

506 of Pub. L. 113-128, set out as a note under section 3101 of this title.

### § 3243. Monitoring

#### (a) In general

The Secretary is authorized to monitor all recipients of financial assistance under this subchapter to determine whether the recipients are complying with the provisions of this subchapter, including the regulations issued under this subchapter.

#### (b) Investigations

The Secretary may investigate any matter the Secretary determines to be necessary to determine the compliance of the recipients with this subchapter, including the regulations issued under this subchapter. The investigations authorized by this subsection may include examining records (including making certified copies of the records), questioning employees, and entering any premises or onto any site in which any part of a program or activity of such a recipient is conducted or in which any of the records of the recipient are kept.

#### (c) Additional requirement

For the purpose of any investigation or hearing conducted under this subchapter by the Secretary, the provisions of section 49 of title 15 (relating to the attendance of witnesses and the production of documents) apply to the Secretary, in the same manner and to the same extent as the provisions apply to the Federal Trade Commission.

(Pub. L. 113-128, title I, §183, July 22, 2014, 128 Stat. 1590.)

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Section effective on the first day of the first full program year after July 22, 2014 (July 1, 2015), see section 506 of Pub. L. 113-128, set out as a note under section 3101 of this title.

### § 3244. Fiscal controls; sanctions

#### (a) Establishment of fiscal controls by States

##### (1) In general

Each State shall establish such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursement of, and accounting for, Federal funds allocated to local areas under part B. Such procedures shall ensure that all financial transactions carried out under part B are conducted and records maintained in accordance with generally accepted accounting principles applicable in each State.

##### (2) Cost principles

###### (A) In general

Each State (including the Governor of the State), local area (including the chief elected official for the area), and provider receiving funds under this subchapter shall comply with the applicable uniform cost principles included in appropriate circulars or rules of the Office of Management and Budget for the type of entity receiving the funds.

#### (B) Exception

The funds made available to a State for administration of statewide workforce investment activities in accordance with section 3174(a)(3)(B) of this title shall be allocable to the overall administration of workforce investment activities, but need not be specifically allocable to—

- (i) the administration of adult employment and training activities;
- (ii) the administration of dislocated worker employment and training activities; or
- (iii) the administration of youth workforce investment activities.

#### (3) Uniform administrative requirements

##### (A) In general

Each State (including the Governor of the State), local area (including the chief elected official for the area), and provider receiving funds under this subchapter shall comply with the appropriate uniform administrative requirements for grants and agreements applicable for the type of entity receiving the funds, as promulgated in circulars or rules of the Office of Management and Budget.

##### (B) Additional requirement

Procurement transactions under this subchapter between local boards and units of State or local governments shall be conducted only on a cost-reimbursable basis.

#### (4) Monitoring

Each Governor of a State shall conduct on an annual basis onsite monitoring of each local area within the State to ensure compliance with the uniform administrative requirements referred to in paragraph (3).

#### (5) Action by Governor

If the Governor determines that a local area is not in compliance with the uniform administrative requirements referred to in paragraph (3), the Governor shall—

- (A) require corrective action to secure prompt compliance with the requirements; and
- (B) impose the sanctions provided under subsection (b) in the event of failure to take the required corrective action.

#### (6) Certification

The Governor shall, every 2 years, certify to the Secretary that—

- (A) the State has implemented the uniform administrative requirements referred to in paragraph (3);
- (B) the State has monitored local areas to ensure compliance with the uniform administrative requirements as required under paragraph (4); and
- (C) the State has taken appropriate action to secure compliance with the requirements pursuant to paragraph (5).

#### (7) Action by the Secretary

If the Secretary determines that the Governor has not fulfilled the requirements of this subsection, the Secretary shall—

- (A) require corrective action to secure prompt compliance with the requirements of this subsection; and

(B) impose the sanctions provided under subsection (e) in the event of failure of the Governor to take the required appropriate action to secure compliance with the requirements.

