1992, 106 Stat. 2889.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13256, 13261 of this title.

§ 13254. Modification of goals; additional rule-making authority**(a) Examination of goals**

Within 3 years after October 24, 1992, and periodically thereafter, the Secretary shall examine the goals established under section 13252(b)(2) of this title, in the context of the program goals stated under section 13252(a) of this title, to determine if the goals under section 13252(b)(2) of this title, including the applicable percentage requirements and dates, should be modified under this section. The Secretary shall publish in the Federal Register the results of each examination under this subsection and provide an opportunity for public comment.

(b) Modification of goals

If, after analysis of information obtained in connection with carrying out subsection (a) of this section or section 13252 of this title, or other information, and taking into account the determination of technical and economic feasibility made under section 13252(b)(2) of this title, the Secretary determines that goals described in section 13252(b)(2) of this title, including the percentage requirements or dates, are not achievable, the Secretary, in consultation with appropriate Federal agencies, shall, by rule, establish goals that are achievable, for purposes of this subchapter. The modification of goals under this section may include changing the target dates specified in section 13252(b)(2) of this title.

(c) Additional rulemaking authority

If the Secretary determines that the achievement of goals described in section 13252(b)(2) of

this title would result in a significant and correctable failure to meet the program goals described in section 13252(a) of this title, the Secretary shall issue such additional regulations as are necessary to remedy such failure. The Secretary shall have no authority under this Act to mandate the production of alternative fueled vehicles or to specify, as applicable, the models, lines, or types of, or marketing or pricing practices, policies, or strategies for, vehicles subject to this Act. Nothing in this Act shall be construed to give the Secretary authority to mandate marketing or pricing practices, policies, or strategies for alternative fuels or to mandate the production or delivery of such fuels.

(Pub. L. 102-486, title V, §504, Oct. 24, 1992, 106 Stat. 2890.)

REFERENCES IN TEXT

This Act, referred to in subsec. (c), is Pub. L. 102-486, Oct. 24, 1992, 106 Stat. 2776, known as the Energy Policy Act of 1992. For complete classification of this Act to the Code, see Short Title note set out under section 13201 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13255, 13256, 13257 of this title.

§ 13255. Voluntary supply commitments

The Secretary shall, by January 1, 1994, and thereafter, undertake to obtain voluntary commitments in geographically diverse regions of the United States—

- (1) from fuel suppliers to make available to the public replacement fuels, including providing for the construction or availability of related fuel delivery systems;
- (2) from owners of 10 or more motor vehicles to acquire and use alternative fueled vehicles and alternative fuels; and
- (3) from suppliers of alternative fueled vehicles to make available to the public alternative fueled vehicles and to ensure the availability of necessary related services,

in sufficient volume to achieve the goals described in section 13252(b)(2) of this title or as modified under section 13254 of this title, and in order to meet any fleet requirement program established by rule under this subchapter. The Secretary shall periodically report to the Congress on the results of efforts under this section. All voluntary commitments obtained pursuant to this section shall be available to the public, except to the extent provided in applicable provisions of law protecting the confidentiality of trade secrets and business and financial information, including section 1905 of title 18.

(Pub. L. 102-486, title V, §505, Oct. 24, 1992, 106 Stat. 2890.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13257 of this title.

§ 13256. Technical and policy analysis

(a) Requirement

Not later than March 1, 1995, and March 1, 1997, the Secretary shall prepare and transmit to the President and the Congress a technical and pol-

icy analysis under this section. The Secretary shall utilize the analytical capability and authorities of the Energy Information Administration and such other offices of the Department of Energy as the Secretary considers appropriate.

(b) Purposes

The technical and policy analysis prepared under this section shall be based on the best available data and information obtainable by the Secretary under section 13253 of this title, or otherwise, and on experience under this subchapter and other provisions of law in the development and use of replacement fuels and alternative fueled vehicles, and shall evaluate—

- (1) progress made in achieving the goals described in section 13252(b)(2) of this title, as modified under section 13254 of this title;
- (2) the actual and potential role of replacement fuels and alternative fueled vehicles in significantly reducing United States reliance on imported oil to the extent of the goals referred to in paragraph (1); and
- (3) the actual and potential availability of various domestic replacement fuels and dedicated vehicles and dual fueled vehicles.

(c) Publication

The Secretary shall publish a proposed version of each analysis under this section in the Federal Register for public comment before transmittal to the President and the Congress. Public comment received in response to such publication shall be preserved for use in rulemaking proceedings under section 13257 of this title.

(Pub. L. 102-486, title V, §506, Oct. 24, 1992, 106 Stat. 2891.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13257 of this title.

§ 13257. Fleet requirement program

(a) Fleet program purchase goals

(1) Except as provided in paragraph (2), the following percentages of new light duty motor vehicles acquired in each model year for a fleet, other than a Federal fleet, State fleet, or fleet owned, operated, leased, or otherwise controlled by a covered person subject to section 13251 of this title, shall be alternative fueled vehicles:

- (A) 20 percent of the motor vehicles acquired in model years 1999, 2000, and 2001;
- (B) 30 percent of the motor vehicles acquired in model year 2002;
- (C) 40 percent of the motor vehicles acquired in model year 2003;
- (D) 50 percent of the motor vehicles acquired in model year 2004;
- (E) 60 percent of the motor vehicles acquired in model year 2005; and
- (F) 70 percent of the motor vehicles acquired in model year 2006 and thereafter.

(2) The Secretary may not establish percentage requirements higher than those described in paragraph (1). The Secretary may, if appropriate, and pursuant to a rule under subsection (b) of this section, establish a lesser percentage requirement for any model year. The Secretary may, by rule, establish a date later than 1998 (or

model year 1999) for initiating the fleet requirements under paragraph (1).

(3) The Secretary shall publish an advance notice of proposed rulemaking for the purpose of—

(A) evaluating the progress toward achieving the goals of replacement fuel use described in section 13252(b)(2) of this title, as modified under section 13254 of this title;

(B) identifying the problems associated with achieving those goals;

(C) assessing the adequacy and practicability of those goals; and

(D) considering all actions needed to achieve those goals.

The Secretary shall provide for at least 3 regional hearings on the advance notice of proposed rulemaking, with respect to which official transcripts shall be maintained. The comment period in connection with such advance notice of proposed rulemaking shall be completed within 7 months after publication of the advance notice.

(4) After the completion of such advance notice of proposed rulemaking, the Secretary shall publish in the Federal Register a proposed rule for the rule required under subsection (b) of this section, and shall provide for a public comment period, with hearings, of not less than 90 days.

(b) Early rulemaking

(1) Not earlier than 1 year after October 24, 1992, and after carrying out the requirements of subsection (a) of this section, the Secretary shall initiate a rulemaking to determine whether a fleet requirement program to begin in calendar year 1998 (when model year 1999 begins), or such other later date as he may select pursuant to subsection (a) of this section, is necessary under this section. Such rule, consistent with subsection (a)(1) of this section, shall establish the annual applicable model year percentage. No rule under this subsection may be promulgated after December 15, 1996, and be enforceable. A fleet requirement program shall be considered necessary and a rule therefor shall be promulgated if the Secretary finds that—

(A) the goal of replacement fuel use described in section 13252(b)(2)(B) of this title, as modified under section 13254 of this title, is not expected to be actually achieved by 2010, or such other date as is established under section 13254 of this title, by voluntary means or pursuant to this subchapter or any other law without such a fleet requirement program, taking into consideration the status of the achievement of the interim goal described in section 13252(b)(2)(A) of this title, as modified under section 13254 of this title;

(B) such goal is practicable and actually achievable within periods specified in section 13252(b)(2) of this title, as modified under section 13254 of this title, through implementation of such a fleet requirement program in combination with voluntary means and the application of other programs relevant to achieving such goals; and

(C) by 1998 (when model year 1999 begins) or the date specified by the Secretary in such rule for initiating a fleet requirement program—

(i) there exists sufficient evidence to ensure that the fuel and the needed infrastruc-

ture, including the supply and deliverability systems, will be installed and located at convenient places in the fleet areas subject to the rule and will be fully operational when the rule is effective to offer a reliable and timely supply of the applicable alternative fuel at reasonable costs (as compared to conventional fuels) to meet the fleet requirement program, as demonstrated through use of the provisions of section 13255(1) of this title regarding voluntary commitments or other adequate, reliable, and convincing forms of agreements, arrangements, or representations that such fuels and infrastructure are in existence or will exist when the rule is effective and will be expanded as the percentages increase annually;

(ii) there will be a sufficient number of new alternative fueled vehicles from original equipment manufacturers that comply with all applicable requirements of the Clean Air Act [42 U.S.C. 7401 et seq.] and chapter 301 of title 49;

(iii) such new vehicles will meet the applicable non-Federal and non-State fleet performance requirements of such fleets (including range, passenger or cargo-carrying capacity, reliability, refueling capability, vehicle mix, and economical operation and maintenance); and

(iv) establishment of a fleet requirement program by rule under this subsection will not result in unfair competitive advantages or disadvantages, or result in undue economic hardship, to the affected fleets.

(2) The Secretary shall not promulgate a rule under this subsection if he is unable to make affirmative findings in the case of each of the subparagraphs under paragraph (1), and each of the clauses under subparagraph (C) of paragraph (1).

(3) If the Secretary does not determine that such program is necessary under this subsection, the provisions of subsection (e) of this section shall apply to the consideration in the future of any fleet requirement program. The record of this rulemaking, including the Secretary's findings, shall be incorporated into a rulemaking under that subsection. If the Secretary determines under this subsection that such program is necessary, the Secretary shall not initiate the later rulemaking under subsection (e) of this section.

(c) Advance notice of proposed rulemaking

Not later than April 1, 1998, the Secretary shall publish an advance notice of proposed rulemaking for the purpose of—

(1) evaluating the progress toward achieving the goals of replacement fuel use described in section 13252(b)(2) of this title, as modified under section 13254 of this title;

(2) identifying the problems associated with achieving those goals;

(3) assessing the adequacy and practicability of those goals; and

(4) considering all actions needed to achieve those goals.

The Secretary shall provide for at least 3 regional hearings on the advance notice of pro-

posed rulemaking, with respect to which official transcripts shall be maintained. The comment period in connection with such advance notice of proposed rulemaking shall be completed within 7 months after publication of the advance notice.

(d) Proposed rule

Before May 1, 1999, the Secretary shall publish in the Federal Register a proposed rule for the rule required under subsection (g) of this section, and shall provide for a public comment period, with hearings, of not less than 90 days.

(e) Determination

(1) Not later than January 1, 2000, the Secretary shall, through the rule required under subsection (g) of this section, determine whether a fleet requirement program is necessary under this section. Such a program shall be considered necessary and a rule therefor shall be promulgated if the Secretary finds that—

(A) the goal of replacement fuel use described in section 13252(b)(2)(B) of this title, as modified under section 13254 of this title, is not expected to be actually achieved by 2010, or such other date as is established under section 13254 of this title, by voluntary means or pursuant to this subchapter or any other law without such a fleet requirement program, taking into consideration the status of the achievement of the interim goal described in section 13252(b)(2)(A) of this title, as modified under section 13254 of this title; and

(B) such goal is practicable and actually achievable within periods specified in section 13252(b)(2) of this title, as modified under section 13254 of this title, through implementation of such a fleet requirement program in combination with voluntary means and the application of other programs relevant to achieving such goals.

(2) The rule under subsection (b) or (g) of this section shall also modify the goal described in section 13252(b)(2)(B) of this title and establish a revised goal pursuant to section 13254 of this title if the Secretary determines, based on the proceeding required under subsection (a) or (c) of this section, that the goal in effect at the time of that proceeding is inadequate or impracticable, and not expected to be achievable. Such goal as modified and established shall be applicable in making the findings described in paragraph (1). If the Secretary modifies the goal under this paragraph, he may also modify the percentages stated in subsection (a)(1) or (g)(1) of this section and the minimum percentage stated in subsection (a)(2) or (g)(2) of this section shall be not less than 10 percent.

(f) Explanation of determination that fleet requirement program is not necessary

If the Secretary determines, based on findings under subsection (b) or (e) of this section, that a fleet requirement program under this section is not necessary, the Secretary shall—

(1) by December 15, 1996, with respect to a rulemaking under subsection (b) of this section; and

(2) by January 1, 2000, with respect to a rulemaking under subsection (e) of this section,

publish such determination in the Federal Register as a final agency action, including an ex-

planation of the findings on which such determination is made and the basis for the determination.

(g) Fleet requirement program

(1) If the Secretary determines under subsection (e) of this section that a fleet requirement program is necessary, the Secretary shall, by January 1, 2000, by rule require that, except as provided in paragraph (2), of the total number of new light duty motor vehicles acquired for a fleet, other than a Federal fleet, State fleet, or fleet owned, operated, leased, or otherwise controlled by a covered person under section 13251 of this title—

(A) 20 percent of the motor vehicles acquired in model year 2002;

(B) 40 percent of the motor vehicles acquired in model year 2003;

(C) 60 percent of the motor vehicles acquired in model year 2004; and

(D) 70 percent of the motor vehicles acquired in model year 2005 and thereafter,

shall be alternative fueled vehicles.

(2) The Secretary may not establish percentage requirements higher than those described in paragraph (1). The Secretary may, if appropriate, and pursuant to a rule under subsection (g) of this section, establish a lesser percentage requirement for any model year. The Secretary may, by rule, establish a date later than 2002 (when model year 2003 begins) for initiating the fleet requirements under paragraph (1).

(3) Nothing in this subchapter shall be construed as requiring any fleet to acquire alternative fueled vehicles or alternative fuels that do not meet the normal business requirements and practices and needs of that fleet.

(4) A vehicle operating only on gasoline that complies with applicable requirements of the Clean Air Act [42 U.S.C. 7401 et seq.] shall not be considered an alternative fueled vehicle under subsection (b) of this section or this subsection, except that the Secretary, as part of the rule under subsection (b) of this section or this subsection, may determine that such vehicle should be treated as an alternative fueled vehicle for purposes of this section, for fleets subject to part C of title II of the Clean Air Act [42 U.S.C. 7581 et seq.], taking into consideration the impact on energy security and the goals stated in section 13252(a) of this title.

(h) Extension of deadlines

The Secretary may, by notice published in the Federal Register, extend the deadlines established under subsections (e), (f)(2), and (g) of this section for an additional 90 days if the Secretary is unable to meet such deadlines. Such extension shall not be reviewable.

(i) Exemptions

(1) A rule issued under subsection (b), (g), or (o) of this section shall provide for the prompt exemption by the Secretary, through a simple and reasonable process, of any fleet from the requirements of subsection (b), (g), or (o) of this section, in whole or in part, if it is demonstrated to the satisfaction of the Secretary that—

(A) alternative fueled vehicles that meet the normal requirements and practices of the principal business of the fleet owner are not reasonably available for acquisition;

(B) alternative fuels that meet the normal requirements and practices of the principal business of the fleet owner are not available in the area in which the vehicles are to be operated; or

(C) in the case of State and local government entities, the application of such requirements would pose an unreasonable financial hardship.

(2) In the case of private fleets, if the motor vehicles, when under normal operations, are garaged at personal residences at night, such motor vehicles shall be exempt from the requirements of subsections (b) and (g).

(j) Conversions

Nothing in this subchapter or the amendments made by this subchapter shall require a fleet owner to acquire conversion vehicles.

(k) Inclusion of law enforcement vehicles and urban buses

(1) If the Secretary determines, by rule, that the inclusion of fleets of law enforcement motor vehicles in the fleet requirement program established under subsection (g) of this section would contribute to achieving the goal described in section 13252(b)(2)(B) of this title, as modified under section 13254 of this title, and the Secretary finds that such inclusion would not hinder the use of the motor vehicles for law enforcement purposes, the Secretary may include such fleets in such program. The Secretary may only initiate one rulemaking under this paragraph.

(2) If the Secretary determines, by rule, that the inclusion of new urban buses, as defined by the Administrator under title II of the Clean Air Act [42 U.S.C. 7521 et seq.], in a fleet requirement program established under subsection (g) of this section would contribute to achieving the goal described in section 13252(b)(2)(B) of this title, as modified under section 13254 of this title, the Secretary may include such urban buses in such program, if the Secretary finds that such application will be consistent with energy security goals and the needs and objectives of encouraging and facilitating the greater use of such urban buses by the public, taking into consideration the impact of such application on public transit entities. The Secretary may only initiate one rulemaking under this paragraph.

(3) Rulemakings under paragraph (1) or (2) shall be separate from a rulemaking under subsection (g) of this section, but may not occur unless a rulemaking is carried out under subsection (g) of this section.

(l) Consideration of factors

In carrying out this section, the Secretary shall take into consideration energy security, costs, safety, lead time requirements, vehicle miles traveled annually, effect on greenhouse gases, technological feasibility, energy requirements, economic impacts, including impacts on workers and the impact on consumers (including users of the alternative fuel for purposes such as for residences, agriculture, process use, and non-fuel purposes) and fleets, the availability of alternative fuels and alternative fueled vehicles, and other relevant factors.

(m) Consultation and participation of other Federal agencies

In carrying out this section and section 13256 of this title, the Secretary shall consult with the Secretary of Transportation, the Administrator, and other appropriate Federal agencies. The Secretary shall provide for the participation of the Secretary of Transportation and the Administrator in the development and issuance of the rule under this section, including the public process concerning such rule.

(n) Petitions

As part of the rule promulgated either pursuant to subsection (b) or (g) of this section, the Secretary shall establish procedures for any fleet owner or operator or motor vehicle manufacturer to request that the Secretary modify or suspend a fleet requirement program established under either subsection nationally, by region, or in an applicable fleet area because, as demonstrated by the petitioner, the infrastructure or fuel supply or distribution system for an applicable alternative fuel is inadequate to meet the needs of a fleet. In the event that the Secretary determines that a modification or suspension of the fleet requirement program on a regional basis would detract from the nationwide character of any fleet requirement program established by rule or would sufficiently diminish the economies of scale for the production of alternative fueled vehicles or alternative fuels and thereafter the practicability and effectiveness of such program, the Secretary may only modify or suspend the program nationally. The procedures shall include provisions for notice and public hearings. The Secretary shall deny or grant the petition within 180 days after filing.

(o) Mandatory State fleet programs

(1) Pursuant to a rule promulgated by the Secretary, beginning in calendar year 1995 (when model year 1996 begins), the following percentages of new light duty motor vehicles acquired annually for State government fleets, including agencies thereof, but not municipal fleets, shall be alternative fueled vehicles:

- (A) 10 percent of the motor vehicles acquired in model year 1996;
- (B) 15 percent of the motor vehicles acquired in model year 1997;
- (C) 25 percent of the motor vehicles acquired in model year 1998;
- (D) 50 percent of the motor vehicles acquired in model year 1999;
- (E) 75 percent of the motor vehicles acquired in model year 2000 and thereafter.

(2)(A) The Secretary shall within 18 months after October 24, 1992, promulgate a rule providing that a State may submit a plan within 12 months after such promulgation containing a light duty alternative fueled vehicle plan for State fleets to meet the annual percentages established under paragraph (1) for the acquisition of light duty motor vehicles. The plan shall provide for the voluntary conversion or acquisition or combination thereof, beyond any acquisition required by this subchapter, of such motor vehicles by State, local, or private fleets, in numbers greater than or equal to the number of State alternative fueled vehicles required pursuant to paragraph (1).

(B) The plan, if approved by the Secretary, would be in lieu of the State meeting such annual percentages solely through purchases of new State-owned vehicles. All conversions or acquisitions or combinations thereof of any alternative fueled vehicles under the plan must be voluntary and must conform with the requirements of section 247 of the Clean Air Act [42 U.S.C. 7587] and must comply with applicable safety requirements. The Secretary of Transportation shall within 3 years after enactment promulgate rules setting forth safety standards in accordance with chapter 301 of title 49 applicable to all conversions.

(Pub. L. 102-486, title V, §507, Oct. 24, 1992, 106 Stat. 2891.)

REFERENCES IN TEXT

The Clean Air Act, referred to in subsecs. (b)(1)(C)(ii), (g)(4), and (k)(2), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§7401 et seq.) of this title. Title II of the Act, known as the National Emission Standards Act, is classified generally to subchapter II (§7521 et seq.) of chapter 85 of this title. Part C of title II of the Act is classified generally to part C (§7581 et seq.) of chapter 85 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

This subchapter, referred to in subsecs. (b)(1)(A), (e)(1)(A), (g)(3), (j), and (o)(2)(A), was in the original "this title" meaning title V of Pub. L. 102-486, Oct. 24, 1992, 102 Stat. 2887, which is classified generally to this subchapter.

CODIFICATION

In subsecs. (b)(1)(C)(ii) and (o)(2)(B), "chapter 301 of title 49" substituted for "the National Traffic and Motor Vehicle Safety Act of 1966 [15 U.S.C. 1381 et seq.]" on authority of Pub. L. 103-272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13256, 13259, 13261 of this title.

§ 13258. Credits

(a) In general

The Secretary shall allocate a credit to a fleet or covered person that is required to acquire an alternative fueled vehicle under this subchapter, if that fleet or person acquires an alternative fueled vehicle in excess of the number that fleet or person is required to acquire under this subchapter or acquires an alternative fueled vehicle before the date that fleet or person is required to acquire an alternative fueled vehicle under such subchapter.

(b) Allocation

In allocating credits under subsection (a) of this section, the Secretary shall allocate one credit for each alternative fueled vehicle the fleet or covered person acquires that exceeds the number of alternative fueled vehicles that fleet or person is required to acquire under this subchapter or that is acquired before the date that fleet or person is required to acquire an alternative fueled vehicle under such subchapter. In the event that a vehicle is acquired before the date otherwise required, the Secretary shall allocate one credit per vehicle for each year the

vehicle is acquired before the required date. The credit shall be allocated for the same type vehicle as the excess vehicle or earlier acquired vehicle.

(c) Use of credits

At the request of a fleet or covered person allocated a credit under this section, the Secretary shall treat the credit as the acquisition of one alternative fueled vehicle of the type for which the credit is allocated in the year designated by that fleet or person when determining whether that fleet or person has complied with this subchapter in the year designated. A credit may be counted toward compliance for only one year.

(d) Transferability

A fleet or covered person allocated a credit under this section or to whom a credit is transferred under this section, may transfer freely the credit to another fleet or person who is required to comply with this subchapter. At the request of the fleet or person to whom a credit is transferred, the Secretary shall treat the transferred credit as the acquisition of one alternative fueled vehicle of the type for which the credit is allocated in the year designated by the fleet or person to whom the credit is transferred when determining whether that fleet or person has complied with this subchapter in the year designated. A transferred credit may be counted toward compliance for only one year. In the case of the alternative fuel provider program under section 13251 of this title, a transferred credit may be counted toward compliance only if the requirement of section 13251(a)(4) of this title is met.

(Pub. L. 102-486, title V, §508, Oct. 24, 1992, 106 Stat. 2897.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13220 of this title.

§ 13259. Secretary's recommendations to Congress

(a) Recommendations to require availability or acquisition

If the Secretary determines, under section 13257(f) of this title, that a fleet requirement program under section 13257 of this title is not necessary, the Secretary shall so notify the Congress. If the Secretary so notifies the Congress, the Secretary shall, within 2 years after such notification and by rule, prepare and submit to the Congress recommendations for requirements or incentives for—

(1) fuel suppliers to make available to the public replacement fuels, including providing for the construction or availability of related fuel delivery systems;

(2) suppliers of alternative fueled vehicles to make available to the public alternative fueled vehicles and to ensure the availability of necessary related services; and

(3) motor vehicle drivers to use replacement fuels,

to the extent necessary to achieve such goals of replacement fuel use and to ensure that the

availability of alternative fuels and of alternative fueled vehicles are consistent with each other.

(b) Fair and equitable application

In carrying out this section, the Secretary shall recommend the imposition of requirements proportionately on all appropriate fuel suppliers and purchasers of motor fuels and suppliers and purchasers of motor vehicles in a fair and equitable manner.

(Pub. L. 102-486, title V, §509, Oct. 24, 1992, 106 Stat. 2898.)

§ 13260. Effect on other laws

(a) In general

Nothing in this Act or the amendments made by this Act shall be construed to alter, affect, or modify the provisions of the Clean Air Act [42 U.S.C. 7401 et seq.], or regulations issued thereunder.

(b) Compliance by alternative fueled vehicles

Alternative fueled vehicles, whether dedicated vehicles or dual fueled vehicles, and the alternative fuels for operating such vehicles, shall comply with requirements of the Clean Air Act [42 U.S.C. 7401 et seq.] applicable to such vehicles and fuels.

(Pub. L. 102-486, title V, §510, Oct. 24, 1992, 106 Stat. 2898.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 102-486, Oct. 24, 1992, 106 Stat. 2776, known as the Energy Policy Act of 1992. For complete classification of this Act to the Code, see Short Title note set out under section 13201 of this title and Tables.

The Clean Air Act, referred to in text, is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

§ 13261. Prohibited acts

It shall be unlawful for any person to violate any provision of section 13251, 13253(b), or 13257 of this title, or any regulation issued under such sections.

(Pub. L. 102-486, title V, §511, Oct. 24, 1992, 106 Stat. 2899.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13262 of this title.

§ 13262. Enforcement

(a) Violation

Whoever violates section 13261 of this title shall be subject to a civil penalty of not more than \$5,000 for each violation.

(b) Willful violation

Whoever willfully violates section 13261 of this title shall be fined not more than \$10,000 for each violation.

(c) Knowing and willful violation following prior violation and penalty

Any person who knowingly and willfully violates section 13261 of this title after having been

subjected to a civil penalty for a prior violation of section 13261 of this title shall be fined not more than \$50,000.

(Pub. L. 102-486, title V, §512, Oct. 24, 1992, 106 Stat. 2899.)

§ 13263. Powers of Secretary

For the purpose of carrying out subchapter I of this chapter, subchapter II of this chapter, this subchapter, and subchapter IV of this chapter, the Secretary, or the duly designated agent of the Secretary, may hold such hearings, take such testimony, sit and act at such times and places, administer such oaths, and require, by subpoena, the attendance and testimony of such witnesses and the production of such books, papers, correspondence, memorandums, contracts, agreements, or other records as the Secretary of Transportation is authorized to do under section 32910(a)(1) of title 49.

(Pub. L. 102-486, title V, §513, Oct. 24, 1992, 106 Stat. 2899.)

REFERENCES IN TEXT

Subchapter I of this chapter, referred to in text, was in the original "title III" meaning title III of Pub. L. 102-486, Oct. 24, 1992, 106 Stat. 2866, which enacted subchapter I of this chapter, amended section 6374 of this title, and repealed provisions set out as a note under section 6374 of this title.

Subchapter II of this chapter, referred to in text, was in the original "title IV" meaning title IV of Pub. L. 102-486, Oct. 24, 1992, 106 Stat. 2875, which enacted subchapter II of this chapter, amended sections 6374a to 6374c of this title and sections 717, 717a, 2001, 2002, 2006, and 2013 of Title 15, Commerce and Trade, enacted provisions set out as notes under sections 79b and 717 of Title 15, and repealed provisions set out as a note under section 717c of Title 15.

CODIFICATION

In text, "section 32910(a)(1) of title 49" substituted for "section 505(b)(1) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2005(b)(1))" on authority of Pub. L. 103-272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

§ 13264. Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this subchapter \$10,000,000 for each of the fiscal years 1993 through 1997, and such sums as may be necessary for fiscal years 1998 through 2000.

(Pub. L. 102-486, title V, §514, Oct. 24, 1992, 106 Stat. 2899.)

SUBCHAPTER IV—ELECTRIC MOTOR VEHICLES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 13263 of this title.

§ 13271. Definitions

For the purposes of this subchapter—

(1) the term "antitrust laws" means the Acts set forth in section 12 of title 15;

(2) the term "associated equipment" means equipment necessary for the regeneration, refueling, or recharging of batteries or other

forms of electric energy used to power an electric motor vehicle and, in the case of electric-hybrid vehicles, such term includes nonpetroleum-related equipment necessary for, and solely related to, the demonstration of such vehicles;

(3) the term “discount payment” means the amount determined pursuant to section 13283 of this title;

(4) the term “electric motor vehicle” means a motor vehicle primarily powered by an electric motor that draws current from rechargeable storage batteries, fuel cells, photovoltaic arrays, or other sources of electric current and may include an electric-hybrid vehicle;

(5) the term “electric-hybrid vehicle” means a vehicle primarily powered by an electric motor that draws current from rechargeable storage batteries, fuel cells, or other source of electric current and also relies on a non-electric source of power;

(6) the term “eligible metropolitan area” means any Metropolitan Area (as such term is defined by the Office of Management and Budget pursuant to section 3504 of title 44) with a 1980 population of 250,000 or more that has been designated by a proposer and the Secretary for a demonstration project under this subchapter, except that the Secretary may designate an area with a 1990 population of 50,000 or more as an eligible metropolitan area;

(7) the term “infrastructure and support systems” includes support and maintenance services and facilities, electricity delivery mechanisms and methods, regulatory treatment of investment in electric motor vehicles and associated equipment, consumer education programs, safety and health procedures, and battery availability, replacement, recycling, and disposal, that may be required to enable electric utilities, manufacturers, and others to support the operation and maintenance of electric motor vehicles and associated equipment;

(8) the term “motor vehicle” has the meaning given such term under section 7550(2) of this title;

(9) the term “non-Federal person” means an entity not part of the Federal Government that is either—

(A) organized under the laws of the United States or the laws of a State of the United States; or

(B) a unit of State or local government;

(10) the term “proposer” means a non-Federal person that submits a proposal to conduct a demonstration project under this subchapter;

(11) the term “price differential” means—

(A) in the case of a purchased electric motor vehicle, the difference between the manufacturer’s suggested retail price of such electric motor vehicle and the manufacturer’s suggested retail price of a comparable conventionally fueled motor vehicle; and

(B) in the case of a leased electric motor vehicle, the difference between the monthly lease payment of such electric motor vehicle over the life of the lease and the monthly

lease payment of a comparable conventionally fueled motor vehicle over the life of the lease; and

(12) the term “user” means a person or entity that purchases or leases an electric motor vehicle.

(Pub. L. 102-486, title VI, §601, Oct. 24, 1992, 106 Stat. 2899.)

PART A—ELECTRIC MOTOR VEHICLE COMMERCIAL DEMONSTRATION PROGRAM

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 13291 of this title.

§ 13281. Program and solicitation

(a) Program

The Secretary shall conduct a program to demonstrate electric motor vehicles and the associated equipment of such vehicles, in consultation with the Electric and Hybrid Vehicle Program Site Operators, manufacturers, the electric utility industry, and such other persons as the Secretary considers appropriate. Such program shall be—

(1) designed to accelerate the development and use of electric motor vehicles; and

(2) structured to evaluate the performance of such electric motor vehicles in field operation, including fleet operation, and evaluate the necessary supporting infrastructure.

(b) Solicitation

(1) Not later than 18 months after October 24, 1992, the Secretary shall solicit proposals to demonstrate electric motor vehicles and associated equipment in one or more eligible metropolitan areas. The Secretary may make additional solicitations for proposals if the Secretary determines that such solicitations are necessary to carry out this part.

(2)(A) Solicitations for proposals under this subsection shall require the proposer to include a description, including the manufacturer or manufacturers of the electric motor vehicles; the proposed users of the electric motor vehicles; the eligible metropolitan area or areas involved; the number of electric motor vehicles to be demonstrated and their type, characteristics, and life-cycle costs; the price differential; the proposed discount payment; the contributions of State or local governments and other persons to the demonstration project; the type of associated equipment to be demonstrated; the domestic content of the electric motor vehicles and associated equipment; and any other information the Secretary considers appropriate.

(B) If the proposal includes a lease arrangement, the proposal shall indicate the terms of such lease arrangement for the electric motor vehicles or associated equipment.

(3) The solicitation for proposals under this subsection shall establish a closing date for receipt of proposals. The Secretary may, if necessary, extend the closing date for receipt of proposals for a period not to exceed 90 days.

(Pub. L. 102-486, title VI, §611, Oct. 24, 1992, 106 Stat. 2900.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13282 of this title.

§ 13282. Selection of proposals**(a) Selection**

(1) The Secretary, in consultation with the Secretary of Transportation, the Secretary of Commerce, and the Administrator of the Environmental Protection Agency, shall, not later than 120 days after the closing date, as established by the Secretary, for receipt of proposals under section 13281 of this title, select at least one, but not more than 10, proposals to receive financial assistance under section 13283 of this title.

(2) The Secretary may select more than 10 proposals under this section, if the Secretary determines that the total amount of available funds is not likely to be otherwise utilized.

(3) Any proposal selected under paragraph (1) must satisfy the limitations set forth in section 13283(c) of this title.

(4) No one project selected under this section shall receive more than 25 percent of the funds authorized under section 13286 of this title.

(5) A demonstration project may not include electric motor vehicles in more than one eligible metropolitan area, unless the total number of electric motor vehicles in that project is equal to, or greater than, 100.

(b) Criteria

In selecting a proposal and in negotiating financial assistance under this section, the Secretary shall consider—

(1) the ability of the manufacturer, directly, indirectly, or in combination with the proposer, to develop, assist in the demonstration of, manufacture, distribute, sell, provide warranties for, service, and ensure the continued availability of parts for, electric motor vehicles in the demonstration project;

(2) the geographic and climatic diversity of the eligible metropolitan area or areas in which the demonstration project is to be undertaken, when considered in combination with other proposals and other selected demonstration projects;

(3) the long-term technical and competitive viability of the electric motor vehicles;

(4) the suitability of the electric motor vehicles for their intended uses;

(5) the environmental effects of the use of the proposed electric motor vehicles;

(6) the price differential and the proposed discount payment;

(7) the extent of involvement of State or local government and other persons in the demonstration project, and whether such involvement will—

(A) permit a reduction of the Federal cost share per vehicle; or

(B) otherwise be used to allow the Federal contribution to be provided for a greater number of electric motor vehicles;

(8) the proportion of domestic content of the electric motor vehicles and associated equipment;

(9) the safety of the electric motor vehicles; and

(10) such other criteria as the Secretary considers appropriate.

(c) Conditions

The Secretary shall require that—

(1) as a part of a demonstration project, the user or users of the electric motor vehicles will provide to the proposer and the manufacturer information regarding the operation, maintenance, performance, and use of the electric motor vehicles for 5 years after the beginning of the demonstration project;

(2) the proposer shall provide to the Secretary such information regarding the operation, maintenance, performance, and use of the electric motor vehicles as the Secretary may request during the period of the demonstration project;

(3) in the case of a demonstration project including automobiles or light duty trucks, the number of electric motor vehicles to be included in the demonstration project shall be no less than 50, except that the Secretary may select a demonstration project with fewer than 50 electric motor vehicles if the Secretary determines that selection of such a proposal will ensure that there is geographic or climatic diversity among the proposals selected and that an adequate demonstration to accelerate the development and use of electric motor vehicles can be undertaken with fewer than 50 electric motor vehicles; and

(4) the procurement practices of the manufacturer do not discriminate against United States producers of vehicle parts.

(Pub. L. 102-486, title VI, §612, Oct. 24, 1992, 106 Stat. 2901.)

§ 13283. Discount payments**(a) Certification**

The Secretary shall provide a discount payment to a proposer of a proposal selected under this part for purposes of reimbursing the proposer for a discount provided to the users if the proposer certifies to the Secretary that—

(1) the electric motor vehicles have been purchased or leased by a user or users in accordance with the requirements of this part; and

(2) the proposer has provided to the user or users a discount payment in accordance with the requirements of this part.

(b) Payment

Not later than 30 days after receipt from the proposer of certification that the Secretary determines satisfies the requirements of subsection (a) of this section, the Secretary shall pay to the proposer the full amount of the discount payment, to the extent provided in advance in appropriations Acts.

(c) Calculations of discount payments

(1) The discount payment shall be no greater than—

(A) the price differential; or

(B) the price of the comparable conventionally fueled motor vehicle.

(2) The purchase price of the electric motor vehicle, less the discount payment and less any additional reduction in the purchase price of the electric motor vehicle that may result from contributions provided by other parties, may not be less than the manufacturer's suggested retail price of a comparable conventionally fueled motor vehicle.

(3) The maximum discount payment shall be no greater than \$10,000 per electric motor vehicle.

(Pub. L. 102-486, title VI, §613, Oct. 24, 1992, 106 Stat. 2902.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13271, 13282 of this title.

§ 13284. Cost-sharing

(a) Requirement

The Secretary shall require at least 50 percent of the costs directly and specifically related to any project under this part to be from non-Federal sources. Such share may be in the form of cash, personnel, services, equipment, and other resources.

(b) Reduction

The Secretary may reduce the amount of costs required to be provided by non-Federal sources under subsection (a) of this section if the Secretary determines that the reduction is necessary and appropriate—

- (1) considering the technological risks involved in the project; and
- (2) in order to meet the objectives of this part.

(Pub. L. 102-486, title VI, §614, Oct. 24, 1992, 106 Stat. 2903.)

§ 13285. Reports to Congress

(a) Progress reports

The Secretary shall report annually to Congress on the progress being made, through demonstration projects supported under this part, to accelerate the development and use of electric motor vehicles.

(b) Report on encouraging purchase and use of electric motor vehicles

Within 18 months after October 24, 1992, the Secretary shall submit to the Congress a report on methods for encouraging the purchase and use of electric motor vehicles. Such report shall—

- (1) address the potential cost of purchasing and maintaining electric motor vehicles, including the initial cost of the batteries and the cost of replacement batteries;
- (2) identify methods for reducing, subsidizing, or sharing such costs; and
- (3) include recommendations for legislative and administrative measures to encourage the purchase and use of electric motor vehicles.

(Pub. L. 102-486, title VI, §615, Oct. 24, 1992, 106 Stat. 2903.)

§ 13286. Authorization of appropriations

There are authorized to be appropriated to the Secretary for purposes of this part \$50,000,000 for the 10-year period beginning with the first full fiscal year after October 24, 1992, to remain available until expended.

(Pub. L. 102-486, title VI, §616, Oct. 24, 1992, 106 Stat. 2903.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13282 of this title.

PART B—ELECTRIC MOTOR VEHICLE INFRASTRUCTURE AND SUPPORT SYSTEMS DEVELOPMENT PROGRAM

§ 13291. General authority

(a) Program

The Secretary shall undertake a program with one or more non-Federal persons, including fleet operators, for cost-shared research, development, demonstration, or commercial application of an infrastructure and support systems program.

(b) Eligibility

A non-Federal person shall be eligible to receive financial assistance under this part only if such person demonstrates, to the satisfaction of the Secretary, that the person will conduct a substantial portion of activities under the project in the United States using domestic labor and materials.

(c) Coordination

Activities under this part shall be coordinated with activities under part A of this subchapter.

(Pub. L. 102-486, title VI, §621, Oct. 24, 1992, 106 Stat. 2904.)

§ 13292. Proposals

(a) Solicitation

Not later than one year after October 24, 1992, the Secretary shall solicit proposals from non-Federal persons, including fleet operators, for projects under this part. Within 240 days after proposals have been solicited, the Secretary shall select proposals.

(b) Criteria

(1) The Secretary shall provide financial assistance to no more than 10 projects under this part, unless the Secretary determines that the total amount of available funds is not likely to be otherwise used.

(2) The proposals selected by the Secretary shall, to the extent practicable, represent geographically and climatically diverse regions of the United States.

(3) The aggregate Federal financial assistance for each project under this part may not exceed \$4,000,000.

(c) Projects

The infrastructure and support systems programs for which projects are selected under this part may address—

- (1) the ability to service electric motor vehicles and to provide or service associated equipment;
- (2) the installation of charging facilities;
- (3) rates and cost recovery for electric utilities who invest in infrastructure capital-related expenditures;
- (4) the development of safety and health procedures and guidelines related to battery charging, watering, and emissions;
- (5) the conduct of information dissemination programs; and
- (6) such other subjects as the Secretary considers necessary in order to address the infrastructure and support systems needed to support the development and use of energy stor-

age technologies, including advanced batteries, and the demonstration of electric motor vehicles.

(Pub. L. 102-486, title VI, §622, Oct. 24, 1992, 106 Stat. 2904.)

§ 13293. Protection of proprietary information

(a) In general

In the case of activities, including joint venture activities, under this subchapter, and in the case of any existing or future activities, including joint venture activities, related primarily to battery technology for electric motor vehicles under other provisions of law, where the knowledge resulting from research and development activities conducted pursuant to such activities, including joint venture activities, is for the benefit of the participants (particularly domestic companies) that provide financial resources to a project under this subchapter, the Secretary, for a period of up to 5 years after the development of information that—

(1) results from research and development activities conducted under this subchapter; and

(2) would be a trade secret or commercial or financial information that is privileged or confidential if the information had been obtained from a participant,

shall, notwithstanding any other provision of law, provide appropriate protections against the dissemination of such information to the public, and the provisions of section 1905 of title 18 shall apply to such information. Nothing in this subsection provides protections against the dissemination of such information to Congress.

(b) “Domestic companies” defined

For purposes of subsection (a) of this section, the term “domestic companies” means entities which are substantially involved in the United States in the domestic production of motor vehicles for sale in the United States and have a substantial percentage of their production facilities in the United States.

(Pub. L. 102-486, title VI, §623, Oct. 24, 1992, 106 Stat. 2904.)

§ 13294. Compliance with existing law

Nothing in this subchapter shall be deemed to convey to any person, partnership, corporation, or other entity, immunity from civil or criminal liability under any antitrust law or to create defenses to actions under any antitrust law.

(Pub. L. 102-486, title VI, §624, Oct. 24, 1992, 106 Stat. 2905.)

§ 13295. Repealed. Pub. L. 105-362, title IV, § 401(b), Nov. 10, 1998, 112 Stat. 3282

Section, Pub. L. 102-486, title VI, §625, Oct. 24, 1992, 106 Stat. 2905, related to electric utility participation study.

§ 13296. Authorization of appropriations

There are authorized to be appropriated to the Secretary for purposes of this part \$40,000,000 for the 5-year period beginning with the first full fiscal year after October 24, 1992, to remain available until expended.

(Pub. L. 102-486, title VI, §626, Oct. 24, 1992, 106 Stat. 2905.)

SUBCHAPTER V—RENEWABLE ENERGY

§ 13311. Purposes

The purposes of this subchapter are to promote—

(1) increases in the production and utilization of energy from renewable energy resources;

(2) further advances of renewable energy technologies; and

(3) exports of United States renewable energy technologies and services.

(Pub. L. 102-486, title XII, §1201, Oct. 24, 1992, 106 Stat. 2956.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original “this title” meaning title XII of Pub. L. 102-486, Oct. 24, 1992, 106 Stat. 2956, which enacted this subchapter and amended sections 6276, 12001 to 12003, 12005, and 12006 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13316 of this title.

§ 13312. Renewable energy export technology training

(a) Establishment of program

The Secretary, through the Agency for International Development, shall establish a program for the training of individuals from developing countries in the operation and maintenance of renewable energy and energy efficiency technologies in accordance with this section. The Secretary and the Administrator of the Agency for International Development shall, within one year after October 24, 1992, enter into a written agreement to carry out this program.

(b) Purpose

The purpose of the program established under this section shall be to train appropriate persons in the system design, operation, and maintenance of renewable energy and energy efficiency equipment manufactured in the United States, including equipment for water pumping, heating and purification, and the production of electric power in remote areas.

(c) Authorization of appropriations

There are authorized to be appropriated to the Secretary \$6,000,000 for each of the fiscal years 1994, 1995, and 1996, to carry out this section.

(Pub. L. 102-486, title XII, §1203, Oct. 24, 1992, 106 Stat. 2961.)

§ 13313. Renewable Energy Advancement Awards

(a) Authority

The Secretary shall make Renewable Energy Advancement Awards in recognition of developments that advance the practical application of biomass, geothermal, hydroelectric, photovoltaic, solar thermal, ocean thermal, and wind technologies to consumer, utility, or industrial uses, in accordance with this section. Except as provided in subsection (f) of this section, Renew-

able Energy Advancement Awards shall include a cash award.

(b) Selection criteria

The Secretary, in consultation with the Advisory Committee on Demonstration and Commercial Application of Renewable Energy and Energy Efficiency Technologies (in this section referred to as the "Advisory Committee"), under section 12005 of this title, shall develop criteria to be applied in the selection of award recipients under this section. Such criteria shall include the following:

- (1) The degree to which the technological development increases the utilization of renewable energy.
- (2) The degree to which the development will have a significant impact, by benefitting a large number of people, by reducing the costs of an important industrial process or commercial product or service, or otherwise.
- (3) The ingenuity of the development.
- (4) Whether the application has significant export potential.
- (5) The environmental soundness of the development.

(c) Selection

Beginning in fiscal year 1994, and annually thereafter for a period of 10 years, the Secretary, in consultation with the Advisory Committee, shall select developments described in subsection (a) of this section that are worthy of receiving an award under this section, and shall make such awards.

(d) Eligibility

Awards may be made under this section only to individuals who are United States nationals or permanent resident aliens, or to non-Federal organizations that are organized under the laws of the United States or the laws of a State of the United States.

(e) Authorization of appropriations

There are authorized to be appropriated to the Secretary \$50,000 for each of the fiscal years 1994, 1995, and 1996 for carrying out this section.

(f) Awards made in absence of appropriations

The Secretary shall make honorary awards under this section if sufficient funds are not available for financial awards in any fiscal year.

(Pub. L. 102-486, title XII, §1204, Oct. 24, 1992, 106 Stat. 2961.)

§ 13314. Study of tax and rate treatment of renewable energy projects

(a) The Secretary, in conjunction with State regulatory commissions, shall undertake a study to determine if conventional taxation and ratemaking procedures result in economic barriers to or incentives for renewable energy power plants compared to conventional power plants.

(b) Within 1 year after October 24, 1992, the Secretary shall submit a report to the Congress on the results of the study undertaken under subsection (a) of this section.

(Pub. L. 102-486, title XII, §1205, Oct. 24, 1992, 106 Stat. 2962.)

§ 13315. Data system and energy technology evaluation

The Secretary of Commerce, in his or her role as a member of the interagency working group established under section 6276 of this title, shall—

(1) develop a comprehensive data base and information dissemination system, using the National Trade Data Bank and the Commercial Information Management System of the Department of Commerce, that will provide information on the specific energy technology needs of foreign countries, and the technical and economic competitiveness of various renewable energy and energy efficiency products and technologies;

(2) make such information available to industry, Federal and multilateral lending agencies, nongovernmental organizations, host-country and donor-agency officials, and such others as the Secretary of Commerce considers necessary; and

(3) prepare and transmit to the Congress not later than June 1, 1993, and biennially thereafter, a comprehensive report evaluating the full range of energy and environmental technologies necessary to meet the energy needs of foreign countries, including—

(A) information on the specific energy needs of foreign countries;

(B) an inventory of United States technologies and services to meet those needs;

(C) an update on the status of ongoing bilateral and multilateral programs which promote United States exports of renewable energy and energy efficiency products and technologies; and

(D) an evaluation of current programs (and recommendations for future programs) that develop and promote energy efficiency and sustainable use of indigenous renewable energy resources in foreign countries to reduce the generation of greenhouse gases.

(Pub. L. 102-486, title XII, §1209, Oct. 24, 1992, 106 Stat. 2964.)

§ 13316. Innovative renewable energy technology transfer program

(a) Establishment of program

The Secretary, through the Agency for International Development, and in consultation with the other members of the interagency working group established under section 6276(d) of this title (in this section referred to as the "interagency working group"), shall establish a renewable energy technology transfer program to carry out the purposes described in subsection (b) of this section. Within 150 days after October 24, 1992, the Secretary and the Administrator of the Agency for International Development shall enter into a written agreement to carry out this section. The agreement shall establish a procedure for resolving any disputes between the Secretary and the Administrator regarding the implementation of specific projects. With respect to countries not assisted by the Agency for International Development, the Secretary may enter into agreements with other appropriate Federal agencies. If the Secretary and the Ad-

ministrator, or the Secretary and an agency described in the previous sentence, are unable to reach an agreement, each shall send a memorandum to the President outlining an appropriate agreement. Within 90 days after receipt of either memorandum, the President shall determine which version of the agreement shall be in effect. Any agreement entered into under this subsection shall be provided to the appropriate committees of the Congress and made available to the public.

(b) Purposes of program

The purposes of the technology transfer program under this section are to—

(1) reduce the United States balance of trade deficit through the export of United States renewable energy technologies and technological expertise;

(2) retain and create manufacturing and related service jobs in the United States;

(3) encourage the export of United States renewable energy technologies, including services related thereto, to those countries that have a need for developmentally sound facilities to provide energy derived from renewable resources;

(4) develop markets for United States renewable energy technologies to be utilized in meeting the energy and environmental requirements of foreign countries;

(5) better ensure that United States participation in energy-related projects in foreign countries includes participation by United States firms as well as utilization of United States technologies that have been developed or demonstrated in the United States through publicly or privately funded demonstration programs;

(6) ensure the introduction of United States firms and expertise in foreign countries;

(7) provide financial assistance by the Federal Government to foster greater participation by United States firms in the financing, ownership, design, construction, or operation of renewable energy technology projects in foreign countries;

(8) assist foreign countries in meeting their energy needs through the use of renewable energy in an environmentally acceptable manner, consistent with sustainable development policies; and

(9) assist United States firms, especially firms that are in competition with firms in foreign countries, to obtain opportunities to transfer technologies to, or undertake projects in, foreign countries.

(c) Identification

Pursuant to the agreements required by subsection (a) of this section, the Secretary, through the Agency for International Development, and after consultation with the inter-agency working group, United States firms, and representatives from foreign countries, shall develop mechanisms to identify potential energy projects in host countries, and shall identify a list of such projects within 240 days after October 24, 1992, and periodically thereafter.

(d) Financial mechanisms

(1) Pursuant to the agreements under subsection (a) of this section, the Secretary,

through the Agency for International Development, shall—

(A) establish appropriate financial mechanisms to increase the participation of United States firms in energy projects utilizing United States renewable energy technologies, and services related thereto, in developing countries;

(B) utilize available financial assistance authorized by this section to counterbalance assistance provided by foreign governments to non-United States firms; and

(C) provide financial assistance to support projects.

(2) The financial assistance authorized by this section may be—

(A) provided in combination with other forms of financial assistance, including non-United States funding that is available to the project; and

(B) utilized to assist United States firms in the development of innovative financing packages for renewable energy technology projects that utilize other financial assistance programs available through the Federal Government.

(3) United States obligations under the Arrangement on Guidelines for Officially Supported Export Credits established through the Organization for Economic Cooperation and Development shall be applicable to this section.

(e) Solicitations for project proposals

(1) Pursuant to the agreements under subsection (a) of this section, the Secretary, through the Agency for International Development, within one year after October 24, 1992, and subsequently as appropriate thereafter, shall solicit proposals from United States firms for the design, construction, testing, and operation of the project or projects identified under subsection (c) of this section which propose to utilize a United States renewable energy technology. Each solicitation under this section shall establish a closing date for receipt of proposals.

(2) The solicitation under this subsection shall, to the extent appropriate, be modeled after the RFP No. DE-PS01-90FE62271 Clean Coal Technology IV, as administered by the Department of Energy.

(3) Any solicitation made under this subsection shall include the following requirements:

(A) The United States firm that submits a proposal in response to the solicitation shall have an equity interest in the proposed project.

(B) The project shall utilize a United States renewable energy technology, including services related thereto, in meeting the applicable energy and environmental requirements of the host country.

(C) Proposals for projects shall be submitted by and undertaken with a United States firm, although a joint venture or other teaming arrangement with a non-United States manufacturer or other non-United States entity is permissible.

(f) Assistance to United States firms

Pursuant to the agreements under subsection (a) of this section, the Secretary, through the

Agency for International Development, and in consultation with the interagency working group, shall establish a procedure to provide financial assistance to United States firms under this section for a project identified under subsection (c) of this section where solicitations for the project are being conducted by the host country or by a multilateral lending institution.

(g) Other program requirements

Pursuant to the agreements under subsection (a) of this section, the Secretary, through the Agency for International Development, and in consultation with the working group, shall—

- (1) establish eligibility criteria for host countries;
- (2) periodically review the energy needs of such countries and export opportunities for United States firms for the development of projects in such countries;
- (3) consult with government officials in host countries and, as appropriate, with representatives of utilities or other entities in host countries, to determine interest in and support for potential projects; and
- (4) determine whether each project selected under this section is developmentally sound, as determined under the criteria developed by the Development Assistance Committee of the Organization for Economic Cooperation and Development.

(h) Selection of projects

- (1) Pursuant to the agreements under subsection (a) of this section, the Secretary, through the Agency for International Development, shall, not later than 120 days after receipt of proposals in response to a solicitation under subsection (e) of this section, select one or more proposals under this section.
- (2) In selecting a proposal under this section, the Secretary, through the Agency for International Development, shall consider—
 - (A) the ability of the United States firm, in cooperation with the host country, to undertake and complete the project;
 - (B) the degree to which the equipment to be included in the project is designed and manufactured in the United States;
 - (C) the long-term technical and competitive viability of the United States technology, and services related thereto, and the ability of the United States firm to compete in the development of additional energy projects using such technology in the host country and in other foreign countries;
 - (D) the extent of technical and financial involvement of the host country in the project;
 - (E) the extent to which the proposed project meets the purposes stated in section 13311(b)¹ of this title;
 - (F) the extent of technical, financial, management, and marketing capabilities of the participants in the project, and the commitment of the participants to completion of a successful project in a manner that will facilitate acceptance of the United States technology for future application; and
 - (G) such other criteria as may be appropriate.

(3) In selecting among proposed projects, the Secretary shall seek to ensure that, relative to otherwise comparable projects in the host country, a selected project will meet 1 or more of the following criteria:

- (A) It will reduce environmental emissions to an extent greater than required by applicable provisions of law.
- (B) It will make greater use of indigenous renewable energy resources.
- (C) It will be a more cost-effective technological alternative, based on life cycle capital and operating costs per unit of energy produced and, where applicable, costs per unit of product produced.

Priority in selection shall be given to those projects which, in the judgment of the Secretary, best meet one or more of these criteria.

(i) United States-Asia Environmental Partnership

Activities carried out under this section shall be coordinated with the United States-Asia Environmental Partnership.

(j) Buy America

In carrying out this section, the Secretary, through the Agency for International Development, and pursuant to the agreements under subsection (a) of this section, shall ensure—

- (1) the maximum percentage, but in no case less than 50 percent, of the cost of any equipment furnished in connection with a project authorized under this section shall be attributable to the manufactured United States components of such equipment; and
- (2) the maximum participation of United States firms.

In determining whether the cost of United States components equals or exceeds 50 percent, the cost of assembly of such United States components in the host country shall not be considered a part of the cost of such United States component.

(k) Reports to Congress

The Secretary and the Administrator of the Agency for International Development shall report annually to the Committee on Energy and Natural Resources of the Senate and the appropriate committees of the House of Representatives on the progress being made to introduce renewable energy technologies into foreign countries.

(l) Definitions

For purposes of this section—

- (1) the term “host country” means a foreign country which is—
 - (A) the participant in or the site of the proposed renewable energy technology project; and
 - (B) either—
 - (i) classified as a country eligible to participate in development assistance programs of the Agency for International Development pursuant to applicable law or regulation; or
 - (ii) a developing country.

(2) the term “developing country” includes, but is not limited to, countries in Central and

¹ So in original. Probably should be section “13316(b)”.

Eastern Europe or in the independent states of the former Soviet Union.

(m) Authorization of appropriations

There are authorized to be appropriated to the Secretary to carry out the program required by this section, \$100,000,000 for each of the fiscal years 1993, 1994, 1995, 1996, 1997, and 1998.

(Pub. L. 102-486, title XII, §1211, Oct. 24, 1992, 106 Stat. 2965.)

§ 13317. Renewable energy production incentive

(a) Incentive payments

For electric energy generated and sold by a qualified renewable energy facility during the incentive period, the Secretary shall make, subject to the availability of appropriations, incentive payments to the owner or operator of such facility. The amount of such payment made to any such owner or operator shall be as determined under subsection (e) of this section. Payments under this section may only be made upon receipt by the Secretary of an incentive payment application which establishes that the applicant is eligible to receive such payment and which satisfies such other requirements as the Secretary deems necessary. Such application shall be in such form, and shall be submitted at such time, as the Secretary shall establish.

(b) Qualified renewable energy facility

For purposes of this section, a qualified renewable energy facility is a facility which is owned by a State or any political subdivision of a State (or an agency, authority, or instrumentality of a State or a political subdivision), by any corporation or association which is wholly owned, directly or indirectly, by one or more of the foregoing, or by a nonprofit electrical cooperative and which generates electric energy for sale in, or affecting, interstate commerce using solar, wind, biomass, or geothermal energy, except that—

(1) the burning of municipal solid waste shall not be treated as using biomass energy; and

(2) geothermal energy shall not include energy produced from a dry steam geothermal reservoir which has—

(A) no mobile liquid in its natural state;

(B) steam quality of 95 percent water; and

(C) an enthalpy for the total produced fluid greater than or equal to 1200 Btu/lb (British thermal units per pound).

(c) Eligibility window

Payments may be made under this section only for electricity generated from a qualified renewable energy facility first used during the 10-fiscal year period beginning with the first full fiscal year occurring after October 24, 1992.

(d) Payment period

A qualified renewable energy facility may receive payments under this section for a 10-fiscal year period. Such period shall begin with the fiscal year in which electricity generated from the facility is first eligible for such payments.

(e) Amount of payment

(1) In general

Incentive payments made by the Secretary under this section to the owner or operator of

any qualified renewable energy facility shall be based on the number of kilowatt hours of electricity generated by the facility through the use of solar, wind, biomass, or geothermal energy during the payment period referred to in subsection (d) of this section. For any facility, the amount of such payment shall be 1.5 cents per kilowatt hour, adjusted as provided in paragraph (2).

(2) Adjustments

The amount of the payment made to any person under this subsection as provided in paragraph (1) shall be adjusted for inflation for each fiscal year beginning after calendar year 1993 in the same manner as provided in the provisions of section 29(d)(2)(B) of title 26, except that in applying such provisions the calendar year 1993 shall be substituted for calendar year 1979.

(f) Sunset

No payment may be made under this section to any facility after the expiration of the 20-fiscal year period beginning with the first full fiscal year occurring after October 24, 1992, and no payment may be made under this section to any facility after a payment has been made with respect to such facility for a 10-fiscal year period.

(g) Authorization of appropriations

There are authorized to be appropriated to the Secretary for fiscal years 1993, 1994, and 1995 such sums as may be necessary to carry out the purposes of this section.

(Pub. L. 102-486, title XII, §1212, Oct. 24, 1992, 106 Stat. 2969.)

SUBCHAPTER VI—COAL

PART A—RESEARCH, DEVELOPMENT, DEMONSTRATION, AND COMMERCIAL APPLICATION

§ 13331. Coal research, development, demonstration, and commercial application programs

(a) Establishment

The Secretary shall, in accordance with section¹ 13541 and 13542 of this title, conduct programs for research, development, demonstration, and commercial application on coal-based technologies. Such research, development, demonstration, and commercial application programs shall include the programs established under this part, and shall have the goals and objectives of—

(1) ensuring a reliable electricity supply;

(2) complying with applicable environmental requirements;

(3) achieving the control of sulfur oxides, oxides of nitrogen, air toxics, solid and liquid wastes, greenhouse gases, or other emissions resulting from coal use or conversion at levels of proficiency greater than or equal to applicable currently available commercial technology;

(4) achieving the cost competitive conversion of coal into energy forms usable in the transportation sector;

(5) demonstrating the conversion of coal to synthetic gaseous, liquid, and solid fuels;

¹ So in original. Probably should be "sections".

(6) demonstrating, in cooperation with other Federal and State agencies, the use of coal-derived fuels in mobile equipment, with opportunities for industrial cost sharing participation;

(7) ensuring the timely commercial application of cost-effective technologies or energy production processes or systems utilizing coal which achieve—

(A) greater efficiency in the conversion of coal to useful energy when compared to currently available commercial technology for the use of coal; and

(B) the control of emissions from the utilization of coal; and

(8) ensuring the availability for commercial use of such technologies by the year 2010.

(b) Demonstration and commercial application programs

(1) In selecting either a demonstration project or a commercial application project for financial assistance under this part, the Secretary shall seek to ensure that, relative to otherwise comparable commercially available technologies or products, the selected project will meet one or more of the following criteria:

(A) It will reduce environmental emissions to an extent greater than required by applicable provisions of law.

(B) It will increase the overall efficiency of the utilization of coal, including energy conversion efficiency and, where applicable, production of products derived from coal.

(C) It will be a more cost-effective technological alternative, based on life cycle capital and operating costs per unit of energy produced and, where applicable, costs per unit of product produced.

Priority in selection shall be given to those projects which, in the judgment of the Secretary, best meet one or more of these criteria.

(2) In administering demonstration and commercial application programs authorized by this part, the Secretary shall establish accounting and project management controls that will be adequate to control costs.

(3)(A) Not later than 180 days after October 24, 1992, the Secretary shall establish procedures and criteria for the recoupment of the Federal share of each cost shared demonstration and commercial application project authorized pursuant to this part. Such recoupment shall occur within a reasonable period of time following the date of completion of such project, but not later than 20 years following such date, taking into account the effect of recoupment on—

(i) the commercial competitiveness of the entity carrying out the project;

(ii) the profitability of the project; and

(iii) the commercial viability of the coal-based technology utilized.

(B) The Secretary may at any time waive or defer all or some portion of the recoupment requirement as necessary for the commercial viability of the project.

(4) Projects selected by the Secretary under this part for demonstration or commercial application of a technology shall, in the judgment of the Secretary, be capable of enhancing the state of the art for such technology.

(c) Report

Within 240 days after October 24, 1992, the Secretary shall transmit to the Committee on Energy and Commerce and the Committee on Science, Space, and Technology of the House of Representatives and to the Committee on Energy and Natural Resources of the Senate a report which shall include each of the following:

(1) A detailed description of ongoing research, development, demonstration, and commercial application activities regarding coal-based technologies undertaken by the Department of Energy, other Federal or State government departments or agencies and, to the extent such information is publicly available, other public or private organizations in the United States and other countries.

(2) A listing and analysis of current Federal and State government regulatory and financial incentives that could further the goals of the programs established under this part.

(3) Recommendations regarding the manner in which any ongoing coal-based demonstration and commercial application program might be modified and extended in order to ensure the timely demonstrations of advanced coal-based technologies so as to ensure that the goals established under this section are achieved and that such demonstrated technologies are available for commercial use by the year 2010.

(4) Recommendations, if any, regarding the manner in which the cost sharing demonstrations conducted pursuant to the Clean Coal Program established by Public Law 98-473 might be modified and extended in order to ensure the timely demonstration of advanced coal-based technologies.

(5) A detailed plan for conducting the research, development, demonstration, and commercial application programs to achieve the goals and objectives of subsection (a) of this section, which plan shall include a description of—

(A) the program elements and management structure to be utilized;

(B) the technical milestones to be achieved with respect to each of the advanced coal-based technologies included in the plan; and

(C) the dates at which further deadlines for additional cost sharing demonstrations shall be established.

(d) Status reports

Within one year after transmittal of the report described in subsection (c) of this section, and every 2 years thereafter for a period of 6 years, the Secretary shall transmit to the Congress a report that provides a detailed description of the status of development of the advanced coal-based technologies and the research, development, demonstration, and commercial application activities undertaken to carry out the programs required by this part.

(e) Consultation

In carrying out research, development, demonstration, and commercial application activities under this part, the Secretary shall consult with the National Coal Council and other representatives of the public and private sectors as the Secretary considers appropriate.

(Pub. L. 102-486, title XIII, § 1301, Oct. 24, 1992, 106 Stat. 2970.)

REFERENCES IN TEXT

Public Law 98-473, referred to in subsec. (c)(4), is Pub. L. 98-473, Oct. 12, 1984, 98 Stat. 1837, as amended. For complete classification of this Act to the Code, see Tables.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives and Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13361, 13362 of this title.

§ 13332. Coal-fired diesel engines

The Secretary shall conduct a program of research, development, demonstration, and commercial application for utilizing coal-derived liquid or gaseous fuels, including ultra-clean coal-water slurries, in diesel engines. The program shall address—

- (1) required engine retrofit technology;
- (2) coal-fuel production technology;
- (3) emission control requirements;
- (4) the testing of low-Btu highly reactive fuels;
- (5) fuel delivery and storage systems requirements; and
- (6) other infrastructure required to support commercial deployment.

(Pub. L. 102-486, title XIII, § 1302, Oct. 24, 1992, 106 Stat. 2972.)

§ 13333. Clean coal, waste-to-energy

The Secretary shall establish a program of research, development, demonstration, and commercial application with respect to the use of solid waste combined with coal as a fuel source for clean coal combustion technologies. The program shall address—

- (1) the feasibility of cofiring coal and used vehicle tires in fluidized bed combustion units;
- (2) the combined gasification of coal and municipal sludge using integrated gasification combined cycle technology;
- (3) the creation of fuel pellets combining coal and material reclaimed from solid waste;
- (4) the feasibility of cofiring, in fluidized bed combustion units, waste methane from coal mines, including ventilation air, together with coal or coal wastes; and
- (5) other sources of waste and coal mixtures in other applications that the Secretary considers appropriate.

(Pub. L. 102-486, title XIII, § 1303, Oct. 24, 1992, 106 Stat. 2972.)

§ 13334. Nonfuel use of coal

(a) Program

The Secretary shall prepare a plan for and carry out a program of research, development, demonstration, and commercial application with respect to technologies for the nonfuel use of coal, including—

- (1) production of coke and other carbon products derived from coal;
- (2) production of coal-derived, carbon-based chemical intermediates that are precursors of value-added chemicals and polymers;
- (3) production of chemicals from coal-derived synthesis gas;
- (4) coal treatment processes, including methodologies such as solvent-extraction techniques that produce low ash, low sulfur, coal-based chemical feedstocks; and
- (5) waste utilization, including recovery, processing, and marketing of products derived from sulfur, carbon dioxide, nitrogen, and ash from coal.

(b) Plan contents

The plan described in subsection (a) of this section shall address and evaluate—

- (1) the known and potential processes for using coal in the creation of products in the chemical, utility, fuel, and carbon-based materials industries;
- (2) the costs, benefits, and economic feasibility of using coal products in the chemical and materials industries, including value-added chemicals, carbon-based products, coke, and waste derived from coal;
- (3) the economics of coproduction of products from coal in conjunction with the production of electric power, thermal energy, and fuel;
- (4) the economics of the refining of coal and coal byproducts to produce nonfuel products;
- (5) the economics of coal utilization in comparison with other feedstocks that might be used for the same purposes;
- (6) the steps that can be taken by the public and private sectors to bring about commercialization of technologies developed under the program recommended; and
- (7) the past development, current status, and future potential of coal products and processes associated with nonfuel uses of coal.

(Pub. L. 102-486, title XIII, § 1304, Oct. 24, 1992, 106 Stat. 2973.)

§ 13335. Coal refinery program

(a) Program

The Secretary shall conduct a program of research, development, demonstration, and commercial application for coal refining technologies.

(b) Objectives

The program shall include technologies for refining high sulfur coals, low sulfur coals, sub-bituminous coals, and lignites to produce clean-burning transportation fuels, compliance boiler fuels, fuel additives, lubricants, chemical feedstocks, and carbon-based manufactured products, either alone or in conjunction with the generation of electricity or process heat, or the

manufacture of a variety of products from coal. The objectives of such program shall be to achieve—

(1) the timely commercial application of technologies, including mild gasification, hydrocracking and other hydrolysis processes, and other energy production processes or systems to produce coal-derived fuels and coproducts, which achieve greater efficiency and economy in the conversion of coal to electrical energy and coproducts than currently available technology;

(2) the production of energy, fuels, and products which, on a complete energy system basis, will result in environmental emissions no greater than those produced by existing comparable energy systems utilized for the same purpose;

(3) the capability to produce a range of coal-derived transportation fuels, including oxygenated hydrocarbons, boiler fuels, turbine fuels, and coproducts, which can reduce dependence on imported oil by displacing conventional petroleum in the transportation sector and other sectors of the economy;

(4) reduction in the cost of producing such coal-derived fuels and coproducts;

(5) the control of emissions from the combustion of coal-derived fuels; and

(6) the availability for commercial use of such technologies by the year 2000.

(Pub. L. 102-486, title XIII, § 1305, Oct. 24, 1992, 106 Stat. 2973.)

§ 13336. Coalbed methane recovery

(a) Study of barriers and environmental and safety aspects

The Secretary, in consultation with the Administrator of the Environmental Protection Agency and the Secretary of the Interior, shall conduct a study of—

(1) technical, economic, financial, legal, regulatory, institutional, or other barriers to coalbed methane recovery, and of policy options for eliminating such barriers; and

(2) the environmental and safety aspects of flaring coalbed methane liberated from coal mines.

Within two years after October 24, 1992, the Secretary shall submit a report to the Congress detailing the results of such study.

(b) Information dissemination

Beginning one year after October 24, 1992, the Secretary, in consultation with the Administrator of the Environmental Protection Agency and the Secretary of the Interior, shall disseminate to the public information on state-of-the-art coalbed methane recovery techniques, including information on costs and benefits.

(c) Demonstration and commercial application program

The Secretary, in consultation with the Administrator of the Environmental Protection Agency and the Secretary of the Interior, shall establish a coalbed methane recovery demonstration and commercial application program, which shall emphasize gas enrichment technology. Such program shall address—

(1) gas enrichment technologies for enriching medium-quality methane recovered from coal mines to pipeline quality;

(2) technologies to use mine ventilation air in nearby power generation facilities, including gas turbines, internal combustion engines, or other coal fired powerplants;

(3) technologies for cofiring methane recovered from mines, including methane from ventilation systems and degasification systems, together with coal in conventional or clean coal technology boilers; and

(4) other technologies for producing and using methane from coal mines that the Secretary considers appropriate.

(Pub. L. 102-486, title XIII, § 1306, Oct. 24, 1992, 106 Stat. 2974.)

§ 13337. Metallurgical coal development

(a) The Secretary shall establish a research, development, demonstration, and commercial application program on metallurgical coal utilization for the purpose of developing techniques that will lead to the greater and more efficient utilization of the Nation's metallurgical coal resources.

(b) The program referred to in subsection (a) of this section shall include the use of metallurgical coal—

(1) as a boiler fuel for the purpose of generating steam to produce electricity, including blending metallurgical coal with other coals in order to enhance its efficient application as a boiler fuel;

(2) as an ingredient in the manufacturing of steel; and

(3) as a source of pipeline quality coalbed methane.

(Pub. L. 102-486, title XIII, § 1307, Oct. 24, 1992, 106 Stat. 2975.)

§ 13338. Utilization of coal wastes

(a) Coal waste utilization program

The Secretary, in consultation with the Secretary of the Interior, shall establish a research, development, demonstration, and commercial application program on coal waste utilization for the purpose of developing techniques that will lead to the greater and more efficient utilization of coal wastes from mining and processing, other than coal ash.

(b) Use as boiler fuel

The program referred to in subsection (a) of this section shall include projects to facilitate the use of coal wastes from mining and processing as a boiler fuel for the purpose of generating steam to produce electricity.

(Pub. L. 102-486, title XIII, § 1308, Oct. 24, 1992, 106 Stat. 2975.)

§ 13339. Underground coal gasification

(a) Program

The Secretary shall conduct a research, development, demonstration, and commercial application program for underground coal gasification technology for in-situ conversion of coal to a cleaner burning, easily transportable gase-

ous fuel. The goal and objective of this program shall be to accelerate the development and commercialization of underground coal gasification. In carrying out this program, the Secretary shall give equal consideration to all ranks of coal.

(b) Demonstration projects

As part of the program authorized in subsection (a) of this section, the Secretary may solicit proposals for underground coal gasification technology projects to fulfill the goal and objective of subsection (a) of this section.

(Pub. L. 102-486, title XIII, § 1309, Oct. 24, 1992, 106 Stat. 2975.)

§ 13340. Low-rank coal research and development

The Secretary shall pursue a program of research and development with respect to the technologies needed to expand the use of low-rank coals which take into account the unique properties of lignites and sub-bituminous coals, including, but not limited to, the following areas—

- (1) high value-added carbon products;
- (2) fuel cell applications;
- (3) emissions control and combustion efficiencies;
- (4) coal water fuels and underground coal gasification;
- (5) distillates; and
- (6) any other technologies which will assist in the development of niche markets for lignites and sub-bituminous coals.

(Pub. L. 102-486, title XIII, § 1310, Oct. 24, 1992, 106 Stat. 2975.)

§ 13341. Magnetohydrodynamics

(a) Program

The Secretary shall carry out a research, development, demonstration, and commercial application program in magnetohydrodynamics. The purpose of this program shall be to determine the adequacy of the engineering and design information completed to date under Department of Energy contracts related to magnetohydrodynamics retrofit systems and to determine whether any further Federal investment in this technology is warranted.

(b) Solicitation of proposals

In order to carry out the program authorized in subsection (a) of this section, the Secretary may solicit proposals from the private sector and seek to enter into an agreement with appropriate parties.

(Pub. L. 102-486, title XIII, § 1311, Oct. 24, 1992, 106 Stat. 2976.)

§ 13342. Oil substitution through coal liquefaction

(a) Program direction

The Secretary shall conduct a program of research, development, demonstration, and commercial application for the purpose of developing economically and environmentally acceptable advanced technologies for oil substitution through coal liquefaction.

(b) Program goals

The goals of the program established under subsection (a) of this section shall include—

- (1) improved resource selection and product quality;
- (2) the development of technologies to increase net yield of liquid fuel product per ton of coal;
- (3) an increase in overall thermal efficiency; and
- (4) a reduction in capital and operating costs through technology improvements.

(c) Proposals

Within 180 days after October 24, 1992, the Secretary shall solicit proposals for conducting activities under this section.

(Pub. L. 102-486, title XIII, § 1312, Oct. 24, 1992, 106 Stat. 2976.)

§ 13343. Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this part \$278,139,000 for fiscal year 1993 and such sums as may be necessary for fiscal years 1994 through 1997.

(Pub. L. 102-486, title XIII, § 1313, Oct. 24, 1992, 106 Stat. 2976.)

PART B—CLEAN COAL TECHNOLOGY PROGRAM

§ 13351. Additional clean coal technology solicitations

(a) Program design

Additional clean coal technology solicitations described in subsection (b) of this section shall be designed to ensure the timely development of cost-effective technologies or energy production processes or systems utilizing coal that achieve greater efficiency in the conversion of coal to useful energy when compared to currently commercially available technology for the use of coal and the control of emissions from the combustion of coal. Such program shall be designed to ensure, to the greatest extent possible, the availability for commercial use of such technologies by the year 2010.

(b) Additional solicitations

In conducting the Clean Coal Program established by Public Law 98-473, the Secretary shall consider the potential benefits of conducting additional solicitations pursuant to such program and, based on the results of that consideration, may carry out such additional solicitations, which shall be similar in scope and percentage of Federal cost sharing as that provided by Public Law 101-121.

(Pub. L. 102-486, title XIII, § 1321, Oct. 24, 1992, 106 Stat. 2976.)

REFERENCES IN TEXT

Public Law 98-473, referred to in subsec. (b), is Pub. L. 98-473, Oct. 12, 1984, 98 Stat. 1837, as amended. For complete classification of this Act to the Code, see Tables.

Public Law 101-121, referred to in subsec. (b), is Pub. L. 101-121, Oct. 23, 1989, 103 Stat. 701, as amended. For complete classification of this Act to the Code, see Tables.

PART C—OTHER COAL PROVISIONS

§ 13361. Clean coal technology export promotion and interagency coordination**(a) Establishment**

There shall be established within the Trade Promotion Coordinating Committee (established by the President on May 23, 1990) a Clean Coal Technology Subgroup (in this part referred to as the “CCT Subgroup”) to focus interagency efforts on clean coal technologies. The CCT Subgroup shall seek to expand the export and use of clean coal technologies, particularly in those countries which can benefit from gains in the efficiency of, and the control of environmental emissions from, coal utilization.

(b) Membership

The CCT Subgroup shall include 1 member from each agency represented on the Energy, Environment, and Infrastructure Working Group of the Trade Promotion Coordinating Committee as of October 24, 1992. The Secretary shall serve as chair of the CCT Subgroup and shall be responsible for ensuring that the functions of the CCT Subgroup are carried out through its member agencies.

(c) Consultation

(1) In carrying out this section, the CCT Subgroup shall consult with representatives from the United States coal industry, representatives of railroads and other transportation industries, organizations representing workers, the electric utility industry, manufacturers of equipment utilizing clean coal technology, members of organizations formed to further the goals of environmental protection or to promote the development and use of clean coal technologies that are developed, manufactured, or controlled by United States firms, and other appropriate interested members of the public.

(2) The CCT Subgroup shall maintain ongoing liaison with other elements of the Trade Promotion Coordinating Committee relating to clean coal technologies or regions where these technologies could be important, including Eastern Europe, Asia, and the Pacific.

(d) Duties

The Secretary, acting through the CCT Subgroup, shall—

(1) facilitate the establishment of technical training for the consideration, planning, construction, and operation of clean coal technologies by end users and international development personnel;

(2) facilitate the establishment of and, where practicable, cause to be established, consistent with the goals and objectives stated in section 13331(a) of this title, within existing departments and agencies—

(A) financial assistance programs (including grants, loan guarantees, and no interest and low interest loans) to support pre-feasibility and feasibility studies for projects that will utilize clean coal technologies; and

(B) loan guarantee programs, grants, and no interest and low interest loans designed to facilitate access to capital and credit in

order to finance such clean coal technology projects;

(3) develop and ensure the execution of programs, including the establishment of financial incentives, to encourage and support private sector efforts in exports of clean coal technologies that are developed, manufactured, or controlled by United States firms;

(4) encourage the training in, and understanding of, clean coal technologies by representatives of foreign companies or countries intending to use coal or clean coal technologies by providing technical or financial support for training programs, workshops, and other educational programs sponsored by United States firms;

(5) educate loan officers and other officers of international lending institutions, commercial and energy attachés of the United States, and such other personnel as the CCT Subgroup considers appropriate, for the purposes of providing information about clean coal technologies to foreign governments or potential project sponsors of clean coal technology projects;

(6) develop policies and practices to be conducted by commercial and energy attachés of the United States, and such other personnel as the CCT Subgroup considers appropriate, in order to promote the exports of clean coal technologies to those countries interested in or intending to utilize coal resources;

(7) augment budgets for trade and development programs supported by Federal agencies for the purpose of financially supporting pre-feasibility or feasibility studies for projects in foreign countries that will utilize clean coal technologies;

(8) review ongoing clean coal technology projects and review and advise Federal agencies on the approval of planned clean coal technology projects which are sponsored abroad by any Federal agency to determine whether such projects are consistent with the overall goals and objectives of this section;

(9) coordinate the activities of the appropriate Federal agencies in order to ensure that Federal clean coal technology export promotion policies are implemented in a timely fashion;

(10) work with CCT Subgroup member agencies to develop an overall strategy for promoting clean coal technology exports, including setting goals and allocating specific responsibilities among member agencies, consistent with applicable statutes; and

(11) coordinate with multilateral institutions to ensure that United States technologies are properly represented in their projects.

(e) Data and information

(1) The CCT Subgroup, consistent with other applicable provisions of law, shall ensure the development of a comprehensive data base and information dissemination system, using the National Trade Data Bank and the Commercial Information Management System of the Department of Commerce, relating to the availability of clean coal technologies and the potential need for such technologies, particularly in developing

countries and countries making the transition from nonmarket to market economies.

(2) The Secretary, acting through the CCT Subgroup, shall assess and prioritize foreign markets that have the most potential for the export of clean coal technologies that are developed, manufactured, or controlled by United States firms. Such assessment shall include—

(A) an analysis of the financing requirements for clean coal technology projects in foreign countries and whether such projects are dependent upon financial assistance from foreign countries or multilateral institutions;

(B) the availability of other fuel or energy resources that may be available to meet the energy requirements intended to be met by the clean coal technology projects;

(C) the priority of environmental considerations in the selection of such projects;

(D) the technical competence of those entities likely to be involved in the planning and operation of such projects;

(E) an objective comparison of the environmental, energy, and economic performance of each clean coal technology relative to conventional technologies;

(F) a list of United States vendors of clean coal technologies; and

(G) answers to commonly asked questions about clean coal technologies.¹

The Secretary, acting through the CCT Subgroup, shall make such information available to the House of Representatives and the Senate, and to the appropriate committees of each House of Congress, industry, Federal and international financing organizations, nongovernmental organizations, potential customers abroad, governments of countries where such clean coal technologies might be used, and such others as the CCT Subgroup considers appropriate.

(f) Report

Within 180 days after the Secretary submits the report to the Congress as required by section 409 of Public Law 101-549, the Secretary, acting through the CCT Subgroup, shall provide to the appropriate committees of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, a plan which details actions to be taken in order to address those recommendations and findings made in the report submitted pursuant to section 409 of Public Law 101-549. As a part of the plan required by this subsection, the Secretary, acting through the CCT Subgroup, shall specifically address the adequacy of financial assistance available from Federal departments and agencies and international financing organizations to aid in the financing of prefeasibility and feasibility studies and projects that would use a clean coal technology in developing countries and countries making the transition from nonmarket to market economies.

(Pub. L. 102-486, title XIII, § 1331, Oct. 24, 1992, 106 Stat. 2977.)

REFERENCES IN TEXT

This part, referred to in subsec. (a), was in the original "this subtitle" meaning subtitle C of title XIII of

Pub. L. 102-486, which enacted this part and provisions set out as a note under section 824a-3 of Title 16, Conservation.

Section 409 of Public Law 101-549, referred to in subsec. (f), is section 409 of Pub. L. 101-549, title IV, Nov. 15, 1990, 104 Stat. 2634, which directed the Secretary of Energy, in consultation with the Secretary of Commerce, to submit a report to Congress within one year of November 15, 1990, respecting clean coal technology programs, and which is not classified to the Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13363 of this title.

§ 13362. Innovative clean coal technology transfer program

(a) Establishment of program

The Secretary, through the Agency for International Development, and in consultation with the other members of the CCT Subgroup, shall establish a clean coal technology transfer program to carry out the purposes described in subsection (b) of this section. Within 150 days after October 24, 1992, the Secretary and the Administrator of the Agency for International Development shall enter into a written agreement to carry out this section. The agreement shall establish a procedure for resolving any disputes between the Secretary and the Administrator regarding the implementation of specific projects. With respect to countries not assisted by the Agency for International Development, the Secretary may enter into agreements with other appropriate United States agencies. If the Secretary and the Administrator, or the Secretary and an agency described in the previous sentence, are unable to reach an agreement, each shall send a memorandum to the President outlining an appropriate agreement. Within 90 days after receipt of either memorandum, the President shall determine which version of the agreement shall be in effect. Any agreement entered into under this subsection shall be provided to the appropriate committees of the Congress and made available to the public.

(b) Purposes of program

The purposes of the technology transfer program under this section are to—

(1) reduce the United States balance of trade deficit through the export of United States energy technologies and technological expertise;

(2) retain and create manufacturing and related service jobs in the United States;

(3) encourage the export of United States technologies, including services related thereto, to those countries that have a need for developmentally sound facilities to provide energy derived from coal resources;

(4) develop markets for United States technologies and, where appropriate, United States coal resources to be utilized in meeting the energy and environmental requirements of foreign countries;

(5) better ensure that United States participation in energy-related projects in foreign countries includes participation by United States firms as well as utilization of United States technologies that have been developed or demonstrated in the United States through publicly or privately funded demonstration programs;

¹ So in original. The comma probably should be a period.

(6) provide for the accelerated deployment of United States technologies that will serve to introduce into foreign countries United States technologies intended to use coal resources in a more efficient, cost-effective, and environmentally acceptable manner;

(7) serve to ensure the introduction of United States firms and expertise in foreign countries;

(8) provide financial assistance by the Federal Government to foster greater participation by United States firms in the financing, ownership, design, construction, or operation of clean coal technology projects in foreign countries;

(9) assist foreign countries in meeting their energy needs through the use of coal in an environmentally acceptable manner, consistent with sustainable development policies; and

(10) assist United States firms, especially firms that are in competition with firms in foreign countries, to obtain opportunities to transfer technologies to, or undertake projects in, foreign countries.

(c) Identification

Pursuant to the agreements required by subsection (a) of this section, the Secretary, through the Agency for International Development, and after consultation with the CCT Subgroup, United States firms, and representatives from foreign countries, shall develop mechanisms to identify potential energy projects in host countries, and shall identify a list of such projects within 240 days after October 24, 1992, and periodically thereafter.

(d) Financial mechanisms

(1) Pursuant to the agreements under subsection (a) of this section, the Secretary, through the Agency for International Development, shall—

(A) establish appropriate financial mechanisms to increase the participation of United States firms in energy projects utilizing United States clean coal technologies, and services related thereto, in developing countries and countries making the transition from nonmarket to market economies;

(B) utilize available financial assistance authorized by this section to counterbalance assistance provided by foreign governments to non-United States firms; and

(C) provide financial assistance to support projects, including—

(i) financing the incremental costs of a clean coal technology project attributable only to expenditures to prevent or abate emissions;

(ii) providing the difference between the costs of a conventional energy project in the host country and a comparable project that would utilize a clean coal technology capable of achieving greater efficiency of energy products and improved environmental emissions compared to such conventional project; and

(iii) such other forms of financial assistance as the Secretary, through the Agency for International Development, considers appropriate.

(2) The financial assistance authorized by this section may be—

(A) provided in combination with other forms of financial assistance, including non-United States funding that is available to the project; and

(B) utilized to assist United States firms to develop innovative financing packages for clean coal technology projects that seek to utilize other financial assistance programs available through other Federal agencies.

(3) United States obligations under the Arrangement on Guidelines for Officially Supported Export Credits established through the Organization for Economic Cooperation and Development shall be applicable to this section.

(e) Solicitations for project proposals

(1) Pursuant to the agreements under subsection (a) of this section, the Secretary, through the Agency for International Development, within one year after October 24, 1992, and subsequently as appropriate thereafter, shall solicit proposals from United States firms for the design, construction, testing, and operation of the project or projects identified under subsection (c) of this section which propose to utilize a United States technology. Each solicitation under this section shall establish a closing date for receipt of proposals.

(2) The solicitation under this subsection shall, to the extent appropriate, be modeled after the RFP No. DE-PS01-90FE62271 Clean Coal Technology IV as administered by the Department of Energy.

(3) Any solicitation made under this subsection shall include the following requirements:

(A) The United States firm that submits a proposal in response to the solicitation shall have an equity interest in the proposed project.

(B) The project shall utilize a United States clean coal technology, including services related thereto, and, where appropriate, United States coal resources, in meeting the applicable energy and environmental requirements of the host country.

(C) Proposals for projects shall be submitted by and undertaken with a United States firm, although a joint venture or other teaming arrangement with a non-United States manufacturer or other non-United States entity is permissible.

(f) Assistance to United States firms

Pursuant to the agreements under subsection (a) of this section, the Secretary, through the Agency for International Development, and in consultation with the CCT Subgroup, shall establish a procedure to provide financial assistance to United States firms under this section for a project identified under subsection (c) of this section where solicitations for the project are being conducted by the host country or by a multilateral lending institution.

(g) Other program requirements

Pursuant to the agreements under subsection (a) of this section, the Secretary, through the Agency for International Development, and in consultation with the CCT Subgroup, shall—

(1) establish eligibility criteria for countries that will host projects;

(2) periodically review the energy needs of such countries and export opportunities for United States firms for the development of projects in such countries;

(3) consult with government officials in host countries and, as appropriate, with representatives of utilities or other entities in host countries, to determine interest in and support for potential projects; and

(4) determine whether each project selected under this section is developmentally sound, as determined under the criteria developed by the Development Assistance Committee of the Organization for Economic Cooperation and Development.

(h) Selection of projects

(1) Pursuant to the agreements under subsection (a) of this section, the Secretary, through the Agency for International Development, shall, not later than 120 days after receipt of proposals in response to a solicitation under subsection (e) of this section, select one or more proposals under this section.

(2) In selecting a proposal under this section, the Secretary, through the Agency for International Development, shall consider—

(A) the ability of the United States firm, in cooperation with the host country, to undertake and complete the project;

(B) the degree to which the equipment to be included in the project is designed and manufactured in the United States;

(C) the long-term technical and competitive viability of the United States technology, and services related thereto, and the ability of the United States firm to compete in the development of additional energy projects using such technology in the host country and in other foreign countries;

(D) the extent of technical and financial involvement of the host country in the project;

(E) the extent to which the proposed project meets the goals and objectives stated in section 13331(a) of this title;

(F) the extent of technical, financial, management, and marketing capabilities of the participants in the project, and the commitment of the participants to completion of a successful project in a manner that will facilitate acceptance of the United States technology for future application; and

(G) such other criteria as may be appropriate.

(3) In selecting among proposed projects, the Secretary shall seek to ensure that, relative to otherwise comparable projects in the host country, a selected project will meet 1 or more of the following criteria:

(A) It will reduce environmental emissions to an extent greater than required by applicable provisions of law.

(B) It will increase the overall efficiency of the utilization of coal, including energy conversion efficiency and, where applicable, production of products derived from coal.

(C) It will be a more cost-effective technological alternative, based on life cycle capital and operating costs per unit of energy produced and, where applicable, costs per unit of product produced.

Priority in selection shall be given to those projects which, in the judgment of the Secretary, best meet one or more of these criteria.

(i) United States-Asia Environmental Partnership

Activities carried out under this section shall be coordinated with the United States-Asia Environmental Partnership.

(j) Buy America

In carrying out this section, the Secretary, through the Agency for International Development, and pursuant to the agreements under subsection (a) of this section, shall ensure—

(1) the maximum percentage, but in no case less than 50 percent, of the cost of any equipment furnished in connection with a project authorized under this section shall be attributable to the manufactured United States components of such equipment; and

(2) the maximum participation of United States firms.

In determining whether the cost of United States components equals or exceeds 50 percent, the cost of assembly of such United States components in the host country shall not be considered a part of the cost of such United States component.

(k) Reports to Congress

The Secretary and the Administrator of the Agency for International Development shall report annually to the Committee on Energy and Natural Resources of the Senate and the appropriate committees of the House of Representatives on the progress being made to introduce clean coal technologies into foreign countries.

(l) "Host country" defined

For purposes of this section, the term "host country" means a foreign country which is—

(1) the participant in or the site of the proposed clean coal technology project; and

(2) either—

(A) classified as a country eligible to participate in development assistance programs of the Agency for International Development pursuant to applicable law or regulation; or

(B) a developing country or country with an economy in transition from a nonmarket to a market economy.

(m) Authorization of appropriations

There are authorized to be appropriated to the Secretary to carry out the program required by this section, \$100,000,000 for each of the fiscal years 1993, 1994, 1995, 1996, 1997, and 1998.

(Pub. L. 102-486, title XIII, § 1332, Oct. 24, 1992, 106 Stat. 2979.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13363, 13370 of this title.

§ 13363. Conventional coal technology transfer

If the Secretary determines that the utilization of a clean coal technology is not practicable for a proposed project and that a United States conventional coal technology would constitute a substantial improvement in efficiency,

costs, and environmental performance relative to the technology being used in a developing country or country making the transition from nonmarket to market economies, with significant indigenous coal resources, such technology shall, for purposes of sections 13361 and 13362¹ of this title, be considered a clean coal technology. In the case of combustion technologies, only the retrofit, repowering, or replacement of a conventional technology shall constitute a substantial improvement for purposes of this section. In carrying out this section, the Secretary shall give highest priority to promoting the most environmentally sound and energy efficient technologies.

(Pub. L. 102-486, title XIII, § 1333, Oct. 24, 1992, 106 Stat. 2984.)

REFERENCES IN TEXT

Sections 13361 and 13362 of this title, referred to in text, was in the original “sections 1321 and 1322” and was translated as reading “sections 1331 and 1332” meaning sections 1331 and 1332 of Pub. L. 102-486, to reflect the probable intent of Congress, because Pub. L. 102-486 does not contain a section 1322 and sections 1331 and 1332 of Pub. L. 102-486 relate to export of clean coal technology.

§ 13364. Study of utilization of coal combustion byproducts

(a) “Coal combustion byproducts” defined

As used in this section, the term “coal combustion byproducts” means the residues from the combustion of coal including ash, slag, and flue gas desulfurization materials.

(b) Study and report to Congress

(1) The Secretary shall conduct a detailed and comprehensive study on the institutional, legal, and regulatory barriers to increased utilization of coal combustion byproducts by potential governmental and commercial users. Such study shall identify and investigate barriers found to exist at the Federal, State, or local level, which may have limited or may have the foreseeable effect of limiting the quantities of coal combustion byproducts that are utilized. In conducting this study, the Secretary shall consult with other departments and agencies of the Federal Government, appropriate State and local governments, and the private sector.

(2) Not later than one year after October 24, 1992, the Secretary shall submit a report to the Congress containing the results of the study required by paragraph (1) and the Secretary’s recommendations for action to be taken to increase the utilization of coal combustion byproducts. At a minimum, such report shall identify actions that would increase the utilization of coal combustion byproducts in—

- (A) bridge and highway construction;
- (B) stabilizing wastes;
- (C) procurement by departments and agencies of the Federal Government and State and local governments; and
- (D) federally funded or federally subsidized procurement by the private sector.

(Pub. L. 102-486, title XIII, § 1334, Oct. 24, 1992, 106 Stat. 2984.)

¹ See References in Text note below.

§ 13365. Coal fuel mixtures

Within one year following October 24, 1992, the Secretary shall submit a report to the Committee on Energy and Commerce and the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate on the status of technologies for combining coal with other materials, such as oil or water fuel mixtures. The report shall include—

- (1) a technical and economic feasibility assessment of such technologies;
- (2) projected developments in such technologies;
- (3) an assessment of the market potential of such technologies, including the potential to displace imported crude oil and refined petroleum products;
- (4) identification of barriers to commercialization of such technologies; and
- (5) recommendations for addressing barriers to commercialization.

(Pub. L. 102-486, title XIII, § 1336, Oct. 24, 1992, 106 Stat. 2985.)

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives and Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 13366. National clearinghouse

(a) Feasibility

(1) The Secretary shall assess the feasibility of establishing a national clearinghouse for the exchange and dissemination of technical information on technology relating to coal and coal-derived fuels.

(2) In assessing the feasibility, the Secretary shall consider whether such a clearinghouse would be appropriate for purposes of—

- (A) collecting information and data on technology relating to coal, and coal-derived fuels, which can be utilized to improve environmental quality and increase energy independence;
- (B) disseminating to appropriate individuals, governmental departments, agencies, and instrumentalities, institutions of higher education, and other entities, information and data collected pursuant to this section;
- (C) maintaining a library of technology publications and treatises relating to technology information and data collected pursuant to this section;
- (D) organizing and conducting seminars for government officials, utilities, coal companies, and other entities or institutions relating to technology using coal and coal-derived fuels that will improve environmental quality and increase energy independence;

(E) gathering information on research grants made for the purpose of improving or enhancing technology relating to the use of coal, and coal-derived fuels, which will improve environmental quality and increase energy independence;

(F) translating into English foreign research papers, articles, seminar proceedings, test results that affect, or could affect, clean coal use technology, and other documents;

(G) encouraging, during the testing of technologies, the use of coal from a variety of domestic sources, and collecting or developing, or both, complete listings of test results using coals from all sources;

(H) establishing and maintaining an index or compilation of research projects relating to clean coal technology carried out throughout the world; and

(I) conducting economic modeling for feasibility of projects.

(b) Authority to establish clearinghouse

Based upon the assessment under subsection (a) of this section, the Secretary may establish a clearinghouse.

(Pub. L. 102-486, title XIII, § 1337, Oct. 24, 1992, 106 Stat. 2985.)

§ 13367. Coal exports

(a) Plan

Within 180 days after October 24, 1992, the Secretary of Commerce, in cooperation with the Secretary and other appropriate Federal agencies, shall submit to the appropriate committees of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a plan for expanding exports of coal mined in the United States.

(b) Plan contents

The plan submitted under subsection (a) of this section shall include—

(1) a description of the location, size, and projected growth in potential export markets for coal mined in the United States;

(2) the identification by country of the foreign trade barriers to the export of coal mined in the United States, including foreign coal production and utilization subsidies, tax treatment, labor practices, tariffs, quotas, and other nontariff barriers;

(3) recommendations and a plan for addressing any such trade barriers;

(4) an evaluation of existing infrastructure in the United States and any new infrastructure requirements in the United States to support an expansion of exports of coal mined in the United States, including ports, vessels, rail lines, and any other supporting infrastructure; and

(5) an assessment of environmental implications of coal exports and the identification of export opportunities for blending coal mined in the United States with coal indigenous to other countries to enhance energy efficiency and environmental performance.

(Pub. L. 102-486, title XIII, § 1338, Oct. 24, 1992, 106 Stat. 2986.)

§ 13368. Ownership of coalbed methane

(a) Federal lands and mineral rights

In the case of any deposit of coalbed methane where the United States is the owner of the surface estate or where the United States has transferred the surface estate but reserved the subsurface mineral estate, the Secretary of the Interior shall administer this section. This section and the definitions contained herein shall be applicable only on lands within Affected States.

(b) Affected States

Not later than 180 days after October 24, 1992, the Secretary of the Interior, with the participation of the Secretary of Energy, shall publish in the Federal Register a list of Affected States which shall be comprised of States—

(1) in which the Secretary of the Interior, with the participation of the Secretary of Energy, determines that disputes, uncertainty, or litigation exist, regarding the ownership of coalbed methane gas;

(2) in which the Secretary of the Interior, with the participation of the Secretary of Energy, determines that development of significant deposits of coalbed methane gas is being impeded by such existing disputes, uncertainty, or litigation regarding ownership of such coalbed methane;

(3) which do not have in effect a statutory or regulatory procedure or existing case law permitting and encouraging the development of coalbed methane gas within that State; and

(4) which do not have extensive development of coalbed methane gas.

The Secretary of the Interior, with the participation of the Secretary of Energy, shall revise such list of Affected States from time to time. Any Affected State shall be deleted from the list of Affected States upon the receipt by the Secretary of the Interior of a Governor's petition requesting such deletion, a State law requesting such deletion enacted by the legislative body of the State. A Governor intending to petition the Secretary of the Interior to delete a State from the list of Affected States shall provide the State's legislative body with 6 months notice of such petition during a legislative session. At the end of such 6-month period, the Governor may petition the Secretary of the Interior to delete a State from the list of Affected States, unless during such 6-month period, the State's legislative body has enacted a law or resolution disapproving the Governor's petition. Until the Secretary of the Interior, with the participation of the Secretary of Energy, publishes a different list, the States of West Virginia, Pennsylvania, Kentucky, Ohio, Tennessee, Indiana, and Illinois shall be the Affected States, effective on October 24, 1992. The States of Colorado, Montana, New Mexico, Wyoming, Utah, Virginia, Washington, Mississippi, Louisiana, and Alabama shall not be included on the Secretary of the Interior's list of Affected States or any extension or revision thereof.

(c) Failure to adopt statutory or regulatory procedure

If an Affected State has not placed in effect, by statute or by regulation, a substantial pro-

gram promoting the permitting, drilling and production of coalbed methane wells (including pooling arrangements) within that State within 3 years after becoming an Affected State, the Secretary of the Interior, with the participation of the Secretary of Energy, shall administer this section and shall promulgate such regulations as are necessary to carry out this section in that State.

(d) Implementation by Secretary of the Interior

In implementing this section, the Secretary of the Interior, with the participation of the Secretary of Energy, shall—

(A) consider existing and future coal mining plans,

(B) preserve the mineability of coal seams, and

(C) provide for the prevention of waste and maximization of recovery of coal and coalbed methane gas in a manner which will protect the rights of all entities owning an interest in such coalbed methane resource.

(e) Spacing

Except where State law in an Affected State contains existing spacing requirements regarding the minimum distance between coalbed methane wells and the minimum distance of a coalbed methane well from a property line, the Secretary of the Interior shall establish such requirements within 90 days after the assertion of jurisdiction pursuant to subsection (c) of this section.

(f) Spacing units

Applications to establish spacing units for the drilling and operation of coalbed methane gas wells may be filed by any entity claiming a coalbed methane ownership interest within a proposed spacing unit. Upon receipt and approval of an application, the Secretary of the Interior shall issue an order establishing the boundaries of the coalbed methane spacing unit. Spacing units shall generally be uniform in size.

(g) Development under pooling arrangement

Following issuance of an order establishing a spacing unit under subsection (f) of this section, and pursuant to an application for pooling filed by the entity claiming a coalbed methane ownership interest and proposing to drill a coalbed methane gas well, the Secretary of the Interior shall hold a hearing to consider the application for pooling and shall, if the criteria of this section are met, issue an order allowing the proposed pooling of acreage within the designated spacing unit for purposes of drilling and production of coalbed methane from the spacing unit. The pooling order shall not be issued before notice or a reasonable and diligent effort to provide notice has been made to each entity which may claim an ownership interest in the coalbed methane gas within such spacing unit and each such entity has been offered an opportunity to appear before the Secretary of the Interior at the hearing. Upon issuance of a pooling order, each owner or claimant of an ownership interest shall be allowed to make one of the following elections:

(1) An election to sell or lease its coalbed methane ownership interest to the unit opera-

tor at a rate determined by the Secretary of the Interior as set forth in the pooling order.

(2) An election to become a participating working interest owner by bearing a share of the risks and costs of drilling, completing, equipping, gathering, operating (including all disposal costs), plugging and abandoning the well, and receiving a share of production from the well.

(3) An election to share in the operation of the well as a nonparticipating working interest owner by relinquishing its working interest to participating working interest owners until the proceeds allocable to its share equal 300 percent of the share of such costs allocable to its interest. Thereafter, the nonparticipating working interest owner shall become a participating working interest owner.

The pooling order shall designate a unit operator who shall be authorized to drill and operate the spacing unit. The pooling order shall provide that any entity claiming an ownership interest in the coalbed methane within such spacing unit which does not make an election under the pooling order shall be deemed to have leased its coalbed methane interest to the unit operator under such terms and conditions as the pooling order may provide. No pooling order may be issued under this paragraph for any spacing unit if all entities claiming an ownership interest in the coalbed methane in the spacing unit have entered into a voluntary agreement providing for the drilling and operation of the coalbed methane gas well for the spacing unit.

(h) Escrow account

(1) Each pooling order issued under subsection (g) of this section shall provide for the establishment of an escrow account into which the payment of costs and proceeds attributable to the conflicting interests shall be deposited and held for the interest of the claimants as follows:

(A) Each participating working interest owner, except for the unit operator, shall deposit in the escrow account its proportionate share of the costs allocable to the ownership interest claimed by each such participating working interest owner as set forth in the pooling order issued by the Secretary of the Interior.

(B) The unit operator shall deposit in the escrow account all proceeds attributable to the conflicting interests of lessees, plus all proceeds in excess of ongoing operational expenses (including reasonable overhead costs) attributable to conflicting working interests.

(2) The Secretary of the Interior shall order payment of principal and accrued interest from the escrow account to all legally entitled entities within 30 days of receipt by the Secretary of the Interior of notification of the final legal determination of entitlement or upon agreement of all entities claiming an ownership interest in the coalbed methane gas. Upon such final determination—

(A) each legally entitled participating working interest owner shall receive a proportionate share of the proceeds attributable to the conflicting ownership interest;

(B) each legally entitled nonparticipating working interest owner shall receive a propor-

tionate share of the proceeds attributable to the conflicting ownership interest, less the cost of being carried as a nonparticipating working interest owner (as determined by the election of the entity under the applicable pooling order);

(C) each entity leasing (or deemed to have leased) its coalbed methane ownership interest to the unit operator shall receive a share of the royalty proceeds (as set out in the applicable pooling order) attributable to the conflicting interests of lessees; and

(D) the unit operator shall receive the costs contributed to the escrow account by each legally entitled participating working interest owner.

The Secretary of the Interior shall enact rules and regulations for the administration and protection of funds delivered to the escrow accounts.

(i) Approval of Secretary of the Interior

No entity may drill any well for the production of coalbed methane gas from a coal seam, subject to the provisions of subsection (g) of this section, in an Affected State unless the drilling of such well has been approved by the Secretary of the Interior.

(j) Authorization to stimulate coal seam

(1) No operator of a coalbed methane well may stimulate a coal seam without the written consent of each entity which, at the time that the coalbed methane operator applies for a drilling permit, is operating a coal mine, or has by virtue of his property rights in the coal the ability to operate a coal mine, located within a horizontal or vertical distance from the point of stimulation as established by the Secretary of the Interior pursuant to paragraph (3) of this subsection. In seeking the coal operator's consent, a coalbed methane well operator shall provide the coal operator with necessary information about such stimulation, including relevant information to ensure compliance with coal mine safety laws and rules.

(2) In the absence of a written consent pursuant to paragraph (1) and at the request of a coalbed methane operator, the Secretary of the Interior shall make a determination regarding stimulation of a coal seam. Such request shall include an affidavit which shall—

(A) state that an entity from which consent is required pursuant to paragraph (1) has refused to provide written consent;

(B) set forth in detail the efforts undertaken by the applicant to obtain such written consent;

(C) state the known reasons for the consent not being provided;

(D) set forth the conditions and compensation, if any, offered by the applicant as part of the efforts to obtain consent; and

(E) provide prima facie evidence that the method of stimulation proposed by the coalbed methane operator will not (i) cause unreasonable loss or damage to the coal seam considering all factors, including the prospect, taking into consideration the economics of the coal industry, that coal seams for which no actual or proposed mining plans exist will be mined

at some future date, or (ii) violate mine safety requirements. If a denial of consent by a coal operator is based on reasons related to safety, the Secretary of the Interior shall seek the views and recommendations of the appropriate State or Federal coal mine safety agency. Any determination by the Secretary of the Interior shall be in accordance with all applicable Federal and State coal mine safety laws and such views and recommendations. A determination by the Secretary of the Interior approving a method of stimulation may include reasonable conditions including, but not limited to, conditions to mitigate, to the extent practicable, economic damage to the coal seam. Any determination approving or denying a method of stimulation by the Secretary of the Interior shall be subject to appeal. Interested entities shall be allowed to participate in and comment on proceedings under this paragraph.

(3) The Secretary of the Interior shall by rule establish, for an Affected State, a region thereof, or a multi-State region comprised of Affected States, the boundaries within which a coalbed methane operator shall be required to obtain written consent from a coal operator pursuant to paragraph (1). Such boundaries shall be stated in terms of a horizontal and a vertical distance from the point of stimulation and shall be determined based on an evaluation of the maximum length, height and depth of fracture producible in a coal seam in such Affected State, region thereof, or multi-State region comprised of Affected States.

(4) The consent required under this subsection shall in no way be deemed to impair, abridge, or affect any contractual rights or objections arising out of a coalbed methane gas contract or coalbed methane gas lease in existence as of October 24, 1992,¹ between the coalbed methane operator and the coal operator, and the existence of such lease or contractual agreement and any extensions or renewals of such lease shall be deemed to fully meet the requirements of this section.

(5) Nothing in this subsection precludes either a coal operator or a coalbed methane operator from seeking in the appropriate State forum compensation for the consequences of a determination by the Secretary of the Interior pursuant to paragraph (2).

(k) Notice and objection

(1) The Secretary of the Interior shall not approve the drilling of any coalbed methane well unless the unit operator has notified each entity which is operating, or has the ability, by virtue of his property rights in the coal, to operate, a coal mine in any portion of the coalbed that would be affected by such well within the distances established pursuant to the rules promulgated under subsection (j)(3) of this section. Any notified entity may object to the drilling of such well within 30 days after receipt of a notice. Upon receipt of a timely objection to the drilling of any coalbed methane gas well submitted by a notified entity, the Secretary of the Interior may refuse to approve the drilling of the well based on any of the following:

¹ See Codification note below.

(A) The proposed activity, due to its proximity to any coal mine opening, shaft, underground workings, or to any proposed extension of the coal mine, would adversely affect any operating, inactive or abandoned coal mine, including any coal mine already surveyed and platted but not yet being operated.

(B) The proposed activity would not conform with a coal operator's development plan for an existing or proposed operation.

(C) There would be an unreasonable interference from the proposed activity with present or future coal mining operations, including the ability to comply with other applicable laws and regulations.

(D) The presence of evidence indicating that the proposed drilling activities would be unsafe, taking into consideration the dangers from creeps, squeezes or other disturbances due to the extraction of coal.

(E) The proposed activity would unreasonably interfere with the safe recovery of coal, oil and gas.

(2) In the event the Secretary of the Interior does not approve the drilling of a coalbed methane well pursuant to paragraph (1), the Secretary of the Interior shall consider whether such drilling could be approved if the unit operator modifies the proposed activities to take into account any of the following:

(A) The proposed activity could instead be reasonably done through an existing or planned pillar of coal, or in close proximity to an existing well or such pillar of coal, taking into consideration surface topography.

(B) The proposed activity could instead be moved to a mined-out area, below the coal outcrop or to some other feasible area.

(C) The unit operator agrees to a drilling moratorium of not more than two years in order to permit completion of coal mining operations.

(D) The practicality of locating the proposed spacing unit or well on a uniform pattern with other spacing units or wells.

(l) Plugging

All coalbed methane wells drilled after October 24, 1992, that penetrate coal seams with remaining reserves shall provide for subsequent safe mining through the well in accordance with standards prescribed by the Secretary of the Interior, in consultation with any Federal and State agencies having authority over coal mine safety. Well plugging costs should be allocated in accordance with State law or private contractual arrangement, as the case may be.

(m) Notice and objection by other parties

The Secretary of the Interior shall not approve the drilling of any coalbed methane well unless such well complies with the spacing and other requirements established by the Secretary of the Interior and each of the following:

(1) The unit operator of such well has notified, or has made a reasonable and diligent effort to notify, all entities claiming ownership of coalbed methane to be drained by such well and provided an opportunity to object in accordance with requirements established by the Secretary of the Interior.

(2) Where conflicting interests exist, an order under subsection (g) of this section establishing pooling requirements has been issued.

The notification requirements of this subsection shall be additional to the notification referred to in subsection (k) of this section. The Secretary of the Interior shall establish the conditions under which entities claiming ownership of coalbed methane may object to the drilling of a coalbed methane well.

(n) Venting for safety

Nothing in this section shall be construed to prevent or inhibit the entity which has the right to develop and mine coal in any mine from venting coalbed methane gas to ensure safe mine operations.

(o) Other laws

The Secretary of the Interior shall comply with all applicable Federal and State coal mine safety laws and regulations.

(p) Definitions

As used in this section—

(1) The term "Affected State" means a State listed by the Secretary of the Interior, with the participation of the Secretary of Energy, under subsection (b) of this section.

(2) The term "coalbed methane gas" means occluded natural gas produced (or which may be produced) from coalbeds and rock strata associated therewith.

(3) The term "unit operator" means the entity designated in a pooling order to develop a spacing unit by the drilling of one or more wells on the unit.

(4) The term "nonparticipating working interest owner" means a gas or oil owner of a tract included in a spacing unit which elects to share in the operation of the well on a carried basis by agreeing to have its proportionate share of the costs allocable to its interest charged against its share of production of the well in accordance with subsection (f)(3) of this section.

(5) The term "participating working interest owner" means a gas or oil owner which elects to bear a share of the risks and costs of drilling, completing, equipping, gathering, operating (including any and all disposal costs)² plugging, and abandoning a well on a spacing unit and to receive a share of production from the well equal to the proportion which the acreage in the spacing unit it owns or holds under lease bears to the total acreage of the spacing unit.

(6) The term "coal seam" means any stratum of coal 20 inches or more in thickness, unless a stratum of less thickness is being commercially worked, or can in the judgment of the Secretary of the Interior foreseeably³ be commercially worked and will require protection if wells are being drilled through it.

(Pub. L. 102-486, title XIII, § 1339, Oct. 24, 1992, 106 Stat. 2986.)

²So in original. Probably should be followed by a comma.

³So in original. Probably should be "foreseeably".

CODIFICATION

October 24, 1992, referred to in subsec. (j)(4), was in the original “the effective date of this section”, which was translated as meaning the date of enactment of Pub. L. 102-486, which enacted this section.

§ 13369. Establishment of data base and study of transportation rates

(a) Data base

The Secretary shall review the information currently collected by the Federal Government and shall determine whether information on transportation rates for rail and pipeline transport of domestic coal, oil, and gas during the period of January 1, 1988, through December 31, 1997, is reasonably available. If he determines that such information is not reasonably available, the Secretary shall establish a data base containing, to the maximum extent practicable, information on all such rates. The confidentiality of contract rates shall be preserved. To obtain data pertaining to rail contract rates, the Secretary shall acquire such data in aggregate form only from the Surface Transportation Board, under terms and conditions that maintain the confidentiality of such rates.

(b) Study

The Energy Information Administration shall determine the extent to which any agency of the Federal Government is studying the rates and distribution patterns of domestic coal, oil, and gas to determine the impact of the Clean Air Act [42 U.S.C. 7401 et seq.] as amended by the Act entitled “An Act to amend the Clean Air Act to provide for attainment and maintenance of health protective national ambient air quality standards, and for other purposes.”, enacted November 15, 1990 (Public Law 101-549), and other Federal policies on such rates and distribution patterns. If the Energy Information Administration finds that no such study is underway, or that reports of the results of such study will not be available to the Congress providing the information specified in this subsection and subsection (a) of this section by the dates established in subsection (c) of this section, the Energy Information Administration shall initiate such a study.

(c) Reports to Congress

Within one year after October 24, 1992, the Secretary shall report to the Congress on the determination the Energy Information Administration is required to make under subsection (b) of this section. Within three years after October 24, 1992, the Secretary shall submit reports on any data base or study developed under this section. Any such reports shall be updated and resubmitted to the Congress within eight years after October 24, 1992. If the Energy Information Administration has determined pursuant to subsection (b) of this section that another study or studies will provide all or part of the information called for in this section, the Secretary shall transmit the results of that study by the dates established in this subsection, together with his comments.

(d) Consultation with other agencies

The Secretary and the Energy Information Administration shall consult with the Chairmen

of the Federal Energy Regulatory Commission and the Surface Transportation Board in implementing this section.

(Pub. L. 102-486, title XIII, § 1340, Oct. 24, 1992, 106 Stat. 2992; Pub. L. 104-88, title III, § 320, Dec. 29, 1995, 109 Stat. 949.)

REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (b), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§ 7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

An Act to amend the Clean Air Act to provide for attainment and maintenance of health protective national ambient air quality standards, and for other purposes, referred to in subsec. (b), is Pub. L. 101-549, Nov. 15, 1990, 104 Stat. 2399, popularly known as the Clean Air Act Amendments of 1990. For complete classification of this Act to the Code, see Short Title of 1990 Amendment note set out under section 7401 of this title and Tables.

AMENDMENTS

1995—Subsecs. (a), (d). Pub. L. 104-88 substituted “Surface Transportation Board” for “Interstate Commerce Commission”.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-88 effective Jan. 1, 1996, see section 2 of Pub. L. 104-88, set out as an Effective Date note under section 701 of Title 49, Transportation.

§ 13370. Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this part, other than section 13362¹ of this title, such sums as may be necessary for fiscal years 1993 through 1998.

(Pub. L. 102-486, title XIII, § 1341, Oct. 24, 1992, 106 Stat. 2993.)

REFERENCES IN TEXT

Section 13362 of this title, referred to in text, was in the original “section 1322” and was translated as reading “section 1332” meaning section 1332 of Pub. L. 102-486, to reflect the probable intent of Congress, because Pub. L. 102-486 does not contain a section 1322.

SUBCHAPTER VII—GLOBAL CLIMATE CHANGE

§ 13381. Report

Not later than 2 years after October 24, 1992, the Secretary shall submit a report to the Congress that includes an assessment of—

(1) the feasibility and economic, energy, social, environmental, and competitive implications, including implications for jobs, of stabilizing the generation of greenhouse gases in the United States by the year 2005;

(2) the recommendations made in chapter 9 of the 1991 National Academy of Sciences report entitled “Policy Implications of Greenhouse Warming”, including an analysis of the benefits and costs of each recommendation;

(3) the extent to which the United States is responding, compared with other countries, to the recommendations made in chapter 9 of the 1991 National Academy of Sciences report;

¹ See References in Text note below.

(4) the feasibility of reducing the generation of greenhouse gases;

(5) the feasibility and economic, energy, social, environmental, and competitive implications, including implications for jobs, of achieving a 20 percent reduction from 1988 levels in the generation of carbon dioxide by the year 2005 as recommended by the 1988 Toronto Scientific World Conference on the Changing Atmosphere;

(6) the potential economic, energy, social, environmental, and competitive implications, including implications for jobs, of implementing the policies necessary to enable the United States to comply with any obligations under the United Nations Framework Convention on Climate Change or subsequent international agreements.

(Pub. L. 102-486, title XVI, §1601, Oct. 24, 1992, 106 Stat. 2999.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13382 of this title.

§ 13382. Least-cost energy strategy

(a) Strategy

The first National Energy Policy Plan (in this subchapter referred to as the "Plan") under section 7321 of this title prepared and required to be submitted by the President to Congress after February 1, 1993, and each subsequent such Plan, shall include a least-cost energy strategy prepared by the Secretary. In developing the least-cost energy strategy, the Secretary shall take into consideration the economic, energy, social, environmental, and competitive costs and benefits, including costs and benefits for jobs, of his choices. Such strategy shall also take into account the report required under section 13381 of this title and relevant Federal, State, and local requirements. Such strategy shall be designed to achieve to the maximum extent practicable and at least-cost to the Nation—

(1) the energy production, utilization, and energy conservation priorities of subsection (d) of this section;

(2) the stabilization and eventual reduction in the generation of greenhouse gases;

(3) an increase in the efficiency of the Nation's total energy use by 30 percent over 1988 levels by the year 2010;

(4) an increase in the percentage of energy derived from renewable resources by 75 percent over 1988 levels by the year 2005; and

(5) a reduction in the Nation's oil consumption from the 1990 level of approximately 40 percent of total energy use to 35 percent by the year 2005.

(b) Additional contents

The least-cost energy strategy shall also include—

(1) a comprehensive inventory of available energy and energy efficiency resources and their projected costs, taking into account all costs of production, transportation, distribution, and utilization of such resources, including—

(A) coal, clean coal technologies, coal seam methane, and underground coal gasification;

(B) energy efficiency, including existing technologies for increased efficiency in production, transportation, distribution, and utilization of energy, and other technologies that are anticipated to be available through further research and development; and

(C) other energy resources, such as renewable energy, solar energy, nuclear fission, fusion, geothermal, biomass, fuel cells, hydropower, and natural gas;

(2) a proposed two-year program for ensuring adequate supplies of the energy and energy efficiency resources and technologies described in paragraph (1), and an identification of administrative actions that can be undertaken within existing Federal authority to ensure their adequate supply;

(3) estimates of life-cycle costs for existing energy production facilities;

(4) basecase forecasts of short-term and long-term national energy needs under low and high case assumptions of economic growth; and

(5) an identification of all applicable Federal authorities needed to achieve the purposes of this section, and of any inadequacies in those authorities.

(c) Secretarial consideration

In developing the least-cost energy strategy, the Secretary shall give full consideration to—

(1) the relative costs of each energy and energy efficiency resource based upon a comparison of all direct and quantifiable net costs for the resource over its available life, including the cost of production, transportation, distribution, utilization, waste management, environmental compliance, and, in the case of imported energy resources, maintaining access to foreign sources of supply; and

(2) the economic, energy, social, environmental, and competitive consequences resulting from the establishment of any particular order of Federal priority as determined under subsection (d) of this section.

(d) Priorities

The least-cost energy strategy shall identify Federal priorities, including policies that—

(1) implement standards for more efficient use of fossil fuels;

(2) increase the energy efficiency of existing technologies;

(3) encourage technologies, including clean coal technologies, that generate lower levels of greenhouse gases;

(4) promote the use of renewable energy resources, including solar, geothermal, sustainable biomass, hydropower, and wind power;

(5) affect the development and consumption of energy and energy efficiency resources and electricity through tax policy;

(6) encourage investment in energy efficient equipment and technologies; and

(7) encourage the development of energy technologies, such as advanced nuclear fission and nuclear fusion, that produce energy without greenhouse gases as a byproduct, and encourage the deployment of nuclear electric generating capacity.

(e) Assumptions

The Secretary shall include in the least-cost energy strategy an identification of all of the

assumptions used in developing the strategy and priorities thereunder, and the reasons for such assumptions.

(f) Preference

When comparing an energy efficiency resource to an energy resource, a higher priority shall be assigned to the energy efficiency resource whenever all direct and quantifiable net costs for the resource over its available life are equal to the estimated cost of the energy resource.

(g) Public review and comment

The Secretary shall provide for a period of public review and comment of the least-cost energy strategy, for a period of at least 30 days, to be completed at least 60 days before the issuance of such strategy. The Secretary shall also provide for public review and comment before the issuance of any update to the least-cost energy strategy required under this section.

(Pub. L. 102-486, title XVI, §1602, Oct. 24, 1992, 106 Stat. 2999.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (a), was in the original "this title" meaning title XVI of Pub. L. 102-486, Oct. 24, 1992, 106 Stat. 2999, which enacted this subchapter and repealed sections 7361 to 7364 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13471 of this title.

§ 13383. Director of Climate Protection

Within 6 months after October 24, 1992, the Secretary shall establish, within the Department of Energy, a Director of Climate Protection (in this section referred to as the "Director"). The Director shall—

(1) in the absence of the Secretary, serve as the Secretary's representative for interagency and multilateral policy discussions of global climate change, including the activities of the Committee on Earth and Environmental Sciences as established by the Global Change Research Act of 1990 (Public Law 101-606) [15 U.S.C. 2921 et seq.] and the Policy Coordinating Committee Working Group on Climate Change;

(2) monitor, in cooperation with other Federal agencies, domestic and international policies for their effects on the generation of greenhouse gases; and

(3) have the authority to participate in the planning activities of relevant Department of Energy programs.

(Pub. L. 102-486, title XVI, §1603, Oct. 24, 1992, 106 Stat. 3001.)

REFERENCES IN TEXT

The Global Change Research Act of 1990, referred to in par. (1), is Pub. L. 101-606, Nov. 16, 1990, 104 Stat. 3096, which is classified generally to chapter 56A (§2921 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2921 of Title 15 and Tables.

§ 13384. Assessment of alternative policy mechanisms for addressing greenhouse gas emissions

Not later than 18 months after October 24, 1992, the Secretary shall transmit a report to

Congress containing a comparative assessment of alternative policy mechanisms for reducing the generation of greenhouse gases. Such assessment shall include a short-run and long-run analysis of the social, economic, energy, environmental, competitive, and agricultural costs and benefits, including costs and benefits for jobs and competition, and the practicality of each of the following policy mechanisms:

(1) Various systems for controlling the generation of greenhouse gases, including caps for the generation of greenhouse gases from major sources and emissions trading programs.

(2) Federal standards for energy efficiency for major sources of greenhouse gases, including efficiency standards for power plants, industrial processes, automobile fuel economy, appliances, and buildings, and for emissions of methane.

(3) Various Federal and voluntary incentives programs.

(Pub. L. 102-486, title XVI, §1604, Oct. 24, 1992, 106 Stat. 3002.)

§ 13385. National inventory and voluntary reporting of greenhouse gases

(a) National inventory

Not later than one year after October 24, 1992, the Secretary, through the Energy Information Administration, shall develop, based on data available to, and obtained by, the Energy Information Administration, an inventory of the national aggregate emissions of each greenhouse gas for each calendar year of the baseline period of 1987 through 1990. The Administrator of the Energy Information Administration shall annually update and analyze such inventory using available data. This subsection does not provide any new data collection authority.

(b) Voluntary reporting

(1) Issuance of guidelines

Not later than 18 months after October 24, 1992, the Secretary shall, after opportunity for public comment, issue guidelines for the voluntary collection and reporting of information on sources of greenhouse gases. Such guidelines shall establish procedures for the accurate voluntary reporting of information on—

(A) greenhouse gas emissions—

(i) for the baseline period of 1987 through 1990; and

(ii) for subsequent calendar years on an annual basis;

(B) annual reductions of greenhouse gas emissions and carbon fixation achieved through any measures, including fuel switching, forest management practices, tree planting, use of renewable energy, manufacture or use of vehicles with reduced greenhouse gas emissions, appliance efficiency, energy efficiency, methane recovery, cogeneration, chlorofluorocarbon capture and replacement, and power plant heat rate improvement;

(C) reductions in greenhouse gas emissions achieved as a result of—

(i) voluntary reductions;

(ii) plant or facility closings; and

(iii) State or Federal requirements; and

(D) an aggregate calculation of greenhouse gas emissions by each reporting entity.

Such guidelines shall also establish procedures for taking into account the differential radiative activity and atmospheric lifetimes of each greenhouse gas.

(2) Reporting procedures

The Administrator of the Energy Information Administration shall develop forms for voluntary reporting under the guidelines established under paragraph (1), and shall make such forms available to entities wishing to report such information. Persons reporting under this subsection shall certify the accuracy of the information reported.

(3) Confidentiality

Trade secret and commercial or financial information that is privileged or confidential shall be protected as provided in section 552(b)(4) of title 5.

(4) Establishment of data base

Not later than 18 months after October 24, 1992, the Secretary, through the Administrator of the Energy Information Administration, shall establish a data base comprised of information voluntarily reported under this subsection. Such information may be used by the reporting entity to demonstrate achieved reductions of greenhouse gases.

(c) Consultation

In carrying out this section, the Secretary shall consult, as appropriate, with the Administrator of the Environmental Protection Agency.

(Pub. L. 102-486, title XVI, §1605, Oct. 24, 1992, 106 Stat. 3002.)

§ 13386. Export of domestic energy resource technologies to developing countries

The Secretary, through the Trade Promotion Coordinating Council, shall develop policies and programs to encourage the export and promotion of domestic energy resource technologies, including renewable energy, energy efficiency, and clean coal technologies, to developing countries.

(Pub. L. 102-486, title XVI, §1607, Oct. 24, 1992, 106 Stat. 3003.)

§ 13387. Innovative environmental technology transfer program

(a) Establishment of program

The Secretary, through the Agency for International Development, and in consultation with the interagency working group established under section 6276(d) of this title (in this section referred to as the "interagency working group",¹ shall establish a technology transfer program to carry out the purposes described in subsection (b) of this section. Within 150 days after October 24, 1992, the Secretary and the Administrator of the Agency for International Development shall enter into a written agreement to carry out this

section. The agreement shall establish a procedure for resolving any disputes between the Secretary and the Administrator regarding the implementation of specific projects. With respect to countries not assisted by the Agency for International Development, the Secretary may enter into agreements with other appropriate Federal agencies. If the Secretary and the Administrator, or the Secretary and an agency described in the previous sentence, are unable to reach an agreement, each shall send a memorandum to the President outlining an appropriate agreement. Within 90 days after receipt of either memorandum, the President shall determine which version of the agreement shall be in effect. Any agreement entered into under this subsection shall be provided to the appropriate committees of the Congress and made available to the public.

(b) Purposes of program

The purposes of the technology transfer program under this section are to—

(1) reduce the United States balance of trade deficit through the export of United States energy technologies and technological expertise;

(2) retain and create manufacturing and related service jobs in the United States;

(3) encourage the export of United States technologies, including services related thereto, to those countries that have a need for developmentally sound facilities to provide energy derived from technologies that substantially reduce environmental pollutants, including greenhouse gases;

(4) develop markets for United States technologies, including services related thereto, that substantially reduce environmental pollutants, including greenhouse gases, that meet the energy and environmental requirements of foreign countries;

(5) better ensure that United States participation in energy-related projects in foreign countries includes participation by United States firms as well as utilization of United States technologies;

(6) ensure the introduction of United States firms and expertise in foreign countries;

(7) provide financial assistance by the Federal Government to foster greater participation by United States firms in the financing, ownership, design, construction, or operation of technologies or services that substantially reduce environmental pollutants, including greenhouse gases; and

(8) assist United States firms, especially firms that are in competition with firms in foreign countries, to obtain opportunities to transfer technologies to, or undertake projects in, foreign countries.

(c) Identification

Pursuant to the agreements required by subsection (a) of this section, the Secretary, through the Agency for International Development, and after consultation with the interagency working group, United States firms, and representatives from foreign countries, shall develop mechanisms to identify potential energy projects in host countries that substantially reduce environmental pollutants, including greenhouse gases, and shall identify a list of such

¹So in original. Probably should be preceded by a closing parenthesis.

projects within 240 days after October 24, 1992, and periodically thereafter.

(d) Financial mechanisms

(1) Pursuant to the agreements under subsection (a) of this section, the Secretary, through the Agency for International Development, shall—

(A) establish appropriate financial mechanisms to increase the participation of United States firms in energy projects, and services related thereto, that substantially reduce environmental pollutants, including greenhouse gases in foreign countries;

(B) utilize available financial assistance authorized by this section to counterbalance assistance provided by foreign governments to non-United States firms; and

(C) provide financial assistance to support projects.

(2) The financial assistance authorized by this section may be—

(A) provided in combination with other forms of financial assistance, including non-Federal funding that may be available for the project; and

(B) utilized in conjunction with financial assistance programs available through other Federal agencies.

(3) United States obligations under the Arrangement on Guidelines for Officially Supported Export Credits established through the Organization for Economic Cooperation and Development shall be applicable to this section.

(e) Solicitations for project proposals

(1) Pursuant to the agreements under subsection (a) of this section, the Secretary, through the Agency for International Development, within one year after October 24, 1992, and subsequently as appropriate thereafter, shall solicit proposals from United States firms for the design, construction, testing, and operation of the project or projects identified under subsection (c) of this section which propose to utilize a United States technology or service. Each solicitation under this section shall establish a closing date for receipt of proposals.

(2) The solicitation under this subsection shall, to the extent appropriate, be modeled after the RFP No. DE-PS01-90FE62271 Clean Coal Technology IV, as administered by the Department of Energy.

(3) Any solicitation made under this subsection shall include the following requirements:

(A) The United States firm that submits a proposal in response to the solicitation shall have an equity interest in the proposed project.

(B) The project shall utilize a United States technology, including services related thereto, that substantially reduce environmental pollutants, including greenhouse gases, in meeting the applicable energy and environmental requirements of the host country.

(C) Proposals for projects shall be submitted by and undertaken with a United States firm, although a joint venture or other teaming arrangement with a non-United States manufacturer or other non-United States entity is permissible.

(f) Assistance to United States firms

Pursuant to the agreements under subsection (a) of this section, the Secretary, through the Agency for International Development, and in consultation with the interagency working group, shall establish a procedure to provide financial assistance to United States firms under this section for a project identified under subsection (c) of this section where solicitations for the project are being conducted by the host country or by a multilateral lending institution.

(g) Other program requirements

Pursuant to the agreements under subsection (a) of this section, the Secretary, through the Agency for International Development, and in consultation with the interagency working group, shall—

(1) establish eligibility criteria for countries that will host projects;

(2) periodically review the energy needs of such countries and export opportunities for United States firms for the development of projects in such countries;

(3) consult with government officials in host countries and, as appropriate, with representatives of utilities or other entities in host countries, to determine interest in and support for potential projects; and

(4) determine whether each project selected under this section is developmentally sound, as determined under the criteria developed by the Development Assistance Committee of the Organization for Economic Cooperation and Development.

(h) Eligible technologies

Not later than 6 months after October 24, 1992, the Secretary shall prepare a list of eligible technologies and services under this section. In preparing such a list, the Secretary shall consider fuel cell powerplants, aeroderivative gas turbines and catalytic combustion technologies for aeroderivative gas turbines, ocean thermal energy conversion technology, anaerobic digester and storage tanks, and other renewable energy and energy efficiency technologies.

(i) Selection of projects

(1) Pursuant to the agreements under subsection (a) of this section, the Secretary, through the Agency for International Development, shall, not later than 120 days after receipt of proposals in response to a solicitation under subsection (e) of this section, select one or more proposals under this section.

(2) In selecting a proposal under this section, the Secretary, through the Agency for International Development, shall consider—

(A) the ability of the United States firm, in cooperation with the host country, to undertake and complete the project;

(B) the degree to which the equipment to be included in the project is designed and manufactured in the United States;

(C) the long-term technical and competitive viability of the United States technology, and services related thereto, and the ability of the United States firm to compete in the development of additional energy projects using such technology in the host country and in other foreign countries;

(D) the extent of technical and financial involvement of the host country in the project;

(E) the extent to which the proposed project meets the purposes of this section;

(F) the extent of technical, financial, management, and marketing capabilities of the participants in the project, and the commitment of the participants to completion of a successful project in a manner that will facilitate acceptance of the United States technology or service for future application; and

(G) such other criteria as may be appropriate.

(3) In selecting among proposed projects, the Secretary shall seek to ensure that, relative to otherwise comparable projects in the host country, a selected project will meet the following criteria:

(A) It will reduce environmental emissions, including greenhouse gases, to an extent greater than required by applicable provisions of law.

(B) It will be a more cost-effective technological alternative, based on life cycle capital and operating costs per unit of energy produced and, where applicable, costs per unit of product produced.

(C) It will increase the overall efficiency of energy use.

Priority in selection shall be given to those projects which, in the judgment of the Secretary, best meet these criteria.

(j) United States-Asia Environmental Partnership

Activities carried out under this section shall be coordinated with the United States-Asia Environmental Partnership.

(k) Buy America

In carrying out this section, the Secretary, through the Agency for International Development, and pursuant to the agreements under subsection (a) of this section, shall ensure—

(1) the maximum percentage, but in no case less than 50 percent, of the cost of any equipment furnished in connection with a project authorized under this section shall be attributable to the manufactured United States components of such equipment; and

(2) the maximum participation of United States firms.

In determining whether the cost of United States components equals or exceeds 50 percent, the cost of assembly of such United States components in the host country shall not be considered a part of the cost of such United States component.

(l) Report to Congress

The Secretary and the Administrator of the Agency for International Development shall report annually to the Committee on Energy and Natural Resources of the Senate and the appropriate committees of the House of Representatives on the progress being made to introduce innovative energy technologies, and services related thereto, that substantially reduce environmental pollutants, including greenhouse gases, into foreign countries.

(m) Definitions

For purposes of this section—

(1) the term “host country” means a foreign country which is—

(A) the participant in or the site of the proposed innovative energy technology project; and

(B) either—

(i) classified as a country eligible to participate in development assistance programs of the Agency for International Development pursuant to applicable law or regulation; or

(ii) a developing country; and

(2) the term “developing country” includes, but is not limited to, countries in Central and Eastern Europe or in the independent states of the former Soviet Union.

(n) Authorization of appropriations

There are authorized to be appropriated to the Secretary to carry out the program required by this section, \$100,000,000 for each of the fiscal years 1993, 1994, 1995, 1996, 1997, and 1998.

(Pub. L. 102-486, title XVI, § 1608, Oct. 24, 1992, 106 Stat. 3003.)

§ 13388. Global Climate Change Response Fund

(a) Establishment of Fund

The Secretary of the Treasury, in consultation with the Secretary of State, shall establish a Global Climate Change Response Fund to act as a mechanism for United States contributions to assist global efforts in mitigating and adapting to global climate change.

(b) Restrictions on deposits

No deposits shall be made to the Global Climate Change Response Fund until the United States has ratified the United Nations Framework Convention on Climate Change.

(c) Use of Fund

Moneys deposited into the Fund shall be used by the President, to the extent authorized and appropriated under section 2222 of title 22, solely for contributions to a financial mechanism negotiated pursuant to the United Nations Framework Convention on Climate Change, including all protocols or agreements related thereto.

(d) Authorization of appropriations

There are authorized to be appropriated for deposit in the Fund to carry out the purposes of this section, \$50,000,000 for fiscal year 1994 and such sums as may be necessary for fiscal years 1995 and 1996.

(Pub. L. 102-486, title XVI, § 1609, Oct. 24, 1992, 106 Stat. 3007.)

SUBCHAPTER VIII—REDUCTION OF OIL VULNERABILITY

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 5905, 13522, 13525 of this title.

§ 13401. Goals

It is the goal of the United States in carrying out energy supply and energy conservation research and development—

(1) to strengthen national energy security by reducing dependence on imported oil;

(2) to increase the efficiency of the economy by meeting future needs for energy services at the lowest total cost to the Nation, including environmental costs, giving comparable consideration to technologies that enhance energy supply and technologies that improve the efficiency of energy end uses;

(3) to reduce the air, water, and other environmental impacts (including emissions of greenhouse gases) of energy production, distribution, transportation, and utilization, through the development of an environmentally sustainable energy system;

(4) to maintain the technological competitiveness of the United States and stimulate economic growth through the development of advanced materials and technologies;

(5) to foster international cooperation by developing international markets for domestically produced sustainable energy technologies, and by transferring environmentally sound, advanced energy systems and technologies to developing countries to promote sustainable development;

(6) to consider the comparative environmental and public health impacts of the energy to be produced or saved by the specific activities;

(7) to consider the obstacles inherent in private industry's development of new energy technologies and steps necessary for establishing or maintaining technological leadership in the area of energy and energy efficiency resource technologies; and

(8) to consider the contribution of a given activity to fundamental scientific knowledge.

(Pub. L. 102-486, title XX, § 2001, Oct. 24, 1992, 106 Stat. 3057.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13431, 13451, 13471, 13522, 13523 of this title.

PART A—OIL AND GAS SUPPLY ENHANCEMENT

§ 13411. Enhanced oil recovery

(a) Program direction

The Secretary shall conduct a 5-year program, in accordance with sections 13541 and 13542 of this title, on technologies to increase the recoverability of domestic oil resources to—

(1) improve reservoir characterization;

(2) improve analysis and field verification;

(3) field test and demonstrate enhanced oil recovery processes, including advanced processes, in reservoirs the Secretary considers to be of high priority, ranked primarily on the basis of oil recovery potential and risk of abandonment;

(4) transfer proven recovery technologies to producers and operators of wells, including stripper wells, that would otherwise be likely to be abandoned in the near term due to declining production;

(5) improve enhanced oil recovery process technology for more economic and efficient oil production;

(6) identify and develop new recovery technologies;

(7) study reservoir properties and how they affect oil recovery from porous media;

(8) improve techniques for meeting environmental requirements;

(9) improve data bases of reservoir and environmental conditions; and

(10) lower lifting costs on stripper wells by utilizing advanced renewable energy technologies such as small wind turbines and others.

(b) Program goals

(1) Near-term priorities

The near-term priorities of the program include preserving access to high potential reservoirs, identifying available technologies that can extend the lifetime of wells and of stripper well property, and developing environmental field operations for waste disposal and injection practices.

(2) Mid-term priorities

The mid-term priorities of the program include developing and testing identified but unproven technologies, and transferring those technologies for widespread use.

(3) Long-term priorities

The long-term priorities of the program include developing advanced techniques to recover oil not recoverable by other techniques.

(c) Accelerated program plan

Within 180 days after October 24, 1992, the Secretary shall prepare and submit to the Congress a plan for carrying out under this section the accelerated field testing of technologies to achieve the priorities stated in subsection (b) of this section. In preparing the plan, the Secretary shall consult with appropriate representatives of industry, institutions of higher education, Federal agencies, including national laboratories, and professional and technical societies, and with the Advisory Board established under section 13522 of this title.

(d) Proposals

Within 1 year after October 24, 1992, the Secretary shall solicit proposals for conducting activities under this section.

(e) Consultation

In carrying out the provisions of this section, the Secretary shall consult representatives of the oil and gas industry with respect to innovative research and development proposals to improve oil and gas recovery and shall consider relevant technical data from industry and other research and information centers and institutes.

(f) Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this section, including advanced extraction and process technology, \$57,250,000 for fiscal year 1993 and \$70,000,000 for fiscal year 1994.

(Pub. L. 102-486, title XX, § 2011, Oct. 24, 1992, 106 Stat. 3057.)

§ 13412. Oil shale

(a) Program direction

The Secretary shall conduct a 5-year program, in accordance with sections 13541 and 13542 of this title, on oil shale extraction and conver-

sion, including research and development on both eastern and western shales, as provided in this section.

(b) Program goals

The goals of the program established under this section include—

- (1) supporting the development of economically competitive and environmentally acceptable technologies to produce domestic supplies of liquid fuels from oil shale;
- (2) increasing knowledge of environmentally acceptable oil shale waste disposal technologies and practices;
- (3) increasing knowledge of the chemistry and kinetics of oil shale retorting;
- (4) increasing understanding of engineering issues concerning the design and scale-up of oil shale extraction and conversion technologies;
- (5) improving techniques for oil shale mining systems; and
- (6) providing for cooperation with universities and other private sector entities.

(c) Eastern oil shale program

(1) As part of the program authorized by this section, the Secretary shall carry out a program on oil shale that includes applied research, in cooperation with universities and the private sector, on eastern oil shale that may have the potential to decrease United States dependence on energy imports.

(2) As part of the program authorized by this subsection, the Secretary shall consider the potential benefits of including in that program applied research carried out in cooperation with universities and other private sector entities that are, as of October 24, 1992, engaged in research on eastern oil shale retorting and associated processes.

(3) The program carried out under this subsection shall be cost-shared with universities and the private sector to the maximum extent possible.

(d) Western oil shale program

As part of the program authorized by this section, the Secretary shall carry out a program on extracting oil from western oil shales that includes, if appropriate, establishment and utilization of at least one field testing center for the purpose of testing, evaluating, and developing improvements in oil shale technology at the field test level. In establishing such a center, the Secretary shall consider sites with existing oil shale mining and processing infrastructure and facilities. Sixty days prior to establishing any such field testing center, the Secretary shall submit a report to Congress on the center to be established.

(e) Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this section \$5,250,000 for fiscal year 1993 and \$6,000,000 for fiscal year 1994.

(Pub. L. 102-486, title XX, § 2012, Oct. 24, 1992, 106 Stat. 3058.)

§ 13413. Natural gas supply

(a) Program direction

The Secretary shall conduct a 5-year program, in accordance with sections 13541 and 13542 of

this title, to increase the recoverable natural gas resource base including, but not limited to—

- (1) more intensive recovery of natural gas from discovered conventional resources;
- (2) the extraction of natural gas from tight gas sands and devonian shales or other unconventional sources;
- (3) surface gasification of coal; and
- (4) recovery of methane from biofuels including municipal solid waste.

(b) Proposals

Within 1 year after October 24, 1992, the Secretary shall solicit proposals for conducting activities under this section.

(c) Cofiring of natural gas and coal

(1) Program

The Secretary shall establish and carry out a 5-year program, in accordance with sections 13541 and 13542 of this title, on cofiring natural gas with coal in utility and large industrial boilers in order to determine optimal natural gas injection levels for both environmental and operational benefits.

(2) Financial assistance

The Secretary shall enter into agreements with, and provide financial assistance to, appropriate parties for application of cofiring technologies to boilers to demonstrate this technology.

(3) Report to Congress

The Secretary shall, before December 31, 1995, submit to the Congress a report on the progress made in carrying out this subsection.

(d) Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this section and sections 13414 and 13415 of this title, \$29,745,000 for fiscal year 1993 and \$45,000,000 for fiscal year 1994.

(Pub. L. 102-486, title XX, § 2013, Oct. 24, 1992, 106 Stat. 3059.)

§ 13414. Natural gas end-use technologies

The Secretary shall carry out a 5-year program, in accordance with sections 13541 and 13542 of this title, on new and advanced natural gas utilization technologies including, but not limited to—

- (1) stationary source emissions control and efficiency improvements including combustion systems, industrial processes, cogeneration, and waste fuels; and
- (2) natural gas storage including increased deliverability from existing gas storage facilities and new capabilities for storage near demand centers, and on-site storage at major energy consuming facilities.

(Pub. L. 102-486, title XX, § 2014, Oct. 24, 1992, 106 Stat. 3060.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13413 of this title.

§ 13415. Midcontinent Energy Research Center

(a) Finding

Congress finds that petroleum resources in the midcontinent region of the United States are very large but are being prematurely abandoned.

(b) Purposes

The purposes of this section are to—

- (1) improve the efficiency of petroleum recovery;
- (2) increase ultimate petroleum recovery; and
- (3) delay the abandonment of resources.

(c) Establishment

The Secretary may establish the Midcontinent Energy Research Center (referred to in this section as the “Center”) to—

- (1) conduct research in petroleum geology and engineering focused on improving the recovery of petroleum from existing fields and established plays in the upper midcontinent region of the United States; and
- (2) ensure that the results of the research described in paragraph (1) are transferred to users.

(d) Research**(1) In general**

In conducting research under this section, the Center shall, to the extent practicable, cooperate with agencies of the Federal Government, the States in the midcontinent region of the United States, and the affected industry.

(2) Programs

Research programs conducted by the Center may include—

- (A) data base development and transfer of technology;
- (B) reservoir management;
- (C) reservoir characterization;
- (D) advanced recovery methods; and
- (E) development of new technology.

(Pub. L. 102-486, title XX, § 2015, Oct. 24, 1992, 106 Stat. 3060.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13413 of this title.

PART B—OIL AND GAS DEMAND REDUCTION AND SUBSTITUTION

§ 13431. General transportation**(a) Program direction**

The Secretary shall conduct a 5-year program, in accordance with sections 13541 and 13542 of this title, on cost effective technologies to reduce the demand for oil in the transportation sector for all motor vehicles, including existing vehicles, through increased energy efficiency and the use of alternative fuels. Such program shall include a broad range of technological approaches, and shall include field demonstrations of sufficient scale and number in operating environments to prove technical and economic viability to meet the goals stated in section 13401 of this title. Such program shall include the activities required under sections 13432 through 13437 of this title, and ongoing activities of a similar nature at the Department of Energy.

(b) Program plan

Within 180 days after October 24, 1992, the Secretary shall prepare and submit to the Congress a 5-year program plan to guide activities under

this part. In preparing the program plan, the Secretary shall consult with appropriate representatives of industry, utilities, institutions of higher education, Federal agencies, including national laboratories, and professional and technical societies.

(c) Proposals

Within 1 year after October 24, 1992, the Secretary shall solicit proposals for conducting activities under this section.

(d) “Alternative fuels” defined

For purposes of this part, the term “alternative fuels” includes natural gas, liquefied petroleum gas, hydrogen, fuels other than alcohol that are derived from biological materials, and any fuel the content of which is at least 85 percent by volume methanol, ethanol, or other alcohol.

(e) Authorization of appropriations

(1) There are authorized to be appropriated to the Secretary for carrying out this part, including all transportation sector energy conservation research and development (other than activities under section 13435 of this title) and all transportation sector biofuels energy systems under solar energy, \$119,144,000 for fiscal year 1993 and \$160,000,000 for fiscal year 1994.

(2) There are authorized to be appropriated to the Secretary for carrying out section 13435 of this title—

- (A) \$60,300,000 for fiscal year 1993;
- (B) \$75,000,000 for fiscal year 1994;
- (C) \$80,000,000 for fiscal year 1995;
- (D) \$80,000,000 for fiscal year 1996;
- (E) \$90,000,000 for fiscal year 1997; and
- (F) \$100,000,000 for fiscal year 1998.

(Pub. L. 102-486, title XX, § 2021, Oct. 24, 1992, 106 Stat. 3061.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13437, 13471 of this title.

§ 13432. Advanced automotive fuel economy**(a) Program direction**

The Secretary shall conduct a program, in accordance with sections 13541 and 13542 of this title, to supplement ongoing research activities of a similar nature at the Department of Energy, to accelerate the near-term and mid-term development of advanced technologies to improve the fuel economy of light-duty passenger vehicles powered by a piston engine, and hybrid vehicles powered by a combination of piston engine and electric motor.

(b) Program goal

The goal of the program established under subsection (a) of this section shall be to stimulate the development of emerging technologies with the potential to achieve significant improvements in fuel economy while reducing emissions of air pollutants.

(c) Proposals

Within 1 year after October 24, 1992, the Secretary shall solicit proposals for conducting activities under this section, making a special effort to involve small businesses in the program.

(Pub. L. 102-486, title XX, § 2022, Oct. 24, 1992, 106 Stat. 3061.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13431 of this title.

§ 13433. Alternative fuel vehicle program

(a) Program direction

The Secretary shall carry out a program, in accordance with sections 13541 and 13542 of this title, on techniques related to improving natural gas and other alternative fuel vehicle technology, including—

- (1) fuel injection;
 - (2) carburetion;
 - (3) manifolding;
 - (4) combustion;
 - (5) power optimization;
 - (6) efficiency;
 - (7) lubricants and detergents;
 - (8) engine durability;
 - (9) ignition, including fuel additives to assist ignition;
 - (10) multifuel engines;
 - (11) emissions control, including catalysts;
 - (12) novel gas compression concepts;
 - (13) advanced storage systems;
 - (14) advanced gaseous fueling technologies;
- and
- (15) the incorporation of advanced materials in these areas.

(b) Cooperative agreements and assistance

The Secretary may enter into cooperative agreements with, and provide financial assistance to, public or private entities willing to provide 50 percent of the costs of a program to perform activities under subsection (a) of this section.

(c) Definitions

For purposes of this section—

- (1) the term “alternative fuel vehicle” means a motor vehicle that operates on alternative fuels; and
- (2) the term “motor vehicle” includes any automobile, truck, bus, van, or other on-road or off-road motor vehicle, including a boat.

(Pub. L. 102-486, title XX, § 2023, Oct. 24, 1992, 106 Stat. 3062.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13431 of this title.

§ 13434. Biofuels user facility

(a) The Secretary shall establish a biofuels user facility to expedite industry adoption of biofuels technologies, including production of alcohol fuels from biomass.

(b) The Secretary, through such universities and colleges as the Secretary determines are qualified, shall establish a program, in accordance with sections 13541 and 13542 of this title, with respect to the production and use of diesel fuels from vegetable oils or animal fats. The program shall investigate—

- (1) the economic feasibility of production of oilseed crops for biofuels purposes; and
- (2) the establishment of a mobile small-scale oilseed pressing and esterification unit and a

stationary small-scale commercial oilseed pressing and esterification unit.

(Pub. L. 102-486, title XX, § 2024, Oct. 24, 1992, 106 Stat. 3062.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13431 of this title.

§ 13435. Electric motor vehicles and associated equipment research and development

(a) General

The Secretary shall conduct, pursuant to the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5901-5920), a research and development program on electric motor vehicles and associated equipment. Such program shall be conducted in cooperation with the electric utility industry, and automobile industry, battery manufacturers, and such other persons as the Secretary considers appropriate.

(b) Comprehensive plan

(1) The Secretary shall prepare a comprehensive 5-year program plan for carrying out the purposes of this section. Such comprehensive plan shall be updated biennially for a period of not less than 10 years after October 24, 1992.

(2) The comprehensive plan under paragraph (1) shall be prepared in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Transportation, the Secretary of Commerce, the heads of other appropriate Federal agencies, representatives of the electric utility industry, electric motor vehicle manufacturers, the United States automobile industry, and such other persons as the Secretary considers appropriate.

(3) The comprehensive plan shall include—

- (A) a prioritization of research areas critical to the commercialization of electric motor vehicles, including advanced battery technology;
- (B) the program elements, management structure, and activities, including program responsibilities, of Federal agencies;
- (C) the program strategies, including technical milestones to be achieved toward specific goals during each fiscal year of the comprehensive plan for all major activities and projects;
- (D) the estimated costs of individual program elements, including estimated costs for each of the fiscal years of the comprehensive plan for each of the participating Federal agencies;
- (E) a description of the methods of technology transfer;
- (F) a proposal for participation by non-Federal entities in the implementation of the comprehensive plan; and
- (G) such other information as the Secretary considers appropriate.

(4) Not later than 180 days after October 24, 1992, the Secretary shall transmit the comprehensive plan to the Congress. Biennial updates shall be submitted to the Congress.

(c) Cooperative agreements

The Secretary, consistent with the comprehensive plan under subsection (b) of this section,

may enter into cooperative agreements to conduct research and development projects with industry in such areas of technology development as—

- (1) high efficiency electric power trains, including advanced motors, motor controllers, and hybrid power trains for electric motor vehicle range improvement;
- (2) light-weight structures for electric motor vehicle weight reduction;
- (3) advanced batteries with high energy density and power density, and improved range or recharging cycles for a given unit weight, for electric motor vehicle application;
- (4) hybrid power trains incorporating an electric motor and recyclable battery charged by an onboard liquid fuel engine, designed to significantly improve fuel economies while maintaining acceleration characteristics comparable to a conventionally fueled vehicle;
- (5) batteries and fuel cells for electric-hybrid vehicle application;
- (6) fuel cells and fuel cell systems for primary electric motor vehicle power sources; and
- (7) photovoltaics for use with electric motor vehicles.

(d) Solicitation of proposals

(1) Within one year after October 24, 1992, the Secretary shall solicit proposals for cooperative agreements for research and development under subsection (c) of this section.

(2) Thereafter, the Secretary may solicit additional proposals for cooperative agreements under subsection (c) of this section if, in the judgment of the Secretary, such cooperative agreements could contribute to the development of electric motor vehicles and associated equipment.

(e) Cost-sharing

(1) The Secretary shall require at least 50 percent of the costs directly and specifically related to any cooperative agreement under this section, other than a cooperative agreement under subsection (j) of this section, to be from non-Federal sources. Such share may be in the form of cash, personnel, services, equipment, and other resources.

(2) The Secretary may reduce the amount of costs required to be provided by non-Federal sources under paragraph (1), if the Secretary determines that the reduction is necessary and appropriate—

- (A) considering the technological risks involved in the project; and
- (B) in order to meet the objectives of this section.

(f) Deployment

(1) The Secretary shall conduct a program designed to accelerate deployment of advanced battery technologies for use with electric motor vehicles.

(2) In carrying out the program authorized by this subsection, the Secretary shall—

- (A) undertake an inventory and assessment of advanced battery technologies and electric motor vehicle technologies and the commercial capability of such technologies; and
- (B) develop a Federal industry information exchange program to improve the deployment

or use of such technologies, which may consist of workshops, publications, conferences, and a data base for use by the public and private sectors.

(g) Domestic parts manufacturers

In carrying out this section, the Secretary of Commerce, in consultation with the Secretary of Commerce, shall issue regulations to ensure that the procurement practices of participating electric motor vehicle and associated equipment manufacturers do not discriminate against the United States manufacturers of vehicle parts.

(h) Hold harmless

Nothing in this section shall be construed to alter, affect, modify, or change any activities or agreements initiated prior to October 24, 1992, with domestic motor vehicle manufacturers through joint venture or consortium agreements regarding batteries for electric motor vehicles.

(i) Consultation

The Secretary shall consult with the Administrator of the Environmental Protection Agency and the Secretary of Transportation in carrying out this section.

(j) Fuel cells for transportation

(1) The Secretary shall develop and implement a comprehensive program of research, development, and demonstration of fuel cells and related systems for transportation applications through the establishment of one or more cooperative programs among industry, government, and research institutions to develop and demonstrate the use of fuel cells as the primary power source for private and mass transit vehicles and other mobile applications.

(2) Research, development, and demonstration activities under this subsection shall be designed to incorporate one or more of the following priorities:

- (A) The potential for near-term to mid-term commercialization.
- (B) The ability of the systems to use a variety of renewable and nonfossil fuels.
- (C) Emission reduction and energy conservation potential.
- (D) The potential to utilize fuel cells and fuel cell systems developed under Department of Defense and National Aeronautics and Space Administration programs.
- (E) The potential to take maximum practical advantage of advances made in electric motor vehicle research, stationary source fuel cell research, and other research activities authorized by this subchapter.

(3)(A) Research, development, and demonstration projects selected by the Secretary under this subsection shall apply to—

- (i) passenger vehicles;
- (ii) vans and utility vehicles;
- (iii) light rail systems and locomotives;
- (iv) trucks, including long-haul trucks, dump trucks, and garbage trucks;
- (v) passenger buses;
- (vi) non-chlorofluorocarbon mobile refrigeration systems;
- (vii) marine vessels, including recreational marine engines; or
- (viii) mobile engines and power generation, including recreational generators, and industrial and construction equipment.

(B) The Secretary shall establish programs to undertake research, development, and demonstration activities for the applications listed in clauses (i) through (viii) of subparagraph (A) in each of fiscal years 1993, 1994, 1995, and 1996, based on the priorities established in paragraph (2), so that by the end of the period, research, development, and demonstration activities are under way for the applications under each such clause. The initiatives authorized and implemented pursuant to this subsection shall be in addition to any other fuel cell programs authorized in existing law.

(k) Definitions

For purposes of this section—

(1) the term “advanced battery technology” means electrochemical storage devices and systems, including fuel cells, and associated technology necessary to charge, discharge, recharge, or regenerate such devices, for use as a source of power for an electric motor vehicle and any other associated equipment;

(2) the term “associated equipment” means equipment necessary for the regeneration, refueling, or recharging of batteries or other forms of electric energy used to power an electric motor vehicle and, in the case of electric-hybrid vehicles, such term includes nonpetroleum-related equipment necessary for, and solely related to, the demonstration of such vehicles;

(3) the term “electric motor vehicle” means a motor vehicle primarily powered by an electric motor that draws current from rechargeable storage batteries, fuel cells, photovoltaic arrays, or other sources of electric current and may include an electric-hybrid vehicle; and

(4) the term “electric-hybrid vehicle” means vehicle primarily powered by an electric motor that draws current from rechargeable storage batteries, fuel cells, or other sources of electric current and also relies on a nonelectric source of power that also operates on or is capable of operating on a nonelectrical source of power.

(Pub. L. 102-486, title XX, §2025, Oct. 24, 1992, 106 Stat. 3063; Pub. L. 105-362, title IV, §402(a), Nov. 10, 1998, 112 Stat. 3283.)

REFERENCES IN TEXT

The Federal Nonnuclear Energy Research and Development Act of 1974, referred to in subsec. (a), is Pub. L. 93-577, Dec. 31, 1974, 88 Stat. 1878, as amended, which is classified generally to chapter 74 (§5901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5901 of this title and Tables.

AMENDMENTS

1998—Subsec. (b)(1). Pub. L. 105-362, §402(a)(1), substituted “biennially” for “annually” in second sentence.

Subsec. (b)(4). Pub. L. 105-362, §402(a)(2), substituted “Biennial updates” for “Annual updates” in second sentence.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13431 of this title.

§ 13436. Repealed. Pub. L. 104-271, title I, § 103(b)(2), Oct. 9, 1996, 110 Stat. 3306

Section, Pub. L. 102-486, title XX, §2026, Oct. 24, 1992, 106 Stat. 3066; Pub. L. 104-271, title I, §103(b)(1), Oct. 9, 1996, 110 Stat. 3306, related to a 5-year program on renewable hydrogen energy systems.

EFFECTIVE DATE OF REPEAL

Pub. L. 104-271, title I, §103(b)(2), Oct. 9, 1996, 110 Stat. 3306, provided that the repeal made by section 103(b)(2) is effective Oct. 1, 1998.

§ 13437. Advanced diesel emissions program

(a) Program direction

The Secretary shall initiate a 5-year program, in accordance with sections 13541 and 13542 of this title, on diesel engine combustion and engine systems, related advanced materials, and fuels and lubricants to reduce emissions oxides of nitrogen and particulates. Activities conducted under this program shall supplement activities of a similar nature at the Department of Energy. Such program shall include field demonstrations of sufficient scale and number in operating environments to prove technical and economic viability to meet the goal stated in subsection (b) of this section.

(b) Program goal

The goal of the program established under subsection (a) of this section shall be to accelerate the ability of United States diesel manufacturers to meet current and future oxides of nitrogen and particulate emissions requirements.

(c) Program plan

Within 180 days after October 24, 1992, the Secretary, in consultation with appropriate representatives of industry, institutions of higher education, Federal agencies, including national laboratories, and professional and technical societies, shall prepare and submit to the Congress a 5-year program plan to guide the activities under this section. Such plan shall be included as part of the plan required by section 13431(b) of this title.

(d) Solicitation of proposals

Within 1 year after October 24, 1992, the Secretary shall solicit proposals for conducting activities consistent with the 5-year program plan. (Pub. L. 102-486, title XX, §2027, Oct. 24, 1992, 106 Stat. 3066.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13431 of this title.

§ 13438. Telecommuting study

(a) Study

The Secretary, in consultation with the Secretary of Transportation, shall conduct a study of the potential costs and benefits to the energy and transportation sectors of telecommuting. The study shall include—

(1) an estimation of the amount and type of reduction of commuting by form of transportation type and numbers of commuters;

(2) an estimation of the potential number of lives saved;

(3) an estimation of the reduction in environmental pollution, in consultation with the Environmental Protection Agency;

(4) an estimation of the amount and type of reduction of energy use and savings by form of transportation type; and

(5) an estimation of the social impact of widespread use of telecommuting.

(b) Report to Congress

This study shall be completed no more than one hundred and eighty days after October 24, 1992. A report, summarizing the results of the study, shall be transmitted to the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate no more than sixty days after completion of this study.

(Pub. L. 102-486, title XX, § 2028, Oct. 24, 1992, 106 Stat. 3067.)

SUBCHAPTER IX—ENERGY AND ENVIRONMENT

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 5905, 13522, 13525 of this title.

PART A—IMPROVED ENERGY EFFICIENCY

§ 13451. General improved energy efficiency

(a) Program direction

The Secretary shall conduct a 5-year program, in accordance with sections 13541 and 13542 of this title, on cost effective technologies to improve energy efficiency and increase the use of renewable energy in the buildings, industrial, and utility sectors. Such program shall include a broad range of technological approaches, and shall include field demonstrations of sufficient scale and number to prove technical and economic viability to meet the goals stated in section 13401 of this title. Such program shall include the activities required under sections 13452, 13453, 13454, 13455, 13456, and 13457 of this title and section 2106¹ and ongoing activities of a similar nature at the Department of Energy. Such program shall also include the activities conducted pursuant to the Steel and Aluminum Energy Conservation and Technology Competitiveness Act of 1988 (Public Law 100-680) [15 U.S.C. 5101 et seq.] and the Department of Energy Metal Casting Competitiveness Research Act of 1990 (Public Law 101-425) [15 U.S.C. 5301 et seq.].

(b) Program goals

The goals of the program established under subsection (a) of this section shall include—

(1) in the buildings sector—

(A) to accelerate the development of technologies that will increase energy efficiency;

(B) to increase the use of renewable energy; and

(C) to reduce environmental impacts;

(2) in the industrial sector—

(A) to accelerate the development of technologies that will increase energy efficiency in order to improve productivity;

(B) to increase the use of renewable energy; and

(C) to reduce environmental impacts; and

(3) in the utility sector—

(A) to accelerate the development of technologies that will increase energy efficiency; and

(B) to increase the use of integrated resource planning.

(c) Program plan

Within 180 days after October 24, 1992, the Secretary shall prepare and submit to the Congress a 5-year program plan to guide activities under this part. In preparing the program plan, the Secretary shall consult with appropriate representatives of industry, utilities, institutions of higher education, Federal agencies, including national laboratories, and professional and technical societies.

(d) Proposals

Within 1 year after October 24, 1992, the Secretary shall solicit proposals for conducting activities under this section.

(e) Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this part, including all building, industry, and utility sectors energy conservation research and development, and inventions and innovation under energy conservation technical and financial assistance, \$178,250,000 for fiscal year 1993 and \$275,000,000 for fiscal year 1994.

(Pub. L. 102-486, title XXI, § 2101, Oct. 24, 1992, 106 Stat. 3067.)

REFERENCES IN TEXT

Section 2106, referred to in subsec. (a), means section 2106 of Pub. L. 102-486, which amended sections 5103, 5107, 5108, 5110, and 5307 of Title 15, Commerce and Trade.

The Steel and Aluminum Energy Conservation and Technology Competitiveness Act of 1988, referred to in subsec. (a), is Pub. L. 100-680, Nov. 17, 1988, 102 Stat. 4073, as amended, which is classified generally to chapter 77 (§ 5101 et seq.) of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 5101 of Title 15 and Tables.

The Department of Energy Metal Casting Competitiveness Research Act of 1990, referred to in subsec. (a), is Pub. L. 101-425, Oct. 15, 1990, 104 Stat. 915, as amended, which is classified generally to chapter 79 (§ 5301 et seq.) of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 15 and Tables.

This part, referred to in subsecs. (c) and (e), was in the original “this subtitle” meaning subtitle A of title XXI of Pub. L. 102-486, Oct. 24, 1992, 106 Stat. 3067, which enacted this part and amended sections 5103, 5107, 5108, 5110, and 5307 of Title 15.

DISTRICT HEATING AND COOLING PROGRAMS

Section 172 of Pub. L. 102-486 provided that:

“(a) IN GENERAL.—The Secretary, in consultation with appropriate industry organizations, shall conduct a study to—

“(1) assess existing district heating and cooling technologies to determine cost-effectiveness, technical performance, energy efficiency, and environmental impacts as compared to alternative methods for heating and cooling buildings;

“(2) estimate the economic value of benefits that may result from implementation of district heating and cooling systems but that are not currently recognized, such as reduced emissions of air pollutants, local economic development, and energy security;

“(3) evaluate the cost-effectiveness, including the economic value referred to in paragraph (2), of cogen-

¹ See References in Text note below.

erated district heating and cooling technologies compared to other alternatives for generating or conserving electricity; and

“(4) assess and make recommendations for reducing institutional and other constraints on the implementation of district heating and cooling systems.

“(b) REPORT.—Not later than 2 years after the date of the enactment of this Act [Oct. 24, 1992], the Secretary shall transmit to the Congress a report containing the findings, conclusions and recommendations, if any, of the Secretary for carrying out Federal, State, and local programs as a result of the study conducted under subsection (a).”

STUDY AND REPORT ON VIBRATION REDUCTION TECHNOLOGIES

Pub. L. 102-486, title I, §173, Oct. 24, 1992, 106 Stat. 2865, as amended by Pub. L. 105-362, title IV, §401(c), Nov. 10, 1998, 112 Stat. 3282, provided that:

“(a) IN GENERAL.—The Secretary shall, in consultation with the appropriate industry representatives, conduct a study to assess the cost-effectiveness, technical performance, energy efficiency, and environmental impacts of active noise and vibration cancellation technologies that use fast adapting algorithms.

“(b) PROCEDURE.—In carrying out such study, the Secretary shall—

“(1) estimate the potential for conserving energy and the economic and environmental benefits that may result from implementing active noise and vibration abatement technologies in demand side management; and

“(2) evaluate the cost-effectiveness of active noise and vibration cancellation technologies as compared to other alternatives for reducing noise and vibration.

“(c) DEMONSTRATION.—The Secretary may, based on the findings and conclusions of the study carried out under this section, conduct at least one project designed to demonstrate the commercial application of active noise and vibration cancellation technologies using fast adapting algorithms in products or equipment with a significant potential for increased energy efficiency.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13472, 13501, 13502 of this title; title 15 sections 5108, 5307.

§ 13452. Natural gas and electric heating and cooling technologies

(a) Program direction

(1) The Secretary shall conduct a 5-year program, in accordance with sections 13541 and 13542 of this title, on energy efficient natural gas and electric heating and cooling technologies for residential and commercial buildings.

(2) The natural gas heating and cooling program shall include activities on—

(A) thermally activated heat pumps, including absorption heat pumps and engine-driven heat pumps; and

(B) other advanced natural gas technologies, including fuel cells for residential and commercial applications.

(3) The electric heating and cooling program shall focus on—

(A) advanced heat pumps;

(B) thermal storage; and

(C) advanced electric HVAC (heating, ventilating, and air conditioning) and refrigeration systems that utilize replacements for chlorofluorocarbons.

(b) Proposals

Within 180 days after October 24, 1992, the Secretary shall solicit proposals for conducting activities under this section.

(Pub. L. 102-486, title XXI, §2102, Oct. 24, 1992, 106 Stat. 3068.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13451 of this title.

§ 13453. Pulp and paper

(a) Program direction

The Secretary shall conduct a 5-year program, in accordance with sections 13541 and 13542 of this title, on advanced pulp and paper technologies. Such program shall include activities on energy generation technologies, boilers, combustion processes, pulping processes (excluding de-inking), chemical recovery, causticizing, source reduction processes, and other related technologies that can improve the energy efficiency of, and reduce the adverse environmental impacts of, pulp and papermaking operations. This section does not authorize projects involving the combustion of waste paper, other than gasification.

(b) Proposals

Within 180 days after October 24, 1992, the Secretary shall solicit proposals for conducting activities under this section.

(Pub. L. 102-486, title XXI, §2103, Oct. 24, 1992, 106 Stat. 3069.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13451 of this title.

§ 13454. Advanced buildings for 2005

(a) Program direction

The Secretary shall initiate a 5-year program, in accordance with sections 13541 and 13542 of this title, to increase building energy efficiency, while maintaining affordability, by the year 2005. Such program shall include activities on—

(1) building design, design methods, and construction techniques;

(2) building materials, including recycled materials, and components;

(3) on-site energy supply conversion systems such as photovoltaics;

(4) automated energy management systems;

(5) methods of evaluating performance; and

(6) insulation products manufactured with nonozone depleting materials.

(b) Proposals

(1) Solicitation

Within 1 year after October 24, 1992, the Secretary shall solicit proposals for conducting activities under this section.

(2) Contents of proposals

Proposals submitted under this subsection shall include and be judged upon—

(A) evidence of knowledge of current building practices in the United States and in other countries;

(B) an explanation of how the proposal will encourage the commercialization of the

technologies resulting from activities in subsection (a) of this section;

(C) evidence of consideration of collaboration with Department of Energy national laboratories;

(D) evidence of collaboration with relevant industry or other groups or organizations; and

(E) a demonstration of the ability of the proposers to undertake and complete the project proposed.

(Pub. L. 102-486, title XXI, §2104, Oct. 24, 1992, 106 Stat. 3069.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13451 of this title.

§ 13455. Electric drives

(a) Program

The Secretary shall conduct a 5-year program, in accordance with sections 13541 and 13542 of this title, to increase the efficiency of electric drive technologies, including adjustable speed drives, high speed motors, and high efficiency motors.

(b) Proposals

Within 1 year after October 24, 1992, the Secretary shall solicit proposals for projects under this section.

(Pub. L. 102-486, title XXI, §2105, Oct. 24, 1992, 106 Stat. 3070.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13451 of this title.

§ 13456. Improving efficiency in energy-intensive industries

(a) Secretarial action

The Secretary, in accordance with sections 13541 and 13542 of this title, shall—

(1) pursue a research, development, demonstration and commercial application program intended to improve energy efficiency and productivity in energy-intensive industries and industrial processes; and

(2) undertake joint ventures to encourage the commercialization of technologies developed under paragraph (1).

(b) Joint ventures

(1) The Secretary shall—

(A) conduct a competitive solicitation for proposals from private firms and investors for such joint ventures under subsection (a)(2) of this section; and

(B) provide financial assistance to at least five such joint ventures.

(2) The purpose of the joint ventures shall be to design, test, and demonstrate changes to industrial processes that will result in improved energy efficiency and productivity. The joint ventures may also demonstrate other improvements of benefit to such industries so long as demonstration of energy efficiency improvements is the principal objective of the joint venture.

(3) In evaluating proposals for financial assistance and joint ventures under this section, the Secretary shall consider—

(A) whether the activities conducted under this section improve the quality and energy efficiency of industries or industrial processes;

(B) the regional distribution of the energy-intensive industries and industrial processes; and

(C) whether the proposed joint venture project would be located in the region which has the energy-intensive industry and industrial processes that would benefit from the project.

(Pub. L. 102-486, title XXI, §2107, Oct. 24, 1992, 106 Stat. 3070.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13451 of this title.

§ 13457. Energy efficient environmental program

(a) Program direction

The Secretary, in consultation with the Administrator of the Environmental Protection Agency, is authorized to continue to carry out a 5-year program to improve the energy efficiency and cost effectiveness of pollution prevention technologies and processes, including source reduction and waste minimization technologies and processes. The purposes of this section shall be to—

(1) apply a systems approach to minimizing adverse environmental effects of industrial production in the most cost effective and energy efficient manner; and

(2) incorporate consideration of the entire materials and energy cycle with the goal of minimizing adverse environmental impacts.

(b) Identification of opportunities

Within 9 months after October 24, 1992, the Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall identify opportunities for the demonstration of energy efficient pollution prevention technologies and processes.

(c) Report

Within 1 year after October 24, 1992, the Secretary shall submit a report to Congress evaluating the opportunities identified under subsection (b) of this section. Such report shall include—

(1) an assessment of the technologies available to increase productivity and simultaneously reduce the consumption of energy and material resources and the production of wastes;

(2) an assessment of the current use of such technologies by industry in the United States;

(3) the status of any such technologies currently being developed, together with projected schedules of their commercial availability;

(4) the energy savings resulting from the use of such technologies;

(5) the environmental benefits of such technologies;

(6) the costs of such technologies;

(7) an evaluation of any existing Federal or State regulatory disincentives for the employment of such technologies; and

(8) an evaluation of any other barriers to the use of such technologies.

In preparing the report required by this subsection, the Secretary shall consult with the Administrator of the Environmental Protection Agency, any other Federal, State, or local official the Secretary considers necessary, representatives of appropriate industries, members of organizations formed to further the goals of environmental protection or energy efficiency, and other appropriate interested members of the public, as determined by the Secretary.

(d) Proposals

Within 1 year after October 24, 1992, the Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall solicit proposals for activities under this section. Proposals selected under this subsection shall demonstrate—

- (1) technical viability and cost effectiveness; and
- (2) procedures for technology transfer and information outreach during and after completion of the project.

(Pub. L. 102-486, title XXI, §2108, Oct. 24, 1992, 106 Stat. 3071.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13451 of this title.

§ 13458. Energy efficient lighting and building centers

(a) Purpose

The purpose of this section is to encourage energy efficiency in buildings through the establishment of regional centers to promote energy efficient lighting, heating and cooling, and building design.

(b) Grants for establishment

Not later than 18 months after October 24, 1992, the Secretary shall make grants to nonprofit institutions, or to consortiums that may include nonprofit institutions, State and local governments, universities, and utilities, to establish or enhance one regional building energy efficiency center (hereafter in this section referred to as a "regional center") in each of the 10 regions served by a Department of Energy regional support office.

(c) Permitted activities

Each regional center established under this section may—

- (1) provide information, training, and technical assistance to building professionals such as architects, designers, engineers, contractors, and building code officials, on building energy efficiency methods and technologies, including lighting, heating and cooling, and passive solar;
- (2) operate an outreach program to inform such building professionals of the benefits and opportunities of energy efficiency, and of the services of the center;
- (3) provide displays demonstrating building energy efficiency methods and technologies, such as lighting, windows, and heating and cooling equipment;

(4) coordinate its activities and programs with other institutions within the region, such as State and local governments, utilities, and educational institutions, in order to support their efforts to promote building energy efficiency;

(5) serve as a clearinghouse to ensure that information about new building energy efficiency technologies, including case studies of successful applications, is disseminated to end-users in the region;

(6) study the building energy needs of the region and make available region-specific energy efficiency information to facilitate the adoption of cost-effective energy efficiency improvements;

(7) assist educational institutions in establishing building energy efficiency engineering and technical programs and curricula; and

(8) evaluate the performance of the center in promoting building energy efficiency.

(d) Application

Any nonprofit institution or consortium interested in receiving a grant under this section shall submit to the Secretary an application in such form and containing such information as the Secretary may require. A lighting or building energy center in existence on October 24, 1992, which is owned and operated by a nonprofit institution or a consortium as described in subsection (b) of this section shall be eligible for a grant under this section.

(e) Selection criteria

The Secretary shall select recipients of grants under this section on the basis of the following criteria:

(1) The capability of the grant recipient to establish a board of directors for the regional center composed of representatives from utilities, State and local governments, building trade and professional organizations, manufacturers, and nonprofit energy and environmental organizations.

(2) The demonstrated or potential resources available to the grant recipient for carrying out this subsection.

(3) The demonstrated or potential ability of the grant recipient to promote building energy efficiency by carrying out the activities specified in subsection (c) of this section.

(4) The activities which the grant recipient proposes to carry out under the grant.

(f) Requirement of matching funds

(1) Federal share

The Federal share of a grant under this section shall be no more than 50 percent of the costs of establishing, and no more than 25 percent of the cost of operating the regional center.

(2) Non-Federal contributions

No grant may be made under this section in any fiscal year unless the recipient of such grant enters into such agreements with the Secretary as the Secretary may require to ensure that such recipient will provide the necessary non-Federal contributions. Such non-Federal contributions may be provided by utilities, State and local governments, nonprofit

institutions, foundations, corporations, and other non-Federal entities.

(g) Task force

The Secretary shall establish a task force to—

- (1) advise the Secretary on activities to be carried out by grant recipients;
- (2) review and evaluate programs carried out by grant recipients; and
- (3) make recommendations regarding the building energy efficiency center grant program.

(h) Membership terms and administration of task force

(1) In general

The task force shall be composed of approximately 20 members, appointed by the Secretary, with expertise in the area of building energy efficiency, including representatives from—

- (A) State or local energy offices;
- (B) utilities;
- (C) building construction trade or professional associations;
- (D) architecture, engineering or professional associations;
- (E) building component or equipment manufacturers;
- (F) from¹ national laboratories;
- (G) building code officials or professional associations; and
- (H) nonprofit energy or environmental organizations.

(2) Geographic representation

The Secretary shall ensure that there is broad geographical representation among task force members.

(3) Terms

Members shall be appointed for a term of 3 years. A vacancy in the task force shall be filled in the manner in which the original appointment was made.

(4) Pay

Members shall serve without pay. Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5.

(5) Chairperson

The Chairperson and Vice Chairperson of the task force shall be elected by the members.

(6) Meetings

The task force shall meet biannually and at the call of the Chairperson.

(7) Inapplicability of termination date

Section 14 of the Federal Advisory Committee Act shall not apply to the task force.

(i) Omitted

(j) Authorization of appropriations

There is authorized to be appropriated for purposes of carrying out this section, to remain available until expended, not more than \$10,000,000 for each of fiscal years 1994, 1995, and 1996.

¹ So in original. The word "from" probably should not appear.

(Pub. L. 102-486, title I, §103, Oct. 24, 1992, 106 Stat. 2789.)

REFERENCES IN TEXT

Section 14 of the Federal Advisory Committee Act, referred to in subsec. (h)(7), is section 14 of Pub. L. 92-463, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

Subsec. (i) of this section, which required the Secretary to transmit annually to Congress a report on the activities of regional centers established under this section, including the degree to which matching funds are being leveraged from private sources to establish and operate such centers, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 6th item on page 88 of House Document No. 103-7.

Section was enacted as part of title I of the Energy Policy Act, and not as part of title XXI of that Act which comprises this subchapter.

PART B—ELECTRICITY GENERATION AND USE

§ 13471. Renewable energy

(a) Program direction

The Secretary shall conduct a comprehensive 5-year program, in accordance with sections 13541 and 13542 of this title, to provide cost-effective options for the generation of electricity from renewable energy sources for grid and nongrid application, including field demonstrations of sufficient scale and number in operating environments to prove technical and economic feasibility for providing cost effective generation and for meeting the goal stated in section 13401(3) of this title and section 13382(a)(4) of this title.

(b) Program plan

Within 180 days after October 24, 1992, the Secretary shall prepare and submit to the Congress a 5-year program plan to guide the activities under this section. In preparing the program plan, the Secretary shall consult with appropriate representatives of industry, institutions of higher education, Federal agencies, including national laboratories, and professional and technical societies.

(c) Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this section, including all solar energy programs (other than activities under section 13431 of this title), geothermal systems, electric energy systems, and energy storage systems, \$208,975,000 for fiscal year 1993 and \$275,000,000 for fiscal year 1994.

(Pub. L. 102-486, title XXI, §2111, Oct. 24, 1992, 106 Stat. 3072.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13477, 13479, 13501 of this title.

§ 13472. High efficiency heat engines

(a) Program direction

The Secretary shall conduct a 5-year program, in accordance with sections 13541 and 13542 of this title, to improve the efficiency of heat engines. Such program shall—

(1) include field demonstrations of sufficient scale and number so as to demonstrate technical and economic feasibility;

(2) incorporate materials that increase engine efficiency; and

(3) cover advanced engine designs for electric and industrial power generation for a range of small-, mid-, and large-scale applications, including—

(A) mechanically recuperated gas turbines;

(B) intercooled gas turbines with steam injection or recuperation;

(C) gas turbines utilizing reformed fuels or hydrogen; and

(D) high efficiency, simple cycle gas turbines.

(b) Program goal

The goal of the program established under subsection (a) of this section shall be to develop heat engines that can achieve over 50 percent efficiency in the mid-term.

(c) Program plan

Within 180 days after October 24, 1992, the Secretary shall prepare and submit to the Congress a 5-year program plan, to be included in the plan required under section 13451(c) of this title, to guide the activities under this section. In preparing the program plan, the Secretary shall consult with appropriate representatives of industry, institutions of higher education, Federal agencies, including the Environmental Protection Agency and national laboratories, and professional and technical societies.

(d) Proposals

Within 1 year after October 24, 1992, the Secretary shall solicit proposals for conducting activities under this section.

(e) Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this section such sums as may be necessary to be derived from sums authorized under section 13451(e) of this title.

(Pub. L. 102-486, title XXI, § 2112, Oct. 24, 1992, 106 Stat. 3072.)

§ 13473. Civilian nuclear waste

(a) Study

The Secretary shall conduct a study of the potential for minimizing the volume and toxic lifetime of nuclear waste, including an analysis of the viability of existing technologies and an assessment of the extent of research and development required for new technologies.

(b) Program

Based on the results of the study required under subsection (a) of this section, the Secretary shall prepare and submit to Congress a 5-year program plan for carrying out a program of research and development on new technologies for minimizing the volume and toxic lifetime of, and thereby mitigating hazards associated with, nuclear waste.

(c) Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this section \$4,700,000

for fiscal year 1993 and such sums as may be necessary for fiscal year 1994.

(Pub. L. 102-486, title XXI, § 2113, Oct. 24, 1992, 106 Stat. 3073.)

§ 13474. Fusion energy

(a) Program

The Secretary shall conduct a fusion energy 5-year program, in accordance with sections 13541 and 13542 of this title, that by the year 2010 will result in a technology demonstration which verifies the practicability of commercial electric power production.

(b) Program goals

The goals of the program established under subsection (a) of this section shall include—

(1) a broad based fusion energy program;

(2) United States participation in the Engineering Design Activity of the International Thermonuclear Experimental Reactor (ITER) program and in the related research and technology development efforts;

(3) the development of technology for fusion power and industrial participation in the development of such technology;

(4) the design and construction of a major new machine for fusion research and technology development consistent with paragraphs (2) and (3); and

(5) research and development for Inertial Confinement Fusion Energy and development of a Heavy Ion Inertial Confinement Fusion experiment.

(c) Management plan

(1) Within 180 days after October 24, 1992, the Secretary shall prepare a comprehensive management plan for the fusion energy program. The plan shall include specific program objectives, milestones and schedules for technology development, and cost estimates and program management resource requirements.

(2) The plan shall also include a description of—

(A) United States participation in the Engineering Design Activity of ITER, including industrial participation;

(B) potential United States participation in the construction and operation of an ITER facility; and

(C) the requirements needed to build and test an inertial fusion energy reactor for the purpose of power production.

(3) As part of the plan required under paragraph (1), the Secretary shall evaluate the status of international fusion programs and evaluate whether the Federal Government should initiate efforts to strengthen existing international cooperative agreements in fusion energy or enter into new cooperative agreements to accomplish the purposes of this section.

(4) The plan shall also evaluate the extent to which university or private sector participation is appropriate or necessary in order to carry out the purposes of this section.

(5) The President shall include in the budget submitted to the Congress each year under section 1105 of title 31 a report prepared by the Sec-

retary describing the progress made in meeting the program objectives, milestones, and schedules established in the management plan. Each such report shall also describe the organization of the program, the personnel assigned and funds committed to the program, and expenditures made in carrying out the program objectives. The report shall be submitted with the plan required under section 13523 of this title.

(d) Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this section \$339,710,000 for fiscal year 1993 and \$380,000,000 for fiscal year 1994.

(Pub. L. 102-486, title XXI, § 2114, Oct. 24, 1992, 106 Stat. 3073; Pub. L. 104-66, title I, § 1052(i), Dec. 21, 1995, 109 Stat. 719.)

AMENDMENTS

1995—Subsec. (c)(5). Pub. L. 104-66 inserted first sentence and struck out former first sentence which read as follows: “Within 1 year after October 24, 1992, and every 2 years thereafter, the Secretary shall issue a report describing the progress made in meeting the program objectives, milestones, and schedules established in the management plan.”

§ 13475. Fuel cells

(a) Program direction

The Secretary shall conduct a 5-year program, in accordance with sections 13541 and 13542 of this title, on efficient and environmentally benign power generation using fuel cells. The program may include activities on molten carbonate, solid oxide, including tubular, monolithic, and planar technologies, and advanced concepts.

(b) Program goal

The goal of the program established under subsection (a) of this section is the development of cost-effective, efficient, and environmentally benign fuel cell systems which will operate on fossil fuels in multiple end use sectors.

(c) Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this section \$51,555,000 for fiscal year 1993 and \$56,000,000 for fiscal year 1994.

(Pub. L. 102-486, title XXI, § 2115, Oct. 24, 1992, 106 Stat. 3074.)

§ 13476. Environmental restoration and waste management program

(a) Authorization of appropriations

There are authorized to be appropriated to the Secretary for fiscal year 1993 \$70,000,000 for the Fast Flux Test Facility to maintain the operational status of the reactor, such sums to be derived from amounts appropriated to the Secretary for the environmental restoration and waste management program.

(b) Long-term missions

The Secretary shall aggressively pursue the development and implementation of long-term missions for the Fast Flux Test Facility. Within 6 months after October 24, 1992, the Secretary shall submit to the Congress a report on the progress made in carrying out this subsection.

(Pub. L. 102-486, title XXI, § 2116, Oct. 24, 1992, 106 Stat. 3075.)

§ 13477. High-temperature superconductivity program

(a) Program

The Secretary shall carry out a 5-year program, in accordance with sections 13541 and 13542 of this title, on high-temperature superconducting electric power equipment technologies. Elements of the program shall include, but are not limited to—

(1) activities that address the development of high-temperature superconducting materials that have increased electrical current capacity, which shall be the emphasis of the program for the near-term;

(2) the development of prototypes, where appropriate, of the major elements of a superconducting electric power system such as motors, generators, transmission lines, transformers, and magnetic energy storage systems;

(3) activities that will improve the efficiency of materials performance of higher temperatures and at all magnetic field orientations;

(4) development of prototypes based on high-temperature superconducting wire, that operate at the highest temperature possible, and refrigeration systems using cryogenics such as nitrogen;

(5) activities that will assist the private sector with designs for more efficient electric power generation and delivery systems which are cost competitive with conventional energy systems; and

(6) development of prototypes that have application in both the commercial and defense sectors.

The Secretary is also encouraged to expedite government, laboratory, industry, and university collaborative agreements under existing mechanisms at the Department of Energy in coordination with other Federal agencies.

(b) Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this section \$21,900,000 for fiscal year 1993 and such sums as may be necessary for subsequent fiscal years, to be derived from sums authorized under section 13471(c) of this title.

(Pub. L. 102-486, title XXI, § 2117, Oct. 24, 1992, 106 Stat. 3075.)

§ 13478. Electric and magnetic fields research and public information dissemination program

(a) Program

The Secretary shall, in accordance with this section (including the agenda developed under subsection (d)(1)(A) of this section) and within 2 months after October 24, 1992, establish a comprehensive program to—

(1) determine whether or not exposure to electric and magnetic fields produced by the generation, transmission, and use of electric energy affects human health;

(2) carry out research, development, and demonstration with respect to technologies to

mitigate any adverse human health effects; and

(3) provide for dissemination of information described in subsection (b)(1) of this section to the public.

(b) Contents

The program shall provide for—

(1) collection, compilation, publication, and dissemination of scientifically valid information on—

(A) possible human health effects of electric and magnetic fields;

(B) the types and extent of human exposure to electric and magnetic fields in various occupational and residential settings;

(C) technologies to measure and characterize electric and magnetic fields; and

(D) methods to assess and manage exposure to electric and magnetic fields;

(2)(A) research on mechanisms by which electric and magnetic fields interact with biological systems; and

(B) epidemiological research on the possible human health effects of electric and magnetic fields; and

(3) research, development, and demonstration with respect to—

(A) technologies to improve the measurement and characterization of electric and magnetic fields; and

(B) techniques to assess and manage exposure to electric and magnetic fields.

(c) Role of Director

(1) Role of Director

The Secretary of Health and Human Services, acting through the Director, shall have sole responsibility under the program for research on possible human health effects of electric and magnetic fields. The Director may delegate this responsibility to the extent the Director determines appropriate.

(2) Agreement

Within 6 months after October 24, 1992, the Secretary shall enter into an agreement with the Secretary of Health and Human Services to carry out, through the Director, the information activities under subsection (b)(1)(A) of this section and the research under subsection (b)(2) of this section.

(3) Actions of Director

The actions of the Director in carrying out research and information responsibilities under this section shall not be subject to approval by the Secretary.

(4) Transfer of funds

The Secretary is authorized, subject to appropriations Acts, to transfer funds to the Director to carry out the Director's responsibilities under paragraph (2).

(5) Report

The Director shall report, by June 1, 1995, and by March 31, 1998, and as appropriate, to the Interagency Committee established under subsection (d) of this section and to Congress the findings and conclusions of the Director on the extent to which exposure to electric and

magnetic fields produced by the generation, transmission, or use of electric energy affects human health.

(d) Interagency Committee

(1) The President shall, within 2 months after October 24, 1992, establish the Electric and Magnetic Fields Interagency Committee to—

(A) develop within 8 months after October 24, 1992, a comprehensive agenda for conducting research, development, and demonstration under the program, with particular emphasis on electric and magnetic fields of the 60 hertz frequency;

(B) develop recommendations, within 8 months after October 24, 1992, for guidelines for the coordination of activities of Federal agencies engaged in research on human health effects of electric and magnetic fields that ensure that such research advances the agenda under subparagraph (A) and is not unnecessarily duplicative of other research activities;

(C) develop recommendations, within 8 months after October 24, 1992, for mechanisms for communication of the results of the program to the public, including recommendations on the scope and nature of the information to be disseminated; and

(D) monitor, review and periodically evaluate the program.

(2)(A) The Interagency Committee shall be composed of 9 members with 1 member to be appointed from each of the following:

(i) The Department of Energy.

(ii) The National Institute of Environmental Health Sciences.

(iii) The Environmental Protection Agency.

(iv) The Department of Defense.

(v) The Occupational Safety and Health Administration.

(vi) The National Institute of Standards and Technology.

(vii) The Department of Transportation.

(viii) The Rural Electrification Administration.

(ix) The Federal Energy Regulatory Commission.

(B) The Interagency Committee shall elect a chairperson from among its members who shall be responsible for ensuring that the duties of the Interagency Committee are carried out.

(C) Agencies that have members on the Interagency Committee shall provide appropriate staff to carry out the duties of the Interagency Committee.

(e) Advisory Committee

(1) Not later than 2 months after October 24, 1992, the Secretary of Health and Human Services and the Secretary shall establish the National Electric and Magnetic Fields Advisory Committee in accordance with the Federal Advisory Committee Act [5 App. U.S.C.] and this section.

(2) The Advisory Committee shall make recommendations to the Interagency Committee with respect to the duties of the Interagency Committee under subsection (d)(1) of this section and advise the Secretary and the Director with respect to the design and implementation of the program, including preparation of solici-

tations for proposals to conduct research under the program.

(3) The Advisory Committee shall be composed of 10 members, chosen from among experts in possible human health effects of electric and magnetic fields, experts in the measurement and characterization of electric and magnetic fields, experts in the assessment and management of electric and magnetic fields, State regulatory agencies, State health agencies, electric utilities, electric equipment manufacturers, labor unions and the public. Five members shall be chosen by the Secretary of Health and Human Services in consultation with the Director, and 5 members shall be chosen by the Secretary.

(4) The Advisory Committee shall elect a chairperson from among its members who shall be responsible for ensuring that the duties of the Advisory Committee are carried out.

(5) The Advisory Committee shall terminate not later than December 31, 1998.

(f) Financial assistance

(1) The Secretary and the Director may provide financial assistance and enter into contracts to conduct activities under the program.

(2) The Secretary shall solicit contributions from non-Federal sources to offset at least 50 percent of the total funding for all activities under the program. The Secretary shall adopt procedures, including a mechanism for collecting contributions, that ensures that no contributor of non-Federal funds may influence the program.

(3) The Secretary may not obligate funds under this section in any fiscal year unless funds received from non-Federal sources under paragraph (2) are available to offset at least 50 percent of the appropriations made under subsection (j) of this section for such fiscal year.

(4) SOLICITATION AND SELECTION OF PROPOSALS

(A) IN GENERAL.—Within 15 months after October 24, 1992, and as often thereafter as appropriate, the Secretary and the Director shall, in consultation with the Interagency Committee, solicit and select proposals to conduct activities under the program.

(B) CONSULTATION WITH ADVISORY COMMITTEE.—In preparing solicitations for proposals to conduct activities, the Secretary and the Director shall consult with the Advisory Committee.

(C) PEER REVIEW PANELS.—Before a proposal to conduct activities under the program may be selected by the Secretary or the Director, such proposal must be submitted to, and evaluated by, at least one scientific and technical peer review panel.

(g) Reports

(1) Report upon completion of activity

Any person who conducts activities under the program shall, upon completion of the activity, submit to the National Academy of Sciences, the Interagency Committee, and the Advisory Committee a report summarizing the activities and results thereof.

(2) Report to Interagency Committee and Advisory Committee

The Secretary shall enter into appropriate arrangements with the National Academy of

Sciences under which the Academy shall periodically submit to the Interagency Committee and the Advisory Committee a report that evaluates the research activities under the program. The report shall include recommendations to promote the effective transfer of information derived from such research projects, including the transfer to representatives of State regulatory agencies, State health agencies, electric utilities, electrical equipment manufacturers, labor unions, and the public. The Secretary shall be responsible for expenses incurred by the Academy in connection with the preparation of such reports.

(3) Report to Congress

The Interagency Committee, in consultation with the Advisory Committee, shall submit to the Secretary and the Congress—

(A) not later than December 31, 1995, a report summarizing the progress of the research program established under this subsection; and

(B) not later than September 30, 1998, a final report stating the Committee's findings and conclusions on the effects, if any, of electric and magnetic fields on human health and remedial actions, if any, that may be needed to minimize any such health effects.

(h) Conflicts of interest

The Secretary and the Director shall include conflict of interest provisions in any grant or other funding provided, or contract entered into, under the research program established under this section including provisions—

(1) that require any person conducting a project under such program to disclose any other source of funding received by the person to conduct other related projects, including funding received from consulting on issues relating to electric and magnetic fields; and

(2) that prohibit a person who has been awarded a grant or contract under this program from receiving compensation beyond expenses for testifying in a court of law as an expert on the specific research the person is conducting under such grant or contract.

(i) Definitions

For purposes of this section:

(1) The term "Advisory Committee" means the National Electric and Magnetic Fields Advisory Committee established under subsection (e) of this section.

(2) The term "Interagency Committee" means the Electric and Magnetic Fields Interagency Committee established under subsection (d) of this section.

(3) The term "Director" means the Director of the National Institute of Environmental Health Sciences.

(4) The term "program" means the electric and magnetic fields research and public information dissemination program established in subsection (a) of this section.

(5) The term "State" means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Terri-

tory of the Pacific Islands, and any other commonwealth, territory, or possession of the United States.

(j) Authorization of appropriations

(1) General authorization

There are authorized to be appropriated to the Secretary a total of \$46,000,000 for the period encompassing fiscal years 1993 through 1998 to carry out the provisions of this section, except that not more than \$1,000,000 may be expended in any such fiscal year for activities under subsection (b)(1) of this section. Any amounts appropriated pursuant to this paragraph shall remain available until expended.

(2) Restrictions on use of funds

(A) Administrative expenses of certain funding recipients

Of the total funds provided to any institution under this section, the amount of such funds that may be used for the administrative indirect costs of the institution may not exceed 26 percent of the modified direct costs of the project.

(B) Administrative expenses of the Secretary and the Director

Of the total amount of funds made available under this section for any fiscal year, not more than 10 percent of such funds may be used for authorized administrative expenses of the Secretary and the Director in carrying out this section.

(C) Construction and rehabilitation of facilities and equipment

Funds made available under this section may not be used for the construction or rehabilitation of facilities or fixed equipment.

(k) Sense of Congress

It is the sense of the Congress that remedial action taken by the Government on electric and magnetic fields, if and as necessary, should be based on, and consistent with, scientifically valid research such as the results and findings of the research authorized by this Act.

(l) Sunset provision

All authority under this section shall expire on December 31, 1998.

(Pub. L. 102-486, title XXI, §2118, Oct. 24, 1992, 106 Stat. 3075; Pub. L. 105-23, §1, July 3, 1997, 111 Stat. 237.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (e)(1), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

This Act, referred to in subsec. (k), is Pub. L. 102-486, Oct. 24, 1992, 106 Stat. 2776, known as the Energy Policy Act of 1992. For complete classification of this Act to the Code, see Short Title note set out under section 13201 of this title and Tables.

AMENDMENTS

1997—Subsecs. (c)(5), (e)(5), (g)(3)(B). Pub. L. 105-23, §1(1), substituted “1998” for “1997”.

Subsec. (j)(1). Pub. L. 105-23 substituted “\$46,000,000” for “\$65,000,000” and “1998” for “1997”.

Subsec. (l). Pub. L. 105-23, §1(1), substituted “1998” for “1997”.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§13479. Spark M. Matsunaga Renewable Energy and Ocean Technology Center

(a) Findings

The Congress finds that—

(1) the late Spark M. Matsunaga, United States Senator from Hawaii, was a longstanding champion of research and development of renewable energy, particularly wind and ocean energy, photovoltaics, and hydrogen fuels;

(2) it was Senator Matsunaga’s vision that renewable energy could provide a sustained source of non-polluting energy and that such forms of alternative energy might ultimately be employed in the production of liquid hydrogen as a transportation fuel and energy storage medium available as an energy export;

(3) Senator Matsunaga also believed that research on other aspects of renewable energy and ocean resources, such as advanced materials, could be crucial to full development of energy storage and conversion systems; and

(4) Keahole Point, Hawaii is particularly well-suited as a site to conduct renewable energy and associated marine research.

(b) Purpose

It is the purpose of this section to establish the facilities and equipment located at Keahole Point, Hawaii as a cooperative research and development facility, to be known as the Spark M. Matsunaga Renewable Energy and Ocean Technology Center.

(c) Establishment

The facilities and equipment located at Keahole Point, Hawaii are established as the Spark M. Matsunaga Renewable Energy and Ocean Technology Center (in this section referred to as the “Center”).

(d) Administration

(1) Not later than 180 days after October 24, 1992, the Secretary may authorize a cooperative agreement with a qualified research institution to administer the Center.

(2) For the purpose of paragraph (1), a qualified research institution is a research institution located in the State of Hawaii that has demonstrated competence and will be the lead organization in the State in renewable energy and ocean technologies.

(e) Activities

The Center may carry out research, development, educational, and technology transfer activities on—

(1) renewable energy;

(2) energy storage, including the production of hydrogen from renewable energy;

(3) materials applications related to energy and marine environments;

(4) other environmental and ocean research concepts, including sea ranching and global climate change; and

(5) such other matters as the Secretary may direct.

(f) Matching funds

To be eligible for Federal funds under this section, the Center must provide funding in cash or in kind from non-Federal sources for each amount provided by the Secretary.

(g) Authorization of appropriations

There is authorized to be appropriated to the Secretary for carrying out this section such sums as may be necessary, to be derived from sums authorized under section 13471(c) of this title.

(Pub. L. 102-486, title XXI, §2119, Oct. 24, 1992, 106 Stat. 3080.)

PART C—ADVANCED NUCLEAR REACTORS

§ 13491. Purposes and definitions**(a) Purposes**

The purposes of this part are—

(1) to require the Secretary to carry out civilian nuclear programs in a way that will lead toward the commercial availability of advanced nuclear reactor technologies; and

(2) to authorize such activities to further the timely availability of advanced nuclear reactor technologies, including technologies that utilize standardized designs or exhibit passive safety features.

(b) Definitions

For purposes of this part—

(1) the term “advanced nuclear reactor technologies” means—

(A) advanced light water reactors that may be commercially available in the near-term, including but not limited to mid-sized reactors with passive safety features for the generation of commercial electric power from nuclear fission; and

(B) other advanced nuclear reactor technologies that may require prototype demonstration prior to commercial availability in the mid- or long-term, including but not limited to high-temperature, gas-cooled reactors and liquid metal reactors, for the generation of commercial electric power from nuclear fission;

(2) the term “Commission” means the Nuclear Regulatory Commission;

(3) the term “standardized design” means a design for a nuclear power plant that may be utilized for a multiple number of units or a multiple number of sites; and

(4) the term “certification” means approval by the Commission of a standardized design.

(Pub. L. 102-486, title XXI, §2121, Oct. 24, 1992, 106 Stat. 3081.)

REFERENCES IN TEXT

This part, referred to in text, was in the original “this subtitle” meaning subtitle C of title XXI of Pub. L. 102-486, Oct. 24, 1992, 106 Stat. 3081, which enacted this part and amended sections 12003 and 12004 of this title.

§ 13492. Program, goals, and plan**(a) Program direction**

The Secretary shall conduct a program to encourage the deployment of advanced nuclear re-

actor technologies that to the maximum extent practicable—

(1) are cost effective in comparison to alternative sources of commercial electric power of comparable availability and reliability, taking into consideration life cycle environmental costs;

(2) facilitate the design, licensing, construction, and operation of a nuclear powerplant using a standardized design;

(3) exhibit enhanced safety features; and

(4) incorporate features that advance the objectives of the Nuclear Non-Proliferation Act of 1978 [22 U.S.C. 3201 et seq.].

(b) Program goals

The goals of the program established under subsection (a) of this section shall include—

(1) for the near-term—

(A) to facilitate the completion, by September 30, 1996, for certification by the Commission, of standardized advanced light water reactor technology designs that the Secretary determines have the characteristics described in subsection (a)(1) through (4) of this section;

(B) to facilitate the completion of submissions, by September 30, 1996, for preliminary design approvals by the Commission of standardized designs for the modular high-temperature gas-cooled reactor technology and the liquid metal reactor technology; and

(C) to evaluate by September 30, 1996, actinide burn technology to determine if it can reduce the volume of long-lived fission by-products;

(2) for the mid-term—

(A) to facilitate increased efficiency of enhanced safety, advanced light water reactors to produce electric power at the lowest cost to the customer;

(B) to develop advanced reactor concepts that are passively safe and environmentally acceptable; and

(C) to complete necessary research and development on high-temperature gas-cooled reactor technology and liquid metal reactor technology to support the selection, by September 30, 1998, of one or both of those technologies as appropriate for prototype demonstration; and

(3) for the long-term, to complete research and development and demonstration to support the design of advanced reactor technologies capable of providing electric power to a utility grid as soon as practicable but no later than the year 2010.

(c) Program plan

Within 180 days after October 24, 1992, the Secretary shall prepare and submit to the Congress a 5-year program plan to guide the activities under this section. The program plan shall include schedule milestones, Federal funding requirements, and non-Federal cost sharing requirements. In preparing the program plan, the Secretary shall take into consideration—

(1) the need for, and the potential for future adoption by electric utilities or other entities of, advanced nuclear reactor technologies that are available, under development, or have the

potential for being developed, for the generation of energy from nuclear fission;

(2) how the Federal Government, acting through the Secretary, can be effective in ensuring the availability of such technologies when they are needed;

(3) how the Federal Government can most effectively cooperate with the private sector in the accomplishment of the goals set forth in subsection (b) of this section; and

(4) potential alternative funding sources for carrying out this section.

In preparing the program plan, the Secretary shall consult with appropriate representatives of industry, institutions of higher education, Federal agencies, including national laboratories, and professional and technical societies. The Secretary shall update the program plan annually and submit such update to Congress. Each such update shall describe any activities that are behind schedule, any funding shortfalls, and any other circumstances that might affect the ability of the Secretary to meet the goals set forth in subsection (b) of this section.

(Pub. L. 102-486, title XXI, §2122, Oct. 24, 1992, 106 Stat. 3082.)

REFERENCES IN TEXT

The Nuclear Non-Proliferation Act of 1978, referred to in subsec. (a)(4), is Pub. L. 95-242, Mar. 10, 1978, 92 Stat. 120, as amended, which is classified principally to chapter 47 (§3201 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 3201 of Title 22 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13493 of this title.

§ 13493. Commercialization of advanced light water reactor technology

(a) Certification of designs

In order to achieve the goal of certification of completed standardized designs by the Commission by 1996 as set forth in section 13492(b) of this title, the Secretary shall conduct a 5-year program of technical and financial assistance to encourage the development and submission for certification of advanced light water reactor designs which, in the judgment of the Secretary, can be certified by the Commission by no later than the end of fiscal year 1996.

(b) First-of-a-kind engineering

(1) Establishment of program

The Secretary shall conduct a program of Federal financial and technical assistance for the first-of-a-kind engineering design of standardized commercial nuclear powerplants which are included, as of October 24, 1992, in the Department of Energy's program for certification of advanced light water reactor designs.

(2) Selection criteria

In order to be eligible for assistance under this subsection, an entity shall certify to the satisfaction of the Secretary that—

(A) the entity, or its members, are bona fide entities engaged in the design, engineering, manufacture, construction, or operation of nuclear reactors;

(B) the entity, or its members, have the financial resources necessary for, and fully intend to pursue the design, engineering, manufacture, construction, and operation in the United States of nuclear power plants¹ through completion of construction and into operation;

(C) the design proposed is scheduled for certification by the Commission under the Department of Energy's program for certification of light water reactor designs; and

(D) at least 50 percent of the funding for the project shall be obtained from non-Federal sources, and a substantial portion of that non-Federal funding shall be obtained from utilities or entities whose primary purpose is the production of electrical power for public consumption.

(3) Program documents

The Secretary shall prepare and submit to the Congress a program document for each design selected under this subsection, specifying goals and objectives, major milestones for achieving those goals and objectives, and the work products to be provided to the Secretary or made available for inspection.

(4) Funding limitations

(A) Before entering into an agreement with an entity under this subsection, the Secretary shall establish a cost ceiling for the contribution of the Federal Government for the project, and shall report such cost ceiling to the Congress.

(B) No entity shall receive assistance under this subsection for a period greater than 4 years.

(C) The aggregate funding provided by the Secretary for projects under this subsection shall not exceed \$100,000,000 for the period encompassing fiscal years 1993 through 1997.

(Pub. L. 102-486, title XXI, §2123, Oct. 24, 1992, 106 Stat. 3083.)

CODIFICATION

Subsec. (b)(5) of this section, which required the Secretary to submit annually to Congress a status report on each project receiving assistance under subsec. (b), terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the last item on page 85 of House Document No. 103-7.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13494 of this title.

§ 13494. Prototype demonstration of advanced nuclear reactor technology

(a) Solicitation of proposals

Within 3 years after October 24, 1992, the Secretary shall solicit proposals for carrying out the preliminary engineering design of not more than 2 prototype advanced nuclear reactor technologies developed by the Department of Energy, other than advanced light water reactor technologies, necessary to support a decision on whether to recommend construction of a proto-

¹ So in original. Probably should be "powerplants".

type demonstration reactor with the characteristics described in section 13493(a) of this title. Proposals submitted under this subsection shall be for modular design concepts of sufficient size to address requirements related to the certification of a standardized design.

(b) Recommendation to Congress

(1) Not later than September 30, 1998, the Secretary shall submit to Congress recommendations on whether to build one or more prototype demonstration reactors under this section. Such recommendations shall—

(A) specify a preferred technology or technologies;

(B) include detailed information on milestones for construction and operation;

(C) include an estimate of the funding requirements; and

(D) specify the extent and type of non-Federal financial support anticipated.

In developing the recommendations under this paragraph, the Secretary shall provide for public notice and an opportunity for comment, and shall solicit the views of the Commission and other parties with technical expertise the Secretary considers useful in the development of such recommendations.

(2) The prototype demonstration program under this section shall be carried out to the maximum extent practicable with private sector funding. At least 50 percent of the funding for such program shall be non-Federal funding. The extent of non-Federal cost sharing proposed for any demonstration project shall be a criterion for the selection of the project.

(c) Selection of technology

Any technology selected by the Secretary for recommendation for prototype demonstration under this section shall to the maximum extent possible exhibit the characteristics set forth in section 13493(a) of this title.

(Pub. L. 102-486, title XXI, § 2124, Oct. 24, 1992, 106 Stat. 3084.)

§ 13495. Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this part \$212,804,000 for fiscal year 1993 and such sums as may be necessary for fiscal year 1994. Amounts authorized or otherwise made available for program direction, space reactor power systems, advanced radioisotope power systems, and the space exploration initiative under nuclear energy research and development shall be in addition to the amounts authorized in the preceding sentence.

(Pub. L. 102-486, title XXI, § 2126, Oct. 24, 1992, 106 Stat. 3085.)

SUBCHAPTER X—ENERGY AND ECONOMIC GROWTH

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 5905, 13522, 13525 of this title.

§ 13501. National Advanced Materials Program

(a) Program direction

The Secretary shall establish a 5-year National Advanced Materials Program, in accord-

ance with sections 13541 and 13542 of this title. Such program shall foster the commercialization of techniques for processing, synthesizing, fabricating, and manufacturing advanced materials and associated components. At a minimum, the Program shall expedite the private sector deployment of advanced materials for use in high performance energy efficient and renewable energy technologies in the industrial, transportation, and buildings sectors that can foster economic growth and competitiveness. The Program shall include field demonstrations of sufficient scale and number to prove technical and economic feasibility.

(b) Program plan

Within 180 days after October 24, 1992, the Secretary, in consultation with appropriate representatives of industry, institutions of higher education, Department of Energy national laboratories, and professional and technical societies, shall prepare and submit to the Congress a 5-year program plan to guide activities under this section. The Secretary shall biennially update and resubmit the program plan to Congress.

(c) Proposals

(1) Solicitation

Within 1 year after October 24, 1992, the Secretary shall solicit proposals for conducting activities consistent with the 5-year program plan. Such proposals may be submitted by one or more parties.

(2) Contents of proposals

Proposals submitted under this subsection shall include—

(A) an explanation of how the proposal will expedite the commercialization of advanced materials in energy efficiency or renewable energy in the near-term to mid-term;

(B) evidence of consideration of whether the unique capabilities of Department of Energy national laboratories warrants collaboration with such laboratories, and the extent of such collaboration proposed;

(C) a description of the extent to which the proposal includes collaboration with relevant industry or other groups or organizations; and

(D) evidence of the ability of the proposers to undertake and complete the proposed project.

(d) General Services Administration demonstration program

The Secretary, in consultation with the Administrator of General Services, shall establish a program to expedite the use, in goods and services acquired by the General Services Administration, of advanced materials technologies. Such program shall include a demonstration of the use of advanced materials technologies as may be necessary to establish technical and economic feasibility. The Secretary shall transfer funds to the General Services Administration for carrying out this subsection.

(e) Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this section such

sums as may be necessary, to be derived for energy efficient applications from section 13451(e) of this title and for renewable applications from section 13471(c) of this title, including Department of Energy national laboratory participation in proposals submitted under subsection (c) of this section, and including transferring funds to the General Services Administration.

(Pub. L. 102-486, title XXII, §2201, Oct. 24, 1992, 106 Stat. 3085.)

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (b) of this section relating to the biennial resubmittal of the program plan to Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 1st item on page 86 of House Document No. 103-7.

§ 13502. National Advanced Manufacturing Technologies Program

(a) Program direction

The Secretary shall establish a 5-year National Advanced Manufacturing Technologies Program, in accordance with sections 13541 and 13542 of this title. Such program shall foster the commercialization of advanced manufacturing technologies to improve energy efficiency and productivity in manufacturing. At a minimum, the Program shall expedite the private sector deployment of advanced manufacturing technologies to improve productivity, quality, and control in manufacturing processes that can foster economic growth, energy efficiency, and competitiveness. The program¹ shall include field demonstrations of sufficient scale and number to prove technical and economic feasibility.

(b) Program plan

Within 180 days after October 24, 1992, the Secretary, in consultation with appropriate representatives of industry, institutions of higher education, Department of Energy national laboratories, and professional and technical societies, shall prepare and submit to the Congress a 5-year program plan to guide activities under this section. The Secretary shall biennially update and resubmit the program plan to Congress.

(c) Proposals

(1) Solicitation

Within 1 year after October 24, 1992, the Secretary shall solicit proposals for conducting activities consistent with the 5-year program plan. Such proposals may be submitted by one or more parties.

(2) Contents of proposals

Proposals submitted under this subsection shall include—

(A) an explanation of how the proposal will expedite the commercialization of advanced manufacturing technologies to improve energy efficiency in the building, industry, and transportation sectors;

(B) evidence of consideration of whether the unique capabilities of Department of Energy national laboratories warrants collabora-

tion with such laboratories, and the extent of such collaboration proposed;

(C) a description of the extent to which the proposal includes collaboration with relevant industry or other groups or organizations; and

(D) evidence of the ability of the proposers to undertake and complete the proposed project.

(d) Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this section such sums as may be necessary, to be derived from sums authorized under section 13451(e) of this title, including Department of Energy national laboratory participation in proposals submitted under subsection (c) of this section.

(Pub. L. 102-486, title XXII, §2202, Oct. 24, 1992, 106 Stat. 3086.)

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (b) of this section relating to the biennial resubmittal of the program plan to Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 2nd item on page 86 of House Document No. 103-7.

§ 13503. Supporting research and technical analysis

(a) Basic energy sciences

(1) Program direction

The Secretary shall continue to support a vigorous program of basic energy sciences to provide basic research support for the development of energy technologies. Such program shall focus on the efficient production and use of energy, and the expansion of our knowledge of materials, chemistry, geology, and other related areas of advancing technology development.

(2) User facilities

(A) As part of the program referred to in paragraph (1), the Secretary shall carry out planning, construction, and operation of user facilities to provide special scientific and research capabilities, including technical expertise and support as appropriate, to serve the research needs of our Nation's universities, industry, private laboratories, Federal laboratories, and others. Research institutions or individuals from other nations shall be accommodated at such user facilities in cases where reciprocal accommodations are provided to United States research institutions and individuals or where the Secretary considers such accommodation to be in the national interest.

(B) The construction of the Advanced Photon Source at the Argonne National Laboratory is hereby authorized.

(C) The Secretary shall not change the user fee practice in effect as of October 1, 1991, with respect to user facilities unless the Secretary notifies Congress 90 days before the effective date of any change.

(D) The Secretary shall expedite the design for construction of the Advanced Neutron Source at the Oak Ridge National Laboratory, in order to provide critical research capabili-

¹ So in original. Probably should be capitalized.

ties in support of our national research initiatives for advanced materials and biotechnology, as well as a broad range of research. Such action shall be consistent with the Basic Energy Sciences Advisory Committee's Technical Evaluation of accelerator and reactor neutron source technologies. Within 90 days after October 24, 1992, the Secretary shall submit to the Congress a plan for such design, including a schedule for construction.

(3) Cost sharing

The Secretary shall not require cost sharing for research and development pursuant to this subsection, except—

(A) as otherwise provided for in cooperative research and development agreements or other agreements entered into under existing law;

(B) for fees for user facilities, as determined by the Secretary; or

(C) in the case of specific projects, where the Secretary determines that the benefits of such research and development accrue to a specific industry or group of industries, in which case cost sharing under section 13542 of this title shall apply.

(b) University and science education

(1) The Secretary shall support programs for improvements and upgrading of university research reactors and associated instrumentation and equipment. Within 1 year after October 24, 1992, the Secretary shall submit to the Congress a report on the condition and status of university research reactors, which includes a 5-year plan for upgrading and improving such facilities, instrumentation capabilities, and related equipment.

(2) The Secretary shall develop a method to evaluate the effectiveness of science and mathematics education programs provided by the Department of Energy and its laboratories, including specific evaluation criteria.

(3)(A)(i) The Director of the Office of Science shall operate an Experimental Program to Stimulate Competitive Research (in this paragraph referred to as "EPSCoR") as part of the Department of Energy's University and Science Education Programs.

(ii) The objectives of EPSCoR shall be—

(I) to enhance the competitiveness of the peer-review process within academic institutions in eligible States; and

(II) to increase the probability of long-term growth of competitive funding to investigators at institutions from eligible States.

(iii) In order to carry out the objectives stated in clause (ii), EPSCoR shall provide for activities which may include (but not be limited to) competitive research awards and graduate traineeships.

(iv) EPSCoR shall assist those States that—

(I) historically have received relatively little Federal research and development funding; and

(II) have demonstrated a commitment to develop their research bases and improve science and engineering research and education programs at their universities and colleges.

(B) For purposes of this paragraph, the term "eligible States" means States that received a

Department-EPSCoR planning or traineeship grant in fiscal year 1991 or fiscal year 1992.

(C) No more than \$5,000,000 of the funds appropriated to EPSCoR in any fiscal year, through fiscal year 1997, are authorized to be appropriated for graduate traineeships.

(c) Technology transfer

The Secretary shall support technology transfer activities conducted by the National Laboratories. Within 1 year after October 24, 1992, the Secretary shall submit to the Congress a report on the adequacy of funding for such activities, along with a proposal recommending ways to reduce the length of time required to consummate cooperative research and development agreements.

(d) Facilities support for multiprogram energy laboratories

(1) Facility policy

The Secretary shall develop and implement a least cost strategy for correcting facility problems, closing unneeded facilities, making facility modifications, and building new facilities at multiprogram energy laboratories.

(2) Facility plan

Within 1 year after October 24, 1992, the Secretary shall prepare and submit to the Congress a comprehensive plan for conducting future facility maintenance, making repairs, modifications, and new additions, and constructing new facilities at multiprogram energy laboratories. Such plan shall provide for facilities work in accordance with the following priorities, listed in descending order of priority:

(A) Providing for the safety and health of employees, visitors, and the general public with regard to correcting existing structural, mechanical, electrical, and environmental deficiencies.

(B) Providing for the repair and rehabilitation of existing facilities to keep them in use and prevent deterioration.

(C) Providing engineering design and construction services for those facilities which require modification or additions in order to meet the needs of new or expanded programs.

Such plan shall include plans for new facilities and facility modifications which will be required to meet the Department of Energy's changing missions of the twenty-first century, including schedules and estimates for implementation, and including a section outlining long-term funding requirements consistent with anticipated budgets and annual authorization of appropriations. Such plan shall address the coordination of modernization and consolidation of facilities in order to meet changing mission requirements, and shall provide for annual reports to Congress on accomplishments, conformance to schedules, commitments, and expenditures.

(e) Authorization of appropriations

There are authorized to be appropriated to the Secretary for Supporting Research and Technical Analysis, including Basic Energy Sciences, Energy Research Analysis, University and

Science Education, Technology Transfer, Advisory and Oversight Program Direction, and Facilities Support for Multiprogram Energy Laboratories, \$966,804,000 for fiscal year 1993 and such sums as may be necessary for fiscal year 1994.

(Pub. L. 102-486, title XXII, §2203, Oct. 24, 1992, 106 Stat. 3087; Pub. L. 105-245, title III, §309(b)(2)(F), Oct. 7, 1998, 112 Stat. 1853.)

AMENDMENTS

1998—Subsec. (b)(3)(A)(i). Pub. L. 105-245 substituted “Office of Science” for “Office of Energy Research”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13504 of this title.

§ 13504. Math and science education program

(a) Program

The Secretary shall enter into contracts with existing qualified entities to conduct science and mathematics education programs that supplement the Special Programs for Students from Disadvantaged Backgrounds carried out by the Secretary of Education under sections 1070d through 1070d-1d of title 20.¹

(b) Purpose

(1) The purpose of the programs shall be to provide support to Federal, State, and private programs designed to promote the participation of low-income and first generation college students as defined in section 1070d of title 20¹ in post-secondary science and mathematics education.

(2) Support activities may include—

(A) the development of educational materials;

(B) the training of teachers and counselors;

(C) the establishment of student internships;

(D) the development of seminars on mathematics and science;

(E) tutoring in mathematics and science;

(F) academic counseling;

(G) the development of opportunities for research; and

(H) such other activities that may promote the participation of low-income and first generation college students in post-secondary science and mathematics education.

(c) Support

(1) In carrying out the purpose of this section, the entities may provide support under subsection (b)(2) of this section to—

(A) low-income and first generation college students; and

(B) institutions of higher education, public and private agencies and organizations, and secondary and middle schools that principally benefit low-income students.

(2) The qualified entities shall, to the extent practicable, coordinate support activities under this section with the Secretary of Education and the Secretary.

(d) Cooperation with qualified entities

The Secretary shall cooperate with qualified entities and, to the extent practicable, make

available to the entities such personnel, facilities, and other resources of the Department of Energy as may be necessary to carry out the duties of the entities.

(e) Report

Not later than October 1 of each year, the entities shall report to the Secretary, the Secretary of Education, and the Congress on—

(1) progress made to promote the participation of low-income and first generation college students in post-secondary science and mathematics education by—

(A) the qualified entities;

(B) other mathematics and science education programs of the Department of Energy; and

(C) the Special Programs for Students from Disadvantaged Backgrounds of the Department of Education; and

(2) recommendations for such additional actions as may be needed to promote the participation of low-income students in post-secondary science and mathematics education.

(f) Effect on existing programs

The programs in this section shall supplement and be developed in cooperation with the current mathematics and science education programs of the Department of Energy and the Department of Education but shall not supplant them.

(g) “Qualified entity” defined

For purposes of this section, the term “qualified entity” means a nonprofit corporation, association, or institution that has demonstrated special knowledge of, and experience with, the education of low-income and first generation college students and whose primary mission is the operation of national programs that focus on low-income students and provide training and other services to educators.

(h) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary, to be derived from section 13503(e) of this title and the Environmental Restoration and Waste Management program, to carry out the purposes of this section.

(Pub. L. 102-486, title XXII, §2204, Oct. 24, 1992, 106 Stat. 3089.)

REFERENCES IN TEXT

Sections 1070d through 1070d-1d of title 20, referred to in subsec. (a), and section 1070d of title 20, referred to in subsec. (b)(1), were repealed by Pub. L. 102-325, title IV, §402(a)(1), July 23, 1992, 106 Stat. 482.

§ 13505. Integration of research and development

Within 180 days after October 24, 1992, the Secretary, in consultation with appropriate representatives of industry, institutions of higher education, Department of Energy national laboratories, and professional and technical societies, shall prepare and submit to Congress a 5-year program plan for improving the integration of basic energy research programs with other energy programs within the Department of Energy. Such program plan shall include—

(1) an evaluation of current procedures and mechanisms used to achieve such integration;

¹ See References in Text note below.

(2) an assessment of the role that the Department of Energy national laboratories play in such integration;

(3) an identification and evaluation of models that could enhance such integration;

(4) an identification and evaluation of new programs, mechanisms, and related policy options that could improve the integrating process, including—

(A) set aside funding for matching or leveraging basic and applied programs;

(B) more formal linkages; and

(C) program coordination;

(5) recommendations for expanded research and development and new technology areas; and

(6) budget estimates for activities under this section.

(Pub. L. 102-486, title XXII, §2205, Oct. 24, 1992, 106 Stat. 3091.)

§ 13506. Definitions

For purposes of this subchapter—

(1) the term “advanced manufacturing technology” means processes, equipment, techniques, practices, and capabilities that are applied for the purpose of—

(A) improving the productivity, quality, or energy efficiency of the design, development, testing, or manufacture of a product; or

(B) expanding the technical capability to design, develop, test, or manufacture a product that is fundamentally different in character from existing products and that will result in improved energy efficiency;

(2) the term “advanced materials” means materials that are processed, synthesized, fabricated, and manufactured to develop high performance properties that exceed the corresponding properties of conventional materials for structural, electronic, magnetic, or photonic applications, or for joining, welding, bonding, or packaging components into complex assemblies, including—

(A) advanced monolithic materials such as metals, ceramics, and polymers;

(B) advanced composite materials such as metal matrix (including intermetallics), polymer matrix, ceramic matrix, continuous fiber ceramic composite, and carbon matrix composites; and

(C) advanced electronic, magnetic, and photonic materials, including superconducting, semiconductor, electrooptic, magneto optic, thin-film, and special purpose coating materials used in technologies for energy efficiency, renewable energy, or electric power applications; and

(3) the term “United States” means the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Northern Mariana Islands, and any other territory or possession of the United States.

(Pub. L. 102-486, title XXII, §2206, Oct. 24, 1992, 106 Stat. 3091.)

SUBCHAPTER XI—POLICY AND ADMINISTRATIVE PROVISIONS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 5905 of this title.

§ 13521. Policy on major construction projects

(a) Report and management plan

The Secretary shall submit to the Congress a report and management plan for any major construction project involving \$100,000,000 or more, prior to the expenditure of those funds.

(b) Congressional review

Expenditure of funds for a project described in subsection (a) of this section may be made after a period of 30 calendar days (not including any day on which either House of Congress is not in session because of adjournment of more than 3 calendar days prior to a day certain) has passed after receipt of the report and management plan by Congress.

(Pub. L. 102-486, title XXIII, §2301, Oct. 24, 1992, 106 Stat. 3092.)

§ 13522. Energy Research, Development, Demonstration, and Commercial Application Advisory Board

(a) Establishment

The Secretary shall establish an Energy Research, Development, Demonstration, and Commercial Application Advisory Board (hereafter in this section referred to as the “Advisory Board”).

(b) Responsibilities

The Advisory Board shall provide impartial technical advice to the Secretary to assist in the development of energy research, development, demonstration, and commercial application plans and reports under sections 5905 and 5914¹ of this title, under section 7321 of this title, and as otherwise provided in subchapters VIII through XI of this chapter. The Advisory Board shall also periodically review such plans and reports and their implementation in relation to the goals stated in section 13401 of this title, and report the results of such review to the Secretary and the Congress. Such report shall be included as part of the report required under section 5914¹ of this title.

(c) Use of existing advisory board

The Secretary may use an existing advisory board to carry out the responsibilities described in subsection (b) of this section.

(Pub. L. 102-486, title XXIII, §2302, Oct. 24, 1992, 106 Stat. 3092.)

REFERENCES IN TEXT

Subchapters VIII through XI of this chapter, referred to in subsec. (b), was in the original “titles XX through XXIII of this Act”, meaning titles XX through XXIII of Pub. L. 102-486, Oct. 24, 1992, 106 Stat. 3057-3092, which enacted subchapters VIII through XI of this chapter and amended sections 5103, 5107, 5108, 5110, 5307, 5905, 12003, 12004, and 12006 of this title.

Section 5914 of this title, referred to in subsec. (b), was omitted from the Code.

¹ See References in Text note below.

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5905, 13411, 13523 of this title.

§ 13523. Management plan**(a) Plan preparation**

The Secretary, in consultation with the Advisory Board established under section 13522 of this title, shall prepare a management plan for the conduct of research, development, demonstration, and commercial application of energy technologies that is consistent with the goals stated in section 13401 of this title.

(b) Contents of plan

The management plan under subsection (a) of this section shall provide for—

- (1) investigation of promising energy and energy efficiency resource technologies that have been identified as potentially significant future contributors to national energy security;
- (2) development of energy and energy efficiency resource technologies that have the potential to reduce energy supply vulnerability, and to minimize adverse impacts on the environment, the global climate, and the economy; and
- (3) creation of opportunities for export of energy and energy efficiency resource technologies from the United States that can enhance the Nation's competitiveness.

(c) Energy technology inventory and status report

As part of the management plan, the Secretary, with the advice of the Advisory Board established under section 13522 of this title, shall develop an inventory and status report of technologies to enhance energy supply and to improve the efficiency of energy end uses. The inventory and status report shall include fossil, renewable, nuclear, and energy conservation technologies which have not yet achieved the status of fully reliable and cost-competitive commercial availability, but which the Secretary projects may become available with additional research, development, and demonstration. The inventory and status report shall provide, for each technology—

- (1) an assessment of its—
 - (A) degree of technological maturity; and
 - (B) principal research, development, and demonstration issues, including—
 - (i) the barriers posed by capital, operating, and maintenance costs;
 - (ii) technical performance; and
 - (iii) potential environmental impacts;
- (2) the projected time frame for commercial availability, specifying at a minimum whether

the technology will be commercially available in the near-term, mid-term, or long-term, whether there are too many uncertainties to project availability, or whether it is unlikely that the technology will ever be commercial; and

(3) a projection of the future cost-competitiveness of the technology in comparison with alternative technologies to provide the same energy service.

(d) Public comment

The Secretary shall publish the proposed management plan for a written public comment period of at least 90 days. The Secretary shall consider such comments and include a summary thereof in the management plan.

(e) Plan submission

Within one year after October 24, 1992, the Secretary shall submit the first management plan under this section to Congress. Thereafter, the Secretary shall submit a revised management plan biennially, at the time of submittal of the President's annual budget submission to the Congress.

(Pub. L. 102-486, title XXIII, §2304, Oct. 24, 1992, 106 Stat. 3093.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13474 of this title.

§ 13524. Costs related to decommissioning and storage and disposal of nuclear waste**(a) Award of contracts****(1) Prime contractors**

In awarding contracts to perform nuclear hot cell services, the Secretary, in evaluating bids for such contracts, shall exclude from consideration costs related to the decommissioning of nuclear facilities or the storage and disposal of nuclear waste, if—

- (A) one or more of the parties bidding to perform such services is a United States company that is subject to such costs; and
- (B) one or more of the parties bidding to perform such services is a foreign company that is not subject to comparable costs.

(2) Subcontractors

Any person awarded a contract subject to the restrictions described in paragraph (1) who subcontracts with a person to perform the services described in such paragraph shall be subject to the same restrictions in evaluating bids among potential subcontractors, as the Secretary was subject to in evaluating bids among prime contractors.

(b) Issuance of regulations

The Secretary shall issue regulations not later than 90 days after October 24, 1992, to carry out the requirements of subsection (a) of this section.

(c) Definitions

As used in this section—

- (1) the term "costs related to decommissioning of nuclear facilities" means any cost associated with the compliance with regulatory re-

quirements governing the decommissioning of nuclear facilities licensed by the Nuclear Regulatory Commission;

(2) the term “costs related to storage and disposal of nuclear waste” means any costs, whether required by regulation or incurred as a matter of prudent business practice, associated with the storage or disposal of nuclear waste;

(3) the term “nuclear hot cell services” means services related to the examination of, or performance of various operations on, nuclear fuel rods, control assemblies, or other components that are emitting large quantities of ionizing radiation; and

(4) the term “nuclear waste” means any radioactive waste material subject to regulation by the Nuclear Regulatory Commission or the Department of Energy.

(Pub. L. 102-486, title XXIII, §2305, Oct. 24, 1992, 106 Stat. 3094.)

§ 13525. Limits on participation by companies

A company shall be eligible to receive financial assistance under subchapters VIII through XI of this chapter only if—

(1) the Secretary finds that the company’s participation in any program under such subchapters would be in the economic interest of the United States, as evidenced by investments in the United States in research, development, and manufacturing (including, for example, the manufacture of major components or subassemblies in the United States); significant contributions to employment in the United States; an agreement with respect to any technology arising from assistance provided under this section to promote the manufacture within the United States of products resulting from that technology (taking into account the goals of promoting the competitiveness of United States industry), and to procure parts and materials from competitive suppliers; and

(2) either—

(A) the company is a United States-owned company; or

(B) the Secretary finds that the company is incorporated in the United States and has a parent company which is incorporated in a country which affords to United States-owned companies opportunities, comparable to those afforded to any other company, to participate in any joint venture similar to those authorized under this Act; affords to United States-owned companies local investment opportunities comparable to those afforded to any other company; and affords adequate and effective protection for the intellectual property rights of United States-owned companies.

(Pub. L. 102-486, title XXIII, §2306, Oct. 24, 1992, 106 Stat. 3095.)

REFERENCES IN TEXT

Subchapters VIII through XI of this chapter, referred to in text, was in the original “titles XX through XXIII of this Act”, meaning titles XX through XXIII of Pub. L. 102-486, Oct. 24, 1992, 106 Stat. 3057-3092, which enacted subchapters VIII through XI of this chapter and

amended sections 5103, 5107, 5108, 5110, 5307, 5905, 12003, 12004, and 12006 of this title.

This Act, referred to in par. (2)(B), is Pub. L. 102-486, Oct. 24, 1992, 106 Stat. 2776, known as the Energy Policy Act of 1992. For complete classification of this Act to the Code, see Short Title note set out under section 13201 of this title and Tables.

§ 13526. Uncosted obligations

(a) Report

Along with the submission of each of the President’s annual budget requests to Congress, the Secretary shall submit to Congress a report which—

(1) identifies the amount of Department of Energy funds that were, as of the end of the previous fiscal year—

- (A) committed uncosted obligations; and
- (B) uncommitted uncosted obligations;

(2) specifically describes the purposes for which all such funds are intended; and

(3) explains the effect that information contained in the report has had on the annual budget request for the Department of Energy being simultaneously submitted.

(b) Definitions

Within 90 days after October 24, 1992, the Secretary shall submit a report to the Congress containing definitions of the terms “uncosted obligation”, “committed uncosted obligation”, and “uncommitted uncosted obligation” for purposes of reports to be submitted under subsection (a) of this section.

(Pub. L. 102-486, title XXIII, §2307, Oct. 24, 1992, 106 Stat. 3096.)

SUBCHAPTER XII—MISCELLANEOUS

PART A—GENERAL PROVISIONS

§ 13541. Research, development, demonstration, and commercial application activities

(a) Research, development, and demonstration

(1) Except as otherwise provided in this Act, research, development, and demonstration activities under this Act may be carried out under the procedures of the Federal Nonnuclear Research and Development Act of 1974 (42 U.S.C. 5901-5920), the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), or any other Act under which the Secretary is authorized to carry out such activities, but only to the extent the Secretary is authorized to carry out such activities under each such Act. An objective of any demonstration program under this Act shall be to determine the technical and commercial feasibility of energy technologies.

(2) Except as otherwise provided in this Act, in carrying out research, development, and demonstration programs and activities under this Act, the Secretary may use, to the extent authorized under applicable provisions of law, contracts, cooperative agreements, cooperative research and development agreements under the Stevenson-Wydler Technology Innovation Act of 1980 [15 U.S.C. 3701 et seq.], grants, joint ventures, and any other form of agreement available to the Secretary.