**(b) Substantial violation**

**(1) Action by Governor**

If, as a result of financial and compliance audits or otherwise, the Governor determines that there is a substantial violation of a specific provision of this subchapter, and corrective action has not been taken, the Governor shall—

(A) issue a notice of intent to revoke approval of all or part of the local plan affected; or

(B) impose a reorganization plan, which may include—

(i) decertifying the local board involved;

(ii) prohibiting the use of eligible providers;

(iii) selecting an alternative entity to administer the program for the local area involved;

(iv) merging the local area into one or more other local areas; or

(v) making such other changes as the Secretary or Governor determines to be necessary to secure compliance with the provision.

**(2) Appeal**

**(A) In general**

The actions taken by the Governor pursuant to subparagraphs (A) and (B) of paragraph (1) may be appealed to the Secretary and shall not become effective until—

(i) the time for appeal has expired; or

(ii) the Secretary has issued a decision.

**(B) Additional requirement**

The Secretary shall make a final decision under subparagraph (A) not later than 45 days after the receipt of the appeal.

**(3) Action by the Secretary**

If the Governor fails to take promptly an action required under paragraph (1), the Secretary shall take such action.

**(c) Repayment of certain amounts to the United States**

**(1) In general**

Every recipient of funds under this subchapter shall repay to the United States amounts found not to have been expended in accordance with this subchapter.

**(2) Offset of repayment amount**

If the Secretary determines that a State has expended funds received under this subchapter in a manner contrary to the requirements of this subchapter, the Secretary may require repayment by offsetting the amount of such expenditures against any other amount to which the State is or may be entitled under this subchapter, except as provided under subsection (d)(1).

**(3) Repayment from deduction by State**

If the Secretary requires a State to repay funds as a result of a determination that a

local area of the State has expended funds in a manner contrary to the requirements of this subchapter, the Governor of the State may use an amount deducted under paragraph (4) to repay the funds, except as provided under subsection (e).<sup>1</sup>

**(4) Deduction by State**

The Governor may deduct an amount equal to the misexpenditure described in paragraph (3) from subsequent program year (subsequent to the program year for which the determination was made) allocations to the local area from funds reserved for the administrative costs of the local programs involved, as appropriate.

**(5) Limitations**

A deduction made by a State as described in paragraph (4) shall not be made until such time as the Governor has taken appropriate corrective action to ensure full compliance with this subchapter within such local area with regard to appropriate expenditures of funds under this subchapter.

**(d) Repayment of amounts**

**(1) In general**

Each recipient of funds under this subchapter shall be liable to repay the amounts described in subsection (c)(1), from funds other than funds received under this subchapter, upon a determination by the Secretary that the misexpenditure of the amounts was due to willful disregard of the requirements of this subchapter, gross negligence, failure to observe accepted standards of administration, or a pattern of misexpenditure described in subsection (c)(1). No such determination shall be made under this subsection or subsection (c) until notice and opportunity for a fair hearing have been given to the recipient.

**(2) Factors in imposing sanctions**

In determining whether to impose any sanction authorized by this section against a recipient of funds under this subchapter for violations of this subchapter (including applicable regulations) by a subgrantee or contractor of such recipient, the Secretary shall first determine whether such recipient has adequately demonstrated that the recipient has—

(A) established and adhered to an appropriate system, for entering into and monitoring subgrant agreements and contracts with subgrantees and contractors, that contains acceptable standards for ensuring accountability;

(B) entered into a written subgrant agreement or contract with such a subgrantee or contractor that established clear goals and obligations in unambiguous terms;

(C) acted with due diligence to monitor the implementation of the subgrant agreement or contract, including carrying out the appropriate monitoring activities (including audits) at reasonable intervals; and

(D) taken prompt and appropriate corrective action upon becoming aware of any evi-

<sup>1</sup> So in original. Subsec. (e) relates to termination or suspension of financial assistance.

dence of a violation of this subchapter, including regulations issued under this subchapter, by such subgrantee or contractor.