(b) Commercial application

Except as otherwise provided in this Act, in carrying out commercial application programs

and commercial application activities under this Act, the Secretary may use, to the extent authorized under applicable provisions of law, contracts, cooperative agreements, cooperative research and development agreements under the Stevenson-Wydler Technology Innovation Act of 1980 [15 U.S.C. 3701 et seq.], grants, joint ventures, and any other form of agreement available to the Secretary. An objective of any commercial application program under this Act shall be to accelerate the transition of technologies from the research and development stage.

(c) “Joint venture” defined

For purposes of this section, the term “joint venture” has the meaning given the term “joint research and development venture” under section 4301(a)(6) and (b) of title 15, except that such term may apply under this section to research, development, demonstration, and commercial application joint ventures.

(d) Protection of information

Section 12(c)(7) of the Stevenson-Wydler Technology Innovation Act of 1980 [15 U.S.C. 3710a(c)(7)], relating to the protection of information, shall apply to research, development, demonstration, and commercial application programs and activities under this Act.

(e) Guidelines and procedures

The Secretary shall provide guidelines and procedures for the transition, where appropriate, of energy technologies from research through development and demonstration under subsection (a) of this section to commercial application under subsection (b) of this section. Nothing in this section shall preclude the Secretary from—

(1) entering into a contract, cooperative agreement, cooperative research and development agreement under the Stevenson-Wydler Technology Innovation Act of 1980 [15 U.S.C. 3701 et seq.], grant, joint venture, or any other form of agreement available to the Secretary under this section that relates to research, development, demonstration, and commercial application; or

(2) extending a contract, cooperative agreement, cooperative research and development agreement under the Stevenson-Wydler Technology Innovation Act of 1980, grant, joint venture, or any other form of agreement available to the Secretary that relates to research, development, and demonstration to cover commercial application.

(f) Application of section

This section shall not apply to any contract, cooperative agreement, cooperative research and development agreement under the Stevenson-Wydler Technology Innovation Act of 1980 [15 U.S.C. 3701 et seq.], grant, joint venture, or any other form of agreement available to the Secretary that is in effect as of October 24, 1992.

(Pub. L. 102-486, title XXX, §3001, Oct. 24, 1992, 106 Stat. 3126.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (a), (b), and (d), is Pub. L. 102-486, Oct. 24, 1992, 106 Stat. 2776, known as

the Energy Policy Act of 1992. For complete classification of this Act to the Code, see Short Title note set out under section 13201 of this title and Tables.

The Federal Nonnuclear Research and Development Act of 1974, referred to in subsec. (a)(1), probably means the Federal Nonnuclear Energy Research and Development Act of 1974, Pub. L. 93-577, Dec. 31, 1974, 88 Stat. 1878, as amended, which is classified generally to chapter 74 (§5901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5901 of this title and Tables.

The Atomic Energy Act of 1954, referred to in subsec. (a)(1), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

The Stevenson-Wydler Technology Innovation Act of 1980, referred to in subsecs. (a)(2), (b), (e)(1), (2), and (f), is Pub. L. 96-480, Oct. 21, 1980, 94 Stat. 2311, as amended, which is classified generally to chapter 63 (§3701 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 3701 of Title 15 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12001, 12005, 13331, 13411, 13412, 13413, 13414, 13431, 13432, 13433, 13434, 13437, 13451, 13452, 13453, 13454, 13455, 13456, 13471, 13472, 13474, 13475, 13477, 13501, 13502 of this title.

§ 13542. Cost sharing

(a) Research and development

Except as otherwise provided in this Act, for research and development programs carried out under this Act, the Secretary shall require a commitment from non-Federal sources of at least 20 percent of the cost of the project. The Secretary may reduce or eliminate the non-Federal requirement under this subsection if the Secretary determines that the research and development is of a basic or fundamental nature.

(b) Demonstration and commercial application

Except as otherwise provided in this Act, the Secretary shall require at least 50 percent of the costs directly and specifically related to any demonstration or commercial application project under this Act to be provided from non-Federal sources. The Secretary may reduce the non-Federal requirement under this subsection if the Secretary determines that the reduction is necessary and appropriate considering the technological risks involved in the project and is necessary to meet the objectives of this Act.

(c) Calculation of amount

In calculating the amount of the non-Federal commitment under paragraph (1) or (2), the Secretary shall include cash, personnel, services, equipment, and other resources.

(d) Tennessee Valley Authority

Funds derived by the Tennessee Valley Authority from its power program may be used for all or part of any cost sharing requirements under this section, except to the extent that such funds are provided by annual appropriation Acts.

(Pub. L. 102-486, title XXX, §3002, Oct. 24, 1992, 106 Stat. 3127.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (a) and (b), is Pub. L. 102-486, Oct. 24, 1992, 106 Stat. 2776, known as the En-

ergy Policy Act of 1992. For complete classification of this Act to the Code, see Short Title note set out under section 13201 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12005, 13331, 13411, 13412, 13413, 13414, 13431, 13432, 13433, 13434, 13437, 13451, 13452, 13453, 13454, 13455, 13456, 13471, 13472, 13474, 13475, 13477, 13501, 13502, 13503 of this title.

PART B—OTHER MISCELLANEOUS PROVISIONS

§ 13551. Repealed. Pub. L. 104-182, title III, § 301, Aug. 6, 1996, 110 Stat. 1683

Section, Pub. L. 102-486, title XXX, § 3013, Oct. 24, 1992, 106 Stat. 3128, related to geothermal heat pumps.

§ 13552. Use of energy futures for fuel purchases

(a) Fuel study

The Secretary shall conduct a study—

(1) to ascertain if the use of energy futures and options contracts could provide cost-effective protection for Government entities (including Government purchases for military purposes and for the Strategic Petroleum Reserve) and consumer cooperatives (or any organization whose purpose is to purchase fuel in bulk) from unanticipated surges in the price of fuel; and

(2) to ascertain how such Government entities or consumer cooperatives may be educated in the prudent use of energy futures and options contracts to maximize their purchasing effectiveness, protect themselves against unanticipated surges in the price of fuel, and minimize fuel costs.

(b) Pilot program

The Secretary shall conduct a pilot program, commencing not later than 30 days after the transmission of the study required in subsection (b)¹ of this section, to educate such governmental entities, consumer cooperatives, or other organizations on the prudent and cost-effective use of energy futures and options contracts to increase their protection against unanticipated surges in the price of fuel and thereby increase the efficiency of their fuel purchase or assistance programs.

(c) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out this section.

(Pub. L. 102-486, title XXX, § 3014, Oct. 24, 1992, 106 Stat. 3128; Pub. L. 105-362, title IV, § 401(f), Nov. 10, 1998, 112 Stat. 3282.)

REFERENCES IN TEXT

Subsection (b) of this section, referred to in subsec. (b), was repealed and subsec. (c) of this section was redesignated (b) by Pub. L. 105-362, title IV, § 401(f), Nov. 10, 1998, 112 Stat. 3282. See 1998 Amendment note below.

AMENDMENTS

1998—Subsecs. (b) to (d). Pub. L. 105-362 redesignated subsecs. (c) and (d) as (b) and (c), respectively, and struck out heading and text of former subsec. (b). Text read as follows: “The Secretary, no later than 12 months after October 24, 1992, shall transmit the study

required in this section to the Committee on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.”

§ 13553. Energy subsidy study

(a) In general

The Secretary shall contract with the National Academy of Sciences to conduct a study of energy subsidies that—

- (1) are in effect on October 24, 1992; or
- (2) have been in effect prior to October 24, 1992.

(b) Report to Congress

Not later than 18 months after October 24, 1992, the Secretary shall transmit to the Congress,¹ the results of such study to be accompanied by recommendations for legislation, if any.

(c) Contents

(1) In general

The study shall identify and quantify the direct and indirect subsidies and other legal and institutional factors that influence decisions in the marketplace concerning fuels and energy technologies.

(2) Topics for examination

The study shall examine—

- (A) fuel and technology choices that are—
 - (i) available on October 24, 1992; or
 - (ii) reasonably foreseeable on October 24, 1992;
- (B) production subsidies for the extraction of raw materials;
- (C) subsidies encouraging investment in large capital projects;
- (D) indemnification;
- (E) fuel cycle subsidies, including waste disposal;
- (F) government research and development support; and
- (G) other relevant incentives and disincentives.

(d) Authorization of appropriations

There are authorized to be appropriated to carry out this section \$500,000 for each of the fiscal years 1993 and 1994.

(Pub. L. 102-486, title XXX, § 3015, Oct. 24, 1992, 106 Stat. 3129.)

§ 13554. Tar sands

(a) Policy

It is the policy of the United States to promote the development and production, by all means consistent with sound engineering, economic, and environmental practices, of deposits of tar sands.

(b) “Tar sands” defined

(1) For purposes of this section, the term “tar sands” means any consolidated or unconsolidated rock (other than coal, oil shale, or gilsonite) that either—

- (A) contains a hydrocarbonaceous material with a gas-free viscosity, at original reservoir temperature, greater than 10,000 centipoise; or

¹ See References in Text note below.

¹ So in original. The comma probably should not appear.

(B) contains a hydrocarbonaceous material and is produced by mining or quarrying.

(2) Nothing in this section is intended or shall be construed to affect in any way the definition of the term tar sands under any other provision of Federal law.

(c) Study

The Secretary, in consultation with the Secretary of the Interior, shall submit a study to the House of Representatives and the Committee on Energy and Natural Resources of the Senate within one year after October 24, 1992. Such study shall identify and evaluate the development potential of sources of tar sands in the United States. The study shall also identify and evaluate processes for extracting oil from the identified tar sand sources, including existing tar sands waste tailings, and evaluate the environmental benefits of, and the potential for co-production of minerals and metals from, such processes.

(d) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1993 and 1994 to carry out this section.

(Pub. L. 102-486, title XXX, §3016, Oct. 24, 1992, 106 Stat. 3129.)

§ 13555. Consultative Commission on Western Hemisphere Energy and Environment

(a) Findings

The Congress finds that—

(1) there is growing mutual economic interdependence among the countries of the Western Hemisphere;

(2) energy and environmental issues are intrinsically linked and must be considered together when formulating policy on the broader issue of sustainable economic development for the Western Hemisphere as a whole;

(3) when developing their respective energy infrastructures, countries in the Western Hemisphere must consider existing and emerging environmental constraints, and do so in a way that results in sustainable long-term economic growth;

(4) the coordination of respective national energy and environmental policies of the governments of the Western Hemisphere could be substantially improved through regular consultation among these countries;

(5) the development, production and consumption of energy can affect environmental quality, and the environmental consequences of energy-related activities are not confined within national boundaries, but are regional and global in scope;

(6) although the Western Hemisphere is richly endowed with indigenous energy resources, an insufficient energy supply would severely constrain future opportunities for sustainable economic development and growth in each of these member countries; and

(7) the energy markets of the United States are linked with those in other countries of the Western Hemisphere and the world.

(b) “Commission” defined

For purposes of this section, the term “Commission” means the Consultative Commission

on Western Hemisphere Energy and Environment.

(c) Negotiations

The President is authorized to direct the United States representative to the Organization of American States to initiate negotiations with the Organization of American States for the establishment of a Consultative Commission on Western Hemisphere Energy and Environment under the auspices of the Organization of American States.

(d) The Commission

In the course of the negotiations, the following shall be pursued:

(1) Objectives

The objectives of the Commission shall be—

(A) to evaluate from the viewpoint of the Western Hemisphere as a whole the energy and environmental situations, trends, and policies of the countries of the participating governments necessary to support sustainable economic development;

(B) to recommend to the participating governments actions, policies, and institutional arrangements that will enhance cooperation and policy coordination among their respective countries in the future development and use of indigenous energy resources and technologies, and in the future development and implementation of measures to protect the environment of the Western Hemisphere; and

(C) to recommend to the participating governments actions and policies that will enhance energy and environmental cooperation and coordination among the countries of the Western Hemisphere and the world.

(2) Composition of Commission

The Commission shall include representatives of—

(A) the respective foreign energy and environmental ministries or departments of the participating governments;

(B) the parliamentary or legislative bodies with legislative responsibilities for energy and environmental matters; and

(C) other governmental and non-governmental observers appointed by the heads of each participating government on the basis of their experience and expertise.

(3) Secretariat

A small secretariat shall be chosen by the participating governments for their expertise in the areas of energy and the environment.

(4) Sunset provision

The Commission’s authority—

(A) shall terminate five years from the date of the agreement under which it was created; and

(B) may be extended for a five-year term at the expiration of the previous term by agreement of the participating governments.

(e) Report

The President shall, within one year after October 24, 1992, report to the Committee on Energy and Commerce and the Committee on For-

eign Affairs of the House of Representatives, and to the Committee on Energy and Natural Resources and the Committee on Foreign Relations of the Senate, on the progress toward the establishment of the Commission and achievement of the purposes of this section.

(Pub. L. 102-486, title XXX, §3020, Oct. 24, 1992, 106 Stat. 3131.)

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives and Committee on Foreign Affairs of House of Representatives treated as referring to Committee on International Relations of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 13556. Disadvantaged business enterprises

(a) General rule

To the extent practicable, the head of each agency shall provide that the obligation of not less than 10 percent of the total combined amounts obligated for contracts and subcontracts by each agency under this Act and amendments made by this Act pursuant to competitive procedures within the meaning of either the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.), or chapter 137 of title 10, shall be expended either with—

- (1) small business concerns controlled by socially and economically disadvantaged individuals or women;
- (2) historically Black colleges and universities;
- (3) colleges and universities having a student body in which more than 20 percent of the students are Hispanic Americans or Native Americans; or
- (4) qualified HUBZone small business concerns.

(b) Definitions

For purposes of this section, the following definitions shall apply:

- (1) The term “small business concern” has the meaning such term has under section 632 of title 15. However, for purposes of contracts and subcontracts requiring engineering services the applicable size standard shall be that established for military and aerospace equipment and military weapons.
- (2) The term “socially and economically disadvantaged individuals” has the meaning such term has under section 637(d) of title 15 and relevant subcontracting regulations promulgated pursuant thereto.
- (3) The term “qualified HUBZone small business concern” has the meaning given that term in section 632(p) of title 15.

(Pub. L. 102-486, title XXX, §3021, Oct. 24, 1992, 106 Stat. 3133; Pub. L. 105-135, title VI, §604(g), Dec. 2, 1997, 111 Stat. 2634.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), is Pub. L. 102-486, Oct. 24, 1992, 106 Stat. 2776, known as the Energy Policy Act of 1992. For complete classification of this Act to the Code, see Short Title note set out under section 13201 of this title and Tables.

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (a), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Provisions of that Act relating to procurement contracts are classified to subchapter IV (§251 et seq.) of chapter 4 of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 471 of Title 40, Public Buildings, Property, and Works, and Tables.

AMENDMENTS

1997—Subsec. (a)(4). Pub. L. 105-135, §604(g)(1), added par. (4).

Subsec. (b)(3). Pub. L. 105-135, §604(g)(2), added par. (3).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-135 effective Oct. 1, 1997, see section 3 of Pub. L. 105-135, set out as a note under section 631 of Title 15, Commerce and Trade.

CHAPTER 135—RESIDENCY AND SERVICE REQUIREMENTS IN FEDERALLY ASSISTED HOUSING

SUBCHAPTER I—STANDARDS AND OBLIGATIONS OF RESIDENCY IN FEDERALLY ASSISTED HOUSING

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SUBCHAPTER I—STANDARDS AND OBLIGATIONS OF RESIDENCY IN FEDERALLY ASSISTED HOUSING

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1437d, 1437f of this title; title 12 section 1701q.

§ 13601. Compliance by owners as condition of Federal assistance

The Secretary of Housing and Urban Development shall require owners of federally assisted housing (as such term is defined in section 13641(2) of this title), as a condition of receiving housing assistance for such housing, to comply with the procedures and requirements established under this subchapter.

(Pub. L. 102-550, title VI, §641, Oct. 28, 1992, 106 Stat. 3820.)

EFFECTIVE DATE

Chapter applicable upon expiration of 6-month period beginning Oct. 28, 1992, except as otherwise provided, see section 13642 of this title.

§ 13602. Compliance with criteria for occupancy as requirement for tenancy

In selecting tenants for occupancy of units in federally assisted housing, an owner of such housing shall utilize the criteria for occupancy in federally assisted housing established by the Secretary, by regulation, under section 13603 of

this title. If an owner determines that an applicant for occupancy in the housing does not meet such criteria, the owner may deny such applicant occupancy.

(Pub. L. 102-550, title VI, §642, Oct. 28, 1992, 106 Stat. 3821.)

§ 13603. Establishment of criteria for occupancy

(a) Task force

(1) Establishment

To assist the Secretary in establishing reasonable criteria for occupancy in federally assisted housing, the Secretary shall establish a task force to review all rules, policy statements, handbooks, technical assistance memoranda, and other relevant documents issued by the Department of Housing and Urban Development on the standards and obligations governing residency in federally assisted housing and make recommendations to the Secretary for the establishment of such criteria for occupancy.

(2) Members

The Secretary shall appoint members to the task force, which shall include individuals representing the interests of owners, managers, and tenants of federally assisted housing, public housing agencies, owner and tenant advocacy organizations, persons with disabilities and disabled families, organizations assisting homeless individuals, and social service, mental health, and other nonprofit servicer providers who serve federally assisted housing.

(3) Compensation

Members of the task force shall not receive compensation for serving on the task force.

(4) Duties

The task force shall—

(A) review all existing standards, regulations, and guidelines governing occupancy and tenant selection policies in federally assisted housing;

(B) review all existing standards, regulations, and guidelines governing lease provisions and other rules of occupancy for federally assisted housing;

(C) determine whether the standards, regulations, and guidelines reviewed under subparagraphs (A) and (B) provide sufficient guidance to owners and managers of federally assisted housing to—

(i) develop procedures for preselection inquiries sufficient to determine the capacity of applicants to comply with reasonable lease terms and conditions of occupancy;

(ii) utilize leases that prohibit behavior which endangers the health or safety of other tenants or violates the rights of other tenants to peaceful enjoyment of the premises;

(iii) assess the need to provide, and appropriate measures for providing, reasonable accommodations required under the Fair Housing Act [42 U.S.C. 3601 et seq.] and section 794 of title 29 for persons with various types of disabilities; and

(iv) comply with civil rights laws and regulations;

(D) propose criteria for occupancy in federally assisted housing, standards for the reasonable performance and behavior of tenants of federally assisted housing, compliance standards consistent with the reasonable accommodation of the requirements of the Fair Housing Act [42 U.S.C. 3601 et seq.] and section 794 of title 29, standards for compliance with other civil rights laws, and procedures for the eviction of tenants not complying with such standards consistent with sections 1437d and 1437f of this title; and

(E) report to the Congress and the Secretary of Housing and Urban Development pursuant to paragraph (7).

(5) Procedure

In carrying out its duties, the task force shall hold public hearings and receive written comments for a period of not less than 60 days.

(6) Support

The Secretary of Housing and Urban Development shall cooperate fully with the task force and shall provide support staff and office space to assist the task force in carrying out its duties.

(7) Reports

Not later than 3 months after October 28, 1992, the task force shall submit to the Secretary and the Congress a preliminary report describing its initial actions. Not later than 6 months after October 28, 1992, the task force shall submit a report to the Secretary and the Congress, which shall include—

(A) a description of its findings; and

(B) recommendations to revise such standards, regulations, and guidelines to provide accurate and complete guidance to owners and managers of federally assisted housing as determined necessary under paragraph (4).

(b) Rulemaking

(1) Authority

The Secretary shall, by regulation, establish criteria for selection of tenants for occupancy in federally assisted housing and lease provisions for such housing.

(2) Standards

The criteria shall provide sufficient guidance to owners and managers of federally assisted housing to enable them to (A) select tenants capable of complying with reasonable lease terms, (B) utilize leases prohibiting behavior which endangers the health or safety of others or violates the right of other tenants to peaceful enjoyment of the premises, (C) comply with legal requirements to make reasonable accommodations for persons with disabilities, and (D) comply with civil rights laws. The criteria shall be consistent with the requirements under subsections (k) and (l) of section 1437d of this title and section 1437f(d)(1) of this title and any similar contract and lease requirements for federally assisted housing. In establishing the criteria, the Secretary shall take into consideration the report of the task force under subsection (a)(7) of this section.

(3) Procedure

Not later than 90 days after the submission of the final report under subsection (a)(7) of this section, the Secretary shall issue a notice of proposed rulemaking of the regulations under this subsection providing for notice and opportunity for public comment regarding the regulations, pursuant to the provisions of section 553 of title 5 (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section). The duration of the period for public comment under such section 553 shall not be less than 60 days. The Secretary shall issue final regulations under this subsection not later than the expiration of the 60-day period beginning upon the conclusion of the comment period, which shall take effect upon issuance.

(Pub. L. 102-550, title VI, §643, Oct. 28, 1992, 106 Stat. 3821.)

REFERENCES IN TEXT

The Fair Housing Act, referred to in subsec. (a)(4)(C)(iii), (D), is title VIII of Pub. L. 90-284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I (§3601 et seq.) of chapter 45 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

The civil rights laws, referred to in subsecs. (a)(4)(C)(iv), (D) and (b)(2)(D), are classified generally to chapter 21 (§1981 et seq.) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13602 of this title.

§ 13604. Assisted applications

(a) Authority

The Secretary shall provide that any individual or family applying for occupancy in federally assisted housing may include in the application for the housing the name, address, phone number, and other relevant information of a family member, friend, or social, health, advocacy, or other organization, and that the owner shall treat such information as confidential.

(b) Maintenance of information

The Secretary shall require the owner of any federally assisted housing receiving an application including such information to maintain such information for any applicants who become tenants of the housing, for the purposes of facilitating contact by the owner with such person or organization to assist in providing any services or special care for the tenant and assist in resolving any relevant tenancy issues arising during the tenancy of such tenant.

(c) Limitations

An owner of federally assisted housing may not require any individual or family applying for occupancy in the housing to provide the information described in subsection (a) of this section.

(Pub. L. 102-550, title VI, §644, Oct. 28, 1992, 106 Stat. 3823.)

SUBCHAPTER II—AUTHORITY TO PROVIDE PREFERENCES FOR ELDERLY RESIDENTS AND UNITS FOR DISABLED RESIDENTS IN CERTAIN SECTION 8 ASSISTED HOUSING

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 1437f of this title.

§ 13611. Authority

Notwithstanding any other provision of law, an owner of a covered section 8 housing project (as such term is defined in section 13619 of this title) designed primarily for occupancy by elderly families may, in selecting tenants for units in the project that become available for occupancy, give preference to elderly families who have applied for occupancy in the housing, subject to the requirements of this subchapter.

(Pub. L. 102-550, title VI, §651, Oct. 28, 1992, 106 Stat. 3823.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original "this subtitle", meaning subtitle D of title VI of Pub. L. 102-550, Oct. 28, 1992, 106 Stat. 3823, which enacted this subchapter and amended section 1437f of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13612, 13613, 13615 of this title.

§ 13612. Reservation of units for disabled families

(a) Requirement

Notwithstanding any other provision of law, for any project for which an owner gives preference in occupancy to elderly families pursuant to section 13611 of this title, such owner shall (subject to sections 13613, 13614, and 13615 of this title) reserve units in the project for occupancy only by disabled families who are not elderly or near-elderly families (and who have applied for occupancy in the housing) in the number determined under subsection (b) of this section.

(b) Number of units

Each owner required to reserve units in a project for occupancy under subsection (a) of this section shall reserve a number of units in the project that is not less than the lesser of—

(1) the number of units equivalent to the higher of—

(A) the percentage of units in the project that were occupied by such disabled families upon October 28, 1992; or

(B) the percentage of units in the project that were occupied by such families upon January 1, 1992; or

(2) 10 percent of the number of units in the project.

(Pub. L. 102-550, title VI, §652, Oct. 28, 1992, 106 Stat. 3823.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13613, 13615, 13616 of this title.

§ 13613. Secondary preferences

(a) Insufficient elderly families

If an owner of a covered section 8 housing project in which elderly families are given a

preference for occupancy pursuant to section 13611 of this title determines (in accordance with regulations established by the Secretary) that there are insufficient numbers of elderly families who have applied for occupancy in the housing to fill all the units in the project not reserved under section 13612 of this title, the owner may give preference for occupancy of such units to disabled families who are near-elderly families and have applied for occupancy in the housing.

(b) Insufficient non-elderly disabled families

If an owner of a covered section 8 housing project in which elderly families are given a preference for occupancy pursuant to section 13611 of this title determines (in accordance with regulations established by the Secretary) that there are insufficient numbers of disabled families who are not elderly or near-elderly families and have applied for occupancy in the housing to fill all the units in the project reserved under section 13612 of this title, the owner may give preference for occupancy of units so reserved to disabled families who are near-elderly families and have applied for occupancy in the housing.

(Pub. L. 102-550, title VI, §653, Oct. 28, 1992, 106 Stat. 3824.)

REFERENCES IN TEXT

Covered section 8 housing, referred to in text, is defined in section 13619 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13612, 13614, 13615 of this title.

§ 13614. General availability of units

If an owner of a covered section 8 housing project in which disabled families who are near-elderly families are given a preference for occupancy pursuant to subsection (a) or (b) of section 13613 of this title determines (in accordance with regulations established by the Secretary) that there are an insufficient number of such families to fill all the units in the project for which the preference is applicable, the owner shall make such units generally available for occupancy by families who have applied, and are eligible, for occupancy in the housing, without regard to the preferences established pursuant to this subchapter.

(Pub. L. 102-550, title VI, §654, Oct. 28, 1992, 106 Stat. 3824.)

REFERENCES IN TEXT

Covered section 8 housing, referred to in text, is defined in section 13619 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13612 of this title.

§ 13615. Preference within groups

Among disabled families qualifying for occupancy in units reserved under section 13612 of this title, and among elderly families and near-elderly families qualifying for preference for occupancy pursuant to section 13611 or 13613 of this title, preference for occupancy in units that are assisted under section 1437f of this title shall be

given to disabled families according to any preferences established under any system established under section 1437f(d)(1)(A) of this title by the public housing agency.

(Pub. L. 102-550, title VI, § 655, Oct. 28, 1992, 106 Stat. 3824; Pub. L. 104-99, title IV, § 402(d)(6)(C), Jan. 26, 1996, 110 Stat. 43; Pub. L. 105-276, title V, § 514(b)(2)(B), Oct. 21, 1998, 112 Stat. 2548.)

AMENDMENTS

1998—Pub. L. 105-276 substituted “shall be given to disabled families according to any preferences established under any system established under section 1437f(d)(1)(A) of this title by the public housing agency.” for “shall be given to disabled families according to the preferences for occupancy referred to in section 1437f(d)(1)(A)(i) of this title and the first sentence of section 1437f(o)(3)(B) of this title, to elderly families according to such preferences, and to near-elderly families according to such preferences, respectively.”

1996—Pub. L. 104-99, § 402(d)(6)(C), (f), temporarily substituted “any preferences” for “the preferences for occupancy referred to in section 1437f(d)(1)(A)(i) of this title and the first sentence of section 1437f(o)(3)(B) of this title, to elderly families according to such preferences, and to near-elderly families according to such preferences, respectively”. See Effective and Termination Dates of 1996 Amendment note below.

EFFECTIVE AND TERMINATION DATES OF 1996 AMENDMENT

Amendment by Pub. L. 104-99 effective Jan. 26, 1996, only for fiscal years 1996, 1997, and 1998, and to cease to be effective Oct. 21, 1998, see section 402(f) of Pub. L. 104-99, as amended, and section 514(f) of Pub. L. 105-276, set out as notes under section 1437a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13612 of this title.

§ 13616. Prohibition of evictions

Any tenant who, except for reservation of a percentage of the units of a project pursuant to section 13612 of this title or any preference for occupancy established pursuant to this subchapter, is lawfully residing in a dwelling unit in a covered section 8 housing project, may not be evicted or otherwise required to vacate such unit because of the reservation or preferences or because of any action taken by the Secretary of Housing and Urban Development or the owner of the project pursuant to this subchapter.

(Pub. L. 102-550, title VI, § 656, Oct. 28, 1992, 106 Stat. 3824.)

REFERENCES IN TEXT

Covered section 8 housing, referred to in text, is defined in section 13619 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1437f, 13611 of this title.

§ 13617. Treatment of covered section 8 housing not subject to elderly preference

If an owner of any covered section 8 housing project designed primarily for occupancy by elderly families does not give preference in occupancy to elderly families as authorized in this subchapter, then elderly families (as such term was defined in section 1437a of this title before October 28, 1992) shall be eligible for occupancy

in such housing to the same extent that such families were eligible before October 28, 1992.

(Pub. L. 102-550, title VI, § 657, Oct. 28, 1992, 106 Stat. 3825.)

REFERENCES IN TEXT

Covered section 8 housing, referred to in text, is defined in section 13619 of this title.

§ 13618. Treatment of other federally assisted housing

(a) Restricted occupancy

An owner of any federally assisted project (or portion of a project) as described in subparagraphs (D), (E), and (F) of section 13641(2) of this title that was designed for occupancy by elderly families may continue to restrict occupancy in such project (or portion) to elderly families in accordance with the rules, standards, and agreements governing occupancy in such housing in effect at the time of the development of the housing.

(b) Prohibition of evictions

Any tenant who is lawfully residing in a dwelling unit in a housing project described in subsection (a) of this section may not be evicted or otherwise required to vacate such unit because of any reservation or preferences under this subchapter or because of any action taken by the Secretary of Housing and Urban Development or the owner of the project pursuant to this subchapter.

(Pub. L. 102-550, title VI, § 658, Oct. 28, 1992, 106 Stat. 3825.)

§ 13619. “Covered section 8 housing” defined

For purposes of this subchapter, the term “covered section 8 housing” means housing described in section 13641(2)(G) of this title that was originally designed for occupancy by elderly families.

(Pub. L. 102-550, title VI, § 659, Oct. 28, 1992, 106 Stat. 3825.)

§ 13620. Study

The Secretary of Housing and Urban Development shall conduct a study to determine the extent to which Federal housing programs serve elderly families, disabled families, and families with children, in relation to the need of such families who are eligible for assistance under such programs. The Secretary shall submit a report to the Congress describing the study and the findings of the study not later than the expiration of the 1-year period beginning on October 28, 1992.

(Pub. L. 102-550, title VI, § 661, Oct. 28, 1992, 106 Stat. 3825.)

SUBCHAPTER III—SERVICE COORDINATORS FOR ELDERLY AND DISABLED RESIDENTS OF FEDERALLY ASSISTED HOUSING

§ 13631. Requirement to provide service coordinators

(a) In general

To the extent that amounts are made available for providing service coordinators under

this section, the Secretary shall require owners of covered federally assisted housing projects (as such term is defined in subsection (d) of this section) receiving such amounts to provide for employing or otherwise retaining the services of one or more individuals to coordinate the provision of supportive services for elderly and disabled families residing in the projects (in this section referred to as a “service coordinator”). No such elderly or disabled family may be required to accept services.

(b) Responsibilities

Each service coordinator of a covered federally assisted housing project provided pursuant to this subtitle¹ or the amendments made by this subtitle—¹

(1) shall consult with the owner of the housing, tenants, any tenant organizations, any resident management organizations, service providers, and any other appropriate persons, to identify the particular needs and characteristics of elderly and disabled families who reside in the project and any supportive services related to such needs and characteristics;

(2) shall manage and coordinate the provision of such services for residents of the project;

(3) may provide training to tenants of the project in the obligations of tenancy or coordinate such training;

(4) shall meet the minimum qualifications and standards required under section 8011(d)(4) of this title; and

(5) may carry out other appropriate activities for residents of the project.

(c) Included services

Supportive services referred to under subsection (b)(1) of this section may include health-related services, mental health services, services for nonmedical counseling, meals, transportation, personal care, bathing, toileting, house-keeping, chore assistance, safety, group and socialization activities, assistance with medications (in accordance with any applicable State laws), case management, personal emergency response, education and outreach regarding telemarketing fraud in accordance with the standards issued under subsection (f) of this section, and other appropriate services. The services may be provided through any agency of the Federal Government or any other public or private department, agency, or organization.

(d) Covered federally assisted housing

For purposes of this subtitle,¹ the term “covered federally assisted housing” means housing that is federally assisted housing (as such term is defined in section 13641(2) of this title), except that such term does not include housing described in subparagraphs (C) and (D) of such section.

(e) Services for low-income elderly or disabled families residing in vicinity of certain projects

To the extent only that this section applies to service coordinators for covered federally assisted housing described in subparagraphs (B),

(C), (D), (E), (F), and (G) of section 13641(2) of this title, any reference in this section to elderly or disabled residents of a project shall be construed to include low-income elderly or disabled families living in the vicinity of such project.

(f) Protection against telemarketing fraud

(1) In general

The Secretary, in coordination with the Secretary of Health and Human Services, shall establish standards for service coordinators in federally assisted housing who are providing education and outreach to elderly persons residing in such housing regarding telemarketing fraud. The standards shall be designed to ensure that such education and outreach informs such elderly persons of the dangers of telemarketing fraud and facilitates the investigation and prosecution of telemarketers engaging in fraud against such residents.

(2) Contents

The standards established under this subsection shall require that any such education and outreach be provided in a manner that—

(A) informs such residents of—

(i) the prevalence of telemarketing fraud targeted against elderly persons;

(ii) how telemarketing fraud works;

(iii) how to identify telemarketing fraud;

(iv) how to protect themselves against telemarketing fraud, including an explanation of the dangers of providing bank account, credit card, or other financial or personal information over the telephone to unsolicited callers;

(v) how to report suspected attempts at telemarketing fraud; and

(vi) their consumer protection rights under Federal law;

(B) provides such other information as the Secretary considers necessary to protect such residents against fraudulent telemarketing; and

(C) disseminates the information provided by appropriate means, and in determining such appropriate means, the Secretary shall consider on-site presentations at federally assisted housing, public service announcements, a printed manual or pamphlet, an Internet website, and telephone outreach to residents whose names appear on “mooch lists” confiscated from fraudulent telemarketers.

(Pub. L. 102-550, title VI, §671, Oct. 28, 1992, 106 Stat. 3826; Pub. L. 106-569, title VIII, §851(b), (c)(2), Dec. 27, 2000, 114 Stat. 3024.)

REFERENCES IN TEXT

This subtitle, referred to in subsecs. (b) and (d), means subtitle E of title VI of Pub. L. 102-550, Oct. 28, 1992, 106 Stat. 3826, which enacted this subchapter, amended sections 1437f, 1437g, and 8011 of this title and section 1701q of Title 12, Banks and Banking, and enacted provisions set out as a note under section 1701q of Title 12.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106-569, §851(b)(1), in first sentence, substituted “for providing service coordina-

¹ See References in Text note below.

tors under this section,” for “to carry out this subtitle pursuant to the amendments made by this subtitle.”.

Subsec. (c). Pub. L. 106-569, §851(c)(2)(A), in first sentence, inserted “education and outreach regarding telemarketing fraud in accordance with the standards issued under subsection (f) of this section,” after “response.”.

Subsec. (d). Pub. L. 106-569, §851(b)(2), inserted closing parenthesis after “section 13641(2) of this title”.

Subsec. (e). Pub. L. 106-569, §851(b)(3), added subsec. (e).

Subsec. (f). Pub. L. 106-569, §851(c)(2)(B), added subsec. (f).

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by title VIII of Pub. L. 106-569 effective Dec. 27, 2000, unless effectiveness or applicability upon another date certain is specifically provided for, with provisions relating to effect of regulatory authority, see section 803 of Pub. L. 106-569, set out as a note under section 1701q of Title 12, Banks and Banking.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1437f, 13632 of this title; title 12 section 1701q.

§ 13632. Grants for costs of providing service coordinators in certain federally assisted housing

(a) Authority

The Secretary may make grants under this section to owners of federally assisted housing projects described in subparagraphs (B), (C), (D), (E), (F), and (G) of section 13641(2) of this title. Any grant amounts shall be used for the costs of employing or otherwise retaining the services of one or more service coordinators under section 13631 of this title to coordinate the provision of any services within the project for residents of the project who are elderly families and disabled families (as such terms are defined in section 13641 of this title). A service coordinator funded with a grant under this section for a project may provide services to low-income elderly or disabled families living in the vicinity of such project.

(b) Application and selection

The Secretary shall provide for the form and manner of applications for grants under this section and for selection of applicants to receive such grants.

(c) Eligible project expense

For any federally assisted housing project described in subparagraph (B), (C), (D), (E), (F), or (G) of section 13641(2) of this title that does not receive a grant under this section, the cost of employing or otherwise retaining the services of one or more service coordinators under section 13631 of this title and not more than 15 percent of the cost of providing services to the residents of the project shall be considered an eligible project expense, but only to the extent that amounts are available from project rent and other income for such costs.

(Pub. L. 102-550, title VI, §676, Oct. 28, 1992, 106 Stat. 3828; Pub. L. 106-569, title VIII, §851(a), Dec. 27, 2000, 114 Stat. 3023.)

AMENDMENTS

2000—Pub. L. 106-569, §851(a)(1), substituted “certain federally assisted housing” for “multifamily housing

assisted under National Housing Act” in section catchline.

Subsec. (a). Pub. L. 106-569, §851(a)(2), substituted “subparagraphs (B), (C), (D), (E), (F), and (G) of section 13641(2) of this title” for “subparagraphs (E) and (F) of section 13641(2) of this title”, made technical amendment to reference in original act which appears in text as reference to section 13631 of this title, and inserted at end “A service coordinator funded with a grant under this section for a project may provide services to low-income elderly or disabled families living in the vicinity of such project.”

Subsec. (c). Pub. L. 106-569, §851(a)(4), redesignated subsec. (d) as (c) and struck out heading and text of former subsec. (c). Text read as follows: “There are authorized to be appropriated for fiscal years 1993 and 1994 such sums as may be necessary for grants under this section.”

Subsec. (d). Pub. L. 106-569, §851(a)(4), redesignated subsec. (d) as (c).

Pub. L. 106-569, §851(a)(3), substituted “subparagraph (B), (C), (D), (E), (F), or (G) of section 13641(2) of this title” for “subparagraph (E) or (F) of section 13641(2) of this title” and made technical amendment to reference in original act which appears in text as reference to section 13631 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by title VIII of Pub. L. 106-569 effective Dec. 27, 2000, unless effectiveness or applicability upon another date certain is specifically provided for, with provisions relating to effect of regulatory authority, see section 803 of Pub. L. 106-569, set out as a note under section 1701q of Title 12, Banks and Banking.

SUBCHAPTER IV—GENERAL PROVISIONS

§ 13641. Definitions

For purposes of this title:¹

(1) Elderly, disabled, and near-elderly families

The terms “elderly family”, “disabled family”, and “near-elderly family” have the meanings given the terms under section 3(b)(3) of the United States Housing Act of 1937 [42 U.S.C. 1437a(b)(3)].

(2) Federally assisted housing

The terms “federally assisted housing” and “project” mean—

(A) a public housing project (as such term is defined in section 3(b) of the United States Housing Act of 1937 [42 U.S.C. 1437a(b)]);

(B) housing for which project-based assistance is provided under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f];

(C) housing that is assisted under section 1701q of title 12;

(D) housing that is assisted under section 1701q of title 12, as such section existed before November 28, 1990;

(E) housing financed by a loan or mortgage insured under section 1715(d)(3) of title 12 that bears interest at a rate determined under the proviso of section 1715(d)(5) of title 12;

(F) housing insured, assisted, or held by the Secretary or a State or State agency under section 1715z-1 of title 12; and

(G) housing constructed or substantially rehabilitated pursuant to assistance provided under section 8(b)(2) of the United

¹ See References in Text note below.

States Housing Act of 1937 [42 U.S.C. 1437f(b)(2)], as in effect before October 1, 1983, that is assisted under a contract for assistance under such section.

(3) Housing assistance

The term “housing assistance” means, with respect to federally assisted housing, the grant, contribution, capital advance, loan, mortgage insurance, or other assistance provided for the housing under the provisions of law referred to in paragraph (2). The term also includes any related assistance provided for the housing by the Secretary, including any rental assistance for low-income occupants.

(4) Owner

The term “owner” means, with respect to federally assisted housing, the entity or private person, including a cooperative or public housing agency, that has the legal right to lease or sublease dwelling units in such housing.

(5) Secretary

The term “Secretary” means the Secretary of Housing and Urban Development.

(Pub. L. 102-550, title VI, §683, Oct. 28, 1992, 106 Stat. 3831.)

REFERENCES IN TEXT

This title, referred to in text, is title VI of Pub. L. 102-550, Oct. 28, 1992, 106 Stat. 3802, which enacted this chapter, amended sections 1437a, 1437c to 1437g, 1437i, 1437o, 1438, 8011 to 8013, 12705, 12901 to 12910, and 12912 of this title and section 1701q of Title 12, Banks and Banking, enacted provisions set out as notes under sections 1437a, 8011, and 12901 of this title and section 1701q of Title 12, and amended provisions set out as a note under section 1701q of Title 12. For complete classification of this title to the Code, see Short Title of 1992 Amendment note set out under section 5301 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13601, 13618, 13619, 13631, 13632 of this title; title 12 section 1701q-2.

§ 13642. Applicability

Except as otherwise provided in subtitles B through F of this title and the amendments made by such subtitles, such subtitles and the amendments made by such subtitles shall apply upon the expiration of the 6-month period beginning on October 28, 1992.

(Pub. L. 102-550, title VI, §684, Oct. 28, 1992, 106 Stat. 3832.)

REFERENCES IN TEXT

Subtitles B through F of this title, referred to in text, mean subtitles B to F of title VI of Pub. L. 102-550, Oct. 28, 1992, 106 Stat. 3812-3830, which enacted this chapter, amended sections 1437a, 1437c to 1437g, 1437i, 1437o, 1438, 8011, 8013, and 12705 of this title and section 1701q of Title 12, Banks and Banking, and enacted provisions set out as notes under section 1437a of this title and section 1701q of Title 12.

§ 13643. Regulations

The Secretary shall issue regulations necessary to carry out subtitles B through F of this title and the amendments made by such subtitles not later than the expiration of the 6-

month period beginning on October 28, 1992. The regulations shall be issued after notice and opportunity for public comment pursuant to the provisions of section 553 of title 5 (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section).

(Pub. L. 102-550, title VI, §685, Oct. 28, 1992, 106 Stat. 3832.)

REFERENCES IN TEXT

Subtitles B through F of this title, referred to in text, mean subtitles B to F of title VI of Pub. L. 102-550, Oct. 28, 1992, 106 Stat. 3812-3830, which enacted this chapter, amended sections 1437a, 1437c to 1437g, 1437i, 1437o, 1438, 8011, 8013, and 12705 of this title and section 1701q of Title 12, Banks and Banking, and enacted provisions set out as notes under section 1437a of this title and section 1701q of Title 12.

SUBCHAPTER V—SAFETY AND SECURITY IN PUBLIC AND ASSISTED HOUSING

§ 13661. Screening of applicants for federally assisted housing

(a) Ineligibility because of eviction for drug crimes

Any tenant evicted from federally assisted housing by reason of drug-related criminal activity (as such term is defined in section 1437a(b) of this title) shall not be eligible for federally assisted housing during the 3-year period beginning on the date of such eviction, unless the evicted tenant successfully completes a rehabilitation program approved by the public housing agency (which shall include a waiver of this subsection if the circumstances leading to eviction no longer exist).

(b) Ineligibility of illegal drug users and alcohol abusers

(1) In general

Notwithstanding any other provision of law, a public housing agency or an owner of federally assisted housing, as determined by the Secretary, shall establish standards that prohibit admission to the program or admission to federally assisted housing for any household with a member—

(A) who the public housing agency or owner determines is illegally using a controlled substance; or

(B) with respect to whom the public housing agency or owner determines that it has reasonable cause to believe that such household member’s illegal use (or pattern of illegal use) of a controlled substance, or abuse (or pattern of abuse) of alcohol, may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.

(2) Consideration of rehabilitation

In determining whether, pursuant to paragraph (1)(B), to deny admission to the program or federally assisted housing to any household based on a pattern of illegal use of a controlled substance or a pattern of abuse of alcohol by a household member, a public housing agency or an owner may consider whether such household member—

(A) has successfully completed a supervised drug or alcohol rehabilitation program

(as applicable) and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol (as applicable);

(B) has otherwise been rehabilitated successfully and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol (as applicable); or

(C) is participating in a supervised drug or alcohol rehabilitation program (as applicable) and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol (as applicable).

(c) Authority to deny admission to criminal offenders

Except as provided in subsections (a) and (b) of this section and in addition to any other authority to screen applicants, in selecting among applicants for admission to the program or to federally assisted housing, if the public housing agency or owner of such housing (as applicable) determines that an applicant or any member of the applicant's household is or was, during a reasonable time preceding the date when the applicant household would otherwise be selected for admission, engaged in any drug-related or violent criminal activity or other criminal activity which would adversely affect the health, safety, or right to peaceful enjoyment of the premises by other residents, the owner, or public housing agency employees, the public housing agency or owner may—

(1) deny such applicant admission to the program or to federally assisted housing; and

(2) after the expiration of the reasonable period beginning upon such activity, require the applicant, as a condition of admission to the program or to federally assisted housing, to submit to the public housing agency or owner evidence sufficient (as the Secretary shall by regulation provide) to ensure that the individual or individuals in the applicant's household who engaged in criminal activity for which denial was made under paragraph (1) have not engaged in any criminal activity during such reasonable period.

(Pub. L. 105-276, title V, § 576, Oct. 21, 1998, 112 Stat. 2639.)

CODIFICATION

Section was enacted as part of the Quality Housing and Work Responsibility Act of 1998, and not as part of subtitles C to F of title VI of Pub. L. 102-550 which comprise this chapter.

Section is comprised of section 576 of Pub. L. 105-276. Subsec. (d) of section 576 of Pub. L. 105-276 amended sections 1437d and 1437n of this title.

EFFECTIVE DATE

Subchapter effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement any provision of subchapter before such date, except to extent otherwise provided, see section 503 of Pub. L. 105-276, set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1437d of this title.

§ 13662. Termination of tenancy and assistance for illegal drug users and alcohol abusers in federally assisted housing

(a) In general

Notwithstanding any other provision of law, a public housing agency or an owner of federally assisted housing (as applicable), shall establish standards or lease provisions for continued assistance or occupancy in federally assisted housing that allow the agency or owner (as applicable) to terminate the tenancy or assistance for any household with a member—

(1) who the public housing agency or owner determines is illegally using a controlled substance; or

(2) whose illegal use (or pattern of illegal use) of a controlled substance, or whose abuse (or pattern of abuse) of alcohol, is determined by the public housing agency or owner to interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.

(b) Consideration of rehabilitation

In determining whether, pursuant to subsection (a)(2) of this section, to terminate tenancy or assistance to any household based on a pattern of illegal use of a controlled substance or a pattern of abuse of alcohol by a household member, a public housing agency or an owner may consider whether such household member—

(1) has successfully completed a supervised drug or alcohol rehabilitation program (as applicable) and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol (as applicable);

(2) has otherwise been rehabilitated successfully and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol (as applicable); or

(3) is participating in a supervised drug or alcohol rehabilitation program (as applicable) and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol (as applicable).

(Pub. L. 105-276, title V, § 577, Oct. 21, 1998, 112 Stat. 2640.)

CODIFICATION

Section was enacted as part of the Quality Housing and Work Responsibility Act of 1998, and not as part of subtitles C to F of title VI of Pub. L. 102-550 which comprise this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1437d of this title.

§ 13663. Ineligibility of dangerous sex offenders for admission to public housing

(a) In general

Notwithstanding any other provision of law, an owner of federally assisted housing shall prohibit admission to such housing for any household that includes any individual who is subject to a lifetime registration requirement under a State sex offender registration program.

(b) Obtaining information

As provided in regulations issued by the Secretary to carry out this section—

(1) a public housing agency shall carry out criminal history background checks on applicants for federally assisted housing and make further inquiry with State and local agencies as necessary to determine whether an applicant for federally assisted housing is subject to a lifetime registration requirement under a State sex offender registration program; and

(2) State and local agencies responsible for the collection or maintenance of criminal history record information or information on persons required to register as sex offenders shall comply with requests of public housing agencies for information pursuant to this section.

(c) Requests by owners for PHAs to obtain information

A public housing agency may take any action under subsection (b) of this section regarding applicants for, or tenants of, federally assisted housing other than federally assisted housing described in subparagraph (A) or (B) of section 13664(a)(2) of this title, but only if the housing is located within the jurisdiction of the agency and the owner of such housing has requested that the agency take such action on behalf of the owner. Upon such a request by the owner, the agency shall take the action requested under subsection (b) of this section. The agency may not make any information obtained pursuant to the action under subsection (b) of this section available to the owner but shall perform determinations for the owner regarding screening, lease enforcement, and eviction based on criteria supplied by the owner.

(d) Opportunity to dispute

Before an adverse action is taken with respect to an applicant for federally assisted housing on the basis that an individual is subject to a lifetime registration requirement under a State sex offender registration program, the public housing agency obtaining the record shall provide the tenant or applicant with a copy of the registration information and an opportunity to dispute the accuracy and relevance of that information.

(e) Fee

A public housing agency may be charged a reasonable fee for taking actions under subsection (b) of this section. In the case of a public housing agency taking actions on behalf of another owner of federally assisted housing pursuant to subsection (c) of this section, the agency may pass such fee on to the owner making the request and may charge an additional reasonable fee for making the request on behalf of the owner.

(f) Records management

Each public housing agency shall establish and implement a system of records management that ensures that any criminal record or information regarding a lifetime registration requirement under a State sex offender registration program that is obtained under this section by the public housing agency is—

- (1) maintained confidentially;
- (2) not misused or improperly disseminated; and
- (3) destroyed, once the purpose for which the record was requested has been accomplished.

(Pub. L. 105-276, title V, § 578, Oct. 21, 1998, 112 Stat. 2641.)

CODIFICATION

Section was enacted as part of the Quality Housing and Work Responsibility Act of 1998, and not as part of subtitles C to F of title VI of Pub. L. 102-550 which comprise this chapter.

§ 13664. Definitions

(a)¹ Definitions

For purposes of this subchapter, the following definitions shall apply:

(1) Drug-related criminal activity

The term “drug-related criminal activity” has the meaning given the term in section 1437a(b) of this title.

(2) Federally assisted housing

The term “federally assisted housing” means a dwelling unit—

(A) in public housing (as such term is defined in section 1437a(b) of this title);

(B) assisted with tenant-based assistance under section 1437f of this title;

(C) in housing that is provided project-based assistance under section 1437f of this title, including new construction and substantial rehabilitation projects;

(D) in housing that is assisted under section 1701q of title 12 (as amended by section 801 of the Cranston-Gonzalez National Affordable Housing Act);

(E) in housing that is assisted under section 1701q of title 12, as such section existed before the enactment of the Cranston-Gonzalez National Affordable Housing Act [November 28, 1990];

(F) in housing that is assisted under section 8013 of this title;

(G) in housing financed by a loan or mortgage insured under section 1715(d)(3) of title 12 that bears interest at a rate determined under the proviso of section 1715(d)(5) of title 12;

(H) in housing insured, assisted, or held by the Secretary or a State or State agency under section 1715z-1 of title 12; or

(I) in housing assisted under section 1484 or 1485 of this title.

(3) Owner

The term “owner” means, with respect to federally assisted housing, the entity or private person (including a cooperative or public housing agency) that has the legal right to lease or sublease dwelling units in such housing.

(Pub. L. 105-276, title V, § 579, Oct. 21, 1998, 112 Stat. 2642.)

REFERENCES IN TEXT

Section 801 of the Cranston-Gonzalez National Affordable Housing Act, referred to in subsec. (a)(2)(D), is section 801 of Pub. L. 101-625.

CODIFICATION

Section was enacted as part of the Quality Housing and Work Responsibility Act of 1998, and not as part of

¹ So in original. No subsec. (b) has been enacted.

subtitles C to F of title VI of Pub. L. 102-550 which comprise this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13663 of this title.

**CHAPTER 136—VIOLENT CRIME CONTROL
AND LAW ENFORCEMENT**

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SUBCHAPTER I—PRISONS

PART A—VIOLENT OFFENDER INCARCERATION AND TRUTH-IN-SENTENCING INCENTIVE GRANTS

§ 13701. Definitions

Unless otherwise provided, for purposes of this part—

(1) the term “indeterminate sentencing” means a system by which—

(A) the court may impose a sentence of a range defined by statute; and

(B) an administrative agency, generally the parole board, or the court, controls release within the statutory range;

(2) the term “part 1 violent crime” means murder and nonnegligent manslaughter, forcible rape, robbery, and aggravated assault as reported to the Federal Bureau of Investigation for purposes of the Uniform Crime Reports; and

(3) the term “State” means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

(Pub. L. 103-322, title II, §20101, as added Pub. L. 104-134, title I, §101[(a)] [title I, §114(a)], Apr. 26, 1996, 110 Stat. 1321, 1321-15; renumbered title I, Pub. L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327.)

PRIOR PROVISIONS

A prior section 13701, Pub. L. 103-322, title II, §20101, Sept. 13, 1994, 108 Stat. 1815, related to grants for correctional facilities prior to the general amendment of this part by Pub. L. 104-134.

SHORT TITLE OF 2000 AMENDMENTS

Pub. L. 106-560, §1, Dec. 21, 2000, 114 Stat. 2784, provided that: “This Act [enacting sections 13726 to 13726c of this title] may be cited as the ‘Interstate Transportation of Dangerous Criminals Act of 2000’ or ‘Jeanna’s Act’.”

Pub. L. 106-546, §1, Dec. 19, 2000, 114 Stat. 2726, provided that: “This Act [enacting sections 14135 to 14135e

of this title and section 1565 of Title 10, Armed Forces, amending sections 3753, 3796kk-2, 14132, and 14133 of this title and sections 3563, 3583, and 4209 of Title 18, Crimes and Criminal Procedure, enacting provisions set out as notes under section 14135 of this title and section 1565 of Title 10, and amending provisions set out as a note under section 531 of Title 28, Judiciary and Judicial Procedure] may be cited as the ‘DNA Analysis Backlog Elimination Act of 2000’.”

Pub. L. 106-386, div. B, §1001, Oct. 28, 2000, 114 Stat. 1491, provided that: “This division [see Tables for classification] may be cited as the ‘Violence Against Women Act of 2000’.”

Pub. L. 106-297, §1, Oct. 13, 2000, 114 Stat. 1045, provided that: “This Act [amending section 13704 of this title] may be cited as the ‘Death in Custody Reporting Act of 2000’.”

SHORT TITLE OF 1996 AMENDMENTS

Pub. L. 104-236, §1, Oct. 3, 1996, 110 Stat. 3093, provided that: “This Act [enacting sections 14072 and 14073 of this title, amending section 14071 of this title, and enacting provisions set out as notes under section 14071 of this title] may be cited as the ‘Pam Lychner Sexual Offender Tracking and Identification Act of 1996’.”

Pub. L. 104-145, §1, May 17, 1996, 110 Stat. 1345, provided that: “This Act [amending section 14071 of this title] may be cited as ‘Megan’s Law’.”

SHORT TITLE

Section 1 of Pub. L. 103-322 provided that: “This Act [see Tables for classification] may be cited as the ‘Violent Crime Control and Law Enforcement Act of 1994’.”

Section 31101 of title III of Pub. L. 103-322 provided that: “This subtitle [subtitle K (§§31101-31133) of title III of Pub. L. 103-322, enacting part G (§13821 et seq.) of subchapter II of this chapter] may be cited as the ‘National Community Economic Partnership Act of 1994’.”

Section 31901 of title III of Pub. L. 103-322 provided that: “This subtitle [subtitle S (§§31901-31922) of title III of Pub. L. 103-322, enacting part I (§13881 et seq.) of subchapter II of this chapter] may be cited as the ‘Family Unity Demonstration Project Act’.”

Section 40001 of title IV of Pub. L. 103-322 provided that: “This title [see Tables for classification] may be cited as the ‘Violence Against Women Act of 1994’.”

Section 40101 of title IV of Pub. L. 103-322 provided that: “This subtitle [subtitle A (§§40101-40156) of title IV of Pub. L. 103-322, enacting part A (§13931 et seq.) of subchapter III of this chapter, sections 300w-10, 3796gg to 3796gg-5, and 5712d of this title, section 1a-7a of Title 16, Conservation, and sections 2247, 2248, and 2259 of Title 18, Crimes and Criminal Procedure, amending sections 3793, 3796aa-1 to 3796aa-3, 3796aa-5, 3796aa-6, 3797, 13012, 13014, 13021, and 13024 of this title, section 4607-8 of Title 16, and Rule 412 of the Federal Rules of Evidence, repealing sections 3796aa-4 and 3796aa-7 of this title, and enacting provisions set out as notes under sections 994 and 2074 of Title 28, Judiciary and Judicial Procedure] may be cited as the ‘Safe Streets for Women Act of 1994’.”

Section 40201 of title IV of Pub. L. 103-322 provided that: “This title [probably should be “subtitle”, meaning subtitle B (§§40201-40295) of title IV of Pub. L. 103-322, enacting part B (§13951 et seq.) of subchapter III of this chapter, sections 3796hh to 3796hh-4 and 10416 to 10418 of this title, and sections 2261 to 2266 of Title 18, Crimes and Criminal Procedure, and amending sections 3782, 3783, 3793, 3797, 10402, and 10407 to 10410 of this title] may be cited as the ‘Safe Homes for Women Act of 1994’.”

Section 40301 of title IV of Pub. L. 103-322 provided that: “This subtitle [subtitle C (§§40301-40304) of title IV of Pub. L. 103-322, enacting part C (§13981) of subchapter III of this chapter and amending section 1988 of this title and section 1445 of Title 28, Judiciary and Judicial Procedure] may be cited as the ‘Civil Rights Remedies for Gender-Motivated Violence Act’.”

Section 40401 of title IV of Pub. L. 103-322 provided that: “This subtitle [subtitle D (§§40401-40422) of title

IV of Pub. L. 103-322, enacting part D (§13991 et seq.) of subchapter III of this chapter] may be cited as the 'Equal Justice for Women in the Courts Act of 1994.'

Section 200101 of title XX of Pub. L. 103-322 provided that: "This subtitle [subtitle A (§§200101-200113) of title XX of Pub. L. 103-322, enacting part A (§14091 et seq.) of subchapter VIII of this chapter] may be cited as the 'Police Corps Act'."

Section 200201 of title XX of Pub. L. 103-322 provided that: "This subtitle [subtitle B (§§200201-200210) of title XX of Pub. L. 103-322, enacting part B (§14111 et seq.) of subchapter VIII of this chapter] may be cited as the 'Law Enforcement Scholarships and Recruitment Act'."

Section 210301 of title XXI of Pub. L. 103-322 provided that: "This subtitle [subtitle C (§§210301-210306) of title XXI of Pub. L. 103-322, enacting part A (§14131 et seq.) of subchapter IX of this chapter and sections 3796kk to 3796kk-6 of this title, amending sections 3751, 3753, 3793, and 3797 of this title, and enacting provisions set out as a note under section 3751 of this title] may be cited as the 'DNA Identification Act of 1994'."

Section 220001 of title XXII of Pub. L. 103-322 provided that: "This title [enacting subchapter X (§14171) of this chapter and section 511A of Title 18, Crimes and Criminal Procedure, and amending section 511 of Title 18] may be cited as the 'Motor Vehicle Theft Prevention Act'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13705, 14214 of this title.

§ 13702. Authorization of grants

(a) In general

The Attorney General shall provide Violent Offender Incarceration grants under section 13703 of this title and Truth-in-Sentencing Incentive grants under section 13704 of this title to eligible States—

- (1) to build or expand correctional facilities to increase the bed capacity for the confinement of persons convicted of a part 1 violent crime or adjudicated delinquent for an act which if committed by an adult, would be a part 1 violent crime;
- (2) to build or expand temporary or permanent correctional facilities, including facilities on military bases, prison barges, and boot camps, for the confinement of convicted non-violent offenders and criminal aliens, for the purpose of freeing suitable existing prison space for the confinement of persons convicted of a part 1 violent crime; and
- (3) to build or expand jails.

(b) Regional compacts

(1) In general

Subject to paragraph (2), States may enter into regional compacts to carry out this part. Such compacts shall be treated as States under this part.

(2) Requirement

To be recognized as a regional compact for eligibility for a grant under section 13703 or 13704 of this title, each member State must be eligible individually.

(3) Limitation on receipt of funds

No State may receive a grant under this part both individually and as part of a compact.

(c) Applicability

Notwithstanding the eligibility requirements of section 13704 of this title, a State that cer-

tifies to the Attorney General that, as of April 26, 1996, such State has enacted legislation in reliance on this part, as enacted on September 13, 1994, and would in fact qualify under those provisions, shall be eligible to receive a grant for fiscal year 1996 as though such State qualifies under section 13704 of this title.

(Pub. L. 103-322, title II, §20102, as added Pub. L. 104-134, title I, §101[(a)] [title I, §114(a)], Apr. 26, 1996, 110 Stat. 1321, 1321-15; renumbered title I, Pub. L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327.)

PRIOR PROVISIONS

A prior section 13702, Pub. L. 103-322, title II, §20102, Sept. 13, 1994, 108 Stat. 1816, related to Truth in Sentencing Incentive Grants prior to the general amendment of this part by Pub. L. 104-134.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13705, 13706, 13707, 13708, 14214 of this title.

§ 13703. Violent offender incarceration grants

(a) Eligibility for minimum grant

To be eligible to receive a minimum grant under this section, a State shall submit an application to the Attorney General that provides assurances that the State has implemented, or will implement, correctional policies and programs, including truth-in-sentencing laws that ensure that violent offenders serve a substantial portion of the sentences imposed, that are designed to provide sufficiently severe punishment for violent offenders, including violent juvenile offenders, and that the prison time served is appropriately related to the determination that the inmate is a violent offender and for a period of time deemed necessary to protect the public.

(b) Additional amount for increased percentage of persons sentenced and time served

A State that received a grant under subsection (a) of this section is eligible to receive additional grant amounts if such State demonstrates that the State has, since 1993—

- (1) increased the percentage of persons arrested for a part 1 violent crime sentenced to prison; or
- (2) increased the average prison time actually served or the average percent of sentence served by persons convicted of a part 1 violent crime.

Receipt of grant amounts under this subsection does not preclude eligibility for a grant under subsection (c) of this section.

(c) Additional amount for increased rate of incarceration and percentage of sentence served

A State that received a grant under subsection (a) of this section is eligible to receive additional grant amounts if such State demonstrates that the State has—

- (1) since 1993, increased the percentage of persons arrested for a part 1 violent crime sentenced to prison, and has increased the average percent of sentence served by persons convicted of a part 1 violent crime; or
- (2) has increased by 10 percent or more over the most recent 3-year period the number of new court commitments to prison of persons convicted of part 1 violent crimes.

Receipt of grant amounts under this subsection does not preclude eligibility for a grant under subsection (b) of this section.

(Pub. L. 103-322, title II, §20103, as added Pub. L. 104-134, title I, §101[(a)] [title I, §114(a)], Apr. 26, 1996, 110 Stat. 1321, 1321-16; renumbered title I, Pub. L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327.)

PRIOR PROVISIONS

A prior section 13703, Pub. L. 103-322, title II, §20103, Sept. 13, 1994, 108 Stat. 1817, related to Violent Offender Incarceration Grants prior to the general amendment of this part by Pub. L. 104-134.

CONTROLLED SUBSTANCE TESTING AND INTERVENTION;
AVAILABILITY OF FUNDS

Pub. L. 104-208, div. A, title I, §101(a) [title I], Sept. 30, 1996, 110 Stat. 3009, 3009-14, provided in part: "That beginning in fiscal year 1999, and thereafter, no funds shall be available to make grants to a State pursuant to section 20103 or section 20104 of the Violent Crime Control and Law Enforcement Act of 1994 [42 U.S.C. 13703, 13704] unless no later than September 1, 1998, such State has implemented a program of controlled substance testing and intervention for appropriate categories of convicted offenders during periods of incarceration and criminal justice supervision, with sanctions including denial or revocation of release for positive controlled substance tests, consistent with guidelines issued by the Attorney General".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13702, 13705, 13706, 13708, 13709, 13712, 14214 of this title.

§ 13704. Truth-in-sentencing incentive grants

(a) Eligibility

To be eligible to receive a grant award under this section, a State shall submit an application to the Attorney General that demonstrates that—

(1)(A) such State has implemented truth-in-sentencing laws that—

(i) require persons convicted of a part 1 violent crime to serve not less than 85 percent of the sentence imposed (without counting time not actually served, such as administrative or statutory incentives for good behavior); or

(ii) result in persons convicted of a part 1 violent crime serving on average not less than 85 percent of the sentence imposed (without counting time not actually served, such as administrative or statutory incentives for good behavior);

(B) such State has truth-in-sentencing laws that have been enacted, but not yet implemented, that require such State, not later than 3 years after such State submits an application to the Attorney General, to provide that persons convicted of a part 1 violent crime serve not less than 85 percent of the sentence imposed (without counting time not actually served, such as administrative or statutory incentives for good behavior); or

(C) in the case of a State that on April 26, 1996, practices indeterminate sentencing with regard to any part 1 violent crime—

(i) persons convicted of a part 1 violent crime on average serve not less than 85 percent of the prison term established under the State's sentencing and release guidelines; or

(ii) persons convicted of a part 1 violent crime on average serve not less than 85 percent of the maximum prison term allowed under the sentence imposed by the court (not counting time not actually served such as administrative or statutory incentives for good behavior); and

(2) such State has provided assurances that it will follow guidelines established by the Attorney General in reporting, on a quarterly basis, information regarding the death of any person who is in the process of arrest, is en route to be incarcerated, or is incarcerated at a municipal or county jail, State prison, or other local or State correctional facility (including any juvenile facility) that, at a minimum, includes—

(A) the name, gender, race, ethnicity, and age of the deceased;

(B) the date, time, and location of death; and

(C) a brief description of the circumstances surrounding the death.

(b) Exception

Notwithstanding subsection (a) of this section, a State may provide that the Governor of the State may allow for the earlier release of—

(1) a geriatric prisoner; or

(2) a prisoner whose medical condition precludes the prisoner from posing a threat to the public, but only after a public hearing in which representatives of the public and the prisoner's victims have had an opportunity to be heard regarding a proposed release.

(Pub. L. 103-322, title II, §20104, as added Pub. L. 104-134, title I, §101[(a)] [title I, §114(a)], Apr. 26, 1996, 110 Stat. 1321, 1321-16; renumbered title I, Pub. L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327; amended Pub. L. 106-297, §2, Oct. 13, 2000, 114 Stat. 1045.)

PRIOR PROVISIONS

A prior section 13704, Pub. L. 103-322, title II, §20104, Sept. 13, 1994, 108 Stat. 1818, related to Federal share matching requirement prior to the general amendment of this part by Pub. L. 104-134.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106-297 redesignated par. (1) as subpar. (A) and former subpars. (A) and (B) as cls. (i) and (ii), respectively, redesignated par. (2) as subpar. (B), redesignated par. (3) as subpar. (C) and former subpars. (A) and (B) as cls. (i) and (ii), respectively, and added par. (2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13702, 13705, 13706, 13708, 13709, 13712, 14214 of this title.

§ 13705. Special rules

(a) Sharing of funds with counties and other units of local government

(1) Reservation

Each State shall reserve not more than 15 percent of the amount of funds allocated in a fiscal year pursuant to section 13706 of this title for counties and units of local government to construct, develop, expand, modify, or improve jails and other correctional facilities.

(2) Factors for determination of amount

To determine the amount of funds to be reserved under this subsection, a State shall

consider the burden placed on a county or unit of local government that results from the implementation of policies adopted by the State to carry out section 13703 or 13704 of this title.

(b) Additional requirements

(1) Eligibility for grant

To be eligible to receive a grant under section 13703 of this title or section 13704 of this title, a State shall—

(A) provide assurances to the Attorney General that the State has implemented or will implement not later than 18 months after April 26, 1996,¹ policies that provide for the recognition of the rights of crime victims; and

(B) subject to the limitation of paragraph (2), no later than September 1, 2000, consider a program of drug testing and intervention for appropriate categories of convicted offenders during periods of incarceration and post-incarceration and criminal justice supervision, with sanctions including denial or revocation of release for positive drug tests, consistent with guidelines issued by the Attorney General.

(2) Use of funds

Beginning in fiscal year 1999, not more than 10 percent of the funds provided under section 13703 of this title or section 13704 of this title may be applied to the cost of offender drug testing and intervention programs during periods of incarceration and post-incarceration criminal justice supervision, consistent with guidelines issued by the Attorney General. Further, such funds may be used by the States to pay the costs of providing to the Attorney General a baseline study on their prison drug abuse problem. Such studies shall be consistent with guidelines issued by the Attorney General.

(c) Funds for juvenile offenders

Notwithstanding any other provision of this part, if a State, or unit of local government located in a State that otherwise meets the requirements of section 13703 or 13704 of this title, certifies to the Attorney General that exigent circumstances exist that require the State to expend funds to build or expand facilities to confine juvenile offenders other than juvenile offenders adjudicated delinquent for an act which, if committed by an adult, would be a part 1 violent crime, the State may use funds received under this part to build or expand juvenile correctional facilities or pretrial detention facilities for juvenile offenders.

(d) Private facilities

A State may use funds received under this part for the privatization of facilities to carry out the purposes of section 13702 of this title.

(e) “Part 1 violent crime” defined

For purposes of this part, “part 1 violent crime” means a part 1 violent crime as defined in section 13701(3)² of this title, or a crime in a

reasonably comparable class of serious violent crimes as approved by the Attorney General.

(Pub. L. 103-322, title II, §20105, as added Pub. L. 104-134, title I, §101[(a)] [title I, §114(a)], Apr. 26, 1996, 110 Stat. 1321, 1321-17; renumbered title I, Pub. L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327; amended Pub. L. 105-277, div. E, §3, Oct. 21, 1998, 112 Stat. 2681-760.)

CODIFICATION

April 26, 1996, referred to in subsec. (b)(1)(A), was in the original “the date of the enactment of this subtitle”, which was translated as meaning the date of enactment of Pub. L. 104-134, which amended this part generally, to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 13705, Pub. L. 103-322, title II, §20105, Sept. 13, 1994, 108 Stat. 1818, related to rules and regulations prior to the general amendment of this part by Pub. L. 104-134.

AMENDMENTS

1998—Subsec. (b). Pub. L. 105-277 amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: “To be eligible to receive a grant under section 13703 or 13704 of this title, a State shall provide assurances to the Attorney General that the State has implemented or will implement not later than 18 months after April 26, 1996, policies that provide for the recognition of the rights and needs of crime victims.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 13706. Formula for grants

(a) Allocation of violent offender incarceration grants under section 13703

(1) Formula allocation

85 percent of the amount available for grants under section 13703 of this title for any fiscal year shall be allocated as follows (except that a State may not receive more than 9 percent of the total amount of funds made available under this paragraph):

(A) 0.75 percent shall be allocated to each State that meets the requirements of section 13703(a) of this title, except that the United States Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands, if eligible under section 13703(a) of this title, shall each be allocated 0.05 percent.

(B) The amount remaining after application of subparagraph (A) shall be allocated to each State that meets the requirements of section 13703(b) of this title, in the ratio that the number of part 1 violent crimes reported by such State to the Federal Bureau of Investigation for the 3 years preceding the year in which the determination is made, bears to the average annual number of part 1 violent crimes reported by all States that meet the requirements of section 13703(b) of this title to the Federal Bureau of Investigation for the 3 years preceding the year in which the determination is made.

(2) Additional allocation

15 percent of the amount available for grants under section 13703 of this title for any fiscal

¹ See Codification note below.

² So in original. Probably should be section “13701(2)”.

year shall be allocated to each State that meets the requirements of section 13703(c) of this title as follows:

(A) 3.0 percent shall be allocated to each State that meets the requirements of section 13703(c) of this title, except that the United States Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands, if eligible under such subsection, shall each be allocated 0.03 percent.

(B) The amount remaining after application of subparagraph (A) shall be allocated to each State that meets the requirements of section 13703(c) of this title, in the ratio that the number of part 1 violent crimes reported by such State to the Federal Bureau of Investigation for the 3 years preceding the year in which the determination is made, bears to the average annual number of part 1 violent crimes reported by all States that meet the requirements of section 13702(c) of this title to the Federal Bureau of Investigation for the 3 years preceding the year in which the determination is made.

(b) Allocation of truth-in-sentencing grants under section 13704

The amounts available for grants for section 13704 of this title shall be allocated to each State that meets the requirements of section 13704 of this title in the ratio that the average annual number of part 1 violent crimes reported by such State to the Federal Bureau of Investigation for the 3 years preceding the year in which the determination is made bears to the average annual number of part 1 violent crimes reported by States that meet the requirements of section 13704 of this title to the Federal Bureau of Investigation for the 3 years preceding the year in which the determination is made, except that a State may not receive more than 25 percent of the total amount available for such grants.

(c) Unavailable data

If data regarding part 1 violent crimes in any State is substantially inaccurate or is unavailable for the 3 years preceding the year in which the determination is made, the Attorney General shall utilize the best available comparable data regarding the number of violent crimes for the previous year for the State for the purposes of allocation of funds under this part.

(d) Regional compacts

In determining the amount of funds that States organized as a regional compact may receive, the Attorney General shall first apply the formula in either subsection (a) or (b) and (c) of this section to each member State of the compact. The States organized as a regional compact may receive the sum of the amounts so determined.

(Pub. L. 103-322, title II, §20106, as added Pub. L. 104-134, title I, §101[(a)] [title I, §114(a)], Apr. 26, 1996, 110 Stat. 1321, 1321-18; renumbered title I, Pub. L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327.)

PRIOR PROVISIONS

A prior section 13706, Pub. L. 103-322, title II, §20106, Sept. 13, 1994, 108 Stat. 1818, related to technical assist-

ance and training prior to the general amendment of this part by Pub. L. 104-134.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13705, 14214 of this title.

§ 13707. Accountability

(a) Fiscal requirements

A State that receives funds under this part shall use accounting, audit, and fiscal procedures that conform to guidelines prescribed by the Attorney General, and shall ensure that any funds used to carry out the programs under section 13702(a) of this title shall represent the best value for the State governments at the lowest possible cost and employ the best available technology.

(b) Administrative provisions

The administrative provisions of sections 3782 and 3783 of this title shall apply to the Attorney General under this part in the same manner that such provisions apply to the officials listed in such sections.

(Pub. L. 103-322, title II, §20107, as added Pub. L. 104-134, title I, §101[(a)] [title I, §114(a)], Apr. 26, 1996, 110 Stat. 1321, 1321-19; renumbered title I, Pub. L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327.)

PRIOR PROVISIONS

A prior section 13707, Pub. L. 103-322, title II, §20107, Sept. 13, 1994, 108 Stat. 1818, related to evaluation of programs prior to the general amendment of this part by Pub. L. 104-134.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 13708. Authorization of appropriations

(a) In general

(1) Authorizations

There are authorized to be appropriated to carry out this part—

- (A) \$997,500,000 for fiscal year 1996;
- (B) \$1,330,000,000 for fiscal year 1997;
- (C) \$2,527,000,000 for fiscal year 1998;
- (D) \$2,660,000,000 for fiscal year 1999; and
- (E) \$2,753,100,000 for fiscal year 2000.

(2) Distribution

(A) In general

Of the amounts remaining after the allocation of funds for the purposes set forth under sections 13710, 13711, and 13709 of this title, the Attorney General shall, from amounts authorized to be appropriated under paragraph (1) for each fiscal year, distribute 50 percent for incarceration grants under section 13703 of this title, and 50 percent for incentive grants under section 13704 of this title.

(B) Distribution of minimum amounts

The Attorney General shall distribute minimum amounts allocated for section 13703(a) of this title to an eligible State not later than 30 days after receiving an application that demonstrates that such State qualifies for a Violent Offender Incarcer-

ation grant under section 13703 of this title or a Truth-in-Sentencing Incentive grant under section 13704 of this title.

(b) Limitations on funds

(1) Uses of funds

Except as provided in section¹ 13710 and 13711 of this title, funds made available pursuant to this section shall be used only to carry out the purposes described in section 13702(a) of this title.

(2) Nonsupplanting requirement

Funds made available pursuant to this section shall not be used to supplant State funds, but shall be used to increase the amount of funds that would, in the absence of Federal funds, be made available from State sources.

(3) Administrative costs

Not more than 3 percent of the funds that remain available after carrying out sections 13709, 13710, and 13711 of this title shall be available to the Attorney General for purposes of—

- (A) administration;
- (B) research and evaluation, including assessment of the effect on public safety and other effects of the expansion of correctional capacity and sentencing reforms implemented pursuant to this part;
- (C) technical assistance relating to the use of grant funds, and development and implementation of sentencing reforms implemented pursuant to this part; and
- (D) data collection and improvement of information systems relating to the confinement of violent offenders and other sentencing and correctional matters.

(4) Carryover of appropriations

Funds appropriated pursuant to this section during any fiscal year shall remain available until expended.

(5) Matching funds

The Federal share of a grant received under this part may not exceed 90 percent of the costs of a proposal as described in an application approved under this part.

(Pub. L. 103-322, title II, §20108, as added Pub. L. 104-134, title I, §101[(a)] [title I, §114(a)], Apr. 26, 1996, 110 Stat. 1321, 1321-19; renumbered title I, Pub. L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327.)

PRIOR PROVISIONS

A prior section 13708, Pub. L. 103-322, title II, §20108, Sept. 13, 1994, 108 Stat. 1818, defined terms in this part prior to the general amendment of this part by Pub. L. 104-134.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13709, 13710, 13711, 14214 of this title.

§ 13709. Payments for incarceration on tribal lands

(a) Reservation of funds

Notwithstanding any other provision of this part other than section 13708(a)(2) of this title,

from amounts appropriated to carry out sections 13703 and 13704 of this title, the Attorney General shall reserve, to carry out this section—

- (1) 0.3 percent in each of fiscal years 1996 and 1997; and
- (2) 0.2 percent in each of fiscal years 1998, 1999, and 2000.

(b) Grants to Indian tribes

From the amounts reserved under subsection (a) of this section, the Attorney General may make grants to Indian tribes for the purposes of constructing jails on tribal lands for the incarceration of offenders subject to tribal jurisdiction.

(c) Applications

To be eligible to receive a grant under this section, an Indian tribe shall submit to the Attorney General an application in such form and containing such information as the Attorney General may by regulation require.

(Pub. L. 103-322, title II, §20109, as added Pub. L. 104-134, title I, §101[(a)] [title I, §114(a)], Apr. 26, 1996, 110 Stat. 1321, 1321-20; renumbered title I, Pub. L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327.)

PRIOR PROVISIONS

A prior section 13709, Pub. L. 103-322, title II, §20109, Sept. 13, 1994, 108 Stat. 1818, authorized appropriations to carry out this part prior to the general amendment of this part by Pub. L. 104-134.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13708, 14214 of this title.

§ 13710. Payments to eligible States for incarceration of criminal aliens

(a) In general

The Attorney General shall make a payment to each State which is eligible under section 1252(j)¹ of title 8 in such amount as is determined under section 1252(j)¹ of title 8, and for which payment is not made to such State for such fiscal year under such section.

(b) Authorization of appropriations

Notwithstanding any other provision of this part, there are authorized to be appropriated to carry out this section from amounts authorized under section 13708 of this title, an amount which when added to amounts appropriated to carry out section 1252(j)¹ of title 8 for fiscal year 1996 equals \$500,000,000 and for each of the fiscal years 1997 through 2000 does not exceed \$650,000,000.

(c) Administration

The amounts appropriated to carry out this section shall be reserved from the total amount appropriated for each fiscal year and shall be added to the other funds appropriated to carry out section 1252(j)¹ of title 8 and administered under such section.

(d) Report to Congress

Not later than May 15, 1999, the Attorney General shall submit a report to the Congress which contains the recommendation of the Attorney

¹ So in original. Probably should be "sections".

¹ See References in Text note below.

General concerning the extension of the program under this section.

(Pub. L. 103-322, title II, §20110, as added Pub. L. 104-134, title I, §101[(a)] [title I, §114(a)], Apr. 26, 1996, 110 Stat. 1321, 1321-21; renumbered title I, Pub. L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327.)

REFERENCES IN TEXT

Section 1252(j) of title 8, referred to in subsecs. (a) to (c), was redesignated section 1231(i) of title 8 by Pub. L. 104-208, div. C, title III, §306(a)(1), Sept. 30, 1996, 110 Stat. 3009-607.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13708 of this title.

§ 13711. Support of Federal prisoners in non-Federal institutions

(a) In general

The Attorney General may make payments to States and units of local government for the purposes authorized in section 4013 of title 18.

(b) Authorization of appropriations

Notwithstanding any other provision of this part other than section 13708(a)(2) of this title, there are authorized to be appropriated from amounts authorized under section 13708 of this title for each of fiscal years 1996 through 2000 such sums as may be necessary to carry out this section.

(Pub. L. 103-322, title II, §20111, as added Pub. L. 104-134, title I, §101[(a)] [title I, §114(a)], Apr. 26, 1996, 110 Stat. 1321, 1321-21; renumbered title I, Pub. L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13708 of this title.

§ 13712. Report by Attorney General

Beginning on October 1, 1996, and each subsequent July 1 thereafter, the Attorney General shall report to the Congress on the implementation of this part, including a report on the eligibility of the States under sections 13703 and 13704 of this title, and the distribution and use of funds under this part.

(Pub. L. 103-322, title II, §20112, as added Pub. L. 104-134, title I, §101[(a)] [title I, §114(a)], Apr. 26, 1996, 110 Stat. 1321, 1321-21; renumbered title I, Pub. L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327.)

§ 13713. Aimee's Law

(a) Short title

This section may be cited as "Aimee's Law".

(b) Definitions

In this section:

(1) Dangerous sexual offense

The term "dangerous sexual offense" means any offense under State law for conduct that would constitute an offense under chapter 109A of title 18 had the conduct occurred in the special maritime and territorial jurisdiction of the United States or in a Federal prison.

(2) Murder

The term "murder" has the meaning given the term in part I of the Uniform Crime Reports of the Federal Bureau of Investigation.

(3) Rape

The term "rape" has the meaning given the term in part I of the Uniform Crime Reports of the Federal Bureau of Investigation.

(c) Penalty

(1) Single State

In any case in which a State convicts an individual of murder, rape, or a dangerous sexual offense, who has a prior conviction for any one of those offenses in a State described in paragraph (3), the Attorney General shall transfer an amount equal to the costs of incarceration, prosecution, and apprehension of that individual, from Federal law enforcement assistance funds that have been allocated to but not distributed to the State that convicted the individual of the prior offense, to the State account that collects Federal law enforcement assistance funds of the State that convicted that individual of the subsequent offense.

(2) Multiple States

In any case in which a State convicts an individual of murder, rape, or a dangerous sexual offense, who has a prior conviction for any one or more of those offenses in more than one other State described in paragraph (3), the Attorney General shall transfer an amount equal to the costs of incarceration, prosecution, and apprehension of that individual, from Federal law enforcement assistance funds that have been allocated to but not distributed to each State that convicted such individual of the prior offense, to the State account that collects Federal law enforcement assistance funds of the State that convicted that individual of the subsequent offense.

(3) State described

A State is described in this paragraph if—

(A) the average term of imprisonment imposed by the State on individuals convicted of the offense for which the individual described in paragraph (1) or (2), as applicable, was convicted by the State is less than the average term of imprisonment imposed for that offense in all States; or

(B) with respect to the individual described in paragraph (1) or (2), as applicable, the individual had served less than 85 percent of the term of imprisonment to which that individual was sentenced for the prior offense.

For purposes of subparagraph (B), in a State that has indeterminate sentencing, the term of imprisonment to which that individual was sentenced for the prior offense shall be based on the lower of the range of sentences.

(d) State applications

In order to receive an amount transferred under subsection (c) of this section, the chief executive of a State shall submit to the Attorney General an application, in such form and containing such information as the Attorney General may reasonably require, which shall include a certification that the State has convicted an individual of murder, rape, or a dangerous sexual offense, who has a prior conviction for one of those offenses in another State.

(e) Source of funds**(1) In general**

Any amount transferred under subsection (c) of this section shall be derived by reducing the amount of Federal law enforcement assistance funds received by the State that convicted such individual of the prior offense before the distribution of the funds to the State. The Attorney General shall provide the State with an opportunity to select the specific Federal law enforcement assistance funds to be so reduced (other than Federal crime victim assistance funds).

(2) Payment schedule

The Attorney General, in consultation with the chief executive of the State that convicted such individual of the prior offense, shall establish a payment schedule.

(f) Construction

Nothing in this section may be construed to diminish or otherwise affect any court ordered restitution.

(g) Exception

This section does not apply if the individual convicted of murder, rape, or a dangerous sexual offense has been released from prison upon the reversal of a conviction for an offense described in subsection (c) of this section and subsequently been convicted for an offense described in subsection (c) of this section.

(h) Report

The Attorney General shall—

(1) conduct a study evaluating the implementation of this section; and

(2) not later than October 1, 2006, submit to Congress a report on the results of that study.

(i) Collection of recidivism data**(1) In general**

Beginning with calendar year 2002, and each calendar year thereafter, the Attorney General shall collect and maintain information relating to, with respect to each State—

(A) the number of convictions during that calendar year for—

- (i) any dangerous sexual offense;
- (ii) rape; and
- (iii) murder; and

(B) the number of convictions described in subparagraph (A) that constitute second or subsequent convictions of the defendant of an offense described in that subparagraph.

(2) Report

Not later than March 1, 2003, and on March 1 of each year thereafter, the Attorney General shall submit to Congress a report, which shall include—

(A) the information collected under paragraph (1) with respect to each State during the preceding calendar year; and

(B) the percentage of cases in each State in which an individual convicted of an offense described in paragraph (1)(A) was previously convicted of another such offense in another State during the preceding calendar year.

(j) Effective date

This section shall take effect on January 1, 2002.

(Pub. L. 106-386, div. C, §2001, Oct. 28, 2000, 114 Stat. 1539.)

CODIFICATION

Section was enacted as Aimee's Law and also as part of the Victims of Trafficking and Violence Protection Act of 2000, and not as part of the Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

PART B—MISCELLANEOUS PROVISIONS

§ 13721. Task force on prison construction standardization and techniques**(a) Task force**

The Director of the National Institute of Corrections shall, subject to availability of appropriations, establish a task force composed of Federal, State, and local officials expert in prison construction, and of at least an equal number of engineers, architects, and construction experts from the private sector with expertise in prison design and construction, including the use of cost-cutting construction standardization techniques and cost-cutting new building materials and technologies.

(b) Cooperation

The task force shall work in close cooperation and communication with other State and local officials responsible for prison construction in their localities.

(c) Performance requirements

The task force shall work to—

(1) establish and recommend standardized construction plans and techniques for prison and prison component construction; and

(2) evaluate and recommend new construction technologies, techniques, and materials,

to reduce prison construction costs at the Federal, State, and local levels and make such construction more efficient.

(d) Dissemination

The task force shall disseminate information described in subsection (c) of this section to State and local officials involved in prison construction, through written reports and meetings.

(e) Promotion and evaluation

The task force shall—

(1) work to promote the implementation of cost-saving efforts at the Federal, State, and local levels;

(2) evaluate and advise on the results and effectiveness of such cost-saving efforts as adopted, broadly disseminating information on the results; and

(3) to the extent feasible, certify the effectiveness of the cost-savings efforts.

(Pub. L. 103-322, title II, §20406, Sept. 13, 1994, 108 Stat. 1826.)

§ 13722. Efficiency in law enforcement and corrections**(a) In general**

In the administration of each grant program funded by appropriations authorized by this Act or by an amendment made by this Act, the Attorney General shall encourage—

(1) innovative methods for the low-cost construction of facilities to be constructed, converted, or expanded and the low-cost operation of such facilities and the reduction of administrative costs and overhead expenses; and
(2) the use of surplus Federal property.

(b) Assessment of construction components and designs

The Attorney General may make an assessment of the cost efficiency and utility of using modular, prefabricated, precast, and pre-engineered construction components and designs for housing nonviolent criminals.

(Pub. L. 103-322, title II, § 20407, Sept. 13, 1994, 108 Stat. 1826.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), is Pub. L. 103-322, Sept. 13, 1994, 108 Stat. 1796, known as the Violent Crime Control and Law Enforcement Act of 1994. For complete classification of this Act to the Code, see Short Title note set out under section 13701 of this title and Tables.

§ 13723. Congressional approval of any expansion at Lorton and congressional hearings on future needs

(a) Congressional approval

Notwithstanding any other provision of law, the existing prison facilities and complex at the District of Columbia Corrections Facility at Lorton, Virginia, shall not be expanded unless such expansion has been approved by the Congress under the authority provided to Congress in section 446 of the District of Columbia Home Rule Act.

(b) Senate hearings

The Senate directs the Subcommittee on the District of Columbia of the Committee on Appropriations of the Senate to conduct hearings regarding expansion of the prison complex in Lorton, Virginia, prior to any approval granted pursuant to subsection (a) of this section. The subcommittee shall permit interested parties, including appropriate officials from the County of Fairfax, Virginia, to testify at such hearings.

(c) "Expanded" and "expansion" defined

For purposes of this section, the terms "expanded" and "expansion" mean any alteration of the physical structure of the prison complex that is made to increase the number of inmates incarcerated at the prison.

(Pub. L. 103-322, title II, § 20410, Sept. 13, 1994, 108 Stat. 1828; Pub. L. 105-33, title XI, § 11717(b), Aug. 5, 1997, 111 Stat. 786.)

REFERENCES IN TEXT

Section 446 of the District of Columbia Home Rule Act, referred to in subsec. (a), is section 446 of Pub. L. 93-198, title IV, Dec. 24, 1973, 87 Stat. 801, as amended, which is not classified to the Code.

AMENDMENTS

1997—Subsec. (a). Pub. L. 105-33 substituted "District of Columbia Home Rule Act" for "District of Columbia Self-Government and Governmental Reorganization Act".

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-33 effective Oct. 1, 1997, except as otherwise provided in title XI of Pub. L.

105-33, see section 11721 of Pub. L. 105-33, set out as a note under section 4246 of Title 18, Crimes and Criminal Procedure.

§ 13724. Conversion of closed military installations into Federal prison facilities

(a) Study of suitable bases

The Secretary of Defense and the Attorney General shall jointly conduct a study of all military installations selected before September 13, 1994, to be closed pursuant to a base closure law for the purpose of evaluating the suitability of any of these installations, or portions of these installations, for conversion into Federal prison facilities. As part of the study, the Secretary and the Attorney General shall identify the military installations so evaluated that are most suitable for conversion into Federal prison facilities.

(b) Suitability for conversion

In evaluating the suitability of a military installation for conversion into a Federal prison facility, the Secretary of Defense and the Attorney General shall consider the estimated cost to convert the installation into a prison facility and such other factors as the Secretary and the Attorney General consider to be appropriate.

(c) Time for study

The study required by subsection (a) of this section shall be completed not later than the date that is 180 days after September 13, 1994.

(d) Construction of Federal prisons

(1) In general

In determining where to locate any new Federal prison facility, and in accordance with the Department of Justice's duty to review and identify a use for any portion of an installation closed pursuant to title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526) and the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510), the Attorney General shall—

(A) consider whether using any portion of a military installation closed or scheduled to be closed in the region pursuant to a base closure law provides a cost-effective alternative to the purchase of real property or construction of new prison facilities;

(B) consider whether such use is consistent with a reutilization and redevelopment plan; and

(C) give consideration to any installation located in a rural area the closure of which will have a substantial adverse impact on the economy of the local communities and on the ability of the communities to sustain an economic recovery from such closure.

(2) Consent

With regard to paragraph (1)(B), consent must be obtained from the local re-use authority for the military installation, recognized and funded by the Secretary of Defense, before the Attorney General may proceed with plans for the design or construction of a prison at the installation.

(3) Report on basis of decision

Before proceeding with plans for the design or construction of a Federal prison, the Attorney General shall submit to Congress a report explaining the basis of the decision on where to locate the new prison facility.

(4) Report on cost-effectiveness

If the Attorney General decides not to utilize any portion of a closed military installation or an installation scheduled to be closed for locating a prison, the report shall include an analysis of why installations in the region, the use of which as a prison would be consistent with a reutilization and redevelopment plan, does not provide a cost-effective alternative to the purchase of real property or construction of new prison facilities.

(e) "Base closure law" defined

In this section, "base closure law" means—

(1) the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note); and

(2) title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).

(Pub. L. 103-322, title II, §20413, Sept. 13, 1994, 108 Stat. 1829.)

REFERENCES IN TEXT

The Defense Authorization Amendments and Base Closure and Realignment Act, referred to in subsecs. (d)(1) and (e)(2), is Pub. L. 100-526, Oct. 24, 1988, 102 Stat. 2623, as amended. Title II of the Act is set out as a note under section 2687 of Title 10, Armed Forces. For complete classification of this Act to the Code, see Short Title of 1988 Amendment note set out under section 2687 of Title 10 and Tables.

The Defense Base Closure and Realignment Act of 1990, referred to in subsecs. (d)(1) and (e)(1), is part A of title XXIX of div. B of Pub. L. 101-510, Nov. 5, 1990, 104 Stat. 1808, which is set out as a note under section 2687 of Title 10. For complete classification of this Act to the Code, see Tables.

§ 13725. Correctional job training and placement**(a) Purpose**

It is the purpose of this section to encourage and support job training programs, and job placement programs, that provide services to incarcerated persons or ex-offenders.

(b) Definitions

As used in this section:

(1) Correctional institution

The term "correctional institution" means any prison, jail, reformatory, work farm, detention center, or halfway house, or any other similar institution designed for the confinement or rehabilitation of criminal offenders.

(2) Correctional job training or placement program

The term "correctional job training or placement program" means an activity that provides job training or job placement services to incarcerated persons or ex-offenders, or that assists incarcerated persons or ex-offenders in obtaining such services.

(3) Ex-offender

The term "ex-offender" means any individual who has been sentenced to a term of proba-

tion by a Federal or State court, or who has been released from a Federal, State, or local correctional institution.

(4) Incarcerated person

The term "incarcerated person" means any individual incarcerated in a Federal or State correctional institution who is charged with or convicted of any criminal offense.

(c) Establishment of Office**(1) In general**

The Attorney General shall establish within the Department of Justice an Office of Correctional Job Training and Placement. The Office shall be headed by a Director, who shall be appointed by the Attorney General.

(2) Timing

The Attorney General shall carry out this subsection not later than 6 months after September 13, 1994.

(d) Functions of Office

The Attorney General, acting through the Director of the Office of Correctional Job Training and Placement, in consultation with the Secretary of Labor, shall—

(1) assist in coordinating the activities of the Federal Bonding Program of the Department of Labor, the activities of the Department of Labor related to the certification of eligibility for targeted jobs credits under section 51 of title 26 with respect to ex-offenders, and any other correctional job training or placement program of the Department of Justice or Department of Labor;

(2) provide technical assistance to State and local employment and training agencies that—

(A) receive financial assistance under this Act; or

(B) receive financial assistance through other programs carried out by the Department of Justice or Department of Labor, for activities related to the development of employability;

(3) prepare and implement the use of special staff training materials, and methods, for developing the staff competencies needed by State and local agencies to assist incarcerated persons and ex-offenders in gaining marketable occupational skills and job placement;

(4) prepare and submit to Congress an annual report on the activities of the Office of Correctional Job Training and Placement, and the status of correctional job training or placement programs in the United States;

(5) cooperate with other Federal agencies carrying out correctional job training or placement programs to ensure coordination of such programs throughout the United States;

(6) consult with, and provide outreach to—

(A) State job training coordinating councils, administrative entities, and private industry councils, with respect to programs carried out under this Act; and

(B) other State and local officials, with respect to other employment or training programs carried out by the Department of Justice or Department of Labor;

(7) collect from States information on the training accomplishments and employment

outcomes of a sample of incarcerated persons and ex-offenders who were served by employment or training programs carried out, or that receive financial assistance through programs carried out, by the Department of Justice or Department of Labor; and

(8)(A) collect from States and local governments information on the development and implementation of correctional job training or placement programs; and

(B) disseminate such information, as appropriate.

(Pub. L. 103-322, title II, § 20418, Sept. 13, 1994, 108 Stat. 1835.)

REFERENCES IN TEXT

This Act, referred to in subsec. (d)(2)(A), (6)(A), is Pub. L. 103-322, Sept. 13, 1994, 108 Stat. 1796, known as the Violent Crime Control and Law Enforcement Act of 1994. For complete classification of this Act to the Code, see Short Title note set out under section 13701 of this title and Tables.

§ 13726. Findings

Congress finds the following:

(1) Increasingly, States are turning to private prisoner transport companies as an alternative to their own personnel or the United States Marshals Service when transporting violent prisoners.

(2) The transport process can last for days if not weeks, as violent prisoners are dropped off and picked up at a network of hubs across the country.

(3) Escapes by violent prisoners during transport by private prisoner transport companies have occurred.

(4) Oversight by the Attorney General is required to address these problems.

(5) While most governmental entities may prefer to use, and will continue to use, fully trained and sworn law enforcement officers when transporting violent prisoners, fiscal or logistical concerns may make the use of highly specialized private prisoner transport companies an option. Nothing in sections 13726 to 13726c of this title should be construed to mean that governmental entities should contract with private prisoner transport companies to move violent prisoners; however when a government entity opts to use a private prisoner transport company to move violent prisoners, then the company should be subject to regulation in order to enhance public safety.

(Pub. L. 106-560, § 2, Dec. 21, 2000, 114 Stat. 2784.)

REFERENCES IN TEXT

Sections 13726 to 13726c of this title, referred to in par. (5), was in the original “this Act”, meaning Pub. L. 106-560, Dec. 21, 2000, 114 Stat. 2784, known as the Interstate Transportation of Dangerous Criminals Act of 2000 or Jeanna’s Act, which enacted this section and sections 13726a to 13726c of this title and provisions set out as a note under section 13701 of this title. For complete classification of this Act to the Code, see Short Title of 2000 Amendments note set out under 13701 of this title and Tables.

CODIFICATION

This section was enacted as part of the Interstate Transportation of Dangerous Criminals Act of 2000 or Jeanna’s Act, and not as part of the Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13726a, 13726b, 13726c of this title.

§ 13726a. Definitions

In sections 13726 to 13726c of this title:

(1) Crime of violence

The term “crime of violence” has the same meaning as in section 924(c)(3) of title 18.

(2) Private prisoner transport company

The term “private prisoner transport company” means any entity, other than the United States, a State, or an inferior political subdivision of a State, which engages in the business of the transporting for compensation, individuals committed to the custody of any State or of an inferior political subdivision of a State, or any attempt thereof.

(3) Violent prisoner

The term “violent prisoner” means any individual in the custody of a State or an inferior political subdivision of a State who has previously been convicted of or is currently charged with a crime of violence or any similar statute of a State or the inferior political subdivisions of a State, or any attempt thereof.

(Pub. L. 106-560, § 3, Dec. 21, 2000, 114 Stat. 2784.)

REFERENCES IN TEXT

Sections 13726 to 13726c of this title, referred to in text, was in the original “this Act”, meaning Pub. L. 106-560, Dec. 21, 2000, 114 Stat. 2784, known as the Interstate Transportation of Dangerous Criminals Act of 2000 or Jeanna’s Act, which enacted this section and sections 13726, 13726b, and 13726c of this title and provisions set out as a note under section 13701 of this title. For complete classification of this Act to the Code, see Short Title of 2000 Amendments note set out under 13701 of this title and Tables.

CODIFICATION

This section was enacted as part of the Interstate Transportation of Dangerous Criminals Act of 2000 or Jeanna’s Act, and not as part of the Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13726, 13726b, 13726c of this title.

§ 13726b. Federal regulation of prisoner transport companies

(a) In general

Not later than 180 days after December 21, 2000, the Attorney General, in consultation with the American Correctional Association and the private prisoner transport industry, shall promulgate regulations relating to the transportation of violent prisoners in or affecting interstate commerce.

(b) Standards and requirements

The regulations shall include the following:

(1) Minimum standards for background checks and preemployment drug testing for

potential employees, including requiring criminal background checks, to disqualify persons with a felony conviction or domestic violence conviction as defined by section 921 of title 18 for eligibility for employment. Pre-employment drug testing will be in accordance with applicable State laws.

(2) Minimum standards for the length and type of training that employees must undergo before they can transport prisoners not to exceed 100 hours of preservice training focusing on the transportation of prisoners. Training shall be in the areas of use of restraints, searches, use of force, including use of appropriate weapons and firearms, CPR, map reading, and defensive driving.

(3) Restrictions on the number of hours that employees can be on duty during a given time period. Such restriction shall not be more stringent than current applicable rules and regulations concerning hours of service promulgated under the Federal Motor Vehicle Safety Act.¹

(4) Minimum standards for the number of personnel that must supervise violent prisoners. Such standards shall provide the transport entity with appropriate discretion, and, absent more restrictive requirements contracted for by the procuring government entity, shall not exceed a requirement of 1 agent for every 6 violent prisoners.

(5) Minimum standards for employee uniforms and identification that require wearing of a uniform with a badge or insignia identifying the employee as a transportation officer.

(6) Standards establishing categories of violent prisoners required to wear brightly colored clothing clearly identifying them as prisoners, when appropriate.

(7) Minimum requirements for the restraints that must be used when transporting violent prisoners, to include leg shackles and double-locked handcuffs, when appropriate.

(8) A requirement that when transporting violent prisoners, private prisoner transport companies notify local law enforcement officials 24 hours in advance of any scheduled stops in their jurisdiction.

(9) A requirement that in the event of an escape by a violent prisoner, private prisoner transport company officials shall immediately notify appropriate law enforcement officials in the jurisdiction where the escape occurs, and the governmental entity that contracted with the private prisoner transport company for the transport of the escaped violent prisoner.

(10) Minimum standards for the safety of violent prisoners in accordance with applicable Federal and State law.

(c) Federal standards

Except for the requirements of subsection (b)(6) of this section, the regulations promulgated under sections 13726 to 13726c of this title shall not provide stricter standards with respect to private prisoner transport companies than are applicable, without exception, to the United States Marshals Service, Federal Bureau of Prisons, and the Immigration and Naturalization

Service when transporting violent prisoners under comparable circumstances.

(Pub. L. 106-560, § 4, Dec. 21, 2000, 114 Stat. 2785.)

REFERENCES IN TEXT

No act with the title Federal Motor Vehicle Safety Act, referred to in subsec. (b)(3), has been enacted. Provisions authorizing the Secretary of Transportation to prescribe requirements relating to hours of service of employees of a motor carrier are contained in chapter 315 (§31501 et seq.) of Title 49, Transportation.

Sections 13726 to 13726c of this title, referred to in subsec. (c), was in the original “this Act”, meaning Pub. L. 106-560, Dec. 21, 2000, 114 Stat. 2784, known as the Interstate Transportation of Dangerous Criminals Act of 2000 or Jeanna’s Act, which enacted this section and sections 13726, 13726a, and 13726c of this title and provisions set out as a note under section 13701 of this title. For complete classification of this Act to the Code, see Short Title of 2000 Amendments note set out under 13701 of this title and Tables.

CODIFICATION

This section was enacted as part of the Interstate Transportation of Dangerous Criminals Act of 2000 or Jeanna’s Act, and not as part of the Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13726, 13726a, 13726c of this title.

§ 13726c. Enforcement

Any person who is found in violation of the regulations established by sections 13726 to 13726c of this title shall—

(1) be liable to the United States for a civil penalty in an amount not to exceed \$10,000 for each violation and, in addition, to the United States for the costs of prosecution; and

(2) make restitution to any entity of the United States, of a State, or of an inferior political subdivision of a State, which expends funds for the purpose of apprehending any violent prisoner who escapes from a prisoner transport company as the result, in whole or in part, of a violation of regulations promulgated pursuant to section 13726b(a) of this title.

(Pub. L. 106-560, § 5, Dec. 21, 2000, 114 Stat. 2786.)

REFERENCES IN TEXT

Sections 13726 to 13726c of this title, referred to in text, was in the original “this Act”, meaning Pub. L. 106-560, Dec. 21, 2000, 114 Stat. 2784, known as the Interstate Transportation of Dangerous Criminals Act of 2000 or Jeanna’s Act, which enacted this section and sections 13726 to 13726b of this title and provisions set out as a note under section 13701 of this title. For complete classification of this Act to the Code, see Short Title of 2000 Amendments note set out under 13701 of this title and Tables.

CODIFICATION

This section was enacted as part of the Interstate Transportation of Dangerous Criminals Act of 2000 or Jeanna’s Act, and not as part of the Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13726, 13726a, 13726b of this title.

¹ See References in Text note below.

SUBCHAPTER II—CRIME PREVENTION

PART A—OUNCE OF PREVENTION COUNCIL

§ 13741. Ounce of Prevention Council

(a) Establishment

(1) In general

There is established an Ounce of Prevention Council (referred to in this subchapter as the “Council”), the members of which—

(A) shall include the Attorney General, the Secretary of Education, the Secretary of Health and Human Services, the Secretary of Housing and Urban Development, the Secretary of Labor, the Secretary of Agriculture, the Secretary of the Treasury, the Secretary of the Interior, and the Director of the Office of National Drug Control Policy; and

(B) may include other officials of the executive branch as directed by the President.

(2) Chair

The President shall designate the Chair of the Council from among its members (referred to in this subchapter as the “Chair”).

(3) Staff

The Council may employ any necessary staff to carry out its functions, and may delegate any of its functions or powers to a member or members of the Council.

(b) Program coordination

For any program authorized under the Violent Crime Control and Law Enforcement Act of 1994, the Ounce of Prevention Council Chair, only at the request of the Council member with jurisdiction over that program, may coordinate that program, in whole or in part, through the Council.

(c) Administrative responsibilities and powers

In addition to the program coordination provided in subsection (b) of this section, the Council shall be responsible for such functions as coordinated planning, development of a comprehensive crime prevention program catalogue, provision of assistance to communities and community-based organizations seeking information regarding crime prevention programs and integrated program service delivery, and development of strategies for program integration and grant simplification. The Council shall have the authority to audit the expenditure of funds received by grantees under programs administered by or coordinated through the Council. In consultation with the Council, the Chair may issue regulations and guidelines to carry out this part and programs administered by or coordinated through the Council.

(Pub. L. 103-322, title III, §30101, Sept. 13, 1994, 108 Stat. 1836.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (a)(1), (2), was in the original “this title”, meaning title III of Pub. L. 103-322, Sept. 13, 1994, 108 Stat. 1836, which enacted this subchapter, sections 3796ff to 3796ff-4 of this title, and sections 6701 to 6720 of Title 31, Money and Finance, amended sections 3791, 3793, and 3797 of this title, sections 2502 to 2504, 2506, and 2512 of Title 16, Conserva-

tion, and section 3621 of Title 18, Crimes and Criminal Procedure, and enacted provisions set out as notes under section 13701 of this title and sections 6701 and 6702 of Title 31. For complete classification of title III to the Code, see Tables.

The Violent Crime Control and Law Enforcement Act of 1994, referred to in subsec. (b), is Pub. L. 103-322, Sept. 13, 1994, 108 Stat. 1796. For complete classification of this Act to the Code, see Short Title note set out under section 13701 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 13742. Ounce of prevention grant program

(a) In general

The Council may make grants for—

(1) summer and after-school (including weekend and holiday) education and recreation programs;

(2) mentoring, tutoring, and other programs involving participation by adult role models (such as D.A.R.E. America);

(3) programs assisting and promoting employability and job placement; and

(4) prevention and treatment programs to reduce substance abuse, child abuse, and adolescent pregnancy, including outreach programs for at-risk families.

(b) Applicants

Applicants may be Indian tribal governments, cities, counties, or other municipalities, school boards, colleges and universities, private nonprofit entities, or consortia of eligible applicants. Applicants must show that a planning process has occurred that has involved organizations, institutions, and residents of target areas, including young people, and that there has been cooperation between neighborhood-based entities, municipality-wide bodies, and local private-sector representatives. Applicants must demonstrate the substantial involvement of neighborhood-based entities in the carrying out of the proposed activities. Proposals must demonstrate that a broad base of collaboration and coordination will occur in the implementation of the proposed activities, involving cooperation among youth-serving organizations, schools, health and social service providers, employers, law enforcement professionals, local government, and residents of target areas, including young people. Applications shall be geographically based in particular neighborhoods or sections of municipalities or particular segments of rural areas, and applications shall demonstrate how programs will serve substantial proportions of children and youth resident in the target area with activities designed to have substantial impact on their lives.

(c) Priority

In making such grants, the Council shall give preference to coalitions consisting of a broad spectrum of community-based and social service organizations that have a coordinated team approach to reducing gang membership and the effects of substance abuse, and providing alternatives to at-risk youth.

(d) Federal share**(1) In general**

The Federal share of a grant made under this part¹ may not exceed 75 percent of the total costs of the projects described in the applications submitted under subsection (b) of this section for the fiscal year for which the projects receive assistance under this subchapter.

(2) Waiver

The Council may waive the 25 percent matching requirement under paragraph (1) upon making a determination that a waiver is equitable in view of the financial circumstances affecting the ability of the applicant to meet that requirement.

(3) Non-Federal share

The non-Federal share of such costs may be in cash or in kind, fairly evaluated, including plant, equipment, and services.

(4) Nonsupplanting requirement

Funds made available under this subchapter to a governmental entity shall not be used to supplant State or local funds, or in the case of Indian tribal governments, funds supplied by the Bureau of Indian Affairs, but shall be used to increase the amount of funds that would, in the absence of Federal funds received under this subchapter, be made available from State or local sources, or in the case of Indian tribal governments, from funds supplied by the Bureau of Indian Affairs.

(5) Evaluation

The Council shall conduct a thorough evaluation of the programs assisted under this subchapter.

(Pub. L. 103-322, title III, §30102, Sept. 13, 1994, 108 Stat. 1837.)

REFERENCES IN TEXT

This part, referred to in subsec. (d)(1), appearing in the original is unidentifiable because subtitle A of title III of Pub. L. 103-322 does not contain parts.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 13743. "Indian tribe" defined

In this part, "Indian tribe" means a tribe, band, pueblo, nation, or other organized group or community of Indians, including an Alaska Native village (as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.),¹ that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(Pub. L. 103-322, title III, §30103, Sept. 13, 1994, 108 Stat. 1838.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in text, is Pub. L. 92-203, §2, Dec. 18, 1971, 85 Stat.

¹ See References in Text note below.

¹ So in original. A closing parenthesis probably should precede the comma.

688, as amended, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 13744. Authorization of appropriations

There are authorized to be appropriated to carry out this part—

- (1) \$1,500,000 for fiscal year 1995;
- (2) \$14,700,000 for fiscal year 1996;
- (3) \$18,000,000 for fiscal year 1997;
- (4) \$18,000,000 for fiscal year 1998;
- (5) \$18,900,000 for fiscal year 1999; and
- (6) \$18,900,000 for fiscal year 2000.

(Pub. L. 103-322, title III, §30104, Sept. 13, 1994, 108 Stat. 1838.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

PART B—LOCAL CRIME PREVENTION BLOCK GRANT PROGRAM

§ 13751. Payments to local governments**(a) Payment and use****(1) Payment**

The Attorney General,¹ shall pay to each unit of general local government which qualifies for a payment under this part an amount equal to the sum of any amounts allocated to the government under this part for each payment period. The Attorney General shall pay such amount from amounts appropriated under section 13752 of this title.

(2) Use

Amounts paid to a unit of general local government under this section shall be used by that unit for carrying out one or more of the following purposes:

(A) Education, training, research, prevention, diversion, treatment, and rehabilitation programs to prevent juvenile violence, juvenile gangs, and the use and sale of illegal drugs by juveniles.

(B) Programs to prevent crimes against the elderly based on the concepts of the Triad model.

(C) Programs that prevent young children from becoming gang involved, including the award of grants or contracts to community-based service providers that have a proven track record of providing services to children ages 5 to 18.

(D) Saturation jobs programs, offered either separately or in conjunction with the services provided for under the Youth Fair Chance Program, that provide employment opportunities leading to permanent unsubsidized employment for disadvantaged young adults 16 through 25 years of age.

(E) Midnight sports league programs that shall require each player in the league to at-

¹ So in original. The comma probably should not appear.

tend employment counseling, job training, and other educational classes provided under the program, which shall be held in conjunction with league sports games at or near the site of the games.

(F) Supervised sports and recreation programs, including Olympic Youth Development Centers established in cooperation with the United States Olympic Committee, that are offered—

(i) after school and on weekends and holidays, during the school year; and

(ii) as daily (or weeklong) full-day programs (to the extent available resources permit) or as part-day programs, during the summer months.

(G) Prevention and enforcement programs to reduce—

(i) the formation or continuation of juvenile gangs; and

(ii) the use and sale of illegal drugs by juveniles.

(H) Youth anticrime councils to give intermediate and secondary school students a structured forum through which to work with community organizations, law enforcement officials, government and media representatives, and school administrators and faculty to address issues regarding youth and violence.

(I) Award of grants or contracts to the Boys and Girls Clubs of America, a national nonprofit youth organization, to establish Boys and Girls Clubs in public housing.

(J) Supervised visitation centers for children who have been removed from their parents and placed outside the home as a result of abuse or neglect or other risk of harm to them and for children whose parents are separated or divorced and the children are at risk because—

(i) there is documented sexual, physical, or emotional abuse as determined by a court of competent jurisdiction;

(ii) there is suspected or elevated risk of sexual, physical, or emotional abuse, or there have been threats of parental abduction of the child;

(iii) due to domestic violence, there is an ongoing risk of harm to a parent or child;

(iv) a parent is impaired because of substance abuse or mental illness;

(v) there are allegations that a child is at risk for any of the reasons stated in clauses (i), (ii), (iii), and (iv), pending an investigation of the allegations; or

(vi) other circumstances, as determined by a court of competent jurisdiction, point to the existence of such a risk.

(K) Family Outreach Teams which provide a youth worker, a parent worker, and a school-parent organizer to provide training in outreach, mentoring, community organizing and peer counseling and mentoring to locally recruited volunteers in a particular area.

(L) To establish corridors of safety for senior citizens by increasing the numbers, presence, and watchfulness of law enforcement officers, community groups, and business owners and employees.

(M) Teams or units involving both specially trained law enforcement professionals and child or family services professionals that on a 24-hour basis respond to or deal with violent incidents in which a child is involved as a perpetrator, witness, or victim.

(N) Dwelling units to law enforcement officers without charge or at a substantially reduced rent for the purpose of providing greater security for residents of high crime areas.

(b) Timing of payments

The Attorney General shall pay each amount allocated under this part to a unit of general local government for a payment period by the later of 90 days after the date the amount is available or the first day of the payment period if the unit of general local government has provided the Attorney General with the assurances required by section 13753(d) of this title.

(c) Adjustments

(1) In general

Subject to paragraph (2), the Attorney General shall adjust a payment under this part to a unit of general local government to the extent that a prior payment to the government was more or less than the amount required to be paid.

(2) Considerations

The Attorney General may increase or decrease under this subsection a payment to a unit of general local government only if the Attorney General determines the need for the increase or decrease, or the unit requests the increase or decrease, within one year after the end of the payment period for which the payment was made.

(d) Reservation for adjustments

The Attorney General may reserve a percentage of not more than 2 percent of the amount under this section for a payment period for all units of general local government in a State if the Attorney General considers the reserve is necessary to ensure the availability of sufficient amounts to pay adjustments after the final allocation of amounts among the units of general local government in the State.

(e) Repayment of unexpended amounts

(1) Repayment required

A unit of general local government shall repay to the Attorney General, by not later than 15 months after receipt from the Attorney General, any amount that is—

(A) paid to the unit from amounts appropriated under the authority of this section; and

(B) not expended by the unit within one year after receipt from the Attorney General.

(2) Penalty for failure to repay

If the amount required to be repaid is not repaid, the Attorney General shall reduce payments in future payment periods accordingly.

(3) Deposit of amounts repaid

Amounts received by the Attorney General as repayments under this subsection shall be

deposited in a designated fund for future payments to units of general local government.

(f) Nonsupplanting requirement

Funds made available under this part to units of local government shall not be used to supplant State or local funds, but will be used to increase the amount of funds that would, in the absence of funds under this part, be made available from State or local sources.

(Pub. L. 103-322, title III, §30201, Sept. 13, 1994, 108 Stat. 1838.)

NATIONAL POLICE ATHLETIC LEAGUE YOUTH
ENRICHMENT

Pub. L. 106-367, Oct. 27, 2000, 114 Stat. 1412, provided that:

“SECTION 1. SHORT TITLE.

“This Act may be cited as the ‘National Police Athletic League Youth Enrichment Act of 2000’.

“SEC. 2. FINDINGS.

“Congress makes the following findings:

“(1) The goals of the Police Athletic League are to—

“(A) increase the academic success of youth participants in PAL programs;

“(B) promote a safe, healthy environment for youth under the supervision of law enforcement personnel where mutual trust and respect can be built;

“(C) increase school attendance by providing alternatives to suspensions and expulsions;

“(D) reduce the juvenile crime rate in participating designated communities and the number of police calls involving juveniles during nonschool hours;

“(E) provide youths with alternatives to drugs, alcohol, tobacco, and gang activity;

“(F) create positive communications and interaction between youth and law enforcement personnel; and

“(G) prepare youth for the workplace.