**(3) Waiver**

If the Secretary determines that the recipient has demonstrated substantial compliance with the requirements of paragraph (2), the Secretary may waive the imposition of sanctions authorized by this section upon such recipient. The Secretary is authorized to impose any sanction consistent with the provisions of this subchapter and with any applicable Federal or State law directly against any subgrantee or contractor for violation of this subchapter, including regulations issued under this subchapter.

**(e) Immediate termination or suspension of assistance in emergency situations**

In emergency situations, if the Secretary determines it is necessary to protect the integrity of the funds or ensure the proper operation of the program or activity involved, the Secretary may immediately terminate or suspend financial assistance, in whole or in part, to the recipient if the recipient is given prompt notice and the opportunity for a subsequent hearing within 30 days after such termination or suspension. The Secretary shall not delegate any of the functions or authority specified in this subsection, other than to an officer whose appointment is required to be made by and with the advice and consent of the Senate.

**(f) Discrimination against participants**

If the Secretary determines that any recipient under this subchapter has discharged or in any other manner discriminated against a participant or against any individual in connection with the administration of the program involved, or against any individual because such individual has filed any complaint or instituted or caused to be instituted any proceeding under or related to this subchapter, or has testified or is about to testify in any such proceeding or an investigation under or related to this subchapter, or otherwise unlawfully denied to any individual a benefit to which that individual is entitled under the provisions of this subchapter, including regulations issued under this subchapter, the Secretary shall, within 30 days, take such action or order such corrective measures, as necessary, with respect to the recipient or the aggrieved individual, or both.

**(g) Remedies**

The remedies described in this section shall not be considered to be the exclusive remedies available for violations described in this section.

(Pub. L. 113-128, title I, §184, July 22, 2014, 128 Stat. 1590.)

**Statutory Notes and Related Subsidiaries**

**EFFECTIVE DATE**

Section effective on the first day of the first full program year after July 22, 2014 (July 1, 2015), see section 506 of Pub. L. 113-128, set out as a note under section 3101 of this title.

**§ 3245. Reports; recordkeeping; investigations**

**(a) Recipient recordkeeping and reports**

**(1) In general**

Recipients of funds under this subchapter shall keep records that are sufficient to permit the preparation of reports required by this subchapter and to permit the tracing of funds to a level of expenditure adequate to ensure that the funds have not been spent unlawfully.

**(2) Records and reports regarding general performance**

Every such recipient shall maintain such records and submit such reports, in such form and containing such information, as the Secretary may require regarding the performance of programs and activities carried out under this subchapter. Such records and reports shall be submitted to the Secretary but shall not be required to be submitted more than once each quarter unless specifically requested by Congress or a committee of Congress, in which case an estimate regarding such information may be provided.

**(3) Maintenance of standardized records**

In order to allow for the preparation of the reports required under subsection (c), such recipients shall maintain standardized records for all individual participants and provide to the Secretary a sufficient number of such records to provide for an adequate analysis of the records.

**(4) Availability to the public**

**(A) In general**

Except as provided in subparagraph (B), records maintained by such recipients pursuant to this subsection shall be made available to the public upon request.

**(B) Exception**

Subparagraph (A) shall not apply to—

- (i) information, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and
- (ii) trade secrets, or commercial or financial information, that is—
  - (I) obtained from a person; and
  - (II) privileged or confidential.

**(C) Fees to recover costs**

Such recipients may charge fees sufficient to recover costs applicable to the processing of requests for records under subparagraph (A).

**(b) Investigations of use of funds**

**(1) In general**

**(A) Secretary**

In order to evaluate compliance with the provisions of this subchapter, the Secretary shall conduct, in several States, in each fiscal year, investigations of the use of funds received by recipients under this subchapter.

**(B) Comptroller general of the United States**

In order to ensure compliance with the provisions of this subchapter, the Comptroller General of the United States may conduct investigations of the use of funds re-