“(2) The Police Athletic League, during its 55-year history as a national organization, has proven to be a positive force in the communities it serves.

“(3) The Police Athletic League is a network of 1,700 facilities serving over 3,000 communities. There are 320 PAL chapters throughout the United States, the Virgin Islands, and the Commonwealth of Puerto Rico, serving 1,500,000 youths, ages 5 to 18, nationwide.

“(4) Based on PAL chapter demographics, approximately 82 percent of the youths who benefit from PAL programs live in inner cities and urban areas.

“(5) PAL chapters are locally operated, volunteer-driven organizations. Although most PAL chapters are sponsored by a law enforcement agency, PAL chapters receive no direct funding from law enforcement agencies and are dependent in large part on support from the private sector, such as individuals, business leaders, corporations, and foundations. PAL chapters have been exceptionally successful in balancing public funds with private sector donations and maximizing community involvement.

“(6) Today’s youth face far greater risks than did their parents and grandparents. Law enforcement statistics demonstrate that youth between the ages of 12 and 17 are at risk of committing violent acts and being victims of violent acts between the hours of 3 p.m. and 8 p.m.

“(7) Greater numbers of students are dropping out of school and failing in school, even though the consequences of academic failure are more dire in 1999 than ever before.

“(8) Many distressed areas in the United States are still underserved by PAL chapters.

“SEC. 3. PURPOSE.

“The purpose of this Act is to provide adequate resources in the form of—

“(1) assistance for the 320 established PAL chapters to increase of services to the communities they are serving; and

“(2) seed money for the establishment of 250 (50 per year over a 5-year period) additional local PAL chapters in public housing projects and other distressed areas, including distressed areas with a majority population of Native Americans, by not later than fiscal year 2006.

“SEC. 4. DEFINITIONS.

“In this Act:

“(1) ASSISTANT ATTORNEY GENERAL.—The term ‘Assistant Attorney General’ means the Assistant Attorney General for the Office of Justice Programs of the Department of Justice.

“(2) DISTRESSED AREA.—The term ‘distressed area’ means an urban, suburban, or rural area with a high percentage of high-risk youth, as defined in section 509A of the Public Health Service Act (42 U.S.C. 290aa-8(f)) [now 42 U.S.C. 290bb-23(g)].

“(3) PAL CHAPTER.—The term ‘PAL chapter’ means a chapter of a Police or Sheriff’s Athletic/Activities League.

“(4) POLICE ATHLETIC LEAGUE.—The term ‘Police Athletic League’ means the private, nonprofit, national representative organization for 320 Police or Sheriff’s Athletic/Activities Leagues throughout the United States (including the Virgin Islands and the Commonwealth of Puerto Rico).

“(5) PUBLIC HOUSING; PROJECT.—The terms ‘public housing’ and ‘project’ have the meanings given those terms in section 3(b) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)).

“SEC. 5. GRANTS AUTHORIZED.

“(a) IN GENERAL.—Subject to appropriations, for each of fiscal years 2001 through 2005, the Assistant Attorney General shall award a grant to the Police Athletic League for the purpose of establishing PAL chapters to serve public housing projects and other distressed areas, and expanding existing PAL chapters to serve additional youths.

“(b) APPLICATION.—

“(1) SUBMISSION.—In order to be eligible to receive a grant under this section, the Police Athletic League shall submit to the Assistant Attorney General an application, which shall include—

“(A) a long-term strategy to establish 250 additional PAL chapters and detailed summary of those areas in which new PAL chapters will be established, or in which existing chapters will be expanded to serve additional youths, during the next fiscal year;

“(B) a plan to ensure that there are a total of not less than 570 PAL chapters in operation before January 1, 2004;

“(C) a certification that there will be appropriate coordination with those communities where new PAL chapters will be located; and

“(D) an explanation of the manner in which new PAL chapters will operate without additional, direct Federal financial assistance once assistance under this Act is discontinued.

“(2) REVIEW.—The Assistant Attorney General shall review and take action on an application submitted under paragraph (1) not later than 120 days after the date of such submission.

“SEC. 6. USE OF FUNDS.

“(a) IN GENERAL.—

“(1) ASSISTANCE FOR NEW AND EXPANDED CHAPTERS.—Amounts made available under a grant awarded under this Act shall be used by the Police Athletic League to provide funding for the establishment of PAL chapters serving public housing projects and other distressed areas, or the expansion of existing PAL chapters.

“(2) PROGRAM REQUIREMENTS.—Each new or expanded PAL chapter assisted under paragraph (1) shall carry out not less than four programs during nonschool hours, of which—

- “(A) not less than two programs shall provide—
 - “(i) mentoring assistance;
 - “(ii) academic assistance;
 - “(iii) recreational and athletic activities; or
 - “(iv) technology training; and
- “(B) any remaining programs shall provide—
 - “(i) drug, alcohol, and gang prevention activities;
 - “(ii) health and nutrition counseling;
 - “(iii) cultural and social programs;
 - “(iv) conflict resolution training, anger management, and peer pressure training;
 - “(v) job skill preparation activities; or
 - “(vi) Youth Police Athletic League Conferences or Youth Forums.

“(b) ADDITIONAL REQUIREMENTS.—In carrying out the programs under subsection (a), a PAL chapter shall, to the maximum extent practicable—

- “(1) use volunteers from businesses, academic communities, social organizations, and law enforcement organizations to serve as mentors or to assist in other ways;
- “(2) ensure that youth in the local community participate in designing the after-school activities;
- “(3) develop creative methods of conducting outreach to youth in the community;
- “(4) request donations of computer equipment and other materials and equipment; and
- “(5) work with State and local park and recreation agencies so that activities funded with amounts made available under a grant under this Act will not duplicate activities funded from other sources in the community served.

“SEC. 7. REPORTS.

“(a) REPORT TO ASSISTANT ATTORNEY GENERAL.—For each fiscal year for which a grant is awarded under this Act, the Police Athletic League shall submit to the Assistant Attorney General a report on the use of amounts made available under the grant.

“(b) REPORT TO CONGRESS.—Not later than May 1 of each fiscal year for which amounts are made available to carry out this Act, the Assistant Attorney General shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report that details the progress made under this Act in establishing and expanding PAL chapters in public housing projects and other distressed areas, and the effectiveness of the PAL programs in reducing drug abuse, school dropouts, and juvenile crime.

“SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

“(a) IN GENERAL.—There are authorized to be appropriated to carry out this Act \$16,000,000 for each of fiscal years 2001 through 2005.

“(b) FUNDING FOR PROGRAM ADMINISTRATION.—Of the amount made available to carry out this Act in each fiscal year—

- “(1) not less than 2 percent shall be used for research and evaluation of the grant program under this Act;
- “(2) not less than 1 percent shall be used for technical assistance related to the use of amounts made available under grants awarded under this Act; and
- “(3) not less than 1 percent shall be used for the management and administration of the grant program under this Act, except that the total amount made available under this paragraph for administration of that program shall not exceed 6 percent.”

KIDS 2000 CRIME PREVENTION AND COMPUTER EDUCATION INITIATIVE

Pub. L. 106-313, title I, §112, Oct. 17, 2000, 114 Stat. 1260, provided that:

“(a) SHORT TITLE.—This section may be cited as the ‘Kids 2000 Act’.

“(b) FINDINGS.—Congress makes the following findings:

- “(1) There is an increasing epidemic of juvenile crime throughout the United States.

“(2) It is well documented that the majority of juvenile crimes take place during after-school hours.

“(3) Knowledge of technology is becoming increasingly necessary for children in school and out of school.

“(4) The Boys and Girls Clubs of America have 2,700 clubs throughout all 50 States, serving over 3,000,000 boys and girls primarily from at-risk communities.

“(5) The Boys and Girls Clubs of America have the physical structures in place for immediate implementation of an after-school technology program.

“(6) Building technology centers and providing integrated content and full-time staffing at those centers in the Boys and Girls Clubs of America nationwide will help foster education, job training, and an alternative to crime for at-risk youth.

“(7) Partnerships between the public sector and the private sector are an effective way of providing after-school technology programs in the Boys and Girls Clubs of America.

“(8) PowerUp: Bridging the Digital Divide is an entity comprised of more than a dozen nonprofit organizations, major corporations, and Federal agencies that have joined together to launch a major new initiative to help ensure that America’s underserved young people acquire the skills, experiences, and resources they need to succeed in the digital age.

“(9) Bringing PowerUp into the Boys and Girls Clubs of America will be an effective way to ensure that our youth have a safe, crime-free environment in which to learn the technological skills they need to close the divide between young people who have access to computer-based information and technology-related skills and those who do not.

“(c) AFTER-SCHOOL TECHNOLOGY GRANTS TO THE BOYS AND GIRLS CLUBS OF AMERICA.—

“(1) PURPOSES.—The Attorney General shall make grants to the Boys and Girls Clubs of America for the purpose of funding effective after-school technology programs, such as PowerUp, in order to provide—

“(A) constructive technology-focused activities that are part of a comprehensive program to provide access to technology and technology training to youth during after-school hours, weekends, and school vacations;

“(B) supervised activities in safe environments for youth; and

“(C) full-time staffing with teachers, tutors, and other qualified personnel.

“(2) SUBAWARDS.—The Boys and Girls Clubs of America shall make subawards to local boys and girls clubs authorizing expenditures associated with providing technology programs such as PowerUp, including the hiring of teachers and other personnel, procurement of goods and services, including computer equipment, or such other purposes as are approved by the Attorney General.

“(d) APPLICATIONS.—

“(1) ELIGIBILITY.—In order to be eligible to receive a grant under this section, an applicant for a subaward (specified in subsection (c)(2)) shall submit an application to the Boys and Girls Clubs of America, in such form and containing such information as the Attorney General may reasonably require.

“(2) APPLICATION REQUIREMENTS.—Each application submitted in accordance with paragraph (1) shall include—

“(A) a request for a subgrant to be used for the purposes of this section;

“(B) a description of the communities to be served by the grant, including the nature of juvenile crime, violence, and drug use in the communities;

“(C) written assurances that Federal funds received under this section will be used to supplement and not supplant, non-Federal funds that would otherwise be available for activities funded under this section;

“(D) written assurances that all activities funded under this section will be supervised by qualified adults;

“(E) a plan for assuring that program activities will take place in a secure environment that is free of crime and drugs;

“(F) a plan outlining the utilization of content-based programs such as PowerUp, and the provision of trained adult personnel to supervise the after-school technology training; and

“(G) any additional statistical or financial information that the Boys and Girls Clubs of America may reasonably require.

“(e) GRANT AWARDS.—In awarding subgrants under this section, the Boys and Girls Clubs of America shall consider—

“(1) the ability of the applicant to provide the intended services;

“(2) the history and establishment of the applicant in providing youth activities; and

“(3) the extent to which services will be provided in crime-prone areas and technologically underserved populations, and efforts to achieve an equitable geographic distribution of the grant awards.

“(f) AUTHORIZATION OF APPROPRIATIONS.—

“(1) IN GENERAL.—There is authorized to be appropriated \$20,000,000 for each of the fiscal years 2001 through 2006 to carry out this section.

“(2) SOURCE OF FUNDS.—Funds to carry out this section may be derived from the Violent Crime Reduction Trust Fund.

“(3) CONTINUED AVAILABILITY.—Amounts made available under this subsection shall remain available until expended.”

ESTABLISHMENT OF BOYS AND GIRLS CLUBS

Pub. L. 104-294, title IV, §401, Oct. 11, 1996, 110 Stat. 3496, as amended by Pub. L. 105-133, §1, Dec. 2, 1997, 111 Stat. 2568, provided that:

“(a) FINDINGS AND PURPOSE.—

“(1) FINDINGS.—The Congress finds that—

“(A) the Boys and Girls Clubs of America, chartered by an Act of Congress on December 10, 1991 [Pub. L. 102-199, see Tables for classification], during its 90-year history as a national organization, has proven itself as a positive force in the communities it serves;

“(B) there are 1,810 Boys and Girls Clubs facilities throughout the United States, Puerto Rico, and the United States Virgin Islands, serving 2,420,000 youths nationwide;

“(C) 71 percent of the young people who benefit from Boys and Girls Clubs programs live in our inner cities and urban areas;

“(D) Boys and Girls Clubs are locally run and have been exceptionally successful in balancing public funds with private sector donations and maximizing community involvement;

“(E) Boys and Girls Clubs are located in 289 public housing sites across the Nation;

“(F) public housing projects in which there is an active Boys and Girls Club have experienced a 25 percent reduction in the presence of crack cocaine, a 22 percent reduction in overall drug activity, and a 13 percent reduction in juvenile crime;

“(G) these results have been achieved in the face of national trends in which overall drug use by youth has increased 105 percent since 1992 and 10.9 percent of the Nation's young people use drugs on a monthly basis; and

“(H) many public housing projects and other distressed areas are still underserved by Boys and Girls Clubs.

“(2) PURPOSE.—The purpose of this section is to provide adequate resources in the form of seed money for the Boys and Girls Clubs of America to establish 1,000 additional local clubs where needed, with particular emphasis placed on establishing clubs in public housing projects and distressed areas, and to ensure that there are a total of not less than 2,500 Boys and Girls Clubs of America facilities in operation not later than December 31, 1999.

“(b) DEFINITIONS.—For purposes of this section—

“(1) the terms ‘public housing’ and ‘project’ have the same meanings as in section 3(b) of the United States Housing Act of 1937 [42 U.S.C. 1437a(b)]; and

“(2) the term ‘distressed area’ means an urban, suburban, rural area, or Indian reservation with a population of high risk youth as defined in section 517 of the Public Health Service Act (42 U.S.C. 290bb-23) of sufficient size to warrant the establishment of a Boys and Girls Club.

“(c) ESTABLISHMENT.—

“(1) IN GENERAL.—For each of the fiscal years 1997, 1998, 1999, 2000, and 2001, the Director of the Bureau of Justice Assistance of the Department of Justice shall make a grant to the Boys and Girls Clubs of America for the purpose of establishing and extending Boys and Girls Clubs facilities where needed, with particular emphasis placed on establishing clubs in and extending services to public housing projects and distressed areas.

“(2) APPLICATIONS.—The Attorney General shall accept an application for a grant under this subsection if submitted by the Boys and Girls Clubs of America, and approve or deny the grant not later than 90 days after the date on which the application is submitted, if the application—

“(A) includes a long-term strategy to establish 1,000 additional Boys and Girls Clubs and detailed summary of those areas in which new facilities will be established, or in which existing facilities will be expanded to serve additional youths, during the next fiscal year;

“(B) includes a plan to ensure that there are a total of not less than 2,500 Boys and Girls Clubs of America facilities in operation before January 1, 2000;

“(C) certifies that there will be appropriate coordination with those communities where clubs will be located; and

“(D) explains the manner in which new facilities will operate without additional, direct Federal financial assistance to the Boys and Girls Clubs once assistance under this subsection is discontinued.

“(d) REPORT.—Not later than May 1 of each fiscal year for which amounts are made available to carry out this Act [see Tables for classification], the Attorney General shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report that details the progress made under this Act in establishing Boys and Girls Clubs in public housing projects and other distressed areas, and the effectiveness of the programs in reducing drug abuse and juvenile crime.

“(e) AUTHORIZATION OF APPROPRIATIONS.—

“(1) IN GENERAL.—There are authorized to be appropriated to carry out this section—

“(A) \$20,000,000 for fiscal year 1997;

“(B) \$20,000,000 for fiscal year 1998;

“(C) \$20,000,000 for fiscal year 1999;

“(D) \$20,000,000 for fiscal year 2000; and

“(E) \$20,000,000 for fiscal year 2001.

“(2) VIOLENT CRIME REDUCTION TRUST FUND.—The sums authorized to be appropriated by this subsection may be made from the Violent Crime Reduction Trust Fund.

“(f) ROLE MODEL GRANTS.—Of amounts made available under subsection (e) for any fiscal year—

“(1) not more than 5 percent may be used to provide a grant to the Boys and Girls Clubs of America for administrative, travel, and other costs associated with a national role-model speaking tour program; and

“(2) no amount may be used to compensate speakers other than to reimburse speakers for reasonable travel and accommodation costs associated with the program described in paragraph (1).”

[Effective Aug. 1, 2000, all functions of Director of Bureau of Justice Assistance, other than those enumerated in section 3742(3) to (6) of this title, transferred to Assistant Attorney General for Office of Justice Programs, see section 1000(a)(1) [title I, §108(b)] of Pub. L.

106-113, set out as a note under section 3741 of this title.]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13753, 13755, 14214 of this title.

§ 13752. Authorization of appropriations

(a) Authorization of appropriations

There are authorized to be appropriated to carry out this part—

- (1) \$75,940,000 for fiscal year 1996;
- (2) \$75,940,000 for fiscal year 1997;
- (3) \$75,940,000 for fiscal year 1998;
- (4) \$75,940,000 for fiscal year 1999; and
- (5) \$73,240,000 for fiscal year 2000.

Such sums are to remain available until expended.

(b) Administrative costs

Up to 2.5 percent of the amount authorized to be appropriated under subsection (b)¹ of this section is authorized to be appropriated for the period fiscal year 1995 through fiscal year 2000 to be available for administrative costs by the Attorney General in furtherance of the purposes of the program. Such sums are to remain available until expended.

(Pub. L. 103-322, title III, §30202, Sept. 13, 1994, 108 Stat. 1841.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13751, 13754, 14214 of this title.

§ 13753. Qualification for payment

(a) In general

The Attorney General shall issue regulations establishing procedures under which eligible units of general local government are required to provide notice to the Attorney General of the units' proposed use of assistance under this part.

(b) General requirements for qualification

A unit of general local government qualifies for a payment under this part for a payment period only after establishing to the satisfaction of the Attorney General that—

- (1) the government will establish a trust fund in which the government will deposit all payments received under this part;
- (2) the government will use amounts in the trust fund (including interest) during a reasonable period;
- (3) the government will expend the payments so received, in accordance with the laws and procedures that are applicable to the expenditure of revenues of the government;
- (4) if at least 25 percent of the pay of individuals employed by the government in a public employee occupation is paid out of the trust fund, individuals in the occupation any part of whose pay is paid out of the trust fund will receive pay at least equal to the prevailing rate of pay for individuals employed in similar public employee occupations by the government;
- (5) the government will use accounting, audit, and fiscal procedures that conform to

guidelines which shall be prescribed by the Attorney General. As applicable, amounts received under this part shall be audited in compliance with the Single Audit Act of 1984 [31 U.S.C. 7501 et seq.];

(6) after reasonable notice to the government, the government will make available to the Attorney General and the Comptroller General of the United States, with the right to inspect, records the Attorney General reasonably requires to review compliance with this part or the Comptroller General of the United States reasonably requires to review compliance and operations;

(7) the government will make reports the Attorney General reasonably requires, in addition to the annual reports required under this part; and

(8) the government will spend the funds only for the purposes set forth in section 13751(a)(2) of this title.

(c) Review by Governors

A unit of general local government shall give the chief executive officer of the State in which the government is located an opportunity for review and comment before establishing compliance with subsection (d) of this section.

(d) Sanctions for noncompliance

(1) In general

If the Attorney General decides that a unit of general local government has not complied substantially with subsection (b) of this section or regulations prescribed under subsection (b) of this section, the Attorney General shall notify the government. The notice shall state that if the government does not take corrective action by the 60th day after the date the government receives the notice, the Attorney General will withhold additional payments to the government for the current payment period and later payment periods until the Attorney General is satisfied that the government—

- (A) has taken the appropriate corrective action; and
- (B) will comply with subsection (b) of this section and regulations prescribed under subsection (b) of this section.

(2) Notice

Before giving notice under paragraph (1), the Attorney General shall give the chief executive officer of the unit of general local government reasonable notice and an opportunity for comment.

(3) Payment conditions

The Attorney General may make a payment to a unit of general local government notified under paragraph (1) only if the Attorney General is satisfied that the government—

- (A) has taken the appropriate corrective action; and
- (B) will comply with subsection (b) of this section and regulations prescribed under subsection (b) of this section.

(Pub. L. 103-322, title III, §30203, Sept. 13, 1994, 108 Stat. 1841; Pub. L. 104-316, title I, §122(u), Oct. 19, 1996, 110 Stat. 3838.)

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

REFERENCES IN TEXT

The Single Audit Act of 1984, referred to in subsec. (b)(5), is Pub. L. 98-502, Oct. 19, 1984, 98 Stat. 2327, as amended, which is classified generally to chapter 75 (§7501 et seq.) of Title 31, Money and Finance. For complete classification of this Act to the Code, see Short Title note set out under section 7501 of Title 31 and Tables.

AMENDMENTS

1996—Subsec. (b)(5). Pub. L. 104-316 struck out “after consultation with the Comptroller General of the United States” after “Attorney General”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13751, 14214 of this title.

§ 13754. Allocation and distribution of funds**(a) State distribution**

For each payment period, the Attorney General shall allocate out of the amount appropriated for the period under the authority of section 13752 of this title—

(1) 0.25 percent to each State; and

(2) of the total amount of funds remaining after allocation under paragraph (1), an amount that is equal to the ratio that the number of part 1 violent crimes reported by such State to the Federal Bureau of Investigation for 1993 bears to the number of part 1 violent crimes reported by all States to the Federal Bureau of Investigation for 1993.

(b) Local distribution

(1) The Attorney General shall allocate among the units of general local government in a State the amount allocated to the State under paragraphs (1) and (2) of subsection (a) of this section.

(2) The Attorney General shall allocate to each unit of general local government an amount which bears the ratio that the number of part 1 violent crimes reported by such unit to the Federal Bureau of Investigation for 1993 bears to the number of part 1 violent crimes reported by all units in the State in which the unit is located to the Federal Bureau of Investigation for 1993 multiplied by the ratio of the population living in all units in the State in which the unit is located that reported part 1 violent crimes to the Federal Bureau of Investigation for 1993 bears to the population of the State; or if such data are not available for a unit, the ratio that the population of such unit bears to the population of all units in the State in which the unit is located for which data are not available multiplied by the ratio of the population living in units in the State in which the unit is located for which data are not available bears to the population of the State.

(3) If under paragraph (2) a unit is allotted less than \$5,000 for the payment period, the amount allotted shall be transferred to the Governor of the State who shall equitably distribute the allocation to all such units or consortia thereof.

(4) If there is in a State a unit of general local government that has been incorporated since the date of the collection of the data used by the Attorney General in making allocations pursuant to this section, the Attorney General shall allocate to this newly incorporated local govern-

ment, out of the amount allocated to the State under this section, an amount bearing the same ratio to the amount allocated to the State as the population of the newly incorporated local government bears to the population of the State. If there is in the State a unit of general local government that has been annexed since the date of the collection of the data used by the Attorney General in making allocations pursuant to this section, the Attorney General shall pay the amount that would have been allocated to this local government to the unit of general local government that annexed it.

(c) Unavailability of information

For purposes of this section, if data regarding part 1 violent crimes in any State for 1993 is unavailable or substantially inaccurate, the Attorney General shall utilize the best available comparable data regarding the number of violent crimes for 1993 for such State for the purposes of allocation of any funds under this part.

(Pub. L. 103-322, title III, §30204, Sept. 13, 1994, 108 Stat. 1842.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13758, 14214 of this title.

§ 13755. Utilization of private sector

Funds or a portion of funds allocated under this part may be utilized to contract with private, nonprofit entities or community-based organizations to carry out the uses specified under section 13751(a)(2) of this title.

(Pub. L. 103-322, title III, §30205, Sept. 13, 1994, 108 Stat. 1843.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 13756. Public participation

A unit of general local government expending payments under this part shall hold at least one public hearing on the proposed use of the payment in relation to its entire budget. At the hearing, persons shall be given an opportunity to provide written and oral views to the governmental authority responsible for enacting the budget and to ask questions about the entire budget and the relation of the payment to the entire budget. The government shall hold the hearing at a time and a place that allows and encourages public attendance and participation.

(Pub. L. 103-322, title III, §30206, Sept. 13, 1994, 108 Stat. 1843.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 13757. Administrative provisions

The administrative provisions of part H of the Omnibus Crime Control and Safe Streets Act of 1968 [42 U.S.C. 3781 et seq.], shall apply to the Attorney General for purposes of carrying out this part.

(Pub. L. 103-322, title III, §30207, Sept. 13, 1994, 108 Stat. 1844.)

REFERENCES IN TEXT

The Omnibus Crime Control and Safe Streets Act of 1968, referred to in text, is Pub. L. 90-351, June 19, 1968, 82 Stat. 197, as amended. The reference to part H of the Act probably means part H of title I of the Act which is classified principally to subchapter VIII (§3781 et seq.) of chapter 46 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3711 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 13758. Definitions

For purposes of this part:

(1) The term “unit of general local government” means—

(A) a county, township, city, or political subdivision of a county, township, or city, that is a unit of general local government as determined by the Secretary of Commerce for general statistical purposes; and

(B) the District of Columbia and the recognized governing body of an Indian tribe or Alaskan Native village that carries out substantial governmental duties and powers.

(2) The term “payment period” means each 1-year period beginning on October 1 of the years 1995 through 2000.

(3) The term “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands, except that American Samoa, Guam, and the Northern Mariana Islands shall be considered as one State and that, for purposes of section 13754(a) of this title, 33 per centum of the amounts allocated shall be allocated to American Samoa, 50 per centum to Guam, and 17 per centum to the Northern Mariana Islands.

(4) The term “children” means persons who are not younger than 5 and not older than 18 years old.

(5) The term “part 1 violent crimes” means murder and non-negligent manslaughter, forcible rape, robbery, and aggravated assault as reported to the Federal Bureau of Investigation for purposes of the Uniform Crime Reports.

(Pub. L. 103-322, title III, §30208, Sept. 13, 1994, 108 Stat. 1844.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

PART C—MODEL INTENSIVE GRANT PROGRAMS

§ 13771. Grant authorization**(a) Establishment****(1) In general**

The Attorney General may award grants to not more than 15 chronic high intensive crime areas to develop comprehensive model crime prevention programs that—

(A) involve and utilize a broad spectrum of community resources, including nonprofit community organizations, law enforcement

organizations, and appropriate State and Federal agencies, including the State educational agencies;

(B) attempt to relieve conditions that encourage crime; and

(C) provide meaningful and lasting alternatives to involvement in crime.

(2) Consultation with the Ounce of Prevention Council

The Attorney General may consult with the Ounce of Prevention Council in awarding grants under paragraph (1).

(b) Priority

In awarding grants under subsection (a) of this section, the Attorney General shall give priority to proposals that—

(1) are innovative in approach to the prevention of crime in a specific area;

(2) vary in approach to ensure that comparisons of different models may be made; and

(3) coordinate crime prevention programs funded under this program with other existing Federal programs to address the overall needs of communities that benefit from grants received under this subchapter.

(Pub. L. 103-322, title III, §30301, Sept. 13, 1994, 108 Stat. 1844.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (b)(3), was in the original “this title”, meaning title III of Pub. L. 103-322, Sept. 13, 1994, 108 Stat. 1836, which enacted this subchapter, sections 3796ff to 3796ff-4 of this title, and sections 6701 to 6720 of Title 31, Money and Finance, amended sections 3791, 3793, and 3797 of this title, sections 2502 to 2504, 2506, and 2512 of Title 16, Conservation, and section 3621 of Title 18, Crimes and Criminal Procedure, and enacted provisions set out as notes under section 13701 of this title and sections 6701 and 6702 of Title 31. For complete classification of title III to the Code, see Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 13772. Uses of funds**(a) In general**

Funds awarded under this part may be used only for purposes described in an approved application. The intent of grants under this part is to fund intensively comprehensive crime prevention programs in chronic high intensive crime areas.

(b) Guidelines

The Attorney General shall issue and publish in the Federal Register guidelines that describe suggested purposes for which funds under approved programs may be used.

(c) Equitable distribution of funds

In disbursing funds under this part, the Attorney General shall ensure the distribution of awards equitably on a geographic basis, including urban and rural areas of varying population and geographic size.

(Pub. L. 103-322, title III, §30302, Sept. 13, 1994, 108 Stat. 1845.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 13773. Program requirements**(a) Description**

An applicant shall include a description of the distinctive factors that contribute to chronic violent crime within the area proposed to be served by the grant. Such factors may include lack of alternative activities and programs for youth, deterioration or lack of public facilities, inadequate public services such as public transportation, street lighting, community-based substance abuse treatment facilities, or employment services offices, and inadequate police or public safety services, equipment, or facilities.

(b) Comprehensive plan

An applicant shall include a comprehensive, community-based plan to attack intensively the principal factors identified in subsection (a) of this section. Such plans shall describe the specific purposes for which funds are proposed to be used and how each purpose will address specific factors. The plan also shall specify how local nonprofit organizations, government agencies, private businesses, citizens groups, volunteer organizations, and interested citizens will cooperate in carrying out the purposes of the grant.

(c) Evaluation

An applicant shall include an evaluation plan by which the success of the plan will be measured, including the articulation of specific, objective indicia of performance, how the indicia will be evaluated, and a projected timetable for carrying out the evaluation.

(Pub. L. 103-322, title III, §30303, Sept. 13, 1994, 108 Stat. 1845.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 13774. Applications

To request a grant under this part the chief local elected official of an area shall—

- (1) prepare and submit to the Attorney General an application in such form, at such time, and in accordance with such procedures, as the Attorney General shall establish; and
- (2) provide an assurance that funds received under this part shall be used to supplement, not supplant, non-Federal funds that would otherwise be available for programs funded under this part.

(Pub. L. 103-322, title III, §30304, Sept. 13, 1994, 108 Stat. 1845.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 13775. Reports

Not later than December 31, 1998, the Attorney General shall prepare and submit to the Committees on the Judiciary of the House and Senate an evaluation of the model programs developed under this part and make recommendations regarding the implementation of a national crime prevention program.

(Pub. L. 103-322, title III, §30305, Sept. 13, 1994, 108 Stat. 1846.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 13776. Definitions

In this part—

“chief local elected official” means an official designated under regulations issued by the Attorney General. The criteria used by the Attorney General in promulgating such regulations shall ensure administrative efficiency and accountability in the expenditure of funds and execution of funded projects under this part.

“chronic high intensity crime area” means an area meeting criteria adopted by the Attorney General by regulation that, at a minimum, define areas with—

(A) consistently high rates of violent crime as reported in the Federal Bureau of Investigation’s “Uniform Crime Reports”, and

(B) chronically high rates of poverty as determined by the Bureau of the Census.

“State” means a State, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

(Pub. L. 103-322, title III, §30306, Sept. 13, 1994, 108 Stat. 1846.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 13777. Authorization of appropriations

There are authorized to be appropriated to carry out this part—

- (1) \$100,000,000 for fiscal year 1996;
- (2) \$125,100,000 for fiscal year 1997;
- (3) \$125,100,000 for fiscal year 1998;
- (4) \$125,100,000 for fiscal year 1999; and
- (5) \$150,200,000 for fiscal year 2000.

(Pub. L. 103-322, title III, §30307, Sept. 13, 1994, 108 Stat. 1846.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

PART D—FAMILY AND COMMUNITY ENDEAVOR
SCHOOLS GRANT PROGRAM**§ 13791. Community schools youth services and supervision grant program****(a) Short title**

This section may be cited as the “Community Schools Youth Services and Supervision Grant Program Act of 1994”.

(b) Definitions

In this section—

“child” means a person who is not younger than 5 and not older than 18 years old.

“community-based organization” means a private, locally initiated, community-based organization that—

(A) is a nonprofit organization, as defined in section 5603(23) of this title; and

(B) is operated by a consortium of service providers, consisting of representatives of 5 or more of the following categories of persons:

- (i) Residents of the community.
- (ii) Business and civic leaders actively involved in providing employment and business development opportunities in the community.
- (iii) Educators.
- (iv) Religious organizations (which shall not provide any sectarian instruction or sectarian worship in connection with an activity funded under this subchapter).
- (v) Law enforcement agencies.
- (vi) Public housing agencies.
- (vii) Other public agencies.
- (viii) Other interested parties.

“eligible community” means an area identified pursuant to subsection (e) of this section.

“Indian tribe” means a tribe, band, pueblo, nation, or other organized group or community of Indians, including an Alaska Native village (as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

“poverty line” means the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 9902(2) of this title¹ applicable to a family of the size involved).

“public school” means a public elementary school, as defined in section 1001(i)² of title 20, and a public secondary school, as defined in section 1001(d)² of title 20.

“Secretary” means the Secretary of Health and Human Services, in consultation and coordination with the Attorney General.

“State” means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, and the United States Virgin Islands.

(c) Program authority

(1) In general

(A) Allocations for States and Indian country

For any fiscal year in which the sums appropriated to carry out this section equal or exceed \$20,000,000, from the sums appropriated to carry out this subsection, the Secretary shall allocate, for grants under subparagraph (B) to community-based organizations in each State, an amount bearing the same ratio to such sums as the number of children in the State who are from families with incomes below the poverty line bears to the number of children in all States who are from families with incomes below the poverty line. In view of the extraordinary need for assistance in Indian country, an appropriate amount of funds available under this part shall be made available for such grants in Indian country.

¹So in original. Probably should be followed by a closing parenthesis.

²See References in Text note below.

(B) Grants to community-based organizations from allocations

For such a fiscal year, the Secretary may award grants from the appropriate State or Indian country allocation determined under subparagraph (A) on a competitive basis to eligible community-based organizations to pay for the Federal share of assisting eligible communities to develop and carry out programs in accordance with this section.

(C) Reallocation

If, at the end of such a fiscal year, the Secretary determines that funds allocated for community-based organizations in a State or Indian country under subparagraph (B) remain unobligated, the Secretary may use such funds to award grants to eligible community-based organizations in another State or Indian country to pay for such Federal share. In awarding such grants, the Secretary shall consider the need to maintain geographic diversity among the recipients of such grants. Amounts made available through such grants shall remain available until expended.

(2) Other fiscal years

For any fiscal year in which the sums appropriated to carry out this section are less than \$20,000,000, the Secretary may award grants on a competitive basis to eligible community-based organizations to pay for the Federal share of assisting eligible communities to develop and carry out programs in accordance with this section.

(3) Administrative costs

The Secretary may use not more than 3 percent of the funds appropriated to carry out this section in any fiscal year for administrative costs.

(d) Program requirements

(1) Location

A community-based organization that receives a grant under this section to assist in carrying out such a program shall ensure that the program is carried out—

(A) when appropriate, in the facilities of a public school during nonschool hours; or

(B) in another appropriate local facility in a State or Indian country, such as a college or university, a local or State park or recreation center, church, or military base, that is—

(i) in a location that is easily accessible to children in the community; and

(ii) in compliance with all applicable local ordinances.

(2) Use of funds

Such community-based organization—

(A) shall use funds made available through the grant to provide, to children in the eligible community, services and activities that—

(i)³ shall include supervised sports programs, and extracurricular and academic programs, that are offered—

³So in original. No cl. (ii) has been enacted.

(I) after school and on weekends and holidays, during the school year; and

(II) as daily full-day programs (to the extent available resources permit) or as part-day programs, during the summer months;

(B) in providing such extracurricular and academic programs, shall provide programs such as curriculum-based supervised educational, work force preparation, entrepreneurship, cultural, health programs, social activities, arts and crafts programs, dance programs, tutorial and mentoring programs, and other related activities;

(C) may use—

(i) such funds for minor renovation of facilities that are in existence prior to the operation of the program and that are necessary for the operation of the program for which the organization receives the grant, purchase of sporting and recreational equipment and supplies, reasonable costs for the transportation of participants in the program, hiring of staff, provision of meals for such participants, provision of health services consisting of an initial basic physical examination, provision of first aid and nutrition guidance, family counselling, parental training, and substance abuse treatment where appropriate; and

(ii) not more than 5 percent of such funds to pay for the administrative costs of the program; and

(D) may not use such funds to provide sectarian worship or sectarian instruction.

(e) Eligible community identification

(1) Identification

To be eligible to receive a grant under this section, a community-based organization shall identify an eligible community to be assisted under this section.

(2) Criteria

Such eligible community shall be an area that meets such criteria with respect to significant poverty and significant juvenile delinquency, and such additional criteria, as the Secretary may by regulation require.

(f) Applications

(1) Application required

To be eligible to receive a grant under this section, a community-based organization shall submit an application to the Secretary at such time, in such manner, and accompanied by such information, as the Secretary may reasonably require, and obtain approval of such application.

(2) Contents of application

Each application submitted pursuant to paragraph (1) shall—

(A) describe the activities and services to be provided through the program for which the grant is sought;

(B) contain an assurance that the community-based organization will spend grant funds received under this section in a manner that the community-based organization

determines will best accomplish the objectives of this section;

(C) contain a comprehensive plan for the program that is designed to achieve identifiable goals for children in the eligible community;

(D) set forth measurable goals and outcomes for the program that—

(i) will—

(I) where appropriate, make a public school the focal point of the eligible community; or

(II) make a local facility described in subsection (d)(1)(B) of this section such a focal point; and

(ii) may include reducing the percentage of children in the eligible community that enter the juvenile justice system, increasing the graduation rates, school attendance, and academic success of children in the eligible community, and improving the skills of program participants;

(E) provide evidence of support for accomplishing such goals and outcomes from—

(i) community leaders;

(ii) businesses;

(iii) local educational agencies;

(iv) local officials;

(v) State officials;

(vi) Indian tribal government officials; and

(vii) other organizations that the community-based organization determines to be appropriate;

(F) contain an assurance that the community-based organization will use grant funds received under this section to provide children in the eligible community with activities and services that shall include supervised sports programs, and extracurricular and academic programs, in accordance with subparagraphs (A) and (B) of subsection (d)(2) of this section;

(G) contain a list of the activities and services that will be offered through the program for which the grant is sought and sponsored by private nonprofit organizations, individuals, and groups serving the eligible community, including—

(i) extracurricular and academic programs, such as programs described in subsection (d)(2)(B) of this section; and

(ii) activities that address specific needs in the community;

(H) demonstrate the manner in which the community-based organization will make use of the resources, expertise, and commitment of private entities in carrying out the program for which the grant is sought;

(I) include an estimate of the number of children in the eligible community expected to be served pursuant to the program;

(J) include a description of charitable private resources, and all other resources, that will be made available to achieve the goals of the program;

(K) contain an assurance that the community-based organization will use competitive procedures when purchasing, contracting, or

otherwise providing for goods, activities, or services to carry out programs under this section;

(L) contain an assurance that the program will maintain a staff-to-participant ratio (including volunteers) that is appropriate to the activity or services provided by the program;

(M) contain an assurance that the program will maintain an average attendance rate of not less than 75 percent of the participants enrolled in the program, or will enroll additional participants in the program;

(N) contain an assurance that the community-based organization will comply with any evaluation under subsection (m)⁴ of this section, any research effort authorized under Federal law, and any investigation by the Secretary;

(O) contain an assurance that the community-based organization shall prepare and submit to the Secretary an annual report regarding any program conducted under this section;

(P) contain an assurance that the program for which the grant is sought will, to the maximum extent possible, incorporate services that are provided solely through non-Federal private or nonprofit sources; and

(Q) contain an assurance that the community-based organization will maintain separate accounting records for the program.

(3) Priority

In awarding grants to carry out programs under this section, the Secretary shall give priority to community-based organizations who submit applications that demonstrate the greatest effort in generating local support for the programs.

(g) Eligibility of participants

(1) In general

To the extent possible, each child who resides in an eligible community shall be eligible to participate in a program carried out in such community that receives assistance under this section.

(2) Eligibility

To be eligible to participate in a program that receives assistance under this section, a child shall provide the express written approval of a parent or guardian, and shall submit an official application and agree to the terms and conditions of participation in the program.

(3) Nondiscrimination

In selecting children to participate in a program that receives assistance under this section, a community-based organization shall not discriminate on the basis of race, color, religion, sex, national origin, or disability.

(h) Peer review panel

(1) Establishment

The Secretary may establish a peer review panel that shall be comprised of individuals with demonstrated experience in designing

and implementing community-based programs.

(2) Composition

A peer review panel shall include at least 1 representative from each of the following:

(A) A community-based organization.

(B) A local government.

(C) A school district.

(D) The private sector.

(E) A charitable organization.

(F) A representative of the United States Olympic Committee, at the option of the Secretary.

(3) Functions

A peer review panel shall conduct the initial review of all grant applications received by the Secretary under subsection (f) of this section, make recommendations to the Secretary regarding—

(A) grant funding under this section; and

(B) a design for the evaluation of programs assisted under this section.

(i) Investigations and inspections

The Secretary may conduct such investigations and inspections as may be necessary to ensure compliance with the provisions of this section.

(j) Payments; Federal share; non-Federal share

(1) Payments

The Secretary shall, subject to the availability of appropriations, pay to each community-based organization having an application approved under subsection (f) of this section the Federal share of the costs of developing and carrying out programs described in subsection (c) of this section.

(2) Federal share

The Federal share of such costs shall be no more than—

(A) 75 percent for each of fiscal years 1995 and 1996;

(B) 70 percent for fiscal year 1997; and

(C) 60 percent for fiscal year 1998 and thereafter.

(3) Non-Federal share

(A) In general

The non-Federal share of such costs may be in cash or in kind, fairly evaluated, including plant, equipment, and services (including the services described in subsection (f)(2)(P) of this section), and funds appropriated by the Congress for the activity of any agency of an Indian tribal government or the Bureau of Indian Affairs on any Indian lands may be used to provide the non-Federal share of the costs of programs or projects funded under this part.

(B) Special rule

At least 15 percent of the non-Federal share of such costs shall be provided from private or nonprofit sources.

(k) Evaluation

The Secretary shall conduct a thorough evaluation of the programs assisted under this section, which shall include an assessment of—

⁴So in original. Probably should be subsection "(k)".

- (1) the number of children participating in each program assisted under this section;
- (2) the academic achievement of such children;
- (3) school attendance and graduation rates of such children; and
- (4) the number of such children being processed by the juvenile justice system.

(Pub. L. 103-322, title III, §30401, Sept. 13, 1994, 108 Stat. 1846; Pub. L. 105-244, title I, §102(a)(13)(N), Oct. 7, 1998, 112 Stat. 1621.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (b), was in the original “this title”, meaning title III of Pub. L. 103-322, Sept. 13, 1994, 108 Stat. 1836, which enacted this subchapter, sections 3796ff to 3796ff-4 of this title, and sections 6701 to 6720 of Title 31, Money and Finance, amended sections 3791, 3793, and 3797 of this title, sections 2502 to 2504, 2506, and 2512 of Title 16, Conservation, and section 3621 of Title 18, Crimes and Criminal Procedure, and enacted provisions set out as notes under section 13701 of this title and sections 6701 and 6702 of Title 31. For complete classification of title III to the Code, see Tables.

The Alaska Native Claims Settlement Act, referred to in subsec. (b), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

Section 1001 of title 20, referred to in subsec. (b), does not have a subsec. (d) or (i) and does not define “elementary school” or “secondary school”. However, such terms are defined in section 1003 of Title 20, Education.

AMENDMENTS

1998—Subsec. (b). Pub. L. 105-244 substituted “section 1001(i)” for “section 1141(i)” and “section 1001(d)” for “section 1141(d)” in definition for “public school”.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13793, 14214 of this title.

§ 13792. Repealed. Pub. L. 105-277, div. A, § 101(f) [title VIII, §301(d)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-410

Section, Pub. L. 103-322, title III, §30402, Sept. 13, 1994, 108 Stat. 1852, related to family and community endeavor schools grant program.

§ 13793. Authorization of appropriations

(a) In general

There are authorized to be appropriated to carry out this part—

- (1) \$37,000,000 for fiscal year 1995;
- (2) \$103,500,000 for fiscal year 1996;
- (3) \$121,500,000 for fiscal year 1997;
- (4) \$153,000,000 for fiscal year 1998;
- (5) \$193,500,000 for fiscal year 1999; and
- (6) \$201,500,000 for fiscal year 2000.

(b) Programs

Of the amounts appropriated under subsection (a) of this section for any fiscal year—

- (1) 70 percent shall be made available to carry out section 13791 of this title; and

- (2) 30 percent shall be made available to carry out section 13792¹ of this title.

(Pub. L. 103-322, title III, §30403, Sept. 13, 1994, 108 Stat. 1855.)

REFERENCES IN TEXT

Section 13792 of this title, referred to in subsec. (b)(2), was repealed by Pub. L. 105-277, div. A, §101(f) [title VIII, §301(d)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-410.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

PART E—ASSISTANCE FOR DELINQUENT AND AT-RISK YOUTH

§ 13801. Grant authority

(a) Grants

(1) In general

In order to prevent the commission of crimes or delinquent acts by juveniles, the Attorney General may make grants to public or private nonprofit organizations to support the development and operation of projects to provide residential services to youth, aged 11 to 19, who—

- (A) have dropped out of school;
- (B) have come into contact with the juvenile justice system; or
- (C) are at risk of dropping out of school or coming into contact with the juvenile justice system.

(2) Consultation with the Ounce of Prevention Council

The Attorney General may consult with the Ounce of Prevention Council in making grants under paragraph (1).

(3) Services

Such services shall include activities designed to—

- (A) increase the self-esteem of such youth;
- (B) assist such youth in making healthy and responsible choices;
- (C) improve the academic performance of such youth pursuant to a plan jointly developed by the applicant and the school which each such youth attends or should attend; and
- (D) provide such youth with vocational and life skills.

(b) Applications

(1) In general

A public agency or private nonprofit organization which desires a grant under this section shall submit an application at such time and in such manner as the Attorney General may prescribe.

(2) Contents

An application under paragraph (1) shall include—

- (A) a description of the program developed by the applicant, including the activities to be offered;
- (B) a detailed discussion of how such program will prevent youth from committing crimes or delinquent acts;

¹ See References in Text note below.

(C) evidence that such program—

(i) will be carried out in facilities which meet applicable State and local laws with regard to safety;

(ii) will include academic instruction, approved by the State, Indian tribal government, or local educational agency, which meets or exceeds State, Indian tribal government, and local standards and curricular requirements; and

(iii) will include instructors and other personnel who possess such qualifications as may be required by applicable State or local laws; and

(D) specific, measurable outcomes for youth served by the program.

(c) Consideration of applications

Not later than 60 days following the submission of applications, the Attorney General shall—

(1) approve each application and disburse the funding for each such application; or

(2) disapprove the application and inform the applicant of such disapproval and the reasons therefor.

(d) Reports

A grantee under this section shall annually submit a report to the Attorney General that describes the activities and accomplishments of such program, including the degree to which the specific youth outcomes are met.

(e) Definitions

In this part—

“Indian tribe” means a tribe, band, pueblo, nation, or other organized group or community of Indians, including Alaska Native village (as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

“State” means a State, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

(Pub. L. 103-322, title III, §30701, Sept. 13, 1994, 108 Stat. 1855.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in subsec. (e), is Pub. L. 92-203, §2, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13802, 14214 of this title.

§ 13802. Authorization of appropriations

There are authorized to be appropriated for grants under section 13801 of this title—

- (1) \$5,400,000 for fiscal year 1996;
- (2) \$6,300,000 for fiscal year 1997;
- (3) \$7,200,000 for fiscal year 1998;

- (4) \$8,100,000 for fiscal year 1999; and
- (5) \$9,000,000 for fiscal year 2000.

(Pub. L. 103-322, title III, §30702, Sept. 13, 1994, 108 Stat. 1856.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

PART F—POLICE RECRUITMENT

§ 13811. Grant authority

(a) Grants

(1) In general

The Attorney General may make grants to qualified community organizations to assist in meeting the costs of qualified programs which are designed to recruit and retain applicants to police departments.

(2) Consultation with the Ounce of Prevention Council

The Attorney General may consult with the Ounce of Prevention Council in making grants under paragraph (1).

(b) Qualified community organizations

An organization is a qualified community organization which is eligible to receive a grant under subsection (a) of this section if the organization—

- (1) is a nonprofit organization; and
- (2) has training and experience in—

(A) working with a police department and with teachers, counselors, and similar personnel,

(B) providing services to the community in which the organization is located,

(C) developing and managing services and techniques to recruit individuals to become members of a police department and to assist such individuals in meeting the membership requirements of police departments,

(D) developing and managing services and techniques to assist in the retention of applicants to police departments, and

(E) developing other programs that contribute to the community.

(c) Qualified programs

A program is a qualified program for which a grant may be made under subsection (a) of this section if the program is designed to recruit and train individuals from underrepresented neighborhoods and localities and if—

(1) the overall design of the program is to recruit and retain applicants to a police department;

(2) the program provides recruiting services which include tutorial programs to enable individuals to meet police force academic requirements and to pass entrance examinations;

(3) the program provides counseling to applicants to police departments who may encounter problems throughout the application process; and

(4) the program provides retention services to assist in retaining individuals to stay in the application process of a police department.

(d) Applications

To qualify for a grant under subsection (a) of this section, a qualified organization shall sub-

mit an application to the Attorney General in such form as the Attorney General may prescribe. Such application shall—

- (1) include documentation from the applicant showing—
 - (A) the need for the grant;
 - (B) the intended use of grant funds;
 - (C) expected results from the use of grant funds; and
 - (D) demographic characteristics of the population to be served, including age, disability, race, ethnicity, and languages used; and
- (2) contain assurances satisfactory to the Attorney General that the program for which a grant is made will meet the applicable requirements of the program guidelines prescribed by the Attorney General under subsection (i) of this section.

(e) Action by Attorney General

Not later than 60 days after the date that an application for a grant under subsection (a) of this section is received, the Attorney General shall consult with the police department which will be involved with the applicant and shall—

- (1) approve the application and disburse the grant funds applied for; or
- (2) disapprove the application and inform the applicant that the application is not approved and provide the applicant with the reasons for the disapproval.

(f) Grant disbursement

The Attorney General shall disburse funds under a grant under subsection (a) of this section in accordance with regulations of the Attorney General which shall ensure—

- (1) priority is given to applications for areas and organizations with the greatest showing of need;
- (2) that grant funds are equitably distributed on a geographic basis; and
- (3) the needs of underserved populations are recognized and addressed.

(g) Grant period

A grant under subsection (a) of this section shall be made for a period not longer than 3 years.

(h) Grantee reporting

(1) For each year of a grant period for a grant under subsection (a) of this section, the recipient of the grant shall file a performance report with the Attorney General explaining the activities carried out with the funds received and assessing the effectiveness of such activities in meeting the purpose of the recipient's qualified program.

(2) If there was more than one recipient of a grant, each recipient shall file such report.

(3) The Attorney General shall suspend the funding of a grant, pending compliance, if the recipient of the grant does not file the report required by this subsection or uses the grant for a purpose not authorized by this section.

(i) Guidelines

The Attorney General shall, by regulation, prescribe guidelines on content and results for programs receiving a grant under subsection (a)

of this section. Such guidelines shall be designed to establish programs which will be effective in training individuals to enter instructional programs for police departments and shall include requirements for—

- (1) individuals providing recruiting services;
- (2) individuals providing tutorials and other academic assistance programs;
- (3) individuals providing retention services; and
- (4) the content and duration of recruitment, retention, and counseling programs and the means and devices used to publicize such programs.

(Pub. L. 103-322, title III, §30801, Sept. 13, 1994, 108 Stat. 1857.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13812, 14214 of this title.

§ 13812. Authorization of appropriations

There are authorized to be appropriated for grants under section 13811 of this title—

- (1) \$2,000,000 for fiscal year 1996;
- (2) \$4,000,000 for fiscal year 1997;
- (3) \$5,000,000 for fiscal year 1998;
- (4) \$6,000,000 for fiscal year 1999; and
- (5) \$7,000,000 for fiscal year 2000.

(Pub. L. 103-322, title III, §30802, Sept. 13, 1994, 108 Stat. 1858.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

PART G—NATIONAL COMMUNITY ECONOMIC PARTNERSHIP

SUBPART 1—COMMUNITY ECONOMIC PARTNERSHIP INVESTMENT FUNDS

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in sections 13841, 13852 of this title.

§ 13821. Purpose

It is the purpose of this subpart to increase private investment in distressed local communities and to build and expand the capacity of local institutions to better serve the economic needs of local residents through the provision of financial and technical assistance to community development corporations.

(Pub. L. 103-322, title III, §31111, Sept. 13, 1994, 108 Stat. 1882.)

SHORT TITLE

For short title of this part as the "National Community Economic Partnership Act of 1994", see section 31101 of Pub. L. 103-322, set out as a note under section 13701 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13824, 13825, 14214 of this title.

§ 13822. Provision of assistance

(a) Authority

The Secretary of Health and Human Services (referred to in this part as the "Secretary")

may, in accordance with this subpart, provide nonrefundable lines of credit to community development corporations for the establishment, maintenance or expansion of revolving loan funds to be utilized to finance projects intended to provide business and employment opportunities for low-income, unemployed, or underemployed individuals and to improve the quality of life in urban and rural areas.

(b) Revolving loan funds

(1) Competitive assessment of applications

In providing assistance under subsection (a) of this section, the Secretary shall establish and implement a competitive process for the solicitation and consideration of applications from eligible entities for lines of credit for the capitalization of revolving funds.

(2) Eligible entities

To be eligible to receive a line of credit under this subpart an applicant shall—

(A) be a community development corporation;

(B) prepare and submit an application to the Secretary that shall include a strategic investment plan that identifies and describes the economic characteristics of the target area to be served, the types of business to be assisted and the impact of such assistance on low-income, underemployed, and unemployed individuals in the target area;

(C) demonstrate previous experience in the development of low-income housing or community or business development projects in a low-income community and provide a record of achievement with respect to such projects; and

(D) have secured one or more commitments from local sources for contributions (either in cash or in kind, letters of credit or letters of commitment) in an amount that is at least equal to the amount requested in the application submitted under subparagraph (B).

(3) Exception

Notwithstanding the provisions of paragraph (2)(D), the Secretary may reduce local contributions to not less than 25 percent of the amount of the line of credit requested by the community development corporation if the Secretary determines such to be appropriate in accordance with section 13826 of this title.

(Pub. L. 103-322, title III, §31112, Sept. 13, 1994, 108 Stat. 1882.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13823, 13824, 13825, 14214 of this title.

§ 13823. Approval of applications

(a) In general

In evaluating applications submitted under section 13822(b)(2)(B) of this title, the Secretary shall ensure that—

(1) the residents of the target area to be served (as identified under the strategic development plan) would have an income that is less than the median income for the area (as determined by the Secretary);

(2) the applicant community development corporation possesses the technical and managerial capability necessary to administer a revolving loan fund and has past experience in the development and management of housing, community and economic development programs;

(3) the applicant community development corporation has provided sufficient evidence of the existence of good working relationships with—

(A) local businesses and financial institutions, as well as with the community the corporation proposes to serve; and

(B) local and regional job training programs;

(4) the applicant community development corporation will target job opportunities that arise from revolving loan fund investments under this subpart so that 75 percent of the jobs retained or created under such investments are provided to—

(A) individuals with—

(i) incomes that do not exceed the Federal poverty line; or

(ii) incomes that do not exceed 80 percent of the median income of the area;

(B) individuals who are unemployed or underemployed;

(C) individuals who are participating or have participated in job training programs authorized under title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.] or the Family Support Act of 1988 (Public Law 100-485);

(D) individuals whose jobs may be retained as a result of the provision of financing available under this subpart; or

(E) individuals who have historically been underrepresented in the local economy; and

(5) a representative cross section of applicants are approved, including large and small community development corporations, urban and rural community development corporations and community development corporations representing diverse populations.

(b) Priority

In determining which application to approve under this subpart the Secretary shall give priority to those applicants proposing to serve a target area—

(1) with a median income that does not exceed 80 percent of the median for the area (as determined by the Secretary); and

(2) with a high rate of unemployment, as determined by the Secretary or in which the population loss is at least 7 percent from April 1, 1980, to April 1, 1990, as reported by the Bureau of the Census.

(Pub. L. 103-322, title III, §31113, Sept. 13, 1994, 108 Stat. 1883; Pub. L. 105-277, div. A, §101(f) [title VIII, §405(d)(44), (f)(35)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-428, 2681-434.)

REFERENCES IN TEXT

The Workforce Investment Act of 1998, referred to in subsec. (a)(4)(C), is Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 936, as amended. Title I of the Act is classified principally to chapter 30 (§2801 et seq.) of Title 29,

Labor. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

The Family Support Act of 1988, referred to in subsec. (a)(4)(C), is Pub. L. 100-485, Oct. 13, 1988, 102 Stat. 2343, as amended. For complete classification of this Act to the Code, see Short Title of 1988 Amendments note set out under section 1305 of this title and Tables.

AMENDMENTS

1998—Subsec. (a)(4)(C). Pub. L. 105-277, §101(f) [title VIII, §405(f)(35)], struck out “the Job Training Partnership Act or” after “authorized under”.

Pub. L. 105-277, §101(f) [title VIII, §405(d)(44)], substituted “authorized under the Job Training Partnership Act or title I of the Workforce Investment Act of 1998” for “authorized under the Job Training Partnership Act (29 U.S.C. 1501 et seq.)”.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 101(f) [title VIII, §405(d)(44)] of Pub. L. 105-277 effective Oct. 21, 1998, and amendment by section 101(f) [title VIII, §405(f)(35)] of Pub. L. 105-277 effective July 1, 2000, see section 101(f) [title VIII, §405(g)(1), (2)(B)] of Pub. L. 105-277, set out as a note under section 3502 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13824, 14214 of this title.

§ 13824. Availability of lines of credit and use

(a) Approval of application

The Secretary shall provide a community development corporation that has an application approved under section 13823 of this title with a line of credit in an amount determined appropriate by the Secretary, subject to the limitations contained in subsection (b) of this section.

(b) Limitations on availability of amounts

(1) Maximum amount

The Secretary shall not provide in excess of \$2,000,000 in lines of credit under this subpart to a single applicant.

(2) Period of availability

A line of credit provided under this subpart shall remain available over a period of time established by the Secretary, but in no event shall any such period of time be in excess of 3 years from the date on which such line of credit is made available.

(3) Exception

Notwithstanding paragraphs (1) and (2), if a recipient of a line of credit under this subpart has made full and productive use of such line of credit, can demonstrate the need and demand for additional assistance, and can meet the requirements of section 13822(b)(2) of this title, the amount of such line of credit may be increased by not more than \$1,500,000.

(c) Amounts drawn from line of credit

Amounts drawn from each line of credit under this subpart shall be used solely for the purposes described in section 13821 of this title and shall only be drawn down as needed to provide loans, investments, or to defray administrative costs related to the establishment of a revolving loan fund.

(d) Use of revolving loan funds

Revolving loan funds established with lines of credit provided under this subpart may be used

to provide technical assistance to private business enterprises and to provide financial assistance in the form of loans, loan guarantees, interest reduction assistance, equity shares, and other such forms of assistance to business enterprises in target areas and who are in compliance with section 13823(a)(4) of this title.

(Pub. L. 103-322, title III, §31114, Sept. 13, 1994, 108 Stat. 1884.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 13825. Limitations on use of funds

(a) Matching requirement

Not to exceed 50 percent of the total amount to be invested by an entity under this subpart may be derived from funds made available from a line of credit under this subpart.

(b) Technical assistance and administration

Not to exceed 10 percent of the amounts available from a line of credit under this subpart shall be used for the provision of training or technical assistance and for the planning, development, and management of economic development projects. Community development corporations shall be encouraged by the Secretary to seek technical assistance from other community development corporations, with expertise in the planning, development and management of economic development projects. The Secretary shall assist in the identification and facilitation of such technical assistance.

(c) Local and private sector contributions

To receive funds available under a line of credit provided under this subpart, an entity, using procedures established by the Secretary, shall demonstrate to the community development corporation that such entity agrees to provide local and private sector contributions in accordance with section 13822(b)(2)(D) of this title, will participate with such community development corporation in a loan, guarantee or investment program for a designated business enterprise, and that the total financial commitment to be provided by such entity is at least equal to the amount to be drawn from the line of credit.

(d) Use of proceeds from investments

Proceeds derived from investments made using funds made available under this subpart may be used only for the purposes described in section 13821 of this title and shall be reinvested in the community in which they were generated.

(Pub. L. 103-322, title III, §31115, Sept. 13, 1994, 108 Stat. 1884.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 13826. Program priority for special emphasis programs

(a) In general

The Secretary shall give priority in providing lines of credit under this subpart to community development corporations that propose to un-

dertake economic development activities in distressed communities that target women, Native Americans, at risk youth, farmworkers, population-losing communities, very low-income communities, single mothers, veterans, and refugees; or that expand employee ownership of private enterprises and small businesses, and to programs providing loans of not more than \$35,000 to very small business enterprises.

(b) Reservation of funds

Not less than 5 percent of the amounts made available under section 13822(a)(2)(A)¹ of this title may be reserved to carry out the activities described in subsection (a) of this section.

(Pub. L. 103-322, title III, §31116, Sept. 13, 1994, 108 Stat. 1885.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13822, 14214 of this title.

SUBPART 2—EMERGING COMMUNITY DEVELOPMENT CORPORATIONS

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in section 13852 of this title.

§ 13841. Community development corporation improvement grants

(a) Purpose

It is the purpose of this section to provide assistance to community development corporations to upgrade the management and operating capacity of such corporations and to enhance the resources available to enable such corporations to increase their community economic development activities.

(b) Skill enhancement grants

(1) In general

The Secretary shall award grants to community development corporations to enable such corporations to attain or enhance the business management and development skills of the individuals that manage such corporations to enable such corporations to seek the public and private resources necessary to develop community economic development projects.

(2) Use of funds

A recipient of a grant under paragraph (1) may use amounts received under such grant—

(A) to acquire training and technical assistance from agencies or institutions that have extensive experience in the development and management of low-income community economic development projects; or

(B) to acquire such assistance from other highly successful community development corporations.

(c) Operating grants

(1) In general

The Secretary shall award grants to community development corporations to enable such corporations to support an administrative capacity for the planning, development, and

management of low-income community economic development projects.

(2) Use of funds

A recipient of a grant under paragraph (1) may use amounts received under such grant—

(A) to conduct evaluations of the feasibility of potential low-income community economic development projects that address identified needs in the low-income community and that conform to those projects and activities permitted under subpart 1;¹

(B) to develop a business plan related to such a potential project; or

(C) to mobilize resources to be contributed to a planned low-income community economic development project or strategy.

(d) Applications

A community development corporation that desires to receive a grant under this section shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

(e) Amount available for community development corporation

Amounts provided under this section to a community development corporation shall not exceed \$75,000 per year. Such corporations may apply for grants under this section for up to 3 consecutive years, except that such corporations shall be required to submit a new application for each grant for which such corporation desires to receive and compete on the basis of such applications in the selection process.

(Pub. L. 103-322, title III, §31121, Sept. 13, 1994, 108 Stat. 1885.)

REFERENCES IN TEXT

Subpart 1, referred to in subsec. (c)(2)(A), was in the original "subtitle A", and was translated as reading "chapter 1", meaning chapter 1 of subtitle K of title III of Pub. L. 103-322, to reflect the probable intent of Congress.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 13842. Emerging community development corporation revolving loan funds

(a) Authority

The Secretary may award grants to emerging community development corporations to enable such corporations to establish, maintain or expand revolving loan funds, to make or guarantee loans, or to make capital investments in new or expanding local businesses.

(b) Eligibility

To be eligible to receive a grant under subsection (a) of this section, an entity shall—

(1) be a community development corporation;

(2) have completed not less than one nor more than two community economic development projects or related projects that improve or provide job and employment opportunities to low-income individuals;

¹ So in original. Probably should be section "13852(b)(1)".

¹ See References in Text note below.

(3) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including a strategic investment plan that identifies and describes the economic characteristics of the target area to be served, the types of business to be assisted using amounts received under the grant and the impact of such assistance on low-income individuals; and

(4) have secured one or more commitments from local sources for contributions (either in cash or in kind, letters of credit, or letters of commitment) in an amount that is equal to at least 10 percent of the amounts requested in the application submitted under paragraph (2).¹

(c) Use of revolving loan fund

(1) In general

A revolving loan fund established or maintained with amounts received under this section may be utilized to provide financial and technical assistance, loans, loan guarantees or investments to private business enterprises to—

(A) finance projects intended to provide business and employment opportunities for low-income individuals and to improve the quality of life in urban and rural areas; and

(B) build and expand the capacity of emerging community development corporations and serve the economic needs of local residents.

(2) Technical assistance

The Secretary shall encourage emerging community development corporations that receive grants under this section to seek technical assistance from established community development corporations, with expertise in the planning, development and management of economic development projects and shall facilitate the receipt of such assistance.

(3) Limitation

Not to exceed 10 percent of the amounts received under this section by a grantee shall be used for training, technical assistance and administrative purposes.

(d) Use of proceeds from investments

Proceeds derived from investments made with amounts provided under this section may be utilized only for the purposes described in this part and shall be reinvested in the community in which they were generated.

(e) Amounts available

Amounts provided under this section to a community development corporation shall not exceed \$500,000 per year.

(Pub. L. 103-322, title III, §31122, Sept. 13, 1994, 108 Stat. 1886.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

SUBPART 3—MISCELLANEOUS PROVISIONS

§ 13851. Definitions

As used in this part:

¹ So in original. Probably should be paragraph "(3)".

(1) Community development corporation

The term "community development corporation" means a private, nonprofit corporation whose board of directors is comprised of business, civic and community leaders, and whose principal purpose includes the provision of low-income housing or community economic development projects that primarily benefit low-income individuals and communities.

(2) Local and private sector contribution

The term "local and private sector contribution" means the funds available at the local level (by private financial institutions, State and local governments) or by any private philanthropic organization and private, nonprofit organizations that will be committed and used solely for the purpose of financing private business enterprises in conjunction with amounts provided under this part.

(3) Population-losing community

The term "population-losing community" means any county in which the net population loss is at least 7 percent from April 1, 1980 to April 1, 1990, as reported by the Bureau of the Census.

(4) Private business enterprise

The term "private business enterprise" means any business enterprise that is engaged in the manufacture of a product, provision of a service, construction or development of a facility, or that is involved in some other commercial, manufacturing or industrial activity, and that agrees to target job opportunities stemming from investments authorized under this part to certain individuals.

(5) Target area

The term "target area" means any area defined in an application for assistance under this part that has a population whose income does not exceed the median for the area within which the target area is located.

(6) Very low-income community

The term "very low-income community" means a community in which the median income of the residents of such community does not exceed 50 percent of the median income of the area.

(Pub. L. 103-322, title III, §31131, Sept. 13, 1994, 108 Stat. 1887.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 13852. Authorization of appropriations

(a) In general

There are authorized to be appropriated to carry out subparts 1 and 2—

- (1) \$45,000,000 for fiscal year 1996;
- (2) \$72,000,000 for fiscal year 1997;
- (3) \$76,500,000 for fiscal year 1998; and
- (4) \$76,500,000 for fiscal year 1999.

(b) Earmarks

Of the aggregate amount appropriated under subsection (a) of this section for each fiscal year—

(1) 60 percent shall be available to carry out subpart 1; and

(2) 40 percent shall be available to carry out subpart 2.

(c) Amounts

Amounts appropriated under subsection (a) of this section shall remain available for expenditure without fiscal year limitation.

(Pub. L. 103-322, title III, §31132, Sept. 13, 1994, 108 Stat. 1888.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13826, 14214 of this title.

§ 13853. Prohibition

None of the funds authorized under this part shall be used to finance the construction of housing.

(Pub. L. 103-322, title III, §31133, Sept. 13, 1994, 108 Stat. 1888.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

PART H—COMMUNITY-BASED JUSTICE GRANTS
FOR PROSECUTORS

§ 13861. Grant authorization

(a) In general

The Attorney General may make grants to State, Indian tribal, or local prosecutors for the purpose of supporting the creation or expansion of community-based justice programs.

(b) Consultation

The Attorney General may consult with the Ounce of Prevention Council in making grants under subsection (a) of this section.

(Pub. L. 103-322, title III, §31701, Sept. 13, 1994, 108 Stat. 1890.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 13862. Use of funds

Grants made by the Attorney General under this section shall be used—

(1) to fund programs that require the cooperation and coordination of prosecutors, school officials, police, probation officers, youth and social service professionals, and community members in the effort to reduce the incidence of, and increase the successful identification and speed of prosecution of, young violent offenders;

(2) to fund programs in which prosecutors focus on the offender, not simply the specific offense, and impose individualized sanctions, designed to deter that offender from further antisocial conduct, and impose increasingly serious sanctions on a young offender who continues to commit offenses;

(3) to fund programs that coordinate criminal justice resources with educational, social service, and community resources to develop and deliver violence prevention programs, in-

cluding mediation and other conflict resolution methods, treatment, counseling, educational, and recreational programs that create alternatives to criminal activity; and

(4) in rural States (as defined in section 3796bb(b) of this title), to fund cooperative efforts between State and local prosecutors, victim advocacy and assistance groups, social and community service providers, and law enforcement agencies to investigate and prosecute child abuse cases, treat youthful victims of child abuse, and work in cooperation with the community to develop education and prevention strategies directed toward the issues with which such entities are concerned.

(Pub. L. 103-322, title III, §31702, Sept. 13, 1994, 108 Stat. 1890.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13863, 14214 of this title.

§ 13863. Applications

(a) Eligibility

In order to be eligible to receive a grant under this part¹ for any fiscal year, a State, Indian tribal, or local prosecutor, in conjunction with the chief executive officer of the jurisdiction in which the program will be placed, shall submit an application to the Attorney General in such form and containing such information as the Attorney General may reasonably require.

(b) Requirements

Each applicant shall include—

(1) a request for funds for the purposes described in section 13862 of this title;

(2) a description of the communities to be served by the grant, including the nature of the youth crime, youth violence, and child abuse problems within such communities;

(3) assurances that Federal funds received under this part¹ shall be used to supplement, not supplant, non-Federal funds that would otherwise be available for activities funded under this section; and

(4) statistical information in such form and containing such information that the Attorney General may require.

(c) Comprehensive plan

Each applicant shall include a comprehensive plan that shall contain—

(1) a description of the youth violence or child abuse crime problem;

(2) an action plan outlining how the applicant will achieve the purposes as described in section 13862 of this title;

(3) a description of the resources available in the community to implement the plan together with a description of the gaps in the plan that cannot be filled with existing resources; and

(4) a description of how the requested grant will be used to fill gaps.

(Pub. L. 103-322, title III, §31703, Sept. 13, 1994, 108 Stat. 1891.)

REFERENCES IN TEXT

This part, referred to in subsecs. (a) and (b)(3), appearing in the original is unidentifiable because sub-

¹ See References in Text note below.

title Q of title III of Pub. L. 103-322 does not contain parts.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13864, 13865, 13866, 14214 of this title.

§ 13864. Allocation of funds; limitations on grants

(a) Administrative cost limitation

The Attorney General shall use not more than 5 percent of the funds available under this program for the purposes of administration and technical assistance.

(b) Renewal of grants

A grant under this part¹ may be renewed for up to 2 additional years after the first fiscal year during which the recipient receives its initial grant under this part,¹ subject to the availability of funds, if—

(1) the Attorney General determines that the funds made available to the recipient during the previous years were used in a manner required under the approved application; and

(2) the Attorney General determines that an additional grant is necessary to implement the community prosecution program described in the comprehensive plan required by section 13863 of this title.

(Pub. L. 103-322, title III, §31704, Sept. 13, 1994, 108 Stat. 1891.)

REFERENCES IN TEXT

This part, referred to in subsec. (b), appearing in the original is unidentifiable because subtitle Q of title III of Pub. L. 103-322 does not contain parts.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 13865. Award of grants

The Attorney General shall consider the following facts in awarding grants:

(1) Demonstrated need and evidence of the ability to provide the services described in the plan required under section 13863 of this title.

(2) The Attorney General shall attempt, to the extent practicable, to achieve an equitable geographic distribution of grant awards.

(Pub. L. 103-322, title III, §31705, Sept. 13, 1994, 108 Stat. 1891.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 13866. Reports

(a) Report to Attorney General

State and local prosecutors that receive funds under this part shall submit to the Attorney General a report not later than March 1 of each year that describes progress achieved in carrying out the plan described under section 13863(c) of this title.

(b) Report to Congress

The Attorney General shall submit to the Congress a report by October 1 of each year in which

¹ See References in Text note below.

grants are made available under this part which shall contain a detailed statement regarding grant awards, activities of grant recipients, a compilation of statistical information submitted by applicants, and an evaluation of programs established under this part.

(Pub. L. 103-322, title III, §31706, Sept. 13, 1994, 108 Stat. 1892.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 13867. Authorization of appropriations

There are authorized to be appropriated to carry out this part—

(1) \$7,000,000 for fiscal year 1996;

(2) \$10,000,000 for fiscal year 1997;

(3) \$10,000,000 for fiscal year 1998;

(4) \$11,000,000 for fiscal year 1999; and

(5) \$12,000,000 for fiscal year 2000.

(Pub. L. 103-322, title III, §31707, Sept. 13, 1994, 108 Stat. 1892.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 13868. Definitions

In this part—

“Indian tribe” means a tribe, band, pueblo, nation, or other organized group or community of Indians, including an Alaska Native village (as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

“State” means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, and the United States Virgin Islands.

“young violent offenders” means individuals, ages 7 through 22, who have committed crimes of violence, weapons offenses, drug distribution, hate crimes and civil rights violations, and offenses against personal property of another.

(Pub. L. 103-322, title III, §31708, Sept. 13, 1994, 108 Stat. 1892.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in text, is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

PART I—FAMILY UNITY DEMONSTRATION PROJECT

§ 13881. Purpose

The purpose of this part is to evaluate the effectiveness of certain demonstration projects in helping to—

(1) alleviate the harm to children and primary caretaker parents caused by separation due to the incarceration of the parents;

(2) reduce recidivism rates of prisoners by encouraging strong and supportive family relationships; and

(3) explore the cost effectiveness of community correctional facilities.

(Pub. L. 103-322, title III, §31902, Sept. 13, 1994, 108 Stat. 1892.)

SHORT TITLE

For short title of this part as the "Family Unity Demonstration Project Act", see section 31901 of Pub. L. 103-322, set out as a note under section 13701 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13893, 14214 of this title.

§ 13882. Definitions

In this part—

"child" means a person who is less than 7 years of age.

"community correctional facility" means a residential facility that—

(A) is used only for eligible offenders and their children under 7 years of age;

(B) is not within the confines of a jail or prison;

(C) houses no more than 50 prisoners in addition to their children; and

(D) provides to inmates and their children—

(i) a safe, stable, environment for children;

(ii) pediatric and adult medical care consistent with medical standards for correctional facilities;

(iii) programs to improve the stability of the parent-child relationship, including educating parents regarding—

(I) child development; and

(II) household management;

(iv) alcoholism and drug addiction treatment for prisoners; and

(v) programs and support services to help inmates—

(I) to improve and maintain mental and physical health, including access to counseling;

(II) to obtain adequate housing upon release from State incarceration;

(III) to obtain suitable education, employment, or training for employment; and

(IV) to obtain suitable child care.

"eligible offender" means a primary caretaker parent who—

(A) has been sentenced to a term of imprisonment of not more than 7 years or is awaiting sentencing for a conviction punishable by such a term of imprisonment; and

(B) has not engaged in conduct that—

(i) knowingly resulted in death or serious bodily injury;

(ii) is a felony for a crime of violence against a person; or

(iii) constitutes child neglect or mental, physical, or sexual abuse of a child.

"primary caretaker parent" means—

(A) a parent who has consistently assumed responsibility for the housing, health, and safety of a child prior to incarceration; or

(B) a woman who has given birth to a child after or while awaiting her sentencing hearing and who expresses a willingness to assume responsibility for the housing, health, and safety of that child,

a parent who, in the best interest of a child, has arranged for the temporary care of the child in the home of a relative or other responsible adult shall not for that reason be excluded from the category "primary caretaker".

"State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

(Pub. L. 103-322, title III, §31903, Sept. 13, 1994, 108 Stat. 1893.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 13883. Authorization of appropriations

(a) Authorization

There are authorized to be appropriated to carry out this part—

(1) \$3,600,000 for fiscal year 1996;

(2) \$3,600,000 for fiscal year 1997;

(3) \$3,600,000 for fiscal year 1998;

(4) \$3,600,000 for fiscal year 1999; and

(5) \$5,400,000 for fiscal year 2000.

(b) Availability of appropriations

Of the amount appropriated under subsection (a) of this section for any fiscal year—

(1) 90 percent shall be available to carry out subpart 1; and

(2) 10 percent shall be available to carry out subpart 2.

(Pub. L. 103-322, title III, §31904, Sept. 13, 1994, 108 Stat. 1894.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13901, 14214 of this title.

SUBPART 1—GRANTS TO STATES

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in sections 13883, 13901 of this title.

§ 13891. Authority to make grants

(a) General authority

The Attorney General may make grants, on a competitive basis, to States to carry out in accordance with this part family unity demonstration projects that enable eligible offenders to live in community correctional facilities with their children.

(b) Preferences

For the purpose of making grants under subsection (a) of this section, the Attorney General shall give preference to a State that includes in

the application required by section 13892 of this title assurances that if the State receives a grant—

(1) both the State corrections agency and the State health and human services agency will participate substantially in, and cooperate closely in all aspects of, the development and operation of the family unity demonstration project for which such a grant is requested;

(2) boards made up of community members, including residents, local businesses, corrections officials, former prisoners, child development professionals, educators, and maternal and child health professionals will be established to advise the State regarding the operation of such project;

(3) the State has in effect a policy that provides for the placement of all prisoners, whenever possible, in correctional facilities for which they qualify that are located closest to their respective family homes;

(4) unless the Attorney General determines that a longer timeline is appropriate in a particular case, the State will implement the project not later than 180 days after receiving a grant under subsection (a) of this section and will expend all of the grant during a 1-year period;

(5) the State has the capacity to continue implementing a community correctional facility beyond the funding period to ensure the continuity of the work;

(6) unless the Attorney General determines that a different process for selecting participants in a project is desirable, the State will—

(A) give written notice to a prisoner, not later than 30 days after the State first receives a grant under subsection (a) of this section or 30 days after the prisoner is sentenced to a term of imprisonment of not more than 7 years (whichever is later), of the proposed or current operation of the project;

(B) accept at any time at which the project is in operation an application by a prisoner to participate in the project if, at the time of application, the remainder of the prisoner's sentence exceeds 180 days;

(C) review applications by prisoners in the sequence in which the State receives such applications; and

(D) not more than 50 days after reviewing such applications approve or disapprove the application; and

(7) for the purposes of selecting eligible offenders to participate in such project, the State has authorized State courts to sentence an eligible offender directly to a community correctional facility, provided that the court gives assurances that the offender would have otherwise served a term of imprisonment.

(c) Selection of grantees

The Attorney General shall make grants under subsection (a) of this section on a competitive basis, based on such criteria as the Attorney General shall issue by rule and taking into account the preferences described in subsection (b) of this section.

(Pub. L. 103-322, title III, §31911, Sept. 13, 1994, 108 Stat. 1894.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13892, 14214 of this title.

§ 13892. Eligibility to receive grants

To be eligible to receive a grant under section 13891 of this title, a State shall submit to the Attorney General an application at such time, in such form, and containing such information as the Attorney General reasonably may require by rule.

(Pub. L. 103-322, title III, §31912, Sept. 13, 1994, 108 Stat. 1895.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13891, 14214 of this title.

§ 13893. Report

(a) In general

A State that receives a grant under this subpart¹ shall, not later than 90 days after the 1-year period in which the grant is required to be expended, submit a report to the Attorney General regarding the family unity demonstration project for which the grant was expended.

(b) Contents

A report under subsection (a) of this section shall—

(1) state the number of prisoners who submitted applications to participate in the project and the number of prisoners who were placed in community correctional facilities;

(2) state, with respect to prisoners placed in the project, the number of prisoners who are returned to that jurisdiction and custody and the reasons for such return;

(3) describe the nature and scope of educational and training activities provided to prisoners participating in the project;

(4) state the number, and describe the scope of, contracts made with public and nonprofit private community-based organizations to carry out such project; and

(5) evaluate the effectiveness of the project in accomplishing the purposes described in section 13881 of this title.

(Pub. L. 103-322, title III, §31913, Sept. 13, 1994, 108 Stat. 1895.)

REFERENCES IN TEXT

This subpart, referred to in subsec. (a), was in the original "this title" and was translated as reading "this chapter", meaning chapter 1 of subtitle S of title III of Pub. L. 103-322, to reflect the probable intent of Congress.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

SUBPART 2—FAMILY UNITY DEMONSTRATION PROJECT FOR FEDERAL PRISONERS

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in section 13883 of this title.

¹ See References in Text note below.

§ 13901. Authority of Attorney General

(a) In general

With the funds available to carry out this part for the benefit of Federal prisoners, the Attorney General, acting through the Director of the Bureau of Prisons, shall select eligible prisoners to live in community correctional facilities with their children.

(b) General contracting authority

In implementing this part,¹ the Attorney General may enter into contracts with appropriate public or private agencies to provide housing, sustenance, services, and supervision of inmates eligible for placement in community correctional facilities under this part.¹

(c) Use of State facilities

At the discretion of the Attorney General, Federal participants may be placed in State projects as defined in subpart 1. For such participants, the Attorney General shall, with funds available under section 13883(b)(2) of this title, reimburse the State for all project costs related to the Federal participant's placement, including administrative costs.

(Pub. L. 103-322, title III, §31921, Sept. 13, 1994, 108 Stat. 1896.)

REFERENCES IN TEXT

This part, referred to in subsec. (b), was in the original "this title" and was translated as reading "this subtitle", meaning subtitle S of title III of Pub. L. 103-322, to reflect the probable intent of Congress.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13902, 14214 of this title.

§ 13902. Requirements

For the purpose of placing Federal participants in a family unity demonstration project under section 13901 of this title, the Attorney General shall consult with the Secretary of Health and Human Services regarding the development and operation of the project.

(Pub. L. 103-322, title III, §31922, Sept. 13, 1994, 108 Stat. 1896.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

PART J—PREVENTION, DIAGNOSIS, AND TREATMENT OF TUBERCULOSIS IN CORRECTIONAL INSTITUTIONS

§ 13911. Prevention, diagnosis, and treatment of tuberculosis in correctional institutions

(a) Guidelines

The Attorney General, in consultation with the Secretary of Health and Human Services and the Director of the National Institute of Corrections, shall develop and disseminate to appropriate entities, including State, Indian tribal, and local correctional institutions and the Immigration and Naturalization Service, guidelines for the prevention, diagnosis, treatment,

and followup care of tuberculosis among inmates of correctional institutions and persons held in holding facilities operated by or under contract with the Immigration and Naturalization Service.

(b) Compliance

The Attorney General shall ensure that prisons in the Federal prison system and holding facilities operated by or under contract with the Immigration and Naturalization Service comply with the guidelines described in subsection (a) of this section.

(c) Grants

(1) In general

The Attorney General shall make grants to State, Indian tribal, and local correction authorities and public health authorities to assist in establishing and operating programs for the prevention, diagnosis, treatment, and followup care of tuberculosis among inmates of correctional institutions.

(2) Federal share

The Federal share of funding of a program funded with a grant under paragraph (1) shall not exceed 50 percent.

(3) Authorization of appropriations

There are authorized to be appropriated to carry out this section—

- (A) \$700,000 for fiscal year 1996;
- (B) \$1,000,000 for fiscal year 1997;
- (C) \$1,000,000 for fiscal year 1998;
- (D) \$1,100,000 for fiscal year 1999; and
- (E) \$1,200,000 for fiscal year 2000.

(d) Definitions

In this section—

"Indian tribe" means a tribe, band, pueblo, nation, or other organized group or community of Indians, including an Alaska Native village (as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.),¹ that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

"State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, and the United States Virgin Islands.

(Pub. L. 103-322, title III, §32201, Sept. 13, 1994, 108 Stat. 1901.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in subsec. (d), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

¹ See References in Text note below.

¹ So in original. A closing parenthesis probably should precede the comma.

PART K—GANG RESISTANCE EDUCATION AND TRAINING

§ 13921. Gang Resistance Education and Training projects

(a) Establishment of projects

(1) In general

The Secretary of the Treasury shall establish not less than 50 Gang Resistance Education and Training (GREAT) projects, to be located in communities across the country, in addition to the number of projects currently funded.

(2) Selection of communities

Communities identified for such GREAT projects shall be selected by the Secretary of the Treasury on the basis of gang-related activity in that particular community.

(3) Amount of assistance per project; allocation

The Secretary of the Treasury shall make available not less than \$800,000 per project, subject to the availability of appropriations, and such funds shall be allocated—

(A) 50 percent to the affected State and local law enforcement and prevention organizations participating in such projects; and

(B) 50 percent to the Bureau of Alcohol, Tobacco and Firearms for salaries, expenses, and associated administrative costs for operating and overseeing such projects.

(b) Authorization of appropriations

There is authorized to be appropriated to carry out this section—

- (1) \$9,000,000 for fiscal year 1995;
- (2) \$7,200,000 for fiscal year 1996;
- (3) \$7,200,000 for fiscal year 1997;
- (4) \$7,200,000 for fiscal year 1998;
- (5) \$7,200,000 for fiscal year 1999; and
- (6) \$7,720,000 for fiscal year 2000.

(Pub. L. 103-322, title III, § 32401, Sept. 13, 1994, 108 Stat. 1902.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

SUBCHAPTER III—VIOLENCE AGAINST WOMEN

PART A—SAFE STREETS FOR WOMEN

SUBPART 1—SAFETY FOR WOMEN IN PUBLIC TRANSIT

§ 13931. Grants for capital improvements to prevent crime in public transportation

(a) General purpose

There is authorized to be appropriated not to exceed \$10,000,000, for the Secretary of Transportation (referred to in this section as the “Secretary”) to make capital grants for the prevention of crime and to increase security in existing and future public transportation systems. None of the provisions of this Act may be construed to prohibit the financing of projects under this section where law enforcement responsibilities are vested in a local public body other than the grant applicant.

(b) Grants for lighting, camera surveillance, and security phones

(1) From the sums authorized for expenditure under this section for crime prevention, the Secretary is authorized to make grants and loans to States and local public bodies or agencies for the purpose of increasing the safety of public transportation by—

(A) increasing lighting within or adjacent to public transportation systems, including bus stops, subway stations, parking lots, or garages;

(B) increasing camera surveillance of areas within and adjacent to public transportation systems, including bus stops, subway stations, parking lots, or garages;

(C) providing emergency phone lines to contact law enforcement or security personnel in areas within or adjacent to public transportation systems, including bus stops, subway stations, parking lots, or garages; or

(D) any other project intended to increase the security and safety of existing or planned public transportation systems.

(2) From the sums authorized under this section, at least 75 percent shall be expended on projects of the type described in subsection (b)(1)(A) and (B) of this section.

(c) Reporting

All grants under this section are contingent upon the filing of a report with the Secretary and the Department of Justice, Office of Victims of Crime, showing crime rates in or adjacent to public transportation before, and for a 1-year period after, the capital improvement. Statistics shall be compiled on the basis of the type of crime, sex, race, ethnicity, language, and relationship of victim to the offender.

(d) Increased Federal share

Notwithstanding any other provision of law, the Federal share under this section for each capital improvement project that enhances the safety and security of public transportation systems and that is not required by law (including any other provision of this Act) shall be 90 percent of the net project cost of the project.

(e) Special grants for projects to study increasing security for women

From the sums authorized under this section, the Secretary shall provide grants and loans for the purpose of studying ways to reduce violent crimes against women in public transit through better design or operation of public transit systems.

(f) General requirements

All grants or loans provided under this section shall be subject to the same terms, conditions, requirements, and provisions applicable to grants and loans as specified in section 5321 of title 49.

(Pub. L. 103-322, title IV, § 40131, Sept. 13, 1994, 108 Stat. 1916.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (a) and (d), is Pub. L. 103-322, Sept. 13, 1994, 108 Stat. 1796, known as the Violent Crime Control and Law Enforcement Act of 1994.

For complete classification of this Act to the Code, see Short Title note set out under section 13701 of this title and Tables.

SUBPART 2—ASSISTANCE TO VICTIMS OF SEXUAL ASSAULT

§ 13941. Training programs

(a) In general

The Attorney General, after consultation with victim advocates and individuals who have expertise in treating sex offenders, shall establish criteria and develop training programs to assist probation and parole officers and other personnel who work with released sex offenders in the areas of—

- (1) case management;
- (2) supervision; and
- (3) relapse prevention.

(b) Training programs

The Attorney General shall ensure, to the extent practicable, that training programs developed under subsection (a) of this section are available in geographically diverse locations throughout the country.

(c) Authorization of appropriations

There are authorized to be appropriated to carry out this section—

- (1) \$1,000,000 for fiscal year 1996; and
- (2) \$1,000,000 for fiscal year 1997.

(Pub. L. 103-322, title IV, § 40152, Sept. 13, 1994, 108 Stat. 1920.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14071, 14214 of this title.

§ 13942. Confidentiality of communications between sexual assault or domestic violence victims and their counselors

(a) Study and development of model legislation

The Attorney General shall—

(1) study and evaluate the manner in which the States have taken measures to protect the confidentiality of communications between sexual assault or domestic violence victims and their therapists or trained counselors;

(2) develop model legislation that will provide the maximum protection possible for the confidentiality of such communications, within any applicable constitutional limits, taking into account the following factors:

(A) the danger that counseling programs for victims of sexual assault and domestic violence will be unable to achieve their goal of helping victims recover from the trauma associated with these crimes if there is no assurance that the records of the counseling sessions will be kept confidential;

(B) consideration of the appropriateness of an absolute privilege for communications between victims of sexual assault or domestic violence and their therapists or trained counselors, in light of the likelihood that such an absolute privilege will provide the maximum guarantee of confidentiality but also in light of the possibility that such an absolute privilege may be held to violate the rights of criminal defendants under the Fed-

eral or State constitutions by denying them the opportunity to obtain exculpatory evidence and present it at trial; and

(C) consideration of what limitations on the disclosure of confidential communications between victims of these crimes and their counselors, short of an absolute privilege, are most likely to ensure that the counseling programs will not be undermined, and specifically whether no such disclosure should be allowed unless, at a minimum, there has been a particularized showing by a criminal defendant of a compelling need for records of such communications, and adequate procedural safeguards are in place to prevent unnecessary or damaging disclosures; and

(3) prepare and disseminate to State authorities the findings made and model legislation developed as a result of the study and evaluation.

(b) Report and recommendations

Not later than the date that is 1 year after September 13, 1994, the Attorney General shall report to the Congress—

(1) the findings of the study and the model legislation required by this section; and

(2) recommendations based on the findings on the need for and appropriateness of further action by the Federal Government.

(c) Review of Federal evidentiary rules

The Judicial Conference of the United States shall evaluate and report to Congress its views on whether the Federal Rules of Evidence should be amended, and if so, how they should be amended, to guarantee that the confidentiality of communications between sexual assault victims and their therapists or trained counselors will be adequately protected in Federal court proceedings.

(Pub. L. 103-322, title IV, § 40153, Sept. 13, 1994, 108 Stat. 1921.)

REFERENCES IN TEXT

The Federal Rules of Evidence, referred to in subsec. (c), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

§ 13943. Information programs

The Attorney General shall compile information regarding sex offender treatment programs and ensure that information regarding community treatment programs in the community into which a convicted sex offender is released is made available to each person serving a sentence of imprisonment in a Federal penal or correctional institution for a commission of an offense under chapter 109A of title 18 or for the commission of a similar offense, including halfway houses and psychiatric institutions.

(Pub. L. 103-322, title IV, § 40154, Sept. 13, 1994, 108 Stat. 1922.)

PART B—SAFE HOMES FOR WOMEN
SUBPART 1—CONFIDENTIALITY FOR ABUSED
PERSONS

§ 13951. Confidentiality of abused person's address

(a) Regulations

Not later than 90 days after September 13, 1994, the United States Postal Service shall promulgate regulations to secure the confidentiality of domestic violence shelters and abused persons' addresses.

(b) Requirements

The regulations under subsection (a) of this section shall require—

(1) in the case of an individual, the presentation to an appropriate postal official of a valid, outstanding protection order; and

(2) in the case of a domestic violence shelter, the presentation to an appropriate postal authority of proof from a State domestic violence coalition that meets the requirements of section 10410 of this title verifying that the organization is a domestic violence shelter.

(c) Disclosure for certain purposes

The regulations under subsection (a) of this section shall not prohibit the disclosure of addresses to State or Federal agencies for legitimate law enforcement or other governmental purposes.

(d) Existing compilations

Compilations of addresses existing at the time at which order is presented to an appropriate postal official shall be excluded from the scope of the regulations under subsection (a) of this section.

(Pub. L. 103-322, title IV, § 40281, Sept. 13, 1994, 108 Stat. 1938.)

SUBPART 2—DATA AND RESEARCH

§ 13961. Research agenda

(a) Request for contract

The Attorney General shall request the National Academy of Sciences, through its National Research Council, to enter into a contract to develop a research agenda to increase the understanding and control of violence against women, including rape and domestic violence. In furtherance of the contract, the National Academy shall convene a panel of nationally recognized experts on violence against women, in the fields of law, medicine, criminal justice, and direct services to victims and experts on domestic violence in diverse, ethnic, social, and language minority communities and the social sciences. In setting the agenda, the Academy shall focus primarily on preventive, educative, social, and legal strategies, including addressing the needs of underserved populations.

(b) Declination of request

If the National Academy of Sciences declines to conduct the study and develop a research agenda, it shall recommend a nonprofit private entity that is qualified to conduct such a study. In that case, the Attorney General shall carry

out subsection (a) of this section through the nonprofit private entity recommended by the Academy. In either case, whether the study is conducted by the National Academy of Sciences or by the nonprofit group it recommends, the funds for the contract shall be made available from sums appropriated for the conduct of research by the National Institute of Justice.

(c) Report

The Attorney General shall ensure that no later than 1 year after September 13, 1994, the study required under subsection (a) of this section is completed and a report describing the findings made is submitted to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives.

(Pub. L. 103-322, title IV, § 40291, Sept. 13, 1994, 108 Stat. 1939.)

DEVELOPMENT OF RESEARCH AGENDA IDENTIFIED BY
THE VIOLENCE AGAINST WOMEN ACT OF 1994

Pub. L. 106-386, div. B, title IV, § 1404, Oct. 28, 2000, 114 Stat. 1514, provided that:

“(a) IN GENERAL.—The Attorney General shall—

“(1) direct the National Institute of Justice, in consultation and coordination with the Bureau of Justice Statistics and the National Academy of Sciences, through its National Research Council, to develop a research agenda based on the recommendations contained in the report entitled ‘Understanding Violence Against Women’ of the National Academy of Sciences; and

“(2) not later than 1 year after the date of the enactment of this Act [Oct. 28, 2000], in consultation with the Secretary of the Department of Health and Human Services, submit to Congress a report which shall include—

“(A) a description of the research agenda developed under paragraph (1) and a plan to implement that agenda; and

“(B) recommendations for priorities in carrying out that agenda to most effectively advance knowledge about and means by which to prevent or reduce violence against women.

“(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.”

§ 13962. State databases

(a) In general

The Attorney General shall study and report to the States and to Congress on how the States may collect centralized databases on the incidence of sexual and domestic violence offenses within a State.

(b) Consultation

In conducting its study, the Attorney General shall consult persons expert in the collection of criminal justice data, State statistical administrators, law enforcement personnel, and nonprofit nongovernmental agencies that provide direct services to victims of domestic violence. The final report shall set forth the views of the persons consulted on the recommendations.

(c) Report

The Attorney General shall ensure that no later than 1 year after September 13, 1994, the study required under subsection (a) of this section is completed and a report describing the findings made is submitted to the Committees

on the Judiciary of the Senate and the House of Representatives.

(d) Authorization of appropriations

There are authorized to be appropriated to carry out this section \$200,000 for fiscal year 1996.

(Pub. L. 103-322, title IV, §40292, Sept. 13, 1994, 108 Stat. 1939.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 13963. Number and cost of injuries

(a) Study

The Secretary of Health and Human Services, acting through the Centers for Disease Control Injury Control Division, shall conduct a study to obtain a national projection of the incidence of injuries resulting from domestic violence, the cost of injuries to health care facilities, and recommend health care strategies for reducing the incidence and cost of such injuries.

(b) Authorization of appropriations

There are authorized to be appropriated to carry out this section—\$100,000 for fiscal year 1996.

(Pub. L. 103-322, title IV, §40293, Sept. 13, 1994, 108 Stat. 1940.)

CHANGE OF NAME

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102-531, title III, §312, Oct. 27, 1992, 106 Stat. 3504.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

SUBPART 3—RURAL DOMESTIC VIOLENCE AND CHILD ABUSE ENFORCEMENT

§ 13971. Rural domestic violence and child abuse enforcement assistance

(a) Grants

The Attorney General may make grants to States, Indian tribal governments, and local governments of rural States, and to other public or private entities of rural States—

(1) to implement, expand, and establish cooperative efforts and projects between law enforcement officers, prosecutors, victim advocacy groups, and other related parties to investigate and prosecute incidents of domestic violence and dating violence (as defined in section 3796gg-2 of this title) and child abuse;

(2) to provide treatment, counseling, and assistance to victims of domestic violence and child abuse, including in immigration matters; and

(3) to work in cooperation with the community to develop education and prevention strategies directed toward such issues.

(b) Definitions

In this section—

“Indian tribe” means a tribe, band, pueblo, nation, or other organized group or community of Indians, including an Alaska Native

village (as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.),¹ that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

“rural State” has the meaning stated in section 3796bb(b) of this title.

(c) Authorization of appropriations

(1) In general

There is authorized to be appropriated to carry out this section \$40,000,000 for each of fiscal years 2001 through 2005.

(2) Additional funding

In addition to funds received under a grant under subsection (a) of this section, a law enforcement agency may use funds received under a grant under section 103² to accomplish the objectives of this section.

(3) Allotment for Indian tribes

Not less than 5 percent of the total amount made available to carry out this section for each fiscal year shall be available for grants to Indian tribal governments.

(Pub. L. 103-322, title IV, §40295, Sept. 13, 1994, 108 Stat. 1940; Pub. L. 106-386, div. B, title I, §§1105, 1109(d), title V, §1512(c), Oct. 28, 2000, 114 Stat. 1497, 1503, 1533.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in subsec. (b), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

Section 103, referred to in subsec. (c)(2), probably was intended to be a reference to “section 10003”, meaning section 10003 of Pub. L. 103-322, title I, Sept. 13, 1994, 108 Stat. 1807, which enacted subchapter XII-E (§3796dd et seq.) of chapter 46 of this title and amended sections 3793 and 3797 of this title.

AMENDMENTS

2000—Subsec. (a)(1). Pub. L. 106-386, §1109(d)(1), inserted “and dating violence (as defined in section 3796gg-2 of this title)” after “domestic violence”.

Subsec. (a)(2). Pub. L. 106-386, §1512(c), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “to provide treatment and counseling to victims of domestic violence and dating violence (as defined in section 3796gg-2 of this title) and child abuse; and”.

Pub. L. 106-386, §1109(d)(2), inserted “and dating violence (as defined in section 3796gg-2 of this title)” after “domestic violence”.

Subsec. (c)(1). Pub. L. 106-386, §1105(1), added par. (1) and struck out heading and text of former par. (1). Text read as follows: “There are authorized to be appropriated to carry out this section—

“(A) \$7,000,000 for fiscal year 1996;

“(B) \$8,000,000 for fiscal year 1997; and

“(C) \$15,000,000 for fiscal year 1998.”

Subsec. (c)(3). Pub. L. 106-386, §1105(2), added par. (3).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

¹So in original. A closing parenthesis probably should precede the comma.

²See References in Text note below.

PART C—CIVIL RIGHTS FOR WOMEN

§ 13981. Civil rights

(a) Purpose

Pursuant to the affirmative power of Congress to enact this part under section 5 of the Fourteenth Amendment to the Constitution, as well as under section 8 of Article I of the Constitution, it is the purpose of this part to protect the civil rights of victims of gender motivated violence and to promote public safety, health, and activities affecting interstate commerce by establishing a Federal civil rights cause of action for victims of crimes of violence motivated by gender.

(b) Right to be free from crimes of violence

All persons within the United States shall have the right to be free from crimes of violence motivated by gender (as defined in subsection (d) of this section).

(c) Cause of action

A person (including a person who acts under color of any statute, ordinance, regulation, custom, or usage of any State) who commits a crime of violence motivated by gender and thus deprives another of the right declared in subsection (b) of this section shall be liable to the party injured, in an action for the recovery of compensatory and punitive damages, injunctive and declaratory relief, and such other relief as a court may deem appropriate.

(d) Definitions

For purposes of this section—

(1) the term “crime of violence motivated by gender” means a crime of violence committed because of gender or on the basis of gender, and due, at least in part, to an animus based on the victim’s gender; and

(2) the term “crime of violence” means—¹

(A) an act or series of acts that would constitute a felony against the person or that would constitute a felony against property if the conduct presents a serious risk of physical injury to another, and that would come within the meaning of State or Federal offenses described in section 16 of title 18, whether or not those acts have actually resulted in criminal charges, prosecution, or conviction and whether or not those acts were committed in the special maritime, territorial, or prison jurisdiction of the United States; and

(B) includes an act or series of acts that would constitute a felony described in subparagraph (A) but for the relationship between the person who takes such action and the individual against whom such action is taken.

(e) Limitation and procedures**(1) Limitation**

Nothing in this section entitles a person to a cause of action under subsection (c) of this section for random acts of violence unrelated to gender or for acts that cannot be dem-

onstrated, by a preponderance of the evidence, to be motivated by gender (within the meaning of subsection (d) of this section).

(2) No prior criminal action

Nothing in this section requires a prior criminal complaint, prosecution, or conviction to establish the elements of a cause of action under subsection (c) of this section.

(3) Concurrent jurisdiction

The Federal and State courts shall have concurrent jurisdiction over actions brought pursuant to this part.

(4) Supplemental jurisdiction

Neither section 1367 of title 28 nor subsection (c) of this section shall be construed, by reason of a claim arising under such subsection, to confer on the courts of the United States jurisdiction over any State law claim seeking the establishment of a divorce, alimony, equitable distribution of marital property, or child custody decree.

(Pub. L. 103-322, title IV, § 40302, Sept. 13, 1994, 108 Stat. 1941.)

REFERENCES IN TEXT

This part, referred to in subsecs. (a) and (e)(3), was in the original “this subtitle”, meaning subtitle C of title IV of Pub. L. 103-322, Sept. 13, 1994, 108 Stat. 1941, which enacted this part, amended section 1988 of this title and section 1445 of Title 28, Judiciary and Judicial Procedure, and enacted provisions set out as a note under section 13701 of this title. For complete classification of this subtitle to the Code, see Short Title note set out under section 13701 of this title and Tables.

CODIFICATION

Section is comprised of section 40302 of Pub. L. 103-322. Subsec. (e)(5) of section 40302 of Pub. L. 103-322 amended section 1445 of Title 28, Judiciary and Judicial Procedure.

SHORT TITLE

For short title of this part as the “Civil Rights Remedies for Gender-Motivated Violence Act”, see section 40301 of Pub. L. 103-322, set out as a note under section 13701 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1988 of this title; title 28 section 1445.

PART D—EQUAL JUSTICE FOR WOMEN IN COURTS

SUBPART 1—EDUCATION AND TRAINING FOR JUDGES AND COURT PERSONNEL IN STATE COURTS

§ 13991. Grants authorized

The State Justice Institute may award grants for the purpose of developing, testing, presenting, and disseminating model programs to be used by States (as defined in section 10701 of this title) in training judges and court personnel in the laws of the States and by Indian tribes in training tribal judges and court personnel in the laws of the tribes on rape, sexual assault, domestic violence, dating violence, and other crimes of violence motivated by the victim’s gender. Nothing shall preclude the attendance of tribal judges and court personnel at programs funded under this section for States to train judges and court personnel on the laws of the States.

¹So in original. The word “means” probably should appear after “(A)” below.

(Pub. L. 103-322, title IV, § 40411, Sept. 13, 1994, 108 Stat. 1942; Pub. L. 106-386, div. B, title IV, § 1406(c)(2), (d)(1), Oct. 28, 2000, 114 Stat. 1516.)

AMENDMENTS

2000—Pub. L. 106-386 inserted “dating violence,” after “domestic violence,” and “Nothing shall preclude the attendance of tribal judges and court personnel at programs funded under this section for States to train judges and court personnel on the laws of the States.” at end.

SHORT TITLE

For short title of this part as the “Equal Justice for Women in the Courts Act of 1994”, see section 40401 of Pub. L. 103-322, set out as a note under section 13701 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 13992. Training provided by grants

Training provided pursuant to grants made under this part may include current information, existing studies, or current data on—

(1) the nature and incidence of rape and sexual assault by strangers and nonstrangers, marital rape, and incest;

(2) the underreporting of rape, sexual assault, and child sexual abuse;

(3) the physical, psychological, and economic impact of rape and sexual assault on the victim, the costs to society, and the implications for sentencing;

(4) the psychology of sex offenders, their high rate of recidivism, and the implications for sentencing;

(5) the historical evolution of laws and attitudes on rape and sexual assault;

(6) sex stereotyping of female and male victims of rape and sexual assault, racial stereotyping of rape victims and defendants, and the impact of such stereotypes on credibility of witnesses, sentencing, and other aspects of the administration of justice;

(7) application of rape shield laws and other limits on introduction of evidence that may subject victims to improper sex stereotyping and harassment in both rape and nonrape cases, including the need for sua sponte judicial intervention in inappropriate cross-examination;

(8) the use of expert witness testimony on rape trauma syndrome, child sexual abuse accommodation syndrome, post-traumatic stress syndrome, and similar issues;

(9) the legitimate reasons why victims of rape, sexual assault, and incest may refuse to testify against a defendant;

(10) the nature and incidence of domestic violence and dating violence (as defined in section 3796gg-2 of this title);

(11) the physical, psychological, and economic impact of domestic violence and dating violence on the victim, the costs to society, and the implications for court procedures and sentencing;

(12) the psychology and self-presentation of batterers and victims and the implications for court proceedings and credibility of witnesses;

(13) sex stereotyping of female and male victims of domestic violence and dating violence,

myths about presence or absence of domestic violence and dating violence in certain racial, ethnic, religious, or socioeconomic groups, and their impact on the administration of justice;

(14) historical evolution of laws and attitudes on domestic violence;

(15) proper and improper interpretations of the defenses of self-defense and provocation, and the use of expert witness testimony on battered woman syndrome;

(16) the likelihood of retaliation, recidivism, and escalation of violence by batterers, and the potential impact of incarceration and other meaningful sanctions for acts of domestic violence including violations of orders of protection;

(17) economic, psychological, social and institutional reasons for victims’ inability to leave the batterer, to report domestic violence or dating violence or to follow through on complaints, including the influence of lack of support from police, judges, and court personnel, and the legitimate reasons why victims of domestic violence or dating violence may refuse to testify against a defendant;

(18) the need for orders of protection, and the implications of mutual orders of protection, dual arrest policies, and mediation in domestic violence and dating violence cases;

(19) recognition of and response to gender-motivated crimes of violence other than rape, sexual assault and domestic violence, such as mass or serial murder motivated by the gender of the victims;

(20) the issues raised by domestic violence in determining custody and visitation, including how to protect the safety of the child and of a parent who is not a predominant aggressor of domestic violence, the legitimate reasons parents may report domestic violence, the ways domestic violence may relate to an abuser’s desire to seek custody, and evaluating expert testimony in custody and visitation determinations involving domestic violence;

(21) the issues raised by child sexual assault in determining custody and visitation, including how to protect the safety of the child, the legitimate reasons parents may report child sexual assault, and evaluating expert testimony in custody and visitation determinations involving child sexual assault, including the current scientifically-accepted and empirically valid research on child sexual assault;¹

(22) the extent to which addressing domestic violence and victim safety contributes to the efficient administration of justice;²

(Pub. L. 103-322, title IV, § 40412, Sept. 13, 1994, 108 Stat. 1943; Pub. L. 106-386, div. B, title IV, § 1406(a)(1), (d)(2), Oct. 28, 2000, 114 Stat. 1515, 1517.)

AMENDMENTS

2000—Par. (10). Pub. L. 106-386, § 1406(d)(2)(A), inserted “and dating violence (as defined in section 3796gg-2 of this title)” before the semicolon.

Par. (11). Pub. L. 106-386, § 1406(d)(2)(B), inserted “and dating violence” after “domestic violence”.

Par. (13). Pub. L. 106-386, § 1406(d)(2)(C), inserted “and dating violence” after “domestic violence” in two places.

¹ So in original. Probably should be followed by “and”.

² So in original. The semicolon probably should be a period.

Par. (17). Pub. L. 106-386, §1406(d)(2)(D), inserted “or dating violence” after “domestic violence” in two places.

Par. (18). Pub. L. 106-386, §1406(d)(2)(E), inserted “and dating violence” after “domestic violence”.

Pars. (20) to (22). Pub. L. 106-386, §1406(a)(1), added pars. (20) to (22).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14001, 14214 of this title.

§ 13993. Cooperation in developing programs in making grants under this part

The State Justice Institute shall ensure that model programs carried out pursuant to grants made under this part are developed with the participation of law enforcement officials, public and private nonprofit victim advocates, including national, State, tribal, and local domestic violence and sexual assault programs and coalitions, legal experts, prosecutors, defense attorneys, and recognized experts on gender bias in the courts.

(Pub. L. 103-322, title IV, §40413, Sept. 13, 1994, 108 Stat. 1944; Pub. L. 106-386, div. B, title IV, §1406(c)(1), Oct. 28, 2000, 114 Stat. 1516.)

AMENDMENTS

2000—Pub. L. 106-386 inserted “, including national, State, tribal, and local domestic violence and sexual assault programs and coalitions” after “victim advocates”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 13994. Authorization of appropriations

(a) In general

There are authorized to be appropriated to carry out this subpart \$600,000 for fiscal year 1996 and \$1,500,000 for each of the fiscal years 2001 through 2005.

(b) Model programs

Of amounts appropriated under this section, the State Justice Institute shall expend not less than 40 percent on model programs regarding domestic violence and not less than 40 percent on model programs regarding rape and sexual assault.

(c) State Justice Institute

The State Justice Institute may use up to 5 percent of the funds appropriated under this section for annually compiling and broadly disseminating (including through electronic publication) information about the use of funds and about the projects funded under this section, including any evaluations of the projects and information to enable the replication and adoption of the projects.

(Pub. L. 103-322, title IV, §40414, Sept. 13, 1994, 108 Stat. 1944; Pub. L. 106-386, div. B, title IV, §1406(a)(2), (c)(3), Oct. 28, 2000, 114 Stat. 1516.)

AMENDMENTS

2000—Subsec. (a). Pub. L. 106-386, §1406(a)(2), inserted “and \$1,500,000 for each of the fiscal years 2001 through 2005” after “1996”.

Subsec. (c). Pub. L. 106-386, §1406(c)(3), added subsec. (c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

SUBPART 2—EDUCATION AND TRAINING FOR JUDGES AND COURT PERSONNEL IN FEDERAL COURTS

§ 14001. Authorization of circuit studies; education and training grants

(a) Studies

In order to gain a better understanding of the nature and the extent of gender bias in the Federal courts, the circuit judicial councils are encouraged to conduct studies of the instances, if any, of gender bias in their respective circuits and to implement recommended reforms.

(b) Matters for examination

The studies under subsection (a) of this section may include an examination of the effects of gender on—

(1) the treatment of litigants, witnesses, attorneys, jurors, and judges in the courts, including before magistrate and bankruptcy judges;

(2) the interpretation and application of the law, both civil and criminal;

(3) treatment of defendants in criminal cases;

(4) treatment of victims of violent crimes in judicial proceedings;

(5) sentencing;

(6) sentencing alternatives and the nature of supervision of probation and parole;

(7) appointments to committees of the Judicial Conference and the courts;

(8) case management and court sponsored alternative dispute resolution programs;

(9) the selection, retention, promotion, and treatment of employees;

(10) appointment of arbitrators, experts, and special masters;

(11) the admissibility of the victim's past sexual history in civil and criminal cases; and

(12) the aspects of the topics listed in section 13992 of this title that pertain to issues within the jurisdiction of the Federal courts.

(c) Clearinghouse

The Administrative Office of the United States Courts shall act as a clearinghouse to disseminate any reports and materials issued by the gender bias task forces under subsection (a) of this section and to respond to requests for such reports and materials. The gender bias task forces shall provide the Administrative Office of the Courts of the United States¹ with their reports and related material.

(d) Continuing education and training programs

The Federal Judicial Center, in carrying out section 620(b)(3) of title 28, shall include in the educational programs it prepares, including the training programs for newly appointed judges, information on the aspects of the topics listed in section 13992 of this title that pertain to issues within the jurisdiction of the Federal courts, and shall prepare materials necessary to implement this subsection.

¹So in original. Probably should be “Administrative Office of the United States Courts”.

(Pub. L. 103-322, title IV, § 40421, Sept. 13, 1994, 108 Stat. 1944; Pub. L. 106-386, div. B, title IV, § 1406(b)(1), Oct. 28, 2000, 114 Stat. 1516.)

AMENDMENTS

2000—Subsec. (d). Pub. L. 106-386 amended heading and text of subsec. (d) generally, substituting provisions relating to continuing education and training programs for provisions relating to model programs.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14002, 14214 of this title.

§ 14002. Authorization of appropriations

There are authorized to be appropriated—

(1) to the Salaries and Expenses Account of the Courts of Appeals, District Courts, and other Judicial Services to carry out section 14001(a) of this title \$500,000 for fiscal year 1996;

(2) to the Federal Judicial Center to carry out section 14001(d) of this title \$100,000 for fiscal year 1996 and \$500,000 for each of the fiscal years 2001 through 2005; and

(3) to the Administrative Office of the United States Courts to carry out section 14001(c) of this title \$100,000 for fiscal year 1996.

(Pub. L. 103-322, title IV, § 40422, Sept. 13, 1994, 108 Stat. 1945; Pub. L. 106-386, div. B, title IV, § 1406(b)(2), Oct. 28, 2000, 114 Stat. 1516.)

AMENDMENTS

2000—Par. (2). Pub. L. 106-386 inserted “and \$500,000 for each of the fiscal years 2001 through 2005” after “1996”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

PART E—VIOLENCE AGAINST WOMEN ACT IMPROVEMENTS

§ 14011. Payment of cost of testing for sexually transmitted diseases

(a) Omitted

(b) Limited testing of defendants

(1) Court order

The victim of an offense of the type referred to in subsection (a)¹ of this section may obtain an order in the district court of the United States for the district in which charges are brought against the defendant charged with the offense, after notice to the defendant and an opportunity to be heard, requiring that the defendant be tested for the presence of the etiologic agent for acquired immune deficiency syndrome, and that the results of the test be communicated to the victim and the defendant. Any test result of the defendant given to the victim or the defendant must be accompanied by appropriate counseling.

(2) Showing required

To obtain an order under paragraph (1), the victim must demonstrate that—

(A) the defendant has been charged with the offense in a State or Federal court, and

if the defendant has been arrested without a warrant, a probable cause determination has been made;

(B) the test for the etiologic agent for acquired immune deficiency syndrome is requested by the victim after appropriate counseling; and

(C) the test would provide information necessary for the health of the victim of the alleged offense and the court determines that the alleged conduct of the defendant created a risk of transmission, as determined by the Centers for Disease Control, of the etiologic agent for acquired immune deficiency syndrome to the victim.

(3) Follow-up testing

The court may order follow-up tests and counseling under paragraph (1) if the initial test was negative. Such follow-up tests and counseling shall be performed at the request of the victim on dates that occur six months and twelve months following the initial test.

(4) Termination of testing requirements

An order for follow-up testing under paragraph (3) shall be terminated if the person obtains an acquittal on, or dismissal of, all charges of the type referred to in subsection (a)¹ of this section.

(5) Confidentiality of test

The results of any test ordered under this subsection shall be disclosed only to the victim or, where the court deems appropriate, to the parent or legal guardian of the victim, and to the person tested. The victim may disclose the test results only to any medical professional, counselor, family member or sexual partner(s) the victim may have had since the attack. Any such individual to whom the test results are disclosed by the victim shall maintain the confidentiality of such information.

(6) Disclosure of test results

The court shall issue an order to prohibit the disclosure by the victim of the results of any test performed under this subsection to anyone other than those mentioned in paragraph (5). The contents of the court proceedings and test results pursuant to this section shall be sealed. The results of such test performed on the defendant under this section shall not be used as evidence in any criminal trial.

(7) Contempt for disclosure

Any person who discloses the results of a test in violation of this subsection may be held in contempt of court.

(c) Penalties for intentional transmission of HIV

Not later than 6 months after September 13, 1994, the United States Sentencing Commission shall conduct a study and prepare and submit to the committees² on the Judiciary of the Senate and the House of Representatives a report concerning recommendations for the revision of sentencing guidelines that relate to offenses in which an HIV infected individual engages in sexual activity if the individual knows that he or

¹ See Codification note below.

² So in original. Probably should be capitalized.

she is infected with HIV and intends, through such sexual activity, to expose another to HIV. (Pub. L. 103-322, title IV, § 40503, Sept. 13, 1994, 108 Stat. 1946; Pub. L. 104-294, title VI, § 604(b)(1), Oct. 11, 1996, 110 Stat. 3506.)

CODIFICATION

Section is comprised of section 40503 of Pub. L. 103-322. Subsec. (a) of section 40503 of Pub. L. 103-322 amended section 10607 of this title. Subsec. (c) of section 40503 of Pub. L. 103-322 also enacted provisions listed in a table of provisions for review, promulgation, or amendment of Federal sentencing guidelines relating to specific offenses set out under section 994 of Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1996—Subsec. (b)(3), Pub. L. 104-294 substituted “paragraph (1)” for “paragraph (b)(1)”.

CHANGE OF NAME

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102-531, title III, § 312, Oct. 27, 1992, 106 Stat. 3504.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104-294, set out as a note under section 13 of Title 18, Crimes and Criminal Procedure.

§ 14012. National baseline study on campus sexual assault

(a) Study

The Attorney General, in consultation with the Secretary of Education, shall provide for a national baseline study to examine the scope of the problem of campus sexual assaults and the effectiveness of institutional and legal policies in addressing such crimes and protecting victims. The Attorney General may utilize the Bureau of Justice Statistics, the National Institute of Justice, and the Office for Victims of Crime in carrying out this section.

(b) Report

Based on the study required by subsection (a) of this section and data collected under the Student Right-To-Know and Campus Security Act (20 U.S.C. 1001 note; Public Law 101-542) and amendments made by that Act, the Attorney General shall prepare a report including an analysis of—

- (1) the number of reported allegations and estimated number of unreported allegations of campus sexual assaults, and to whom the allegations are reported (including authorities of the educational institution, sexual assault victim service entities, and local criminal authorities);
- (2) the number of campus sexual assault allegations reported to authorities of educational institutions which are reported to criminal authorities;
- (3) the number of campus sexual assault allegations that result in criminal prosecution in comparison with the number of non-campus sexual assault allegations that result in criminal prosecution;
- (4) Federal and State laws or regulations pertaining specifically to campus sexual assaults;

(5) the adequacy of policies and practices of educational institutions in addressing campus sexual assaults and protecting victims, including consideration of—

(A) the security measures in effect at educational institutions, such as utilization of campus police and security guards, control over access to grounds and buildings, supervision of student activities and student living arrangements, control over the consumption of alcohol by students, lighting, and the availability of escort services;

(B) the articulation and communication to students of the institution’s policies concerning sexual assaults;

(C) policies and practices that may prevent or discourage the reporting of campus sexual assaults to local criminal authorities, or that may otherwise obstruct justice or interfere with the prosecution of perpetrators of campus sexual assaults;

(D) the nature and availability of victim services for victims of campus sexual assaults;

(E) the ability of educational institutions’ disciplinary processes to address allegations of sexual assault adequately and fairly;

(F) measures that are taken to ensure that victims are free of unwanted contact with alleged assailants, and disciplinary sanctions that are imposed when a sexual assault is determined to have occurred; and

(G) the grounds on which educational institutions are subject to lawsuits based on campus sexual assaults, the resolution of these cases, and measures that can be taken to avoid the likelihood of lawsuits and civil liability;

(6) in conjunction with the report produced by the Department of Education in coordination with institutions of education under the Student Right-To-Know and Campus Security Act (20 U.S.C. 1001 note; Public Law 101-542) and amendments made by that Act, an assessment of the policies and practices of educational institutions that are of greatest effectiveness in addressing campus sexual assaults and protecting victims, including policies and practices relating to the particular issues described in paragraph (5); and

(7) any recommendations the Attorney General may have for reforms to address campus sexual assaults and protect victims more effectively, and any other matters that the Attorney General deems relevant to the subject of the study and report required by this section.

(c) Submission of report

The report required by subsection (b) of this section shall be submitted to the Congress no later than September 1, 1996.

(d) “Campus sexual assaults” defined

For purposes of this section, “campus sexual assaults” includes sexual assaults occurring at institutions of postsecondary education and sexual assaults committed against or by students or employees of such institutions.

(e) Authorization of appropriations

There are authorized to be appropriated to carry out the study required by this section—\$200,000 for fiscal year 1996.

(Pub. L. 103-322, title IV, §40506, Sept. 13, 1994, 108 Stat. 1948.)

REFERENCES IN TEXT

The Student Right-To-Know and Campus Security Act, referred to in subsec. (b), is Pub. L. 101-542, Nov. 8, 1990, 104 Stat. 2381, as amended, which amended sections 1085, 1092, 1094, and 1232g of Title 20, Education, and enacted provisions set out as notes under sections 1001 and 1092 of Title 20. For complete classification of this Act to the Code, see Short Title of 1990 Amendments note set out under section 1001 of Title 20 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 14013. Report on battered women's syndrome**(a) Report**

Not less than 1 year after September 13, 1994, the Attorney General and the Secretary of Health and Human Services shall transmit to the House Committee on Energy and Commerce, the Senate Committee on Labor and Human Resources, and the Committees on the Judiciary of the Senate and the House of Representatives a report on the medical and psychological basis of "battered women's syndrome" and on the extent to which evidence of the syndrome has been considered in criminal trials.

(b) Components

The report under subsection (a) of this section shall include—

(1) medical and psychological testimony on the validity of battered women's syndrome as a psychological condition;

(2) a compilation of State, tribal, and Federal court cases in which evidence of battered women's syndrome was offered in criminal trials; and

(3) an assessment by State, tribal, and Federal judges, prosecutors, and defense attorneys of the effects that evidence of battered women's syndrome may have in criminal trials.

(Pub. L. 103-322, title IV, §40507, Sept. 13, 1994, 108 Stat. 1949.)

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 14014. Report on confidentiality of addresses for victims of domestic violence**(a) Report**

The Attorney General shall conduct a study of the means by which abusive spouses may obtain

information concerning the addresses or locations of estranged or former spouses, notwithstanding the desire of the victims to have such information withheld to avoid further exposure to abuse. Based on the study, the Attorney General shall transmit a report to Congress including—

(1) the findings of the study concerning the means by which information concerning the addresses or locations of abused spouses may be obtained by abusers; and

(2) analysis of the feasibility of creating effective means of protecting the confidentiality of information concerning the addresses and locations of abused spouses to protect such persons from exposure to further abuse while preserving access to such information for legitimate purposes.

(b) Use of components

The Attorney General may use the National Institute of Justice and the Office for Victims of Crime in carrying out this section.

(Pub. L. 103-322, title IV, §40508, Sept. 13, 1994, 108 Stat. 1950.)

§ 14015. Report on recordkeeping relating to domestic violence

Not later than 1 year after September 13, 1994, the Attorney General shall complete a study of, and shall submit to Congress a report and recommendations on, problems of recordkeeping of criminal complaints involving domestic violence. The study and report shall examine—

(1) the efforts that have been made by the Department of Justice, including the Federal Bureau of Investigation, to collect statistics on domestic violence; and

(2) the feasibility of requiring that the relationship between an offender and victim be reported in Federal records of crimes of aggravated assault, rape, and other violent crimes.

(Pub. L. 103-322, title IV, §40509, Sept. 13, 1994, 108 Stat. 1950.)

§ 14016. Enforcement of statutory rape laws**(a) Sense of Senate**

It is the sense of the Senate that States and local jurisdictions should aggressively enforce statutory rape laws.

(b) Justice Department program on statutory rape

Not later than January 1, 1997, the Attorney General shall establish and implement a program that—

(1) studies the linkage between statutory rape and teenage pregnancy, particularly by predatory older men committing repeat offenses; and

(2) educates State and local criminal law enforcement officials on the prevention and prosecution of statutory rape, focusing in particular on the commission of statutory rape by predatory older men committing repeat offenses, and any links to teenage pregnancy.

(c) Violence against women initiative

The Attorney General shall ensure that the Department of Justice's Violence Against

Women initiative addresses the issue of statutory rape, particularly the commission of statutory rape by predatory older men committing repeat offenses.

(Pub. L. 104-193, title IX, §906, Aug. 22, 1996, 110 Stat. 2349.)

CODIFICATION

Section was enacted as part of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and not as part of the Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

PART F—NATIONAL STALKER AND DOMESTIC VIOLENCE REDUCTION

§ 14031. Grant program

(a) In general

The Attorney General is authorized to provide grants to States and units of local government to improve and implement processes for entering data regarding stalking and domestic violence into local, State, and national crime information databases.

(b) Eligibility

To be eligible to receive a grant under subsection (a) of this section, a State or unit of local government shall certify that it has or intends to establish a program that enters into the National Crime Information Center records of—

- (1) warrants for the arrest of persons violating protection orders intended to protect victims from stalking or domestic violence;
- (2) arrests or convictions of persons violating protection¹ or domestic violence; and
- (3) protection orders for the protection of persons from stalking or domestic violence.

(Pub. L. 103-322, title IV, §40602, Sept. 13, 1994, 108 Stat. 1951; Pub. L. 106-386, div. B, title I, §1106(b), Oct. 28, 2000, 114 Stat. 1497.)

AMENDMENTS

2000—Subsec. (a). Pub. L. 106-386 inserted “and implement” after “improve”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 14032. Authorization of appropriations

There is authorized to be appropriated to carry out this part \$3,000,000 for each of fiscal years 2001 through 2005.

(Pub. L. 103-322, title IV, §40603, Sept. 13, 1994, 108 Stat. 1951; Pub. L. 106-386, div. B, title I, §1106(a), Oct. 28, 2000, 114 Stat. 1497.)

REFERENCES IN TEXT

This part, referred to in text, was in the original “this subtitle”, meaning subtitle F of title IV of Pub. L. 103-322, Sept. 13, 1994, 108 Stat. 1950, which enacted this part, amended section 534 of Title 28, Judiciary and Judicial Procedure, and enacted provisions set out as a note under section 534 of Title 28.

AMENDMENTS

2000—Pub. L. 106-386 reenacted section catchline without change and amended text generally. Prior to

¹So in original. Probably should be followed by “orders intended to protect victims from stalking”.

amendment, text read as follows: “There are authorized to be appropriated to carry out this part—

- “(1) \$1,500,000 for fiscal year 1996;
- “(2) \$1,750,000 for fiscal year 1997; and
- “(3) \$2,750,000 for fiscal year 1998.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 14033. Application requirements

An application for a grant under this part shall be submitted in such form and manner, and contain such information, as the Attorney General may prescribe. In addition, applications shall include documentation showing—

- (1) the need for grant funds and that State or local funding, as the case may be, does not already cover these operations;
- (2) intended use of the grant funds, including a plan of action to increase record input; and
- (3) an estimate of expected results from the use of the grant funds.

(Pub. L. 103-322, title IV, §40604, Sept. 13, 1994, 108 Stat. 1951.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 14034. Disbursement

Not later than 90 days after the receipt of an application under this part, the Attorney General shall either provide grant funds or shall inform the applicant why grant funds are not being provided.

(Pub. L. 103-322, title IV, §40605, Sept. 13, 1994, 108 Stat. 1952.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 14035. Technical assistance, training, and evaluations

The Attorney General may provide technical assistance and training in furtherance of the purposes of this part, and may provide for the evaluation of programs that receive funds under this part, in addition to any evaluation requirements that the Attorney General may prescribe for grantees. The technical assistance, training, and evaluations authorized by this section may be carried out directly by the Attorney General, or through contracts or other arrangements with other entities.

(Pub. L. 103-322, title IV, §40606, Sept. 13, 1994, 108 Stat. 1952.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 14036. Training programs for judges

The State Justice Institute, after consultation with nationally recognized nonprofit organizations with expertise in stalking and domestic violence cases, shall conduct training programs for State (as defined in section 10701¹ of this

¹See References in Text note below.

title) and Indian tribal judges to ensure that a judge issuing an order in a stalking or domestic violence case has all available criminal history and other information, whether from State or Federal sources.

(Pub. L. 103-322, title IV, § 40607, Sept. 13, 1994, 108 Stat. 1952.)

REFERENCES IN TEXT

Section 10701 of this title, referred to in text, was in the original “section 202 of the State Justice Institute Authorization Act of 1984”, and was translated as reading “section 202 of the State Justice Institute Act of 1984”, which is section 202 of Pub. L. 98-620, to reflect the probable intent of Congress.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 14037. Recommendations on intrastate communication

The State Justice Institute, after consultation with nationally recognized nonprofit associations with expertise in data sharing among criminal justice agencies and familiarity with the issues raised in stalking and domestic violence cases, shall recommend proposals regarding how State courts may increase intrastate communication between civil and criminal courts.

(Pub. L. 103-322, title IV, § 40608, Sept. 13, 1994, 108 Stat. 1952.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 14038. Inclusion in National Incident-Based Reporting System

Not later than 2 years after September 13, 1994, the Attorney General, in accordance with the States, shall compile data regarding domestic violence and intimidation (including stalking) as part of the National Incident-Based Reporting System (NIBRS).

(Pub. L. 103-322, title IV, § 40609, Sept. 13, 1994, 108 Stat. 1952.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 14039. Report to Congress

The Attorney General shall submit to the Congress an annual report, beginning one year after September 13, 1994, that provides information concerning the incidence of stalking and domestic violence, and evaluates the effectiveness of State antistalking efforts and legislation.

(Pub. L. 103-322, title IV, § 40610, Sept. 13, 1994, 108 Stat. 1952.)

REPORT RELATING TO STALKING LAWS

Pub. L. 105-119, title I, § 115(b)(2), Nov. 26, 1997, 111 Stat. 2467, provided that: “The Attorney General shall include in an annual report under section 40610 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14039) information concerning existing or proposed State laws and penalties for stalking crimes against children.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 14040. Definitions

As used in this part—

(1) the term “national crime information databases” refers to the National Crime Information Center and its incorporated criminal history databases, including the Interstate Identification Index; and

(2) the term “protection order” includes an injunction or any other order issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, another person, including temporary and final orders issued by civil or criminal courts (other than support or child custody orders) whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.

(Pub. L. 103-322, title IV, § 40611, Sept. 13, 1994, 108 Stat. 1952.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

PART G—ELDER ABUSE, NEGLECT, AND EXPLOITATION, INCLUDING DOMESTIC VIOLENCE AND SEXUAL ASSAULT AGAINST OLDER OR DISABLED INDIVIDUALS

CODIFICATION

This part was, in the original, subtitle H of title IV of Pub. L. 103-322, as added by Pub. L. 106-386, and has been redesignated as part G of this subchapter for purposes of codification.

§ 14041. Definitions

In this part:

(1) In general

The terms “elder abuse, neglect, and exploitation”, and “older individual” have the meanings given the terms in section 3002 of this title.

(2) Domestic violence

The term “domestic violence” has the meaning given such term by section 3796gg-2 of this title.

(3) Sexual assault

The term “sexual assault” has the meaning given the term in section 3796gg-2 of this title.

(Pub. L. 103-322, title IV, § 40801, as added Pub. L. 106-386, div. B, title II, § 1209(a), Oct. 28, 2000, 114 Stat. 1508.)

§ 14041a. Training programs for law enforcement officers

The Attorney General may make grants for training programs to assist law enforcement officers, prosecutors, and relevant officers of Federal, State, tribal, and local courts in recognizing, addressing, investigating, and prosecuting instances of elder abuse, neglect, and exploi-

tation and violence against individuals with disabilities, including domestic violence and sexual assault, against older or disabled individuals.

(Pub. L. 103-322, title IV, § 40802, as added Pub. L. 106-386, div. B, title II, § 1209(a), Oct. 28, 2000, 114 Stat. 1509.)

§ 14041b. Authorization of appropriations

There are authorized to be appropriated to carry out this part \$5,000,000 for each of fiscal years 2001 through 2005.

(Pub. L. 103-322, title IV, § 40803, as added Pub. L. 106-386, div. B, title II, § 1209(a), Oct. 28, 2000, 114 Stat. 1509.)

PART H—DOMESTIC VIOLENCE TASK FORCE

CODIFICATION

This part was, in the original, subtitle I of title IV of Pub. L. 103-322, as added by Pub. L. 106-386, and has been redesignated as part H of this subchapter for purposes of codification.

§ 14042. Task force

(a) Establish

The Attorney General, in consultation with national nonprofit, nongovernmental organizations whose primary expertise is in domestic violence, shall establish a task force to coordinate research on domestic violence and to report to Congress on any overlapping or duplication of efforts on domestic violence issues. The task force shall be comprised of representatives from all Federal agencies that fund such research.

(b) Uses of funds

Funds appropriated under this section shall be used to—

- (1) develop a coordinated strategy to strengthen research focused on domestic violence education, prevention, and intervention strategies;
- (2) track and report all Federal research and expenditures on domestic violence; and
- (3) identify gaps and duplication of efforts in domestic violence research and governmental expenditures on domestic violence issues.

(c) Report

The Task Force shall report to Congress annually on its work under subsection (b) of this section.

(d) Definition

For purposes of this section, the term “domestic violence” has the meaning given such term by section 3796gg-2 of this title.

(e) Authorization of Appropriations

There is authorized to be appropriated to carry out this section \$500,000 for each of fiscal years 2001 through 2004.

(Pub. L. 103-322, title IV, § 40901, as added Pub. L. 106-386, div. B, title IV, § 1407, Oct. 28, 2000, 114 Stat. 1517.)

STUDY OF STATE LAWS REGARDING INSURANCE DISCRIMINATION AGAINST VICTIMS OF VIOLENCE AGAINST WOMEN

Pub. L. 106-386, div. B, title II, § 1206, Oct. 28, 2000, 114 Stat. 1507, provided that:

“(a) IN GENERAL.—The Attorney General shall conduct a national study to identify State laws that address discrimination against victims of domestic violence and sexual assault related to issuance or administration of insurance policies.

“(b) REPORT.—Not later than 1 year after the date of the enactment of this Act [Oct. 28, 2000], the Attorney General shall submit to Congress a report on the findings and recommendations of the study required by subsection (a).”

STUDY OF WORKPLACE EFFECTS FROM VIOLENCE AGAINST WOMEN

Pub. L. 106-386, div. B, title II, § 1207, Oct. 28, 2000, 114 Stat. 1507, provided that: “The Attorney General shall—

“(1) conduct a national survey of plans, programs, and practices developed to assist employers and employees on appropriate responses in the workplace related to victims of domestic violence, stalking, or sexual assault; and

“(2) not later than 18 months after the date of the enactment of this Act [Oct. 28, 2000], submit to Congress a report describing the results of that survey, which report shall include the recommendations of the Attorney General to assist employers and employees affected in the workplace by incidents of domestic violence, stalking, and sexual assault.”

STUDY OF UNEMPLOYMENT COMPENSATION FOR VICTIMS OF VIOLENCE AGAINST WOMEN

Pub. L. 106-386, div. B, title II, § 1208, Oct. 28, 2000, 114 Stat. 1508, provided that: “The Secretary of Labor, in consultation with the Attorney General, shall—

“(1) conduct a national study to identify State laws that address the separation from employment of an employee due to circumstances directly resulting from the experience of domestic violence by the employee and circumstances governing that receipt (or nonreceipt) by the employee of unemployment compensation based on such separation; and

“(2) not later than 1 year after the date of the enactment of this Act [Oct. 28, 2000], submit to Congress a report describing the results of that study, together with any recommendations based on that study.”

DEFINITIONS OF TERMS IN PUB. L. 106-386

For definitions of “domestic violence” and “sexual assault” as used in sections 1206, 1207, and 1208 of Pub. L. 106-386, set out above, see section 1002 of Pub. L. 106-386, set out as a note under section 3796gg-2 of this title.

SUBCHAPTER IV—DRUG CONTROL

§ 14051. Increased penalties for drug-dealing in “drug-free” zones

Pursuant to its authority under section 994 of title 28, the United States Sentencing Commission shall amend its sentencing guidelines to provide an appropriate enhancement for a defendant convicted of violating section 860 of title 21.

(Pub. L. 103-322, title IX, § 90102, Sept. 13, 1994, 108 Stat. 1987.)

CODIFICATION

Section is comprised of section 90102 of Pub. L. 103-322 which is also listed in a table of provisions for review, promulgation, or amendment of Federal sentencing guidelines relating to specific offenses set out under section 994 of Title 28, Judiciary and Judicial Procedure.

§ 14052. Enhanced penalties for illegal drug use in Federal prisons and for smuggling drugs into Federal prisons

(a) Declaration of policy

It is the policy of the Federal Government that the use or distribution of illegal drugs in the Nation's Federal prisons will not be tolerated and that such crimes shall be prosecuted to the fullest extent of the law.

(b) Sentencing guidelines

Pursuant to its authority under section 994 of title 28, the United States Sentencing Commission shall amend its sentencing guidelines to appropriately enhance the penalty for a person convicted of an offense—

(1) under section 844 of title 21 involving simple possession of a controlled substance within a Federal prison or other Federal detention facility; or

(2) under section 841(b) of title 21 involving the smuggling of a controlled substance into a Federal prison or other Federal detention facility or the distribution or intended distribution of a controlled substance within a Federal prison or other Federal detention facility.

(c) No probation

Notwithstanding any other law, the court shall not sentence a person convicted of an offense described in subsection (b) of this section to probation.

(Pub. L. 103-322, title IX, §90103, Sept. 13, 1994, 108 Stat. 1987.)

CODIFICATION

Section is comprised of section 90103 of Pub. L. 103-322. Subsec. (b) of section 90103 of Pub. L. 103-322 is also listed in a table of provisions for review, promulgation, or amendment of Federal sentencing guidelines relating to specific offenses set out under section 994 of Title 28, Judiciary and Judicial Procedure.

§ 14053. Violent crime and drug emergency areas

(a) Definitions

In this section—

“major violent crime or drug-related emergency” means an occasion or instance in which violent crime, drug smuggling, drug trafficking, or drug abuse violence reaches such levels, as determined by the President, that Federal assistance is needed to supplement State and local efforts and capabilities to save lives, and to protect property and public health and safety.

“State” means a State, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

(b) Declaration of violent crime and drug emergency areas

If a major violent crime or drug-related emergency exists throughout a State or a part of a State, the President may declare the State or part of a State to be a violent crime or drug emergency area and may take appropriate actions authorized by this section.

(c) Procedure

(1) In general

A request for a declaration designating an area to be a violent crime or drug emergency area shall be made, in writing, by the chief executive officer of a State or local government, respectively (or in the case of the District of Columbia, the mayor), and shall be forwarded to the Attorney General in such form as the Attorney General may by regulation require. One or more cities, counties, States, or the District of Columbia may submit a joint request for designation as a major violent crime or drug emergency area under this subsection.

(2) Finding

A request made under paragraph (1) shall be based on a written finding that the major violent crime or drug-related emergency is of such severity and magnitude that Federal assistance is necessary to ensure an effective response to save lives and to protect property and public health and safety.

(d) Irrelevancy of population density

The President shall not limit declarations made under this section to highly populated centers of violent crime or drug trafficking, drug smuggling, or drug use, but shall also consider applications from governments of less populated areas where the magnitude and severity of such activities is beyond the capability of the State or local government to respond.

(e) Requirements

As part of a request for a declaration under this section, and as a prerequisite to Federal violent crime or drug emergency assistance under this section, the chief executive officer of a State or local government shall—

(1) take appropriate action under State or local law and furnish information on the nature and amount of State and local resources that have been or will be committed to alleviating the major violent crime- or drug-related emergency;

(2) submit a detailed plan outlining that government's short- and long-term plans to respond to the violent crime or drug emergency, specifying the types and levels of Federal assistance requested and including explicit goals (including quantitative goals) and timetables; and

(3) specify how Federal assistance provided under this section is intended to achieve those goals.

(f) Review period

The Attorney General shall review a request submitted pursuant to this section, and the President shall decide whether to declare a violent crime or drug emergency area, within 30 days after receiving the request.

(g) Federal assistance

The President may—

(1) direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, financial assistance, and managerial, technical, and advisory services) in support of State and local assistance efforts; and

(2) provide technical and advisory assistance, including communications support and law enforcement-related intelligence information.

(h) Duration of Federal assistance

(1) In general

Federal assistance under this section shall not be provided to a violent crime or drug emergency area for more than 1 year.

(2) Extension

The chief executive officer of a jurisdiction may apply to the President for an extension of assistance beyond 1 year. The President may extend the provision of Federal assistance for not more than an additional 180 days.

(i) Regulations

Not later than 120 days after September 13, 1994, the Attorney General shall issue regulations to implement this section.

(j) No effect on existing authority

Nothing in this section shall diminish or detract from existing authority possessed by the President or Attorney General.

(Pub. L. 103-322, title IX, §90107, Sept. 13, 1994, 108 Stat. 1988.)

SUBCHAPTER V—CRIMINAL STREET GANGS

§ 14061. Juvenile anti-drug and anti-gang grants in federally assisted low-income housing

Grants authorized in this Act to reduce or prevent juvenile drug and gang-related activity in “public housing” may be used for such purposes in federally assisted, low-income housing.

(Pub. L. 103-322, title XV, §150007, Sept. 13, 1994, 108 Stat. 2035.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 103-322, Sept. 13, 1994, 108 Stat. 1796, known as the Violent Crime Control and Law Enforcement Act of 1994. For complete classification of this Act to the Code, see Short Title note set out under section 13701 of this title and Tables.

§ 14062. Gang investigation coordination and information collection

(a) Coordination

The Attorney General (or the Attorney General’s designee), in consultation with the Secretary of the Treasury (or the Secretary’s designee), shall develop a national strategy to coordinate gang-related investigations by Federal law enforcement agencies.

(b) Data collection

The Director of the Federal Bureau of Investigation shall acquire and collect information on incidents of gang violence for inclusion in an annual uniform crime report.

(c) Report

The Attorney General shall prepare a report on national gang violence outlining the strategy developed under subsection (a) of this section to be submitted to the President and Congress by January 1, 1996.

(d) Authorization of appropriations

There are authorized to be appropriated to carry out this section \$1,000,000 for fiscal year 1996.

(Pub. L. 103-322, title XV, §150008, Sept. 13, 1994, 108 Stat. 2036.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

SUBCHAPTER VI—CRIMES AGAINST CHILDREN

§ 14071. Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program

(a) In general

(1) State guidelines

The Attorney General shall establish guidelines for State programs that require—

(A) a person who is convicted of a criminal offense against a victim who is a minor or who is convicted of a sexually violent offense to register a current address for the time period specified in subparagraph (A) of subsection (b)(6) of this section; and

(B) a person who is a sexually violent predator to register a current address unless such requirement is terminated under subparagraph (B) of subsection (b)(6) of this section.

(2) Determination of sexually violent predator status; waiver; alternative measures

(A) In general

A determination of whether a person is a sexually violent predator for purposes of this section shall be made by a court after considering the recommendation of a board composed of experts in the behavior and treatment of sex offenders, victims’ rights advocates, and representatives of law enforcement agencies.

(B) Waiver

The Attorney General may waive the requirements of subparagraph (A) if the Attorney General determines that the State has established alternative procedures or legal standards for designating a person as a sexually violent predator.

(C) Alternative measures

The Attorney General may also approve alternative measures of comparable or greater effectiveness in protecting the public from unusually dangerous or recidivistic sexual offenders in lieu of the specific measures set forth in this section regarding sexually violent predators.

(3) Definitions

For purposes of this section:

(A) The term “criminal offense against a victim who is a minor” means any criminal offense in a range of offenses specified by State law which is comparable to or which exceeds the following range of offenses:

(i) kidnapping of a minor, except by a parent;

- (ii) false imprisonment of a minor, except by a parent;
- (iii) criminal sexual conduct toward a minor;
- (iv) solicitation of a minor to engage in sexual conduct;
- (v) use of a minor in a sexual performance;
- (vi) solicitation of a minor to practice prostitution;
- (vii) any conduct that by its nature is a sexual offense against a minor; or
- (viii) an attempt to commit an offense described in any of clauses (i) through (vii), if the State—
 - (I) makes such an attempt a criminal offense; and
 - (II) chooses to include such an offense in those which are criminal offenses against a victim who is a minor for the purposes of this section.

For purposes of this subparagraph conduct which is criminal only because of the age of the victim shall not be considered a criminal offense if the perpetrator is 18 years of age or younger.

(B) The term “sexually violent offense” means any criminal offense in a range of offenses specified by State law which is comparable to or which exceeds the range of offenses encompassed by aggravated sexual abuse or sexual abuse (as described in sections 2241 and 2242 of title 18 or as described in the State criminal code) or an offense that has as its elements engaging in physical contact with another person with intent to commit aggravated sexual abuse or sexual abuse (as described in such sections of title 18 or as described in the State criminal code).

(C) The term “sexually violent predator” means a person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses.

(D) The term “mental abnormality” means a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of other persons.

(E) The term “predatory” means an act directed at a stranger, or a person with whom a relationship has been established or promoted for the primary purpose of victimization.

(F) The term “employed, carries on a vocation” includes employment that is full-time or part-time for a period of time exceeding 14 days or for an aggregate period of time exceeding 30 days during any calendar year, whether financially compensated, volunteered, or for the purpose of government or educational benefit.

(G) The term “student” means a person who is enrolled on a full-time or part-time basis, in any public or private educational institution, including any secondary school,

trade, or professional institution, or institution of higher education.

(b) Registration requirement upon release, parole, supervised release, or probation

An approved State registration program established under this section shall contain the following elements:

(1) Duties of responsible officials

(A) If a person who is required to register under this section is released from prison, or placed on parole, supervised release, or probation, a State prison officer, the court, or another responsible officer or official, shall—

(i) inform the person of the duty to register and obtain the information required for such registration;

(ii) inform the person that if the person changes residence address, the person shall report the change of address as provided by State law;

(iii) inform the person that if the person changes residence to another State, the person shall report the change of address as provided by State law and comply with any registration requirement in the new State of residence, and inform the person that the person must also register in a State where the person is employed, carries on a vocation, or is a student;

(iv) obtain fingerprints and a photograph of the person if these have not already been obtained in connection with the offense that triggers registration; and

(v) require the person to read and sign a form stating that the duty of the person to register under this section has been explained.

(B) In addition to the requirements of subparagraph (A), for a person required to register under subparagraph (B) of subsection (a)(1) of this section, the State prison officer, the court, or another responsible officer or official, as the case may be, shall obtain the name of the person, identifying factors, anticipated future residence, offense history, and documentation of any treatment received for the mental abnormality or personality disorder of the person.

(2) Transfer of information to State and FBI; participation in national sex offender registry

(A) State reporting

State procedures shall ensure that the registration information is promptly made available to a law enforcement agency having jurisdiction where the person expects to reside and entered into the appropriate State records or data system. State procedures shall also ensure that conviction data and fingerprints for persons required to register are promptly transmitted to the Federal Bureau of Investigation.

(B) National reporting

A State shall participate in the national database established under section 14072(b) of this title in accordance with guidelines issued by the Attorney General, including transmission of current address information

and other information on registrants to the extent provided by the guidelines.

(3) Verification

(A) For a person required to register under subparagraph (A) of subsection (a)(1) of this section, State procedures shall provide for verification of address at least annually.

(B) The provisions of subparagraph (A) shall be applied to a person required to register under subparagraph (B) of subsection (a)(1) of this section, except that such person must verify the registration every 90 days after the date of the initial release or commencement of parole.

(4) Notification of local law enforcement agencies of changes in address

A change of address by a person required to register under this section shall be reported by the person in the manner provided by State law. State procedures shall ensure that the updated address information is promptly made available to a law enforcement agency having jurisdiction where the person will reside and entered into the appropriate State records or data system.

(5) Registration for change of address to another State

A person who has been convicted of an offense which requires registration under this section and who moves to another State, shall report the change of address to the responsible agency in the State the person is leaving, and shall comply with any registration requirement in the new State of residence. The procedures of the State the person is leaving shall ensure that notice is provided promptly to an agency responsible for registration in the new State, if that State requires registration.

(6) Length of registration

A person required to register under subsection (a)(1) of this section shall continue to comply with this section, except during ensuing periods of incarceration, until—

(A) 10 years have elapsed since the person was released from prison or placed on parole, supervised release, or probation; or

(B) for the life of that person if that person—

(i) has 1 or more prior convictions for an offense described in subsection (a)(1)(A) of this section; or

(ii) has been convicted of an aggravated offense described in subsection (a)(1)(A) of this section; or

(iii) has been determined to be a sexually violent predator pursuant to subsection (a)(2) of this section.

(7) Registration of out-of-State offenders, Federal offenders, persons sentenced by courts martial, and offenders crossing State borders

As provided in guidelines issued by the Attorney General, each State shall include in its registration program residents who were convicted in another State and shall ensure that procedures are in place to accept registration information from—

(A) residents who were convicted in another State, convicted of a Federal offense, or sentenced by a court martial; and

(B) nonresident offenders who have crossed into another State in order to work or attend school.

(c) Registration of offender crossing State border

Any person who is required under this section to register in the State in which such person resides shall also register in any State in which the person is employed, carries on a vocation, or is a student.

(d) Penalty

A person required to register under a State program established pursuant to this section who knowingly fails to so register and keep such registration current shall be subject to criminal penalties in any State in which the person has so failed.

(e) Release of information

(1) The information collected under a State registration program may be disclosed for any purpose permitted under the laws of the State.

(2) The State or any agency authorized by the State shall release relevant information that is necessary to protect the public concerning a specific person required to register under this section, except that the identity of a victim of an offense that requires registration under this section shall not be released.

(f) Immunity for good faith conduct

Law enforcement agencies, employees of law enforcement agencies and independent contractors acting at the direction of such agencies, and State officials shall be immune from liability for good faith conduct under this section.

(g) Compliance

(1) Compliance date

Each State shall have not more than 3 years from September 13, 1994, in which to implement this section, except that the Attorney General may grant an additional 2 years to a State that is making good faith efforts to implement this section.

(2) Ineligibility for funds

(A) A State that fails to implement the program as described in this section shall not receive 10 percent of the funds that would otherwise be allocated to the State under section 3756 of this title.

(B) REALLOCATION OF FUNDS.—Any funds that are not allocated for failure to comply with this section shall be reallocated to States that comply with this section.

(h) Fingerprints

Each requirement to register under this section shall be deemed to also require the submission of a set of fingerprints of the person required to register, obtained in accordance with regulations prescribed by the Attorney General under section 14072(h) of this title.

(i) Grants to States for costs of compliance

(1) Program authorized

(A) In general

The Director of the Bureau of Justice Assistance (in this subsection referred to as the “Director”) shall carry out a program, which shall be known as the “Sex Offender

Management Assistance Program” (in this subsection referred to as the “SOMA program”), under which the Director shall award a grant to each eligible State to offset costs directly associated with complying with this section.

(B) Uses of funds

Each grant awarded under this subsection shall be—

- (i) distributed directly to the State for distribution to State and local entities; and
- (ii) used for training, salaries, equipment, materials, and other costs directly associated with complying with this section.

(2) Eligibility

(A) Application

To be eligible to receive a grant under this subsection, the chief executive of a State shall, on an annual basis, submit to the Director an application (in such form and containing such information as the Director may reasonably require) assuring that—

- (i) the State complies with (or made a good faith effort to comply with) this section; and
- (ii) where applicable, the State has penalties comparable to or greater than Federal penalties for crimes listed in this section, except that the Director may waive the requirement of this clause if a State demonstrates an overriding need for assistance under this subsection.

(B) Regulations

(i) In general

Not later than 90 days after October 30, 1998, the Director shall promulgate regulations to implement this subsection (including the information that must be included and the requirements that the States must meet) in submitting the applications required under this subsection. In allocating funds under this subsection, the Director may consider the annual number of sex offenders registered in each eligible State’s monitoring and notification programs.

(ii) Certain training programs

Prior to implementing this subsection, the Director shall study the feasibility of incorporating into the SOMA program the activities of any technical assistance or training program established as a result of section 13941 of this title. In a case in which incorporating such activities into the SOMA program will eliminate duplication of efforts or administrative costs, the Director shall take administrative actions, as allowable, and make recommendations to Congress to incorporate such activities into the SOMA program prior to implementing the SOMA program.

(3) Authorization of appropriations

There is authorized to be appropriated to carry out this subsection, \$25,000,000 for each of fiscal years 1999 and 2000.

(j) Notice of enrollment at or employment by institutions of higher education

(1) Notice by offenders

(A) In general

In addition to any other requirements of this section, any person who is required to register in a State shall provide notice as required under State law—

- (i) of each institution of higher education in that State at which the person is employed, carries on a vocation, or is a student; and
- (ii) of each change in enrollment or employment status of such person at an institution of higher education in that State.

(B) Change in status

A change in status under subparagraph (A)(ii) shall be reported by the person in the manner provided by State law. State procedures shall ensure that the updated information is promptly made available to a law enforcement agency having jurisdiction where such institution is located and entered into the appropriate State records or data system.

(2) State reporting

State procedures shall ensure that the registration information collected under paragraph (1)—

- (A) is promptly made available to a law enforcement agency having jurisdiction where such institution is located; and
- (B) entered into the appropriate State records or data system.

(3) Request

Nothing in this subsection shall require an educational institution to request such information from any State.

(Pub. L. 103-322, title XVII, § 170101, Sept. 13, 1994, 108 Stat. 2038; Pub. L. 104-145, § 2, May 17, 1996, 110 Stat. 1345; Pub. L. 104-236, §§ 3-7, Oct. 3, 1996, 110 Stat. 3096, 3097; Pub. L. 105-119, title I, § 115(a)(1)-(5), Nov. 26, 1997, 111 Stat. 2461-2463; Pub. L. 105-314, title VI, § 607(a), Oct. 30, 1998, 112 Stat. 2985; Pub. L. 106-386, div. B, title VI, § 1601(b)(1), Oct. 28, 2000, 114 Stat. 1537.)

AMENDMENTS

2000—Subsec. (j). Pub. L. 106-386 added subsec. (j).
 1998—Subsecs. (g), (h). Pub. L. 105-314, § 607(a)(1), which directed the amendment of this section by redesignating the second subsection designated as subsection (g) as subsection (h), was executed by redesignating subsec. (g), relating to fingerprints, as (h) to reflect the probable intent of Congress.

Subsec. (i). Pub. L. 105-314, § 607(a)(2), added subsec. (i).

1997—Subsec. (a)(1)(A), (B). Pub. L. 105-119, § 115(a)(1)(A), struck out “with a designated State law enforcement agency” after “current address”.

Subsec. (a)(2). Pub. L. 105-119, § 115(a)(1)(B), added par. (2) and struck out heading and text of former par. (2). Text read as follows: “A determination that a person is a sexually violent predator and a determination that a person is no longer a sexually violent predator shall be made by the sentencing court after receiving a report by a State board composed of experts in the field of the behavior and treatment of sexual offenders, victim rights advocates, and representatives from law enforcement agencies.”

Subsec. (a)(3)(A). Pub. L. 105-119, §115(a)(1)(C)(i), substituted "in a range of offenses specified by State law which is comparable to or which exceeds the following range of offenses:" for "that consists of—" in introductory provisions.

Subsec. (a)(3)(B). Pub. L. 105-119, §115(a)(1)(C)(ii), substituted "in a range of offenses specified by State law which is comparable to or which exceeds the range of offenses encompassed by" for "that consists of".

Subsec. (a)(3)(F), (G). Pub. L. 105-119, §115(a)(1)(D), added subpars. (F) and (G).

Subsec. (b)(1). Pub. L. 105-119, §115(a)(2)(A)(i), substituted "Duties of responsible officials" for "Duty of State prison official or court" in heading.

Subsec. (b)(1)(A). Pub. L. 105-119, §115(a)(2)(A)(ii)(I), substituted "the court, or another responsible officer or official" for "or in the case of probation, the court" in introductory provisions.

Subsec. (b)(1)(A)(ii). Pub. L. 105-119, §115(a)(2)(A)(ii)(II), substituted "report the change of address as provided by State law" for "give the new address to a designated State law enforcement agency in writing within 10 days".

Subsec. (b)(1)(A)(iii). Pub. L. 105-119, §115(a)(2)(A)(iii)(III), substituted "shall report the change of address as provided by State law and comply with any registration requirement in the new State of residence, and inform the person that the person must also register in a State where the person is employed, carries on a vocation, or is a student" for "shall register the new address with the law enforcement agency with whom the person last registered, and the person is also required to register with a designated law enforcement agency in the new State not later than 10 days after establishing residence in the new State, if the new State has a registration requirement".

Subsec. (b)(1)(B). Pub. L. 105-119, §115(a)(2)(A)(iii), substituted "the court, or another responsible officer or official" for "or the court".

Subsec. (b)(2). Pub. L. 105-119, §115(a)(2)(B), added par. (2) and struck out heading and text of former par. (2). Text read as follows: "The officer, or in the case of a person placed on probation, the court, shall, within 3 days after receipt of information described in paragraph (1), forward it to a designated State law enforcement agency. The State law enforcement agency shall immediately enter the information into the appropriate State law enforcement record system and notify the appropriate law enforcement agency having jurisdiction where the person expects to reside. The State law enforcement agency shall also immediately transmit all information described in paragraph (1) to the Federal Bureau of Investigation for inclusion in the FBI database described in section 14072 of this title."

Subsec. (b)(3)(A). Pub. L. 105-119, §115(a)(2)(C)(i), in introductory provisions, substituted "State procedures shall provide for verification of address at least annually." for "on each anniversary of the person's initial registration date during the period in which the person is required to register under this section the following applies:".

Subsec. (b)(3)(A)(i) to (iv). Pub. L. 105-119, §115(a)(2)(C)(ii), which directed the amendment of par. (3)(A) by striking out cls. (i) through (v), was executed by striking out cls. (i) through (iv) to reflect the probable intent of Congress because no cl. (v) had been enacted. Prior to amendment, cls. (i) through (iv) read as follows:

"(i) The designated State law enforcement agency shall mail a nonforwardable verification form to the last reported address of the person.

"(ii) The person shall mail the verification form to the designated State law enforcement agency within 10 days after receipt of the form.

"(iii) The verification form shall be signed by the person, and state that the person still resides at the address last reported to the designated State law enforcement agency. The person shall include with the verification form, fingerprints and a photograph of that person.

"(iv) If the person fails to mail the verification form to the designated State law enforcement agency within 10 days after receipt of the form, the person shall be in violation of this section unless the person proves that the person has not changed the residence address."

Subsec. (b)(4). Pub. L. 105-119, §115(a)(2)(D), substituted "section shall be reported by the person in the manner provided by State law. State procedures shall ensure that the updated address information is promptly made available to a law enforcement agency having jurisdiction where the person will reside and entered into the appropriate State records or data system" for "section reported to the designated State law enforcement agency shall be immediately reported to the appropriate law enforcement agency having jurisdiction where the person is residing. The designated law enforcement agency shall, if the person changes residence to another State, notify the law enforcement agency with which the person must register in the new State, if the new State has a registration requirement".

Subsec. (b)(5). Pub. L. 105-119, §115(a)(2)(E), substituted "and who moves to another State, shall report the change of address to the responsible agency in the State the person is leaving, and shall comply with any registration requirement in the new State of residence. The procedures of the State the person is leaving shall ensure that notice is provided promptly to an agency responsible for registration in the new State, if that State requires registration" for "shall register the new address with a designated law enforcement agency in another State to which the person moves not later than 10 days after such person establishes residence in the new State, if the new State has a registration requirement".

Subsec. (b)(7). Pub. L. 105-119, §115(a)(2)(F), added par. (7).

Subsec. (c). Pub. L. 105-119, §115(a)(3), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 105-119, §115(a)(3), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 105-119, §115(a)(3), (4), redesignated subsec. (d) as (e) and in par. (2) substituted "The State or any agency authorized by the State" for "The designated State law enforcement agency and any local law enforcement agency authorized by the State agency". Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 105-119, §115(a)(3), (5), redesignated subsec. (e) as (f) and substituted "and independent contractors acting in the direction of such agencies, and State officials" for "and State officials". Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 105-119, §115(a)(3), redesignated subsec. (f), relating to compliance, as (g).

1996—Subsec. (a)(2). Pub. L. 104-236, §4, inserted before period at end "victim rights advocates, and representatives from law enforcement agencies".

Subsec. (b)(2). Pub. L. 104-236, §7, amended heading and text of par. (2) generally. Prior to amendment, text read as follows: "The officer, or in the case of a person placed on probation, the court, shall, within 3 days after receipt of information described in paragraph (1), forward it to a designated State law enforcement agency. The State law enforcement agency shall immediately enter the information into the appropriate State law enforcement record system and notify the appropriate law enforcement agency having jurisdiction where the person expects to reside. The State law enforcement agency shall also immediately transmit the conviction data and fingerprints to the Federal Bureau of Investigation."

Subsec. (b)(3)(A)(iii). Pub. L. 104-236, §6, inserted at end "The person shall include with the verification form, fingerprints and a photograph of that person."

Subsec. (b)(6). Pub. L. 104-236, §3, amended heading and text of par. (6) generally. Prior to amendment, text read as follows:

"(A) A person required to register under subparagraph (A) of subsection (a)(1) of this section shall continue to comply with this section until 10 years have elapsed since the person was released from prison, placed on parole, supervised release, or probation.

“(B) The requirement of a person to register under subparagraph (B) of subsection (a)(1) of this section shall terminate upon a determination, made in accordance with paragraph (2) of subsection (a) of this section, that the person no longer suffers from a mental abnormality or personality disorder that would make the person likely to engage in a predatory sexually violent offense.”

Subsec. (d). Pub. L. 104-145 amended heading and text of subsec. (d) generally. Prior to amendment, text read as follows: “The information collected under a State registration program shall be treated as private data except that—

“(1) such information may be disclosed to law enforcement agencies for law enforcement purposes;

“(2) such information may be disclosed to government agencies conducting confidential background checks; and

“(3) the designated State law enforcement agency and any local law enforcement agency authorized by the State agency may release relevant information that is necessary to protect the public concerning a specific person required to register under this section, except that the identity of a victim of an offense that requires registration under this section shall not be released.”

Subsec. (g). Pub. L. 104-236, §5, added subsec. (g).

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-386, div. B, title VI, §1601(b)(2), Oct. 28, 2000, 114 Stat. 1537, provided that: “The amendment made by this subsection [amending this section] shall take effect 2 years after the date of the enactment of this Act [Oct. 28, 2000].”

EFFECTIVE DATE OF 1997 AMENDMENT

Section 115(c) of Pub. L. 105-119 provided that: “This section [amending this section, section 14072 of this title, and sections 3521, 3563, 3583, 4042, and 4209 of Title 18, Crimes and Criminal Procedure, enacting provisions set out as notes under section 14039 of this title and section 951 of Title 10, Armed Forces, and amending provisions set out as a note under this section] shall take effect on the date of the enactment of this Act [Nov. 26, 1997], except that—

“(1) subparagraphs (A), (B), and (C) of subsection (a)(8) [amending sections 3563, 3583, 4042, and 4209 of Title 18, Crimes and Criminal Procedure, and enacting provisions set out as a note under section 951 of Title 10, Armed Forces] shall take effect 1 year after the date of the enactment of this Act; and

“(2) States shall have 3 years from such date of enactment to implement amendments made by this Act [probably should be “this section”] which impose new requirements under the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act [42 U.S.C. 14071 et seq.], and the Attorney General may grant an additional 2 years to a State that is making good faith efforts to implement these amendments.”

EFFECTIVE DATE OF 1996 AMENDMENT

Section 10 of Pub. L. 104-236, as amended by Pub. L. 105-119, title I, §115(a)(7), Nov. 26, 1997, 111 Stat. 2464, provided that:

“(a) IN GENERAL.—This Act [enacting sections 14072 and 14073 of this title, amending this section, and enacting provisions set out as notes under this section and section 13701 of this title] and the amendments made by this Act shall become effective 1 year after the date of enactment of this Act [Oct. 3, 1996].

“(b) COMPLIANCE BY STATES.—Each State shall implement the amendments made by sections 3, 4, 5, 6, and 7 of this Act [amending this section] not later than 3 years after the date of enactment of this Act, except that the Attorney General may grant an additional 2 years to a State that is making good faith efforts to implement such amendments.

“(c) INELIGIBILITY FOR FUNDS.—

“(1) A State that fails to implement the program as described in sections 3, 4, 5, 6, and 7 of this Act [amending this section] shall not receive 10 percent of the funds that would otherwise be allocated to the State under section 506 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3756).

“(2) Any funds that are not allocated for failure to comply with section 3, 4, 5, 6, or 7 of this Act shall be reallocated to States that comply with these sections.

“(d) EFFECTIVE DATE.—States shall be allowed the time specified in subsection (b) to establish minimally sufficient sexual offender registration programs for purposes of the amendments made by section 2 [enacting section 14072 of this title]. Subsections (c) and (k) of section 170102 of the Violent Crime Control and Law Enforcement Act of 1994 [42 U.S.C. 14072(c), (k)], and any requirement to issue related regulations, shall take effect at the conclusion of the time provided under this subsection for the establishment of minimally sufficient sexual offender registration programs.”

REGULATIONS

Section 9 of Pub. L. 104-236 provided that: “Not later than 1 year after the date of enactment of this Act [Oct. 3, 1996], the Attorney General shall issue regulations to carry out this Act [see Effective Date of 1996 Amendment note above] and the amendments made by this Act.”

SEVERABILITY

Section 11 of Pub. L. 104-236 provided that: “If any provision of this Act [see Effective Date of 1996 Amendment note above], an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.”

TRANSFER OF FUNCTIONS

Effective Aug. 1, 2000, all functions of Director of Bureau of Justice Assistance, other than those enumerated in section 3742(3) to (6) of this title, transferred to Assistant Attorney General for Office of Justice Programs, see section 1000(a)(1) [title I, §108(b)] of Pub. L. 106-113, set out as a note under section 3741 of this title.

STUDY OF SEX OFFENDER MANAGEMENT ASSISTANCE PROGRAM

Pub. L. 105-314, title VI, §607(b), Oct. 30, 1998, 112 Stat. 2986, provided that: “Not later than March 1, 2000, the Director shall conduct a study to assess the efficacy of the Sex Offender Management Assistance Program under section 170101(i) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071(i)), as added by this section, and submit recommendations to Congress.”

STUDY OF HOTLINES

Pub. L. 105-314, title IX, §902, Oct. 30, 1998, 112 Stat. 2991, provided that:

“(a) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act [Oct. 30, 1998], the Attorney General shall conduct a study in accordance with subsection (b) and submit to Congress a report on the results of that study.

“(b) CONTENTS OF STUDY.—The study under this section shall include an examination of—

“(1) existing State programs for informing the public about the presence of sexual predators released from prison, as required in section 170101 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071), including the use of CD-ROMs, Internet databases, and Sexual Offender Identification Hotlines, such as those used in the State of California; and

“(2) the feasibility of establishing a national hotline for parents to access a Federal Bureau of Investigation database that tracks the location of convicted sexual predators established under section 170102 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14072) and, in determining that feasibility, the Attorney General shall examine issues including the cost, necessary changes to Federal and State laws necessitated by the creation of such a hotline, consistency with Federal and State case law pertaining to community notification, and the need for, and accuracy and reliability of, the information available through such a hotline.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14072 of this title; title 18 sections 3563, 3583; title 20 sections 1092, 1232g.

§ 14072. FBI database

(a) Definitions

For purposes of this section—

(1) the term “FBI” means the Federal Bureau of Investigation;

(2) the terms “criminal offense against a victim who is a minor”, “sexually violent offense”, “sexually violent predator”, “mental abnormality”, “predatory”, “employed, carries on a vocation”, and “student” have the same meanings as in section 14071(a)(3) of this title; and

(3) the term “minimally sufficient sexual offender registration program” means any State sexual offender registration program that—

(A) requires the registration of each offender who is convicted of an offense in a range of offenses specified by State law which is comparable to or exceeds that described in subparagraph (A) or (B) of section 14071(a)(1) of this title;

(B) participates in the national database established under subsection (b) of this section in conformity with guidelines issued by the Attorney General;

(C) provides for verification of address at least annually;¹

(D) requires that each person who is required to register under subparagraph (A) shall do so for a period of not less than 10 years beginning on the date that such person was released from prison or placed on parole, supervised release, or probation.

(b) Establishment

The Attorney General shall establish a national database at the Federal Bureau of Investigation to track the whereabouts and movement of—

(1) each person who has been convicted of a criminal offense against a victim who is a minor;

(2) each person who has been convicted of a sexually violent offense; and

(3) each person who is a sexually violent predator.

(c) Registration requirement

Each person described in subsection (b) of this section who resides in a State that has not established a minimally sufficient sexual offender registration program shall register a current ad-

dress, fingerprints of that person, and a current photograph of that person with the FBI for inclusion in the database established under subsection (b) of this section for the time period specified under subsection (d) of this section.

(d) Length of registration

A person described in subsection (b) of this section who is required to register under subsection (c) of this section shall, except during ensuing periods of incarceration, continue to comply with this section—

(1) until 10 years after the date on which the person was released from prison or placed on parole, supervised release, or probation; or

(2) for the life of the person, if that person—

(A) has 2 or more convictions for an offense described in subsection (b) of this section;

(B) has been convicted of aggravated sexual abuse, as defined in section 2241 of title 18 or in a comparable provision of State law; or

(C) has been determined to be a sexually violent predator.

(e) Verification

(1) Persons convicted of an offense against a minor or a sexually violent offense

In the case of a person required to register under subsection (c) of this section, the FBI shall, during the period in which the person is required to register under subsection (d) of this section, verify the person’s address in accordance with guidelines that shall be promulgated by the Attorney General. Such guidelines shall ensure that address verification is accomplished with respect to these individuals and shall require the submission of fingerprints and photographs of the individual.

(2) Sexually violent predators

Paragraph (1) shall apply to a person described in subsection (b)(3) of this section, except that such person must verify the registration once every 90 days after the date of the initial release or commencement of parole of that person.

(f) Community notification

(1) In general

Subject to paragraph (2), the FBI may release relevant information concerning a person required to register under subsection (c) of this section that is necessary to protect the public.

(2) Identity of victim

In no case shall the FBI release the identity of any victim of an offense that requires registration by the offender with the FBI.

(g) Notification of FBI of changes in residence

(1) Establishment of new residence

For purposes of this section, a person shall be deemed to have established a new residence during any period in which that person resides for not less than 10 days.

(2) Persons required to register with the FBI

Each establishment of a new residence, including the initial establishment of a resi-

¹ So in original. Probably should be followed by “and”.

dence immediately following release from prison, or placement on parole, supervised release, or probation, by a person required to register under subsection (c) of this section shall be reported to the FBI not later than 10 days after that person establishes a new residence.

(3) Individual registration requirement

A person required to register under subsection (c) of this section or under a State sexual offender registration program, including a program established under section 14071 of this title, who changes address to a State other than the State in which the person resided at the time of the immediately preceding registration shall, not later than 10 days after that person establishes a new residence, register a current address, fingerprints, and photograph of that person, for inclusion in the appropriate database, with—

- (A) the FBI; and
- (B) the State in which the new residence is established.

(4) State registration requirement

Any time any State agency in a State with a minimally sufficient sexual offender registration program, including a program established under section 14071 of this title, is notified of a change of address by a person required to register under such program within or outside of such State, the State shall notify—

- (A) the law enforcement officials of the jurisdiction to which, and the jurisdiction from which, the person has relocated; and
- (B) the FBI.

(5) Verification

(A) Notification of local law enforcement officials

The FBI shall ensure that State and local law enforcement officials of the jurisdiction from which, and the State and local law enforcement officials of the jurisdiction to which, a person required to register under subsection (c) of this section relocates are notified of the new residence of such person.

(B) Notification of FBI

A State agency receiving notification under this subsection shall notify the FBI of the new residence of the offender.

(C) Verification

(i) State agencies

If a State agency cannot verify the address of or locate a person required to register with a minimally sufficient sexual offender registration program, including a program established under section 14071 of this title, the State shall immediately notify the FBI.

(ii) FBI

If the FBI cannot verify the address of or locate a person required to register under subsection (c) of this section or if the FBI receives notification from a State under clause (i), the FBI shall—

(I) classify the person as being in violation of the registration requirements of the national database; and

(II) add the name of the person to the National Crime Information Center Wanted person file and create a wanted persons record: *Provided*, That an arrest warrant which meets the requirements for entry into the file is issued in connection with the violation.

(h) Fingerprints

(1) FBI registration

For each person required to register under subsection (c) of this section, fingerprints shall be obtained and verified by the FBI or a local law enforcement official pursuant to regulations issued by the Attorney General.

(2) State registration systems

In a State that has a minimally sufficient sexual offender registration program, including a program established under section 14071 of this title, fingerprints required to be registered with the FBI under this section shall be obtained and verified in accordance with State requirements. The State agency responsible for registration shall ensure that the fingerprints and all other information required to be registered is registered with the FBI.

(i) Penalty

A person who is—

(1) required to register under paragraph (1), (2), or (3) of subsection (g) of this section and knowingly fails to comply with this section;

(2) required to register under a sexual offender registration program in the person's State of residence and knowingly fails to register in any other State in which the person is employed, carries on a vocation, or is a student;

(3) described in section 4042(c)(4) of title 18, and knowingly fails to register in any State in which the person resides, is employed, carries on a vocation, or is a student following release from prison or sentencing to probation; or

(4) sentenced by a court martial for conduct in a category specified by the Secretary of Defense under section 115(a)(8)(C) of title I of Public Law 105-119, and knowingly fails to register in any State in which the person resides, is employed, carries on a vocation, or is a student following release from prison or sentencing to probation, shall, in the case of a first offense under this subsection, be imprisoned for not more than 1 year and, in the case of a second or subsequent offense under this subsection, be imprisoned for not more than 10 years.

(j) Release of information

The information collected by the FBI under this section shall be disclosed by the FBI—

(1) to Federal, State, and local criminal justice agencies for—

- (A) law enforcement purposes; and
- (B) community notification in accordance with section 14071(d)(3)³ of this title; and

(2) to Federal, State, and local governmental agencies responsible for conducting employ-

²So in original.

³See References in Text note below.

ment-related background checks under section 5119a of this title.

(k) Notification upon release

Any State not having established a program described in subsection (a)(3) of this section must—

(1) upon release from prison, or placement on parole, supervised release, or probation, notify each offender who is convicted of an offense described in subparagraph (A) or (B) of section 14071(a)(1) of this title of their duty to register with the FBI; and

(2) notify the FBI of the release of each offender who is convicted of an offense described in subparagraph (A) or (B) of section 14071(a)(1) of this title.

(Pub. L. 103-322, title XVII, §170102, as added Pub. L. 104-236, §2(a), Oct. 3, 1996, 110 Stat. 3093; amended Pub. L. 105-119, title I, §115(a)(6), Nov. 26, 1997, 111 Stat. 2463; Pub. L. 105-277, div. A, §101(b) [title I, §123], Oct. 21, 1998, 112 Stat. 2681-50, 2681-72.)

REFERENCES IN TEXT

Section 115(a)(8)(C) of title I of Public Law 105-119, referred to in subsec. (i)(4), is set out as a note under section 951 of Title 10, Armed Forces.

Section 14071(d)(3) of this title, referred to in subsec. (j)(1)(B), was redesignated section 14071(e)(3) of this title by Pub. L. 105-119, title I, §115(a)(3), Nov. 26, 1997, 111 Stat. 2463.

AMENDMENTS

1998—Subsec. (a)(2). Pub. L. 105-277, §101(b) [title I, §123(1)], struck out “or” after “‘employed.’”

Subsec. (g)(3). Pub. L. 105-277, §101(b) [title I, §123(2)], substituted “State sexual offender” for “minimally sufficient” in introductory provisions.

Subsec. (i). Pub. L. 105-277, §101(b) [title I, §123(3)], amended heading and text of subsec. (i) generally. Prior to amendment, text read as follows: “A person required to register under paragraph (1), (2), or (3) of subsection (g) of this section or pursuant to section 14071(b)(7) of this title who knowingly fails to comply with this section shall—

“(1) in the case of a first offense—

“(A) if the person has been convicted of 1 offense described in subsection (b) of this section, be fined not more than \$100,000; or

“(B) if the person has been convicted of more than 1 offense described in subsection (b) of this section, be imprisoned for up to 1 year and fined not more than \$100,000; or

“(2) in the case of a second or subsequent offense, be imprisoned for up to 10 years and fined not more than \$100,000.”

1997—Subsec. (a)(2). Pub. L. 105-119, §115(a)(6)(A), substituted “‘predatory’, ‘employed, or carries on a vocation’, and ‘student’” for “and ‘predatory’”.

Subsec. (a)(3)(A). Pub. L. 105-119, §115(a)(6)(B)(i), inserted “in a range of offenses specified by State law which is comparable to or exceeds that” before “described”.

Subsec. (a)(3)(B). Pub. L. 105-119, §115(a)(6)(B)(ii), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “requires that all information gathered under such program be transmitted to the FBI in accordance with subsection (g) of this section;”.

Subsec. (a)(3)(C). Pub. L. 105-119, §115(a)(6)(B)(iii), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: “meets the requirements for verification under section 14071(b)(3) of this title; and”.

Subsec. (i). Pub. L. 105-119, §115(a)(6)(C), inserted “or pursuant to section 14071(b)(7) of this title” after “subsection (g) of this section” in introductory provisions.

EFFECTIVE DATE

For effective date of section, see section 10 of Pub. L. 104-236, as amended, set out as an Effective Date of 1996 Amendment note under section 14071 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14071 of this title.

§ 14073. Immunity for good faith conduct

State and Federal law enforcement agencies, employees of State and Federal law enforcement agencies, and State and Federal officials shall be immune from liability for good faith conduct under section 14072¹ of this title.

(Pub. L. 104-236, §8, Oct. 3, 1996, 110 Stat. 3097.)

REFERENCES IN TEXT

Section 14072 of this title, referred to in text, was in the original “section 170102”, which was translated as meaning section 170102 of Pub. L. 103-322, as added by Pub. L. 104-236, to reflect the probable intent of Congress. Pub. L. 104-236, which enacted this section, contains no section 170102.

CODIFICATION

Section was enacted as part of the Pam Lychner Sexual Offender Tracking and Identification Act of 1996, and not as part of the Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

EFFECTIVE DATE

Section effective one year after Oct. 3, 1996, see section 10(a) of Pub. L. 104-236, set out as an Effective Date of 1996 Amendment note under section 14071 of this title.

SUBCHAPTER VII—RURAL CRIME

§ 14081. Rural Crime and Drug Enforcement Task Forces

(a) Establishment

The Attorney General, in consultation with the Governors, mayors, and chief executive officers of State and local law enforcement agencies, may establish a Rural Crime and Drug Enforcement Task Force in judicial districts that encompass significant rural lands. Assets seized as a result of investigations initiated by a Rural Crime and Drug Enforcement Task Force and forfeited under Federal law shall be used, consistent with the guidelines on equitable sharing established by the Attorney General and of the Secretary of the Treasury, primarily to enhance the operations of the task force and its participating State and local law enforcement agencies.

(b) Task force membership

The Task Forces¹ established under subsection (a) of this section shall be carried out under policies and procedures established by the Attorney General. The Attorney General may deputize State and local law enforcement officers and may cross-designate up to 100 Federal law enforcement officers, when necessary to undertake investigations pursuant to section 873(a) of title 21 or offenses punishable by a term of imprisonment of 10 years or more under title 18. The task forces—

(1) shall include representatives from—

¹ See References in Text note below.

¹ So in original. Probably should not be capitalized.

- (A) State and local law enforcement agencies;
- (B) the office of the United States Attorney for the judicial district; and
- (C) the Federal Bureau of Investigation, the Drug Enforcement Administration, the Immigration and Naturalization Service, and the United States Marshals Service; and

(2) may include representatives of other Federal law enforcement agencies, such as the United States Customs Service, United States Park Police, United States Forest Service, Bureau of Alcohol, Tobacco, and Firearms, and Bureau of Land Management.

(Pub. L. 103-322, title XVIII, §180102, Sept. 13, 1994, 108 Stat. 2045.)

§ 14082. Rural drug enforcement training

(a) Specialized training for rural officers

The Director of the Federal Law Enforcement Training Center shall develop a specialized course of instruction devoted to training law enforcement officers from rural agencies in the investigation of drug trafficking and related crimes.

(b) Authorization of appropriations

There are authorized to be appropriated to carry out subsection (a) of this section—

- (1) \$1,000,000 for fiscal year 1996;
- (2) \$1,000,000 for fiscal year 1997;
- (3) \$1,000,000 for fiscal year 1998;
- (4) \$1,000,000 for fiscal year 1999; and
- (5) \$1,000,000 for fiscal year 2000.

(Pub. L. 103-322, title XVIII, §180103, Sept. 13, 1994, 108 Stat. 2046.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 14083. More agents for Drug Enforcement Administration

There are authorized to be appropriated for the hiring of additional Drug Enforcement Administration agents—

- (1) \$12,000,000 for fiscal year 1996;
- (2) \$20,000,000 for fiscal year 1997;
- (3) \$30,000,000 for fiscal year 1998;
- (4) \$40,000,000 for fiscal year 1999; and
- (5) \$48,000,000 for fiscal year 2000.

(Pub. L. 103-322, title XVIII, §180104, Sept. 13, 1994, 108 Stat. 2046.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

SUBCHAPTER VIII—POLICE CORPS AND LAW ENFORCEMENT OFFICERS TRAINING AND EDUCATION

PART A—POLICE CORPS

§ 14091. Purposes

The purposes of this part are to—
 (1) address violent crime by increasing the number of police with advanced education and training on community patrol; and

(2) provide educational assistance to law enforcement personnel and to students who possess a sincere interest in public service in the form of law enforcement.

(Pub. L. 103-322, title XX, §200102, Sept. 13, 1994, 108 Stat. 2049.)

SHORT TITLE

For short title of this part as the “Police Corps Act”, see section 200101 of Pub. L. 103-322, set out as a note under section 13701 of this title.

§ 14092. Definitions

In this part—

“academic year” means a traditional academic year beginning in August or September and ending in the following May or June.

“dependent child” means a natural or adopted child or stepchild of a law enforcement officer who at the time of the officer’s death—

- (A) was no more than 21 years old; or
- (B) if older than 21 years, was in fact dependent on the child’s parents for at least one-half of the child’s support (excluding educational expenses), as determined by the Director.

“Director” means the Director of the Office of the Police Corps and Law Enforcement Education appointed under section 14093¹ of this title.

“educational expenses” means expenses that are directly attributable to a course of education leading to the award of either a baccalaureate or graduate degree in a course of study which, in the judgment of the State or local police force to which the participant will be assigned, includes appropriate preparation for police service including the cost of tuition, fees, books, supplies, transportation, room and board and miscellaneous expenses.

“institution of higher education” has the meaning stated in the first sentence of section 1001 of title 20.

“participant” means a participant in the Police Corps program selected pursuant to section 14095² of this title.

“State” means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.

“State Police Corps program” means a State police corps program that meets the requirements of section 14099 of this title.

(Pub. L. 103-322, title XX, §200103, Sept. 13, 1994, 108 Stat. 2049; Pub. L. 104-134, title I, §101[(a)] [title I, §121], Apr. 26, 1996, 110 Stat. 1321, 1321-22; renumbered title I, Pub. L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327; Pub. L. 105-244, title I, §102(a)(13)(O), Oct. 7, 1998, 112 Stat. 1621.)

AMENDMENTS

1998—Subsec. (b). Pub. L. 105-244 substituted “section 1001” for “section 1141(a)” in par. defining “institution of higher education”.

1996—Pub. L. 104-134 amended generally par. defining “education expenses”. Prior to amendment, par. read

¹So in original. Section 14093 of this title does not provide for the appointment of a Director.

²So in original. Probably should be section “14096”.

as follows: “‘educational expenses’ means expenses that are directly attributable to—

“(A) a course of education leading to the award of the baccalaureate degree in legal- or criminal justice-related studies; or

“(B) a course of graduate study legal or criminal justice studies following award of a baccalaureate degree, including the cost of tuition, fees, books, supplies, transportation, room and board and miscellaneous expenses.”

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of Title 20, Education.

§ 14093. Establishment of Office of the Police Corps and Law Enforcement Education

There is established in the Department of Justice, under the general authority of the Attorney General, an Office of the Police Corps and Law Enforcement Education.

(Pub. L. 103-322, title XX, §200104, Sept. 13, 1994, 108 Stat. 2050.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14092, 14111 of this title.

§ 14094. Designation of lead agency and submission of State plan

(a) Lead agency

A State that desires to participate in the Police Corps program under this part shall designate a lead agency that will be responsible for—

- (1) submitting to the Director a State plan described in subsection (b) of this section; and
- (2) administering the program in the State.

(b) State plans

A State plan shall—

(1) contain assurances that the lead agency shall work in cooperation with the local law enforcement liaisons, representatives of police labor organizations and police management organizations, and other appropriate State and local agencies to develop and implement inter-agency agreements designed to carry out the program;

(2) contain assurances that the State shall advertise the assistance available under this part;

(3) contain assurances that the State shall screen and select law enforcement personnel for participation in the program; and

(4) meet the requirements of section 14099 of this title.

(Pub. L. 103-322, title XX, §200105, Sept. 13, 1994, 108 Stat. 2050.)

§ 14095. Scholarship assistance

(a) Scholarships authorized

(1) The Director may award scholarships to participants who agree to work in a State or local police force in accordance with agreements entered into pursuant to subsection (d) of this section.

(2)(A) Except as provided in subparagraph (B), each scholarship payment made under this section for each academic year shall not exceed—

(i) \$7,500; or

(ii) the cost of the educational expenses related to attending an institution of higher education.

(B) In the case of a participant who is pursuing a course of educational study during substantially an entire calendar year, the amount of scholarship payments made during such year shall not exceed \$10,000.

(C) The total amount of scholarship assistance received by any one student under this section shall not exceed \$30,000.

(3) Recipients of scholarship assistance under this section shall continue to receive such scholarship payments only during such periods as the Director finds that the recipient is maintaining satisfactory progress as determined by the institution of higher education the recipient is attending.

(4)(A) The Director shall make scholarship payments under this section directly to the institution of higher education that the student is attending.

(B) Each institution of higher education receiving a payment on behalf of a participant pursuant to subparagraph (A) shall remit to such student any funds in excess of the costs of tuition, fees, and room and board payable to the institution.

(b) Reimbursement authorized

(1) The Director may make payments to a participant to reimburse such participant for the costs of educational expenses if the student agrees to work in a State or local police force in accordance with the agreement entered into pursuant to subsection (d) of this section.

(2)(A) Each payment made pursuant to paragraph (1) for each academic year of study shall not exceed—

(i) \$7,500; or

(ii) the cost of educational expenses related to attending an institution of higher education.

(B) In the case of a participant who is pursuing a course of educational study during substantially an entire calendar year, the amount of scholarship payments made during such year shall not exceed \$10,000.

(C) The total amount of payments made pursuant to subparagraph (A) to any 1 student shall not exceed \$30,000.

(c) Use of scholarship

Scholarships awarded under this subsection¹ shall only be used to attend a 4-year institution of higher education, except that—

(1) scholarships may be used for graduate and professional study; and

(2) if a participant has enrolled in the program upon or after transfer to a 4-year institution of higher education, the Director may reimburse the participant for the participant's prior educational expenses.

(d) Agreement

(1)(A) Each participant receiving a scholarship or a payment under this section shall enter into an agreement with the Director.

¹ So in original. Probably should be “section”.

(B) An agreement under subparagraph (A) shall contain assurances that the participant shall—

(i) after successful completion of a baccalaureate program and training as prescribed in section 14097 of this title, work for 4 years in a State or local police force without there having arisen sufficient cause for the participant's dismissal under the rules applicable to members of the police force of which the participant is a member;

(ii) complete satisfactorily—

(I) an educational course of study and receipt of a baccalaureate degree (in the case of undergraduate study) or the reward of credit to the participant for having completed one or more graduate courses (in the case of graduate study); and

(II) Police Corps training and certification by the Director that the participant has met such performance standards as may be established pursuant to section 14097 of this title; and

(iii) repay all of the scholarship or payment received plus interest at the rate of 10 percent if the conditions of clauses (i) and (ii) are not complied with.

(2)(A) A recipient of a scholarship or payment under this section shall not be considered to be in violation of the agreement entered into pursuant to paragraph (1) if the recipient—

(i) dies; or

(ii) becomes permanently and totally disabled as established by the sworn affidavit of a qualified physician.

(B) If a scholarship recipient is unable to comply with the repayment provision set forth in paragraph (1)(B)(ii)² because of a physical or emotional disability or for good cause as determined by the Director, the Director may substitute community service in a form prescribed by the Director for the required repayment.

(C) The Director shall expeditiously seek repayment from a participant who violates an agreement described in paragraph (1).

(e) Dependent child

A dependent child of a law enforcement officer—

(1) who is a member of a State or local police force or is a Federal criminal investigator or uniformed police officer,

(2) who is not a participant in the Police Corps program, but

(3) who serves in a State for which the Director has approved a Police Corps plan, and

(4) who is killed in the course of performing police duties,

shall be entitled to the scholarship assistance authorized in this section for any course of study in any accredited institution of higher education. Such dependent child shall not incur any repayment obligation in exchange for the scholarship assistance provided in this section.

(f) Application

Each participant desiring a scholarship or payment under this section shall submit an ap-

plication as prescribed by the Director in such manner and accompanied by such information as the Director may reasonably require.

(Pub. L. 103-322, title XX, §200106, Sept. 13, 1994, 108 Stat. 2050.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14098 of this title.

§ 14096. Selection of participants

(a) In general

Participants in State Police Corps programs shall be selected on a competitive basis by each State under regulations prescribed by the Director.

(b) Selection criteria and qualifications

(1) In order to participate in a State Police Corps program, a participant shall—

(A) be a citizen of the United States or an alien lawfully admitted for permanent residence in the United States;

(B) meet the requirements for admission as a trainee of the State or local police force to which the participant will be assigned pursuant to section 14099(5) of this title, including achievement of satisfactory scores on any applicable examination, except that failure to meet the age requirement for a trainee of the State or local police shall not disqualify the applicant if the applicant will be of sufficient age upon completing an undergraduate course of study;

(C) possess the necessary mental and physical capabilities and emotional characteristics to discharge effectively the duties of a law enforcement officer;

(D) be of good character and demonstrate sincere motivation and dedication to law enforcement and public service;

(E) in the case of an undergraduate, agree in writing that the participant will complete an educational course of study leading to the award of a baccalaureate degree and will then accept an appointment and complete 4 years of service as an officer in the State police or in a local police department within the State;

(F) in the case of a participant desiring to undertake or continue graduate study, agree in writing that the participant will accept an appointment and complete 4 years of service as an officer in the State police or in a local police department within the State before undertaking or continuing graduate study;

(G) contract, with the consent of the participant's parent or guardian if the participant is a minor, to serve for 4 years as an officer in the State police or in a local police department, if an appointment is offered; and

(H) except as provided in paragraph (2), be without previous law enforcement experience.

(2)(A) Until the date that is 5 years after September 13, 1994, up to 10 percent of the applicants accepted into the Police Corps program may be persons who—

(i) have had some law enforcement experience; and

(ii) have demonstrated special leadership potential and dedication to law enforcement.

²So in original. Probably should be paragraph "(1)(B)(iii)".

(B)(i) The prior period of law enforcement of a participant selected pursuant to subparagraph (A) shall not be counted toward satisfaction of the participant's 4-year service obligation under section 14098 of this title, and such a participant shall be subject to the same benefits and obligations under this part as other participants, including those stated in section¹ (b)(1)(E) and (F) of this section.

(ii) Clause (i) shall not be construed to preclude counting a participant's previous period of law enforcement experience for purposes other than satisfaction of the requirements of section 14098 of this title, such as for purposes of determining such a participant's pay and other benefits, rank, and tenure.

(3) It is the intent of this part that there shall be no more than 20,000 participants in each graduating class. The Director shall approve State plans providing in the aggregate for such enrollment of applicants as shall assure, as nearly as possible, annual graduating classes of 20,000. In a year in which applications are received in a number greater than that which will produce, in the judgment of the Director, a graduating class of more than 20,000, the Director shall, in deciding which applications to grant, give preference to those who will be participating in State plans that provide law enforcement personnel to areas of greatest need.

(c) Recruitment of minorities

Each State participating in the Police Corps program shall make special efforts to seek and recruit applicants from among members of all racial, ethnic or gender groups. This subsection does not authorize an exception from the competitive standards for admission established pursuant to subsections (a) and (b) of this section.

(d) Enrollment of applicant

(1) An applicant shall be accepted into a State Police Corps program on the condition that the applicant will be matriculated in, or accepted for admission at, a 4-year institution of higher education—

(A) as a full-time student in an undergraduate program; or

(B) for purposes of taking a graduate course.

(2) If the applicant is not matriculated or accepted as set forth in paragraph (1), the applicant's acceptance in the program shall be revoked.

(e) Leave of absence

(1) A participant in a State Police Corps program who requests a leave of absence from educational study, training or service for a period not to exceed 1 year (or 18 months in the aggregate in the event of multiple requests) due to temporary physical or emotional disability shall be granted such leave of absence by the State.

(2) A participant who requests a leave of absence from educational study, training or service for a period not to exceed 1 year (or 18 months in the aggregate in the event of multiple requests) for any reason other than those listed in paragraph (1) may be granted such leave of absence by the State.

(3) A participant who requests a leave of absence from educational study or training for a period not to exceed 30 months to serve on an official church mission may be granted such leave of absence.

(f) Admission of applicants

An applicant may be admitted into a State Police Corps program either before commencement of or during the applicant's course of educational study.

(Pub. L. 103-322, title XX, § 200107, Sept. 13, 1994, 108 Stat. 2052.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14092, 14099 of this title.

§ 14097. Police Corps training

(a) In general

(1) The Director shall establish programs of training for Police Corps participants. Such programs may be carried out at up to 3 training centers established for this purpose and administered by the Director, or by contracting with existing State training facilities. The Director shall contract with a State training facility upon request of such facility if the Director determines that such facility offers a course of training substantially equivalent to the Police Corps training program described in this part.

(2) The Director may enter into contracts with individuals, institutions of learning, and government agencies (including State and local police forces) to obtain the services of persons qualified to participate in and contribute to the training process.

(3) The Director may enter into agreements with agencies of the Federal Government to utilize on a reimbursable basis space in Federal buildings and other resources.

(4) The Director may authorize such expenditures as are necessary for the effective maintenance of the training centers, including purchases of supplies, uniforms, and educational materials, and the provision of subsistence, quarters, and medical care to participants.

(b) Training sessions

A participant in a State Police Corps program shall attend up to 24 weeks, but no less than 16 weeks, of training at a training center. The Director may approve training conducted in not more than 3 separate sessions.

(c) Further training

The Police Corps training authorized in this section is intended to serve as basic law enforcement training but not to exclude further training of participants by the State and local authorities to which they will be assigned. Each State plan approved by the Director under section 14099¹ of this title shall include assurances that following completion of a participant's course of education each participant shall receive appropriate additional training by the State or local authority to which the participant is assigned. The time spent by a participant in such additional training, but not the

¹ So in original. Probably should be "subsection".

¹ See References in Text note below.

time spent in Police Corps training, shall be counted toward fulfillment of the participant's 4-year service obligation.

(d) Course of training

The training sessions at training centers established under this section shall be designed to provide basic law enforcement training, including vigorous physical and mental training to teach participants self-discipline and organizational loyalty and to impart knowledge and understanding of legal processes and law enforcement.

(e) Evaluation of participants

A participant shall be evaluated during training for mental, physical, and emotional fitness, and shall be required to meet performance standards prescribed by the Director at the conclusion of each training session in order to remain in the Police Corps program.

(f) Stipend

The Director shall pay participants in training sessions a stipend of \$250 a week during training.

(Pub. L. 103-322, title XX, §200108, Sept. 13, 1994, 108 Stat. 2054; Pub. L. 105-277, div. C, title I, §138(a), Oct. 21, 1998, 112 Stat. 2681-597.)

REFERENCES IN TEXT

Section 14099 of this title, referred to in subsec. (c), was in the original "section 10", and was translated as reading "section 200110", meaning section 200110 of Pub. L. 103-322, to reflect the probable intent of Congress, because Pub. L. 103-322 does not contain a section 10, and section 14099 of this title relates to requirements for State Police Corps plans.

AMENDMENTS

1998—Subsec. (b). Pub. L. 105-277, §138(a)(1), added subsec. (b) and struck out heading and text of former subsec. (b). Text read as follows: "A participant in a State Police Corps program shall attend two 8-week training sessions at a training center, one during the summer following completion of sophomore year and one during the summer following completion of junior year. If a participant enters the program after sophomore year, the participant shall complete 16 weeks of training at times determined by the Director."

Subsec. (c). Pub. L. 105-277, §138(a)(2), substituted "The Police Corps" for "The 16 weeks of Police Corps".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14095, 14098 of this title.

§ 14098. Service obligation

(a) Swearing in

Upon satisfactory completion of the participant's course of education and training program established in section 14097 of this title and meeting the requirements of the police force to which the participant is assigned, a participant shall be sworn in as a member of the police force to which the participant is assigned pursuant to the State Police Corps plan, and shall serve for 4 years as a member of that police force.

(b) Rights and responsibilities

A participant shall have all of the rights and responsibilities of and shall be subject to all rules and regulations applicable to other members of the police force of which the participant is a member, including those contained in appli-

cable agreements with labor organizations and those provided by State and local law.

(c) Discipline

If the police force of which the participant is a member subjects the participant to discipline such as would preclude the participant's completing 4 years of service, and result in denial of educational assistance under section 14095 of this title, the Director may, upon a showing of good cause, permit the participant to complete the service obligation in an equivalent alternative law enforcement service and, if such service is satisfactorily completed, section 14095(d)(1)(B)(iii) of this title shall not apply.

(d) Layoffs

If the police force of which the participant is a member lays off the participant such as would preclude the participant's completing 4 years of service, and result in denial of educational assistance under section 14095 of this title, the Director may permit the participant to complete the service obligation in an equivalent alternative law enforcement service and, if such service is satisfactorily completed, section 14095(d)(1)(B)(iii) of this title shall not apply.

(Pub. L. 103-322, title XX, §200109, Sept. 13, 1994, 108 Stat. 2055.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14096, 14100 of this title.

§ 14099. State plan requirements

A State Police Corps plan shall—

(1) provide for the screening and selection of participants in accordance with the criteria set out in section 14096 of this title;

(2) state procedures governing the assignment of participants in the Police Corps program to State and local police forces (no more than 10 percent of all the participants assigned in each year by each State to be assigned to a statewide police force or forces);

(3) provide that participants shall be assigned to those geographic areas in which—

(A) there is the greatest need for additional law enforcement personnel; and

(B) the participants will be used most effectively;

(4) provide that to the extent consistent with paragraph (3), a participant shall be assigned to an area near the participant's home or such other place as the participant may request;

(5) provide that to the extent feasible, a participant's assignment shall be made at the time the participant is accepted into the program, subject to change—

(A) prior to commencement of a participant's fourth year of undergraduate study, under such circumstances as the plan may specify; and

(B) from commencement of a participant's fourth year of undergraduate study until completion of 4 years of police service by participant, only for compelling reasons or to meet the needs of the State Police Corps program and only with the consent of the participant;

(6) provide that no participant shall be assigned to serve with a local police force—

(A) whose size has declined by more than 5 percent since June 21, 1989; or

(B) which has members who have been laid off but not retired;

(7) provide that participants shall be placed and to the extent feasible kept on community and preventive patrol;

(8) ensure that participants will receive effective training and leadership;

(9) provide that the State may decline to offer a participant an appointment following completion of Federal training, or may remove a participant from the Police Corps program at any time, only for good cause (including failure to make satisfactory progress in a course of educational study) and after following reasonable review procedures stated in the plan; and

(10) provide that a participant shall, while serving as a member of a police force, be compensated at the same rate of pay and benefits and enjoy the same rights under applicable agreements with labor organizations and under State and local law as other police officers of the same rank and tenure in the police force of which the participant is a member.

(Pub. L. 103-322, title XX, §200110, Sept. 13, 1994, 108 Stat. 2056.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14092, 14094, 14096, 14097, 14100 of this title.

§ 14100. Assistance to States and localities employing Police Corps officers

Each jurisdiction directly employing Police Corps participants during the 4-year term of service prescribed by section 14098 of this title shall receive \$10,000 on account of each such participant at the completion of each such year of service, but—

(1) no such payment shall be made on account of service in any State or local police force—

(A) whose average size, in the year for which payment is to be made, not counting Police Corps participants assigned under section 14099¹ of this title, has declined more than 2 percent since January 1, 1993; or

(B) which has members who have been laid off but not retired; and

(2) no such payment shall be made on account of any Police Corps participant for years of service after the completion of the term of service prescribed in section 14098 of this title.

(Pub. L. 103-322, title XX, §200111, Sept. 13, 1994, 108 Stat. 2056.)

REFERENCES IN TEXT

Section 14099 of this title, referred to in par. (1)(A), was in the original "section 106", and was translated as reading "section 200110", meaning section 200110 of Pub. L. 103-322, to reflect the probable intent of Congress, because Pub. L. 103-322 does not contain a section 106, and section 14099 of this title relates to assignment of Police Corps participants.

¹ See References in Text note below.

§ 14101. Authorization of appropriations

There are authorized to be appropriated to carry out this part \$50,000,000 for fiscal year 1999, \$70,000,000 for fiscal year 2000, \$90,000,000 for fiscal year 2001, and \$90,000,000 for fiscal year 2002.

(Pub. L. 103-322, title XX, §200112, Sept. 13, 1994, 108 Stat. 2057; Pub. L. 105-277, div. C, title I, §138(b), Oct. 21, 1998, 112 Stat. 2681-597.)

AMENDMENTS

1998—Pub. L. 105-277 substituted "\$50,000,000 for fiscal year 1999, \$70,000,000 for fiscal year 2000, \$90,000,000 for fiscal year 2001, and \$90,000,000 for fiscal year 2002" for "\$20,000 for each of the fiscal years 1996 through 2000".

§ 14102. Reports to Congress

(a) In general

Not later than April 1 of each year, the Director shall submit a report to the Attorney General, the President, the Speaker of the House of Representatives, and the President of the Senate.

(b) Contents

A report under subsection (a) of this section shall—

(1) state the number of current and past participants in the Police Corps program, broken down according to the levels of educational study in which they are engaged and years of service they have served on police forces (including service following completion of the 4-year service obligation);

(2) describe the geographic, racial, and gender dispersion of participants in the Police Corps program; and

(3) describe the progress of the Police Corps program and make recommendations for changes in the program.

(Pub. L. 103-322, title XX, §200113, Sept. 13, 1994, 108 Stat. 2057.)

PART B—LAW ENFORCEMENT SCHOLARSHIP PROGRAM

§ 14111. Definitions

In this part—

"Director" means the Director of the Office of the Police Corps and Law Enforcement Education appointed under section 14093¹ of this title.

"educational expenses" means expenses that are directly attributable to—

(A) a course of education leading to the award of an associate degree;

(B) a course of education leading to the award of a baccalaureate degree; or

(C) a course of graduate study following award of a baccalaureate degree,

including the cost of tuition, fees, books, supplies, and related expenses.

"institution of higher education" has the meaning stated in the first sentence of section 1001 of title 20.

"law enforcement position" means employment as an officer in a State or local police force, or correctional institution.

¹ So in original. Section 14093 of this title does not provide for the appointment of a Director.

“State” means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.

(Pub. L. 103-322, title XX, §200202, Sept. 13, 1994, 108 Stat. 2057; Pub. L. 105-244, title I, §102(a)(13)(P), Oct. 7, 1998, 112 Stat. 1621.)

AMENDMENTS

1998—Pub. L. 105-244 substituted “section 1001” for “section 1141(a)” in par. defining “institution of higher education”.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of Title 20, Education.

SHORT TITLE

For short title of this part as the “Law Enforcement Scholarships and Recruitment Act”, see section 200201 of Pub. L. 103-322, set out as a note under section 13701 of this title.

§ 14112. Allotment

From amounts appropriated under section 14119 of this title, the Director shall allot—

- (1) 80 percent of such amounts to States on the basis of the number of law enforcement officers in each State compared to the number of law enforcement officers in all States; and
- (2) 20 percent of such amounts to States on the basis of the shortage of law enforcement personnel and the need for assistance under this part in the State compared to the shortage of law enforcement personnel and the need for assistance under this part in all States.

(Pub. L. 103-322, title XX, §200203, Sept. 13, 1994, 108 Stat. 2058.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14113, 14116 of this title.

§ 14113. Establishment of program

(a) Use of allotment

(1) In general

A State that receives an allotment pursuant to section 14112 of this title shall use the allotment to pay the Federal share of the costs of—

- (A) awarding scholarships to in-service law enforcement personnel to enable such personnel to seek further education; and
- (B) providing—
 - (i) full-time employment in summer; or
 - (ii) part-time (not to exceed 20 hours per week) employment for a period not to exceed 1 year.

(2) Employment

The employment described in paragraph (1)(B)—

- (A) shall be provided by State and local law enforcement agencies for students who are juniors or seniors in high school or are enrolled in an institution of higher education and who demonstrate an interest in undertaking a career in law enforcement;

(B) shall not be in a law enforcement position; and

(C) shall consist of performing meaningful tasks that inform students of the nature of the tasks performed by law enforcement agencies.

(b) Payments; Federal share; non-Federal share

(1) Payments

Subject to the availability of appropriations, the Director shall pay to each State that receives an allotment under section 14112 of this title the Federal share of the cost of the activities described in the application submitted pursuant to section 14116¹ of this title.

(2) Federal share

The Federal share shall not exceed 60 percent.

(3) Non-Federal share

The non-Federal share of the cost of scholarships and student employment provided under this part shall be supplied from sources other than the Federal Government.

(c) Responsibilities of Director

The Director shall be responsible for the administration of the programs conducted pursuant to this part and shall, in consultation with the Assistant Secretary for Postsecondary Education, issue rules to implement this part.

(d) Administrative expenses

A State that receives an allotment under section 14112 of this title may reserve not more than 8 percent of the allotment for administrative expenses.

(e) Special rule

A State that receives an allotment under section 14112 of this title shall ensure that each scholarship recipient under this part be compensated at the same rate of pay and benefits and enjoy the same rights under applicable agreements with labor organizations and under State and local law as other law enforcement personnel of the same rank and tenure in the office of which the scholarship recipient is a member.

(f) Supplementation of funding

Funds received under this part shall only be used to supplement, and not to supplant, Federal, State, or local efforts for recruitment and education of law enforcement personnel.

(Pub. L. 103-322, title XX, §200204, Sept. 13, 1994, 108 Stat. 2058.)

REFERENCES IN TEXT

Section 14116 of this title, referred to in subsec. (b)(1), was in the original “section 200203”, and was translated as reading “section 200207”, meaning section 200207 of Pub. L. 103-322, to reflect the probable intent of Congress, because section 200203 of Pub. L. 103-322, which is classified to section 14112 of this title, does not provide for submission of applications, and section 14116 does so provide.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14119 of this title.

¹ See References in Text note below.

§ 14114. Scholarships**(a) Period of award**

Scholarships awarded under this part shall be for a period of 1 academic year.

(b) Use of scholarships

Each individual awarded a scholarship under this part may use the scholarship for educational expenses at an institution of higher education.

(Pub. L. 103-322, title XX, §200205, Sept. 13, 1994, 108 Stat. 2059.)

§ 14115. Eligibility**(a) Scholarships**

A person shall be eligible to receive a scholarship under this part if the person has been employed in law enforcement for the 2-year period immediately preceding the date on which assistance is sought.

(b) Ineligibility for student employment

A person who has been employed as a law enforcement officer is ineligible to participate in a student employment program carried out under this part.

(Pub. L. 103-322, title XX, §200206, Sept. 13, 1994, 108 Stat. 2059.)

§ 14116. State application**(a) In general**

Each State desiring an allotment under section 14112 of this title shall submit an application to the Director at such time, in such manner, and accompanied by such information as the Director may reasonably require.

(b) Contents

An application under subsection (a) of this section shall—

(1) describe the scholarship program and the student employment program for which assistance under this part is sought;

(2) contain assurances that the lead agency will work in cooperation with the local law enforcement liaisons, representatives of police labor organizations and police management organizations, and other appropriate State and local agencies to develop and implement inter-agency agreements designed to carry out this part;

(3) contain assurances that the State will advertise the scholarship assistance and student employment it will provide under this part and that the State will use such programs to enhance recruitment efforts;

(4) contain assurances that the State will screen and select law enforcement personnel for participation in the scholarship program under this part;

(5) contain assurances that under such student employment program the State will screen and select, for participation in such program, students who have an interest in undertaking a career in law enforcement;

(6) contain assurances that under such scholarship program the State will make scholarship payments to institutions of higher education on behalf of persons who receive scholarships under this part;

(7) with respect to such student employment program, identify—

(A) the employment tasks that students will be assigned to perform;

(B) the compensation that students will be paid to perform such tasks; and

(C) the training that students will receive as part of their participation in the program;

(8) identify model curriculum and existing programs designed to meet the educational and professional needs of law enforcement personnel; and

(9) contain assurances that the State will promote cooperative agreements with educational and law enforcement agencies to enhance law enforcement personnel recruitment efforts in institutions of higher education.

(Pub. L. 103-322, title XX, §200207, Sept. 13, 1994, 108 Stat. 2059.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14113 of this title.

§ 14117. Local application**(a) In general**

A person who desires a scholarship or employment under this part shall submit an application to the State at such time, in such manner, and accompanied by such information as the State may reasonably require.

(b) Contents

An application under subsection (a) of this section shall describe—

(1) the academic courses for which a scholarship is sought; or

(2) the location and duration of employment that is sought.

(c) Priority

In awarding scholarships and providing student employment under this part, each State shall give priority to applications from persons who are—

(1) members of racial, ethnic, or gender groups whose representation in the law enforcement agencies within the State is substantially less than in the population eligible for employment in law enforcement in the State;

(2) pursuing an undergraduate degree; and

(3) not receiving financial assistance under the Higher Education Act of 1965 [20 U.S.C. 1001 et seq.].

(Pub. L. 103-322, title XX, §200208, Sept. 13, 1994, 108 Stat. 2060.)

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in subsec. (c)(3), is Pub. L. 89-329, Nov. 8, 1965, 79 Stat. 1219, as amended, which is classified principally to chapter 28 (§1001 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

§ 14118. Scholarship agreement**(a) In general**

A person who receives a scholarship under this part shall enter into an agreement with the Director.

(b) Contents

An agreement described in subsection (a) of this section shall—

(1) provide assurances that the scholarship recipient will work in a law enforcement position in the State that awarded the scholarship in accordance with the service obligation described in subsection (c) of this section after completion of the scholarship recipient's academic courses leading to an associate, bachelor, or graduate degree;

(2) provide assurances that the scholarship recipient will repay the entire scholarship in accordance with such terms and conditions as the Director shall prescribe if the requirements of the agreement are not complied with, unless the scholarship recipient—

(A) dies;

(B) becomes physically or emotionally disabled, as established by the sworn affidavit of a qualified physician; or

(C) has been discharged in bankruptcy; and

(3) set forth the terms and conditions under which the scholarship recipient may seek employment in the field of law enforcement in a State other than the State that awarded the scholarship.

(c) Service obligation**(1) In general**

Except as provided in paragraph (2), a person who receives a scholarship under this part shall work in a law enforcement position in the State that awarded the scholarship for a period of 1 month for each credit hour for which funds are received under the scholarship.

(2) Special rule

For purposes of satisfying the requirement of paragraph (1), a scholarship recipient shall work in a law enforcement position in the State that awarded the scholarship for not less than 6 months but shall not be required to work in such a position for more than 2 years.

(Pub. L. 103-322, title XX, §200209, Sept. 13, 1994, 108 Stat. 2060.)

§ 14119. Authorization of appropriations**(a) General authorization of appropriations**

There are authorized to be appropriated to carry out this part—

(1) \$20,000,000 for fiscal year 1996;

(2) \$20,000,000 for fiscal year 1997;

(3) \$20,000,000 for fiscal year 1998;

(4) \$20,000,000 for fiscal year 1999; and

(5) \$20,000,000 for fiscal year 2000.

(b) Uses of funds

Of the funds appropriated under subsection (a) of this section for a fiscal year—

(1) 80 percent shall be available to provide scholarships described in section 14113(a)(1)(A) of this title; and

(2) 20 percent shall be available to provide employment described in sections 14113(a)(1)(B) and 14113(a)(2) of this title.

(Pub. L. 103-322, title XX, §200210, Sept. 13, 1994, 108 Stat. 2061.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14112 of this title.

SUBCHAPTER IX—STATE AND LOCAL LAW ENFORCEMENT

PART A—DNA IDENTIFICATION

§ 14131. Quality assurance and proficiency testing standards**(a) Publication of quality assurance and proficiency testing standards**

(1)(A) Not later than 180 days after September 13, 1994, the Director of the Federal Bureau of Investigation shall appoint an advisory board on DNA quality assurance methods from among nominations proposed by the head of the National Academy of Sciences and professional societies of crime laboratory officials.

(B) The advisory board shall include as members scientists from State, local, and private forensic laboratories, molecular geneticists and population geneticists not affiliated with a forensic laboratory, and a representative from the National Institute of Standards and Technology.

(C) The advisory board shall develop, and if appropriate, periodically revise, recommended standards for quality assurance, including standards for testing the proficiency of forensic laboratories, and forensic analysts, in conducting analyses of DNA.

(2) The Director of the Federal Bureau of Investigation, after taking into consideration such recommended standards, shall issue (and revise from time to time) standards for quality assurance, including standards for testing the proficiency of forensic laboratories, and forensic analysts, in conducting analyses of DNA.

(3) The standards described in paragraphs (1) and (2) shall specify criteria for quality assurance and proficiency tests to be applied to the various types of DNA analyses used by forensic laboratories. The standards shall also include a system for grading proficiency testing performance to determine whether a laboratory is performing acceptably.

(4) Until such time as the advisory board has made recommendations to the Director of the Federal Bureau of Investigation and the Director has acted upon those recommendations, the quality assurance guidelines adopted by the technical working group on DNA analysis methods shall be deemed the Director's standards for purposes of this section.

(b) Administration of advisory board

(1) For administrative purposes, the advisory board appointed under subsection (a) of this section shall be considered an advisory board to the Director of the Federal Bureau of Investigation.

(2) Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply with respect to the advisory board appointed under subsection (a) of this section.

(3) The DNA advisory board established under this section shall be separate and distinct from any other advisory board administered by the FBI, and is to be administered separately.

(4) The board shall cease to exist on the date 5 years after the initial appointments are made

to the board, unless the existence of the board is extended by the Director of the Federal Bureau of Investigation.

(c) Proficiency testing program

(1) Not later than 1 year after the effective date of this Act,¹ the Director of the National Institute of Justice shall certify to the Committees on the Judiciary of the House and Senate that—

(A) the Institute has entered into a contract with, or made a grant to, an appropriate entity for establishing, or has taken other appropriate action to ensure that there is established, not later than 2 years after September 13, 1994, a blind external proficiency testing program for DNA analyses, which shall be available to public and private laboratories performing forensic DNA analyses;

(B) a blind external proficiency testing program for DNA analyses is already readily available to public and private laboratories performing forensic DNA analyses; or

(C) it is not feasible to have blind external testing for DNA forensic analyses.

(2) As used in this subsection, the term “blind external proficiency test” means a test that is presented to a forensic laboratory through a second agency and appears to the analysts to involve routine evidence.

(3) Notwithstanding any other provision of law, the Attorney General shall make available to the Director of the National Institute of Justice during the first fiscal year in which funds are distributed under this subtitle up to \$250,000 from the funds available under part X of Title I of the Omnibus Crime Control and Safe Streets Act of 1968 [42 U.S.C. 3796kk et seq.] to carry out this subsection.

(Pub. L. 103-322, title XXI, § 210303, Sept. 13, 1994, 108 Stat. 2068.)

REFERENCES IN TEXT

Section 14 of the Federal Advisory Committee Act, referred to in subsec. (b)(2), is section 14 of Pub. L. 92-463, which is set out in the Appendix to Title 5, Government Organization and Employees.

The effective date of this Act, referred to in subsec. (c)(1), probably means the date of enactment of Pub. L. 103-322, which was approved Sept. 13, 1994.

This subtitle, referred to in subsec. (c)(3), is subtitle C (§§ 210301-210306) of title XXI of Pub. L. 103-322, Sept. 13, 1994, 108 Stat. 2065, known as the DNA Identification Act of 1994, which enacted this part and sections 3796kk to 3796kk-6 of this title, amended sections 3751, 3753, 3793, and 3797 of this title, and enacted provisions set out as notes under sections 3751 and 13701 of this title. For complete classification of this subtitle to the Code, see Short Title note set out under section 13701 of this title and Tables.

The Omnibus Crime Control and Safe Streets Act of 1968, referred to in subsec. (c)(3), is Pub. L. 90-351, June 19, 1968, 82 Stat. 197, as amended. Part X of title I of the Act is classified generally to subchapter XII-L (§ 3796kk et seq.) of chapter 46 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3711 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3753, 3796kk-2, 14132, 14133, 14134, 14214 of this title.

¹ See References in Text note below.

§ 14132. Index to facilitate law enforcement exchange of DNA identification information

(a) Establishment of index

The Director of the Federal Bureau of Investigation may establish an index of—

(1) DNA identification records of persons convicted of crimes;

(2) analyses of DNA samples recovered from crime scenes;

(3) analyses of DNA samples recovered from unidentified human remains; and

(4) analyses of DNA samples voluntarily contributed from relatives of missing persons.

(b) Information

The index described in subsection (a) of this section shall include only information on DNA identification records and DNA analyses that are—

(1) based on analyses performed by or on behalf of a criminal justice agency (or the Secretary of Defense in accordance with section 1565 of title 10) in accordance with publicly available standards that satisfy or exceed the guidelines for a quality assurance program for DNA analysis, issued by the Director of the Federal Bureau of Investigation under section 14131 of this title;

(2) prepared by laboratories, and DNA analysts, that undergo semiannual external proficiency testing by a DNA proficiency testing program meeting the standards issued under section 14131 of this title; and

(3) maintained by Federal, State, and local criminal justice agencies (or the Secretary of Defense in accordance with section 1565 of title 10) pursuant to rules that allow disclosure of stored DNA samples and DNA analyses only—

(A) to criminal justice agencies for law enforcement identification purposes;

(B) in judicial proceedings, if otherwise admissible pursuant to applicable statutes or rules;

(C) for criminal defense purposes, to a defendant, who shall have access to samples and analyses performed in connection with the case in which such defendant is charged; or

(D) if personally identifiable information is removed, for a population statistics database, for identification research and protocol development purposes, or for quality control purposes.

(c) Failure to comply

Access to the index established by this section is subject to cancellation if the quality control and privacy requirements described in subsection (b) of this section are not met.

(d) Expungement of records

(1) By Director

(A) The Director of the Federal Bureau of Investigation shall promptly expunge from the index described in subsection (a) of this section the DNA analysis of a person included in the index on the basis of a qualifying Federal offense or a qualifying District of Columbia offense (as determined under sections 14135a and 14135b of this title, respectively) if the Direc-

tor receives, for each conviction of the person of a qualifying offense, a certified copy of a final court order establishing that such conviction has been overturned.

(B) For purposes of subparagraph (A), the term “qualifying offense” means any of the following offenses:

- (i) A qualifying Federal offense, as determined under section 14135a of this title.
- (ii) A qualifying District of Columbia offense, as determined under section 14135b of this title.
- (iii) A qualifying military offense, as determined under section 1565 of title 10.

(C) For purposes of subparagraph (A), a court order is not “final” if time remains for an appeal or application for discretionary review with respect to the order.

(2) By States

(A) As a condition of access to the index described in subsection (a) of this section, a State shall promptly expunge from that index the DNA analysis of a person included in the index by that State if the responsible agency or official of that State receives, for each conviction of the person of an offense on the basis of which that analysis was or could have been included in the index, a certified copy of a final court order establishing that such conviction has been overturned.

(B) For purposes of subparagraph (A), a court order is not “final” if time remains for an appeal or application for discretionary review with respect to the order.

(Pub. L. 103-322, title XXI, § 210304, Sept. 13, 1994, 108 Stat. 2069; Pub. L. 106-113, div. B, § 1000(a)(1) [title I, § 120], Nov. 29, 1999, 113 Stat. 1535, 1501A-23; Pub. L. 106-546, § 6(b), Dec. 19, 2000, 114 Stat. 2733.)

AMENDMENTS

2000—Subsec. (b)(1). Pub. L. 106-546, § 6(b)(1), inserted “(or the Secretary of Defense in accordance with section 1565 of title 10)” after “criminal justice agency”.

Subsec. (b)(2). Pub. L. 106-546, § 6(b)(2), substituted “semiannual” for “, at regular intervals of not to exceed 180 days,”.

Subsec. (b)(3). Pub. L. 106-546, § 6(b)(3), inserted “(or the Secretary of Defense in accordance with section 1565 of title 10)” after “criminal justice agencies” in introductory provisions.

Subsec. (d). Pub. L. 106-546, § 6(b)(4), added subsec. (d).
1999—Subsec. (a)(4). Pub. L. 106-113 added par. (4).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14134, 14135, 14135e, 14214 of this title; title 10 section 1565.

§ 14133. Federal Bureau of Investigation

(a) Proficiency testing requirements

(1) Generally

(A) Personnel at the Federal Bureau of Investigation who perform DNA analyses shall undergo semiannual external proficiency testing by a DNA proficiency testing program meeting the standards issued under section 14131 of this title.

(B) Within 1 year after September 13, 1994, the Director of the Federal Bureau of Investigation shall arrange for periodic blind exter-

nal tests to determine the proficiency of DNA analysis performed at the Federal Bureau of Investigation laboratory.

(C) In this paragraph, “blind external test” means a test that is presented to the laboratory through a second agency and appears to the analysts to involve routine evidence.

(2) Report

For 5 years after September 13, 1994, the Director of the Federal Bureau of Investigation shall submit to the Committees on the Judiciary of the House and Senate an annual report on the results of each of the tests described in paragraph (1).

(b) Privacy protection standards

(1) Generally

Except as provided in paragraph (2), the results of DNA tests performed for a Federal law enforcement agency for law enforcement purposes may be disclosed only—

(A) to criminal justice agencies for law enforcement identification purposes;

(B) in judicial proceedings, if otherwise admissible pursuant to applicable statutes¹ or rules; and

(C) for criminal defense purposes, to a defendant, who shall have access to samples and analyses performed in connection with the case in which such defendant is charged.

(2) Exception

If personally identifiable information is removed, test results may be disclosed for a population statistics database, for identification research and protocol development purposes, or for quality control purposes.

(c) Criminal penalty

(1) A person who—

(A) by virtue of employment or official position, has possession of, or access to, individually identifiable DNA information indexed in a database created or maintained by any Federal law enforcement agency; and

(B) knowingly discloses such information in any manner to any person or agency not authorized to receive it,

shall be fined not more than \$100,000.

(2) A person who, without authorization, knowingly obtains DNA samples or individually identifiable DNA information indexed in a database created or maintained by any Federal law enforcement agency shall be fined not more than \$100,000.

(Pub. L. 103-322, title XXI, § 210305, Sept. 13, 1994, 108 Stat. 2070; Pub. L. 106-546, § 8(c), Dec. 19, 2000, 114 Stat. 2735.)

AMENDMENTS

2000—Subsec. (a)(1)(A). Pub. L. 106-546 substituted “semiannual” for “, at regular intervals of not to exceed 180 days,”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14134, 14214 of this title.

¹ So in original. Probably should be “statutes”.

§ 14134. Authorization of appropriations

There are authorized to be appropriated to the Federal Bureau of Investigation to carry out sections 14131, 14132, and 14133 of this title—

- (1) \$5,500,000 for fiscal year 1996;
- (2) \$8,000,000 for fiscal year 1997;
- (3) \$8,000,000 for fiscal year 1998;
- (4) \$2,500,000 for fiscal year 1999; and
- (5) \$1,000,000 for fiscal year 2000.

(Pub. L. 103-322, title XXI, § 210306, Sept. 13, 1994, 108 Stat. 2071.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 14135. Authorization of grants

(a) Authorization of grants

The Attorney General may make grants to eligible States for use by the State for the following purposes:

- (1) To carry out, for inclusion in the Combined DNA Index System of the Federal Bureau of Investigation, DNA analyses of samples taken from individuals convicted of a qualifying State offense (as determined under subsection (b)(3) of this section).
- (2) To carry out, for inclusion in such Combined DNA Index System, DNA analyses of samples from crime scenes.
- (3) To increase the capacity of laboratories owned by the State or by units of local government within the State to carry out DNA analyses of samples specified in paragraph (2).

(b) Eligibility

For a State to be eligible to receive a grant under this section, the chief executive officer of the State shall submit to the Attorney General an application in such form and containing such information as the Attorney General may require. The application shall—

- (1) provide assurances that the State has implemented, or will implement not later than 120 days after the date of such application, a comprehensive plan for the expeditious DNA analysis of samples in accordance with this section;
- (2) include a certification that each DNA analysis carried out under the plan shall be maintained pursuant to the privacy requirements described in section 14132(b)(3) of this title;
- (3) include a certification that the State has determined, by statute, rule, or regulation, those offenses under State law that shall be treated for purposes of this section as qualifying State offenses;
- (4) specify the allocation that the State shall make, in using grant amounts to carry out DNA analyses of samples, as between samples specified in subsection (a)(1) of this section and samples specified in subsection (a)(2) of this section; and
- (5) specify that portion of grant amounts that the State shall use for the purpose specified in subsection (a)(3) of this section.

(c) Crimes without suspects

A State that proposes to allocate grant amounts under paragraph (4) or (5) of subsection

(b) of this section for the purposes specified in paragraph (2) or (3) of subsection (a) of this section shall use such allocated amounts to conduct or facilitate DNA analyses of those samples that relate to crimes in connection with which there are no suspects.

(d) Analysis of samples

(1) In general

The plan shall require that, except as provided in paragraph (3), each DNA analysis be carried out in a laboratory that satisfies quality assurance standards and is—

- (A) operated by the State or a unit of local government within the State; or
- (B) operated by a private entity pursuant to a contract with the State or a unit of local government within the State.

(2) Quality assurance standards

(A) The Director of the Federal Bureau of Investigation shall maintain and make available to States a description of quality assurance protocols and practices that the Director considers adequate to assure the quality of a forensic laboratory.

(B) For purposes of this section, a laboratory satisfies quality assurance standards if the laboratory satisfies the quality control requirements described in paragraphs (1) and (2) of section 14132(b) of this title.

(3) Use of vouchers for certain purposes

A grant for the purposes specified in paragraph (1) or (2) of subsection (a) of this section may be made in the form of a voucher for laboratory services, which may be redeemed at a laboratory operated by a private entity approved by the Attorney General that satisfies quality assurance standards. The Attorney General may make payment to such a laboratory for the analysis of DNA samples using amounts authorized for those purposes under subsection (j) of this section.

(e) Restrictions on use of funds

(1) Nonsupplanting

Funds made available pursuant to this section shall not be used to supplant State funds, but shall be used to increase the amount of funds that would, in the absence of Federal funds, be made available from State sources for the purposes of this Act.

(2) Administrative costs

A State may not use more than 3 percent of the funds it receives from this section for administrative expenses.

(f) Reports to the Attorney General

Each State which receives a grant under this section shall submit to the Attorney General, for each year in which funds from a grant received under this section is expended, a report at such time and in such manner as the Attorney General may reasonably require, which contains—

- (1) a summary of the activities carried out under the grant and an assessment of whether such activities are meeting the needs identified in the application; and
- (2) such other information as the Attorney General may require.

(g) Reports to Congress

Not later than 90 days after the end of each fiscal year for which grants are made under this section, the Attorney General shall submit to the Congress a report that includes—

(1) the aggregate amount of grants made under this section to each State for such fiscal year; and

(2) a summary of the information provided by States receiving grants under this section.

(h) Expenditure records**(1) In general**

Each State which receives a grant under this section shall keep records as the Attorney General may require to facilitate an effective audit of the receipt and use of grant funds received under this section.

(2) Access

Each State which receives a grant under this section shall make available, for the purpose of audit and examination, such records as are related to the receipt or use of any such grant.

(i) Definition

For purposes of this section, the term “State” means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

(j) Authorization of appropriations

Amounts are authorized to be appropriated to the Attorney General for grants under subsection (a) of this section as follows:

(1) For grants for the purposes specified in paragraph (1) of such subsection—

- (A) \$15,000,000 for fiscal year 2001;
- (B) \$15,000,000 for fiscal year 2002; and
- (C) \$15,000,000 for fiscal year 2003.

(2) For grants for the purposes specified in paragraphs (2) and (3) of such subsection—

- (A) \$25,000,000 for fiscal year 2001;
- (B) \$50,000,000 for fiscal year 2002;
- (C) \$25,000,000 for fiscal year 2003; and
- (D) \$25,000,000 for fiscal year 2004.

(Pub. L. 106-546, § 2, Dec. 19, 2000, 114 Stat. 2726.)

REFERENCES IN TEXT

This Act, referred to in subsec. (e)(1), is Pub. L. 106-546, Dec. 19, 2000, 114 Stat. 2726, known as the DNA Analysis Backlog Elimination Act of 2000. For complete classification of this Act to the Code, see Short Title of 2000 Amendments note set out under section 13701 of this title and Tables.

CODIFICATION

Section was enacted as part of the DNA Analysis Backlog Elimination Act of 2000, and not as part of the Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

SENSE OF CONGRESS REGARDING THE OBLIGATION OF GRANTEE STATES TO ENSURE ACCESS TO POST-CONVICTION DNA TESTING AND COMPETENT COUNSEL IN CAPITAL CASES

Pub. L. 106-561, § 4, Dec. 21, 2000, 114 Stat. 2791, provided that:

“(a) FINDINGS.—Congress finds that—

“(1) over the past decade, deoxyribonucleic acid testing (referred to in this section as ‘DNA testing’)

has emerged as the most reliable forensic technique for identifying criminals when biological material is left at a crime scene;

“(2) because of its scientific precision, DNA testing can, in some cases, conclusively establish the guilt or innocence of a criminal defendant;

“(3) in other cases, DNA testing may not conclusively establish guilt or innocence, but may have significant probative value to a finder of fact;

“(4) DNA testing was not widely available in cases tried prior to 1994;

“(5) new forensic DNA testing procedures have made it possible to get results from minute samples that could not previously be tested, and to obtain more informative and accurate results than earlier forms of forensic DNA testing could produce, resulting in some cases of convicted inmates being exonerated by new DNA tests after earlier tests had failed to produce definitive results;

“(6) DNA testing can and has resulted in the post-conviction exoneration of more than 75 innocent men and women, including some under sentence of death;

“(7) in more than a dozen cases, post-conviction DNA testing that has exonerated an innocent person has also enhanced public safety by providing evidence that led to the apprehension of the actual perpetrator;

“(8) experience has shown that it is not unduly burdensome to make DNA testing available to inmates in appropriate cases;

“(9) under current Federal and State law, it is difficult to obtain post-conviction DNA testing because of time limits on introducing newly discovered evidence;

“(10) the National Commission on the Future of DNA Evidence, a Federal panel established by the Department of Justice and comprised of law enforcement, judicial, and scientific experts, has urged that post-conviction DNA testing be permitted in the relatively small number of cases in which it is appropriate, notwithstanding procedural rules that could be invoked to preclude such testing, and notwithstanding the inability of an inmate to pay for the testing;

“(11) only a few States have adopted post-conviction DNA testing procedures;

“(12) States have received millions of dollars in DNA-related grants, and more funding is needed to improve State forensic facilities and to reduce the nationwide backlog of DNA samples from convicted offenders and crime scenes that need to be tested or retested using upgraded methods;

“(13) States that accept such financial assistance should not deny the promise of truth and justice for both sides of our adversarial system that DNA testing offers;

“(14) post-conviction DNA testing and other post-conviction investigative techniques have shown that innocent people have been sentenced to death in this country;

“(15) a constitutional error in capital cases is incompetent defense lawyers who fail to present important evidence that the defendant may have been innocent or does not deserve to be sentenced to death; and

“(16) providing quality representation to defendants facing loss of liberty or life is essential to fundamental due process and the speedy final resolution of judicial proceedings.

“(b) SENSE OF CONGRESS.—It is the sense of Congress that—

“(1) Congress should condition forensic science-related grants to a State or State forensic facility on the State’s agreement to ensure post-conviction DNA testing in appropriate cases; and

“(2) Congress should work with the States to improve the quality of legal representation in capital cases through the establishment of standards that will assure the timely appointment of competent counsel with adequate resources to represent defendants in capital cases at each stage of the proceedings.”

Pub. L. 106-546, §11, Dec. 19, 2000, 114 Stat. 2735, enacted provisions substantially identical to those enacted by Pub. L. 106-561, §4, set out above.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14135e of this title.

§ 14135a. Collection and use of DNA identification information from certain Federal offenders

(a) Collection of DNA samples

(1) From individuals in custody

The Director of the Bureau of Prisons shall collect a DNA sample from each individual in the custody of the Bureau of Prisons who is, or has been, convicted of a qualifying Federal offense (as determined under subsection (d) of this section) or a qualifying military offense, as determined under section 1565 of title 10.

(2) From individuals on release, parole, or probation

The probation office responsible for the supervision under Federal law of an individual on probation, parole, or supervised release shall collect a DNA sample from each such individual who is, or has been, convicted of a qualifying Federal offense (as determined under subsection (d) of this section) or a qualifying military offense, as determined under section 1565 of title 10.

(3) Individuals already in CODIS

For each individual described in paragraph (1) or (2), if the Combined DNA Index System (in this section referred to as "CODIS") of the Federal Bureau of Investigation contains a DNA analysis with respect to that individual, or if a DNA sample has been collected from that individual under section 1565 of title 10, the Director of the Bureau of Prisons or the probation office responsible (as applicable) may (but need not) collect a DNA sample from that individual.

(4) Collection procedures

(A) The Director of the Bureau of Prisons or the probation office responsible (as applicable) may use or authorize the use of such means as are reasonably necessary to detain, restrain, and collect a DNA sample from an individual who refuses to cooperate in the collection of the sample.

(B) The Director of the Bureau of Prisons or the probation office, as appropriate, may enter into agreements with units of State or local government or with private entities to provide for the collection of the samples described in paragraph (1) or (2).

(5) Criminal penalty

An individual from whom the collection of a DNA sample is authorized under this subsection who fails to cooperate in the collection of that sample shall be—

- (A) guilty of a class A misdemeanor; and
- (B) punished in accordance with title 18.

(b) Analysis and use of samples

The Director of the Bureau of Prisons or the probation office responsible (as applicable) shall

furnish each DNA sample collected under subsection (a) of this section to the Director of the Federal Bureau of Investigation, who shall carry out a DNA analysis on each such DNA sample and include the results in CODIS.

(c) Definitions

In this section:

(1) The term "DNA sample" means a tissue, fluid, or other bodily sample of an individual on which a DNA analysis can be carried out.

(2) The term "DNA analysis" means analysis of the deoxyribonucleic acid (DNA) identification information in a bodily sample.

(d) Qualifying Federal offenses

(1) The offenses that shall be treated for purposes of this section as qualifying Federal offenses are the following offenses under title 18, as determined by the Attorney General:

(A) Murder (as described in section 1111 of such title), voluntary manslaughter (as described in section 1112 of such title), or other offense relating to homicide (as described in chapter 51 of such title, sections 1113, 1114, 1116, 1118, 1119, 1120, and 1121).

(B) An offense relating to sexual abuse (as described in chapter 109A of such title, sections 2241 through 2245), to sexual exploitation or other abuse of children (as described in chapter 110 of such title, sections 2251 through 2252), or to transportation for illegal sexual activity (as described in chapter 117 of such title, sections 2421, 2422, 2423, and 2425).

(C) An offense relating to peonage and slavery (as described in chapter 77 of such title).

(D) Kidnapping (as defined in section 3559(c)(2)(E) of such title).

(E) An offense involving robbery or burglary (as described in chapter 103 of such title, sections 2111 through 2114, 2116, and 2118 through 2119).

(F) Any violation of section 1153 involving murder, manslaughter, kidnapping, maiming, a felony offense relating to sexual abuse (as described in chapter 109A), incest, arson, burglary, or robbery.

(G) Any attempt or conspiracy to commit any of the above offenses.

(2) In addition to the offenses described in paragraph (1), the following offenses shall be treated for purposes of this section as qualifying Federal offenses, as determined by the Attorney General:

(A) Any offense listed in section 2332b(g)(5)(B) of title 18.

(B) Any crime of violence (as defined in section 16 of title 18).

(C) Any attempt or conspiracy to commit any of the above offenses.

(e) Regulations

(1) In general

Except as provided in paragraph (2), this section shall be carried out under regulations prescribed by the Attorney General.

(2) Probation officers

The Director of the Administrative Office of the United States Courts shall make available model procedures for the activities of probation officers in carrying out this section.

(f) Commencement of collection

Collection of DNA samples under subsection (a) of this section shall, subject to the availability of appropriations, commence not later than the date that is 180 days after December 19, 2000.

(Pub. L. 106-546, §3, Dec. 19, 2000, 114 Stat. 2728; Pub. L. 107-56, title V, §503, Oct. 26, 2001, 115 Stat. 364.)

CODIFICATION

Section was enacted as part of the DNA Analysis Backlog Elimination Act of 2000, and not as part of the Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

AMENDMENTS

2001—Subsec. (d)(2). Pub. L. 107-56 amended par. (2) generally. Prior to amendment, par. (2) read as follows: “The initial determination of qualifying Federal offenses shall be made not later than 120 days after December 19, 2000.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14132, 14135c, 14135e of this title; title 10 section 1565; title 18 sections 3563, 3583, 4209.

§ 14135b. Collection and use of DNA identification information from certain District of Columbia offenders**(a) Collection of DNA samples****(1) From individuals in custody**

The Director of the Bureau of Prisons shall collect a DNA sample from each individual in the custody of the Bureau of Prisons who is, or has been, convicted of a qualifying District of Columbia offense (as determined under subsection (d) of this section).

(2) From individuals on release, parole, or probation

The Director of the Court Services and Offender Supervision Agency for the District of Columbia shall collect a DNA sample from each individual under the supervision of the Agency who is on supervised release, parole, or probation who is, or has been, convicted of a qualifying District of Columbia offense (as determined under subsection (d) of this section).

(3) Individuals already in CODIS

For each individual described in paragraph (1) or (2), if the Combined DNA Index System (in this section referred to as “CODIS”) of the Federal Bureau of Investigation contains a DNA analysis with respect to that individual, the Director of the Bureau of Prisons or Agency (as applicable) may (but need not) collect a DNA sample from that individual.

(4) Collection procedures

(A) The Director of the Bureau of Prisons or Agency (as applicable) may use or authorize the use of such means as are reasonably necessary to detain, restrain, and collect a DNA sample from an individual who refuses to cooperate in the collection of the sample.

(B) The Director of the Bureau of Prisons or Agency, as appropriate, may enter into agreements with units of State or local government or with private entities to provide for the collection of the samples described in paragraph (1) or (2).

(5) Criminal penalty

An individual from whom the collection of a DNA sample is authorized under this subsection who fails to cooperate in the collection of that sample shall be—

- (A) guilty of a class A misdemeanor; and
- (B) punished in accordance with title 18.

(b) Analysis and use of samples

The Director of the Bureau of Prisons or Agency (as applicable) shall furnish each DNA sample collected under subsection (a) of this section to the Director of the Federal Bureau of Investigation, who shall carry out a DNA analysis on each such DNA sample and include the results in CODIS.

(c) Definitions

In this section:

- (1) The term “DNA sample” means a tissue, fluid, or other bodily sample of an individual on which a DNA analysis can be carried out.
- (2) The term “DNA analysis” means analysis of the deoxyribonucleic acid (DNA) identification information in a bodily sample.

(d) Qualifying District of Columbia offenses

The government of the District of Columbia may determine those offenses under the District of Columbia Code that shall be treated for purposes of this section as qualifying District of Columbia offenses.

(e) Commencement of collection

Collection of DNA samples under subsection (a) of this section shall, subject to the availability of appropriations, commence not later than the date that is 180 days after December 19, 2000.

(f) Authorization of appropriations

There are authorized to be appropriated to the Court Services and Offender Supervision Agency for the District of Columbia to carry out this section such sums as may be necessary for each of fiscal years 2001 through 2005.

(Pub. L. 106-546, §4, Dec. 19, 2000, 114 Stat. 2730.)

CODIFICATION

Section was enacted as part of the DNA Analysis Backlog Elimination Act of 2000, and not as part of the Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14132, 14135c, 14135e of this title; title 10 section 1565; title 18 section 4209.

§ 14135c. Conditions of release generally

If the collection of a DNA sample from an individual on probation, parole, or supervised release is authorized pursuant to section 14135a or 14135b of this title or section 1565 of title 10, the individual shall cooperate in the collection of a DNA sample as a condition of that probation, parole, or supervised release.

(Pub. L. 106-546, §7(d), Dec. 19, 2000, 114 Stat. 2734.)

CODIFICATION

Section was enacted as part of the DNA Analysis Backlog Elimination Act of 2000, and not as part of the

Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

§ 14135d. Authorization of appropriations

There are authorized to be appropriated to the Attorney General to carry out this Act (including to reimburse the Federal judiciary for any reasonable costs incurred in implementing such Act, as determined by the Attorney General) such sums as may be necessary.

(Pub. L. 106-546, §9, Dec. 19, 2000, 114 Stat. 2735.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 106-546, Dec. 19, 2000, 114 Stat. 2726, known as the DNA Analysis Backlog Elimination Act of 2000. For complete classification of this Act to the Code, see Short Title of 2000 Amendments note set out under section 13701 of this title and Tables.

CODIFICATION

Section was enacted as part of the DNA Analysis Backlog Elimination Act of 2000, and not as part of the Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

§ 14135e. Privacy protection standards

(a) In general

Except as provided in subsection (b) of this section, any sample collected under, or any result of any analysis carried out under, section 14135, 14135a, or 14135b of this title may be used only for a purpose specified in such section.

(b) Permissive uses

A sample or result described in subsection (a) of this section may be disclosed under the circumstances under which disclosure of information included in the Combined DNA Index System is allowed, as specified in subparagraphs (A) through (D) of section 14132(b)(3) of this title.

(c) Criminal penalty

A person who knowingly—

(1) discloses a sample or result described in subsection (a) of this section in any manner to any person not authorized to receive it; or

(2) obtains, without authorization, a sample or result described in subsection (a) of this section,

shall be fined not more than \$100,000.

(Pub. L. 106-546, §10, Dec. 19, 2000, 114 Stat. 2735.)

CODIFICATION

Section was enacted as part of the DNA Analysis Backlog Elimination Act of 2000, and not as part of the Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

PART B—POLICE PATTERN OR PRACTICE

§ 14141. Cause of action

(a) Unlawful conduct

It shall be unlawful for any governmental authority, or any agent thereof, or any person acting on behalf of a governmental authority, to engage in a pattern or practice of conduct by law enforcement officers or by officials or employees of any governmental agency with responsibility for the administration of juvenile justice or the incarceration of juveniles that de-

prives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.

(b) Civil action by Attorney General

Whenever the Attorney General has reasonable cause to believe that a violation of paragraph (1)¹ has occurred, the Attorney General, for or in the name of the United States, may in a civil action obtain appropriate equitable and declaratory relief to eliminate the pattern or practice.

(Pub. L. 103-322, title XXI, §210401, Sept. 13, 1994, 108 Stat. 2071.)

§ 14142. Data on use of excessive force

(a) Attorney General to collect

The Attorney General shall, through appropriate means, acquire data about the use of excessive force by law enforcement officers.

(b) Limitation on use of data

Data acquired under this section shall be used only for research or statistical purposes and may not contain any information that may reveal the identity of the victim or any law enforcement officer.

(c) Annual summary

The Attorney General shall publish an annual summary of the data acquired under this section.

(Pub. L. 103-322, title XXI, §210402, Sept. 13, 1994, 108 Stat. 2071.)

PART C—IMPROVED TRAINING AND TECHNICAL AUTOMATION

§ 14151. Improved training and technical automation

(a) Grants

(1) In general

The Attorney General shall, subject to the availability of appropriations, make grants to State, Indian tribal, and local criminal justice agencies and to nonprofit organizations for the purposes of improving criminal justice agency efficiency through computerized automation and technological improvements.

(2) Types of programs

Grants under this section may include programs to—

(A) increase use of mobile digital terminals;

(B) improve communications systems, such as computer-aided dispatch and incident reporting systems;

(C) accomplish paper-flow reduction;

(D) establish or improve ballistics identification programs;

(E) increase the application of automated fingerprint identification systems and their communications on an interstate and intrastate basis; and

(F) improve computerized collection of criminal records.

¹So in original. Probably should be “subsection (a) of this section”.

(3) Funding

No funds under this part may be used to implement any cryptographic or digital telephony programs.

(b) Training and investigative assistance**(1) In general**

The Attorney General shall, subject to the availability of appropriations—

(A) expand and improve investigative and managerial training courses for State, Indian tribal, and local law enforcement agencies; and

(B) develop and implement, on a pilot basis with no more than 10 participating cities, an intelligent information system that gathers, integrates, organizes, and analyzes information in active support of investigations by Federal, State, and local law enforcement agencies of violent serial crimes.

(2) Improvement of facilities

The improvement described in subsection (a) of this section shall include improvements of the training facilities of the Federal Bureau of Investigation Academy at Quantico, Virginia.

(3) Intelligent information system

The intelligent information system described in paragraph (1)(B) shall be developed and implemented by the Federal Bureau of Investigation and shall utilize the resources of the Violent Criminal Apprehension Program.

(c) Authorization of appropriations

There are authorized to be appropriated—

(1) to carry out subsection (a) of this section—

- (A) \$10,000,000 for fiscal year 1996;
- (B) \$20,000,000 for fiscal year 1997;
- (C) \$23,000,000 for fiscal year 1998;
- (D) \$23,000,000 for fiscal year 1999; and
- (E) \$24,000,000 for fiscal year 2000.¹

(2) to carry out subsection (b)(1) of this section—

- (A) \$4,000,000 for fiscal year 1996;
- (B) \$2,000,000 for fiscal year 1997;
- (C) \$3,000,000 for fiscal year 1998;
- (D) \$5,000,000 for fiscal year 1999; and
- (E) \$6,000,000 for fiscal year 2000; and

(3) to carry out subsection (b)(2) of this section—

\$10,000,000 for fiscal year 1996.

(d) Definitions

In this section—

“Indian tribe” means a tribe, band, pueblo, nation, or other organized group or community of Indians, including an Alaska Native village (as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.),² that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

“State” means a State, the District of Columbia, the Commonwealth of Puerto Rico,

the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, and the United States Virgin Islands.

(Pub. L. 103-322, title XXI, §210501, Sept. 13, 1994, 108 Stat. 2072.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in subsec. (d), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

PART D—OTHER STATE AND LOCAL AID

§ 14161. Federal assistance to ease increased burdens on State court systems**(a) In general**

The Attorney General shall, subject to the availability of appropriation, make grants for States and units of local government to pay the costs of providing increased resources for courts, prosecutors, public defenders, and other criminal justice participants as necessary to meet the increased demands for judicial activities resulting from the provisions of this Act and amendments made by this Act.

(b) Applications

In carrying out this section, the Attorney General may make grants to, or enter into contracts with public or private agencies, institutions, or organizations or individuals to carry out any purpose specified in this section. The Attorney General shall have final authority over all funds awarded under this section.

(c) Records

Each recipient that receives a grant under this section shall keep such records as the Attorney General may require to facilitate an effective audit.

(d) Authorization of appropriations

There are authorized to be appropriated to carry out this section—

- (1) \$23,000,000 for fiscal year 1996;
- (2) \$30,000,000 for fiscal year 1997;
- (3) \$30,000,000 for fiscal year 1998;
- (4) \$32,000,000 for fiscal year 1999; and
- (5) \$35,000,000 for fiscal year 2000,

to remain available for obligation until expended.

(Pub. L. 103-322, title XXI, §210602, Sept. 13, 1994, 108 Stat. 2073.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), is Pub. L. 103-322, Sept. 13, 1994, 108 Stat. 1796, known as the Violent Crime Control and Law Enforcement Act of 1994. For complete classification of this Act to the Code, see Short Title note set out under section 13701 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

¹So in original. The period probably should be a semicolon.

²So in original. A closing parenthesis probably should precede the comma.

SUBCHAPTER X—MOTOR VEHICLE THEFT
PREVENTION

§ 14171. Motor vehicle theft prevention program

(a) In general

Not later than 180 days after September 13, 1994, the Attorney General shall develop, in cooperation with the States, a national voluntary motor vehicle theft prevention program (in this section referred to as the “program”) under which—

(1) the owner of a motor vehicle may voluntarily sign a consent form with a participating State or locality in which the motor vehicle owner—

(A) states that the vehicle is not normally operated under certain specified conditions; and

(B) agrees to—

(i) display program decals or devices on the owner’s vehicle; and

(ii) permit law enforcement officials in any State to stop the motor vehicle and take reasonable steps to determine whether the vehicle is being operated by or with the permission of the owner, if the vehicle is being operated under the specified conditions; and

(2) participating States and localities authorize law enforcement officials in the State or locality to stop motor vehicles displaying program decals or devices under specified conditions and take reasonable steps to determine whether the vehicle is being operated by or with the permission of the owner.

(b) Uniform decal or device designs

(1) In general

The motor vehicle theft prevention program developed pursuant to this section shall include a uniform design or designs for decals or other devices to be displayed by motor vehicles participating in the program.

(2) Type of design

The uniform design shall—

(A) be highly visible; and

(B) explicitly state that the motor vehicle to which it is affixed may be stopped under the specified conditions without additional grounds for establishing a reasonable suspicion that the vehicle is being operated unlawfully.

(c) Voluntary consent form

The voluntary consent form used to enroll in the program shall—

(1) clearly state that participation in the program is voluntary;

(2) clearly explain that participation in the program means that, if the participating vehicle is being operated under the specified conditions, law enforcement officials may stop the vehicle and take reasonable steps to determine whether it is being operated by or with the consent of the owner, even if the law enforcement officials have no other basis for believing that the vehicle is being operated unlawfully;

(3) include an express statement that the vehicle is not normally operated under the specified conditions and that the operation of the

vehicle under those conditions would provide sufficient grounds for a prudent law enforcement officer to reasonably believe that the vehicle was not being operated by or with the consent of the owner; and

(4) include any additional information that the Attorney General may reasonably require.

(d) Specified conditions under which stops may be authorized

(1) In general

The Attorney General shall promulgate rules establishing the conditions under which participating motor vehicles may be authorized to be stopped under this section. These conditions may not be based on race, creed, color, national origin, gender, or age. These conditions may include—

(A) the operation of the vehicle during certain hours of the day; or

(B) the operation of the vehicle under other circumstances that would provide a sufficient basis for establishing a reasonable suspicion that the vehicle was not being operated by the owner, or with the consent of the owner.

(2) More than one set of conditions

The Attorney General may establish more than one set of conditions under which participating motor vehicles may be stopped. If more than one set of conditions is established, a separate consent form and a separate design for program decals or devices shall be established for each set of conditions. The Attorney General may choose to satisfy the requirement of a separate design for program decals or devices under this paragraph by the use of a design color that is clearly distinguishable from other design colors.

(3) No new conditions without consent

After the program has begun, the conditions under which a vehicle may be stopped if affixed with a certain decal or device design may not be expanded without the consent of the owner.

(4) Limited participation by States and localities

A State or locality need not authorize the stopping of motor vehicles under all sets of conditions specified under the program in order to participate in the program.

(e) Motor vehicles for hire

(1) Notification to lessees

Any person who is in the business of renting or leasing motor vehicles and who rents or leases a motor vehicle on which a program decal or device is affixed shall, prior to transferring possession of the vehicle, notify the person to whom the motor vehicle is rented or leased about the program.

(2) Type of notice

The notice required by this subsection shall—

(A) be in writing;

(B) be in a prominent format to be determined by the Attorney General; and

(C) explain the possibility that if the motor vehicle is operated under the specified

conditions, the vehicle may be stopped by law enforcement officials even if the officials have no other basis for believing that the vehicle is being operated unlawfully.

(3) Fine for failure to provide notice

Failure to provide proper notice under this subsection shall be punishable by a fine not to exceed \$5,000.

(f) Notification of police

As a condition of participating in the program, a State or locality must agree to take reasonable steps to ensure that law enforcement officials throughout the State or locality are familiar with the program, and with the conditions under which motor vehicles may be stopped under the program.

(g) Regulations

The Attorney General shall promulgate regulations to implement this section.

(h) Authorization of appropriations

There are authorized to carry out this section.¹

- (1) \$1,500,000 for fiscal year 1996;
- (2) \$1,700,000 for fiscal year 1997; and
- (3) \$1,800,000 for fiscal year 1998.

(Pub. L. 103-322, title XXII, §220002, Sept. 13, 1994, 108 Stat. 2074.)

SHORT TITLE

For short title of this subchapter as the "Motor Vehicle Theft Prevention Act", see section 220001 of Pub. L. 103-322, set out as a note under section 13701 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

SUBCHAPTER XI—PROTECTIONS FOR THE ELDERLY

§ 14181. Missing Alzheimer's Disease Patient Alert Program

(a) Grant

The Attorney General shall, subject to the availability of appropriations, award a grant to an eligible organization to assist the organization in paying for the costs of planning, designing, establishing, and operating a Missing Alzheimer's Disease Patient Alert Program, which shall be a locally based, proactive program to protect and locate missing patients with Alzheimer's disease and related dementias.

(b) Application

To be eligible to receive a grant under subsection (a) of this section, an organization shall submit an application to the Attorney General at such time, in such manner, and containing such information as the Attorney General may require, including, at a minimum, an assurance that the organization will obtain and use assistance from private nonprofit organizations to support the program.

(c) Eligible organization

The Attorney General shall award the grant described in subsection (a) of this section to a

national voluntary organization that has a direct link to patients, and families of patients, with Alzheimer's disease and related dementias.

(d) Authorization of appropriations

There are authorized to be appropriated to carry out this section—

- (1) \$900,000 for fiscal year 1996;
- (2) \$900,000 for fiscal year 1997; and
- (3) \$900,000 for fiscal year 1998.

(Pub. L. 103-322, title XXIV, §240001, Sept. 13, 1994, 108 Stat. 2080.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

SUBCHAPTER XII—PRESIDENTIAL SUMMIT ON VIOLENCE AND NATIONAL COMMISSION ON CRIME PREVENTION AND CONTROL

§ 14191. Presidential summit

Congress calls on the President to convene a national summit on violence in America prior to convening the Commission established under this subchapter.

(Pub. L. 103-322, title XXVII, §270001, Sept. 13, 1994, 108 Stat. 2089.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14198 of this title.

§ 14192. Establishment; committees and task forces; representation

(a) Establishment and appointment of members

There is established a commission to be known as the "National Commission on Crime Control and Prevention". The Commission shall be composed of 28 members appointed as follows:

(1) 10 persons by the President, not more than 6 of whom shall be of the same major political party.

(2) 9 persons by the President pro tempore of the Senate, 5 of whom shall be appointed on the recommendation of the Majority Leader of the Senate and the chairman of the Committee on the Judiciary of the Senate, and 4 of whom shall be appointed on the recommendation of the Minority Leader of the Senate and the ranking minority member of the Committee on the Judiciary of the Senate.

(3) 9 persons appointed by the Speaker of the House of Representatives, in consultation with the chairman of the Committee on the Judiciary of the House of Representatives, and 4 of whom shall be appointed on the recommendation of the Minority Leader of the House of Representatives, in consultation with the ranking member of the Committee on the Judiciary.

(b) Committees and task forces

The Commission shall establish committees or task forces from among its members for the examination of specific subject areas and the carrying out of other functions or responsibilities of the Commission, including committees or task forces for the examination of the subject

¹ So in original. The period probably should be a dash.

areas of crime and violence generally, the causes of the demand for drugs, violence in schools, and violence against women, as described in subsections (b) through (e) of section 14194 of this title.

(c) Representation

(1) At least 1 member of the Commission appointed by the President, at least 2 members of the Commission appointed by the President pro tempore of the Senate, and at least 2 members of the Commission appointed by the Speaker of the House of Representatives shall be persons well-qualified to participate in the Commission's examination of the subject area of crime and violence generally, with education, training, expertise, or experience in such areas as law enforcement, law, sociology, psychology, social work, and ethnography and urban poverty (including health care, housing, education, and employment).

(2) At least 1 member of the Commission appointed by the President, at least 2 members of the Commission appointed by the President pro tempore of the Senate, and at least 2 members of the Commission appointed by the Speaker of the House of Representatives shall be persons well-qualified to participate in the Commission's examination of the subject area of the causes of the demand for drugs, with education, training, expertise, or experience in such areas as addiction, biomedicine, sociology, psychology, law, and ethnography and urban poverty (including health care, housing, education, and employment).

(3) At least 1 member of the Commission appointed by the President, at least 2 members of the Commission appointed by the President pro tempore of the Senate, and at least 2 members of the Commission appointed by the Speaker of the House of Representatives shall be persons well-qualified to participate in the Commission's examination of the subject area of violence in schools, with education, training, expertise, or experience in such areas as law enforcement, education, school governance policy and teaching, law, sociology, psychology, and ethnography and urban poverty (including health care, housing, education, and employment).

(4) At least 1 member of the Commission appointed by the President, at least 2 members of the Commission appointed by the President pro tempore of the Senate, and at least 2 members of the Commission appointed by the Speaker of the House of Representatives shall be persons well-qualified to participate in the Commission's examination of the subject area of violence against women, as survivors of violence, or as persons with education, training, expertise, or experience in such areas as law enforcement, law, judicial administration, prosecution, defense, victim services or advocacy in sexual assault or domestic violence cases (including medical services and counseling), and protection of victims' rights.

(Pub. L. 103-322, title XXVII, §270002, Sept. 13, 1994, 108 Stat. 2089.)

§ 14193. Purposes

The purposes of the Commission are as follows:

(1) To develop a comprehensive proposal for preventing and controlling crime and violence in the United States, including cost estimates for implementing any recommendations made by the Commission.

(2) To bring attention to successful models and programs in crime prevention and crime control.

(3) To reach out beyond the traditional criminal justice community for ideas for controlling and preventing crime.

(4) To recommend improvements in the coordination of local, State, Federal, and international crime control and prevention efforts, including efforts relating to crime near international borders.

(5) To make a comprehensive study of the economic and social factors leading to or contributing to crime and violence, including the causes of illicit drug use and other substance abuse, and to develop specific proposals for legislative and administrative actions to reduce crime and violence and the factors that contribute to it.

(6) To recommend means of utilizing criminal justice resources as effectively as possible, including targeting finite correctional facility space to the most serious and violent offenders, and considering increased use of intermediate sanctions for offenders who can be dealt with adequately by such means.

(7) To examine distinctive crime problems and the impact of crime on members of minority groups, Indians living on reservations, and other groups defined by race, ethnicity, religion, age, disability, or other characteristics, and to recommend specific responses to the distinctive crime problems of such groups.

(8) To examine the problem of sexual assaults, domestic violence, and other criminal and unlawful acts that particularly affect women, and to recommend Federal, State, and local strategies for more effectively preventing and punishing such crimes and acts.

(9) To examine the treatment of victims in Federal, State, and local criminal justice systems, and to develop recommendations to enhance and protect the rights of victims.

(10) To examine the ability of Federal, State, and local criminal justice systems to administer criminal law and criminal sanctions impartially without discrimination on the basis of race, ethnicity, religion, gender, or other legally proscribed grounds, and to make recommendations for correcting any deficiencies in the impartial administration of justice on these grounds.

(11) To examine the nature, scope, causes, and complexities of violence in schools and to recommend a comprehensive response to that problem.

(Pub. L. 103-322, title XXVII, §270003, Sept. 13, 1994, 108 Stat. 2091.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14194 of this title.

§ 14194. Responsibilities of Commission

(a) In general

The responsibilities of the Commission shall include such study and consultation as may be

necessary or appropriate to carry out the purposes set forth in section 14193 of this title, including the specific measures described in subsections (b) through (e) of this section in relation to the subject areas addressed in those subsections.

(b) Crime and violence generally

In addressing the subject of crime and violence generally, the activities of the Commission shall include the following:

(1) Reviewing the effectiveness of traditional criminal justice approaches in preventing and controlling crime and violence.

(2) Examining the impact that changes in Federal and State law have had in controlling crime and violence.

(3) Examining the impact of changes in Federal immigration laws and policies and increased development and growth along United States international borders on crime and violence in the United States, particularly among the Nation's youth.

(4) Examining the problem of youth gangs and providing recommendations as to how to reduce youth involvement in violent crime.

(5) Examining the extent to which the use of dangerous weapons in the commission of crime has contributed to violence and murder in the United States.

(6) Convening field hearings in various regions of the country to receive testimony from a cross section of criminal justice professionals, business leaders, elected officials, medical doctors, and other persons who wish to participate.

(7) Reviewing all segments of the Nation's criminal justice systems, including the law enforcement, prosecution, defense, judicial, and corrections components in developing the crime control and prevention proposal.

(c) Causes of demand for drugs

In addressing the subject of the causes of the demand for drugs, the activities of the Commission shall include the following:

(1) Examining the root causes of illicit drug use and abuse in the United States, including by compiling existing research regarding those root causes, and including consideration of the following factors:

(A) The characteristics of potential illicit drug users and abusers or drug traffickers, including age and social, economic, and educational backgrounds.

(B) Environmental factors that contribute to illicit drug use and abuse, including the correlation between unemployment, poverty, and homelessness and drug experimentation and abuse.

(C) The effects of substance use and abuse by a relative or friend in contributing to the likelihood and desire of an individual to experiment with illicit drugs.

(D) Aspects of, and changes in cultural values, attitudes and traditions that contribute to illicit drug use and abuse.

(E) The physiological and psychological factors that contribute to the desire for illicit drugs.

(2) Evaluating Federal, State, and local laws and policies on the prevention of drug abuse,

control of unlawful production, distribution and use of controlled substances, and the efficacy of sentencing policies with regard to those laws.

(3) Analyzing the allocation of resources among interdiction of controlled substances entering the United States, enforcement of Federal laws relating to the unlawful production, distribution, and use of controlled substances, education with regard to and the prevention of the unlawful use of controlled substances, and treatment and rehabilitation of drug abusers.

(4) Analyzing current treatment and rehabilitation methods and making recommendations for improvements.

(5) Identifying any existing gaps in drug abuse policy that result from the lack of attention to the root causes of drug abuse.

(6) Assessing the needs of government at all levels for resources and policies for reducing the overall desire of individuals to experiment with and abuse illicit drugs.

(7) Making recommendations regarding necessary improvements in policies for reducing the use of illicit drugs in the United States.

(d) Violence in schools

In addressing the subject of violence in schools, the activities of the Commission shall include the following:

(1) Defining the causes of violence in schools.

(2) Defining the scope of the national problem of violence in schools.

(3) Providing statistics and data on the problem of violence in schools on a State-by-State basis.

(4) Investigating the problem of youth gangs and their relation to violence in schools and providing recommendations on how to reduce youth involvement in violent crime in schools.

(5) Examining the extent to which dangerous weapons have contributed to violence and murder in schools.

(6) Exploring the extent to which the school environment has contributed to violence in schools.

(7) Reviewing the effectiveness of current approaches in preventing violence in schools.

(e) Violence against women

In addressing the subject of sexual assault, domestic violence, and other criminal and unlawful acts that particularly affect women, the activities of the Commission shall include the following:

(1) Evaluating the adequacy of, and making recommendations regarding, current law enforcement efforts at the Federal, State, and local levels to reduce the incidence of such crimes and acts, and to punish those responsible for such crimes and acts.

(2) Evaluating the adequacy of, and making recommendations regarding, the responsiveness of prosecutors and courts to such crimes and acts.

(3) Evaluating the adequacy of rules of evidence, practice, and procedure to ensure the effective prosecution and conviction of perpetrators of such crimes and acts and to protect victims of such crimes and acts from

abuse in legal proceedings, making recommendations, where necessary, to improve those rules.

(4) Evaluating the adequacy of pretrial release, sentencing, incarceration, and post-conviction release in relation to such crimes and acts.

(5) Evaluating the adequacy of, and making recommendations regarding, the adequacy of Federal and State laws on sexual assault and the need for a more uniform statutory response to sex offenses, including sexual assaults and other sex offenses committed by offenders who are known or related by blood or marriage to the victim.

(6) Evaluating the adequacy of, and making recommendations regarding, the adequacy of Federal and State laws on domestic violence and the need for a more uniform statutory response to domestic violence.

(7) Evaluating the adequacy of, and making recommendations regarding, the adequacy of current education, prevention, and protective services for victims of such crimes and acts.

(8) Assessing the issuance, formulation, and enforcement of protective orders, whether or not related to a criminal proceeding, and making recommendations for their more effective use in domestic violence and stalking cases.

(9) Assessing the problem of stalking and recommending effective means of response to the problem.

(10) Evaluating the adequacy of, and making recommendations regarding, programs for public awareness and public dissemination of information to prevent such crimes and acts.

(11) Evaluating the treatment of victims of such crimes and acts in Federal, State, and local criminal justice systems, and making recommendations designed to improve such treatment.

(Pub. L. 103-322, title XXVII, § 270004, Sept. 13, 1994, 108 Stat. 2092.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14192 of this title.

§ 14195. Administrative matters

(a) Chair

The President shall designate a member of the Commission to chair the Commission.

(b) No additional pay or benefits; per diem

Members of the Commission shall receive no pay or benefits by reason of their service on the Commission, but shall receive travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under sections 5702 and 5703 of title 5.

(c) Vacancies

Vacancies on the Commission shall be filled in the same manner as initial appointments.

(d) Meetings open to public

The Commission shall be considered to be an agency for the purposes of section 552b of title 5 relating to the requirement that meetings of Federal agencies be open to the public.

(Pub. L. 103-322, title XXVII, § 270005, Sept. 13, 1994, 108 Stat. 2094.)

§ 14196. Staff and support services

(a) Director

With the approval of the Commission, the chairperson shall appoint a staff director for the Commission.

(b) Staff

With the approval of the Commission, the staff director may appoint and fix the compensation of staff personnel for the Commission.

(c) Civil service laws

The staff of the Commission shall be appointed without regard to the provisions of title 5 governing appointments in the competitive service. Staff compensation may be set without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, but in no event shall any such personnel be compensated at a rate greater than the rate of basic pay for level ES-4 of the Senior Executive Service Schedule under section 5382 of that title. The staff director shall be paid at a rate not to exceed the rate of basic pay for level V of the Executive Schedule.

(d) Consultants

With the approval of the Commission, the staff director may procure temporary and intermittent services under section 3109(b) of title 5.

(e) Staff of Federal agencies

Upon the request of the Commission, the head of any Federal agency may detail, on a reimbursable basis, personnel of that agency to the Commission to assist in carrying out its duties.

(f) Physical facilities

The Administrator of the General Service Administration shall provide suitable office space for the operation of the Commission. The facilities shall serve as the headquarters of the Commission and shall include all necessary equipment and incidentals required for proper functioning.

(Pub. L. 103-322, title XXVII, § 270006, Sept. 13, 1994, 108 Stat. 2094.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (c), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

Level V of the Executive Schedule, referred to in subsec. (c), is set out in section 5316 of Title 5.

§ 14197. Powers

(a) Hearings

For the purposes of carrying out this subchapter, the Commission may conduct such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission considers appropriate. The Commission may administer oaths before the Commission.

(b) Delegation

Any committee, task force, member, or agent, of the Commission may, if authorized by the Commission, take any action that the Commission is authorized to take under this subchapter.

(c) Access to information

The Commission may request directly from any Federal agency or entity in the executive or legislative branch such information as is needed to carry out its functions.

(d) Mail

The Commission may use the United States mails in the same manner and under the same conditions as other Federal agencies.

(Pub. L. 103-322, title XXVII, § 270007, Sept. 13, 1994, 108 Stat. 2095.)

§ 14198. Report; termination

Not later than 2 years after the date on which the Commission is fully constituted under section 14191 of this title, the Commission shall submit a detailed report to the Congress and the President containing its findings and recommendations. The Commission shall terminate 30 days after the submission of its report.

(Pub. L. 103-322, title XXVII, § 270008, Sept. 13, 1994, 108 Stat. 2095.)

§ 14199. Authorization of appropriations

There are authorized to be appropriated to carry out this subchapter—

- (1)¹ \$1,000,000 for fiscal year 1996.

(Pub. L. 103-322, title XXVII, § 270009, Sept. 13, 1994, 108 Stat. 2095.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

SUBCHAPTER XIII—VIOLENT CRIME
REDUCTION TRUST FUND**§ 14211. Creation of Violent Crime Reduction Trust Fund****(a) Violent Crime Reduction Trust Fund**

There is established a separate account in the Treasury, known as the “Violent Crime Reduction Trust Fund” (referred to in this section as the “Fund”) into which shall be transferred, in accordance with subsection (b) of this section, savings realized from implementation of section 5 of the Federal Workforce Restructuring Act of 1994 (5 U.S.C. 3101 note; Public Law 103-226).

(b) Transfers into Fund

On the first day of the following fiscal years (or as soon thereafter as possible for fiscal year 1995), the following amounts shall be transferred from the general fund to the Fund—

- (1) for fiscal year 1995, \$2,423,000,000;
- (2) for fiscal year 1996, \$4,287,000,000;
- (3) for fiscal year 1997, \$5,000,000,000;
- (4) for fiscal year 1998, \$5,500,000,000;
- (5) for fiscal year 1999, \$6,500,000,000; and
- (6) for fiscal year 2000, \$6,500,000,000.

(c) Appropriations from Fund

(1) Amounts in the Fund may be appropriated exclusively for the purposes authorized in this Act and for those expenses authorized by any Act enacted before this Act that are expressly qualified for expenditure from the Fund.

(2) Amounts appropriated under paragraph (1) and outlays flowing from such appropriations shall not be taken into account for purposes of any budget enforcement procedures under the Balanced Budget and Emergency Deficit Control Act of 1985 except section 251A¹ of that Act as added by subsection (g), or for purposes of section 665d(b)¹ of title 2. Amounts of new budget authority and outlays under paragraph (1) that are included in concurrent resolutions on the budget shall not be taken into account for purposes of sections 665(b), 665e(b), and 665e(c) of title 2,¹ or for purposes of section 24 of House Concurrent Resolution 218 (One Hundred Third Congress).

(Pub. L. 103-322, title XXXI, § 310001(a)–(c), Sept. 13, 1994, 108 Stat. 2102, 2103.)

REFERENCES IN TEXT

This section, referred to in subsec. (a), is section 310001 of Pub. L. 103-322, which enacted this section and section 901a of Title 2, The Congress, and amended sections 665a and 904 of Title 2 and sections 1105 and 1321 of Title 31, Money and Finance.

This Act, referred to in subsec. (c)(1), is Pub. L. 103-322, Sept. 13, 1994, 108 Stat. 1796, known as the Violent Crime Control and Law Enforcement Act of 1994. For complete classification of this Act to the Code, see Short Title note set out under section 13701 of this title and Tables.

The Balanced Budget and Emergency Deficit Control Act of 1985, referred to in subsec. (c)(2), is title II of Pub. L. 99-177, Dec. 12, 1985, 99 Stat. 1038, as amended, which enacted chapter 20 (§900 et seq.) and sections 654 to 656 of Title 2, The Congress, amended section 911 of this title, sections 602, 622, 631 to 642, and 651 to 653 of Title 2, and sections 1104 to 1106, and 1109 of Title 31, Money and Finance, repealed section 661 of Title 2, enacted provisions set out as notes under section 911 of this title and section 900 of Title 2, and amended provisions set out as a note under section 621 of Title 2. Section 251A of the Act was classified to section 901a of Title 2 and was repealed by Pub. L. 105-33, title X, § 10204(a)(1), Aug. 5, 1997, 111 Stat. 702. For complete classification of this Act to the Code, see Short Title note set out under section 900 of Title 2 and Tables.

Sections 665, 665d, and 665e of title 2, referred to in subsec. (c)(2), were repealed by Pub. L. 105-33, title X, § 10118(a), Aug. 5, 1997, 111 Stat. 695.

House Concurrent Resolution 218, referred to in subsec. (c)(2), is H. Con. Res. 218, May 12, 1994, 108 Stat. 5075, which is not classified to the Code.

§ 14212. Repealed. Pub. L. 105-33, title X, § 10204(b), Aug. 5, 1997, 111 Stat. 702

Section, Pub. L. 103-322, title XXXI, § 310002, Sept. 13, 1994, 108 Stat. 2105, related to conforming reduction in discretionary spending limits.

§ 14213. Extension of authorizations of appropriations for fiscal years for which full amount authorized is not appropriated

If, in making an appropriation under any provision of this Act or amendment made by this Act that authorizes the making of an appropriation for a certain purpose for a certain fiscal year in a certain amount, the Congress makes an appropriation for that purpose for that fiscal year in a lesser amount, that provision or amendment shall be considered to authorize the making of appropriations for that purpose for later fiscal years in an amount equal to the dif-

¹ So in original. No par. (2) has been enacted.

¹ See References in Text note below.

ference between the amount authorized to be appropriated and the amount that has been appropriated.

(Pub. L. 103-322, title XXXI, §310003, Sept. 13, 1994, 108 Stat. 2105.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 103-322, Sept. 13, 1994, 108 Stat. 1796, known as the Violent Crime Control and Law Enforcement Act of 1994. For complete classification of this Act to the Code, see Short Title note set out under section 13701 of this title and Tables.

§ 14214. Flexibility in making of appropriations

(a) Federal law enforcement

In the making of appropriations under any provision of this Act or amendment made by this Act that authorizes the making of an appropriation for a Federal law enforcement program for a certain fiscal year in a certain amount out of the Violent Crime Reduction Trust Fund, not to exceed 10 percent of that amount is authorized to be appropriated for that fiscal year for any other Federal law enforcement program for which appropriations are authorized by any other Federal law enforcement provision of this Act or amendment made by this Act. The aggregate reduction in the authorization for any particular Federal law enforcement program may not exceed 10 percent of the total amount authorized to be appropriated from the Violent Crime Reduction Trust Fund for that program in this Act or amendment made by this Act.

(b) State and local law enforcement

In the making of appropriations under any provision of this Act or amendment made by this Act that authorizes the making of an appropriation for a State and local law enforcement program for a certain fiscal year in a certain amount out of the Violent Crime Reduction Trust Fund, not to exceed 10 percent of that amount is authorized to be appropriated for that fiscal year for any other State and local law enforcement program for which appropriations are authorized by any other State and local law enforcement provision of this Act or amendment made by this Act. The aggregate reduction in the authorization for any particular State and local law enforcement program may not exceed 10 percent of the total amount authorized to be appropriated from the Violent Crime Reduction Trust Fund for that program in this Act or amendment made by this Act.

(c) Prevention

In the making of appropriations under any provision of this Act or amendment made by this Act that authorizes the making of an appropriation for a prevention program for a certain fiscal year in a certain amount out of the Violent Crime Reduction Trust Fund, not to exceed 10 percent of that amount is authorized to be appropriated for that fiscal year for any other prevention program for which appropriations are authorized by any other prevention provision of this Act or amendment made by this Act. The aggregate reduction in the authorization for any particular prevention program may not exceed 10 percent of the total amount authorized to be appropriated from the Violent Crime Reduction

Trust Fund for that program in this Act or amendment made by this Act.

(d) Definitions

In this section—“Federal law enforcement program” means a program authorized in any of the following sections:

- (1) section 190001(a);
- (2) section 190001(b);
- (3) section 190001(c);
- (4) section 190001(d);
- (5) section 190001(e);
- (6) section 320925;¹
- (7) section 14062 of this title;
- (8) section 14171 of this title;
- (9) section 130002;
- (10) section 130005;
- (11) section 130006;
- (12) section 130007;
- (13) section 250005;
- (14) sections 14131-14134 of this title;
- (15) section 14083 of this title; and
- (16) section 14199 of this title.

“State and local law enforcement program” means a program authorized in any of the following sections:

- (1) sections 10001-10003;
- (2) section 210201;
- (3) section 210603;
- (4) section 180101;
- (5) section 14082 of this title;
- (6) sections 13861-13868 of this title;
- (7) section 14161 of this title;
- (8) sections 13811-13812 of this title;
- (9) section 210302;
- (10) section 14151 of this title;
- (11) section 210101;
- (12) section 320930;²
- (13) sections 13701-13709 of this title;
- (14) section 20301;
- (15) section 13911 of this title; and
- (16) section 20201.

“prevention program” means a program authorized in any of the following sections:

- (1) section 50001;
- (2) sections 13741-13744 of this title;
- (3) sections 13751-13758 of this title;
- (4) sections 13771-13777 of this title;
- (5) sections 13791-13793 of this title;
- (6) sections 13801-13802 of this title;
- (7) chapter 67 of title 31;
- (8) section 31101 and sections 13821-13853 of this title;
- (9) sections 31501-31505;
- (10) section 31901 and sections 13881-13902 of this title;
- (11) section 32001;
- (12) section 32101;
- (13) section 13921 of this title;
- (14) section 40114;
- (15) section 40121;
- (16) section 300w-10³ of this title;
- (17) section 13941 of this title;
- (18) section 5712d of this title;
- (19) section 40156;

¹So in original. Pub. L. 103-322 does not contain a section 320925.

²So in original. Pub. L. 103-322 does not contain a section 320930.

³See References in Text note below.

- (20) section 10416 of this title;
- (21) section 40231;
- (22) section 40241;
- (23) section 10417 of this title;
- (24) section 10418 of this title;
- (25) section 13962 of this title;
- (26) section 13963 of this title;
- (27) section 13971 of this title;
- (28) sections 13991–13994 of this title;
- (29) sections 14001–14002 of this title;
- (30) section 14012 of this title;
- (31) section 40601 and sections 14031–14040 of this title; and
- (32) section 14181³ of this title.

(Pub. L. 103–322, title XXXI, §310004, Sept. 13, 1994, 108 Stat. 2106.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (a) to (c), is Pub. L. 103–322, Sept. 13, 1994, 108 Stat. 1796, known as the Violent Crime Control and Law Enforcement Act of 1994. For complete classification of this Act to the Code, see Short Title note set out under section 13701 of this title and Tables.

Section 190001, referred to in subsec. (d), is section 190001 of Pub. L. 103–322, 108 Stat. 2048, which is not classified to the Code.

Section 130002, referred to in subsec. (d), is section 130002 of Pub. L. 103–322, 108 Stat. 2023, which is set out as a note under section 1226 of Title 8, Aliens and Nationality.

Section 130005, referred to in subsec. (d), is section 130005 of Pub. L. 103–322, 108 Stat. 2028, which amended section 1158 of Title 8 and enacted provisions set out as a note under section 1158 of Title 8.

Section 130006, referred to in subsec. (d), is section 130006 of Pub. L. 103–322, 108 Stat. 2028, which is set out as a note under section 1101 of Title 8.

Section 130007, referred to in subsec. (d), is section 130007 of Pub. L. 103–322, 108 Stat. 2029, which is set out as a note under section 1228 of Title 8.

Section 250005, referred to in subsec. (d), is section 230005 of Pub. L. 103–322, 108 Stat. 2086, which is not classified to the Code.

Sections 10001–10003, referred to in subsec. (d), are sections 10001–10003 of Pub. L. 103–322, 108 Stat. 1807, which enacted subchapter XII–E (§3796dd et seq.) of chapter 46 of this title, amended sections 3793 and 3797 of this title, and enacted provisions set out as notes under sections 3711 and 3796dd of this title.

Section 210201, referred to in subsec. (d), is section 210201 of Pub. L. 103–322, 108 Stat. 2062, which enacted subchapter XII–K (§3796jj et seq.) of chapter 46 of this title and amended sections 3793 and 3797 of this title.

Section 210603, referred to in subsec. (d), is section 210603 of Pub. L. 103–322, 108 Stat. 2074, which enacted provisions set out as a note under section 922 of Title 18, Crimes and Criminal Procedure, and amended provisions set out as notes under section 922 of Title 18.

Section 180101, referred to in subsec. (d), is section 180101 of Pub. L. 103–322, 108 Stat. 2045, which amended sections 3793 and 3796bb of this title.

Section 210302, referred to in subsec. (d), is section 210302 of Pub. L. 103–322, 108 Stat. 2065, which enacted subchapter XII–L (§3796kk et seq.) of chapter 46 of this title, amended sections 3751, 3753, 3793, and 3797 of this title, and enacted provisions set out as a note under section 3751 of this title.

Section 210101, referred to in subsec. (d), is section 210101 of Pub. L. 103–322, 108 Stat. 2061, which is not classified to the Code.

Section 20301, referred to in subsec. (d), is section 20301 of Pub. L. 103–322, 108 Stat. 1823, which amended section 1252 of Title 8, Aliens and Nationality, and enacted provisions set out as notes under sections 1231 and 1252 of Title 8.

Section 20201, referred to in subsec. (d), is section 20201 of Pub. L. 103–322, 108 Stat. 1819, which enacted

subchapter XII–F (§3796ee et seq.) of chapter 46 of this title and amended sections 3791, 3793, and 3797 of this title.

Section 50001, referred to in subsec. (d), is section 50001 of Pub. L. 103–322, 108 Stat. 1955, which enacted former subchapter XII–J (§3796ii et seq.) of chapter 46 of this title and amended sections 3793 and 3797 of this title.

Section 31101, referred to in subsec. (d), is section 31101 of Pub. L. 103–322, 108 Stat. 1882, which is set out as a note under section 13701 of this title.

Sections 31501–31505, referred to in subsec. (d), are sections 31501–31505 of Pub. L. 103–322, 108 Stat. 1888, 1889, which amended sections 2502 to 2504, 2506, and 2512 of Title 16, Conservation.

Section 31901, referred to in subsec. (d), is section 31901 of Pub. L. 103–322, 108 Stat. 1892, which enacted provisions set out as a note under section 13701 of this title.

Section 32001, referred to in subsec. (d), is section 32001 of Pub. L. 103–322, 108 Stat. 1896, which amended section 3621 of Title 18, Crimes and Criminal Procedure.

Section 32101, referred to in subsec. (d), is section 32101 of Pub. L. 103–322, 108 Stat. 1898, which enacted subchapter XII–G (§3796ff et seq.) of chapter 46 of this title and amended sections 3791, 3793, and 3797 of this title.

Section 40114, referred to in subsec. (d), is section 40114 of Pub. L. 103–322, 108 Stat. 1910, which is not classified to the Code.

Section 40121, referred to in subsec. (d), is section 40121 of Pub. L. 103–322, 108 Stat. 1910, which enacted subchapter XII–H (§3796gg et seq.) of chapter 46 of this title and amended sections 3793 and 3797 of this title.

Section 300w–10 of this title, referred to in subsec. (d), was repealed by Pub. L. 106–386, div. B, title IV, §1401(b), Oct. 28, 2000, 114 Stat. 1513.

Section 40156, referred to in subsec. (d), is section 40156 of Pub. L. 103–322, 108 Stat. 1922, which amended sections 3793, 3796aa–1 to 3796aa–3, 3796aa–5, 3796aa–6, 13012, 13014, 13021, and 13024 of this title and repealed sections 3796aa–4 and 3796aa–7 of this title.

Section 40231, referred to in subsec. (d), is section 40231 of Pub. L. 103–322, 108 Stat. 1932, which enacted subchapter XII–I (§3796hh et seq.) of chapter 46 of this title and amended sections 3782, 3783, 3793, and 3797 of this title.

Section 40241, referred to in subsec. (d), is section 40241 of Pub. L. 103–322, 108 Stat. 1934, which amended section 10409 of this title.

Section 40601, referred to in subsec. (d), is section 40601 of Pub. L. 103–322, 108 Stat. 1950, which amended section 534 of Title 28, Judiciary and Judicial Procedure, and enacted provisions set out as a note under section 534 of Title 28.

Section 14181 of this title, referred to in subsec. (d), was in the original “section 24001” and was translated as reading “section 240001”, meaning section 240001 of Pub. L. 103–322, to reflect the probable intent of Congress, because Pub. L. 103–322 does not contain a section 24001.

SUBCHAPTER XIV—MISCELLANEOUS

§ 14221. Task force relating to introduction of nonindigenous species

(1) In general

The Attorney General is authorized to convene a law enforcement task force in Hawaii to facilitate the prosecution of violations of Federal laws, and laws of the State of Hawaii, relating to the wrongful conveyance, sale, or introduction of nonindigenous plant and animal species.

(2) Membership

(A) The task force shall be composed of representatives of—

- (i) the Office of the United States Attorney for the District of Hawaii;

- (ii) the United States Customs Service;
- (iii) the Animal and Plant Health Inspection Service;
- (iv) the Fish and Wildlife Service;
- (v) the National Park Service;
- (vi) the United States Forest Service;
- (vii) the Military Customs Inspection Office of the Department of Defense;
- (viii) the United States Postal Service;
- (ix) the office of the Attorney General of the State of Hawaii;
- (x) the Hawaii Department of Agriculture;
- (xi) the Hawaii Department of Land and Natural Resources; and
- (xii) such other individuals as the Attorney General deems appropriate.

(B) The Attorney General shall, to the extent practicable, select individuals to serve on the task force who have experience with the enforcement of laws relating to the wrongful conveyance, sale, or introduction of nonindigenous plant and animal species.

(3) Duties

The task force shall—

(A) facilitate the prosecution of violations of Federal and State laws relating to the conveyance, sale, or introduction of nonindigenous plant and animal species into Hawaii; and

(B) make recommendations on ways to strengthen Federal and State laws and law enforcement strategies designed to prevent the introduction of nonindigenous plant and animal species.

(4) Report

The task force shall report to the Attorney General, the Secretary of Agriculture, the Secretary of the Interior, and to the Committee on the Judiciary and Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on the Judiciary, Committee on Agriculture, and Committee on Merchant Marine and Fisheries of the House of Representatives on—

(A) the progress of its enforcement efforts; and

(B) the adequacy of existing Federal laws and laws of the State of Hawaii that relate to the introduction of nonindigenous plant and animal species.

Thereafter, the task force shall make such reports as the task force deems appropriate.

(5) Consultation

The task force shall consult with Hawaii agricultural interests and representatives of Hawaii conservation organizations about methods of preventing the wrongful conveyance, sale, or introduction of nonindigenous plant and animal species into Hawaii.

(Pub. L. 103-322, title XXXII, § 320108(a), Sept. 13, 1994, 108 Stat. 2111.)

ABOLITION OF HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

Committee on Merchant Marine and Fisheries of House of Representatives abolished and its jurisdiction transferred by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. For treatment of references to Committee on Merchant Marine and Fish-

eries, see section 1(b)(3) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

§ 14222. Coordination of substance abuse treatment and prevention programs

The Attorney General shall consult with the Secretary of the Department of Health and Human Services in establishing and carrying out the substance abuse treatment and prevention components of the programs authorized under this Act, to assure coordination of programs, eliminate duplication of efforts and enhance the effectiveness of such services.

(Pub. L. 103-322, title XXXII, § 320401, Sept. 13, 1994, 108 Stat. 2114.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 103-322, Sept. 13, 1994, 108 Stat. 1796, known as the Violent Crime Control and Law Enforcement Act of 1994. For complete classification of this Act to the Code, see Short Title note set out under section 13701 of this title and Tables.

§ 14223. Edward Byrne Memorial Formula Grant Program

Nothing in this Act shall be construed to prohibit or exclude the expenditure of appropriations to grant recipients that would have been or are eligible to receive grants under subpart 1 of part E of the Omnibus Crime Control and Safe Streets Act of 1968 [42 U.S.C. 3751 et seq.].

(Pub. L. 103-322, title XXXII, § 320919, Sept. 13, 1994, 108 Stat. 2130.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 103-322, Sept. 13, 1994, 108 Stat. 1796, known as the Violent Crime Control and Law Enforcement Act of 1994. For complete classification of this Act to the Code, see Short Title note set out under section 13701 of this title and Tables.

The Omnibus Crime Control and Safe Streets Act of 1968, referred to in text, is Pub. L. 90-351, June 19, 1968, 82 Stat. 197, as amended. The reference to subpart 1 of part E of the Act probably means subpart 1 of part E of title I of the Act which is classified generally to part A (§ 3751 et seq.) of subchapter V of chapter 46 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3711 of this title and Tables.

CHAPTER 137—MANAGEMENT OF RECHARGEABLE BATTERIES AND BATTERIES CONTAINING MERCURY

SUBCHAPTER I—GENERALLY

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SUBCHAPTER I—GENERALLY

§ 14301. Findings

The Congress finds that—

(1) it is in the public interest to—

(A) phase out the use of mercury in batteries and provide for the efficient and cost-effective collection and recycling or proper disposal of used nickel cadmium batteries, small sealed lead-acid batteries, and other regulated batteries; and

(B) educate the public concerning the collection, recycling, and proper disposal of such batteries;

(2) uniform national labeling requirements for regulated batteries, rechargeable consumer products, and product packaging will significantly benefit programs for regulated battery collection and recycling or proper disposal; and

(3) it is in the public interest to encourage persons who use rechargeable batteries to participate in collection for recycling of used nickel-cadmium, small sealed lead-acid, and other regulated batteries.

(Pub. L. 104-142, §2, May 13, 1996, 110 Stat. 1329.)

SHORT TITLE

Section 1 of Pub. L. 104-142 provided that: "This Act [enacting this chapter] may be cited as the 'Mercury-Containing and Rechargeable Battery Management Act'."

Section 101 of title I of Pub. L. 104-142 provided that: "This title [enacting subchapter II of this chapter] may be cited as the 'Rechargeable Battery Recycling Act'."

Section 201 of title II of Pub. L. 104-142 provided that: "This title [enacting subchapter III of this chapter] may be cited as the 'Mercury-Containing Battery Management Act'."

§ 14302. Definitions

For purposes of this chapter:

(1) Administrator

The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) Button cell

The term "button cell" means a button- or coin-shaped battery.

(3) Easily removable

The term "easily removable", with respect to a battery, means detachable or removable at the end of the life of the battery—

(A) from a consumer product by a consumer with the use of common household tools; or

(B) by a retailer of replacements for a battery used as the principal electrical power source for a vehicle.

(4) Mercuric-oxide battery

The term "mercuric-oxide battery" means a battery that uses a mercuric-oxide electrode.

(5) Rechargeable battery

The term "rechargeable battery"—

(A) means 1 or more voltaic or galvanic cells, electrically connected to produce electric energy, that is designed to be recharged for repeated uses; and

(B) includes any type of enclosed device or sealed container consisting of 1 or more such cells, including what is commonly called a battery pack (and in the case of a battery pack, for the purposes of the requirements of easy removability and labeling under section 14322 of this title, means the battery pack as a whole rather than each component individually); but

(C) does not include—

(i) a lead-acid battery used to start an internal combustion engine or as the principal electrical power source for a vehicle, such as an automobile, a truck, construction equipment, a motorcycle, a garden tractor, a golf cart, a wheelchair, or a boat;

(ii) a lead-acid battery used for load leveling or for storage of electricity generated by an alternative energy source, such as a solar cell or wind-driven generator;

(iii) a battery used as a backup power source for memory or program instruction storage, timekeeping, or any similar purpose that requires uninterrupted electrical power in order to function if the primary energy supply fails or fluctuates momentarily; or

(iv) a rechargeable alkaline battery.

(6) Rechargeable consumer product

The term "rechargeable consumer product"—

(A) means a product that, when sold at retail, includes a regulated battery as a primary energy supply, and that is primarily intended for personal or household use; but

(B) does not include a product that only uses a battery solely as a source of backup

power for memory or program instruction storage, timekeeping, or any similar purpose that requires uninterrupted electrical power in order to function if the primary energy supply fails or fluctuates momentarily.

(7) Regulated battery

The term “regulated battery” means a rechargeable battery that—

(A) contains a cadmium or a lead electrode or any combination of cadmium and lead electrodes; or

(B) contains other electrode chemistries and is the subject of a determination by the Administrator under section 14322(d) of this title.

(8) Remanufactured product

The term “remanufactured product” means a rechargeable consumer product that has been altered by the replacement of parts, repackaged, or repaired after initial sale by the original manufacturer.

(Pub. L. 104-142, §3, May 13, 1996, 110 Stat. 1329.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14323 of this title.

§ 14303. Information dissemination

The Administrator shall, in consultation with representatives of rechargeable battery manufacturers, rechargeable consumer product manufacturers, and retailers, establish a program to provide information to the public concerning the proper handling and disposal of used regulated batteries and rechargeable consumer products with nonremovable batteries.

(Pub. L. 104-142, §4, May 13, 1996, 110 Stat. 1330.)

§ 14304. Enforcement

(a) Civil penalty

When on the basis of any information the Administrator determines that a person has violated, or is in violation of, any requirement of this chapter (except a requirement of section 14323 of this title) the Administrator—

(1) in the case of any violation, may issue an order assessing a civil penalty of not more than \$10,000 for each violation, or requiring compliance immediately or within a reasonable specified time period, or both; or

(2) in the case of any violation or failure to comply with an order issued under this section, may commence a civil action in the United States district court in the district in which the violation occurred or in the district in which the violator resides for appropriate relief, including a temporary or permanent injunction.

(b) Contents of order

An order under subsection (a)(1) of this section shall state with reasonable specificity the nature of the violation.

(c) Considerations

In assessing a civil penalty under subsection (a)(1) of this section, the Administrator shall take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

(d) Finality of order; request for hearing

An order under subsection (a)(1) of this section shall become final unless, not later than 30 days after the order is served, a person named in the order requests a hearing on the record.

(e) Hearing

On receiving a request under subsection (d) of this section, the Administrator shall promptly conduct a hearing on the record.

(f) Subpoena power

In connection with any hearing on the record under this section, the Administrator may issue subpoenas for the attendance and testimony of witnesses and for the production of relevant papers, books, and documents.

(g) Continued violation after expiration of period for compliance

If a violator fails to take corrective action within the time specified in an order under subsection (a)(1) of this section, the Administrator may assess a civil penalty of not more than \$10,000 for the continued noncompliance with the order.

(h) Savings provision

The Administrator may not take any enforcement action against a person for selling, offering for sale, or offering for promotional purposes to the ultimate consumer a battery or product covered by this chapter that was—

(1) purchased ready for sale to the ultimate consumer; and

(2) sold, offered for sale, or offered for promotional purposes without modification.

The preceding sentence shall not apply to a person—

(A) who is the importer of a battery covered by this chapter, and

(B) who has knowledge of the chemical contents of the battery

when such chemical contents make the sale, offering for sale, or offering for promotional purposes of such battery unlawful under subchapter III of this chapter.

(Pub. L. 104-142, §5, May 13, 1996, 110 Stat. 1331.)

§ 14305. Information gathering and access

(a) Records and reports

A person who is required to carry out the objectives of this chapter, including—

(1) a regulated battery manufacturer;

(2) a rechargeable consumer product manufacturer;

(3) a mercury-containing battery manufacturer; and

(4) an authorized agent of a person described in paragraph (1), (2), or (3),

shall establish and maintain such records and report such information as the Administrator may by regulation reasonably require to carry out the objectives of this chapter.

(b) Access and copying

The Administrator or the Administrator's authorized representative, on presentation of credentials of the Administrator, may at reasonable times have access to and copy any records

required to be maintained under subsection (a) of this section.

(c) Confidentiality

The Administrator shall maintain the confidentiality of documents and records that contain proprietary information.

(Pub. L. 104-142, §6, May 13, 1996, 110 Stat. 1332.)

§ 14306. State authority

Nothing in this chapter shall be construed to prohibit a State from enacting and enforcing a standard or requirement that is identical to a standard or requirement established or promulgated under this chapter. Except as provided in sections 14322(e) and 14323 of this title, nothing in this chapter shall be construed to prohibit a State from enacting and enforcing a standard or requirement that is more stringent than a standard or requirement established or promulgated under this chapter.

(Pub. L. 104-142, §7, May 13, 1996, 110 Stat. 1332.)

§ 14307. Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out this chapter.

(Pub. L. 104-142, §8, May 13, 1996, 110 Stat. 1332.)

SUBCHAPTER II—RECYCLING OF
RECHARGEABLE BATTERIES

§ 14321. Purpose

The purpose of this subchapter is to facilitate the efficient recycling or proper disposal of used nickel-cadmium rechargeable batteries, used small sealed lead-acid rechargeable batteries, other regulated batteries, and such rechargeable batteries in used consumer products, by—

(1) providing for uniform labeling requirements and streamlined regulatory requirements for regulated battery collection programs; and

(2) encouraging voluntary industry programs by eliminating barriers to funding the collection and recycling or proper disposal of used rechargeable batteries.

(Pub. L. 104-142, title I, §102, May 13, 1996, 110 Stat. 1332.)

§ 14322. Rechargeable consumer products and labeling

(a) Prohibition

(1) In general

No person shall sell for use in the United States a regulated battery that is ready for retail sale or a rechargeable consumer product that is ready for retail sale, if such battery or product was manufactured on or after the date 12 months after May 13, 1996, unless the labeling requirements of subsection (b) of this section are met and, in the case of a regulated battery, the regulated battery—

(A) is easily removable from the rechargeable consumer product; or

(B) is sold separately.

(2) Application

Paragraph (1) does not apply to any of the following:

(A) The sale of a remanufactured product unit unless paragraph (1) applied to the sale of the unit when originally manufactured.

(B) The sale of a product unit intended for export purposes only.

(b) Labeling

Each regulated battery or rechargeable consumer product without an easily removable battery manufactured on or after the date that is 1 year after May 13, 1996, whether produced domestically or imported shall bear the following labels:

(1) 3 chasing arrows or a comparable recycling symbol.

(2)(A) On each regulated battery which is a nickel-cadmium battery, the chemical name or the abbreviation “Ni-Cd” and the phrase “BATTERY MUST BE RECYCLED OR DISPOSED OF PROPERLY.”.

(B) On each regulated battery which is a lead-acid battery, “Pb” or the words “LEAD”, “RETURN”, and “RECYCLE” and if the regulated battery is sealed, the phrase “BATTERY MUST BE RECYCLED.”.

(3) On each rechargeable consumer product containing a regulated battery that is not easily removable, the phrase “CONTAINS NICKEL-CADMIUM BATTERY. BATTERY MUST BE RECYCLED OR DISPOSED OF PROPERLY.” or “CONTAINS SEALED LEAD BATTERY. BATTERY MUST BE RECYCLED.”, as applicable.

(4) On the packaging of each rechargeable consumer product, and the packaging of each regulated battery sold separately from such a product, unless the required label is clearly visible through the packaging, the phrase “CONTAINS NICKEL-CADMIUM BATTERY. BATTERY MUST BE RECYCLED OR DISPOSED OF PROPERLY.” or “CONTAINS SEALED LEAD BATTERY. BATTERY MUST BE RECYCLED.”, as applicable.

(c) Existing or alternative labeling

(1) Initial period

For a period of 2 years after May 13, 1996, regulated batteries, rechargeable consumer products containing regulated batteries, and rechargeable consumer product packages that are labeled in substantial compliance with subsection (b) of this section shall be deemed to comply with the labeling requirements of subsection (b) of this section.

(2) Certification

(A) In general

On application by persons subject to the labeling requirements of subsection (b) of this section or the labeling requirements promulgated by the Administrator under subsection (d) of this section, the Administrator shall certify that a different label meets the requirements of subsection (b) or (d) of this section, respectively, if the different label—

(i) conveys the same information as the label required under subsection (b) or (d) of this section, respectively; or

(ii) conforms with a recognized international standard that is consistent with the overall purposes of this subchapter.

(B) Constructive certification

Failure of the Administrator to object to an application under subparagraph (A) on the ground that a different label does not meet either of the conditions described in subparagraph (A)(i) or (ii) within 120 days after the date on which the application is made shall constitute certification for the purposes of this chapter.

(d) Rulemaking authority of Administrator**(1) In general**

If the Administrator determines that other rechargeable batteries having electrode chemistries different from regulated batteries are toxic and may cause substantial harm to human health and the environment if discarded into the solid waste stream for land disposal or incineration, the Administrator may, with the advice and counsel of State regulatory authorities and manufacturers of rechargeable batteries and rechargeable consumer products, and after public comment—

(A) promulgate labeling requirements for the batteries with different electrode chemistries, rechargeable consumer products containing such batteries that are not easily removable batteries, and packaging for the batteries and products; and

(B) promulgate requirements for easy removability of regulated batteries from rechargeable consumer products designed to contain such batteries.

(2) Substantial similarity

The regulations promulgated under paragraph (1) shall be substantially similar to the requirements set forth in subsections (a) and (b) of this section.

(e) Uniformity

After the effective dates of a requirement set forth in subsection (a), (b), or (c) of this section or a regulation promulgated by the Administrator under subsection (d) of this section, no Federal agency, State, or political subdivision of a State may enforce any easy removability or environmental labeling requirement for a rechargeable battery or rechargeable consumer product that is not identical to the requirement or regulation.

(f) Exemptions**(1) In general**

With respect to any rechargeable consumer product, any person may submit an application to the Administrator for an exemption from the requirements of subsection (a) of this section in accordance with the procedures under paragraph (2). The application shall include the following information:

(A) A statement of the specific basis for the request for the exemption.

(B) The name, business address, and telephone number of the applicant.

(2) Granting of exemption

Not later than 60 days after receipt of an application under paragraph (1), the Administrator shall approve or deny the application. On approval of the application the Administrator shall grant an exemption to the appli-

cant. The exemption shall be issued for a period of time that the Administrator determines to be appropriate, except that the period shall not exceed 2 years. The Administrator shall grant an exemption on the basis of evidence supplied to the Administrator that the manufacturer has been unable to commence manufacturing the rechargeable consumer product in compliance with the requirements of this section and with an equivalent level of product performance without the product—

(A) posing a threat to human health, safety, or the environment; or

(B) violating requirements for approvals from governmental agencies or widely recognized private standard-setting organizations (including Underwriters Laboratories).

(3) Renewal of exemption

A person granted an exemption under paragraph (2) may apply for a renewal of the exemption in accordance with the requirements and procedures described in paragraphs (1) and (2). The Administrator may grant a renewal of such an exemption for a period of not more than 2 years after the date of the granting of the renewal.

(Pub. L. 104-142, title I, §103, May 13, 1996, 110 Stat. 1332.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14302, 14306 of this title.

§ 14323. Requirements**(a) Batteries subject to certain regulations**

The collection, storage, or transportation of used rechargeable batteries, batteries described in section 14302(5)(C) of this title or in subchapter III of this chapter, and used rechargeable consumer products containing rechargeable batteries that are not easily removable rechargeable batteries, shall, notwithstanding any law of a State or political subdivision thereof governing such collection, storage, or transportation, be regulated under applicable provisions of the regulations promulgated by the Environmental Protection Agency at 60 Fed. Reg. 25492 (May 11, 1995), as effective on May 11, 1995, except as provided in paragraph (2) of subsection (b) of this section and except that—

(1) the requirements of 40 CFR 260.20, 260.40, and 260.41 and the equivalent requirements of an approved State program shall not apply, and

(2) this section shall not apply to any lead acid battery managed under 40 CFR 266 subpart G or the equivalent requirements of an approved State program.

(b) Enforcement under Solid Waste Disposal Act

(1) Any person who fails to comply with the requirements imposed by subsection (a) of this section may be subject to enforcement under applicable provisions of the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.].

(2) States may implement and enforce the requirements of subsection (a) of this section if the Administrator finds that—

(A) the State has adopted requirements that are identical to those referred to in subsection

(a) of this section governing the collection, storage, or transportation of batteries referred to in subsection (a) of this section; and

(B) the State provides for enforcement of such requirements.

(Pub. L. 104-142, title I, § 104, May 13, 1996, 110 Stat. 1335.)

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsec. (b)(1), is title II of Pub. L. 89-272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94-580, § 2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§ 6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14304, 14306 of this title.

SUBCHAPTER III—MANAGEMENT OF BATTERIES CONTAINING MERCURY

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 14304, 14323 of this title.

§ 14331. Purpose

The purpose of this subchapter is to phase out the use of batteries containing mercury.

(Pub. L. 104-142, title II, § 202, May 13, 1996, 110 Stat. 1336.)

§ 14332. Limitations on sale of alkaline-manganese batteries containing mercury

No person shall sell, offer for sale, or offer for promotional purposes any alkaline-manganese battery manufactured on or after May 13, 1996, with a mercury content that was intentionally introduced (as distinguished from mercury that may be incidentally present in other materials), except that the limitation on mercury content in alkaline-manganese button cells shall be 25 milligrams of mercury per button cell.

(Pub. L. 104-142, title II, § 203, May 13, 1996, 110 Stat. 1336.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14333 of this title.

§ 14333. Limitations on sale of zinc-carbon batteries containing mercury

No person shall sell, offer for sale, or offer for promotional purposes any zinc-carbon battery manufactured on or after May 13, 1996, that contains mercury that was intentionally introduced as described in section 14332 of this title.

(Pub. L. 104-142, title II, § 204, May 13, 1996, 110 Stat. 1336.)

§ 14334. Limitations on sale of button cell mercuric-oxide batteries

No person shall sell, offer for sale, or offer for promotional purposes any button cell mercuric-oxide battery for use in the United States on or after May 13, 1996.

(Pub. L. 104-142, title II, § 205, May 13, 1996, 110 Stat. 1336.)

§ 14335. Limitations on sale of other mercuric-oxide batteries

(a) Prohibition

On or after May 13, 1996, no person shall sell, offer for sale, or offer for promotional purposes a mercuric-oxide battery for use in the United States unless the battery manufacturer, or the importer of such a battery—

(1) identifies a collection site in the United States that has all required Federal, State, and local government approvals, to which persons may send used mercuric-oxide batteries for recycling or proper disposal;

(2) informs each of its purchasers of mercuric-oxide batteries of the collection site identified under paragraph (1); and

(3) informs each of its purchasers of mercuric-oxide batteries of a telephone number that the purchaser may call to get information about sending mercuric-oxide batteries for recycling or proper disposal.

(b) Application of section

This section does not apply to a sale or offer of a mercuric-oxide button cell battery.

(Pub. L. 104-142, title II, § 206, May 13, 1996, 110 Stat. 1336.)

§ 14336. New product or use

On petition of a person that proposes a new use for a battery technology described in this subchapter or the use of a battery described in this subchapter in a new product, the Administrator may exempt from this subchapter the new use of the technology or the use of such a battery in the new product on the condition, if appropriate, that there exist reasonable safeguards to ensure that the resulting battery or product without an easily removable battery will not be disposed of in an incinerator, composting facility, or landfill (other than a facility regulated under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.)).

(Pub. L. 104-142, title II, § 207, May 13, 1996, 110 Stat. 1336.)

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in text, is title II of Pub. L. 89-272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94-580, § 2, Oct. 21, 1976, 90 Stat. 2795. Subtitle C of the Act is classified generally to subchapter III (§ 6921 et seq.) of chapter 82 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

CHAPTER 138—ASSISTED SUICIDE FUNDING RESTRICTION

Sec.	
14401.	Findings and purpose. (a) Findings. (b) Purpose.
14402.	Restriction on use of Federal funds under health care programs. (a) Restriction on Federal funding of health care services. (b) Construction and treatment of certain services. (c) Limitation on Federal facilities and employees. (d) List of programs to which restrictions apply.

Sec.	
14403.	Restriction on use of Federal funds under certain grant programs.
14404.	Restriction on use of Federal funds by advocacy programs. (a) In general. (b) List of programs to which restrictions apply.
14405.	Restriction on use of other Federal funds. (a) In general. (b) Nonduplication.
14406.	Clarification with respect to advance directives.
14407.	Application to District of Columbia.
14408.	Relation to other laws.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 2380, 701, 1395y, 1396b, 1397d, 2996f of this title; title 5 section 8902; title 10 section 1073; title 18 section 4005; title 22 section 2504; title 25 section 1621x; title 38 section 1707.

§ 14401. Findings and purpose

(a) Findings

Congress finds the following:

(1) The Federal Government provides financial support for the provision of and payment for health care services, as well as for advocacy activities to protect the rights of individuals.

(2) Assisted suicide, euthanasia, and mercy killing have been criminal offenses throughout the United States and, under current law, it would be unlawful to provide services in support of such illegal activities.

(3) Because of recent legal developments, it may become lawful in areas of the United States to furnish services in support of such activities.

(4) Congress is not providing Federal financial assistance in support of assisted suicide, euthanasia, and mercy killing and intends that Federal funds not be used to promote such activities.

(b) Purpose

It is the principal purpose of this chapter to continue current Federal policy by providing explicitly that Federal funds may not be used to pay for items and services (including assistance) the purpose of which is to cause (or assist in causing) the suicide, euthanasia, or mercy killing of any individual.

(Pub. L. 105–12, § 2, Apr. 30, 1997, 111 Stat. 23.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original “this Act”, meaning Pub. L. 105–12, Apr. 30, 1997, 111 Stat. 23, known as the Assisted Suicide Funding Restriction Act of 1997. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

EFFECTIVE DATE

Section 11 of Pub. L. 105–12 provided that:

“(a) IN GENERAL.—The provisions of this Act [see Short Title note below] (and the amendments made by this Act) take effect upon its enactment [Apr. 30, 1997] and apply, subject to subsection (b), to Federal payments made pursuant to obligations incurred after the date of the enactment of this Act for items and services provided on or after such date.

“(b) APPLICATION TO CONTRACTS.—Such provisions shall apply with respect to contracts entered into, re-

newed, or extended after the date of the enactment of this Act [Apr. 30, 1997] and shall also apply to a contract entered into before such date to the extent permitted under such contract.”

SHORT TITLE

Section 1(a) of Pub. L. 105–12 provided that: “This Act [enacting this chapter, section 2380 of this title, section 1621x of Title 25, Indians, and section 1707 of Title 38, Veterans’ Benefits, amending sections 295, 701, 1395y, 1395cc, 1396a, 1396b, 1397d, 2996f, 6022, 6042, 6062, 6082, and 10805 of this title, section 8902 of Title 5, Government Organization and Employees, section 1073 of Title 10, Armed Forces, section 4005 of Title 18, Crimes and Criminal Procedure, section 2504 of Title 22, Foreign Relations and Intercourse, and section 794e of Title 29, Labor, and enacting provisions set out as notes under this section and section 295 of this title] may be cited as the ‘Assisted Suicide Funding Restriction Act of 1997.’”

CONSTRUCTION OF CONFORMING AMENDMENTS

Section 9(p) of Pub. L. 105–12 provided that: “The fact that a law is not amended under this section [enacting section 2380 of this title, section 1621x of Title 25, Indians, and section 1707 of Title 38, Veterans’ Benefits, amending sections 701, 1395y, 1395cc, 1396a, 1396b, 1397d, 2996f, 6022, 6042, 6062, 6082, and 10805 of this title, section 8902 of Title 5, Government Organization and Employees, section 1073 of Title 10, Armed Forces, section 4005 of Title 18, Crimes and Criminal Procedure, section 2504 of Title 22, Foreign Relations and Intercourse, and section 794e of Title 29, Labor] shall not be construed as indicating that the provisions of this Act [see Short Title note above] do not apply to such a law.”

§ 14402. Restriction on use of Federal funds under health care programs

(a) Restriction on Federal funding of health care services

Subject to subsection (b) of this section, no funds appropriated by Congress for the purpose of paying (directly or indirectly) for the provision of health care services may be used—

(1) to provide any health care item or service furnished for the purpose of causing, or for the purpose of assisting in causing, the death of any individual, such as by assisted suicide, euthanasia, or mercy killing;

(2) to pay (directly, through payment of Federal financial participation or other matching payment, or otherwise) for such an item or service, including payment of expenses relating to such an item or service; or

(3) to pay (in whole or in part) for health benefit coverage that includes any coverage of such an item or service or of any expenses relating to such an item or service.

(b) Construction and treatment of certain services

Nothing in subsection (a) of this section, or in any other provision of this chapter (or in any amendment made by this chapter), shall be construed to apply to or to affect any limitation relating to—

(1) the withholding or withdrawing of medical treatment or medical care;

(2) the withholding or withdrawing of nutrition or hydration;

(3) abortion; or

(4) the use of an item, good, benefit, or service furnished for the purpose of alleviating pain or discomfort, even if such use may in-

crease the risk of death, so long as such item, good, benefit, or service is not also furnished for the purpose of causing, or the purpose of assisting in causing, death, for any reason.

(c) Limitation on Federal facilities and employees

Subject to subsection (b) of this section, with respect to health care items and services furnished—

(1) by or in a health care facility owned or operated by the Federal government, or

(2) by any physician or other individual employed by the Federal government to provide health care services within the scope of the physician's or individual's employment,

no such item or service may be furnished for the purpose of causing, or for the purpose of assisting in causing, the death of any individual, such as by assisted suicide, euthanasia, or mercy killing.

(d) List of programs to which restrictions apply

(1) Federal health care funding programs

Subsection (a) of this section applies to funds appropriated under or to carry out the following:

(A) Medicare program

Title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.].

(B) Medicaid program

Title XIX of the Social Security Act [42 U.S.C. 1396 et seq.].

(C) Title XX social services block grant

Title XX of the Social Security Act [42 U.S.C. 1397 et seq.].

(D) Maternal and child health block grant program

Title V of the Social Security Act [42 U.S.C. 701 et seq.].

(E) Public Health Service Act

The Public Health Service Act [42 U.S.C. 201 et seq.].

(F) Indian Health Care Improvement Act

The Indian Health Care Improvement Act [25 U.S.C. 1601 et seq.].

(G) Federal employees health benefits program

Chapter 89 of title 5.

(H) Military health care system (including Tricare and CHAMPUS programs)

Chapter 55 of title 10.

(I) Veterans medical care

Chapter 17 of title 38.

(J) Health services for Peace Corps volunteers

Section 2504(e) of title 22.

(K) Medical services for Federal prisoners

Section 4005(a) of title 18.

(2) Federal facilities and personnel

The provisions of subsection (c) of this section apply to facilities and personnel of the following:

(A) Military health care system

The Department of Defense operating under chapter 55 of title 10.

(B) Veterans medical care

The Veterans Health Administration of the Department of Veterans Affairs.

(C) Public Health Service

The Public Health Service.

(3) Nonexclusive list

Nothing in this subsection shall be construed as limiting the application of subsection (a) of this section to the programs specified in paragraph (1) or the application of subsection (c) of this section to the facilities and personnel specified in paragraph (2).

(Pub. L. 105-12, § 3, Apr. 30, 1997, 111 Stat. 23.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d)(1)(A)–(D), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles V, XVIII, XIX, and XX of the Act are classified generally to subchapters V (§701 et seq.), XVIII (§1395 et seq.), XIX (§1396 et seq.), and XX (§1397 et seq.), respectively, of chapter 7 of this title, respectively. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Public Health Service Act, referred to in subsec. (d)(1)(E), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended, which is classified generally to chapter 6A (§201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The Indian Health Care Improvement Act, referred to in subsec. (d)(1)(F), is Pub. L. 94-437, Sept. 30, 1976, 90 Stat. 1400, as amended, which is classified principally to chapter 18 (§1601 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 25 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14403, 14404, 14405, 14406 of this title.

§ 14403. Restriction on use of Federal funds under certain grant programs

Subject to section 14402(b) of this title (relating to construction and treatment of certain services), no funds appropriated by Congress to carry out subtitle B, D, or E of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 [42 U.S.C. 15021 et seq., 15061 et seq., 15081 et seq.] may be used to support or fund any program or service which has a purpose of assisting in procuring any item, benefit, or service furnished for the purpose of causing, or the purpose of assisting in causing, the death of any individual, such as by assisted suicide, euthanasia, or mercy killing.

(Pub. L. 105-12, § 4, Apr. 30, 1997, 111 Stat. 25; Pub. L. 106-402, title IV, §401(b)(15)(A), Oct. 30, 2000, 114 Stat. 1740.)

REFERENCES IN TEXT

The Developmental Disabilities Assistance and Bill of Rights Act of 2000, referred to in text, is Pub. L. 106-402, Oct. 30, 2000, 114 Stat. 1677. Subtitles B, D, and E of the Act probably mean subtitles B, D, and E of title I of the Act, which are classified generally to parts B [§15021 et seq.], D [§15061 et seq.], and E [§15081 et seq.], respectively, of subchapter I of chapter 144 of this title. For

complete classification of this Act to the Code, see Short Title note set out under section 15001 of this title and Tables.

AMENDMENTS

2000—Pub. L. 106-402, § 401(b)(15)(A)(i), substituted “Restriction on use of Federal funds under certain grant programs” for “Restriction on use of Federal funds under certain grant programs under the Developmental Disabilities Assistance and Bill of Rights Act” in section catchline.

Pub. L. 106-402, § 401(b)(15)(A)(ii), substituted “sub-title B, D, or E of the Developmental Disabilities Assistance and Bill of Rights Act of 2000” for “part B, D, or E of the Developmental Disabilities Assistance and Bill of Rights Act”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6062, 6082, 14405 of this title.

§ 14404. Restriction on use of Federal funds by advocacy programs

(a) In general

Subject to section 14402(b) of this title (relating to construction and treatment of certain services), no funds appropriated by Congress may be used to assist in, to support, or to fund any activity or service which has a purpose of assisting in, or to bring suit or provide any other form of legal assistance for the purpose of—

(1) securing or funding any item, benefit, program, or service furnished for the purpose of causing, or the purpose of assisting in causing, the suicide, euthanasia, or mercy killing of any individual;

(2) compelling any person, institution, governmental entity¹ to provide or fund any item, benefit, program, or service for such purpose; or

(3) asserting or advocating a legal right to cause, or to assist in causing, the suicide, euthanasia, or mercy killing of any individual.

(b) List of programs to which restrictions apply

(1) In general

Subsection (a) of this section applies to funds appropriated under or to carry out the following:

(A) Protection and advocacy systems under the Developmental Disabilities Assistance and Bill of Rights Act of 2000

Subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 [42 U.S.C. 15041 et seq.].

(B) Protection and advocacy systems under the Protection and Advocacy for Mentally Ill Individuals Act

The Protection and Advocacy for Mentally Ill Individuals Act of 1986² [42 U.S.C. 10801 et seq.].

(C) Protection and advocacy systems under the Rehabilitation Act of 1973

Section 509 of the Rehabilitation Act of 1973 (29 U.S.C. 794e).

¹So in original. Probably should be “or governmental entity”.

²See References in Text note below.

(D) Ombudsman programs under the Older Americans Act of 1965

Ombudsman programs under the Older Americans Act of 1965 [42 U.S.C. 3001 et seq.].

(E) Legal assistance

Legal assistance programs under the Legal Services Corporation Act [42 U.S.C. 2996 et seq.].

(2) Nonexclusive list

Nothing in this subsection shall be construed as limiting the application of subsection (a) of this section to the programs specified in paragraph (1).

(Pub. L. 105-12, § 5, Apr. 30, 1997, 111 Stat. 25; Pub. L. 106-402, title IV, § 401(b)(15)(B), Oct. 30, 2000, 114 Stat. 1740.)

REFERENCES IN TEXT

The Developmental Disabilities Assistance and Bill of Rights Act of 2000, referred to in subsec. (b)(1)(A), is Pub. L. 106-402, Oct. 30, 2000, 114 Stat. 1677. Subtitle C of the Act probably means subtitle C of title I of the Act, which is classified generally to part C (§15041 et seq.) of subchapter I of chapter 144 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 15001 of this title and Tables.

The Protection and Advocacy for Mentally Ill Individuals Act of 1986, referred to in subsec. (b)(1)(B), was Pub. L. 99-319, May 23, 1986, 100 Stat. 478, as amended. Pub. L. 99-319 was renamed the Protection and Advocacy for Individuals with Mental Illness Act by Pub. L. 106-310, div. B, title XXXII, §3206(a), Oct. 17, 2000, 114 Stat. 1193, and is classified generally to chapter 114 (§10801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 10801 of this title and Tables.

The Older Americans Act of 1965, referred to in subsec. (b)(1)(D), is Pub. L. 89-73, July 14, 1965, 79 Stat. 218, as amended, which is classified generally to chapter 35 (§3001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

The Legal Services Corporation Act, referred to in subsec. (b)(1)(E), is title X of Pub. L. 88-452, as added by Pub. L. 93-355, § 2, July 25, 1974, 88 Stat. 378, as amended, which is classified generally to subchapter X (§2996 et seq.) of chapter 34 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

AMENDMENTS

2000—Subsec. (b)(1)(A). Pub. L. 106-402 added subpar. (A) and struck out heading and text of former subpar. (A). Text read as follows: “Part C of the Developmental Disabilities Assistance and Bill of Rights Act.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6042, 10805, 14405, 15044 of this title.

§ 14405. Restriction on use of other Federal funds

(a) In general

Subject to section 14402(b) of this title (relating to construction and treatment of certain services) and subsection (b) of this section, no funds appropriated by the Congress shall be used to provide, procure, furnish, or fund any item, good, benefit, activity, or service, furnished or performed for the purpose of causing, or assisting in causing, the suicide, euthanasia, or mercy killing of any individual.

(b) Nonduplication

Subsection (a) of this section shall not apply to funds to which section 14402, 14403, or 14404 of this title applies, except that subsection (a) of this section, rather than section 14402 of this title, shall apply to funds appropriated to carry out title 10 (other than chapter 55), title 18 (other than section 4005(a)), and chapter 37 of title 28.

(Pub. L. 105-12, § 6, Apr. 30, 1997, 111 Stat. 25.)

§ 14406. Clarification with respect to advance directives

Subject to section 14402(b) of this title (relating to construction and treatment of certain services), sections 1395cc(f) and 1396a(w) of this title shall not be construed—

- (1) to require any provider or organization, or any employee of such a provider or organization, to inform or counsel any individual regarding any right to obtain an item or service furnished for the purpose of causing, or the purpose of assisting in causing, the death of the individual, such as by assisted suicide, euthanasia, or mercy killing; or
- (2) to apply to or to affect any requirement with respect to a portion of an advance directive that directs the purposeful causing of, or the purposeful assisting in causing, the death of any individual, such as by assisted suicide, euthanasia, or mercy killing.

(Pub. L. 105-12, § 7, Apr. 30, 1997, 111 Stat. 26.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1395cc, 1396a of this title.

§ 14407. Application to District of Columbia

For purposes of this chapter, the term “funds appropriated by Congress” includes funds appropriated to the District of Columbia pursuant to an authorization of appropriations under title V of the District of Columbia Home Rule Act and the term “Federal government” includes the government of the District of Columbia.

(Pub. L. 105-12, § 8, Apr. 30, 1997, 111 Stat. 26; Pub. L. 105-33, title XI, § 11717(b), Aug. 5, 1997, 111 Stat. 786.)

REFERENCES IN TEXT

The District of Columbia Home Rule Act, referred to in text, is Pub. L. 93-198, Dec. 24, 1973, 87 Stat. 774, as amended. Title V of the Act was classified to the District of Columbia Code prior to repeal by Pub. L. 105-33, title XI, § 11601, Aug. 5, 1997, 111 Stat. 777.

AMENDMENTS

1997—Pub. L. 105-33 substituted “District of Columbia Home Rule Act” for “District of Columbia Self-Government and Governmental Reorganization Act”.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-33 effective Oct. 1, 1997, except as otherwise provided in title XI of Pub. L. 105-33, see section 11721 of Pub. L. 105-33, set out as a note under section 4246 of Title 18, Crimes and Criminal Procedure.

§ 14408. Relation to other laws

The provisions of this chapter supersede other Federal laws (including laws enacted after April

30, 1997) except to the extent such laws specifically supersede the provisions of this chapter.

(Pub. L. 105-12, § 10, Apr. 30, 1997, 111 Stat. 29.)

CHAPTER 139—VOLUNTEER PROTECTION

Sec.

- 14501. Findings and purpose.
 - (a) Findings.
 - (b) Purpose.
- 14502. Preemption and election of State nonapplicability.
 - (a) Preemption.
 - (b) Election of State regarding nonapplicability.
- 14503. Limitation on liability for volunteers.
 - (a) Liability protection for volunteers.
 - (b) Concerning responsibility of volunteers to organizations and entities.
 - (c) No effect on liability of organization or entity.
 - (d) Exceptions to volunteer liability protection.
 - (e) Limitation on punitive damages based on actions of volunteers.
 - (f) Exceptions to limitations on liability.
- 14504. Liability for noneconomic loss.
 - (a) General rule.
 - (b) Amount of liability.
- 14505. Definitions.

§ 14501. Findings and purpose

(a) Findings

The Congress finds and declares that—

(1) the willingness of volunteers to offer their services is deterred by the potential for liability actions against them;

(2) as a result, many nonprofit public and private organizations and governmental entities, including voluntary associations, social service agencies, educational institutions, and other civic programs, have been adversely affected by the withdrawal of volunteers from boards of directors and service in other capacities;

(3) the contribution of these programs to their communities is thereby diminished, resulting in fewer and higher cost programs than would be obtainable if volunteers were participating;

(4) because Federal funds are expended on useful and cost-effective social service programs, many of which are national in scope, depend heavily on volunteer participation, and represent some of the most successful public-private partnerships, protection of volunteerism through clarification and limitation of the personal liability risks assumed by the volunteer in connection with such participation is an appropriate subject for Federal legislation;

(5) services and goods provided by volunteers and nonprofit organizations would often otherwise be provided by private entities that operate in interstate commerce;

(6) due to high liability costs and unwarranted litigation costs, volunteers and nonprofit organizations face higher costs in purchasing insurance, through interstate insurance markets, to cover their activities; and

(7) clarifying and limiting the liability risk assumed by volunteers is an appropriate subject for Federal legislation because—

(A) of the national scope of the problems created by the legitimate fears of volunteers

about frivolous, arbitrary, or capricious lawsuits;

(B) the citizens of the United States depend on, and the Federal Government expends funds on, and provides tax exemptions and other consideration to, numerous social programs that depend on the services of volunteers;

(C) it is in the interest of the Federal Government to encourage the continued operation of volunteer service organizations and contributions of volunteers because the Federal Government lacks the capacity to carry out all of the services provided by such organizations and volunteers; and

(D)(i) liability reform for volunteers, will promote the free flow of goods and services, lessen burdens on interstate commerce and uphold constitutionally protected due process rights; and

(ii) therefore, liability reform is an appropriate use of the powers contained in article 1, section 8, clause 3 of the United States Constitution, and the fourteenth amendment to the United States Constitution.

(b) Purpose

The purpose of this chapter is to promote the interests of social service program beneficiaries and taxpayers and to sustain the availability of programs, nonprofit organizations, and governmental entities that depend on volunteer contributions by reforming the laws to provide certain protections from liability abuses related to volunteers serving nonprofit organizations and governmental entities.

(Pub. L. 105-19, § 2, June 18, 1997, 111 Stat. 218.)

EFFECTIVE DATE

Section 7 of Pub. L. 105-19 provided that:

“(a) IN GENERAL.—This Act [enacting this chapter] shall take effect 90 days after the date of enactment of this Act [June 18, 1997].

“(b) APPLICATION.—This Act applies to any claim for harm caused by an act or omission of a volunteer where that claim is filed on or after the effective date of this Act but only if the harm that is the subject of the claim or the conduct that caused such harm occurred after such effective date.”

SHORT TITLE

Section 1 of Pub. L. 105-19 provided that: “This Act [enacting this chapter] may be cited as the ‘Volunteer Protection Act of 1997.’”

§ 14502. Preemption and election of State nonapplicability

(a) Preemption

This chapter preempts the laws of any State to the extent that such laws are inconsistent with this chapter, except that this chapter shall not preempt any State law that provides additional protection from liability relating to volunteers or to any category of volunteers in the performance of services for a nonprofit organization or governmental entity.

(b) Election of State regarding nonapplicability

This chapter shall not apply to any civil action in a State court against a volunteer in which all parties are citizens of the State if such State enacts a statute in accordance with State requirements for enacting legislation—

(1) citing the authority of this subsection;

(2) declaring the election of such State that this chapter shall not apply, as of a date certain, to such civil action in the State; and

(3) containing no other provisions.

(Pub. L. 105-19, § 3, June 18, 1997, 111 Stat. 219.)

§ 14503. Limitation on liability for volunteers

(a) Liability protection for volunteers

Except as provided in subsections (b) and (d) of this section, no volunteer of a nonprofit organization or governmental entity shall be liable for harm caused by an act or omission of the volunteer on behalf of the organization or entity if—

(1) the volunteer was acting within the scope of the volunteer’s responsibilities in the nonprofit organization or governmental entity at the time of the act or omission;

(2) if appropriate or required, the volunteer was properly licensed, certified, or authorized by the appropriate authorities for the activities or practice in the State in which the harm occurred, where the activities were or practice was undertaken within the scope of the volunteer’s responsibilities in the nonprofit organization or governmental entity;

(3) the harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer; and

(4) the harm was not caused by the volunteer operating a motor vehicle, vessel, aircraft, or other vehicle for which the State requires the operator or the owner of the vehicle, craft, or vessel to—

(A) possess an operator’s license; or

(B) maintain insurance.

(b) Concerning responsibility of volunteers to organizations and entities

Nothing in this section shall be construed to affect any civil action brought by any nonprofit organization or any governmental entity against any volunteer of such organization or entity.

(c) No effect on liability of organization or entity

Nothing in this section shall be construed to affect the liability of any nonprofit organization or governmental entity with respect to harm caused to any person.

(d) Exceptions to volunteer liability protection

If the laws of a State limit volunteer liability subject to one or more of the following conditions, such conditions shall not be construed as inconsistent with this section:

(1) A State law that requires a nonprofit organization or governmental entity to adhere to risk management procedures, including mandatory training of volunteers.

(2) A State law that makes the organization or entity liable for the acts or omissions of its volunteers to the same extent as an employer is liable for the acts or omissions of its employees.

(3) A State law that makes a limitation of liability inapplicable if the civil action was brought by an officer of a State or local government pursuant to State or local law.

(4) A State law that makes a limitation of liability applicable only if the nonprofit organization or governmental entity provides a financially secure source of recovery for individuals who suffer harm as a result of actions taken by a volunteer on behalf of the organization or entity. A financially secure source of recovery may be an insurance policy within specified limits, comparable coverage from a risk pooling mechanism, equivalent assets, or alternative arrangements that satisfy the State that the organization or entity will be able to pay for losses up to a specified amount. Separate standards for different types of liability exposure may be specified.

(e) Limitation on punitive damages based on actions of volunteers

(1) General rule

Punitive damages may not be awarded against a volunteer in an action brought for harm based on the action of a volunteer acting within the scope of the volunteer's responsibilities to a nonprofit organization or governmental entity unless the claimant establishes by clear and convincing evidence that the harm was proximately caused by an action of such volunteer which constitutes willful or criminal misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed.

(2) Construction

Paragraph (1) does not create a cause of action for punitive damages and does not preempt or supersede any Federal or State law to the extent that such law would further limit the award of punitive damages.

(f) Exceptions to limitations on liability

(1) In general

The limitations on the liability of a volunteer under this chapter shall not apply to any misconduct that—

(A) constitutes a crime of violence (as that term is defined in section 16 of title 18) or act of international terrorism (as that term is defined in section 2331 of title 18) for which the defendant has been convicted in any court;

(B) constitutes a hate crime (as that term is used in the Hate Crime Statistics Act (28 U.S.C. 534 note));

(C) involves a sexual offense, as defined by applicable State law, for which the defendant has been convicted in any court;

(D) involves misconduct for which the defendant has been found to have violated a Federal or State civil rights law; or

(E) where the defendant was under the influence (as determined pursuant to applicable State law) of intoxicating alcohol or any drug at the time of the misconduct.

(2) Rule of construction

Nothing in this subsection shall be construed to effect subsection (a)(3) or (e) of this section.

(Pub. L. 105-19, § 4, June 18, 1997, 111 Stat. 219.)

REFERENCES IN TEXT

The Hate Crime Statistics Act, referred to in subsection (f)(1)(B), is Pub. L. 101-275, Apr. 23, 1990, 104 Stat. 140,

which is set out as a note under section 534 of Title 28, Judiciary and Judicial Procedure.

§ 14504. Liability for noneconomic loss

(a) General rule

In any civil action against a volunteer, based on an action of a volunteer acting within the scope of the volunteer's responsibilities to a nonprofit organization or governmental entity, the liability of the volunteer for noneconomic loss shall be determined in accordance with subsection (b) of this section.

(b) Amount of liability

(1) In general

Each defendant who is a volunteer, shall be liable only for the amount of noneconomic loss allocated to that defendant in direct proportion to the percentage of responsibility of that defendant (determined in accordance with paragraph (2)) for the harm to the claimant with respect to which that defendant is liable. The court shall render a separate judgment against each defendant in an amount determined pursuant to the preceding sentence.

(2) Percentage of responsibility

For purposes of determining the amount of noneconomic loss allocated to a defendant who is a volunteer under this section, the trier of fact shall determine the percentage of responsibility of that defendant for the claimant's harm.

(Pub. L. 105-19, § 5, June 18, 1997, 111 Stat. 221.)

§ 14505. Definitions

For purposes of this chapter:

(1) Economic loss

The term "economic loss" means any pecuniary loss resulting from harm (including the loss of earnings or other benefits related to employment, medical expense loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities) to the extent recovery for such loss is allowed under applicable State law.

(2) Harm

The term "harm" includes physical, non-physical, economic, and noneconomic losses.

(3) Noneconomic losses

The term "noneconomic losses" means losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation and all other nonpecuniary losses of any kind or nature.

(4) Nonprofit organization

The term "nonprofit organization" means—

(A) any organization which is described in section 501(c)(3) of title 26 and exempt from tax under section 501(a) of such title and which does not practice any action which constitutes a hate crime referred to in subsection (b)(1) of the first section of the Hate Crime Statistics Act (28 U.S.C. 534 note); or

(B) any not-for-profit organization which is organized and conducted for public benefit and operated primarily for charitable, civic, educational, religious, welfare, or health purposes and which does not practice any action which constitutes a hate crime referred to in subsection (b)(1) of the first section of the Hate Crime Statistics Act (28 U.S.C. 534 note).

(5) State

The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, any other territory or possession of the United States, or any political subdivision of any such State, territory, or possession.

(6) Volunteer

The term “volunteer” means an individual performing services for a nonprofit organization or a governmental entity who does not receive—

(A) compensation (other than reasonable reimbursement or allowance for expenses actually incurred); or

(B) any other thing of value in lieu of compensation,

in excess of \$500 per year, and such term includes a volunteer serving as a director, officer, trustee, or direct service volunteer.

(Pub. L. 105–19, § 6, June 18, 1997, 111 Stat. 221.)

REFERENCES IN TEXT

The Hate Crime Statistics Act, referred to in par. (4), is Pub. L. 101–275, Apr. 23, 1990, 104 Stat. 140, which is set out as a note under section 534 of Title 28, Judiciary and Judicial Procedure.

CHAPTER 140—CRIMINAL JUSTICE IDENTIFICATION, INFORMATION, AND COMMUNICATION

SUBCHAPTER I—CRIME IDENTIFICATION TECHNOLOGY

- Sec.
14601. State grant program for criminal justice identification, information, and communication.
- (a) In general.
 - (b) Use of grant amounts.
 - (c) Assurances.
 - (d) Matching funds.
 - (e) Authorization of appropriations.
 - (f) Grants to Indian tribes.

SUBCHAPTER II—EXCHANGE OF CRIMINAL HISTORY RECORDS FOR NONCRIMINAL JUSTICE PURPOSES

- 14611. Findings.
- 14612. Definitions.
- 14613. Enactment and consent of the United States.
- 14614. Effect on other laws.
 - (a) Privacy Act of 1974.
 - (b) Access to certain records not affected.
 - (c) Authority of FBI under Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973.
 - (d) Federal Advisory Committee Act.
 - (e) Members of Council not Federal officers or employees.
- 14615. Enforcement and implementation.

- Sec.
14616. National Crime Prevention and Privacy Compact.

SUBCHAPTER I—CRIME IDENTIFICATION TECHNOLOGY

§ 14601. State grant program for criminal justice identification, information, and communication

(a) In general

Subject to the availability of amounts provided in advance in appropriations Acts, the Office of Justice Programs relying principally on the expertise of the Bureau of Justice Statistics shall make a grant to each State, in a manner consistent with the national criminal history improvement program, which shall be used by the State, in conjunction with units of local government, State and local courts, other States, or combinations thereof, to establish or upgrade an integrated approach to develop information and identification technologies and systems to—

- (1) upgrade criminal history and criminal justice record systems, including systems operated by law enforcement agencies and courts;
- (2) improve criminal justice identification;
- (3) promote compatibility and integration of national, State, and local systems for—
 - (A) criminal justice purposes;
 - (B) firearms eligibility determinations;
 - (C) identification of sexual offenders;
 - (D) identification of domestic violence offenders; and
 - (E) background checks for other authorized purposes unrelated to criminal justice; and
- (4) capture information for statistical and research purposes to improve the administration of criminal justice.

(b) Use of grant amounts

Grants under this section may be used for programs to establish, develop, update, or upgrade—

- (1) State centralized, automated, adult and juvenile criminal history record information systems, including arrest and disposition reporting;
- (2) automated fingerprint identification systems that are compatible with standards established by the National Institute of Standards and Technology and interoperable with the Integrated Automated Fingerprint Identification System (IAFIS) of the Federal Bureau of Investigation;
- (3) finger imaging, live scan, and other automated systems to digitize fingerprints and to communicate prints in a manner that is compatible with standards established by the National Institute of Standards and Technology and interoperable with systems operated by States and by the Federal Bureau of Investigation;
- (4) programs and systems to facilitate full participation in the Interstate Identification Index of the National Crime Information Center;
- (5) systems to facilitate full participation in any compact relating to the Interstate Identifi-

fication Index of the National Crime Information Center;

(6) systems to facilitate full participation in the national instant criminal background check system established under section 103(b) of the Brady Handgun Violence Prevention Act (18 U.S.C. 922 note) for firearms eligibility determinations;

(7) integrated criminal justice information systems to manage and communicate criminal justice information among law enforcement agencies, courts, prosecutors, and corrections agencies;

(8) noncriminal history record information systems relevant to firearms eligibility determinations for availability and accessibility to the national instant criminal background check system established under section 103(b) of the Brady Handgun Violence Prevention Act (18 U.S.C. 922 note);

(9) court-based criminal justice information systems that promote—

(A) reporting of dispositions to central State repositories and to the Federal Bureau of Investigation; and

(B) compatibility with, and integration of, court systems with other criminal justice information systems;

(10) ballistics identification and information programs that are compatible and integrated with the National Integrated Ballistics Network (NIBN);

(11) the capabilities of forensic science programs and medical examiner programs related to the administration of criminal justice, including programs leading to accreditation or certification of individuals or departments, agencies, or laboratories, and programs relating to the identification and analysis of deoxyribonucleic acid;

(12) sexual offender identification and registration systems;

(13) domestic violence offender identification and information systems;

(14) programs for fingerprint-supported background checks capability for noncriminal justice purposes, including youth service employees and volunteers and other individuals in positions of responsibility, if authorized by Federal or State law and administered by a government agency;

(15) criminal justice information systems with a capacity to provide statistical and research products including incident-based reporting systems that are compatible with the National Incident-Based Reporting System (NIBRS) and uniform crime reports;

(16) multiagency, multijurisdictional communications systems among the States to share routine and emergency information among Federal, State, and local law enforcement agencies;

(17) the capability of the criminal justice system to deliver timely, accurate, and complete criminal history record information to child welfare agencies, organizations, and programs that are engaged in the assessment of risk and other activities related to the protection of children, including protection against child sexual abuse, and placement of children in foster care; and

(18) notwithstanding subsection (c) of this section, antiterrorism purposes as they relate to any other uses under this section or for other antiterrorism programs.

(c) Assurances

(1) In general

To be eligible to receive a grant under this section, a State shall provide assurances to the Attorney General that the State has the capability to contribute pertinent information to the national instant criminal background check system established under section 103(b) of the Brady Handgun Violence Prevention Act (18 U.S.C. 922 note).

(2) Information sharing

Such assurances shall include a provision that ensures that a statewide strategy for information sharing systems is underway, or will be initiated, to improve the functioning of the criminal justice system, with an emphasis on integration of all criminal justice components, law enforcement, courts, prosecution, corrections, and probation and parole. The strategy shall be prepared after consultation with State and local officials with emphasis on the recommendation of officials whose duty it is to oversee, plan, and implement integrated information technology systems, and shall contain—

(A) a definition and analysis of “integration” in the State and localities developing integrated information sharing systems;

(B) an assessment of the criminal justice resources being devoted to information technology;

(C) Federal, State, regional, and local information technology coordination requirements;

(D) an assurance that the individuals who developed the grant application took into consideration the needs of all branches of the State Government and specifically sought the advice of the chief of the highest court of the State with respect to the application;

(E) State and local resource needs;

(F) the establishment of statewide priorities for planning and implementation of information technology systems; and

(G) a plan for coordinating the programs funded under this subchapter with other federally funded information technology programs, including directly funded local programs such as the Local Law Enforcement Block Grant program (described under the heading “Violent Crime Reduction Programs, State and Local Law Enforcement Assistance” of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998 (Public Law 105-119)) and the M.O.R.E. program established pursuant to part Q of title I of the Omnibus Crime Control and Safe Streets Act of 1968 [42 U.S.C. 3796dd et seq.].

(d) Matching funds

The Federal share of a grant received under this subchapter may not exceed 90 percent of the costs of a program or proposal funded under this subchapter unless the Attorney General waives,

wholly or in part, the requirements of this subsection.

(e) Authorization of appropriations

(1) In general

There is authorized to be appropriated to carry out this section \$250,000,000 for each of fiscal years 2002 through 2007.

(2) Limitations

Of the amount made available to carry out this section in any fiscal year—

(A) not more than 3 percent may be used by the Attorney General for salaries and administrative expenses;

(B) not more than 5 percent may be used for technical assistance, training and evaluations, and studies commissioned by Bureau of Justice Statistics of the Department of Justice (through discretionary grants or otherwise) in furtherance of the purposes of this section; and

(C) the Attorney General shall ensure the amounts are distributed on an equitable geographic basis.

(f) Grants to Indian tribes

Notwithstanding any other provision of this section, the Attorney General may use amounts made available under this section to make grants to Indian tribes for use in accordance with this section.

(Pub. L. 105-251, title I, §102, Oct. 9, 1998, 112 Stat. 1871; Pub. L. 106-177, title I, §102, Mar. 10, 2000, 114 Stat. 35; Pub. L. 106-561, §2(c)(4), Dec. 21, 2000, 114 Stat. 2791; Pub. L. 107-56, title X, §1015, Oct. 26, 2001, 115 Stat. 400.)

REFERENCES IN TEXT

Section 103(b) of the Brady Handgun Violence Prevention Act, referred to in subsecs. (b)(6), (8) and (c)(1), is section 103(b) of Pub. L. 103-159, as amended, which is set out as a note under section 922 of Title 18, Crimes and Criminal Procedure.

The Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998, referred to in subsec. (c)(2)(G), is Pub. L. 105-119, Nov. 26, 1997, 111 Stat. 2440. Provisions described under the heading "Violent Crime Reduction Programs, State and Local Law Enforcement Assistance" appear at 111 Stat. 2452, and are not classified to the Code.

The Omnibus Crime Control and Safe Streets Act of 1968, referred to in subsec. (c)(2)(G), is Pub. L. 90-351, June 19, 1968, 82 Stat. 197, as amended. Part Q of title I of the Act is classified generally to subchapter XII-E (§3796dd et seq.) of chapter 46 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3711 of this title and Tables.

AMENDMENTS

2001—Subsec. (b)(18). Pub. L. 107-56, §1015(1), added par. (18).

Subsec. (e)(1). Pub. L. 107-56, §1015(2), substituted "this section \$250,000,000 for each of fiscal years 2002 through 2007" for "this section \$250,000,000 for each of fiscal years 1999 through 2003".

2000—Subsec. (b)(17). Pub. L. 106-177 added par. (17).

Subsec. (e)(2)(B) to (D). Pub. L. 106-561 inserted "and" after semicolon in subpar. (B), redesignated subpar. (D) as (C), and struck out former subpar. (C) which read as follows: "not less than 20 percent shall be used by the Attorney General for the purposes described in paragraph (11) of subsection (b) of this section; and".

SHORT TITLE

Pub. L. 105-251, title I, §101, Oct. 9, 1998, 112 Stat. 1871, provided that: "This title [enacting this subchapter]

may be cited as the 'Crime Identification Technology Act of 1998'."

Pub. L. 105-251, title II, §201, Oct. 9, 1998, 112 Stat. 1874, provided that: "This title [enacting subchapter II of this chapter, amending sections 5119a and 5119b of this title, and enacting provisions set out as a note under section 5101 of this title] may be cited as the 'National Criminal History Access and Child Protection Act'."

Pub. L. 105-251, title II, §211, Oct. 9, 1998, 112 Stat. 1874, provided that: "This subtitle [subtitle A (§§211-217) of title II of Pub. L. 105-251, enacting subchapter II of this chapter] may be cited as the 'National Crime Prevention and Privacy Compact Act of 1998'."

SUBCHAPTER II—EXCHANGE OF CRIMINAL HISTORY RECORDS FOR NONCRIMINAL JUSTICE PURPOSES

§ 14611. Findings

Congress finds that—

(1) both the Federal Bureau of Investigation and State criminal history record repositories maintain fingerprint-based criminal history records;

(2) these criminal history records are shared and exchanged for criminal justice purposes through a Federal-State program known as the Interstate Identification Index System;

(3) although these records are also exchanged for legally authorized, noncriminal justice uses, such as governmental licensing and employment background checks, the purposes for and procedures by which they are exchanged vary widely from State to State;

(4) an interstate and Federal-State compact is necessary to facilitate authorized interstate criminal history record exchanges for non-criminal justice purposes on a uniform basis, while permitting each State to effectuate its own dissemination policy within its own borders; and

(5) such a compact will allow Federal and State records to be provided expeditiously to governmental and nongovernmental agencies that use such records in accordance with pertinent Federal and State law, while simultaneously enhancing the accuracy of the records and safeguarding the information contained therein from unauthorized disclosure or use.

(Pub. L. 105-251, title II, §212, Oct. 9, 1998, 112 Stat. 1874.)

§ 14612. Definitions

In this subchapter:

(1) Attorney General

The term "Attorney General" means the Attorney General of the United States.

(2) Compact

The term "Compact" means the National Crime Prevention and Privacy Compact set forth in section 14616 of this title.

(3) Council

The term "Council" means the Compact Council established under Article VI of the Compact.

(4) FBI

The term "FBI" means the Federal Bureau of Investigation.

(5) Party State

The term “Party State” means a State that has ratified the Compact.

(6) State

The term “State” means any State, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Pub. L. 105-251, title II, §213, Oct. 9, 1998, 112 Stat. 1874.)

§ 14613. Enactment and consent of the United States

The National Crime Prevention and Privacy Compact, as set forth in section 14616 of this title, is enacted into law and entered into by the Federal Government. The consent of Congress is given to States to enter into the Compact.

(Pub. L. 105-251, title II, §214, Oct. 9, 1998, 112 Stat. 1875.)

§ 14614. Effect on other laws**(a) Privacy Act of 1974**

Nothing in the Compact shall affect the obligations and responsibilities of the FBI under section 552a of title 5 (commonly known as the “Privacy Act of 1974”).

(b) Access to certain records not affected

Nothing in the Compact shall interfere in any manner with—

(1) access, direct or otherwise, to records pursuant to—

(A) section 9101 of title 5;

(B) the National Child Protection Act [42 U.S.C. 5119 et seq.];

(C) the Brady Handgun Violence Prevention Act (Public Law 103-159; 107 Stat. 1536);

(D) the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103-322; 108 Stat. 2074) or any amendment made by that Act;

(E) the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.); or

(F) the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.); or

(2) any direct access to Federal criminal history records authorized by law.

(c) Authority of FBI under Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973

Nothing in the Compact shall be construed to affect the authority of the FBI under the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973 (Public Law 92-544 (86 Stat. 1115)).

(d) Federal Advisory Committee Act

The Council shall not be considered to be a Federal advisory committee for purposes of the Federal Advisory Committee Act (5 U.S.C. App.).

(e) Members of Council not Federal officers or employees

Members of the Council (other than a member from the FBI or any at-large member who may be a Federal official or employee) shall not, by virtue of such membership, be deemed—

(1) to be, for any purpose other than to effect the Compact, officers or employees of the United States (as defined in sections 2104 and 2105 of title 5); or

(2) to become entitled by reason of Council membership to any compensation or benefit payable or made available by the Federal Government to its officers or employees.

(Pub. L. 105-251, title II, §215, Oct. 9, 1998, 112 Stat. 1875.)

REFERENCES IN TEXT

The Privacy Act of 1974, referred to in subsec. (a), is Pub. L. 93-579, Dec. 31, 1974, 88 Stat. 1896, as amended, which enacted section 552a of Title 5, Government Organization and Employees, and provisions set out as notes under section 552a of Title 5. For complete classification of this Act to the Code, see Short Title note set out under section 552a of Title 5 and Tables.

The National Child Protection Act, referred to in subsec. (b)(1)(B), probably means the National Child Protection Act of 1993, Pub. L. 103-209, Dec. 20, 1993, 107 Stat. 2490, as amended, which is classified principally to subchapter VI (§5119 et seq.) of chapter 67 of this title. For complete classification of this Act to the Code, see Short Title of 1993 Amendment note set out under section 5101 of this title and Tables.

The Brady Handgun Violence Prevention Act, referred to in subsec. (b)(1)(C), is title I of Pub. L. 103-159, Nov. 30, 1993, 107 Stat. 1536, which enacted section 925A of Title 18, Crimes and Criminal Procedure, amended section 3759 of this title and sections 921, 922, and 924 of Title 18, and enacted provisions set out as notes under sections 921 and 922 of Title 18. For complete classification of this Act to the Code, see Short Title of 1993 Amendment note set out under section 921 of Title 18 and Tables.

The Violent Crime Control and Law Enforcement Act of 1994, referred to in subsec. (b)(1)(D), is Pub. L. 103-322, Sept. 13, 1994, 108 Stat. 1796, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 13701 of this title and Tables.

The United States Housing Act of 1937, referred to in subsec. (b)(1)(E), 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, which is classified generally to chapter 8 (§1437 et seq.) 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.

The Native American Housing Assistance and Self-Determination Act of 1996, referred to in subsec. (b)(1)(F), is Pub. L. 104-330, Oct. 26, 1996, 110 Stat. 4016, as amended, which is classified principally to chapter 43 (§4101 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of Title 25 and Tables.

The Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973, referred to in subsec. (c), is Pub. L. 92-544, Oct. 25, 1972, 86 Stat. 1109, as amended. For complete classification of this Act to the Code, see Tables.

The Federal Advisory Committee Act, referred to in subsec. (d), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

§ 14615. Enforcement and implementation

All departments, agencies, officers, and employees of the United States shall enforce the Compact and cooperate with one another and with all Party States in enforcing the Compact and effectuating its purposes. For the Federal Government, the Attorney General shall make such rules, prescribe such instructions, and take such other actions as may be necessary to carry out the Compact and this subchapter.

(Pub. L. 105-251, title II, §216, Oct. 9, 1998, 112 Stat. 1875.)

§ 14616. National Crime Prevention and Privacy Compact

The Contracting Parties agree to the following:

OVERVIEW

(a) In general

This Compact organizes an electronic information sharing system among the Federal Government and the States to exchange criminal history records for noncriminal justice purposes authorized by Federal or State law, such as background checks for governmental licensing and employment.

(b) Obligations of parties

Under this Compact, the FBI and the Party States agree to maintain detailed databases of their respective criminal history records, including arrests and dispositions, and to make them available to the Federal Government and to Party States for authorized purposes. The FBI shall also manage the Federal data facilities that provide a significant part of the infrastructure for the system.

ARTICLE I—DEFINITIONS

In this Compact:

(1) Attorney General

The term “Attorney General” means the Attorney General of the United States.

(2) Compact officer

The term “Compact officer” means—

(A) with respect to the Federal Government, an official so designated by the Director of the FBI; and

(B) with respect to a Party State, the chief administrator of the State’s criminal history record repository or a designee of the chief administrator who is a regular full-time employee of the repository.

(3) Council

The term “Council” means the Compact Council established under Article VI.

(4) Criminal history records

The term “criminal history records”—

(A) means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, or other formal criminal charges, and any disposition arising therefrom, including acquittal, sentencing, correctional supervision, or release; and

(B) does not include identification information such as fingerprint records if such information does not indicate involvement of the individual with the criminal justice system.

(5) Criminal history record repository

The term “criminal history record repository” means the State agency designated by the Governor or other appropriate executive official or the legislature of a State to perform

centralized recordkeeping functions for criminal history records and services in the State.

(6) Criminal justice

The term “criminal justice” includes activities relating to the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice includes criminal identification activities and the collection, storage, and dissemination of criminal history records.

(7) Criminal justice agency

The term “criminal justice agency”—

(A) means—

(i) courts; and
(ii) a governmental agency or any subunit thereof that—

(I) performs the administration of criminal justice pursuant to a statute or Executive order; and

(II) allocates a substantial part of its annual budget to the administration of criminal justice; and

(B) includes Federal and State inspectors general offices.

(8) Criminal justice services

The term “criminal justice services” means services provided by the FBI to criminal justice agencies in response to a request for information about a particular individual or as an update to information previously provided for criminal justice purposes.

(9) Criterion offense

The term “criterion offense” means any felony or misdemeanor offense not included on the list of nonserious offenses published periodically by the FBI.

(10) Direct access

The term “direct access” means access to the National Identification Index by computer terminal or other automated means not requiring the assistance of or intervention by any other party or agency.

(11) Executive order

The term “Executive order” means an order of the President of the United States or the chief executive officer of a State that has the force of law and that is promulgated in accordance with applicable law.

(12) FBI

The term “FBI” means the Federal Bureau of Investigation.

(13) Interstate Identification System

The term “Interstate Identification Index System” or “III System”—

(A) means the cooperative Federal-State system for the exchange of criminal history records; and

(B) includes the National Identification Index, the National Fingerprint File and, to the extent of their participation in such system, the criminal history record repositories of the States and the FBI.

(14) National Fingerprint File

The term “National Fingerprint File” means a database of fingerprints, or other

uniquely personal identifying information, relating to an arrested or charged individual maintained by the FBI to provide positive identification of record subjects indexed in the III System.

(15) National Identification Index

The term “National Identification Index” means an index maintained by the FBI consisting of names, identifying numbers, and other descriptive information relating to record subjects about whom there are criminal history records in the III System.

(16) National indices

The term “National indices” means the National Identification Index and the National Fingerprint File.

(17) Nonparty State

The term “Nonparty State” means a State that has not ratified this Compact.

(18) Noncriminal justice purposes

The term “noncriminal justice purposes” means uses of criminal history records for purposes authorized by Federal or State law other than purposes relating to criminal justice activities, including employment suitability, licensing determinations, immigration and naturalization matters, and national security clearances.

(19) Party State

The term “Party State” means a State that has ratified this Compact.

(20) Positive identification

The term “positive identification” means a determination, based upon a comparison of fingerprints or other equally reliable biometric identification techniques, that the subject of a record search is the same person as the subject of a criminal history record or records indexed in the III System. Identifications based solely upon a comparison of subjects’ names or other nonunique identification characteristics or numbers, or combinations thereof, shall not constitute positive identification.

(21) Sealed record information

The term “sealed record information” means—

(A) with respect to adults, that portion of a record that is—

(i) not available for criminal justice uses;

(ii) not supported by fingerprints or other accepted means of positive identification; or

(iii) subject to restrictions on dissemination for noncriminal justice purposes pursuant to a court order related to a particular subject or pursuant to a Federal or State statute that requires action on a sealing petition filed by a particular record subject; and

(B) with respect to juveniles, whatever each State determines is a sealed record under its own law and procedure.

(22) State

The term “State” means any State, territory, or possession of the United States, the

District of Columbia, and the Commonwealth of Puerto Rico.

ARTICLE II—PURPOSES

The purposes of this Compact are to—

(1) provide a legal framework for the establishment of a cooperative Federal-State system for the interstate and Federal-State exchange of criminal history records for non-criminal justice uses;

(2) require the FBI to permit use of the National Identification Index and the National Fingerprint File by each Party State, and to provide, in a timely fashion, Federal and State criminal history records to requesting States, in accordance with the terms of this Compact and with rules, procedures, and standards established by the Council under Article VI;

(3) require Party States to provide information and records for the National Identification Index and the National Fingerprint File and to provide criminal history records, in a timely fashion, to criminal history record repositories of other States and the Federal Government for noncriminal justice purposes, in accordance with the terms of this Compact and with rules, procedures, and standards established by the Council under Article VI;

(4) provide for the establishment of a Council to monitor III System operations and to prescribe system rules and procedures for the effective and proper operation of the III System for noncriminal justice purposes; and

(5) require the FBI and each Party State to adhere to III System standards concerning record dissemination and use, response times, system security, data quality, and other duly established standards, including those that enhance the accuracy and privacy of such records.

ARTICLE III—RESPONSIBILITIES OF COMPACT PARTIES

(a) FBI responsibilities

The Director of the FBI shall—

(1) appoint an FBI Compact officer who shall—

(A) administer this Compact within the Department of Justice and among Federal agencies and other agencies and organizations that submit search requests to the FBI pursuant to Article V(c);

(B) ensure that Compact provisions and rules, procedures, and standards prescribed by the Council under Article VI are complied with by the Department of Justice and the Federal agencies and other agencies and organizations referred to in Article III(1)(A); and

(C) regulate the use of records received by means of the III System from Party States when such records are supplied by the FBI directly to other Federal agencies;

(2) provide to Federal agencies and to State criminal history record repositories, criminal history records maintained in its database for the noncriminal justice purposes described in Article IV, including—

(A) information from Nonparty States; and

(B) information from Party States that is available from the FBI through the III Sys-

tem, but is not available from the Party State through the III System;

(3) provide a telecommunications network and maintain centralized facilities for the exchange of criminal history records for both criminal justice purposes and the noncriminal justice purposes described in Article IV, and ensure that the exchange of such records for criminal justice purposes has priority over exchange for noncriminal justice purposes; and

(4) modify or enter into user agreements with Nonparty State criminal history record repositories to require them to establish record request procedures conforming to those prescribed in Article V.

(b) State responsibilities

Each Party State shall—

(1) appoint a Compact officer who shall—

(A) administer this Compact within that State;

(B) ensure that Compact provisions and rules, procedures, and standards established by the Council under Article VI are complied with in the State; and

(C) regulate the in-State use of records received by means of the III System from the FBI or from other Party States;

(2) establish and maintain a criminal history record repository, which shall provide—

(A) information and records for the National Identification Index and the National Fingerprint File; and

(B) the State's III System-indexed criminal history records for noncriminal justice purposes described in Article IV;

(3) participate in the National Fingerprint File; and

(4) provide and maintain telecommunications links and related equipment necessary to support the services set forth in this Compact.

(c) Compliance with III System standards

In carrying out their responsibilities under this Compact, the FBI and each Party State shall comply with III System rules, procedures, and standards duly established by the Council concerning record dissemination and use, response times, data quality, system security, accuracy, privacy protection, and other aspects of III System operation.

(d) Maintenance of record services

(1) Use of the III System for noncriminal justice purposes authorized in this Compact shall be managed so as not to diminish the level of services provided in support of criminal justice purposes.

(2) Administration of Compact provisions shall not reduce the level of service available to authorized noncriminal justice users on the effective date of this Compact.

ARTICLE IV—AUTHORIZED RECORD DISCLOSURES

(a) State criminal history record repositories

To the extent authorized by section 552a of title 5, United States Code (commonly known as the "Privacy Act of 1974"), the FBI shall provide on request criminal history records (excluding

sealed records) to State criminal history record repositories for noncriminal justice purposes allowed by Federal statute, Federal Executive order, or a State statute that has been approved by the Attorney General and that authorizes national indices checks.

(b) Criminal justice agencies and other governmental or nongovernmental agencies

The FBI, to the extent authorized by section 552a of title 5, United States Code (commonly known as the "Privacy Act of 1974"), and State criminal history record repositories shall provide criminal history records (excluding sealed records) to criminal justice agencies and other governmental or nongovernmental agencies for noncriminal justice purposes allowed by Federal statute, Federal Executive order, or a State statute that has been approved by the Attorney General, that authorizes national indices checks.

(c) Procedures

Any record obtained under this Compact may be used only for the official purposes for which the record was requested. Each Compact officer shall establish procedures, consistent with this Compact, and with rules, procedures, and standards established by the Council under Article VI, which procedures shall protect the accuracy and privacy of the records, and shall—

(1) ensure that records obtained under this Compact are used only by authorized officials for authorized purposes;

(2) require that subsequent record checks are requested to obtain current information whenever a new need arises; and

(3) ensure that record entries that may not legally be used for a particular noncriminal justice purpose are deleted from the response and, if no information authorized for release remains, an appropriate "no record" response is communicated to the requesting official.

ARTICLE V—RECORD REQUEST PROCEDURES

(a) Positive identification

Subject fingerprints or other approved forms of positive identification shall be submitted with all requests for criminal history record checks for noncriminal justice purposes.

(b) Submission of State requests

Each request for a criminal history record check utilizing the national indices made under any approved State statute shall be submitted through that State's criminal history record repository. A State criminal history record repository shall process an interstate request for noncriminal justice purposes through the national indices only if such request is transmitted through another State criminal history record repository or the FBI.

(c) Submission of Federal requests

Each request for criminal history record checks utilizing the national indices made under Federal authority shall be submitted through the FBI or, if the State criminal history record repository consents to process fingerprint submissions, through the criminal history record repository in the State in which such request

originated. Direct access to the National Identification Index by entities other than the FBI and State criminal history records repositories shall not be permitted for noncriminal justice purposes.

(d) Fees

A State criminal history record repository or the FBI—

(1) may charge a fee, in accordance with applicable law, for handling a request involving fingerprint processing for noncriminal justice purposes; and

(2) may not charge a fee for providing criminal history records in response to an electronic request for a record that does not involve a request to process fingerprints.

(e) Additional search

(1) If a State criminal history record repository cannot positively identify the subject of a record request made for noncriminal justice purposes, the request, together with fingerprints or other approved identifying information, shall be forwarded to the FBI for a search of the national indices.

(2) If, with respect to a request forwarded by a State criminal history record repository under paragraph (1), the FBI positively identifies the subject as having a III System-indexed record or records—

(A) the FBI shall so advise the State criminal history record repository; and

(B) the State criminal history record repository shall be entitled to obtain the additional criminal history record information from the FBI or other State criminal history record repositories.

ARTICLE VI—ESTABLISHMENT OF
COMPACT COUNCIL

(a) Establishment

(1) In general

There is established a council to be known as the “Compact Council”, which shall have the authority to promulgate rules and procedures governing the use of the III System for noncriminal justice purposes, not to conflict with FBI administration of the III System for criminal justice purposes.

(2) Organization

The Council shall—

(A) continue in existence as long as this Compact remains in effect;

(B) be located, for administrative purposes, within the FBI; and

(C) be organized and hold its first meeting as soon as practicable after the effective date of this Compact.

(b) Membership

The Council shall be composed of 15 members, each of whom shall be appointed by the Attorney General, as follows:

(1) Nine members, each of whom shall serve a 2-year term, who shall be selected from among the Compact officers of Party States based on the recommendation of the Compact officers of all Party States, except that, in the absence of the requisite number of Compact

officers available to serve, the chief administrators of the criminal history record repositories of Nonparty States shall be eligible to serve on an interim basis.

(2) Two at-large members, nominated by the Director of the FBI, each of whom shall serve a 3-year term, of whom—

(A) 1 shall be a representative of the criminal justice agencies of the Federal Government and may not be an employee of the FBI; and

(B) 1 shall be a representative of the non-criminal justice agencies of the Federal Government.

(3) Two at-large members, nominated by the Chairman of the Council, once the Chairman is elected pursuant to Article VI(c), each of whom shall serve a 3-year term, of whom—

(A) 1 shall be a representative of State or local criminal justice agencies; and

(B) 1 shall be a representative of State or local noncriminal justice agencies.

(4) One member, who shall serve a 3-year term, and who shall simultaneously be a member of the FBI’s advisory policy board on criminal justice information services, nominated by the membership of that policy board.

(5) One member, nominated by the Director of the FBI, who shall serve a 3-year term, and who shall be an employee of the FBI.

(c) Chairman and Vice Chairman

(1) In general

From its membership, the Council shall elect a Chairman and a Vice Chairman of the Council, respectively. Both the Chairman and Vice Chairman of the Council—

(A) shall be a Compact officer, unless there is no Compact officer on the Council who is willing to serve, in which case the Chairman may be an at-large member; and

(B) shall serve a 2-year term and may be reelected to only 1 additional 2-year term.

(2) Duties of Vice Chairman

The Vice Chairman of the Council shall serve as the Chairman of the Council in the absence of the Chairman.

(d) Meetings

(1) In general

The Council shall meet at least once each year at the call of the Chairman. Each meeting of the Council shall be open to the public. The Council shall provide prior public notice in the Federal Register of each meeting of the Council, including the matters to be addressed at such meeting.

(2) Quorum

A majority of the Council or any committee of the Council shall constitute a quorum of the Council or of such committee, respectively, for the conduct of business. A lesser number may meet to hold hearings, take testimony, or conduct any business not requiring a vote.

(e) Rules, procedures, and standards

The Council shall make available for public inspection and copying at the Council office

within the FBI, and shall publish in the Federal Register, any rules, procedures, or standards established by the Council.

(f) Assistance from FBI

The Council may request from the FBI such reports, studies, statistics, or other information or materials as the Council determines to be necessary to enable the Council to perform its duties under this Compact. The FBI, to the extent authorized by law, may provide such assistance or information upon such a request.

(g) Committees

The Chairman may establish committees as necessary to carry out this Compact and may prescribe their membership, responsibilities, and duration.

ARTICLE VII—RATIFICATION OF COMPACT

This Compact shall take effect upon being entered into by 2 or more States as between those States and the Federal Government. Upon subsequent entering into this Compact by additional States, it shall become effective among those States and the Federal Government and each Party State that has previously ratified it. When ratified, this Compact shall have the full force and effect of law within the ratifying jurisdictions. The form of ratification shall be in accordance with the laws of the executing State.

ARTICLE VIII—MISCELLANEOUS PROVISIONS

(a) Relation of Compact to certain FBI activities

Administration of this Compact shall not interfere with the management and control of the Director of the FBI over the FBI's collection and dissemination of criminal history records and the advisory function of the FBI's advisory policy board chartered under the Federal Advisory Committee Act (5 U.S.C. App.) for all purposes other than noncriminal justice.

(b) No authority for nonappropriated expenditures

Nothing in this Compact shall require the FBI to obligate or expend funds beyond those appropriated to the FBI.

(c) Relating to Public Law 92-544

Nothing in this Compact shall diminish or lessen the obligations, responsibilities, and authorities of any State, whether a Party State or a Nonparty State, or of any criminal history record repository or other subdivision or component thereof, under the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973 (Public Law 92-544), or regulations and guidelines promulgated thereunder, including the rules and procedures promulgated by the Council under Article VI(a), regarding the use and dissemination of criminal history records and information.

ARTICLE IX—RENUNCIATION

(a) In general

This Compact shall bind each Party State until renounced by the Party State.

(b) Effect

Any renunciation of this Compact by a Party State shall—

(1) be effected in the same manner by which the Party State ratified this Compact; and

(2) become effective 180 days after written notice of renunciation is provided by the Party State to each other Party State and to the Federal Government.

ARTICLE X—SEVERABILITY

The provisions of this Compact shall be severable, and if any phrase, clause, sentence, or provision of this Compact is declared to be contrary to the constitution of any participating State, or to the Constitution of the United States, or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If a portion of this Compact is held contrary to the constitution of any Party State, all other portions of this Compact shall remain in full force and effect as to the remaining Party States and in full force and effect as to the Party State affected, as to all other provisions.

ARTICLE XI—ADJUDICATION OF DISPUTES

(a) In general

The Council shall—

(1) have initial authority to make determinations with respect to any dispute regarding—

(A) interpretation of this Compact;

(B) any rule or standard established by the Council pursuant to Article V; and

(C) any dispute or controversy between any parties to this Compact; and

(2) hold a hearing concerning any dispute described in paragraph (1) at a regularly scheduled meeting of the Council and only render a decision based upon a majority vote of the members of the Council. Such decision shall be published pursuant to the requirements of Article VI(e).

(b) Duties of FBI

The FBI shall exercise immediate and necessary action to preserve the integrity of the III System, maintain system policy and standards, protect the accuracy and privacy of records, and to prevent abuses, until the Council holds a hearing on such matters.

(c) Right of appeal

The FBI or a Party State may appeal any decision of the Council to the Attorney General, and thereafter may file suit in the appropriate district court of the United States, which shall have original jurisdiction of all cases or controversies arising under this Compact. Any suit arising under this Compact and initiated in a State court shall be removed to the appropriate district court of the United States in the manner provided by section 1446 of title 28, United States Code, or other statutory authority.

(Pub. L. 105-251, title II, §217, Oct. 9, 1998, 112 Stat. 1876.)

REFERENCES IN TEXT

The Privacy Act of 1974, referred to in Article IV(a), (b), is Pub. L. 93-579, Dec. 31, 1974, 88 Stat. 1896, as

amended, which enacted section 552a of Title 5, Government Organization and Employees, and provisions set out as notes under section 552a of Title 5. For complete classification of this Act to the Code, see Short Title note set out under section 552a of Title 5 and Tables.

The Federal Advisory Committee Act, referred to in Article VIII(a), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

The Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973, referred to in Article VIII(c), is Pub. L. 92-544, Oct. 25, 1972, 86 Stat. 1109, as amended. For complete classification of this Act to the Code, see Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14612, 14613 of this title.

CHAPTER 140A—JENNIFER’S LAW

Sec.	
14661.	Program authorized.
14662.	Eligibility.
	(a) Application.
	(b) Contents.
14663.	Uses of funds.
14664.	Authorization of appropriations.
14665.	Grants for the assistance of organizations to find missing adults.
	(a) In general.
	(b) Regulations.

§ 14661. Program authorized

The Attorney General is authorized to provide grant awards to States to enable States to improve the reporting of unidentified and missing persons.

(Pub. L. 106-177, title II, § 202, Mar. 10, 2000, 114 Stat. 36.)

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106-468, § 1, Nov. 9, 2000, 114 Stat. 2027, provided that: “This Act [enacting section 14665 of this title and provisions set out as a note under section 14665 of this title] may be cited as ‘Kristen’s Act’.”

SHORT TITLE

Pub. L. 106-177, title II, § 201, Mar. 10, 2000, 114 Stat. 36, provided that: “This title [enacting this chapter] may be cited as ‘Jennifer’s Law’.”

§ 14662. Eligibility

(a) Application

To be eligible to receive a grant award under this chapter, a State shall submit an application at such time and in such form as the Attorney General may reasonably require.

(b) Contents

Each such application shall include assurances that the State shall, to the greatest extent possible—

- (1) report to the National Crime Information Center and when possible, to law enforcement authorities throughout the State regarding every deceased unidentified person, regardless of age, found in the State’s jurisdiction;
- (2) enter a complete profile of such unidentified person in compliance with the guidelines established by the Department of Justice for the National Crime Information Center Missing and Unidentified Persons File, including dental records, DNA records, x-rays, and fingerprints, if available;

- (3) enter the National Crime Information Center number or other appropriate number assigned to the unidentified person on the death certificate of each such unidentified person; and

- (4) retain all such records pertaining to unidentified persons until a person is identified.

(Pub. L. 106-177, title II, § 203, Mar. 10, 2000, 114 Stat. 36.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14663 of this title.

§ 14663. Uses of funds

A State that receives a grant award under this chapter may use such funds received to establish or expand programs developed to improve the reporting of unidentified persons in accordance with the assurances provided in the application submitted pursuant to section 14662(b) of this title.

(Pub. L. 106-177, title II, § 204, Mar. 10, 2000, 114 Stat. 36.)

§ 14664. Authorization of appropriations

There are authorized to be appropriated to carry out this chapter \$2,000,000 for each of fiscal years 2000, 2001, and 2002.

(Pub. L. 106-177, title II, § 205, Mar. 10, 2000, 114 Stat. 37.)

§ 14665. Grants for the assistance of organizations to find missing adults

(a) In general

The Attorney General may make grants to public agencies or nonprofit private organizations, or combinations thereof, for programs—

- (1) to assist law enforcement and families in locating missing adults;
- (2) to maintain a national, interconnected database for the purpose of tracking missing adults who are determined by law enforcement to be endangered due to age, diminished mental capacity, or the circumstances of disappearance, when foul play is suspected or circumstances are unknown;
- (3) to maintain statistical information of adults reported as missing;
- (4) to provide informational resources and referrals to families of missing adults;
- (5) to assist in public notification and victim advocacy related to missing adults; and
- (6) to establish and maintain a national clearinghouse for missing adults.

(b) Regulations

The Attorney General may make such rules and regulations as may be necessary to carry out this Act.

(Pub. L. 106-468, § 2, Nov. 9, 2000, 114 Stat. 2027.)

REFERENCES IN TEXT

This Act, referred to in subsec. (b), is Pub. L. 106-468, Nov. 9, 2000, 114 Stat. 2027, known as Kristen’s Act, which enacted this section and provisions set out as notes under this section and section 14661 of this title. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was enacted as part of Kristen's Act, and not as part of Jennifer's Law which comprises this chapter.

AUTHORIZATION OF APPROPRIATIONS

Pub. L. 106-468, §3, Nov. 9, 2000, 114 Stat. 2028, provided that: "There are authorized to be appropriated to carry out this Act [enacting this section and provisions set out as a note under section 14661 of this title] \$1,000,000 each year for fiscal years 2001 through 2004."

CHAPTER 141—COMMERCIAL SPACE OPPORTUNITIES AND TRANSPORTATION SERVICES

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§ 14701. Definitions

For purposes of this chapter—

(1) the term "Administrator" means the Administrator of the National Aeronautics and Space Administration;

(2) the term "commercial provider" means any person providing space transportation services or other space-related activities, primary control of which is held by persons other than Federal, State, local, and foreign governments;

(3) the term "payload" means anything that a person undertakes to transport to, from, or within outer space, or in suborbital trajectory, by means of a space transportation vehicle, but does not include the space transportation vehicle itself except for its components which are specifically designed or adapted for that payload;

(4) the term "space-related activities" includes research and development, manufacturing, processing, service, and other associated and support activities;

(5) the term "space transportation services" means the preparation of a space transportation vehicle and its payloads for transportation to, from, or within outer space, or in suborbital trajectory, and the conduct of transporting a payload to, from, or within outer space, or in suborbital trajectory;

(6) the term "space transportation vehicle" means any vehicle constructed for the purpose of operating in, or transporting a payload to, from, or within, outer space, or in suborbital trajectory, and includes any component of such vehicle not specifically designed or adapted for a payload;

(7) the term "State" means each of the several States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other commonwealth, territory, or possession of the United States; and

(8) the term "United States commercial provider" means a commercial provider, organized under the laws of the United States or of a State, which is—

(A) more than 50 percent owned by United States nationals; or

(B) a subsidiary of a foreign company and the Secretary of Transportation finds that—

(i) such subsidiary has in the past evidenced a substantial commitment to the United States market through—

(I) investments in the United States in long-term research, development, and manufacturing (including the manufacture of major components and subassemblies); and

(II) significant contributions to employment in the United States; and

(ii) the country or countries in which such foreign company is incorporated or organized, and, if appropriate, in which it principally conducts its business, affords reciprocal treatment to companies described in subparagraph (A) comparable to that afforded to such foreign company's subsidiary in the United States, as evidenced by—

(I) providing comparable opportunities for companies described in subparagraph (A) to participate in Government sponsored research and development similar to that authorized under this chapter;

(II) providing no barriers, to companies described in subparagraph (A) with respect to local investment opportunities, that are not provided to foreign companies in the United States; and

(III) providing adequate and effective protection for the intellectual property rights of companies described in subparagraph (A).

(Pub. L. 105-303, § 2, Oct. 28, 1998, 112 Stat. 2843.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 105-303, Oct. 28, 1998, 112 Stat. 2843, known as the Commercial Space Act of 1998. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

SHORT TITLE

Pub. L. 105-303, § 1(a), Oct. 28, 1998, 112 Stat. 2843, provided that: “This Act [enacting this chapter and sections 70120 and 70121 of Title 49, Transportation, amending sections 2465c and 2465f of this title, sections 5621, 5622, and 5803 of Title 15, Commerce and Trade, and sections 70101 to 70106, 70108 to 70113, 70115, 70117, and 70119 of Title 49, repealing sections 2465b, 2465d, and 2465e of this title, and enacting provisions set out as a note under section 70105 of Title 49] may be cited as the ‘Commercial Space Act of 1998.’”

SUBCHAPTER I—PROMOTION OF COMMERCIAL SPACE OPPORTUNITIES

§ 14711. Commercialization of Space Station

(a) Policy

The Congress declares that a priority goal of constructing the International Space Station is the economic development of Earth orbital space. The Congress further declares that free and competitive markets create the most efficient conditions for promoting economic development, and should therefore govern the economic development of Earth orbital space. The Congress further declares that the use of free market principles in operating, servicing, allocating the use of, and adding capabilities to the Space Station, and the resulting fullest possible engagement of commercial providers and participation of commercial users, will reduce Space Station operational costs for all partners and the Federal Government’s share of the United States burden to fund operations.

(b) Reports

(1) The Administrator shall deliver to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, within 90 days after October 28, 1998, a study that identifies and examines—

(A) the opportunities for commercial providers to play a role in International Space Station activities, including operation, use, servicing, and augmentation;

(B) the potential cost savings to be derived from commercial providers playing a role in each of these activities;

(C) which of the opportunities described in subparagraph (A) the Administrator plans to make available to commercial providers in fiscal years 1999 and 2000;

(D) the specific policies and initiatives the Administrator is advancing to encourage and facilitate these commercial opportunities; and

(E) the revenues and cost reimbursements to the Federal Government from commercial users of the Space Station.

(2) The Administrator shall deliver to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, within 180 days after October 28, 1998, an independently conducted market study that examines and evaluates potential industry interest in providing commercial goods and services for the operation, servicing, and augmentation of the International Space Station, and in the commercial use of the International Space Station. This study shall also include updates to the cost savings and revenue estimates made in the study described in paragraph (1) based on the external market assessment.

(3) The Administrator shall deliver to the Congress, no later than the submission of the President’s annual budget request for fiscal year 2000, a report detailing how many proposals (whether solicited or not) the National Aeronautics and Space Administration received during calendar years 1997 and 1998 regarding commercial operation, servicing, utilization, or augmentation of the International Space Station, broken down by each of these four categories, and specifying how many agreements the National Aeronautics and Space Administration has entered into in response to these proposals, also broken down by these four categories.

(4) Each of the studies and reports required by paragraphs (1), (2), and (3) shall include consideration of the potential role of State governments as brokers in promoting commercial participation in the International Space Station program.

(Pub. L. 105-303, title I, § 101, Oct. 28, 1998, 112 Stat. 2845.)

SPACE STATION COMMERCIAL DEVELOPMENT DEMONSTRATION PROGRAM

Pub. L. 106-74, title IV, § 434, Oct. 20, 1999, 113 Stat. 1097, as amended by Pub. L. 106-391, title II, § 204, Oct. 30, 2000, 114 Stat. 1590, provided that:

“(a) PURPOSE.—The purpose of this section is to establish a demonstration regarding the commercial feasibility and economic viability of private sector business operations involving the International Space Station and its related infrastructure. The goal will be furthered by the early use of the International Space Station by United States commercial entities committing private capital to commercial enterprises on the International Space Station. In conjunction with this demonstration program, the National Aeronautics and Space Administration (NASA) shall establish and publish a price policy designed to eliminate price uncertainty for those planning to utilize the International Space Station and its related facilities for United States commercial use.

“(b) USE OF RECEIPTS FOR COMMERCIAL USE.—Any receipts collected by NASA from the commercial use of the International Space Station shall first be used to offset any costs incurred by NASA in support of the United States commercial use of the International Space Station. Any receipts collected in excess of the costs identified pursuant to the prior sentence may be retained by NASA for use without fiscal year limitation in promoting the commercial use of the International Space Station.

“(c) REPORT.—NASA shall submit an annual report to the Congress that identifies all receipts that are collected under this section, the use of the receipts and

the status of the demonstration. NASA shall submit a final report on the status of the demonstration, including any recommendation for expansion, within 120 days of the completion of the assembly of the International Space Station or the end of fiscal year 2002, whichever is earlier.

“(d) DEFINITIONS.—As used in this section, the term ‘United States commercial use’ means private commercial projects that are designed to benefit the United States through the sales of goods or services or the creation of jobs, or both.

“(e) TERMINATION.—The demonstration program established under this section shall apply to United States commercial use agreements that are entered into prior to the date of the completion of the International Space Station or the end of fiscal year 2002, whichever is earlier.”

§ 14712. Promotion of United States Global Positioning System standards

(a) Finding

The Congress finds that the Global Positioning System, including satellites, signal equipment, ground stations, data links, and associated command and control facilities, has become an essential element in civil, scientific, and military space development because of the emergence of a United States commercial industry which provides Global Positioning System equipment and related services.

(b) International cooperation

In order to support and sustain the Global Positioning System in a manner that will most effectively contribute to the national security, public safety, scientific, and economic interests of the United States, the Congress encourages the President to—

(1) ensure the operation of the Global Positioning System on a continuous worldwide basis free of direct user fees;

(2) enter into international agreements that promote cooperation with foreign governments and international organizations to—

(A) establish the Global Positioning System and its augmentations as an acceptable international standard; and

(B) eliminate any foreign barriers to applications of the Global Positioning System worldwide; and

(3) provide clear direction and adequate resources to the Assistant Secretary of Commerce for Communications and Information so that on an international basis the Assistant Secretary can—

(A) achieve and sustain efficient management of the electromagnetic spectrum used by the Global Positioning System; and

(B) protect that spectrum from disruption and interference.

(Pub. L. 105-303, title I, §104, Oct. 28, 1998, 112 Stat. 2852.)

§ 14713. Acquisition of space science data

(a) Acquisition from commercial providers

The Administrator shall, to the extent possible and while satisfying the scientific or educational requirements of the National Aeronautics and Space Administration, and where appropriate, of other Federal agencies and scientific researchers, acquire, where cost effective,

space science data from a commercial provider.

(b) Treatment of space science data as commercial item under acquisition laws

Acquisitions of space science data by the Administrator shall be carried out in accordance with applicable acquisition laws and regulations (including chapters 137 and 140 of title 10). For purposes of such law and regulations, space science data shall be considered to be a commercial item. Nothing in this subsection shall be construed to preclude the United States from acquiring, through contracts with commercial providers, sufficient rights in data to meet the needs of the scientific and educational community or the needs of other government activities.

(c) Definition

For purposes of this section, the term “space science data” includes scientific data concerning—

(1) the elemental and mineralogical resources of the moon, asteroids, planets and their moons, and comets;

(2) microgravity acceleration; and

(3) solar storm monitoring.

(d) Safety standards

Nothing in this section shall be construed to prohibit the Federal Government from requiring compliance with applicable safety standards.

(e) Limitation

This section does not authorize the National Aeronautics and Space Administration to provide financial assistance for the development of commercial systems for the collection of space science data.

(Pub. L. 105-303, title I, §105, Oct. 28, 1998, 112 Stat. 2852.)

§ 14714. Administration of commercial space centers

The Administrator shall administer the Commercial Space Center program in a coordinated manner from National Aeronautics and Space Administration headquarters in Washington, D.C.

(Pub. L. 105-303, title I, §106, Oct. 28, 1998, 112 Stat. 2853.)

§ 14715. Sources of Earth Science data

(a) Acquisition

The Administrator shall, to the extent possible and while satisfying the scientific or educational requirements of the National Aeronautics and Space Administration, and where appropriate, of other Federal agencies and scientific researchers, acquire, where cost-effective, space-based and airborne Earth remote sensing data, services, distribution, and applications from a commercial provider.

(b) Treatment as commercial item under acquisition laws

Acquisitions by the Administrator of the data, services, distribution, and applications referred to in subsection (a) of this section shall be carried out in accordance with applicable acquisition laws and regulations (including chapters 137

and 140 of title 10). For purposes of such law and regulations, such data, services, distribution, and applications shall be considered to be a commercial item. Nothing in this subsection shall be construed to preclude the United States from acquiring, through contracts with commercial providers, sufficient rights in data to meet the needs of the scientific and educational community or the needs of other government activities.

(c) Study

(1) The Administrator shall conduct a study to determine the extent to which the baseline scientific requirements of Earth Science can be met by commercial providers, and how the National Aeronautics and Space Administration will meet such requirements which cannot be met by commercial providers.

(2) The study conducted under this subsection shall—

(A) make recommendations to promote the availability of information from the National Aeronautics and Space Administration to commercial providers to enable commercial providers to better meet the baseline scientific requirements of Earth Science;

(B) make recommendations to promote the dissemination to commercial providers of information on advanced technology research and development performed by or for the National Aeronautics and Space Administration; and

(C) identify policy, regulatory, and legislative barriers to the implementation of the recommendations made under this subsection.

(3) The results of the study conducted under this subsection shall be transmitted to the Congress within 6 months after October 28, 1998.

(d) Safety standards

Nothing in this section shall be construed to prohibit the Federal Government from requiring compliance with applicable safety standards.

(e) Administration and execution

This section shall be carried out as part of the Commercial Remote Sensing Program at the Stennis Space Center.

(Pub. L. 105-303, title I, § 107, Oct. 28, 1998, 112 Stat. 2853.)

CODIFICATION

Section is comprised of section 107 of Pub. L. 105-303. Subsec. (f) of section 107 of Pub. L. 105-303 amended sections 5621 and 5622 of Title 15, Commerce and Trade.

SUBCHAPTER II—FEDERAL ACQUISITION OF SPACE TRANSPORTATION SERVICES

§ 14731. Requirement to procure commercial space transportation services

(a) In general

Except as otherwise provided in this section, the Federal Government shall acquire space transportation services from United States commercial providers whenever such services are required in the course of its activities. To the maximum extent practicable, the Federal Government shall plan missions to accommodate the space transportation services capabilities of United States commercial providers.

(b) Exceptions

The Federal Government shall not be required to acquire space transportation services under subsection (a) of this section if, on a case-by-case basis, the Administrator or, in the case of a national security issue, the Secretary of the Air Force, determines that—

(1) a payload requires the unique capabilities of the Space Shuttle;

(2) cost effective space transportation services that meet specific mission requirements would not be reasonably available from United States commercial providers when required;

(3) the use of space transportation services from United States commercial providers poses an unacceptable risk of loss of a unique scientific opportunity;

(4) the use of space transportation services from United States commercial providers is inconsistent with national security objectives;

(5) the use of space transportation services from United States commercial providers is inconsistent with international agreements for international collaborative efforts relating to science and technology;

(6) it is more cost effective to transport a payload in conjunction with a test or demonstration of a space transportation vehicle owned by the Federal Government; or

(7) a payload can make use of the available cargo space on a Space Shuttle mission as a secondary payload, and such payload is consistent with the requirements of research, development, demonstration, scientific, commercial, and educational programs authorized by the Administrator.

Nothing in this section shall prevent the Administrator from planning or negotiating agreements with foreign entities for the launch of Federal Government payloads for international collaborative efforts relating to science and technology.

(c) Delayed effect

Subsection (a) of this section shall not apply to space transportation services and space transportation vehicles acquired or owned by the Federal Government before October 28, 1998, or with respect to which a contract for such acquisition or ownership has been entered into before October 28, 1998.

(d) Historical purposes

This section shall not be construed to prohibit the Federal Government from acquiring, owning, or maintaining space transportation vehicles solely for historical display purposes.

(Pub. L. 105-303, title II, § 201, Oct. 28, 1998, 112 Stat. 2854.)

§ 14732. Acquisition of commercial space transportation services

(a) Treatment of commercial space transportation services as commercial item under acquisition laws

Acquisitions of space transportation services by the Federal Government shall be carried out in accordance with applicable acquisition laws and regulations (including chapters 137 and 140 of title 10). For purposes of such law and regula-

tions, space transportation services shall be considered to be a commercial item.

(b) Safety standards

Nothing in this section shall be construed to prohibit the Federal Government from requiring compliance with applicable safety standards.

(Pub. L. 105-303, title II, §202, Oct. 28, 1998, 112 Stat. 2855.)

§ 14733. Shuttle privatization

(a) Policy and preparation

The Administrator shall prepare for an orderly transition from the Federal operation, or Federal management of contracted operation, of space transportation systems to the Federal purchase of commercial space transportation services for all nonemergency space transportation requirements for transportation to and from Earth orbit, including human, cargo, and mixed payloads. In those preparations, the Administrator shall take into account the need for short-term economies, as well as the goal of restoring the National Aeronautics and Space Administration's research focus and its mandate to promote the fullest possible commercial use of space. As part of those preparations, the Administrator shall plan for the potential privatization of the Space Shuttle program. Such plan shall keep safety and cost effectiveness as high priorities. Nothing in this section shall prohibit the National Aeronautics and Space Administration from studying, designing, developing, or funding upgrades or modifications essential to the safe and economical operation of the Space Shuttle fleet.

(b) Feasibility study

The Administrator shall conduct a study of the feasibility of implementing the recommendation of the Independent Shuttle Management Review Team that the National Aeronautics and Space Administration transition toward the privatization of the Space Shuttle. The study shall identify, discuss, and, where possible, present options for resolving, the major policy and legal issues that must be addressed before the Space Shuttle is privatized, including—

(1) whether the Federal Government or the Space Shuttle contractor should own the Space Shuttle orbiters and ground facilities;

(2) whether the Federal Government should indemnify the contractor for any third party liability arising from Space Shuttle operations, and, if so, under what terms and conditions;

(3) whether payloads other than National Aeronautics and Space Administration payloads should be allowed to be launched on the Space Shuttle, how missions will be prioritized, and who will decide which mission flies and when;

(4) whether commercial payloads should be allowed to be launched on the Space Shuttle and whether any classes of payloads should be made ineligible for launch consideration;

(5) whether National Aeronautics and Space Administration and other Federal Government payloads should have priority over non-Federal payloads in the Space Shuttle launch as-

signments, and what policies should be developed to prioritize among payloads generally;

(6) whether the public interest requires that certain Space Shuttle functions continue to be performed by the Federal Government; and

(7) how much cost savings, if any, will be generated by privatization of the Space Shuttle.

(c) Report to Congress

Within 60 days after October 28, 1998, the National Aeronautics and Space Administration shall complete the study required under subsection (b) of this section and shall submit a report on the study to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science of the House of Representatives.

(Pub. L. 105-303, title II, §204, Oct. 28, 1998, 112 Stat. 2856.)

§ 14734. Use of excess intercontinental ballistic missiles

(a) In general

The Federal Government shall not—

(1) convert any missile described in subsection (c) of this section to a space transportation vehicle configuration; or

(2) transfer ownership of any such missile to another person, except as provided in subsection (b) of this section.

(b) Authorized Federal uses

(1) A missile described in subsection (c) of this section may be converted for use as a space transportation vehicle by the Federal Government if, except as provided in paragraph (2) and at least 30 days before such conversion, the agency seeking to use the missile as a space transportation vehicle transmits to the Committee on Armed Services and the Committee on Science of the House of Representatives, and to the Committee on Armed Services and the Committee on Commerce, Science, and Transportation of the Senate, a certification that the use of such missile—

(A) would result in cost savings to the Federal Government when compared to the cost of acquiring space transportation services from United States commercial providers;

(B) meets all mission requirements of the agency, including performance, schedule, and risk requirements;

(C) is consistent with international obligations of the United States; and

(D) is approved by the Secretary of Defense or his designee.

(2) The requirement under paragraph (1) that the certification described in that paragraph must be transmitted at least 30 days before conversion of the missile shall not apply if the Secretary of Defense determines that compliance with that requirement would be inconsistent with meeting immediate national security requirements.

(c) Missiles referred to

The missiles referred to in this section are missiles owned by the United States that—

(1) were formerly used by the Department of Defense for national defense purposes as intercontinental ballistic missiles; and

(2) have been declared excess to United States national defense needs and are in compliance with international obligations of the United States.

(Pub. L. 105-303, title II, §205, Oct. 28, 1998, 112 Stat. 2857; Pub. L. 106-65, div. A, title X, §1067(21), Oct. 5, 1999, 113 Stat. 775.)

AMENDMENTS

1999—Subsec. (b)(1). Pub. L. 106-65 substituted “transmits to the Committee on Armed Services” for “transmits to the Committee on National Security” in introductory provisions.

§ 14735. National launch capability study

(a) Findings

Congress finds that a robust satellite and launch industry in the United States serves the interest of the United States by—

- (1) contributing to the economy of the United States;
- (2) strengthening employment, technological, and scientific interests of the United States; and
- (3) serving the foreign policy and national security interests of the United States.

(b) Definitions

In this section:

(1) Secretary

The term “Secretary” means the Secretary of Defense.

(2) Total potential national mission model

The term “total potential national mission model” means a model that—

- (A) is determined by the Secretary, in consultation with the Administrator, to assess the total potential space missions to be conducted in the United States during a specified period of time; and
- (B) includes all launches in the United States (including launches conducted on or off a Federal range).

(c) Report

(1) In general

Not later than 180 days after October 28, 1998, the Secretary shall, in consultation with the Administrator and appropriate representatives of the satellite and launch industry and the governments of States and political subdivisions thereof—

- (A) prepare a report that meets the requirements of this subsection; and
- (B) submit that report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science of the House of Representatives.

(2) Requirements for report

The report prepared under this subsection shall—

- (A) identify the total potential national mission model for the period beginning on the date of the report and ending on December 31, 2007;
- (B) identify the resources that are necessary or available to carry out the total potential national mission model described in subparagraph (A), including—

(i) launch property and services of the Department of Defense, the National Aeronautics and Space Administration, and non-Federal facilities; and

(ii) the ability to support commercial launch-on-demand on short notification, taking into account Federal requirements, at launch sites or test ranges in the United States;

(C) identify each deficiency in the resources referred to in subparagraph (B); and

(D) with respect to the deficiencies identified under subparagraph (C), include estimates of the level of funding necessary to address those deficiencies for the period described in subparagraph (A).

(d) Recommendations

Based on the reports under subsection (c) of this section, the Secretary, after consultation with the Secretary of Transportation, the Secretary of Commerce, and representatives from interested private sector entities, States, and local governments, shall—

- (1) identify opportunities for investment by non-Federal entities (including States and political subdivisions thereof and private sector entities) to assist the Federal Government in providing launch capabilities for the commercial space industry in the United States;
- (2) identify one or more methods by which, if sufficient resources referred to in subsection (c)(2)(D) of this section are not available to the Department of Defense and the National Aeronautics and Space Administration, the control of the launch property and launch services of the Department of Defense and the National Aeronautics and Space Administration may be transferred from the Department of Defense and the National Aeronautics and Space Administration to—
 - (A) one or more other Federal agencies;
 - (B) one or more States (or subdivisions thereof);
 - (C) one or more private sector entities; or
 - (D) any combination of the entities described in subparagraphs (A) through (C); and
- (3) identify the technical, structural, and legal impediments associated with making launch sites or test ranges in the United States viable and competitive.

(Pub. L. 105-303, title II, §206, Oct. 28, 1998, 112 Stat. 2857.)

CHAPTER 142—POISON CONTROL CENTER ENHANCEMENT AND AWARENESS

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14803.	Establishment of a national toll-free number. <ul style="list-style-type: none"> (a) In general. (b) Rule of construction. (c) Authorization of appropriations.
14804.	Establishment of nationwide media campaign. <ul style="list-style-type: none"> (a) In general. (b) Contract with entity. (c) Authorization of appropriations.
14805.	Establishment of a grant program. <ul style="list-style-type: none"> (a) Regional poison control centers.

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- (b) Other improvements.
- (c) Certification.
- (d) Waiver of certification requirements.
- (e) Supplement not supplant.
- (f) Maintenance of effort.
- (g) Matching requirement.
- (h) Authorization of appropriations.

§ 14801. Findings

Congress makes the following findings:

(1) Each year more than 2,000,000 poisonings are reported to poison control centers throughout the United States. More than 90 percent of these poisonings happen in the home. Fifty-three percent of poisoning victims are children younger than 6 years of age.

(2) Poison control centers are a valuable national resource that provide life-saving and cost-effective public health services. For every dollar spent on poison control centers, \$7 in medical costs are saved. The average cost of a poisoning exposure call is \$32, while the average cost if other parts of the medical system are involved is \$932. Over the last 2 decades, the instability and lack of funding has resulted in a steady decline in the number of poison control centers in the United States. Within just the last year, 2 poison control centers have been forced to close because of funding problems. A third poison control center is scheduled to close in April 1999. Currently, there are 73 such centers.

(3) Stabilizing the funding structure and increasing accessibility to poison control centers will increase the number of United States residents who have access to a certified poison control center, and reduce the inappropriate use of emergency medical services and other more costly health care services.

(Pub. L. 106-174, § 2, Feb. 25, 2000, 114 Stat. 18.)

SHORT TITLE

Pub. L. 106-174, § 1, Feb. 25, 2000, 114 Stat. 18, provided that: "This Act [enacting this chapter] may be cited as the 'Poison Control Center Enhancement and Awareness Act'."

§ 14802. Definition

In this chapter, the term "Secretary" means the Secretary of Health and Human Services.

(Pub. L. 106-174, § 3, Feb. 25, 2000, 114 Stat. 18.)

§ 14803. Establishment of a national toll-free number**(a) In general**

The Secretary shall provide coordination and assistance to regional poison control centers for the establishment of a nationwide toll-free phone number to be used to access such centers.

(b) Rule of construction

Nothing in this section shall be construed as prohibiting the establishment or continued operation of any privately funded nationwide toll-free phone number used to provide advice and other assistance for poisonings or accidental exposures.

(c) Authorization of appropriations

There is authorized to be appropriated to carry out this section, \$2,000,000 for each of the

fiscal years 2000 through 2004. Funds appropriated under this subsection shall not be used to fund any toll-free phone number described in subsection (b) of this section.

(Pub. L. 106-174, § 4, Feb. 25, 2000, 114 Stat. 18.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14804 of this title.

§ 14804. Establishment of nationwide media campaign**(a) In general**

The Secretary shall establish a national media campaign to educate the public and health care providers about poison prevention and the availability of poison control resources in local communities and to conduct advertising campaigns concerning the nationwide toll-free number established under section 14803 of this title.

(b) Contract with entity

The Secretary may carry out subsection (a) of this section by entering into contracts with 1 or more nationally recognized media firms for the development and distribution of monthly television, radio, and newspaper public service announcements.

(c) Authorization of appropriations

There is authorized to be appropriated to carry out this section, \$600,000 for each of the fiscal years 2000 through 2004.

(Pub. L. 106-174, § 5, Feb. 25, 2000, 114 Stat. 19.)

§ 14805. Establishment of a grant program**(a) Regional poison control centers**

The Secretary shall award grants to certified regional poison control centers for the purposes of achieving the financial stability of such centers, and for preventing and providing treatment recommendations for poisonings.

(b) Other improvements

The Secretary shall also use amounts received under this section to—

- (1) develop standard education programs;
- (2) develop standard patient management protocols for commonly encountered toxic exposures;
- (3) improve and expand the poison control data collection systems;
- (4) improve national toxic exposure surveillance; and
- (5) expand the physician/medical toxicologist supervision of poison control centers.

(c) Certification

Except as provided in subsection (d) of this section, the Secretary may make a grant to a center under subsection (a) of this section only if—

- (1) the center has been certified by a professional organization in the field of poison control, and the Secretary has approved the organization as having in effect standards for certification that reasonably provide for the protection of the public health with respect to poisoning; or
- (2) the center has been certified by a State government, and the Secretary has approved

the State government as having in effect standards for certification that reasonably provide for the protection of the public health with respect to poisoning.

(d) Waiver of certification requirements

(1) In general

The Secretary may grant a waiver of the certification requirement of subsection (c) of this section with respect to a noncertified poison control center or a newly established center that applies for a grant under this section if such center can reasonably demonstrate that the center will obtain such a certification within a reasonable period of time as determined appropriate by the Secretary.

(2) Renewal

The Secretary may only renew a waiver under paragraph (1) for a period of 3 years.

(e) Supplement not supplant

Amounts made available to a poison control center under this section shall be used to supplement and not supplant other Federal, State, or local funds provided for such center.

(f) Maintenance of effort

A poison control center, in utilizing the proceeds of a grant under this section, shall maintain the expenditures of the center for activities of the center at a level that is not less than the level of such expenditures maintained by the center for the fiscal year preceding the fiscal year for which the grant is received.

(g) Matching requirement

The Secretary may impose a matching requirement with respect to amounts provided under a grant under this section if the Secretary determines appropriate.

(h) Authorization of appropriations

There is authorized to be appropriated to carry out this section, \$25,000,000 for each of the fiscal years 2000 through 2004.

(Pub. L. 106-174, § 6, Feb. 25, 2000, 114 Stat. 19.)

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This chapter is referred to in title 8 section 1154.

§ 14901. Findings and purposes**(a) Findings**

Congress recognizes—

(1) the international character of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (done at The Hague on May 29, 1993); and

(2) the need for uniform interpretation and implementation of the Convention in the United States and abroad,

and therefore finds that enactment of a Federal law governing adoptions and prospective adoptions subject to the Convention involving United States residents is essential.

(b) Purposes

The purposes of this chapter are—

(1) to provide for implementation by the United States of the Convention;

(2) to protect the rights of, and prevent abuses against, children, birth families, and adoptive parents involved in adoptions (or prospective adoptions) subject to the Convention, and to ensure that such adoptions are in the children's best interests; and

(3) to improve the ability of the Federal Government to assist United States citizens seeking to adopt children from abroad and residents of other countries party to the Convention seeking to adopt children from the United States.

(Pub. L. 106-279, §2, Oct. 6, 2000, 114 Stat. 825.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original "this Act", meaning Pub. L. 106-279, Oct. 6, 2000, 114 Stat. 825, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

EFFECTIVE DATES; TRANSITION RULE

Pub. L. 106-279, title V, §505, Oct. 6, 2000, 114 Stat. 844, provided that:

“(a) EFFECTIVE DATES.—

“(1) PROVISIONS EFFECTIVE UPON ENACTMENT.—Sections 2, 3, 101 through 103, 202 through 205, 401(a), 403, 503, and 505(a) [enacting this section and sections 14902, 14911 to 14913, 14922 to 14924, 14941(a), 14943, and 14953 of this title and amending section 622 of this title] shall take effect on the date of the enactment of this Act [Oct. 6, 2000].

“(2) PROVISIONS EFFECTIVE UPON THE ENTRY INTO FORCE OF THE CONVENTION.—Subject to subsection (b), the provisions of this Act not specified in paragraph (1) [enacting sections 14914, 14921, 14931, 14932, 14941(b), (c), 14942, 14944, 14951, 14952, and 14954 of this title, amending sections 1101 and 1154 of Title 8, Aliens and Nationality, and enacting provisions set out as notes under this section] shall take effect upon the entry into force of the Convention for the United States pursuant to Article 46(2)(a) of the Convention.

“(b) TRANSITION RULE.—The Convention and this Act [see Short Title note below] shall not apply—

“(1) in the case of a child immigrating to the United States, if the application for advance processing of an orphan petition or petition to classify an orphan as an immediate relative for the child is filed

before the effective date described in subsection (a)(2); or

“(2) in the case of a child emigrating from the United States, if the prospective adoptive parents of the child initiated the adoption process in their country of residence with the filing of an appropriate application before the effective date described in subsection (a)(2).”

SHORT TITLE

Pub. L. 106-279, §1(a), Oct. 6, 2000, 114 Stat. 825, provided that: “This Act [enacting this chapter and amending section 622 of this title and sections 1101 and 1154 of Title 8, Aliens and Nationality] may be cited as the ‘Intercountry Adoption Act of 2000.’”

§ 14902. Definitions

As used in this chapter:

(1) Accredited agency

The term “accredited agency” means an agency accredited under subchapter II of this chapter to provide adoption services in the United States in cases subject to the Convention.

(2) Accrediting entity

The term “accrediting entity” means an entity designated under section 14922(a) of this title to accredit agencies and approve persons under subchapter II of this chapter.

(3) Adoption service

The term “adoption service” means—

(A) identifying a child for adoption and arranging an adoption;

(B) securing necessary consent to termination of parental rights and to adoption;

(C) performing a background study on a child or a home study on a prospective adoptive parent, and reporting on such a study;

(D) making determinations of the best interests of a child and the appropriateness of adoptive placement for the child;

(E) post-placement monitoring of a case until final adoption; and

(F) where made necessary by disruption before final adoption, assuming custody and providing child care or any other social service pending an alternative placement.

The term “providing”, with respect to an adoption service, includes facilitating the provision of the service.

(4) Agency

The term “agency” means any person other than an individual.

(5) Approved person

The term “approved person” means a person approved under subchapter II of this chapter to provide adoption services in the United States in cases subject to the Convention.

(6) Attorney General

Except as used in section 14944 of this title, the term “Attorney General” means the Attorney General, acting through the Commissioner of Immigration and Naturalization.

(7) Central authority

The term “central authority” means the entity designated as such by any Convention country under Article 6(1) of the Convention.

(8) Central authority function

The term “central authority function” means any duty required to be carried out by a central authority under the Convention.

(9) Convention

The term “Convention” means the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, done at The Hague on May 29, 1993.

(10) Convention adoption

The term “Convention adoption” means an adoption of a child resident in a foreign country party to the Convention by a United States citizen, or an adoption of a child resident in the United States by an individual residing in another Convention country.

(11) Convention record

The term “Convention record” means any item, collection, or grouping of information contained in an electronic or physical document, an electronic collection of data, a photograph, an audio or video tape, or any other information storage medium of any type whatever that contains information about a specific past, current, or prospective Convention adoption (regardless of whether the adoption was made final) that has been preserved in accordance with section 14941(a) of this title by the Secretary of State or the Attorney General.

(12) Convention country

The term “Convention country” means a country party to the Convention.

(13) Other Convention country

The term “other Convention country” means a Convention country other than the United States.

(14) Person

The term “person” shall have the meaning provided in section 1 of title 1 and shall not include any agency of government or tribal government entity.

(15) Person with an ownership or control interest

The term “person with an ownership or control interest” has the meaning given such term in section 1320a-3(a)(3) of this title.

(16) Secretary

The term “Secretary” means the Secretary of State.

(17) State

The term “State” means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, and the Virgin Islands.

(Pub. L. 106-279, §3, Oct. 6, 2000, 114 Stat. 826.)

REFERENCES IN TEXT

Subchapter II of this chapter, referred to in pars. (1), (2), and (5), was in the original “title II”, meaning title II of Pub. L. 106-279, Oct. 6, 2000, 114 Stat. 830, which enacted subchapter II of this chapter and amended section 622 of this title. For complete classification of title II to the Code, see Tables.

EFFECTIVE DATE

Section effective Oct. 6, 2000, with transition rule, see section 505(a)(1), (b) of Pub. L. 106-279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

SUBCHAPTER I—UNITED STATES CENTRAL AUTHORITY

§ 14911. Designation of central authority**(a) In general**

For purposes of the Convention and this chapter—

(1) the Department of State shall serve as the central authority of the United States; and

(2) the Secretary shall serve as the head of the central authority of the United States.

(b) Performance of central authority functions

(1) Except as otherwise provided in this chapter, the Secretary shall be responsible for the performance of all central authority functions for the United States under the Convention and this chapter.

(2) All personnel of the Department of State performing core central authority functions in a professional capacity in the Office of Children's Issues shall have a strong background in consular affairs, personal experience in international adoptions, or professional experience in international adoptions or child services.

(c) Authority to issue regulations

Except as otherwise provided in this chapter, the Secretary may prescribe such regulations as may be necessary to carry out central authority functions on behalf of the United States.

(Pub. L. 106-279, title I, §101, Oct. 6, 2000, 114 Stat. 827.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (b)(1), and (c), was in the original “this Act”, meaning Pub. L. 106-279, Oct. 6, 2000, 114 Stat. 825, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 14901 of this title and Tables.

EFFECTIVE DATE

Section effective Oct. 6, 2000, with transition rule, see section 505(a)(1), (b) of Pub. L. 106-279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

§ 14912. Responsibilities of the Secretary of State**(a) Liaison responsibilities**

The Secretary shall have responsibility for—

(1) liaison with the central authorities of other Convention countries; and

(2) the coordination of activities under the Convention by persons subject to the jurisdiction of the United States.

(b) Information exchange

The Secretary shall be responsible for—

(1) providing the central authorities of other Convention countries with information concerning—

(A) accredited agencies and approved persons, agencies and persons whose accreditation or approval has been suspended or can-

celed, and agencies and persons who have been temporarily or permanently debarred from accreditation or approval;

(B) Federal and State laws relevant to implementing the Convention; and

(C) any other matters necessary and appropriate for implementation of the Convention;

(2) not later than the date of the entry into force of the Convention for the United States (pursuant to Article 46(2)(a) of the Convention) and at least once during each subsequent calendar year, providing to the central authority of all other Convention countries a notice requesting the central authority of each such country to specify any requirements of such country regarding adoption, including restrictions on the eligibility of persons to adopt, with respect to which information on the prospective adoptive parent or parents in the United States would be relevant;

(3) making responses to notices under paragraph (2) available to—

(A) accredited agencies and approved persons; and

(B) other persons or entities performing home studies under section 14921(b)(1) of this title;

(4) ensuring the provision of a background report (home study) on prospective adoptive parent or parents (pursuant to the requirements of section 14923(b)(1)(A)(ii) of this title), through the central authority of each child's country of origin, to the court having jurisdiction over the adoption (or, in the case of a child emigrating to the United States for the purpose of adoption, to the competent authority in the child's country of origin with responsibility for approving the child's emigration) in adequate time to be considered prior to the granting of such adoption or approval;

(5) providing Federal agencies, State courts, and accredited agencies and approved persons with an identification of Convention countries and persons authorized to perform functions under the Convention in each such country; and

(6) facilitating the transmittal of other appropriate information to, and among, central authorities, Federal and State agencies (including State courts), and accredited agencies and approved persons.

(c) Accreditation and approval responsibilities

The Secretary shall carry out the functions prescribed by the Convention with respect to the accreditation of agencies and the approval of persons to provide adoption services in the United States in cases subject to the Convention as provided in subchapter II of this chapter. Such functions may not be delegated to any other Federal agency.

(d) Additional responsibilities

The Secretary—

(1) shall monitor individual Convention adoption cases involving United States citizens; and

(2) may facilitate interactions between such citizens and officials of other Convention countries on matters relating to the Conven-

tion in any case in which an accredited agency or approved person is unwilling or unable to provide such facilitation.

(e) Establishment of registry

The Secretary and the Attorney General shall jointly establish a case registry of all adoptions involving immigration of children into the United States and emigration of children from the United States, regardless of whether the adoption occurs under the Convention. Such registry shall permit tracking of pending cases and retrieval of information on both pending and closed cases.

(f) Methods of performing responsibilities

The Secretary may—

(1) authorize public or private entities to perform appropriate central authority functions for which the Secretary is responsible, pursuant to regulations or under agreements published in the Federal Register; and

(2) carry out central authority functions through grants to, or contracts with, any individual or public or private entity, except as may be otherwise specifically provided in this chapter.

(Pub. L. 106-279, title I, §102, Oct. 6, 2000, 114 Stat. 828.)

REFERENCES IN TEXT

Subchapter II of this chapter, referred to in subsec. (c), was in the original "title II", meaning title II of Pub. L. 106-279, Oct. 6, 2000, 114 Stat. 830, which enacted subchapter II of this chapter and amended section 622 of this title. For complete classification of title II to the Code, see Tables.

EFFECTIVE DATE

Section effective Oct. 6, 2000, with transition rule, see section 505(a)(1), (b) of Pub. L. 106-279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14923, 14932 of this title.

§ 14913. Responsibilities of the Attorney General

In addition to such other responsibilities as are specifically conferred upon the Attorney General by this chapter, the central authority functions specified in Article 14 of the Convention (relating to the filing of applications by prospective adoptive parents to the central authority of their country of residence) shall be performed by the Attorney General.

(Pub. L. 106-279, title I, §103, Oct. 6, 2000, 114 Stat. 829.)

EFFECTIVE DATE

Section effective Oct. 6, 2000, with transition rule, see section 505(a)(1), (b) of Pub. L. 106-279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

§ 14914. Annual report on intercountry adoptions

(a) Reports required

Beginning 1 year after the date of the entry into force of the Convention for the United States and each year thereafter, the Secretary, in consultation with the Attorney General and

other appropriate agencies, shall submit a report describing the activities of the central authority of the United States under this chapter during the preceding year to the Committee on International Relations, the Committee on Ways and Means, and the Committee on the Judiciary of the House of Representatives and the Committee on Foreign Relations, the Committee on Finance, and the Committee on the Judiciary of the Senate.

(b) Report elements

Each report under subsection (a) of this section shall set forth with respect to the year concerned, the following:

(1) The number of intercountry adoptions involving immigration to the United States, regardless of whether the adoption occurred under the Convention, including the country from which each child emigrated, the State to which each child immigrated, and the country in which the adoption was finalized.

(2) The number of intercountry adoptions involving emigration from the United States, regardless of whether the adoption occurred under the Convention, including the country to which each child immigrated and the State from which each child emigrated.

(3) The number of Convention placements for adoption in the United States that were disrupted, including the country from which the child emigrated, the age of the child, the date of the placement for adoption, the reasons for the disruption, the resolution of the disruption, the agencies that handled the placement for adoption, and the plans for the child, and in addition, any information regarding disruption or dissolution of adoptions of children from other countries received pursuant to section 622(b)(14) of this title.

(4) The average time required for completion of a Convention adoption, set forth by country from which the child emigrated.

(5) The current list of agencies accredited and persons approved under this chapter to provide adoption services.

(6) The names of the agencies and persons temporarily or permanently debarred under this chapter, and the reasons for the debarment.

(7) The range of adoption fees charged in connection with Convention adoptions involving immigration to the United States and the median of such fees set forth by the country of origin.

(8) The range of fees charged for accreditation of agencies and the approval of persons in the United States engaged in providing adoption services under the Convention.

(Pub. L. 106-279, title I, §104, Oct. 6, 2000, 114 Stat. 829.)

EFFECTIVE DATE

Section effective upon entry into force for the United States of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, pursuant to Article 46(2)(a) of the Convention, with transition rule, see section 505(a)(2), (b) of Pub. L. 106-279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14923, 14953 of this title.

SUBCHAPTER II—PROVISIONS RELATING TO ACCREDITATION AND APPROVAL

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 14902, 14912, 14944 of this title.

§ 14921. Accreditation or approval required in order to provide adoption services in cases subject to the Convention

(a) In general

Except as otherwise provided in this subchapter, no person may offer or provide adoption services in connection with a Convention adoption in the United States unless that person—

(1) is accredited or approved in accordance with this subchapter; or

(2) is providing such services through or under the supervision and responsibility of an accredited agency or approved person.

(b) Exceptions

Subsection (a) of this section shall not apply to the following:

(1) Background studies and home studies

The performance of a background study on a child or a home study on a prospective adoptive parent, or any report on any such study by a social work professional or organization who is not providing any other adoption service in the case, if the background or home study is approved by an accredited agency.

(2) Child welfare services

The provision of a child welfare service by a person who is not providing any other adoption service in the case.

(3) Legal services

The provision of legal services by a person who is not providing any adoption service in the case.

(4) Prospective adoptive parents acting on own behalf

The conduct of a prospective adoptive parent on his or her own behalf in the case, to the extent not prohibited by the law of the State in which the prospective adoptive parent resides.

(Pub. L. 106-279, title II, §201, Oct. 6, 2000, 114 Stat. 830.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (a), was in the original "this title", meaning title II of Pub. L. 106-279, Oct. 6, 2000, 114 Stat. 830, which enacted this subchapter and amended section 622 of this title. For complete classification of title II to the Code, see Tables.

EFFECTIVE DATE

Section effective upon entry into force for the United States of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, pursuant to Article 46(2)(a) of the Convention, with transition rule, see section 505(a)(2), (b) of Pub. L. 106-279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14912, 14944 of this title.

§ 14922. Process for accreditation and approval; role of accrediting entities

(a) Designation of accrediting entities

(1) In general

The Secretary shall enter into agreements with one or more qualified entities under which such entities will perform the duties described in subsection (b) of this section in accordance with the Convention, this subchapter, and the regulations prescribed under section 14923 of this title, and upon entering into each such agreement shall designate the qualified entity as an accrediting entity.

(2) Qualified entities

In paragraph (1), the term “qualified entity” means—

(A) a nonprofit private entity that has expertise in developing and administering standards for entities providing child welfare services and that meets such other criteria as the Secretary may by regulation establish; or

(B) a public entity (other than a Federal entity), including an agency or instrumentality of State government having responsibility for licensing adoption agencies, that—

(i) has expertise in developing and administering standards for entities providing child welfare services;

(ii) accredits only agencies located in the State in which the public entity is located; and

(iii) meets such other criteria as the Secretary may by regulation establish.

(b) Duties of accrediting entities

The duties described in this subsection are the following:

(1) Accreditation and approval

Accreditation of agencies, and approval of persons, to provide adoption services in the United States in cases subject to the Convention.

(2) Oversight

Ongoing monitoring of the compliance of accredited agencies and approved persons with applicable requirements, including review of complaints against such agencies and persons in accordance with procedures established by the accrediting entity and approved by the Secretary.

(3) Enforcement

Taking of adverse actions (including requiring corrective action, imposing sanctions, and refusing to renew, suspending, or canceling accreditation or approval) for noncompliance with applicable requirements, and notifying the agency or person against whom adverse actions are taken of the deficiencies necessitating the adverse action.

(4) Data, records, and reports

Collection of data, maintenance of records, and reporting to the Secretary, the United States central authority, State courts, and other entities (including on persons and agencies granted or denied approval or accredita-

tion), to the extent and in the manner that the Secretary requires.

(c) Remedies for adverse action by accrediting entity

(1) Correction of deficiency

An agency or person who is the subject of an adverse action by an accrediting entity may re-apply for accreditation or approval (or petition for termination of the adverse action) on demonstrating to the satisfaction of the accrediting entity that the deficiencies necessitating the adverse action have been corrected.

(2) No other administrative review

An adverse action by an accrediting entity shall not be subject to administrative review.

(3) Judicial review

An agency or person who is the subject of an adverse action by an accrediting entity may petition the United States district court in the judicial district in which the agency is located or the person resides to set aside the adverse action. The court shall review the adverse action in accordance with section 706 of title 5, and for purposes of such review the accrediting entity shall be considered an agency within the meaning of section 701 of such title.

(d) Fees

The amount of fees assessed by accrediting entities for the costs of accreditation shall be subject to approval by the Secretary. Such fees may not exceed the costs of accreditation. In reviewing the level of such fees, the Secretary shall consider the relative size of, the geographic location of, and the number of Convention adoption cases managed by the agencies or persons subject to accreditation or approval by the accrediting entity.

(Pub. L. 106-279, title II, §202, Oct. 6, 2000, 114 Stat. 831.)

EFFECTIVE DATE

Section effective Oct. 6, 2000, with transition rule, see section 505(a)(1), (b) of Pub. L. 106-279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14902, 14924, 14953 of this title.

§ 14923. Standards and procedures for providing accreditation or approval

(a) In general

(1) Promulgation of regulations

The Secretary, shall, by regulation, prescribe the standards and procedures to be used by accrediting entities for the accreditation of agencies and the approval of persons to provide adoption services in the United States in cases subject to the Convention.

(2) Consideration of views

In developing such regulations, the Secretary shall consider any standards or procedures developed or proposed by, and the views of, individuals and entities with interest and expertise in international adoptions and fam-

ily social services, including public and private entities with experience in licensing and accrediting adoption agencies.

(3) Applicability of notice and comment rules

Subsections (b), (c), and (d) of section 553 of title 5 shall apply in the development and issuance of regulations under this section.

(b) Minimum requirements

(1) Accreditation

The standards prescribed under subsection (a) of this section shall include the requirement that accreditation of an agency may not be provided or continued under this subchapter unless the agency meets the following requirements:

(A) Specific requirements

(i) The agency provides prospective adoptive parents of a child in a prospective Convention adoption a copy of the medical records of the child (which, to the fullest extent practicable, shall include an English-language translation of such records) on a date which is not later than the earlier of the date that is 2 weeks before: (I) the adoption; or (II) the date on which the prospective parents travel to a foreign country to complete all procedures in such country relating to the adoption.

(ii) The agency ensures that a thorough background report (home study) on the prospective adoptive parent or parents has been completed in accordance with the Convention and with applicable Federal and State requirements and transmitted to the Attorney General with respect to each Convention adoption. Each such report shall include a criminal background check and a full and complete statement of all facts relevant to the eligibility of the prospective adopting parent or parents to adopt a child under any requirements specified by the central authority of the child's country of origin under section 14912(b)(3) of this title, including, in the case of a child emigrating to the United States for the purpose of adoption, the requirements of the child's country of origin applicable to adoptions taking place in such country. For purposes of this clause, the term "background report (home study)" includes any supplemental statement submitted by the agency to the Attorney General for the purpose of providing information relevant to any requirements specified by the child's country of origin.

(iii) The agency provides prospective adoptive parents with a training program that includes counseling and guidance for the purpose of promoting a successful intercountry adoption before such parents travel to adopt the child or the child is placed with such parents for adoption.

(iv) The agency employs personnel providing intercountry adoption services on a fee for service basis rather than on a contingent fee basis.

(v) The agency discloses fully its policies and practices, the disruption rates of its placements for intercountry adoption, and all fees charged by such agency for intercountry adoption.

(B) Capacity to provide adoption services

The agency has, directly or through arrangements with other persons, a sufficient number of appropriately trained and qualified personnel, sufficient financial resources, appropriate organizational structure, and appropriate procedures to enable the agency to provide, in accordance with this chapter, all adoption services in cases subject to the Convention.

(C) Use of social service professionals

The agency has established procedures designed to ensure that social service functions requiring the application of clinical skills and judgment are performed only by professionals with appropriate qualifications and credentials.

(D) Records, reports, and information matters

The agency is capable of—

(i) maintaining such records and making such reports as may be required by the Secretary, the United States central authority, and the accrediting entity that accredits the agency;

(ii) cooperating with reviews, inspections, and audits;

(iii) safeguarding sensitive individual information; and

(iv) complying with other requirements concerning information management necessary to ensure compliance with the Convention, this chapter, and any other applicable law.

(E) Liability insurance

The agency agrees to have in force adequate liability insurance for professional negligence and any other insurance that the Secretary considers appropriate.

(F) Compliance with applicable rules

The agency has established adequate measures to comply (and to ensure compliance of their agents and clients) with the Convention, this chapter, and any other applicable law.

(G) Nonprofit organization with state license to provide adoption services

The agency is a private nonprofit organization licensed to provide adoption services in at least one State.

(2) Approval

The standards prescribed under subsection (a) of this section shall include the requirement that a person shall not be approved under this subchapter unless the person is a private for-profit entity that meets the requirements of subparagraphs (A) through (F) of paragraph (1) of this subsection.

(3) Renewal of accreditation or approval

The standards prescribed under subsection (a) of this section shall provide that the accreditation of an agency or approval of a person under this subchapter shall be for a period of not less than 3 years and not more than 5 years, and may be renewed on a showing that the agency or person meets the requirements

applicable to original accreditation or approval under this subchapter.

(c) Temporary registration of community based agencies

(1) One-year registration period for medium community based agencies

For a 1-year period after the entry into force of the Convention and notwithstanding subsection (b) of this section, the Secretary may provide, in regulations issued pursuant to subsection (a) of this section, that an agency may register with the Secretary and be accredited to provide adoption services in the United States in cases subject to the Convention during such period if the agency has provided adoption services in fewer than 100 intercountry adoptions in the preceding calendar year and meets the criteria described in paragraph (3).

(2) Two-year registration period for small community-based agencies

For a 2-year period after the entry into force of the Convention and notwithstanding subsection (b) of this section, the Secretary may provide, in regulations issued pursuant to subsection (a) of this section, that an agency may register with the Secretary and be accredited to provide adoption services in the United States in cases subject to the Convention during such period if the agency has provided adoption services in fewer than 50 intercountry adoptions in the preceding calendar year and meets the criteria described in paragraph (3).

(3) Criteria for registration

Agencies registered under this subsection shall meet the following criteria:

(A) The agency is licensed in the State in which it is located and is a nonprofit agency.

(B) The agency has been providing adoption services in connection with intercountry adoptions for at least 3 years.

(C) The agency has demonstrated that it will be able to provide the United States Government with all information related to the elements described in section 14914(b) of this title and provides such information.

(D) The agency has initiated the process of becoming accredited under the provisions of this chapter and is actively taking steps to become an accredited agency.

(E) The agency has not been found to be involved in any improper conduct relating to intercountry adoptions.

(Pub. L. 106-279, title II, §203, Oct. 6, 2000, 114 Stat. 832.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b)(1)(B), (D)(iv), (F) and (c)(3)(D) was in the original "this Act", meaning Pub. L. 106-279, Oct. 6, 2000, 114 Stat. 825, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 14901 of this title and Tables.

EFFECTIVE DATE

Section effective Oct. 6, 2000, with transition rule, see section 505(a)(1), (b) of Pub. L. 106-279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14912, 14922, 14924 of this title.

§ 14924. Secretarial oversight of accreditation and approval

(a) Oversight of accrediting entities

The Secretary shall—

(1) monitor the performance by each accrediting entity of its duties under section 14922 of this title and its compliance with the requirements of the Convention, this chapter, other applicable laws, and implementing regulations under this chapter; and

(2) suspend or cancel the designation of an accrediting entity found to be substantially out of compliance with the Convention, this chapter, other applicable laws, or implementing regulations under this chapter.

(b) Suspension or cancellation of accreditation or approval

(1) Secretary's authority

The Secretary shall suspend or cancel the accreditation or approval granted by an accrediting entity to an agency or person pursuant to section 14922 of this title when the Secretary finds that—

(A) the agency or person is substantially out of compliance with applicable requirements; and

(B) the accrediting entity has failed or refused, after consultation with the Secretary, to take appropriate enforcement action.

(2) Correction of deficiency

At any time when the Secretary is satisfied that the deficiencies on the basis of which an adverse action is taken under paragraph (1) have been corrected, the Secretary shall—

(A) notify the accrediting entity that the deficiencies have been corrected; and

(B)(i) in the case of a suspension, terminate the suspension; or

(ii) in the case of a cancellation, notify the agency or person that the agency or person may re-apply to the accrediting entity for accreditation or approval.

(c) Debarment

(1) Secretary's authority

On the initiative of the Secretary, or on request of an accrediting entity, the Secretary may temporarily or permanently debar an agency from accreditation or a person from approval under this subchapter, but only if—

(A) there is substantial evidence that the agency or person is out of compliance with applicable requirements; and

(B) there has been a pattern of serious, willful, or grossly negligent failures to comply or other aggravating circumstances indicating that continued accreditation or approval would not be in the best interests of the children and families concerned.

(2) Period of debarment

The Secretary's debarment order shall state whether the debarment is temporary or permanent. If the debarment is temporary, the Secretary shall specify a date, not earlier than

3 years after the date of the order, on or after which the agency or person may apply to the Secretary for withdrawal of the debarment.

(3) Effect of debarment

An accrediting entity may take into account the circumstances of the debarment of an agency or person that has been debarred pursuant to this subsection in considering any subsequent application of the agency or person, or of any other entity in which the agency or person has an ownership or control interest, for accreditation or approval under this subchapter.

(d) Judicial review

A person (other than a prospective adoptive parent), an agency, or an accrediting entity who is the subject of a final action of suspension, cancellation, or debarment by the Secretary under this subchapter may petition the United States District Court for the District of Columbia or the United States district court in the judicial district in which the person resides or the agency or accrediting entity is located to set aside the action. The court shall review the action in accordance with section 706 of title 5.

(e) Failure to ensure a full and complete home study

(1) In general

Willful, grossly negligent, or repeated failure to ensure the completion and transmission of a background report (home study) that fully complies with the requirements of section 14923(b)(1)(A)(ii) of this title shall constitute substantial noncompliance with applicable requirements.

(2) Regulations

Regulations promulgated under section 14923 of this title shall provide for—

(A) frequent and careful monitoring of compliance by agencies and approved persons with the requirements of section 14923(b)(A)(ii)¹ of this title; and

(B) consultation between the Secretary and the accrediting entity where an agency or person has engaged in substantial noncompliance with the requirements of section 14923(b)(A)(ii)¹ of this title, unless the accrediting entity has taken appropriate corrective action and the noncompliance has not recurred.

(3) Repeated failures to comply

Repeated serious, willful, or grossly negligent failures to comply with the requirements of section 14923(b)(1)(A)(ii) of this title by an agency or person after consultation between Secretary and the accrediting entity with respect to previous noncompliance by such agency or person shall constitute a pattern of serious, willful, or grossly negligent failures to comply under subsection (c)(1)(B) of this section.

(4) Failure to comply with certain requirements

A failure to comply with the requirements of section 14923(b)(1)(A)(ii) of this title shall con-

stitute a serious failure to comply under subsection (c)(1)(B) of this section unless it is shown by clear and convincing evidence that such noncompliance had neither the purpose nor the effect of determining the outcome of a decision or proceeding by a court or other competent authority in the United States or the child's country of origin.

(Pub. L. 106-279, title II, §204, Oct. 6, 2000, 114 Stat. 835.)

EFFECTIVE DATE

Section effective Oct. 6, 2000, with transition rule, see section 505(a)(1), (b) of Pub. L. 106-279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

SUBCHAPTER III—RECOGNITION OF CONVENTION ADOPTIONS IN THE UNITED STATES

§ 14931. Adoptions of children immigrating to the United States

(a) Legal effect of certificates issued by the Secretary of State

(1) Issuance of certificates by the Secretary of State

The Secretary of State shall, with respect to each Convention adoption, issue a certificate to the adoptive citizen parent domiciled in the United States that the adoption has been granted or, in the case of a prospective adoptive citizen parent, that legal custody of the child has been granted to the citizen parent for purposes of emigration and adoption, pursuant to the Convention and this chapter, if the Secretary of State—

(A) receives appropriate notification from the central authority of such child's country of origin; and

(B) has verified that the requirements of the Convention and this chapter have been met with respect to the adoption.

(2) Legal effect of certificates

If appended to an original adoption decree, the certificate described in paragraph (1) shall be treated by Federal and State agencies, courts, and other public and private persons and entities as conclusive evidence of the facts certified therein and shall constitute the certification required by section 1154(d)(2) of title 8.

(b) Legal effect of Convention adoption finalized in another Convention country

A final adoption in another Convention country, certified by the Secretary of State pursuant to subsection (a) of this section or section 14932(c) of this title, shall be recognized as a final valid adoption for purposes of all Federal, State, and local laws of the United States.

(c) Condition on finalization of Convention adoption by State court

In the case of a child who has entered the United States from another Convention country for the purpose of adoption, an order declaring the adoption final shall not be entered unless the Secretary of State has issued the certificate provided for in subsection (a) of this section with respect to the adoption.

¹ So in original. Probably should be section "14923(b)(1)(A)(ii)".

(Pub. L. 106-279, title III, §301, Oct. 6, 2000, 114 Stat. 837.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(1), was in the original "this Act", meaning Pub. L. 106-279, Oct. 6, 2000, 114 Stat. 825, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 14901 of this title and Tables.

EFFECTIVE DATE

Section effective upon entry into force for the United States of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, pursuant to Article 46(2)(a) of the Convention, with transition rule, see section 505(a)(2), (b) of Pub. L. 106-279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

§ 14932. Adoptions of children emigrating from the United States

(a) Duties of accredited agency or approved person

In the case of a Convention adoption involving the emigration of a child residing in the United States to a foreign country, the accredited agency or approved person providing adoption services, or the prospective adoptive parent or parents acting on their own behalf (if permitted by the laws of such other Convention country in which they reside and the laws of the State in which the child resides), shall do the following:

(1) Ensure that, in accordance with the Convention—

(A) a background study on the child is completed;

(B) the accredited agency or approved person—

(i) has made reasonable efforts to actively recruit and make a diligent search for prospective adoptive parents to adopt the child in the United States; and

(ii) despite such efforts, has not been able to place the child for adoption in the United States in a timely manner; and

(C) a determination is made that placement with the prospective adoptive parent or parents is in the best interests of the child.

(2) Furnish to the State court with jurisdiction over the case—

(A) documentation of the matters described in paragraph (1);

(B) a background report (home study) on the prospective adoptive parent or parents (including a criminal background check) prepared in accordance with the laws of the receiving country; and

(C) a declaration by the central authority (or other competent authority) of such other Convention country—

(i) that the child will be permitted to enter and reside permanently, or on the same basis as the adopting parent, in the receiving country; and

(ii) that the central authority (or other competent authority) of such other Convention country consents to the adoption, if such consent is necessary under the laws of such country for the adoption to become final.

(3) Furnish to the United States central authority—

(A) official copies of State court orders certifying the final adoption or grant of custody for the purpose of adoption;

(B) the information and documents described in paragraph (2), to the extent required by the United States central authority; and

(C) any other information concerning the case required by the United States central authority to perform the functions specified in subsection (c) of this section or otherwise to carry out the duties of the United States central authority under the Convention.

(b) Conditions on State court orders

An order declaring an adoption to be final or granting custody for the purpose of adoption in a case described in subsection (a) of this section shall not be entered unless the court—

(1) has received and verified to the extent the court may find necessary—

(A) the material described in subsection (a)(2) of this section; and

(B) satisfactory evidence that the requirements of Articles 4 and 15 through 21 of the Convention have been met; and

(2) has determined that the adoptive placement is in the best interests of the child.

(c) Duties of the Secretary of State

In a case described in subsection (a) of this section, the Secretary, on receipt and verification as necessary of the material and information described in subsection (a)(3) of this section, shall issue, as applicable, an official certification that the child has been adopted or a declaration that custody for purposes of adoption has been granted, in accordance with the Convention and this chapter.

(d) Filing with registry regarding non-Convention adoptions

Accredited agencies, approved persons, and other persons, including governmental authorities, providing adoption services in an intercountry adoption not subject to the Convention that involves the emigration of a child from the United States shall file information required by regulations jointly issued by the Attorney General and the Secretary of State for purposes of implementing section 14912(e) of this title.

(Pub. L. 106-279, title III, §303, Oct. 6, 2000, 114 Stat. 839.)

EFFECTIVE DATE

Section effective upon entry into force for the United States of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, pursuant to Article 46(2)(a) of the Convention, with transition rule, see section 505(a)(2), (b) of Pub. L. 106-279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14931, 14953 of this title.

SUBCHAPTER IV—ADMINISTRATION AND
ENFORCEMENT

§ 14941. Access to Convention records

(a) Preservation of Convention records

(1) In general

Not later than 180 days after October 6, 2000, the Secretary, in consultation with the Attorney General, shall issue regulations that establish procedures and requirements in accordance with the Convention and this section for the preservation of Convention records.

(2) Applicability of notice and comment rules

Subsections (b), (c), and (d) of section 553 of title 5 shall apply in the development and issuance of regulations under this section.

(b) Access to Convention records

(1) Prohibition

Except as provided in paragraph (2), the Secretary or the Attorney General may disclose a Convention record, and access to such a record may be provided in whole or in part, only if such record is maintained under the authority of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] and disclosure of, or access to, such record is permitted or required by applicable Federal law.

(2) Exception for administration of the Convention

A Convention record may be disclosed, and access to such a record may be provided, in whole or in part, among the Secretary, the Attorney General, central authorities, accredited agencies, and approved persons, only to the extent necessary to administer the Convention or this chapter.

(3) Penalties for unlawful disclosure

Unlawful disclosure of all or part of a Convention record shall be punishable in accordance with applicable Federal law.

(c) Access to non-Convention records

Disclosure of, access to, and penalties for unlawful disclosure of, adoption records that are not Convention records, including records of adoption proceedings conducted in the United States, shall be governed by applicable State law.

(Pub. L. 106-279, title IV, § 401, Oct. 6, 2000, 114 Stat. 841.)

REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in subsec. (b)(1), is act June 27, 1952, ch. 477, 66 Stat. 163, as amended, which is classified principally to chapter 12 (§1101 et seq.) of Title 8, Aliens and Nationality. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 8 and Tables.

This chapter, referred to in subsec. (b)(2), was in the original "this Act", meaning Pub. L. 106-279, Oct. 6, 2000, 114 Stat. 825, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 14901 of this title and Tables.

EFFECTIVE DATE

Subsec. (a) of this section effective Oct. 6, 2000, and subsecs. (b) and (c) of this section effective upon entry

into force for the United States of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, pursuant to Article 46(2)(a) of the Convention, with transition rule, see section 505 of Pub. L. 106-279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14902 of this title.

§ 14942. Documents of other Convention countries

Documents originating in any other Convention country and related to a Convention adoption case shall require no authentication in order to be admissible in any Federal, State, or local court in the United States, unless a specific and supported claim is made that the documents are false, have been altered, or are otherwise unreliable.

(Pub. L. 106-279, title IV, § 402, Oct. 6, 2000, 114 Stat. 841.)

EFFECTIVE DATE

Section effective upon entry into force for the United States of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, pursuant to Article 46(2)(a) of the Convention, with transition rule, see section 505(a)(2), (b) of Pub. L. 106-279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

§ 14943. Authorization of appropriations; collection of fees

(a) Authorization of appropriations

(1) In general

There are authorized to be appropriated such sums as may be necessary to agencies of the Federal Government implementing the Convention and the provisions of this chapter.

(2) Availability of funds

Amounts appropriated pursuant to paragraph (1) are authorized to remain available until expended.

(b) Assessment of fees

(1) The Secretary may charge a fee for new or enhanced services that will be undertaken by the Department of State to meet the requirements of this chapter with respect to intercountry adoptions under the Convention and comparable services with respect to other intercountry adoptions. Such fee shall be prescribed by regulation and shall not exceed the cost of such services.

(2) Fees collected under paragraph (1) shall be retained and deposited as an offsetting collection to any Department of State appropriation to recover the costs of providing such services.

(3) Fees authorized under this section shall be available for obligation only to the extent and in the amount provided in advance in appropriations Acts.

(c) Restriction

No funds collected under the authority of this section may be made available to an accrediting entity to carry out the purposes of this chapter.

(Pub. L. 106-279, title IV, § 403, Oct. 6, 2000, 114 Stat. 841.)

EFFECTIVE DATE

Section effective Oct. 6, 2000, with transition rule, see section 505(a)(1), (b) of Pub. L. 106-279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

§ 14944. Enforcement**(a) Civil penalties**

Any person who—

- (1) violates section 14921 of this title;
- (2) makes a false or fraudulent statement, or misrepresentation, with respect to a material fact, or offers, gives, solicits, or accepts inducement by way of compensation, intended to influence or affect in the United States or a foreign country—

(A) a decision by an accrediting entity with respect to the accreditation of an agency or approval of a person under subchapter II of this chapter;

(B) the relinquishment of parental rights or the giving of parental consent relating to the adoption of a child in a case subject to the Convention; or

(C) a decision or action of any entity performing a central authority function; or

- (3) engages another person as an agent, whether in the United States or in a foreign country, who in the course of that agency takes any of the actions described in paragraph (1) or (2),

shall be subject, in addition to any other penalty that may be prescribed by law, to a civil money penalty of not more than \$50,000 for a first violation, and not more than \$100,000 for each succeeding violation.

(b) Civil enforcement**(1) Authority of Attorney General**

The Attorney General may bring a civil action to enforce subsection (a) of this section against any person in any United States district court.

(2) Factors to be considered in imposing penalties

In imposing penalties the court shall consider the gravity of the violation, the degree of culpability of the defendant, and any history of prior violations by the defendant.

(c) Criminal penalties

Whoever knowingly and willfully violates paragraph (1) or (2) of subsection (a) of this section shall be subject to a fine of not more than \$250,000, imprisonment for not more than 5 years, or both.

(Pub. L. 106-279, title IV, § 404, Oct. 6, 2000, 114 Stat. 842.)

REFERENCES IN TEXT

Subchapter II of this chapter, referred to in subsec. (a)(2)(A), was in the original “title II”, meaning title II of Pub. L. 106-279, Oct. 6, 2000, 114 Stat. 830, which enacted subchapter II of this chapter and amended section 622 of this title. For complete classification of title II to the Code, see Tables.

EFFECTIVE DATE

Section effective upon entry into force for the United States of the Convention on Protection of Children and

Co-operation in Respect of Intercountry Adoption, pursuant to Article 46(2)(a) of the Convention, with transition rule, see section 505(a)(2), (b) of Pub. L. 106-279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14902 of this title.

SUBCHAPTER V—GENERAL PROVISIONS

§ 14951. Recognition of Convention adoptions

Subject to Article 24 of the Convention, adoptions concluded between two other Convention countries that meet the requirements of Article 23 of the Convention and that became final before the date of entry into force of the Convention for the United States shall be recognized thereafter in the United States and given full effect. Such recognition shall include the specific effects described in Article 26 of the Convention.

(Pub. L. 106-279, title V, § 501, Oct. 6, 2000, 114 Stat. 843.)

EFFECTIVE DATE

Section effective upon entry into force for the United States of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, pursuant to Article 46(2)(a) of the Convention, with transition rule, see section 505(a)(2), (b) of Pub. L. 106-279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

§ 14952. Special rules for certain cases**(a) Authority to establish alternative procedures for adoption of children by relatives**

To the extent consistent with the Convention, the Secretary may establish by regulation alternative procedures for the adoption of children by individuals related to them by blood, marriage, or adoption, in cases subject to the Convention.

(b) Waiver authority**(1) In general**

Notwithstanding any other provision of this chapter, to the extent consistent with the Convention, the Secretary may, on a case-by-case basis, waive applicable requirements of this chapter or regulations issued under this chapter, in the interests of justice or to prevent grave physical harm to the child.

(2) Nondelegation

The authority provided by paragraph (1) may not be delegated.

(Pub. L. 106-279, title V, § 502, Oct. 6, 2000, 114 Stat. 843.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b)(1), was in the original “this Act”, meaning Pub. L. 106-279, Oct. 6, 2000, 114 Stat. 825, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 14901 of this title and Tables.

EFFECTIVE DATE

Section effective upon entry into force for the United States of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, pur-

suant to Article 46(2)(a) of the Convention, with transition rule, see section 505(a)(2), (b) of Pub. L. 106-279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

§ 14953. Relationship to other laws

(a) Preemption of inconsistent State law

The Convention and this chapter shall not be construed to preempt any provision of the law of any State or political subdivision thereof, or prevent a State or political subdivision thereof from enacting any provision of law with respect to the subject matter of the Convention or this chapter, except to the extent that such provision of State law is inconsistent with the Convention or this chapter, and then only to the extent of the inconsistency.

(b) Applicability of the Indian Child Welfare Act

The Convention and this chapter shall not be construed to affect the application of the Indian Child Welfare Act of 1978 (25 U.S.C. 1901 et seq.).

(c) Relationship to other laws

Sections 3506(c), 3507, and 3512 of title 44 shall not apply to information collection for purposes of sections 14914, 14922(b)(4), and 14932(d) of this title or for use as a Convention record as defined in this chapter.

(Pub. L. 106-279, title V, §503, Oct. 6, 2000, 114 Stat. 843.)

REFERENCES IN TEXT

The Indian Child Welfare Act of 1978, referred to in subsec. (b), is Pub. L. 95-608, Nov. 8, 1978, 92 Stat. 3069, as amended, which is classified principally to chapter 21 (§1901 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 1901 of Title 25 and Tables.

EFFECTIVE DATE

Section effective Oct. 6, 2000, with transition rule, see section 505(a)(1), (b) of Pub. L. 106-279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

§ 14954. No private right of action

The Convention and this chapter shall not be construed to create a private right of action to seek administrative or judicial relief, except to the extent expressly provided in this chapter.

(Pub. L. 106-279, title V, §504, Oct. 6, 2000, 114 Stat. 843.)

EFFECTIVE DATE

Section effective upon entry into force for the United States of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, pursuant to Article 46(2)(a) of the Convention, with transition rule, see section 505(a)(2), (b) of Pub. L. 106-279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

CHAPTER 144—DEVELOPMENTAL DISABILITIES ASSISTANCE AND BILL OF RIGHTS

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 300a–7, 3013, 14404 of this title; title 20 section 1444; title 29 section 762, 781, 794e, 3012.

SUBCHAPTER I—PROGRAMS FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 15114 of this title.

PART A—GENERAL PROVISIONS

§ 15001. Findings, purposes, and policy

(a) Findings

Congress finds that—

- (1) disability is a natural part of the human experience that does not diminish the right of individuals with developmental disabilities to live independently, to exert control and choice over their own lives, and to fully participate in and contribute to their communities through full integration and inclusion in the economic, political, social, cultural, and educational mainstream of United States society;
- (2) in 1999, there were between 3,200,000 and 4,500,000 individuals with developmental disabilities in the United States, and recent studies indicate that individuals with developmental disabilities comprise between 1.2 and 1.65 percent of the United States population;
- (3) individuals whose disabilities occur during their developmental period frequently have severe disabilities that are likely to continue indefinitely;
- (4) individuals with developmental disabilities often encounter discrimination in the provision of critical services, such as services in the areas of emphasis (as defined in section 15002 of this title);
- (5) individuals with developmental disabilities are at greater risk than the general population of abuse, neglect, financial and sexual

exploitation, and the violation of their legal and human rights;

(6) a substantial portion of individuals with developmental disabilities and their families do not have access to appropriate support and services, including access to assistive technology, from generic and specialized service systems, and remain unserved or underserved;

(7) individuals with developmental disabilities often require lifelong community services, individualized supports, and other forms of assistance, that are most effective when provided in a coordinated manner;

(8) there is a need to ensure that services, supports, and other assistance are provided in a culturally competent manner, that ensures that individuals from racial and ethnic minority backgrounds are fully included in all activities provided under this subchapter;

(9) family members, friends, and members of the community can play an important role in enhancing the lives of individuals with developmental disabilities, especially when the family members, friends, and community members are provided with the necessary community services, individualized supports, and other forms of assistance;

(10) current research indicates that 88 percent of individuals with developmental disabilities live with their families or in their own households;

(11) many service delivery systems and communities are not prepared to meet the impending needs of the 479,862 adults with developmental disabilities who are living at home with parents who are 60 years old or older and who serve as the primary caregivers of the adults;

(12) in almost every State, individuals with developmental disabilities are waiting for appropriate services in their communities, in the areas of emphasis;

(13) the public needs to be made more aware of the capabilities and competencies of individuals with developmental disabilities, particularly in cases in which the individuals are provided with necessary services, supports, and other assistance;

(14) as increasing numbers of individuals with developmental disabilities are living, learning, working, and participating in all aspects of community life, there is an increasing need for a well trained workforce that is able to provide the services, supports, and other forms of direct assistance required to enable the individuals to carry out those activities;

(15) there needs to be greater effort to recruit individuals from minority backgrounds into professions serving individuals with developmental disabilities and their families;

(16) the goals of the Nation properly include a goal of providing individuals with developmental disabilities with the information, skills, opportunities, and support to—

(A) make informed choices and decisions about their lives;

(B) live in homes and communities in which such individuals can exercise their full rights and responsibilities as citizens;

(C) pursue meaningful and productive lives;

(D) contribute to their families, communities, and States, and the Nation;

(E) have interdependent friendships and relationships with other persons;

(F) live free of abuse, neglect, financial and sexual exploitation, and violations of their legal and human rights; and

(G) achieve full integration and inclusion in society, in an individualized manner, consistent with the unique strengths, resources, priorities, concerns, abilities, and capabilities of each individual; and

(17) as the Nation, States, and communities maintain and expand community living options for individuals with developmental disabilities, there is a need to evaluate the access to those options by individuals with developmental disabilities and the effects of those options on individuals with developmental disabilities.

(b) Purpose

The purpose of this subchapter is to assure that individuals with developmental disabilities and their families participate in the design of and have access to needed community services, individualized supports, and other forms of assistance that promote self-determination, independence, productivity, and integration and inclusion in all facets of community life, through culturally competent programs authorized under this subchapter, including specifically—

(1) State Councils on Developmental Disabilities in each State to engage in advocacy, capacity building, and systemic change activities that—

(A) are consistent with the purpose described in this subsection and the policy described in subsection (c) of this section; and

(B) contribute to a coordinated, consumer- and family-centered, consumer- and family-directed, comprehensive system that includes needed community services, individualized supports, and other forms of assistance that promote self-determination for individuals with developmental disabilities and their families;

(2) protection and advocacy systems in each State to protect the legal and human rights of individuals with developmental disabilities;

(3) University Centers for Excellence in Developmental Disabilities Education, Research, and Service—

(A) to provide interdisciplinary pre-service preparation and continuing education of students and fellows, which may include the preparation and continuing education of leadership, direct service, clinical, or other personnel to strengthen and increase the capacity of States and communities to achieve the purpose of this subchapter;

(B) to provide community services—

(i) that provide training and technical assistance for individuals with developmental disabilities, their families, professionals, paraprofessionals, policymakers, students, and other members of the community; and

(ii) that may provide services, supports, and assistance for the persons described in

clause (i) through demonstration and model activities;

(C) to conduct research, which may include basic or applied research, evaluation, and the analysis of public policy in areas that affect or could affect, either positively or negatively, individuals with developmental disabilities and their families; and

(D) to disseminate information related to activities undertaken to address the purpose of this subchapter, especially dissemination of information that demonstrates that the network authorized under this part is a national and international resource that includes specific substantive areas of expertise that may be accessed and applied in diverse settings and circumstances; and

(4) funding for—

(A) national initiatives to collect necessary data on issues that are directly or indirectly relevant to the lives of individuals with developmental disabilities;

(B) technical assistance to entities who engage in or intend to engage in activities consistent with the purpose described in this subsection or the policy described in subsection (c) of this section; and

(C) other nationally significant activities.

(c) Policy

It is the policy of the United States that all programs, projects, and activities receiving assistance under this subchapter shall be carried out in a manner consistent with the principles that—

(1) individuals with developmental disabilities, including those with the most severe developmental disabilities, are capable of self-determination, independence, productivity, and integration and inclusion in all facets of community life, but often require the provision of community services, individualized supports, and other forms of assistance;

(2) individuals with developmental disabilities and their families have competencies, capabilities, and personal goals that should be recognized, supported, and encouraged, and any assistance to such individuals should be provided in an individualized manner, consistent with the unique strengths, resources, priorities, concerns, abilities, and capabilities of such individuals;

(3) individuals with developmental disabilities and their families are the primary decisionmakers regarding the services and supports such individuals and their families receive, including regarding choosing where the individuals live from available options, and play decisionmaking roles in policies and programs that affect the lives of such individuals and their families;

(4) services, supports, and other assistance should be provided in a manner that demonstrates respect for individual dignity, personal preferences, and cultural differences;

(5) specific efforts must be made to ensure that individuals with developmental disabilities from racial and ethnic minority backgrounds and their families enjoy increased and meaningful opportunities to access and use

community services, individualized supports, and other forms of assistance available to other individuals with developmental disabilities and their families;

(6) recruitment efforts in disciplines related to developmental disabilities relating to pre-service training, community training, practice, administration, and policymaking must focus on bringing larger numbers of racial and ethnic minorities into the disciplines in order to provide appropriate skills, knowledge, role models, and sufficient personnel to address the growing needs of an increasingly diverse population;

(7) with education and support, communities can be accessible to and responsive to the needs of individuals with developmental disabilities and their families and are enriched by full and active participation in community activities, and contributions, by individuals with developmental disabilities and their families;

(8) individuals with developmental disabilities have access to opportunities and the necessary support to be included in community life, have interdependent relationships, live in homes and communities, and make contributions to their families, communities, and States, and the Nation;

(9) efforts undertaken to maintain or expand community-based living options for individuals with disabilities should be monitored in order to determine and report to appropriate individuals and entities the extent of access by individuals with developmental disabilities to those options and the extent of compliance by entities providing those options with quality assurance standards;

(10) families of children with developmental disabilities need to have access to and use of safe and appropriate child care and before-school and after-school programs, in the most integrated settings, in order to enrich the participation of the children in community life;

(11) individuals with developmental disabilities need to have access to and use of public transportation, in order to be independent and directly contribute to and participate in all facets of community life; and

(12) individuals with developmental disabilities need to have access to and use of recreational, leisure, and social opportunities in the most integrated settings, in order to enrich their participation in community life.

(Pub. L. 106-402, title I, §101, Oct. 30, 2000, 114 Stat. 1678.)

SHORT TITLE

Pub. L. 106-402, §1(a), Oct. 30, 2000, 114 Stat. 1677, provided that: "This Act [see Tables for classification] may be cited as the 'Developmental Disabilities Assistance and Bill of Rights Act of 2000'."

Pub. L. 106-402, title II, §201, Oct. 30, 2000, 114 Stat. 1728, provided that: "This title [enacting subchapter II of this chapter] may be cited as the 'Families of Children With Disabilities Support Act of 2000'."

EX. ORD. NO. 12994. PRESIDENT'S COMMITTEE ON MENTAL RETARDATION

Ex. Ord. No. 12994, Mar. 21, 1996, 61 F.R. 13047, provided:

The President's Committee on Mental Retardation, established by Executive Order No. 11280 [former 42

U.S.C. note prec. 2661] on May 11, 1966, as superseded by Executive Order No. 11776 on March 28, 1974, has organized national planning, stimulated development of plans, policies and programs, and advanced the concept of community participation in the field of mental retardation.

National goals have been established to:

- (1) promote full participation of people with mental retardation in their communities;
- (2) provide all necessary supports to people with mental retardation and their families for such participation;
- (3) reduce the occurrence and severity of mental retardation by one-half by the year 2010;
- (4) assure the full citizenship rights of all people with mental retardation, including those rights secured by such landmark statutes as the Americans with Disabilities Act of 1990, Public Law 101-336 (42 U.S.C. 12101 *et seq.*);
- (5) recognize the right of all people with mental retardation to self-determination and autonomy, to be treated in a nondiscriminatory manner, and to exercise meaningful choice, with whatever supports are necessary to effectuate these rights;
- (6) recognize the right of all people with mental retardation to enjoy a quality of life that promotes independence, self-determination, and participation as productive members of society; and
- (7) promote the widest possible dissemination of information on models, programs, and services in the field of mental retardation.

The achievement of these goals will require the most effective possible use of public and private resources.

NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App.), it is hereby ordered as follows:

SECTION 1. *Committee Continued and Responsibilities Expanded.* The President's Committee on Mental Retardation (the "Committee"), with expanded membership and expanded responsibilities, is hereby continued in operation.

SEC. 2. *Composition of Committee.* (a) The Committee shall be composed of the following members:

- (1) The Secretary of Health and Human Services;
- (2) The Secretary of Education;
- (3) The Attorney General;
- (4) The Secretary of Labor;
- (5) The Secretary of Housing and Urban Development;
- (6) The Chief Executive Officer of the Corporation for National and Community Service (formerly ACTION);
- (7) The Commissioner of Social Security;
- (8) The Chair of the Equal Employment Opportunity Commission;
- (9) The Chairperson of the National Council on Disability;

(10) No more than 21 other members who shall be appointed to the Committee by the President. These citizen members shall consist of individuals who represent a broad spectrum of perspectives, experience, and expertise on mental retardation, and shall include self-advocates with mental retardation and members of families with a child or adult with mental retardation, and persons employed in either the public or the private sector. Except as the President may from time to time otherwise direct, appointees under this paragraph shall have two-year terms, except that an appointment made to fill a vacancy occurring before the expiration of a term shall be made for the balance of the unexpired term.

(b) The President shall designate the Chair of the Committee from the 21 citizen members. The Chair shall advise and counsel the Committee and represent the Committee on appropriate occasions.

SEC. 3. *Functions of the Committee.* (a) The Committee shall provide such advice and assistance in the area of mental retardation as the President or Secretary of Health and Human Services may request, and particularly shall advise with respect to the following areas:

(1) evaluating and monitoring the national efforts to establish appropriate policies and supports for people with mental retardation;

(2) providing suggestions for improvement in the delivery of mental retardation services, including preventive services, the promulgation of effective and humane policies, and the provision of necessary supports;

(3) identifying the extent to which various Federal and State programs achieve the national goals in mental retardation described in the preamble to this order and have a positive impact on the lives of people with mental retardation;

(4) facilitating liaison among Federal, State, and local governments, foundations, nonprofit organizations, other private organizations, and citizens concerning mental retardation;

(5) developing and disseminating such information as will tend to reduce the incidence and severity of mental retardation; and

(6) promoting the concept of community participation and development of community supports for citizens with mental retardation.

(b) The Committee shall make an annual report, through the Secretary of Health and Human Services, to the President concerning mental retardation. Such additional reports may be made as the President may require or as the Committee may deem appropriate.

SEC. 4. *Cooperation by Other Agencies.* To assist the Committee in providing advice to the President, Federal departments and agencies requested to do so by the Committee shall designate liaison officers to the Committee. Such officers shall, on request by the Committee, and to the extent permitted by law, provide the Committee with information on department and agency programs that do contribute to or could contribute to achievement of the President's goals in the field of mental retardation.

SEC. 5. *Administration.* (a) The Department of Health and Human Services shall, to the extent permitted by law, provide the Committee with necessary staff, administrative services, and facilities and funding.

(b) Each member of the Committee, except any member who receives other compensation from the United States Government, may receive compensation for each day he or she is engaged in the work of the Committee, as authorized by law (5 U.S.C. 3109), and may also receive travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 5701-5707), for persons employed intermittently in the Government service. Committee members with disabilities may be compensated for attendant expenses, consistent with Government procedures and practices.

(c) The Secretary of Health and Human Services shall perform such other functions with respect to the Committee as may be required by the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), except that of reporting to the Congress.

SEC. 6. *Construction.* Nothing in this order shall be construed as subjecting any Federal agency, or any function vested by law in, or assigned pursuant to law to, any Federal agency, to the authority of the Committee or as abrogating or restricting any such function in any manner.

SEC. 7. *Superseded Authority.* Executive Order No. 11776 is hereby superseded.

WILLIAM J. CLINTON.

EXTENSION OF TERM OF PRESIDENT'S COMMITTEE ON MENTAL RETARDATION

Term of the President's Committee on Mental Retardation extended until Dec. 31, 1982, by Ex. Ord. No. 12258, Dec. 31, 1980, 46 F.R. 1251, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

Term of the President's Committee on Mental Retardation extended until Sept. 30, 1984, by Ex. Ord. No. 12399, Dec. 31, 1982, 48 F.R. 379, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Committee on Mental Retardation extended until Sept. 30, 1985, by Ex. Ord. No. 12489, Sept. 28, 1984, 49 F.R. 38927, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Committee on Mental Retardation extended until Sept. 30, 1987, by Ex. Ord. No. 12534, Sept. 30, 1985, 50 F.R. 40319, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Committee on Mental Retardation extended until Sept. 30, 1989, by Ex. Ord. No. 12610, Sept. 30, 1987, 52 F.R. 36901, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Committee on Mental Retardation extended until Sept. 30, 1991, by Ex. Ord. No. 12692, Sept. 29, 1989, 54 F.R. 40627, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Committee on Mental Retardation extended until Sept. 30, 1993, by Ex. Ord. No. 12774, Sept. 27, 1991, 56 F.R. 49835, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Committee on Mental Retardation extended until Sept. 30, 1995, by Ex. Ord. No. 12869, Sept. 30, 1993, 58 F.R. 51751, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Committee on Mental Retardation extended until Sept. 30, 1997, by Ex. Ord. No. 12974, Sept. 29, 1995, 60 F.R. 51875, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Committee on Mental Retardation extended until Sept. 30, 1999, by Ex. Ord. No. 13062, §1(k), Sept. 29, 1997, 62 F.R. 51755, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Committee on Mental Retardation extended until Sept. 30, 2001, by Ex. Ord. No. 13138, Sept. 30, 1999, 64 F.R. 53879, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Committee on Mental Retardation extended until Sept. 30, 2003, by Ex. Ord. No. 13225, Sept. 28, 2001, 66 F.R. 50291, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15004, 15009, 15021, 15025, 15064, 15114 of this title.

§ 15002. Definitions

In this subchapter:

(1) American Indian Consortium

The term "American Indian Consortium" means any confederation of 2 or more recognized American Indian tribes, created through the official action of each participating tribe, that has a combined total resident population of 150,000 enrolled tribal members and a contiguous territory of Indian lands in 2 or more States.

(2) Areas of emphasis

The term "areas of emphasis" means the areas related to quality assurance activities, education activities and early intervention activities, child care-related activities, health-related activities, employment-related activities, housing-related activities, transportation-related activities, recreation-related activities, and other services available or offered to individuals in a community, including formal and informal community supports, that affect their quality of life.

ferred to individuals in a community, including formal and informal community supports, that affect their quality of life.

(3) Assistive technology device

The term "assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially, modified or customized, that is used to increase, maintain, or improve functional capabilities of individuals with developmental disabilities.

(4) Assistive technology service

The term "assistive technology service" means any service that directly assists an individual with a developmental disability in the selection, acquisition, or use of an assistive technology device. Such term includes—

(A) conducting an evaluation of the needs of an individual with a developmental disability, including a functional evaluation of the individual in the individual's customary environment;

(B) purchasing, leasing, or otherwise providing for the acquisition of an assistive technology device by an individual with a developmental disability;

(C) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing or replacing an assistive technology device;

(D) coordinating and using another therapy, intervention, or service with an assistive technology device, such as a therapy, intervention, or service associated with an education or rehabilitation plan or program;

(E) providing training or technical assistance for an individual with a developmental disability, or, where appropriate, a family member, guardian, advocate, or authorized representative of an individual with a developmental disability; and

(F) providing training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of, an individual with developmental disabilities.

(5) Center

The term "Center" means a University Center for Excellence in Developmental Disabilities Education, Research, and Service established under part D of this subchapter.

(6) Child care-related activities

The term "child care-related activities" means advocacy, capacity building, and systemic change activities that result in families of children with developmental disabilities having access to and use of child care services, including before-school, after-school, and out-of-school services, in their communities.

(7) Culturally competent

The term "culturally competent", used with respect to services, supports, or other assistance, means services, supports, or other assistance that is conducted or provided in a manner that is responsive to the beliefs, inter-

personal styles, attitudes, language, and behaviors of individuals who are receiving the services, supports, or other assistance, and in a manner that has the greatest likelihood of ensuring their maximum participation in the program involved.

(8) Developmental disability

(A) In general

The term “developmental disability” means a severe, chronic disability of an individual that—

- (i) is attributable to a mental or physical impairment or combination of mental and physical impairments;
- (ii) is manifested before the individual attains age 22;
- (iii) is likely to continue indefinitely;
- (iv) results in substantial functional limitations in 3 or more of the following areas of major life activity:
 - (I) Self-care.
 - (II) Receptive and expressive language.
 - (III) Learning.
 - (IV) Mobility.
 - (V) Self-direction.
 - (VI) Capacity for independent living.
 - (VII) Economic self-sufficiency; and
- (v) reflects the individual’s need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

(B) Infants and young children

An individual from birth to age 9, inclusive, who has a substantial developmental delay or specific congenital or acquired condition, may be considered to have a developmental disability without meeting 3 or more of the criteria described in clauses (i) through (v) of subparagraph (A) if the individual, without services and supports, has a high probability of meeting those criteria later in life.

(9) Early intervention activities

The term “early intervention activities” means advocacy, capacity building, and systemic change activities provided to individuals described in paragraph (8)(B) and their families to enhance—

- (A) the development of the individuals to maximize their potential; and
- (B) the capacity of families to meet the special needs of the individuals.

(10) Education activities

The term “education activities” means advocacy, capacity building, and systemic change activities that result in individuals with developmental disabilities being able to access appropriate supports and modifications when necessary, to maximize their educational potential, to benefit from lifelong educational activities, and to be integrated and included in all facets of student life.

(11) Employment-related activities

The term “employment-related activities” means advocacy, capacity building, and sys-

temic change activities that result in individuals with developmental disabilities acquiring, retaining, or advancing in paid employment, including supported employment or self-employment, in integrated settings in a community.

(12) Family support services

(A) In general

The term “family support services” means services, supports, and other assistance, provided to families with members who have developmental disabilities, that are designed to—

- (i) strengthen the family’s role as primary caregiver;
- (ii) prevent inappropriate out-of-the-home placement of the members and maintain family unity; and
- (iii) reunite families with members who have been placed out of the home whenever possible.

(B) Specific services

Such term includes respite care, provision of rehabilitation technology and assistive technology, personal assistance services, parent training and counseling, support for families headed by aging caregivers, vehicular and home modifications, and assistance with extraordinary expenses, associated with the needs of individuals with developmental disabilities.

(13) Health-related activities

The term “health-related activities” means advocacy, capacity building, and systemic change activities that result in individuals with developmental disabilities having access to and use of coordinated health, dental, mental health, and other human and social services, including prevention activities, in their communities.

(14) Housing-related activities

The term “housing-related activities” means advocacy, capacity building, and systemic change activities that result in individuals with developmental disabilities having access to and use of housing and housing supports and services in their communities, including assistance related to renting, owning, or modifying an apartment or home.

(15) Inclusion

The term “inclusion”, used with respect to individuals with developmental disabilities, means the acceptance and encouragement of the presence and participation of individuals with developmental disabilities, by individuals without disabilities, in social, educational, work, and community activities, that enables individuals with developmental disabilities to—

- (A) have friendships and relationships with individuals and families of their own choice;
- (B) live in homes close to community resources, with regular contact with individuals without disabilities in their communities;
- (C) enjoy full access to and active participation in the same community activities

and types of employment as individuals without disabilities; and

(D) take full advantage of their integration into the same community resources as individuals without disabilities, living, learning, working, and enjoying life in regular contact with individuals without disabilities.

(16) Individualized supports

The term “individualized supports” means supports that—

(A) enable an individual with a developmental disability to exercise self-determination, be independent, be productive, and be integrated and included in all facets of community life;

(B) are designed to—

(i) enable such individual to control such individual’s environment, permitting the most independent life possible;

(ii) prevent placement into a more restrictive living arrangement than is necessary; and

(iii) enable such individual to live, learn, work, and enjoy life in the community; and

(C) include—

(i) early intervention services;

(ii) respite care;

(iii) personal assistance services;

(iv) family support services;

(v) supported employment services;

(vi) support services for families headed by aging caregivers of individuals with developmental disabilities; and

(vii) provision of rehabilitation technology and assistive technology, and assistive technology services.

(17) Integration

The term “integration”, used with respect to individuals with developmental disabilities, means exercising the equal right of individuals with developmental disabilities to access and use the same community resources as are used by and available to other individuals.

(18) Not-for-profit

The term “not-for-profit”, used with respect to an agency, institution, or organization, means an agency, institution, or organization that is owned or operated by 1 or more corporations or associations, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(19) Personal assistance services

The term “personal assistance services” means a range of services, provided by 1 or more individuals, designed to assist an individual with a disability to perform daily activities, including activities on or off a job that such individual would typically perform if such individual did not have a disability. Such services shall be designed to increase such individual’s control in life and ability to perform everyday activities, including activities on or off a job.

(20) Prevention activities

The term “prevention activities” means activities that address the causes of develop-

mental disabilities and the exacerbation of functional limitation, such as activities that—

(A) eliminate or reduce the factors that cause or predispose individuals to developmental disabilities or that increase the prevalence of developmental disabilities;

(B) increase the early identification of problems to eliminate circumstances that create or increase functional limitations; and

(C) mitigate against the effects of developmental disabilities throughout the lifespan of an individual.

(21) Productivity

The term “productivity” means—

(A) engagement in income-producing work that is measured by increased income, improved employment status, or job advancement; or

(B) engagement in work that contributes to a household or community.

(22) Protection and advocacy system

The term “protection and advocacy system” means a protection and advocacy system established in accordance with section 15043 of this title.

(23) Quality assurance activities

The term “quality assurance activities” means advocacy, capacity building, and systemic change activities that result in improved consumer- and family-centered quality assurance and that result in systems of quality assurance and consumer protection that—

(A) include monitoring of services, supports, and assistance provided to an individual with developmental disabilities that ensures that the individual—

(i) will not experience abuse, neglect, sexual or financial exploitation, or violation of legal or human rights; and

(ii) will not be subject to the inappropriate use of restraints or seclusion;

(B) include training in leadership, self-advocacy, and self-determination for individuals with developmental disabilities, their families, and their guardians to ensure that those individuals—

(i) will not experience abuse, neglect, sexual or financial exploitation, or violation of legal or human rights; and

(ii) will not be subject to the inappropriate use of restraints or seclusion; or

(C) include activities related to inter-agency coordination and systems integration that result in improved and enhanced services, supports, and other assistance that contribute to and protect the self-determination, independence, productivity, and integration and inclusion in all facets of community life, of individuals with developmental disabilities.

(24) Recreation-related activities

The term “recreation-related activities” means advocacy, capacity building, and systemic change activities that result in individuals with developmental disabilities having access to and use of recreational, leisure, and social activities, in their communities.

(25) Rehabilitation technology

The term “rehabilitation technology” means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of, and address the barriers confronted by, individuals with developmental disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation. Such term includes rehabilitation engineering, and the provision of assistive technology devices and assistive technology services.

(26) Secretary

The term “Secretary” means the Secretary of Health and Human Services.

(27) Self-determination activities

The term “self-determination activities” means activities that result in individuals with developmental disabilities, with appropriate assistance, having—

(A) the ability and opportunity to communicate and make personal decisions;

(B) the ability and opportunity to communicate choices and exercise control over the type and intensity of services, supports, and other assistance the individuals receive;

(C) the authority to control resources to obtain needed services, supports, and other assistance;

(D) opportunities to participate in, and contribute to, their communities; and

(E) support, including financial support, to advocate for themselves and others, to develop leadership skills, through training in self-advocacy, to participate in coalitions, to educate policymakers, and to play a role in the development of public policies that affect individuals with developmental disabilities.

(28) State

The term “State”, except as otherwise provided, includes, in addition to each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(29) State Council on Developmental Disabilities

The term “State Council on Developmental Disabilities” means a Council established under section 15025 of this title.

(30) Supported employment services

The term “supported employment services” means services that enable individuals with developmental disabilities to perform competitive work in integrated work settings, in the case of individuals with developmental disabilities—

(A)(i) for whom competitive employment has not traditionally occurred; or

(ii) for whom competitive employment has been interrupted or intermittent as a result of significant disabilities; and

(B) who, because of the nature and severity of their disabilities, need intensive sup-

ported employment services or extended services in order to perform such work.

(31) Transportation-related activities

The term “transportation-related activities” means advocacy, capacity building, and systemic change activities that result in individuals with developmental disabilities having access to and use of transportation.

(32) Unserved and underserved

The term “unserved and underserved” includes populations such as individuals from racial and ethnic minority backgrounds, disadvantaged individuals, individuals with limited English proficiency, individuals from underserved geographic areas (rural or urban), and specific groups of individuals within the population of individuals with developmental disabilities, including individuals who require assistive technology in order to participate in and contribute to community life.

(Pub. L. 106-402, title I, §102, Oct. 30, 2000, 114 Stat. 1682.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1437a, 1471, 8013, 9877, 11382, 15001, 15112 of this title; title 25 section 4103; title 29 section 794e.

§ 15003. Records and audits**(a) Records**

Each recipient of assistance under this subchapter shall keep such records as the Secretary shall prescribe, including—

(1) records that fully disclose—

(A) the amount and disposition by such recipient of the assistance;

(B) the total cost of the project or undertaking in connection with which such assistance is given or used; and

(C) the amount of that portion of the cost of the project or undertaking that is supplied by other sources; and

(2) such other records as will facilitate an effective audit.

(b) Access

The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients of assistance under this subchapter that are pertinent to such assistance.

(Pub. L. 106-402, title I, §103, Oct. 30, 2000, 114 Stat. 1688.)

§ 15004. Responsibilities of the Secretary**(a) Program accountability****(1) In general**

In order to monitor entities that received funds under this chapter to carry out activities under parts B, C, and D of this subchapter and determine the extent to which the entities have been responsive to the purpose of this subchapter and have taken actions consistent with the policy described in section 15001(c) of this title, the Secretary shall develop and im-

plement an accountability process as described in this subsection, with respect to activities conducted after October 1, 2001.

(2) Areas of emphasis

The Secretary shall develop a process for identifying and reporting (pursuant to section 15005 of this title) on progress achieved through advocacy, capacity building, and systemic change activities, undertaken by the entities described in paragraph (1), that resulted in individuals with developmental disabilities and their families participating in the design of and having access to needed community services, individualized supports, and other forms of assistance that promote self-determination, independence, productivity, and integration and inclusion in all facets of community life. Specifically, the Secretary shall develop a process for identifying and reporting on progress achieved, through advocacy, capacity building, and systemic change activities, by the entities in the areas of emphasis.

(3) Indicators of progress

(A) In general

In identifying progress made by the entities described in paragraph (1) in the areas of emphasis, the Secretary, in consultation with the Commissioner of the Administration on Developmental Disabilities and the entities, shall develop indicators for each area of emphasis.

(B) Proposed indicators

Not later than 180 days after October 30, 2000, the Secretary shall develop and publish in the Federal Register for public comment proposed indicators of progress for monitoring how entities described in paragraph (1) have addressed the areas of emphasis described in paragraph (2) in a manner that is responsive to the purpose of this subchapter and consistent with the policy described in section 15001(c) of this title.

(C) Final indicators

Not later than October 1, 2001, the Secretary shall revise the proposed indicators of progress, to the extent necessary based on public comment, and publish final indicators of progress in the Federal Register.

(D) Specific measures

At a minimum, the indicators of progress shall be used to describe and measure—

(i) the satisfaction of individuals with developmental disabilities with the advocacy, capacity building, and systemic change activities provided under parts B, C, and D of this subchapter;

(ii) the extent to which the advocacy, capacity building, and systemic change activities provided through parts B, C, and D of this subchapter result in improvements in—

(I) the ability of individuals with developmental disabilities to make choices and exert control over the type, intensity, and timing of services, supports, and assistance that the individuals have used;

(II) the ability of individuals with developmental disabilities to participate in the full range of community life with persons of the individuals' choice; and

(III) the ability of individuals with developmental disabilities to access services, supports, and assistance in a manner that ensures that such an individual is free from abuse, neglect, sexual and financial exploitation, violation of legal and human rights, and the inappropriate use of restraints and seclusion; and

(iii) the extent to which the entities described in paragraph (1) collaborate with each other to achieve the purpose of this subchapter and the policy described in section 15001(c) of this title.

(4) Time line for compliance with indicators of progress

The Secretary shall require entities described in paragraph (1) to meet the indicators of progress described in paragraph (3). For fiscal year 2002 and each year thereafter, the Secretary shall apply the indicators in monitoring entities described in paragraph (1), with respect to activities conducted after October 1, 2001.

(b) Time line for regulations

Except as otherwise expressly provided in this subchapter, the Secretary, not later than 1 year after October 30, 2000, shall promulgate such regulations as may be required for the implementation of this subchapter.

(c) Interagency committee

(1) In general

The Secretary shall maintain the interagency committee authorized in section 6007 of this title as in effect on the day before October 30, 2000, except as otherwise provided in this subsection.

(2) Composition

The interagency committee shall be composed of representatives of—

(A) the Administration on Developmental Disabilities, the Administration on Children, Youth, and Families, the Administration on Aging, and the Health Resources and Services Administration, of the Department of Health and Human Services; and

(B) such other Federal departments and agencies as the Secretary of Health and Human Services considers to be appropriate.

(3) Duties

Such interagency committee shall meet regularly to coordinate and plan activities conducted by Federal departments and agencies for individuals with developmental disabilities.

(4) Meetings

Each meeting of the interagency committee (except for any meetings of any subcommittees of the committee) shall be open to the public. Notice of each meeting, and a statement of the agenda for the meeting, shall be published in the Federal Register not later than 14 days before the date on which the meeting is to occur.

(Pub. L. 106-402, title I, §104, Oct. 30, 2000, 114 Stat. 1688.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(1), was in the original “this Act”, meaning Pub. L. 106-402, Oct. 30, 2000, 114 Stat. 1677, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 15001 of this title and Tables.

Section 6007 of this title, referred to in subsec. (c)(1), was repealed by Pub. L. 106-402, title IV, §401(a), Oct. 30, 2000, 114 Stat. 1737.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15024, 15025, 15026, 15064 of this title.

§ 15005. Reports of the Secretary

At least once every 2 years, the Secretary, using information submitted in the reports and information required under parts B, C, D, and E of this subchapter, shall prepare and submit to the President, Congress, and the National Council on Disability, a report that describes the goals and outcomes of programs supported under parts B, C, D, and E of this subchapter. In preparing the report, the Secretary shall provide—

(1) meaningful examples of how the councils, protection and advocacy systems, centers, and entities funded under parts B, C, D, and E of this subchapter, respectively—

(A) have undertaken coordinated activities with each other;

(B) have enhanced the ability of individuals with developmental disabilities and their families to participate in the design of and have access to needed community services, individualized supports, and other forms of assistance that promote self-determination, independence, productivity, and integration and inclusion in all facets of community life;

(C) have brought about advocacy, capacity building, and systemic change activities (including policy reform), and other actions on behalf of individuals with developmental disabilities and their families, including individuals who are traditionally unserved or underserved, particularly individuals who are members of ethnic and racial minority groups and individuals from underserved geographic areas; and

(D) have brought about advocacy, capacity building, and systemic change activities that affect individuals with disabilities other than individuals with developmental disabilities;

(2) information on the extent to which programs authorized under this subchapter have addressed—

(A) protecting individuals with developmental disabilities from abuse, neglect, sexual and financial exploitation, and violations of legal and human rights, so that those individuals are at no greater risk of harm than other persons in the general population; and

(B) reports of deaths of and serious injuries to individuals with developmental disabilities; and

(3) a summary of any incidents of non-compliance of the programs authorized under this subchapter with the provisions of this subchapter, and corrections made or actions taken to obtain compliance.

(Pub. L. 106-402, title I, §105, Oct. 30, 2000, 114 Stat. 1690.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10824, 15004 of this title.

§ 15006. State control of operations

Except as otherwise specifically provided, nothing in this subchapter shall be construed as conferring on any Federal officer or employee the right to exercise any supervision or control over the administration, personnel, maintenance, or operation of any programs, services, and supports for individuals with developmental disabilities with respect to which any funds have been or may be expended under this subchapter.

(Pub. L. 106-402, title I, §106, Oct. 30, 2000, 114 Stat. 1691.)

§ 15007. Employment of individuals with disabilities

As a condition of providing assistance under this subchapter, the Secretary shall require that each recipient of such assistance take affirmative action to employ and advance in employment qualified individuals with disabilities on the same terms and conditions required with respect to the employment of such individuals under the provisions of title V of the Rehabilitation Act of 1973 (29 U.S.C. 791 et seq.) and the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), that govern employment.

(Pub. L. 106-402, title I, §107, Oct. 30, 2000, 114 Stat. 1691.)

REFERENCES IN TEXT

The Rehabilitation Act of 1973, referred to in text, is Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 355, as amended. Title V of the Act is classified generally to subchapter V (§790 et seq.) of chapter 16 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

The Americans with Disabilities Act of 1990, referred to in text, is Pub. L. 101-336, July 26, 1990, 104 Stat. 327, as amended, which is classified principally to chapter 126 (§12101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

§ 15008. Construction

Nothing in this subchapter shall be construed to preclude an entity funded under this subchapter from engaging in advocacy, capacity building, and systemic change activities for individuals with developmental disabilities that may also have a positive impact on individuals with other disabilities.

(Pub. L. 106-402, title I, §108, Oct. 30, 2000, 114 Stat. 1692.)

§ 15009. Rights of individuals with developmental disabilities

(a) In general

Congress makes the following findings respecting the rights of individuals with developmental disabilities:

(1) Individuals with developmental disabilities have a right to appropriate treatment, services, and habilitation for such disabilities, consistent with section 15001(c) of this title.

(2) The treatment, services, and habitation¹ for an individual with developmental disabilities should be designed to maximize the potential of the individual and should be provided in the setting that is least restrictive of the individual's personal liberty.

(3) The Federal Government and the States both have an obligation to ensure that public funds are provided only to institutional programs, residential programs, and other community programs, including educational programs in which individuals with developmental disabilities participate, that—

(A) provide treatment, services, and habilitation that are appropriate to the needs of such individuals; and

(B) meet minimum standards relating to—

(i) provision of care that is free of abuse, neglect, sexual and financial exploitation, and violations of legal and human rights and that subjects individuals with developmental disabilities to no greater risk of harm than others in the general population;

(ii) provision to such individuals of appropriate and sufficient medical and dental services;

(iii) prohibition of the use of physical restraint and seclusion for such an individual unless absolutely necessary to ensure the immediate physical safety of the individual or others, and prohibition of the use of such restraint and seclusion as a punishment or as a substitute for a habilitation program;

(iv) prohibition of the excessive use of chemical restraints on such individuals and the use of such restraints as punishment or as a substitute for a habilitation program or in quantities that interfere with services, treatment, or habilitation for such individuals; and

(v) provision for close relatives or guardians of such individuals to visit the individuals without prior notice.

(4) All programs for individuals with developmental disabilities should meet standards—

(A) that are designed to assure the most favorable possible outcome for those served; and

(B)(i) in the case of residential programs serving individuals in need of comprehensive health-related, habilitative, assistive technology or rehabilitative services, that are at least equivalent to those standards applicable to intermediate care facilities for the mentally retarded, promulgated in regulations of the Secretary on June 3, 1988, as ap-

propriate, taking into account the size of the institutions and the service delivery arrangements of the facilities of the programs;

(ii) in the case of other residential programs for individuals with developmental disabilities, that assure that—

(I) care is appropriate to the needs of the individuals being served by such programs;

(II) the individuals admitted to facilities of such programs are individuals whose needs can be met through services provided by such facilities; and

(III) the facilities of such programs provide for the humane care of the residents of the facilities, are sanitary, and protect their rights; and

(iii) in the case of nonresidential programs, that assure that the care provided by such programs is appropriate to the individuals served by the programs.

(b) Clarification

The rights of individuals with developmental disabilities described in findings made in this section shall be considered to be in addition to any constitutional or other rights otherwise afforded to all individuals.

(Pub. L. 106-402, title I, §109, Oct. 30, 2000, 114 Stat. 1692.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15024, 15114 of this title.

PART B—FEDERAL ASSISTANCE TO STATE COUNCILS ON DEVELOPMENTAL DISABILITIES

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 14403, 15004, 15005, 15043, 15081, 15083 of this title.

§ 15021. Purpose

The purpose of this part is to provide for allotments to support State Councils on Developmental Disabilities (referred to individually in this part as a "Council") in each State to—

(1) engage in advocacy, capacity building, and systemic change activities that are consistent with the purpose described in section 15001(b) of this title and the policy described in section 15001(c) of this title; and

(2) contribute to a coordinated, consumer- and family-centered, consumer- and family-directed, comprehensive system of community services, individualized supports, and other forms of assistance that enable individuals with developmental disabilities to exercise self-determination, be independent, be productive, and be integrated and included in all facets of community life.

(Pub. L. 106-402, title I, §121, Oct. 30, 2000, 114 Stat. 1693.)

§ 15022. State allotments

(a) Allotments

(1) In general

(A) Authority

For each fiscal year, the Secretary shall, in accordance with regulations and this

¹ So in original. Probably should be "habilitation".

paragraph, allot the sums appropriated for such year under section 15029 of this title among the States on the basis of—

- (i) the population;
- (ii) the extent of need for services for individuals with developmental disabilities; and
- (iii) the financial need,

of the respective States.

(B) Use of funds

Sums allotted to the States under this section shall be used to pay for the Federal share of the cost of carrying out projects in accordance with State plans approved under section 15024 of this title for the provision under such plans of services for individuals with developmental disabilities.

(2) Adjustments

The Secretary may make adjustments in the amounts of State allotments based on clauses (i), (ii), and (iii) of paragraph (1)(A) not more often than annually. The Secretary shall notify each State of any adjustment made under this paragraph and the percentage of the total sums appropriated under section 15029 of this title that the adjusted allotment represents not later than 6 months before the beginning of the fiscal year in which such adjustment is to take effect.

(3) Minimum allotment for appropriations less than or equal to \$70,000,000

(A) In general

Except as provided in paragraph (4), for any fiscal year the allotment under this section—

- (i) to each of American Samoa, Guam, the United States Virgin Islands, or the Commonwealth of the Northern Mariana Islands may not be less than \$210,000; and
- (ii) to any State not described in clause (i) may not be less than \$400,000.

(B) Reduction of allotment

Notwithstanding subparagraph (A), if the aggregate of the amounts to be allotted to the States pursuant to subparagraph (A) for any fiscal year exceeds the total amount appropriated under section 15029 of this title for such fiscal year, the amount to be allotted to each State for such fiscal year shall be proportionately reduced.

(4) Minimum allotment for appropriations in excess of \$70,000,000

(A) In general

In any case in which the total amount appropriated under section 15029 of this title for a fiscal year is more than \$70,000,000, the allotment under this section for such fiscal year—

- (i) to each of American Samoa, Guam, the United States Virgin Islands, or the Commonwealth of the Northern Mariana Islands may not be less than \$220,000; and
- (ii) to any State not described in clause (i) may not be less than \$450,000.

(B) Reduction of allotment

The requirements of paragraph (3)(B) shall apply with respect to amounts to be allotted

to States under subparagraph (A), in the same manner and to the same extent as such requirements apply with respect to amounts to be allotted to States under paragraph (3)(A).

(5) State supports, services, and other activities

In determining, for purposes of paragraph (1)(A)(ii), the extent of need in any State for services for individuals with developmental disabilities, the Secretary shall take into account the scope and extent of the services, supports, and assistance described, pursuant to section 15024(c)(3)(A) of this title, in the State plan of the State.

(6) Increase in allotments

In any year in which the total amount appropriated under section 15029 of this title for a fiscal year exceeds the total amount appropriated under such section (or a corresponding provision) for the preceding fiscal year by a percentage greater than the most recent percentage change in the Consumer Price Index published by the Secretary of Labor under section 720(c)(1) of title 29 (if the percentage change indicates an increase), the Secretary shall increase each of the minimum allotments described in paragraphs (3) and (4). The Secretary shall increase each minimum allotment by an amount that bears the same ratio to the amount of such minimum allotment (including any increases in such minimum allotment under this paragraph (or a corresponding provision) for prior fiscal years) as the amount that is equal to the difference between—

(A) the total amount appropriated under section 15029 of this title for the fiscal year for which the increase in the minimum allotment is being made; minus

(B) the total amount appropriated under section 15029 of this title (or a corresponding provision) for the immediately preceding fiscal year,

bears to the total amount appropriated under section 15029 of this title (or a corresponding provision) for such preceding fiscal year.

(b) Unobligated funds

Any amount paid to a State for a fiscal year and remaining unobligated at the end of such year shall remain available to such State for the next fiscal year for the purposes for which such amount was paid.

(c) Obligation of funds

For the purposes of this part, State Interagency Agreements are considered valid obligations for the purpose of obligating Federal funds allotted to the State under this part.

(d) Cooperative efforts between States

If a State plan approved in accordance with section 15024 of this title provides for cooperative or joint effort between or among States or agencies, public or private, in more than 1 State, portions of funds allotted to 1 or more States described in this subsection may be combined in accordance with the agreements between the States or agencies involved.

(e) Reallotments**(1) In general**

If the Secretary determines that an amount of an allotment to a State for a period (of a fiscal year or longer) will not be required by the State during the period for the purpose for which the allotment was made, the Secretary may reallot the amount.

(2) Timing

The Secretary may make such a reallotment from time to time, on such date as the Secretary may fix, but not earlier than 30 days after the Secretary has published notice of the intention of the Secretary to make the reallotment in the Federal Register.

(3) Amounts

The Secretary shall reallot the amount to other States with respect to which the Secretary has not made that determination. The Secretary shall reallot the amount in proportion to the original allotments of the other States for such fiscal year, but shall reduce such proportionate amount for any of the other States to the extent the proportionate amount exceeds the sum that the Secretary estimates the State needs and will be able to use during such period.

(4) Reallotment of reductions

The Secretary shall similarly reallot the total of the reductions among the States whose proportionate amounts were not so reduced.

(5) Treatment

Any amount reallotted to a State under this subsection for a fiscal year shall be deemed to be a part of the allotment of the State under subsection (a) of this section for such fiscal year.

(Pub. L. 106-402, title I, §122, Oct. 30, 2000, 114 Stat. 1693.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15023, 15024, 15026, 15027, 15029, 15042 of this title.

§ 15023. Payments to the States for planning, administration, and services**(a) State plan expenditures**

From each State's allotments for a fiscal year under section 15022 of this title, the Secretary shall pay to the State the Federal share of the cost, other than the cost for construction, incurred during such year for activities carried out under the State plan approved under section 15024 of this title. The Secretary shall make such payments from time to time in advance on the basis of estimates by the Secretary of the sums the State will expend for the cost under the State plan. The Secretary shall make such adjustments as may be necessary to the payments on account of previously made underpayments or overpayments under this section.

(b) Designated State agency expenditures

The Secretary may make payments to a State for the portion described in section 15024(c)(5)(B)(vi) of this title in advance or by

way of reimbursement, and in such installments as the Secretary may determine.

(Pub. L. 106-402, title I, §123, Oct. 30, 2000, 114 Stat. 1696.)

§ 15024. State plan**(a) In general**

Any State desiring to receive assistance under this part shall submit to the Secretary, and obtain approval of, a 5-year strategic State plan under this section.

(b) Planning cycle

The plan described in subsection (a) of this section shall be updated as appropriate during the 5-year period.

(c) State plan requirements

In order to be approved by the Secretary under this section, a State plan shall meet each of the following requirements:

(1) State Council

The plan shall provide for the establishment and maintenance of a Council in accordance with section 15025 of this title and describe the membership of such Council.

(2) Designated State agency

The plan shall identify the agency or office within the State designated to support the Council in accordance with this section and section 15025(d) of this title (referred to in this part as a "designated State agency").

(3) Comprehensive review and analysis

The plan shall describe the results of a comprehensive review and analysis of the extent to which services, supports, and other assistance are available to individuals with developmental disabilities and their families, and the extent of unmet needs for services, supports, and other assistance for those individuals and their families, in the State. The results of the comprehensive review and analysis shall include—

(A) a description of the services, supports, and other assistance being provided to individuals with developmental disabilities and their families under other federally assisted State programs, plans, and policies under which the State operates and in which individuals with developmental disabilities are or may be eligible to participate, including particularly programs relating to the areas of emphasis, including—

(i) medical assistance, maternal and child health care, services for children with special health care needs, children's mental health services, comprehensive health and mental health services, and institutional care options;

(ii) job training, job placement, worksite accommodation, and vocational rehabilitation, and other work assistance programs; and

(iii) social, child welfare, aging, independent living, and rehabilitation and assistive technology services, and such other services as the Secretary may specify;

(B) a description of the extent to which agencies operating such other federally as-

sisted State programs, including activities authorized under section 3011 or 3012 of title 29, pursue interagency initiatives to improve and enhance community services, individualized supports, and other forms of assistance for individuals with developmental disabilities;

(C) an analysis of the extent to which community services and opportunities related to the areas of emphasis directly benefit individuals with developmental disabilities, especially with regard to their ability to access and use services provided in their communities, to participate in opportunities, activities, and events offered in their communities, and to contribute to community life, identifying particularly—

(i) the degree of support for individuals with developmental disabilities that are attributable to either physical impairment, mental impairment, or a combination of physical and mental impairments;

(ii) criteria for eligibility for services, including specialized services and special adaptation of generic services provided by agencies within the State, that may exclude individuals with developmental disabilities from receiving services described in this clause;

(iii) the barriers that impede full participation of members of unserved and underserved groups of individuals with developmental disabilities and their families;

(iv) the availability of assistive technology, assistive technology services, or rehabilitation technology, or information about assistive technology, assistive technology services, or rehabilitation technology to individuals with developmental disabilities;

(v) the numbers of individuals with developmental disabilities on waiting lists for services described in this subparagraph;

(vi) a description of the adequacy of current resources and projected availability of future resources to fund services described in this subparagraph;

(vii) a description of the adequacy of health care and other services, supports, and assistance that individuals with developmental disabilities who are in facilities receive (based in part on each independent review (pursuant to section 1396a(a)(3)(C) of this title) of an Intermediate Care Facility (Mental Retardation) within the State, which the State shall provide to the Council not later than 30 days after the availability of the review); and

(viii) to the extent that information is available, a description of the adequacy of health care and other services, supports, and assistance that individuals with developmental disabilities who are served through home and community-based waivers (authorized under section 1396n(c) of this title) receive;

(D) a description of how entities funded under parts C and D of this subchapter, through interagency agreements or other mechanisms, collaborated with the entity

funded under this part in the State, each other, and other entities to contribute to the achievement of the purpose of this part; and

(E) the rationale for the goals related to advocacy, capacity building, and systemic change to be undertaken by the Council to contribute to the achievement of the purpose of this part.

(4) Plan goals

The plan shall focus on Council efforts to bring about the purpose of this part, by—

(A) specifying 5-year goals, as developed through data driven strategic planning, for advocacy, capacity building, and systemic change related to the areas of emphasis, to be undertaken by the Council, that—

(i) are derived from the unmet needs of individuals with developmental disabilities and their families identified under paragraph (3); and

(ii) include a goal, for each year of the grant, to—

(I) establish or strengthen a program for the direct funding of a State self-advocacy organization led by individuals with developmental disabilities;

(II) support opportunities for individuals with developmental disabilities who are considered leaders to provide leadership training to individuals with developmental disabilities who may become leaders; and

(III) support and expand participation of individuals with developmental disabilities in cross-disability and culturally diverse leadership coalitions; and

(B) for each year of the grant, describing—

(i) the goals to be achieved through the grant, which, beginning in fiscal year 2002, shall be consistent with applicable indicators of progress described in section 15004(a)(3) of this title;

(ii) the strategies to be used in achieving each goal; and

(iii) the method to be used to determine if each goal has been achieved.

(5) Assurances

(A) In general

The plan shall contain or be supported by assurances and information described in subparagraphs (B) through (N) that are satisfactory to the Secretary.

(B) Use of funds

With respect to the funds paid to the State under section 15022 of this title, the plan shall provide assurances that—

(i) not less than 70 percent of such funds will be expended for activities related to the goals described in paragraph (4);

(ii) such funds will contribute to the achievement of the purpose of this part in various political subdivisions of the State;

(iii) such funds will be used to supplement, and not supplant, the non-Federal funds that would otherwise be made available for the purposes for which the funds paid under section 15022 of this title are provided;

(iv) such funds will be used to complement and augment rather than duplicate or replace services for individuals with developmental disabilities and their families who are eligible for Federal assistance under other State programs;

(v) part of such funds will be made available by the State to public or private entities;

(vi) at the request of any State, a portion of such funds provided to such State under this part for any fiscal year shall be available to pay up to ½ (or the entire amount if the Council is the designated State agency) of the expenditures found to be necessary by the Secretary for the proper and efficient exercise of the functions of the designated State agency, except that not more than 5 percent of such funds provided to such State for any fiscal year, or \$50,000, whichever is less, shall be made available for total expenditures for such purpose by the designated State agency; and

(vii) not more than 20 percent of such funds will be allocated to the designated State agency for service demonstrations by such agency that—

(I) contribute to the achievement of the purpose of this part; and

(II) are explicitly authorized by the Council.

(C) State financial participation

The plan shall provide assurances that there will be reasonable State financial participation in the cost of carrying out the plan.

(D) Conflict of interest

The plan shall provide an assurance that no member of such Council will cast a vote on any matter that would provide direct financial benefit to the member or otherwise give the appearance of a conflict of interest.

(E) Urban and rural poverty areas

The plan shall provide assurances that special financial and technical assistance will be given to organizations that provide community services, individualized supports, and other forms of assistance to individuals with developmental disabilities who live in areas designated as urban or rural poverty areas.

(F) Program accessibility standards

The plan shall provide assurances that programs, projects, and activities funded under the plan, and the buildings in which such programs, projects, and activities are operated, will meet standards prescribed by the Secretary in regulations and all applicable Federal and State accessibility standards, including accessibility requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), section 794d of title 29, and the Fair Housing Act (42 U.S.C. 3601 et seq.).

(G) Individualized services

The plan shall provide assurances that any direct services provided to individuals with

developmental disabilities and funded under the plan will be provided in an individualized manner, consistent with the unique strengths, resources, priorities, concerns, abilities, and capabilities of such individual.

(H) Human rights

The plan shall provide assurances that the human rights of the individuals with developmental disabilities (especially individuals without familial protection) who are receiving services under programs assisted under this part will be protected consistent with section 15009 of this title (relating to rights of individuals with developmental disabilities).

(I) Minority participation

The plan shall provide assurances that the State has taken affirmative steps to assure that participation in programs funded under this part is geographically representative of the State, and reflects the diversity of the State with respect to race and ethnicity.

(J) Employee protections

The plan shall provide assurances that fair and equitable arrangements (as determined by the Secretary after consultation with the Secretary of Labor) will be provided to protect the interests of employees affected by actions taken under the plan to provide community living activities, including arrangements designed to preserve employee rights and benefits and provide training and retraining of such employees where necessary, and arrangements under which maximum efforts will be made to guarantee the employment of such employees.

(K) Staff assignments

The plan shall provide assurances that the staff and other personnel of the Council, while working for the Council, will be responsible solely for assisting the Council in carrying out the duties of the Council under this part and will not be assigned duties by the designated State agency, or any other agency, office, or entity of the State.

(L) Noninterference

The plan shall provide assurances that the designated State agency, and any other agency, office, or entity of the State, will not interfere with the advocacy, capacity building, and systemic change activities, budget, personnel, State plan development, or plan implementation of the Council, except that the designated State agency shall have the authority necessary to carry out the responsibilities described in section 15025(d)(3) of this title.

(M) State quality assurance

The plan shall provide assurances that the Council will participate in the planning, design or redesign, and monitoring of State quality assurance systems that affect individuals with developmental disabilities.

(N) Other assurances

The plan shall contain such additional information and assurances as the Secretary

may find necessary to carry out the provisions (including the purpose) of this part.

(d) Public input and review, submission, and approval

(1) Public input and review

The plan shall be based on public input. The Council shall make the plan available for public review and comment, after providing appropriate and sufficient notice in accessible formats of the opportunity for such review and comment. The Council shall revise the plan to take into account and respond to significant comments.

(2) Consultation with the designated State agency

Before the plan is submitted to the Secretary, the Council shall consult with the designated State agency to ensure that the State plan is consistent with State law and to obtain appropriate State plan assurances.

(3) Plan approval

The Secretary shall approve any State plan and, as appropriate, amendments of such plan that comply with the provisions of subsections (a), (b), and (c) of this section and this subsection. The Secretary may take final action to disapprove a State plan after providing reasonable notice and an opportunity for a hearing to the State.

(Pub. L. 106-402, title I, §124, Oct. 30, 2000, 114 Stat. 1696.)

REFERENCES IN TEXT

The Americans with Disabilities Act of 1990, referred to in subsec. (c)(5)(F), is Pub. L. 101-336, July 26, 1990, 104 Stat. 327, as amended, which is classified principally to chapter 126 (§12101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

The Fair Housing Act, referred to in subsec. (c)(5)(F), is title VIII of Pub. L. 90-284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I (§3601 et seq.) of chapter 45 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15022, 15023, 15025, 15026, 15027, 15028, 15044, 15064 of this title.

§ 15025. State Councils on Developmental Disabilities and designated State agencies

(a) In general

Each State that receives assistance under this part shall establish and maintain a Council to undertake advocacy, capacity building, and systemic change activities (consistent with subsections (b) and (c) of section 15001 of this title) that contribute to a coordinated, consumer- and family-centered, consumer- and family-directed, comprehensive system of community services, individualized supports, and other forms of assistance that contribute to the achievement of the purpose of this part. The Council shall have the authority to fulfill the responsibilities described in subsection (c) of this section.

(b) Council membership

(1) Council appointments

(A) In general

The members of the Council of a State shall be appointed by the Governor of the State from among the residents of that State.

(B) Recommendations

The Governor shall select members of the Council, at the discretion of the Governor, after soliciting recommendations from organizations representing a broad range of individuals with developmental disabilities and individuals interested in individuals with developmental disabilities, including the non-State agency members of the Council. The Council may, at the initiative of the Council, or on the request of the Governor, coordinate Council and public input to the Governor regarding all recommendations.

(C) Representation

The membership of the Council shall be geographically representative of the State and reflect the diversity of the State with respect to race and ethnicity.

(2) Membership rotation

The Governor shall make appropriate provisions to rotate the membership of the Council. Such provisions shall allow members to continue to serve on the Council until such members' successors are appointed. The Council shall notify the Governor regarding membership requirements of the Council, and shall notify the Governor when vacancies on the Council remain unfilled for a significant period of time.

(3) Representation of individuals with developmental disabilities

Not less than 60 percent of the membership of each Council shall consist of individuals who are—

- (A)(i) individuals with developmental disabilities;
- (ii) parents or guardians of children with developmental disabilities; or
- (iii) immediate relatives or guardians of adults with mentally impairing developmental disabilities who cannot advocate for themselves; and

(B) not employees of a State agency that receives funds or provides services under this part, and who are not managing employees (as defined in section 1126(b) of the Social Security Act (42 U.S.C. 1320a-5(b))) of any other entity that receives funds or provides services under this part.

(4) Representation of agencies and organizations

(A) In general

Each Council shall include—

- (i) representatives of relevant State entities, including—

(I) State entities that administer funds provided under Federal laws related to individuals with disabilities, including the Rehabilitation Act of 1973 (29 U.S.C.

701 et seq.), the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.), and titles V and XIX of the Social Security Act (42 U.S.C. 701 et seq. and 1396 et seq.);

(II) Centers in the State; and

(III) the State protection and advocacy system; and

(ii) representatives, at all times, of local and nongovernmental agencies, and private nonprofit groups concerned with services for individuals with developmental disabilities in the State in which such agencies and groups are located.

(B) Authority and limitations

The representatives described in subparagraph (A) shall—

(i) have sufficient authority to engage in policy planning and implementation on behalf of the department, agency, or program such representatives represent; and

(ii) recuse themselves from any discussion of grants or contracts for which such representatives' departments, agencies, or programs are grantees, contractors, or applicants and comply with the conflict of interest assurance requirement under section 15024(c)(5)(D) of this title.

(5) Composition of membership with developmental disabilities

Of the members of the Council described in paragraph (3)—

(A) $\frac{1}{3}$ shall be individuals with developmental disabilities described in paragraph (3)(A)(i);

(B) $\frac{1}{3}$ shall be parents or guardians of children with developmental disabilities described in paragraph (3)(A)(ii), or immediate relatives or guardians of adults with developmental disabilities described in paragraph (3)(A)(iii); and

(C) $\frac{1}{3}$ shall be a combination of individuals described in paragraph (3)(A).

(6) Institutionalized individuals

(A) In general

Of the members of the Council described in paragraph (5), at least 1 shall be an immediate relative or guardian of an individual with a developmental disability who resides or previously resided in an institution or shall be an individual with a developmental disability who resides or previously resided in an institution.

(B) Limitation

Subparagraph (A) shall not apply with respect to a State if such an individual does not reside in that State.

(c) Council responsibilities

(1) In general

A Council, through Council members, staff, consultants, contractors, or subgrantees, shall have the responsibilities described in paragraphs (2) through (10).

(2) Advocacy, capacity building, and systemic change activities

The Council shall serve as an advocate for individuals with developmental disabilities

and conduct or support programs, projects, and activities that carry out the purpose of this part.

(3) Examination of goals

At the end of each grant year, each Council shall—

(A) determine the extent to which each goal of the Council was achieved for that year;

(B) determine to the extent that each goal was not achieved, the factors that impeded the achievement;

(C) determine needs that require amendment of the 5-year strategic State plan required under section 15024 of this title;

(D) separately determine the information on the self-advocacy goal described in section 15024(c)(4)(A)(ii) of this title; and

(E) determine customer satisfaction with Council supported or conducted activities.

(4) State plan development

The Council shall develop the State plan and submit the State plan to the Secretary after consultation with the designated State agency under the State plan. Such consultation shall be solely for the purposes of obtaining State assurances and ensuring consistency of the plan with State law.

(5) State plan implementation

(A) In general

The Council shall implement the State plan by conducting and supporting advocacy, capacity building, and systemic change activities such as those described in subparagraphs (B) through (L).

(B) Outreach

The Council may support and conduct outreach activities to identify individuals with developmental disabilities and their families who otherwise might not come to the attention of the Council and assist and enable the individuals and families to obtain services, individualized supports, and other forms of assistance, including access to special adaptation of generic community services or specialized services.

(C) Training

The Council may support and conduct training for persons who are individuals with developmental disabilities, their families, and personnel (including professionals, paraprofessionals, students, volunteers, and other community members) to enable such persons to obtain access to, or to provide, community services, individualized supports, and other forms of assistance, including special adaptation of generic community services or specialized services for individuals with developmental disabilities and their families. To the extent that the Council supports or conducts training activities under this subparagraph, such activities shall contribute to the achievement of the purpose of this part.

(D) Technical assistance

The Council may support and conduct technical assistance activities to assist pub-

lic and private entities to contribute to the achievement of the purpose of this part.

(E) Supporting and educating communities

The Council may support and conduct activities to assist neighborhoods and communities to respond positively to individuals with developmental disabilities and their families—

- (i) by encouraging local networks to provide informal and formal supports;
- (ii) through education; and
- (iii) by enabling neighborhoods and communities to offer such individuals and their families access to and use of services, resources, and opportunities.

(F) Interagency collaboration and coordination

The Council may support and conduct activities to promote interagency collaboration and coordination to better serve, support, assist, or advocate for individuals with developmental disabilities and their families.

(G) Coordination with related councils, committees, and programs

The Council may support and conduct activities to enhance coordination of services with—

- (i) other councils, entities, or committees, authorized by Federal or State law, concerning individuals with disabilities (such as the State interagency coordinating council established under subtitle C¹ of the Individuals with Disabilities Education Act (20 U.S.C. 1431 et seq.), the State Rehabilitation Council and the Statewide Independent Living Council established under the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), the State mental health planning council established under subtitle B¹ of title XIX of the Public Health Service Act [42 U.S.C. 300x et seq.], and the activities authorized under section 3011 or 3012 of title 29, and entities carrying out other similar councils, entities, or committees);
- (ii) parent training and information centers under part D of the Individuals with Disabilities Education Act (20 U.S.C. 1451 et seq.) and other entities carrying out federally funded projects that assist parents of children with disabilities; and
- (iii) other groups interested in advocacy, capacity building, and systemic change activities to benefit individuals with disabilities.

(H) Barrier elimination, systems design and redesign

The Council may support and conduct activities to eliminate barriers to access and use of community services by individuals with developmental disabilities, enhance systems design and redesign, and enhance citizen participation to address issues identified in the State plan.

(I) Coalition development and citizen participation

The Council may support and conduct activities to educate the public about the capabilities, preferences, and needs of individuals with developmental disabilities and their families and to develop and support coalitions that support the policy agenda of the Council, including training in self-advocacy, education of policymakers, and citizen leadership skills.

(J) Informing policymakers

The Council may support and conduct activities to provide information to policymakers by supporting and conducting studies and analyses, gathering information, and developing and disseminating model policies and procedures, information, approaches, strategies, findings, conclusions, and recommendations. The Council may provide the information directly to Federal, State, and local policymakers, including Congress, the Federal executive branch, the Governors, State legislatures, and State agencies, in order to increase the ability of such policymakers to offer opportunities and to enhance or adapt generic services to meet the needs of, or provide specialized services to, individuals with developmental disabilities and their families.

(K) Demonstration of new approaches to services and supports

(i) In general

The Council may support and conduct, on a time-limited basis, activities to demonstrate new approaches to serving individuals with developmental disabilities that are a part of an overall strategy for systemic change. The strategy may involve the education of policymakers and the public about how to deliver effectively, to individuals with developmental disabilities and their families, services, supports, and assistance that contribute to the achievement of the purpose of this part.

(ii) Sources of funding

The Council may carry out this subparagraph by supporting and conducting demonstration activities through sources of funding other than funding provided under this part, and by assisting entities conducting demonstration activities to develop strategies for securing funding from other sources.

(L) Other activities

The Council may support and conduct other advocacy, capacity building, and systemic change activities to promote the development of a coordinated, consumer- and family-centered, consumer- and family-directed, comprehensive system of community services, individualized supports, and other forms of assistance that contribute to the achievement of the purpose of this part.

(6) Review of designated State agency

The Council shall periodically review the designated State agency and activities carried

¹ See References in Text note below.

out under this part by the designated State agency and make any recommendations for change to the Governor.

(7) Reports

Beginning in fiscal year 2002, the Council shall annually prepare and transmit to the Secretary a report. Each report shall be in a form prescribed by the Secretary by regulation under section 15004(b) of this title. Each report shall contain information about the progress made by the Council in achieving the goals of the Council (as specified in section 15024(c)(4) of this title), including—

(A) a description of the extent to which the goals were achieved;

(B) a description of the strategies that contributed to achieving the goals;

(C) to the extent to which the goals were not achieved, a description of factors that impeded the achievement;

(D) separate information on the self-advocacy goal described in section 15024(c)(4)(A)(ii) of this title;

(E)(i) as appropriate, an update on the results of the comprehensive review and analysis described in section 15024(c)(3) of this title; and

(ii) information on consumer satisfaction with Council supported or conducted activities;

(F)(i) a description of the adequacy of health care and other services, supports, and assistance that individuals with developmental disabilities in Intermediate Care Facilities (Mental Retardation) receive; and

(ii) a description of the adequacy of health care and other services, supports, and assistance that individuals with developmental disabilities served through home and community-based waivers (authorized under section 1915(c) of the Social Security Act (42 U.S.C. 1396n(c))) receive;

(G) an accounting of the manner in which funds paid to the State under this part for a fiscal year were expended;

(H) a description of—

(i) resources made available to carry out activities to assist individuals with developmental disabilities that are directly attributable to Council actions; and

(ii) resources made available for such activities that are undertaken by the Council in collaboration with other entities; and

(I) a description of the method by which the Council will widely disseminate the annual report to affected constituencies and the general public and will assure that the report is available in accessible formats.

(8) Budget

Each Council shall prepare, approve, and implement a budget using amounts paid to the State under this part to fund and implement all programs, projects, and activities carried out under this part, including—

(A)(i) conducting such hearings and forums as the Council may determine to be necessary to carry out the duties of the Council; and

(ii) as determined in Council policy—

(I) reimbursing members of the Council for reasonable and necessary expenses (including expenses for child care and personal assistance services) for attending Council meetings and performing Council duties;

(II) paying a stipend to a member of the Council, if such member is not employed or must forfeit wages from other employment, to attend Council meetings and perform other Council duties;

(III) supporting Council member and staff travel to authorized training and technical assistance activities including in-service training and leadership development activities; and

(IV) carrying out appropriate subcontracting activities;

(B) hiring and maintaining such numbers and types of staff (qualified by training and experience) and obtaining the services of such professional, consulting, technical, and clerical staff (qualified by training and experience), consistent with State law, as the Council determines to be necessary to carry out the functions of the Council under this part, except that such State shall not apply hiring freezes, reductions in force, prohibitions on travel, or other policies to the staff of the Council, to the extent that such policies would impact the staff or functions funded with Federal funds, or would prevent the Council from carrying out the functions of the Council under this part; and

(C) directing the expenditure of funds for grants, contracts, interagency agreements that are binding contracts, and other activities authorized by the State plan approved under section 15024 of this title.

(9) Staff hiring and supervision

The Council shall, consistent with State law, recruit and hire a Director of the Council, should the position of Director become vacant, and supervise and annually evaluate the Director. The Director shall hire, supervise, and annually evaluate the staff of the Council. Council recruitment, hiring, and dismissal of staff shall be conducted in a manner consistent with Federal and State nondiscrimination laws. Dismissal of personnel shall be conducted in a manner consistent with State law and personnel policies.

(10) Staff assignments

The staff of the Council, while working for the Council, shall be responsible solely for assisting the Council in carrying out the duties of the Council under this part and shall not be assigned duties by the designated State agency or any other agency or entity of the State.

(11) Construction

Nothing in this subchapter shall be construed to authorize a Council to direct, control, or exercise any policymaking authority or administrative authority over any program assisted under the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.) or the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.).

(d) Designated State agency**(1) In general**

Each State that receives assistance under this part shall designate a State agency that shall, on behalf of the State, provide support to the Council. After April 6, 1994, any designation of a State agency under this paragraph shall be made in accordance with the requirements of this subsection.

(2) Designation**(A) Type of agency**

Except as provided in this subsection, the designated State agency shall be—

- (i) the Council if such Council may be the designated State agency under the laws of the State;
- (ii) a State agency that does not provide or pay for services for individuals with developmental disabilities; or
- (iii) a State office, including the immediate office of the Governor of the State or a State planning office.

(B) Conditions for continuation of State service agency designation**(i) Designation before April 6, 1994**

If a State agency that provides or pays for services for individuals with developmental disabilities was a designated State agency for purposes of part B of the Developmental Disabilities Assistance and Bill of Rights Act on April 6, 1994, and the Governor of the State (or the legislature, where appropriate and in accordance with State law) determines prior to June 30, 1994, not to change the designation of such agency, such agency may continue to be a designated State agency for purposes of this part.

(ii) Criteria for continued designation

The determination, at the discretion of the Governor (or the legislature, as the case may be), shall be made after—

- (I) the Governor has considered the comments and recommendations of the general public and a majority of the non-State agency members of the Council with respect to the designation of such State agency; and
- (II) the Governor (or the legislature, as the case may be) has made an independent assessment that the designation of such agency will not interfere with the budget, personnel, priorities, or other action of the Council, and the ability of the Council to serve as an independent advocate for individuals with developmental disabilities.

(C) Review of designation

The Council may request a review of and change in the designation of the designated State agency by the Governor (or the legislature, as the case may be). The Council shall provide documentation concerning the reason the Council desires a change to be made and make a recommendation to the Governor (or the legislature, as the case may be) regarding a preferred designated State agency.

(D) Appeal of designation

After the review is completed under subparagraph (C), a majority of the non-State agency members of the Council may appeal to the Secretary for a review of and change in the designation of the designated State agency if the ability of the Council to serve as an independent advocate is not assured because of the actions or inactions of the designated State agency.

(3) Responsibilities**(A) In general**

The designated State agency shall, on behalf of the State, have the responsibilities described in subparagraphs (B) through (G).

(B) Support services

The designated State agency shall provide required assurances and support services as requested by and negotiated with the Council.

(C) Fiscal responsibilities

The designated State agency shall—

- (i) receive, account for, and disburse funds under this part based on the State plan required in section 15024 of this title; and
- (ii) provide for such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursement of, and accounting for, funds paid to the State under this part.

(D) Records, access, and financial reports

The designated State agency shall keep and provide access to such records as the Secretary and the Council may determine to be necessary. The designated State agency, if other than the Council, shall provide timely financial reports at the request of the Council regarding the status of expenditures, obligations, and liquidation by the agency or the Council, and the use of the Federal and non-Federal shares described in section 15026 of this title, by the agency or the Council.

(E) Non-Federal share

The designated State agency, if other than the Council, shall provide the required non-Federal share described in section 15026(c) of this title.

(F) Assurances

The designated State agency shall assist the Council in obtaining the appropriate State plan assurances and in ensuring that the plan is consistent with State law.

(G) Memorandum of understanding

On the request of the Council, the designated State agency shall enter into a memorandum of understanding with the Council delineating the roles and responsibilities of the designated State agency.

(4) Use of funds for designated State agency responsibilities**(A) Condition for Federal funding****(i) In general**

The Secretary shall provide amounts to a State under section 15024(c)(5)(B)(vi) of

this title for a fiscal year only if the State expends an amount from State sources for carrying out the responsibilities of the designated State agency under paragraph (3) for the fiscal year that is not less than the total amount the State expended from such sources for carrying out similar responsibilities for the previous fiscal year.

(ii) Exception

Clause (i) shall not apply in a year in which the Council is the designated State agency.

(B) Support services provided by other agencies

With the agreement of the designated State agency, the Council may use or contract with agencies other than the designated State agency to perform the functions of the designated State agency.

(Pub. L. 106-402, title I, §125, Oct. 30, 2000, 114 Stat. 1701.)

REFERENCES IN TEXT

The Rehabilitation Act of 1973, referred to in subsecs. (b)(4)(A)(i)(I) and (c)(5)(G)(i), (11), is Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 355, as amended, which is classified generally to chapter 16 (§701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

The Individuals with Disabilities Education Act, referred to in subsecs. (b)(4)(A)(i)(I) and (c)(5)(G)(i), (ii), (11), is title VI of Pub. L. 91-230, Apr. 13, 1970, 84 Stat. 175, as amended, which is classified generally to chapter 33 (§1400 et seq.) of Title 20, Education. The reference to subtitle C of the Act probably means part C of the Act which is classified generally to subchapter III (§1431 et seq.) of chapter 33 of Title 20. Part D of the Act is classified generally to subchapter IV (§1451 et seq.) of chapter 33 of Title 20. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

The Older Americans Act of 1965, referred to in subsec. (b)(4)(A)(i)(I), is Pub. L. 89-73, July 14, 1965, 79 Stat. 218, as amended, which is classified generally to chapter 35 (§3001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

The Social Security Act, referred to in subsec. (b)(4)(A)(i)(I), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles V and XIX of the Act are classified generally to subchapters V (§701 et seq.) and XIX (§1396 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Public Health Service Act, referred to in subsec. (c)(5)(G)(i), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. The reference to subtitle B of title XIX of the Act probably means part B of title XIX of the Act which is classified generally to part B (§300x et seq.) of subchapter XVII of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The Developmental Disabilities Assistance and Bill of Rights Act, referred to in subsec. (d)(2)(B)(i), is title I of Pub. L. 88-164, as added by Pub. L. 98-527, §2, Oct. 19, 1984, 98 Stat. 2662, as amended, which was repealed by Pub. L. 106-402, title IV, §401(a), Oct. 30, 2000, 114 Stat. 1737. Part B of the Act was classified generally to subchapter II (§6021 et seq.) of chapter 75 of this title. For complete classification of this Act to the Code, see Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1396u, 15002, 15024, 15026, 15027 of this title; title 29 section 725.

§ 15026. Federal and non-Federal share

(a) Aggregate cost

(1) In general

Except as provided in paragraphs (2) and (3), the Federal share of the cost of all projects in a State supported by an allotment to the State under this part may not be more than 75 percent of the aggregate necessary cost of such projects, as determined by the Secretary.

(2) Urban or rural poverty areas

In the case of projects whose activities or products target individuals with developmental disabilities who live in urban or rural poverty areas, as determined by the Secretary, the Federal share of the cost of all such projects may not be more than 90 percent of the aggregate necessary cost of such projects, as determined by the Secretary.

(3) State plan activities

In the case of projects undertaken by the Council or Council staff to implement State plan activities, the Federal share of the cost of all such projects may be not more than 100 percent of the aggregate necessary cost of such activities.

(b) Nonduplication

In determining the amount of any State's Federal share of the cost of such projects incurred by such State under a State plan approved under section 15024 of this title, the Secretary shall not consider—

(1) any portion of such cost that is financed by Federal funds provided under any provision of law other than section 15022 of this title; and

(2) the amount of any non-Federal funds required to be expended as a condition of receipt of the Federal funds described in paragraph (1).

(c) Non-Federal share

(1) In-kind contributions

The non-Federal share of the cost of any project supported by an allotment under this part may be provided in cash or in kind, fairly evaluated, including plant, equipment, or services.

(2) Contributions of political subdivisions and public or private entities

(A) In general

Contributions to projects by a political subdivision of a State or by a public or private entity under an agreement with the State shall, subject to such limitations and conditions as the Secretary may by regulation prescribe under section 15004(b) of this title, be considered to be contributions by such State, in the case of a project supported under this part.

(B) State contributions

State contributions, including contributions by the designated State agency to provide support services to the Council pursuant to section 15025(d)(4) of this title, may be counted as part of such State's non-Federal share of the cost of projects supported under this part.

(3) Variations of the non-Federal share

The non-Federal share required of each recipient of a grant from a Council under this part may vary.

(Pub. L. 106-402, title I, §126, Oct. 30, 2000, 114 Stat. 1710.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 15025 of this title.

§ 15027. Withholding of payments for planning, administration, and services

Whenever the Secretary, after providing reasonable notice and an opportunity for a hearing to the Council and the designated State agency, finds that—

(1) the Council or agency has failed to comply substantially with any of the provisions required by section 15024 of this title to be included in the State plan, particularly provisions required by paragraphs (4)(A) and (5)(B)(vii) of section 15024(c) of this title, or with any of the provisions required by section 15025(b)(3) of this title; or

(2) the Council or agency has failed to comply substantially with any regulations of the Secretary that are applicable to this part,

the Secretary shall notify such Council and agency that the Secretary will not make further payments to the State under section 15022 of this title (or, in the discretion of the Secretary, that further payments to the State under section 15022 of this title for activities for which there is such failure), until the Secretary is satisfied that there will no longer be such failure. Until the Secretary is so satisfied, the Secretary shall make no further payments to the State under section 15022 of this title, or shall limit further payments under section 15022 of this title to such State to activities for which there is no such failure.

(Pub. L. 106-402, title I, §127, Oct. 30, 2000, 114 Stat. 1711.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 15028 of this title.

§ 15028. Appeals by States**(a) Appeal**

If any State is dissatisfied with the Secretary's action under section 15024(d)(3) or 15027 of this title, such State may appeal to the United States court of appeals for the circuit in which such State is located, by filing a petition with such court not later than 60 days after such action.

(b) Filing

The clerk of the court shall transmit promptly a copy of the petition to the Secretary, or any officer designated by the Secretary for that purpose. The Secretary shall file promptly with the court the record of the proceedings on which the Secretary based the action, as provided in section 2112 of title 28.

(c) Jurisdiction

Upon the filing of the petition, the court shall have jurisdiction to affirm the action of the Sec-

retary or to set the action aside, in whole or in part, temporarily or permanently. Until the filing of the record, the Secretary may modify or set aside the order of the Secretary relating to the action.

(d) Findings and remand

The findings of the Secretary about the facts, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case involved to the Secretary for further proceedings to take further evidence. On remand, the Secretary may make new or modified findings of fact and may modify the previous action of the Secretary, and shall file with the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(e) Finality

The judgment of the court affirming or setting aside, in whole or in part, any action of the Secretary shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(f) Effect

The commencement of proceedings under this section shall not, unless so specifically ordered by a court, operate as a stay of the Secretary's action.

(Pub. L. 106-402, title I, §128, Oct. 30, 2000, 114 Stat. 1711.)

§ 15029. Authorization of appropriations**(a) Funding for State allotments**

Except as described in subsection (b) of this section, there are authorized to be appropriated for allotments under section 15022 of this title \$76,000,000 for fiscal year 2001 and such sums as may be necessary for each of fiscal years 2002 through 2007.

(b) Reservation for technical assistance**(1) Lower appropriation years**

For any fiscal year for which the amount appropriated under subsection (a) of this section is less than \$76,000,000, the Secretary shall reserve funds in accordance with section 15083(c) of this title to provide technical assistance to entities funded under this part.

(2) Higher appropriation years

For any fiscal year for which the amount appropriated under subsection (a) of this section is not less than \$76,000,000, the Secretary shall reserve not less than \$300,000 and not more than 1 percent of the amount appropriated under subsection (a) of this section to provide technical assistance to entities funded under this part.

(Pub. L. 106-402, title I, §129, Oct. 30, 2000, 114 Stat. 1712.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15022, 15081, 15083 of this title.

PART C—PROTECTION AND ADVOCACY OF
INDIVIDUAL RIGHTS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 1396r, 1396u, 3058g, 10802, 14404, 15004, 15005, 15024, 15083 of this title; title 29 section 794e, 1396r, 3002.

§ 15041. Purpose

The purpose of this part is to provide for allotments to support a protection and advocacy system (referred to in this part as a “system”) in each State to protect the legal and human rights of individuals with developmental disabilities in accordance with this part.

(Pub. L. 106–402, title I, §141, Oct. 30, 2000, 114 Stat. 1712.)

§ 15042. Allotments and payments

(a) Allotments

(1) In general

To assist States in meeting the requirements of section 15043(a) of this title, the Secretary shall allot to the States the amounts appropriated under section 15045 of this title and not reserved under paragraph (6). Allotments and reallocations of such sums shall be made on the same basis as the allotments and reallocations are made under subsections (a)(1)(A) and (e) of section 15022 of this title, except as provided in paragraph (2).

(2) Minimum allotments

In any case in which—

(A) the total amount appropriated under section 15045 of this title for a fiscal year is not less than \$20,000,000, the allotment under paragraph (1) for such fiscal year—

- (i) to each of American Samoa, Guam, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands may not be less than \$107,000; and
- (ii) to any State not described in clause (i) may not be less than \$200,000; or

(B) the total amount appropriated under section 15045 of this title for a fiscal year is less than \$20,000,000, the allotment under paragraph (1) for such fiscal year—

- (i) to each of American Samoa, Guam, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands may not be less than \$80,000; and
- (ii) to any State not described in clause (i) may not be less than \$150,000.

(3) Reduction of allotment

Notwithstanding paragraphs (1) and (2), if the aggregate of the amounts to be allotted to the States pursuant to such paragraphs for any fiscal year exceeds the total amount appropriated for such allotments under section 15045 of this title for such fiscal year, the amount to be allotted to each State for such fiscal year shall be proportionately reduced.

(4) Increase in allotments

In any year in which the total amount appropriated under section 15045 of this title for a fiscal year exceeds the total amount appropriated under such section (or a corresponding

provision) for the preceding fiscal year by a percentage greater than the most recent percentage change in the Consumer Price Index published by the Secretary of Labor under section 720(c)(1) of title 29 (if the percentage change indicates an increase), the Secretary shall increase each of the minimum allotments described in subparagraphs (A) and (B) of paragraph (2). The Secretary shall increase each minimum allotment by an amount that bears the same ratio to the amount of such minimum allotment (including any increases in such minimum allotment under this paragraph (or a corresponding provision) for prior fiscal years) as the amount that is equal to the difference between—

(A) the total amount appropriated under section 15045 of this title for the fiscal year for which the increase in the minimum allotment is being made; minus

(B) the total amount appropriated under section 15045 of this title (or a corresponding provision) for the immediately preceding fiscal year,

bears to the total amount appropriated under section 15045 of this title (or a corresponding provision) for such preceding fiscal year.

(5) Monitoring the administration of the system

In a State in which the system is housed in a State agency, the State may use not more than 5 percent of any allotment under this subsection for the costs of monitoring the administration of the system required under section 15043(a) of this title.

(6) Technical assistance and American Indian consortium

In any case in which the total amount appropriated under section 15045 of this title for a fiscal year is more than \$24,500,000, the Secretary shall—

(A) use not more than 2 percent of the amount appropriated to provide technical assistance to eligible systems with respect to activities carried out under this part (consistent with requests by such systems for such assistance for the year); and

(B) provide a grant in accordance with section 15043(b) of this title, and in an amount described in paragraph (2)(A)(i), to an American Indian consortium to provide protection and advocacy services.

(b) Payment to systems

Notwithstanding any other provision of law, the Secretary shall pay directly to any system in a State that complies with the provisions of this part the amount of the allotment made for the State under this section, unless the system specifies otherwise.

(c) Unobligated funds

Any amount paid to a system under this part for a fiscal year and remaining unobligated at the end of such year shall remain available to such system for the next fiscal year, for the purposes for which such amount was paid.

(Pub. L. 106–402, title I, §142, Oct. 30, 2000, 114 Stat. 1712.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15043, 15045 of this title.

§ 15043. System required**(a) System required**

In order for a State to receive an allotment under part B of this subchapter or this part—

(1) the State shall have in effect a system to protect and advocate the rights of individuals with developmental disabilities;

(2) such system shall—

(A) have the authority to—

(i) pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of such individuals within the State who are or who may be eligible for treatment, services, or habilitation, or who are being considered for a change in living arrangements, with particular attention to members of ethnic and racial minority groups; and

(ii) provide information on and referral to programs and services addressing the needs of individuals with developmental disabilities;

(B) have the authority to investigate incidents of abuse and neglect of individuals with developmental disabilities if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred;

(C) on an annual basis, develop, submit to the Secretary, and take action with regard to goals (each of which is related to 1 or more areas of emphasis) and priorities, developed through data driven strategic planning, for the system's activities;

(D) on an annual basis, provide to the public, including individuals with developmental disabilities attributable to either physical impairment, mental impairment, or a combination of physical and mental impairment, and their representatives, and as appropriate, non-State agency representatives of the State Councils on Developmental Disabilities, and Centers, in the State, an opportunity to comment on—

(i) the goals and priorities established by the system and the rationale for the establishment of such goals; and

(ii) the activities of the system, including the coordination of services with the entities carrying out advocacy programs under the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.), and the Protection and Advocacy for Mentally Ill Individuals Act of 1986¹ (42 U.S.C. 10801 et seq.), and with entities carrying out other related programs, including the parent training and information centers funded under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), and activities authorized under section 3011 or 3012 of title 29;

(E) establish a grievance procedure for clients or prospective clients of the system to

ensure that individuals with developmental disabilities have full access to services of the system;

(F) not be administered by the State Council on Developmental Disabilities;

(G) be independent of any agency that provides treatment, services, or habilitation to individuals with developmental disabilities;

(H) have access at reasonable times to any individual with a developmental disability in a location in which services, supports, and other assistance are provided to such an individual, in order to carry out the purpose of this part;

(I) have access to all records of—

(i) any individual with a developmental disability who is a client of the system if such individual, or the legal guardian, conservator, or other legal representative of such individual, has authorized the system to have such access;

(ii) any individual with a developmental disability, in a situation in which—

(I) the individual, by reason of such individual's mental or physical condition, is unable to authorize the system to have such access;

(II) the individual does not have a legal guardian, conservator, or other legal representative, or the legal guardian of the individual is the State; and

(III) a complaint has been received by the system about the individual with regard to the status or treatment of the individual or, as a result of monitoring or other activities, there is probable cause to believe that such individual has been subject to abuse or neglect; and

(iii) any individual with a developmental disability, in a situation in which—

(I) the individual has a legal guardian, conservator, or other legal representative;

(II) a complaint has been received by the system about the individual with regard to the status or treatment of the individual or, as a result of monitoring or other activities, there is probable cause to believe that such individual has been subject to abuse or neglect;

(III) such representative has been contacted by such system, upon receipt of the name and address of such representative;

(IV) such system has offered assistance to such representative to resolve the situation; and

(V) such representative has failed or refused to act on behalf of the individual;

(J)(i) have access to the records of individuals described in subparagraphs (B) and (I), and other records that are relevant to conducting an investigation, under the circumstances described in those subparagraphs, not later than 3 business days after the system makes a written request for the records involved; and

(ii) have immediate access, not later than 24 hours after the system makes such a re-

¹ See References in Text note below.

quest, to the records without consent from another party, in a situation in which services, supports, and other assistance are provided to an individual with a developmental disability—

(I) if the system determines there is probable cause to believe that the health or safety of the individual is in serious and immediate jeopardy; or

(II) in any case of death of an individual with a developmental disability;

(K) hire and maintain sufficient numbers and types of staff (qualified by training and experience) to carry out such system's functions, except that the State involved shall not apply hiring freezes, reductions in force, prohibitions on travel, or other policies to the staff of the system, to the extent that such policies would impact the staff or functions of the system funded with Federal funds or would prevent the system from carrying out the functions of the system under this part;

(L) have the authority to educate policy-makers; and

(M) provide assurances to the Secretary that funds allotted to the State under section 15042 of this title will be used to supplement, and not supplant, the non-Federal funds that would otherwise be made available for the purposes for which the allotted funds are provided;

(3) to the extent that information is available, the State shall provide to the system—

(A) a copy of each independent review, pursuant to section 1396a(a)(30)(C) of this title, of an Intermediate Care Facility (Mental Retardation) within the State, not later than 30 days after the availability of such a review; and

(B) information about the adequacy of health care and other services, supports, and assistance that individuals with developmental disabilities who are served through home and community-based waivers (authorized under section 1396n(c) of this title) receive; and

(4) the agency implementing the system shall not be redesignated unless—

(A) there is good cause for the redesignation;

(B) the State has given the agency notice of the intention to make such redesignation, including notice regarding the good cause for such redesignation, and given the agency an opportunity to respond to the assertion that good cause has been shown;

(C) the State has given timely notice and an opportunity for public comment in an accessible format to individuals with developmental disabilities or their representatives; and

(D) the system has an opportunity to appeal the redesignation to the Secretary, on the basis that the redesignation was not for good cause.

(b) American Indian consortium

Upon application to the Secretary, an American Indian consortium established to provide

protection and advocacy services under this part, shall receive funding pursuant to section 15042(a)(6) of this title to provide the services. Such consortium shall be considered to be a system for purposes of this part and shall coordinate the services with other systems serving the same geographic area. The tribal council that designates the consortium shall carry out the responsibilities and exercise the authorities specified for a State in this part, with regard to the consortium.

(c) Record

In this section, the term "record" includes—

(1) a report prepared or received by any staff at any location at which services, supports, or other assistance is provided to individuals with developmental disabilities;

(2) a report prepared by an agency or staff person charged with investigating reports of incidents of abuse or neglect, injury, or death occurring at such location, that describes such incidents and the steps taken to investigate such incidents; and

(3) a discharge planning record.

(Pub. L. 106-402, title I, §143, Oct. 30, 2000, 114 Stat. 1714.)

REFERENCES IN TEXT

The Rehabilitation Act of 1973, referred to in subsec. (a)(2)(D)(ii), is Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 355, as amended, which is classified generally to chapter 16 (§701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

The Older Americans Act of 1965, referred to in subsec. (a)(2)(D)(ii), is Pub. L. 89-73, July 14, 1965, 79 Stat. 218, as amended, which is classified generally to chapter 35 (§3001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

The Protection and Advocacy for Mentally Ill Individuals Act of 1986, referred to in subsec. (a)(2)(D)(ii), was Pub. L. 99-319, May 23, 1986, 100 Stat. 478, as amended. Pub. L. 99-319 was renamed the Protection and Advocacy for Individuals with Mental Illness Act by Pub. L. 106-310, div. B, title XXXII, §3206(a), Oct. 17, 2000, 114 Stat. 1193, and is classified generally to chapter 114 (§10801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 10801 of this title and Tables.

The Individuals with Disabilities Education Act, referred to in subsec. (a)(2)(D)(ii), is title VI of Pub. L. 91-230, Apr. 13, 1970, 84 Stat. 175, as amended, which is classified generally to chapter 33 (§1400 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15002, 15042, 15044, 15064 of this title.

§ 15044. Administration

(a) Governing board

In a State in which the system described in section 15043 of this title is organized as a private nonprofit entity with a multimember governing board, or a public system with a multimember governing board, such governing board shall be selected according to the policies and procedures of the system, except that—

(1)(A) the governing board shall be composed of members who broadly represent or are knowledgeable about the needs of the individuals served by the system;

(B) a majority of the members of the board shall be—

(i) individuals with disabilities, including individuals with developmental disabilities, who are eligible for services, or have received or are receiving services through the system; or

(ii) parents, family members, guardians, advocates, or authorized representatives of individuals referred to in clause (i); and

(C) the board may include a representative of the State Council on Developmental Disabilities, the Centers in the State, and the self-advocacy organization described in section 15024(c)(4)(A)(ii)(I) of this title;

(2) not more than $\frac{1}{3}$ of the members of the governing board may be appointed by the chief executive officer of the State involved, in the case of any State in which such officer has the authority to appoint members of the board;

(3) the membership of the governing board shall be subject to term limits set by the system to ensure rotating membership;

(4) any vacancy in the board shall be filled not later than 60 days after the date on which the vacancy occurs; and

(5) in a State in which the system is organized as a public system without a multi-member governing or advisory board, the system shall establish an advisory council—

(A) that shall advise the system on policies and priorities to be carried out in protecting and advocating the rights of individuals with developmental disabilities; and

(B) on which a majority of the members shall be—

(i) individuals with developmental disabilities who are eligible for services, or have received or are receiving services, through the system; or

(ii) parents, family members, guardians, advocates, or authorized representatives of individuals referred to in clause (i).

(b) Legal action

(1) In general

Nothing in this subchapter shall preclude a system from bringing a suit on behalf of individuals with developmental disabilities against a State, or an agency or instrumental-ity of a State.

(2) Use of amounts from judgment

An amount received pursuant to a suit described in paragraph (1) through a court judgment may only be used by the system to further the purpose of this part and shall not be used to augment payments to legal contractors or to award personal bonuses.

(3) Limitation

The system shall use assistance provided under this part in a manner consistent with section 14404 of this title.

(c) Disclosure of information

For purposes of any periodic audit, report, or evaluation required under this part, the Secretary shall not require an entity carrying out a program to disclose the identity of, or any other personally identifiable information related to, any individual requesting assistance under such program.

(d) Public notice of Federal onsite review

The Secretary shall provide advance public notice of any Federal programmatic or administrative onsite review of a system conducted under this part and solicit public comment on the system through such notice. The Secretary shall prepare an onsite visit report containing the results of such review, which shall be distributed to the Governor of the State and to other interested public and private parties. The comments received in response to the public comment solicitation notice shall be included in the onsite visit report.

(e) Reports

Beginning in fiscal year 2002, each system established in a State pursuant to this part shall annually prepare and transmit to the Secretary a report that describes the activities, accomplishments, and expenditures of the system during the preceding fiscal year, including a description of the system's goals, the extent to which the goals were achieved, barriers to their achievement, the process used to obtain public input, the nature of such input, and how such input was used.

(Pub. L. 106-402, title I, §144, Oct. 30, 2000, 114 Stat. 1717.)

§ 15045. Authorization of appropriations

For allotments under section 15042 of this title, there are authorized to be appropriated \$32,000,000 for fiscal year 2001 and such sums as may be necessary for each of fiscal years 2002 through 2007.

(Pub. L. 106-402, title I, §145, Oct. 30, 2000, 114 Stat. 1718.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 15042 of this title.

PART D—NATIONAL NETWORK OF UNIVERSITY CENTERS FOR EXCELLENCE IN DEVELOPMENTAL DISABILITIES EDUCATION, RESEARCH, AND SERVICE

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 14403, 15002, 15004, 15005, 15024, 15081, 15083, 15114 of this title.

§ 15061. Grant authority

(a) National network

From appropriations authorized under section 15066(a)(1) of this title, the Secretary shall make 5-year grants to entities in each State designated as University Centers for Excellence in Developmental Disabilities Education, Research, and Service to carry out activities described in section 15063(a) of this title.

(b) National training initiatives

From appropriations authorized under section 15066(a)(1) of this title and reserved under section 15066(a)(2) of this title, the Secretary shall make grants to Centers to carry out activities described in section 15063(b) of this title.

(c) Technical assistance

From appropriations authorized under section 15066(a)(1) of this title and reserved under sec-

tion 15066(a)(3) of this title (or from funds reserved under section 15083 of this title, as appropriate), the Secretary shall enter into 1 or more cooperative agreements or contracts for the purpose of providing technical assistance described in section 15063(c) of this title.

(Pub. L. 106-402, title I, §151, Oct. 30, 2000, 114 Stat. 1719.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15062, 15063, 15064 of this title.

§ 15062. Grant awards

(a) Existing Centers

(1) In general

In awarding and distributing grant funds under section 15061(a) of this title for a fiscal year, the Secretary, subject to the availability of appropriations and the condition specified in subsection (d) of this section, shall award and distribute grant funds in equal amounts of \$500,000 (adjusted in accordance with subsection (b) of this section), to each Center that existed during the preceding fiscal year and that meets the requirements of this part, prior to making grants under subsection (c) or (d) of this section.

(2) Reduction of award

Notwithstanding paragraph (1), if the aggregate of the funds to be awarded to the Centers pursuant to paragraph (1) for any fiscal year exceeds the total amount appropriated under section 15066 of this title for such fiscal year, the amount to be awarded to each Center for such fiscal year shall be proportionately reduced.

(b) Adjustments

Subject to the availability of appropriations, for any fiscal year following a year in which each Center described in subsection (a) of this section received a grant award of not less than \$500,000 under subsection (a) of this section (adjusted in accordance with this subsection), the Secretary shall adjust the awards to take into account the most recent percentage change in the Consumer Price Index published by the Secretary of Labor under section 720(c)(1) of title 29 (if the percentage change indicates an increase), prior to making grants under subsection (c) or (d) of this section.

(c) National training initiatives on critical and emerging needs

Subject to the availability of appropriations, for any fiscal year in which each Center described in subsection (a) of this section receives a grant award of not less than \$500,000, under subsection (a) of this section (adjusted in accordance with subsection (b) of this section), after making the grant awards, the Secretary shall make grants under section 15061(b) of this title to Centers to pay for the Federal share of the cost of training initiatives related to the unmet needs of individuals with developmental disabilities and their families, as described in section 15063(b) of this title.

(d) Additional grants

For any fiscal year in which each Center described in subsection (a) of this section receives

a grant award of not less than \$500,000 under subsection (a) of this section (adjusted in accordance with subsection (b) of this section), after making the grant awards, the Secretary may make grants under section 15061(a) of this title for activities described in section 15063(a) of this title to additional Centers, or additional grants to Centers, for States or populations that are unserved or underserved by Centers due to such factors as—

- (1) population;
- (2) a high concentration of rural or urban areas; or
- (3) a high concentration of unserved or underserved populations.

(Pub. L. 106-402, title I, §152, Oct. 30, 2000, 114 Stat. 1719.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 15066 of this title.

§ 15063. Purpose and scope of activities

(a) National network of University Centers for Excellence in Developmental Disabilities Education, Research, and Service

(1) In general

In order to provide leadership in, advise Federal, State, and community policymakers about, and promote opportunities for individuals with developmental disabilities to exercise self-determination, be independent, be productive, and be integrated and included in all facets of community life, the Secretary shall award grants to eligible entities designated as Centers in each State to pay for the Federal share of the cost of the administration and operation of the Centers. The Centers shall be interdisciplinary education, research, and public service units of universities (as defined by the Secretary) or public or not-for-profit entities associated with universities that engage in core functions, described in paragraph (2), addressing, directly or indirectly, 1 or more of the areas of emphasis.

(2) Core functions

The core functions referred to in paragraph (1) shall include the following:

(A) Provision of interdisciplinary pre-service preparation and continuing education of students and fellows, which may include the preparation and continuing education of leadership, direct service, clinical, or other personnel to strengthen and increase the capacity of States and communities to achieve the purpose of this subchapter.

(B) Provision of community services—

(i) that provide training or technical assistance for individuals with developmental disabilities, their families, professionals, paraprofessionals, policymakers, students, and other members of the community; and

(ii) that may provide services, supports, and assistance for the persons described in clause (i) through demonstration and model activities.

(C) Conduct of research, which may include basic or applied research, evaluation,

and the analysis of public policy in areas that affect or could affect, either positively or negatively, individuals with developmental disabilities and their families.

(D) Dissemination of information related to activities undertaken to address the purpose of this subchapter, especially dissemination of information that demonstrates that the network authorized under this part is a national and international resource that includes specific substantive areas of expertise that may be accessed and applied in diverse settings and circumstances.

(b) National training initiatives on critical and emerging needs

(1) Supplemental grants

After consultation with relevant, informed sources, including individuals with developmental disabilities and their families, the Secretary shall award, under section 15061(b) of this title, supplemental grants to Centers to pay for the Federal share of the cost of training initiatives related to the unmet needs of individuals with developmental disabilities and their families. The Secretary shall make the grants on a competitive basis, and for periods of not more than 5 years.

(2) Establishment of consultation process by the Secretary

Not later than 1 year after October 30, 2000, the Secretary shall establish a consultation process that, on an ongoing basis, allows the Secretary to identify and address, through supplemental grants authorized under paragraph (1), training initiatives related to the unmet needs of individuals with developmental disabilities and their families.

(c) Technical assistance

In order to strengthen and support the national network of Centers, the Secretary may enter into 1 or more cooperative agreements or contracts to—

(1) assist in national and international dissemination of specific information from multiple Centers and, in appropriate cases, other entities whose work affects the lives of individuals with developmental disabilities;

(2) compile, analyze, and disseminate state-of-the-art training, research, and demonstration results policies, and practices from multiple Centers and, in appropriate cases, other entities whose work affects the lives of persons with developmental disabilities;

(3) convene experts from multiple Centers to discuss and make recommendations with regard to national emerging needs of individuals with developmental disabilities;

(4)(A) develop portals that link users with every Center's website; and

(B) facilitate electronic information sharing using state-of-the-art Internet technologies such as real-time online discussions, multi-point video conferencing, and web-based audio/video broadcasts, on emerging topics that impact individuals with disabilities and their families;

(5) serve as a research-based resource for Federal and State policymakers on information concerning and issues impacting individ-

uals with developmental disabilities and entities that assist or serve those individuals; or

(6) undertake any other functions that the Secretary determines to be appropriate;

to promote the viability and use of the resources and expertise of the Centers nationally and internationally.

(Pub. L. 106-402, title I, §153, Oct. 30, 2000, 114 Stat. 1720.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15061, 15062, 15064, 15066, 15083 of this title.

§ 15064. Applications

(a) Applications for core Center grants

(1) In general

To be eligible to receive a grant under section 15061(a) of this title for a Center, an entity shall submit to the Secretary, and obtain approval of, an application at such time, in such manner, and containing such information, as the Secretary may require.

(2) Application contents

Each application described in paragraph (1) shall describe a 5-year plan, including a projected goal related to 1 or more areas of emphasis for each of the core functions described in section 15063(a) of this title.

(3) Assurances

The application shall be approved by the Secretary only if the application contains or is supported by reasonable assurances that the entity designated as the Center will—

(A) meet regulatory standards as established by the Secretary for Centers;

(B) address the projected goals, and carry out goal-related activities, based on data driven strategic planning and in a manner consistent with the objectives of this part, that—

(i) are developed in collaboration with the consumer advisory committee established pursuant to subparagraph (E);

(ii) are consistent with, and to the extent feasible complement and further, the Council goals contained in the State plan submitted under section 15024 of this title and the system goals established under section 15043 of this title; and

(iii) will be reviewed and revised annually as necessary to address emerging trends and needs;

(C) use the funds made available through the grant to supplement, and not supplant, the funds that would otherwise be made available for activities described in section 15063(a) of this title;

(D) protect, consistent with the policy specified in section 15001(c) of this title (relating to rights of individuals with developmental disabilities), the legal and human rights of all individuals with developmental disabilities (especially those individuals under State guardianship) who are involved in activities carried out under programs assisted under this part;

(E) establish a consumer advisory committee—

(i) of which a majority of the members shall be individuals with developmental disabilities and family members of such individuals;

(ii) that is comprised of—

(I) individuals with developmental disabilities and related disabilities;

(II) family members of individuals with developmental disabilities;

(III) a representative of the State protection and advocacy system;

(IV) a representative of the State Council on Developmental Disabilities;

(V) a representative of a self-advocacy organization described in section 15024(c)(4)(A)(ii)(I) of this title; and

(VI) representatives of organizations that may include parent training and information centers assisted under section 1482 or 1483 of title 20, entities carrying out activities authorized under section 3011 or 3012 of title 29, relevant State agencies, and other community groups concerned with the welfare of individuals with developmental disabilities and their families;

(iii) that reflects the racial and ethnic diversity of the State; and

(iv) that shall—

(I) consult with the Director of the Center regarding the development of the 5-year plan, and shall participate in an annual review of, and comment on, the progress of the Center in meeting the projected goals contained in the plan, and shall make recommendations to the Director of the Center regarding any proposed revisions of the plan that might be necessary; and

(II) meet as often as necessary to carry out the role of the committee, but at a minimum twice during each grant year;

(F) to the extent possible, utilize the infrastructure and resources obtained through funds made available under the grant to leverage additional public and private funds to successfully achieve the projected goals developed in the 5-year plan;

(G)(i) have a director with appropriate academic credentials, demonstrated leadership, expertise regarding developmental disabilities, significant experience in managing grants and contracts, and the ability to leverage public and private funds; and

(ii) allocate adequate staff time to carry out activities related to each of the core functions described in section 15063(a) of this title; and

(H) educate, and disseminate information related to the purpose of this subchapter to, the legislature of the State in which the Center is located, and to Members of Congress from such State.

(b) Supplemental grant applications pertaining to national training initiatives in critical and emerging needs

To be eligible to receive a supplemental grant under section 15061(b) of this title, a Center may submit a supplemental application to the Sec-

retary at such time, in such manner, and containing such information as the Secretary may require, pursuant to the terms and conditions set by the Secretary consistent with section 15063(b) of this title.

(c) Peer review

(1) In general

The Secretary shall require that all applications submitted under this part be subject to technical and qualitative review by peer review groups established under paragraph (2). The Secretary may approve an application under this part only if such application has been recommended by a peer review group that has conducted the peer review required under this paragraph. In conducting the review, the group may conduct onsite visits or inspections of related activities as necessary.

(2) Establishment of peer review groups

(A) In general

The Secretary, acting through the Commissioner of the Administration on Developmental Disabilities, may, notwithstanding—

(i) the provisions of title 5 concerning appointments to the competitive service; and

(ii) the provisions of chapter 51, and subchapter III of chapter 53 of title 5 concerning classification and General Schedule pay rates;

establish such peer review groups and appoint and set the rates of pay of members of such groups.

(B) Composition

Each peer review group shall include such individuals with disabilities and parents, guardians, or advocates of or for individuals with developmental disabilities, as are necessary to carry out this subsection.

(3) Waivers of approval

The Secretary may waive the provisions of paragraph (1) with respect to review and approval of an application if the Secretary determines that exceptional circumstances warrant such a waiver.

(d) Federal share

(1) In general

The Federal share of the cost of administration or operation of a Center, or the cost of carrying out a training initiative, supported by a grant made under this part may not be more than 75 percent of the necessary cost of such project, as determined by the Secretary.

(2) Urban or rural poverty areas

In the case of a project whose activities or products target individuals with developmental disabilities who live in an urban or rural poverty area, as determined by the Secretary, the Federal share of the cost of the project may not be more than 90 percent of the necessary costs of the project, as determined by the Secretary.

(3) Grant expenditures

For the purpose of determining the Federal share with respect to the project, expenditures

on that project by a political subdivision of a State or by a public or private entity shall, subject to such limitations and conditions as the Secretary may by regulation prescribe under section 15004(b) of this title, be considered to be expenditures made by a Center under this part.

(e) Annual report

Each Center shall annually prepare and transmit to the Secretary a report containing—

(1) information on progress made in achieving the projected goals of the Center for the previous year, including—

(A) the extent to which the goals were achieved;

(B) a description of the strategies that contributed to achieving the goals;

(C) to the extent to which the goals were not achieved, a description of factors that impeded the achievement; and

(D) an accounting of the manner in which funds paid to the Center under this part for a fiscal year were expended;

(2) information on proposed revisions to the goals; and

(3) a description of successful efforts to leverage funds, other than funds made available under this part, to pursue goals consistent with this part.

(Pub. L. 106-402, title I, §154, Oct. 30, 2000, 114 Stat. 1722.)

REFERENCES IN TEXT

Provisions of title 5 governing appointments in competitive service, referred to in subsec. (c)(2)(A)(i), are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

§ 15065. Definition

In this part, the term “State” means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, and Guam.

(Pub. L. 106-402, title I, §155, Oct. 30, 2000, 114 Stat. 1725.)

§ 15066. Authorization of appropriations

(a) Authorization and reservations

(1) Authorization

There are authorized to be appropriated to carry out this part (other than section 15063(c)(4) of this title) \$30,000,000 for fiscal year 2001 and such sums as may be necessary for each of fiscal years 2002 through 2007.

(2) Reservation for training initiatives

From any amount appropriated for a fiscal year under paragraph (1) and remaining after each Center described in section 15062(a) of this title has received a grant award of not less than \$500,000, as described in section 15062 of this title, the Secretary shall reserve funds for the training initiatives authorized under section 15063(b) of this title.

(3) Reservation for technical assistance

(A) Years before appropriation trigger

For any covered year, the Secretary shall reserve funds in accordance with section

15083(c) of this title to fund technical assistance activities under section 15063(c) of this title (other than section 15063(c)(4) of this title).

(B) Years after appropriation trigger

For any fiscal year that is not a covered year, the Secretary shall reserve not less than \$300,000 and not more than 2 percent of the amount appropriated under paragraph (1) to fund technical assistance activities under section 15063(c) of this title (other than section 15063(c)(4) of this title).

(C) Covered year

In this paragraph, the term “covered year” means a fiscal year prior to the first fiscal year for which the amount appropriated under paragraph (1) is not less than \$20,000,000.

(b) Limitation

The Secretary may not use, for peer review or other activities directly related to peer review conducted under this part—

(1) for fiscal year 2001, more than \$300,000 of the funds made available under subsection (a) of this section; and

(2) for any succeeding fiscal year, more than the amount of funds used for the peer review and related activities in fiscal year 2001, adjusted to take into account the most recent percentage change in the Consumer Price Index published by the Secretary of Labor under section 720(c)(1) of title 29 (if the percentage change indicates an increase).

(Pub. L. 106-402, title I, §156, Oct. 30, 2000, 114 Stat. 1725.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15061, 15062, 15081, 15083 of this title.

PART E—PROJECTS OF NATIONAL SIGNIFICANCE

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 14403, 15004, 15005 of this title.

§ 15081. Purpose

The purpose of this part is to provide grants, contracts, or cooperative agreements for projects of national significance that—

(1) create opportunities for individuals with developmental disabilities to directly and fully contribute to, and participate in, all facets of community life; and

(2) support the development of national and State policies that reinforce and promote, with the support of families, guardians, advocates, and communities, of individuals with developmental disabilities, the self-determination, independence, productivity, and integration and inclusion in all facets of community life of such individuals through—

(A) family support activities;

(B) data collection and analysis;

(C) technical assistance to entities funded under parts B and D of this subchapter, subject to the limitations described in sections 15029(b), 15066(a)(3), and 15083(c) of this title; and

(D) other projects of sufficient size and scope that hold promise to expand or improve opportunities for such individuals, including—

(i) projects that provide technical assistance for the development of information and referral systems;

(ii) projects that provide technical assistance to self-advocacy organizations of individuals with developmental disabilities;

(iii) projects that provide education for policymakers;

(iv) Federal interagency initiatives;

(v) projects that enhance the participation of racial and ethnic minorities in public and private sector initiatives in developmental disabilities;

(vi) projects that provide aid to transition youth with developmental disabilities from school to adult life, especially in finding employment and postsecondary education opportunities and in upgrading and changing any assistive technology devices that may be needed as a youth matures;

(vii) initiatives that address the development of community quality assurance systems and the training related to the development, implementation, and evaluation of such systems, including training of individuals with developmental disabilities and their families;

(viii) initiatives that address the needs of aging individuals with developmental disabilities and aging caregivers of adults with developmental disabilities in the community;

(ix) initiatives that create greater access to and use of generic services systems, community organizations, and associations, and initiatives that assist in community economic development;

(x) initiatives that create access to increased living options;

(xi) initiatives that address the challenging behaviors of individuals with developmental disabilities, including initiatives that promote positive alternatives to the use of restraints and seclusion; and

(xii) initiatives that address other areas of emerging need.

(Pub. L. 106-402, title I, §161, Oct. 30, 2000, 114 Stat. 1725.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15082, 15083 of this title.

§ 15082. Grant authority

(a) In general

The Secretary shall award grants, contracts, or cooperative agreements to public or private nonprofit entities for projects of national significance relating to individuals with developmental disabilities to carry out activities described in section 15081(2) of this title.

(b) Federal interagency initiatives

(1) In general

(A) Authority

The Secretary may—

(i) enter into agreements with Federal agencies to jointly carry out activities described in section 15081(2) of this title or to jointly carry out activities of common interest related to the objectives of such section; and

(ii) transfer to such agencies for such purposes funds appropriated under this part, and receive and use funds from such agencies for such purposes.

(B) Relation to program purposes

Funds transferred or received pursuant to this paragraph shall be used only in accordance with statutes authorizing the appropriation of such funds. Such funds shall be made available through grants, contracts, or cooperative agreements only to recipients eligible to receive such funds under such statutes.

(C) Procedures and criteria

If the Secretary enters into an agreement under this subsection for the administration of a jointly funded project—

(i) the agreement shall specify which agency's procedures shall be used to award grants, contracts, or cooperative agreements and to administer such awards;

(ii) the participating agencies may develop a single set of criteria for the jointly funded project, and may require applicants to submit a single application for joint review by such agencies; and

(iii) unless the heads of the participating agencies develop joint eligibility requirements, an applicant for an award for the project shall meet the eligibility requirements of each program involved.

(2) Limitation

The Secretary may not construe the provisions of this subsection to take precedence over a limitation on joint funding contained in an applicable statute.

(Pub. L. 106-402, title I, §162, Oct. 30, 2000, 114 Stat. 1727.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 15083 of this title.

§ 15083. Authorization of appropriations

(a) In general

There are authorized to be appropriated to carry out the projects specified in this section \$16,000,000 for fiscal year 2001, and such sums as may be necessary for each of fiscal years 2002 through 2007.

(b) Use of funds

(1) Grants, contracts, and agreements

Except as provided in paragraph (2), the amount appropriated under subsection (a) of this section for each fiscal year shall be used to award grants, or enter into contracts, cooperative agreements, or other agreements, under section 15082 of this title.

(2) Administrative costs

Not more than 1 percent of the amount appropriated under subsection (a) of this section

for each fiscal year may be used to provide for the administrative costs (other than compensation of Federal employees) of the Administration on Developmental Disabilities for administering this part and parts B, C, and D of this subchapter, including monitoring the performance of and providing technical assistance to, entities that receive funds under this subchapter.

(c) Technical assistance for Councils and Centers

(1) In general

For each covered year, the Secretary shall expend, to provide technical assistance for entities funded under part B or D of this subchapter, an amount from funds appropriated under subsection (a) of this section that is not less than the amount the Secretary expended on technical assistance for entities funded under that part (or a corresponding provision) in the previous fiscal year.

(2) Covered year

In this subsection, the term “covered year” means—

(A) in the case of an expenditure for entities funded under part B of this subchapter, a fiscal year for which the amount appropriated under section 15029(a) of this title is less than \$76,000,000; and

(B) in the case of an expenditure for entities funded under part D of this subchapter, a fiscal year prior to the first fiscal year for which the amount appropriated under section 15066(a)(1) of this title is not less than \$20,000,000.

(3) References

References in this subsection to part D of this subchapter shall not be considered to include section 15063(c)(4) of this title.

(d) Technical assistance on electronic information sharing

In addition to any funds reserved under subsection (c) of this section, the Secretary shall reserve \$100,000 from the amount appropriated under subsection (a) of this section for each fiscal year to carry out section 15063(c)(4) of this title.

(e) Limitation

For any fiscal year for which the amount appropriated under subsection (a) of this section is not less than \$10,000,000, not more than 50 percent of such amount shall be used for activities carried out under section 15081(2)(A) of this title.

(Pub. L. 106-402, title I, §163, Oct. 30, 2000, 114 Stat. 1727.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15029, 15061, 15066, 15081 of this title.

SUBCHAPTER II—FAMILY SUPPORT

§ 15091. Findings, purposes, and policy

(a) Findings

Congress makes the following findings:

(1) It is in the best interest of our Nation to preserve, strengthen, and maintain the family.

(2) Families of children with disabilities provide support, care, and training to their chil-

dren that can save States millions of dollars. Without the efforts of family caregivers, many persons with disabilities would receive care through State-supported out-of-home placements.

(3) Most families of children with disabilities, especially families in unserved and underserved populations, do not have access to family-centered and family-directed services to support such families in their efforts to care for such children at home.

(4) Medical advances and improved health care have increased the life span of many people with disabilities, and the combination of the longer life spans and the aging of family caregivers places a continually increasing demand on the finite service delivery systems of the States.

(5) In 1996, 49 States provided family support initiatives in response to the needs of families of children with disabilities. Such initiatives included the provision of cash subsidies, respite care, and other forms of support. There is a need in each State, however, to strengthen, expand, and coordinate the activities of a system of family support services for families of children with disabilities that is easily accessible, avoids duplication, uses resources efficiently, and prevents gaps in services to families in all areas of the State.

(6) The goals of the Nation properly include the goal of providing to families of children with disabilities the family support services necessary—

(A) to support the family;

(B) to enable families of children with disabilities to nurture and enjoy their children at home;

(C) to enable families of children with disabilities to make informed choices and decisions regarding the nature of supports, resources, services, and other assistance made available to such families; and

(D) to support family caregivers of adults with disabilities.

(b) Purposes

The purposes of this subchapter are—

(1) to promote and strengthen the implementation of comprehensive State systems of family support services, for families with children with disabilities, that are family-centered and family-directed, and that provide families with the greatest possible decisionmaking authority and control regarding the nature and use of services and support;

(2) to promote leadership by families in planning, policy development, implementation, and evaluation of family support services for families of children with disabilities;

(3) to promote and develop interagency coordination and collaboration between agencies responsible for providing the services; and

(4) to increase the availability of, funding for, access to, and provision of family support services for families of children with disabilities.

(c) Policy

It is the policy of the United States that all programs, projects, and activities funded under this subchapter shall be family-centered and

family-directed, and shall be provided in a manner consistent with the goal of providing families of children with disabilities with the support the families need to raise their children at home.

(Pub. L. 106-402, title II, §202, Oct. 30, 2000, 114 Stat. 1728.)

SHORT TITLE

For short title of this subchapter as the “Families of Children With Disabilities Support Act of 2000”, see section 201 of Pub. L. 106-402, set out as a note under section 15001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15098, 15100 of this title.

§ 15092. Definitions and special rule

(a) Definitions

In this subchapter:

(1) Child with a disability

The term “child with a disability” means an individual who—

(A) has a significant physical or mental impairment, as defined pursuant to State policy to the extent that such policy is established without regard to type of disability; or

(B) is an infant or a young child from birth through age 8 and has a substantial developmental delay or specific congenital or acquired condition that presents a high probability of resulting in a disability if services are not provided to the infant or child.

(2) Family

(A) In general

Subject to subparagraph (B), for purposes of the application of this subchapter in a State, the term “family” has the meaning given the term by the State.

(B) Exclusion of employees

The term does not include an employee who, acting in a paid employment capacity, provides services to a child with a disability in an out-of-home setting such as a hospital, nursing home, personal care home, board and care home, group home, or other facility.

(3) Family support for families of children with disabilities

The term “family support for families of children with disabilities” means supports, resources, services, and other assistance provided to families of children with disabilities pursuant to State policy that are designed to—

(A) support families in the efforts of such families to raise their children with disabilities in the home;

(B) strengthen the role of the family as primary caregiver for such children;

(C) prevent involuntary out-of-the-home placement of such children and maintain family unity; and

(D) reunite families with children with disabilities who have been placed out of the home, whenever possible.

(4) Secretary

The term “Secretary” means the Secretary of Health and Human Services.

(5) State

The term “State” means each of the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(6) Systems change activities

The term “systems change activities” means efforts that result in laws, regulations, policies, practices, or organizational structures—

(A) that are family-centered and family-directed;

(B) that facilitate and increase access to, provision of, and funding for, family support services for families of children with disabilities; and

(C) that otherwise accomplish the purposes of this subchapter.

(b) Special rule

References in this subchapter to a child with a disability shall be considered to include references to an individual who is not younger than age 18 who—

(1) has a significant impairment described in subsection (a)(1)(A) of this section; and

(2) is residing with and receiving assistance from a family member.

(Pub. L. 106-402, title II, §203, Oct. 30, 2000, 114 Stat. 1729.)

§ 15093. Grants to States

(a) In general

The Secretary shall make grants to States on a competitive basis, in accordance with the provisions of this subchapter, to support systems change activities designed to assist States to develop and implement, or expand and enhance, a statewide system of family support services for families of children with disabilities that accomplishes the purposes of this subchapter.

(b) Award period and grant limitation

No grant shall be awarded under this section for a period of more than 3 years. No State shall be eligible for more than 1 grant under this section.

(c) Amount of grants

(1) Grants to States

(A) Federal matching share

From amounts appropriated under section 15101(a) of this title, the Secretary shall pay to each State that has an application approved under section 15094 of this title, for each year of the grant period, an amount that is—

(i) equal to not more than 75 percent of the cost of the systems change activities to be carried out by the State; and

(ii) not less than \$100,000 and not more than \$500,000.

(B) Non-Federal share

The non-Federal share of the cost of the systems change activities may be in cash or

in kind, fairly evaluated, including plant, equipment, or services.

(2) Calculation of amounts

The Secretary shall calculate a grant amount described in paragraph (1) on the basis of—

- (A) the amounts available for making grants under this section; and
- (B) the child population of the State concerned.

(d) Priority for previously participating States

For the second and third fiscal years for which amounts are appropriated to carry out this section, the Secretary, in providing payments under this section, shall give priority to States that received payments under this section during the preceding fiscal year.

(e) Priorities for distribution

To the extent practicable, the Secretary shall award grants to States under this section in a manner that—

- (1) is geographically equitable;
- (2) distributes the grants among States that have differing levels of development of statewide systems of family support services for families of children with disabilities; and
- (3) distributes the grants among States that attempt to meet the needs of unserved and underserved populations, such as individuals from racial and ethnic minority backgrounds, disadvantaged individuals, individuals with limited English proficiency, and individuals from underserved geographic areas (rural or urban).

(Pub. L. 106-402, title II, §204, Oct. 30, 2000, 114 Stat. 1730.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15095, 15096 of this title.

§ 15094. Application

To be eligible to receive a grant under this subchapter, a State shall submit an application to the Secretary at such time, in such manner, and containing such information and assurances as the Secretary may require, including information about the designation of a lead entity, a description of available State resources, and assurances that systems change activities will be family-centered and family-directed.

(Pub. L. 106-402, title II, §205, Oct. 30, 2000, 114 Stat. 1731.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15093, 15095 of this title.

§ 15095. Designation of the lead entity

(a) Designation

The Chief Executive Officer of a State that desires to receive a grant under section 15093 of this title, shall designate the office or entity (referred to in this subchapter as the “lead entity”) responsible for—

- (1) submitting the application described in section 15094 of this title on behalf of the State;

(2) administering and supervising the use of the amounts made available under the grant;

(3) coordinating efforts related to and supervising the preparation of the application;

(4) coordinating the planning, development, implementation (or expansion and enhancement), and evaluation of a statewide system of family support services for families of children with disabilities among public agencies and between public agencies and private agencies, including coordinating efforts related to entering into interagency agreements;

(5) coordinating efforts related to the participation by families of children with disabilities in activities carried out under a grant made under this subchapter; and

(6) submitting the report described in section 15097 of this title on behalf of the State.

(b) Qualifications

In designating the lead entity, the Chief Executive Officer may designate—

- (1) an office of the Chief Executive Officer;
- (2) a commission appointed by the Chief Executive Officer;
- (3) a public agency;
- (4) a council established under Federal or State law; or
- (5) another appropriate office, agency, or entity.

(Pub. L. 106-402, title II, §206, Oct. 30, 2000, 114 Stat. 1731.)

§ 15096. Authorized activities

(a) In general

A State that receives a grant under section 15093 of this title shall use the funds made available through the grant to carry out systems change activities that accomplish the purposes of this subchapter.

(b) Special rule

In carrying out activities authorized under this subchapter, a State shall ensure that such activities address the needs of families of children with disabilities from unserved or underserved populations.

(Pub. L. 106-402, title II, §207, Oct. 30, 2000, 114 Stat. 1732.)

§ 15097. Reporting

A State that receives a grant under this subchapter shall prepare and submit to the Secretary, at the end of the grant period, a report containing the results of State efforts to develop and implement, or expand and enhance, a statewide system of family support services for families of children with disabilities.

(Pub. L. 106-402, title II, §208, Oct. 30, 2000, 114 Stat. 1732.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 15095 of this title.

§ 15098. Technical assistance

(a) In general

The Secretary shall enter into contracts or cooperative agreements with appropriate public or

private agencies and organizations, including institutions of higher education, with documented experience, expertise, and capacity, for the purpose of providing technical assistance and information with respect to the development and implementation, or expansion and enhancement, of a statewide system of family support services for families of children with disabilities.

(b) Purpose

An agency or organization that provides technical assistance and information under this section in a State that receives a grant under this subchapter shall provide the technical assistance and information to the lead entity of the State, family members of children with disabilities, organizations, service providers, and policymakers involved with children with disabilities and their families. Such an agency or organization may also provide technical assistance and information to a State that does not receive a grant under this subchapter.

(c) Reports to the Secretary

An entity providing technical assistance and information under this section shall prepare and submit to the Secretary periodic reports regarding Federal policies and procedures identified within the States that facilitate or impede the delivery of family support services to families of children with disabilities. The report shall include recommendations to the Secretary regarding the delivery of services, coordination with other programs, and integration of the policies described in section 15091 of this title in Federal law, other than this subchapter.

(Pub. L. 106-402, title II, §209, Oct. 30, 2000, 114 Stat. 1732.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 15101 of this title.

§ 15099. Evaluation

(a) In general

The Secretary shall conduct a national evaluation of the program of grants to States authorized by this subchapter.

(b) Purpose

(1) In general

The Secretary shall conduct the evaluation under subsection (a) of this section to assess the status and effects of State efforts to develop and implement, or expand and enhance, statewide systems of family support services for families of children with disabilities in a manner consistent with the provisions of this subchapter. In particular, the Secretary shall assess the impact of such efforts on families of children with disabilities, and recommend amendments to this subchapter that are necessary to assist States to accomplish fully the purposes of this subchapter.

(2) Information systems

The Secretary shall work with the States to develop an information system designed to compile and report, from information provided by the States, qualitative and quantitative descriptions of the impact of the program of

grants to States authorized by this subchapter on—

(A) families of children with disabilities, including families from unserved and underserved populations;

(B) access to and funding for family support services for families of children with disabilities;

(C) interagency coordination and collaboration between agencies responsible for providing the services; and

(D) the involvement of families of children with disabilities at all levels of the statewide systems.

(c) Report to Congress

Not later than 2½ years after October 30, 2000, the Secretary shall prepare and submit to the appropriate committees of Congress a report concerning the results of the evaluation conducted under this section.

(Pub. L. 106-402, title II, §210, Oct. 30, 2000, 114 Stat. 1733.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 15101 of this title.

§ 15100. Projects of national significance

(a) Study by the Secretary

The Secretary shall review Federal programs to determine the extent to which such programs facilitate or impede access to, provision of, and funding for family support services for families of children with disabilities, consistent with the policies described in section 15091 of this title.

(b) Projects of national significance

The Secretary shall make grants or enter into contracts for projects of national significance to support the development of national and State policies and practices related to the development and implementation, or expansion and enhancement, of family-centered and family-directed systems of family support services for families of children with disabilities.

(Pub. L. 106-402, title II, §211, Oct. 30, 2000, 114 Stat. 1733.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 15101 of this title.

§ 15101. Authorization of appropriations

(a) In general

There are authorized to be appropriated to carry out this subchapter such sums as may be necessary for each of fiscal years 2001 through 2007.

(b) Reservation

(1) In general

The Secretary shall reserve for each fiscal year 10 percent, or \$400,000 (whichever is greater), of the amount appropriated pursuant to subsection (a) of this section to carry out—

(A) section 15098 of this title (relating to the provision of technical assistance and information to States); and

(B) section 15099 of this title (relating to the conduct of evaluations).

(2) Special rule

For each year that the amount appropriated pursuant to subsection (a) of this section is \$10,000,000 or greater, the Secretary may reserve 5 percent of such amount to carry out section 15100 of this title.

(Pub. L. 106-402, title II, §212, Oct. 30, 2000, 114 Stat. 1734.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 15093 of this title.

SUBCHAPTER III—PROGRAM FOR DIRECT SUPPORT WORKERS WHO ASSIST INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES

§ 15111. Findings

Congress finds that—

(1) direct support workers, especially young adults, have played essential roles in providing the support needed by individuals with developmental disabilities and expanding community options for those individuals;

(2) 4 factors have contributed to a decrease in the available pool of direct support workers, specifically—

(A) the small population of individuals who are age 18 through 25, an age group that has been attracted to direct support work in the past;

(B) the rapid expansion of the service sector, which attracts individuals who previously would have elected to pursue employment as direct support workers;

(C) the failure of wages in the human services sector to keep pace with wages in other service sectors; and

(D) the lack of quality training and career advancement opportunities available to direct support workers; and

(3) individuals with developmental disabilities benefit from assistance from direct support workers who are well trained, and benefit from receiving services from professionals who have spent time as direct support workers.

(Pub. L. 106-402, title III, §301, Oct. 30, 2000, 114 Stat. 1734.)

§ 15112. Definitions

In this subchapter:

(1) Developmental disability

The term “developmental disability” has the meaning given the term in section 15002 of this title.

(2) Institution of higher education

The term “institution of higher education” has the meaning given the term in section 1141¹ of title 20.

(3) Secretary

The term “Secretary” means the Secretary of Health and Human Services.

(Pub. L. 106-402, title III, §302, Oct. 30, 2000, 114 Stat. 1734.)

REFERENCES IN TEXT

Section 1141 of title 20, referred to in par. (2), was repealed by Pub. L. 105-244, §3, title I, §101(b), title VII, §702, Oct. 7, 1998, 112 Stat. 1585, 1616, 1803, effective Oct. 1, 1998. However, the term “institution of higher education” is defined in section 1001 of Title 20, Education.

§ 15113. Reaching up scholarship program**(a) Program authorization**

The Secretary may award grants to eligible entities, on a competitive basis, to enable the entities to carry out scholarship programs by providing vouchers for postsecondary education to direct support workers who assist individuals with developmental disabilities residing in diverse settings. The Secretary shall award the grants to pay for the Federal share of the cost of providing the vouchers.

(b) Eligible entity

To be eligible to receive a grant under this section, an entity shall be—

- (1) an institution of higher education;
- (2) a State agency; or
- (3) a consortium of such institutions or agencies.

(c) Application requirements

To be eligible to receive a grant under this section, an eligible entity shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including a description of—

- (1) the basis for awarding the vouchers;
- (2) the number of individuals to receive the vouchers; and
- (3) the amount of funds that will be made available by the eligible entity to pay for the non-Federal share of the cost of providing the vouchers.

(d) Selection criteria

In awarding a grant under this section for a scholarship program, the Secretary shall give priority to an entity submitting an application that—

- (1) specifies that individuals who receive vouchers through the program will be individuals—

(A) who are direct support workers who assist individuals with developmental disabilities residing in diverse settings, while pursuing postsecondary education; and

(B) each of whom verifies, prior to receiving the voucher, that the worker has completed 250 hours as a direct support worker in the past 90 days;

(2) states that the vouchers that will be provided through the program will be in amounts of not more than \$2,000 per year;

(3) provides an assurance that the eligible entity (or another specified entity that is not a voucher recipient) will contribute the non-Federal share of the cost of providing the vouchers; and

(4) meets such other conditions as the Secretary may specify.

(e) Federal share

The Federal share of the cost of providing the vouchers shall be not more than 80 percent.

¹ See References in Text note below.

(Pub. L. 106-402, title III, §303, Oct. 30, 2000, 114 Stat. 1735.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 15115 of this title.

§ 15114. Staff development curriculum authorization

(a) Funding

(1) In general

The Secretary shall award funding, on a competitive basis, through a grant, cooperative agreement, or contract, to a public or private entity or a combination of such entities, for the development, evaluation, and dissemination of a staff development curriculum, and related guidelines, for computer-assisted, competency-based, multimedia, interactive instruction, relating to service as a direct support worker.

(2) Participants

The curriculum shall be developed for individuals who—

(A) seek to become direct support workers who assist individuals with developmental disabilities or are such direct support workers; and

(B) seek to upgrade their skills and competencies related to being a direct support worker.

(b) Application requirements

To be eligible to receive an award under this section, an entity shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including—

(1) a comprehensive analysis of the content of direct support roles;

(2) information identifying an advisory group that—

(A) is comprised of individuals with experience and expertise with regard to the support provided by direct support workers, and effective ways to provide the support, for individuals with developmental disabilities in diverse settings; and

(B) will advise the entity throughout the development, evaluation, and dissemination of the staff development curriculum and guidelines;

(3) information describing how the entity will—

(A) develop, field test, and validate a staff development curriculum that—

(i) relates to the appropriate reading level for direct service workers who assist individuals with disabilities;

(ii) allows for multiple levels of instruction;

(iii) provides instruction appropriate for direct support workers who work in diverse settings; and

(iv) is consistent with subsections (b) and (c) of section 15001 of this title and section 15009 of this title;

(B) develop, field test, and validate guidelines for the organizations that use the curriculum that provide for—

(i) providing necessary technical and instructional support to trainers and mentors for the participants;

(ii) ensuring easy access to and use of such curriculum by workers that choose to participate in using, and agencies that choose to use, the curriculum;

(iii) evaluating the proficiency of the participants with respect to the content of the curriculum;

(iv) providing necessary support to the participants to assure that the participants have access to, and proficiency in using, a computer in order to participate in the development, testing, and validation process;

(v) providing necessary technical and instructional support to trainers and mentors for the participants in conjunction with the development, testing, and validation process;

(vi) addressing the satisfaction of participants, individuals with developmental disabilities and their families, providers of services for such individuals and families, and other relevant entities with the curriculum; and

(vii) developing methods to maintain a record of the instruction completed, and the content mastered, by each participant under the curriculum; and

(C) nationally disseminate the curriculum and guidelines, including dissemination through—

(i) parent training and information centers funded under part D of the Individuals with Disabilities Education Act (20 U.S.C. 1451 et seq.);

(ii) community-based organizations of and for individuals with developmental disabilities and their families;

(iii) entities funded under subchapter I of this chapter;

(iv) centers for independent living;

(v) State educational agencies and local educational agencies;

(vi) entities operating appropriate medical facilities;

(vii) postsecondary education entities; and

(viii) other appropriate entities; and

(4) such other information as the Secretary may require.

(Pub. L. 106-402, title III, §304, Oct. 30, 2000, 114 Stat. 1735.)

REFERENCES IN TEXT

The Individuals with Disabilities Education Act, referred to in subsec. (b)(3)(C)(i), is title VI of Pub. L. 91-230, Apr. 13, 1970, 84 Stat. 175, as amended. Part D of the Act is classified generally to subchapter IV (§1451 et seq.) of chapter 33 of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 15115 of this title.

§ 15115. Authorization of appropriations

(a) Scholarships

There are authorized to be appropriated to carry out section 15113 of this title \$800,000 for

fiscal year 2001 and such sums as may be necessary for each of fiscal years 2002 through 2007.

(b) Staff development curriculum

There are authorized to be appropriated to carry out section 15114 of this title \$800,000 for fiscal year 2001 and such sums as may be necessary for each of fiscal years 2002 and 2003.

(Pub. L. 106-402, title III, §305, Oct. 30, 2000, 114 Stat. 1737.)

CHAPTER 145—PUBLIC SAFETY OFFICER MEDAL OF VALOR

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§ 15201. Authorization of Medal

After September 1, 2001, the President may award, and present in the name of Congress, a Medal of Valor of appropriate design, with ribbons and appurtenances, to a public safety officer who is cited by the Attorney General, upon the recommendation of the Medal of Valor Review Board, for extraordinary valor above and beyond the call of duty. The Public Safety Medal of Valor shall be the highest national award for valor by a public safety officer.

(Pub. L. 107-12, §2, May 30, 2001, 115 Stat. 20.)

SHORT TITLE

Pub. L. 107-12, §1, May 30, 2001, 115 Stat. 20, provided that: "This Act [enacting this chapter and amending section 2214 of Title 15, Commerce and Trade] may be cited as the 'Public Safety Officer Medal of Valor Act of 2001'."

§ 15202. Medal of Valor Board

(a) Establishment of Board

There is established a Medal of Valor Review Board (hereinafter in this chapter referred to as the "Board"), which shall be composed of 11 members appointed in accordance with subsection (b) of this section and shall conduct its business in accordance with this chapter.

(b) Membership

(1) Members

The members of the Board shall be individuals with knowledge or expertise, whether by experience or training, in the field of public safety, of which—

- (A) two shall be appointed by the majority leader of the Senate;
- (B) two shall be appointed by the minority leader of the Senate;
- (C) two shall be appointed by the Speaker of the House of Representatives;

(D) two shall be appointed by the minority leader of the House of Representatives; and

(E) three shall be appointed by the President, including one with experience in fire-fighting, one with experience in law enforcement, and one with experience in emergency services.

(2) Term

The term of a Board member shall be 4 years.

(3) Vacancies

Any vacancy in the membership of the Board shall not affect the powers of the Board and shall be filled in the same manner as the original appointment.

(4) Operation of the Board

(A) Chairman

The Chairman of the Board shall be elected by the members of the Board from among the members of the Board.

(B) Meetings

The Board shall conduct its first meeting not later than 90 days after the appointment of the last member appointed of the initial group of members appointed to the Board. Thereafter, the Board shall meet at the call of the Chairman of the Board. The Board shall meet not less often than twice each year.

(C) Voting and rules

A majority of the members shall constitute a quorum to conduct business, but the Board may establish a lesser quorum for conducting hearings scheduled by the Board. The Board may establish by majority vote any other rules for the conduct of the Board's business, if such rules are not inconsistent with this chapter or other applicable law.

(c) Duties

The Board shall select candidates as recipients of the Medal of Valor from among those applications received by the National Medal of Valor Office. Not more often than once each year, the Board shall present to the Attorney General the name or names of those it recommends as Medal of Valor recipients. In a given year, the Board shall not be required to select any recipients but may not select more than 5 recipients. The Attorney General may in extraordinary cases increase the number of recipients in a given year. The Board shall set an annual timetable for fulfilling its duties under this chapter.

(d) Hearings

(1) In general

The Board may hold such hearings, sit and act at such times and places, administer such oaths, take such testimony, and receive such evidence as the Board considers advisable to carry out its duties.

(2) Witness expenses

Witnesses requested to appear before the Board may be paid the same fees as are paid to witnesses under section 1821 of title 28. The per diem and mileage allowances for witnesses

shall be paid from funds appropriated to the Board.

(e) Information from Federal agencies

The Board may secure directly from any Federal department or agency such information as the Board considers necessary to carry out its duties. Upon the request of the Board, the head of such department or agency may furnish such information to the Board.

(f) Information to be kept confidential

The Board shall not disclose any information which may compromise an ongoing law enforcement investigation or is otherwise required by law to be kept confidential.

(Pub. L. 107-12, § 3, May 30, 2001, 115 Stat. 20.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (b)(4)(C), and (c), was in the original “this Act”, meaning Pub. L. 107-12, May 30, 2001, 115 Stat. 20, which enacted this chapter and amended section 2214 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 15201 of this title and Tables.

§ 15203. Board personnel matters

(a) Compensation of members

(1) Except as provided in paragraph (2), each member of the Board shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5 for each day (including travel time) during which such member is engaged in the performance of the duties of the Board.

(2) All members of the Board who serve as officers or employees of the United States, a State, or a local government, shall serve without compensation in addition to that received for those services.

(b) Travel expenses

The members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, while away from their homes or regular places of business in the performance of service for the Board.

(Pub. L. 107-12, § 4, May 30, 2001, 115 Stat. 21.)

§ 15204. Definitions

In this chapter:

(1) Public safety officer

The term “public safety officer” means a person serving a public agency, with or without compensation, as a firefighter, law enforcement officer, or emergency services officer, as determined by the Attorney General. For the purposes of this paragraph, the term “law enforcement officer” includes a person who is a corrections or court officer or a civil defense officer.

(2) State

The term “State” means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(Pub. L. 107-12, § 5, May 30, 2001, 115 Stat. 22.)

§ 15205. Authorization of appropriations

There are authorized to be appropriated to the Attorney General such sums as may be necessary to carry out this chapter.

(Pub. L. 107-12, § 6, May 30, 2001, 115 Stat. 22.)

§ 15206. National Medal of Valor Office

There is established within the Department of Justice a National Medal of Valor Office. The Office shall provide staff support to the Board to establish criteria and procedures for the submission of recommendations of nominees for the Medal of Valor and for the final design of the Medal of Valor.

(Pub. L. 107-12, § 7, May 30, 2001, 115 Stat. 22.)

§ 15207. Consultation requirement

The Board shall consult with the Institute of Heraldry within the Department of Defense regarding the design and artistry of the Medal of Valor. The Board may also consider suggestions received by the Department of Justice regarding the design of the medal, including those made by persons not employed by the Department.

(Pub. L. 107-12, § 9, May 30, 2001, 115 Stat. 22.)