

reduce a base grant (as defined in section 9835(a)(7) of this title) for either program in succeeding years.

(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; Pub. L. 110-134, §14, Dec. 12, 2007, 121 Stat. 1415; Pub. L. 114-328, div. A, title VI, §618(j), Dec. 23, 2016, 130 Stat. 2161.)

#### Editorial Notes

##### 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.

This Act, referred to in subsec. (d)(3), is Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 499, known as the Omnibus Budget Reconciliation Act of 1981. For complete classification of this Act to the Code, see Tables.

##### AMENDMENTS

2016—Subsec. (a)(3)(B)(i). Pub. L. 114-328 inserted “or 351” after “section 310”.

2007—Subsec. (a). Pub. L. 110-134, §14(1)(A), added par. (a)(1) and struck out former par. (1) which related to criteria for eligibility for participation in Head Start programs assisted under this subchapter.

Subsec. (a)(3) to (5). Pub. L. 110-134, §14(1)(B), added pars. (3) to (5).

Subsec. (c). Pub. L. 110-134, §14(2), struck out “(age 3 to compulsory school attendance)” after “eligible children”.

Subsec. (d)(3). Pub. L. 110-134, §14(3), added par. (3) and struck out former par. (3) which read as follows: “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.”

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, des-

ignated 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).

#### Statutory Notes and Related Subsidiaries

##### 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.

#### § 9840a. Early Head Start programs

##### (a) In general

The Secretary shall make grants to entities (referred to in this subchapter as “Early Head Start agencies”) in accordance with this section for programs (referred to in this subchapter as “Early Head Start 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), 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 (including parenting skills training and training in basic child development) and services 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 (including home-based services) and programs in the community (including programs for infants and toddlers with disabilities and programs for homeless infants and toddlers) to ensure a comprehensive array of services (such as health and mental health services and family support services);
- (6) ensure that children with documented behavioral problems, including problems involving behavior related to prior or existing trauma, receive appropriate screening and referral;
- (7) ensure formal linkages with local Head Start programs in order to provide for continuity of services for children and families;
- (8) develop and implement a systematic procedure for transitioning children and parents from an Early Head Start program to a Head Start program or other local early childhood education and development program;
- (9) establish channels of communication between staff of the Early Head Start program, and staff of a Head Start program or other local providers of early childhood education and development programs, to facilitate the coordination of programs;
- (10) 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;
- (11) ensure formal linkages with 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.), with the State interagency coordinating council, as established in part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431 et seq.), and with the agency responsible for administering section 5106a of this title;
- (12) meet such other requirements concerning design and operation of the program described in subsection (a) as the Secretary may establish.

**(c) Persons eligible to participate**

Persons who may participate in programs described in subsection (a) include—

- (1) pregnant women; and
- (2) families with children under age 3;

who meet the eligibility criteria specified in section 9840(a)(1) of this title, including the criteria specified in section 9840(a)(1)(B)(ii) 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;
- (2) entities operating Indian Head Start programs or migrant or seasonal Head Start programs; and
- (3) other public entities, and nonprofit or for-profit private entities, including community-based and faith-based organizations, 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**

The Secretary shall award grants under this section on a competitive basis to applicants meeting the criteria specified in subsection (d) (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 applicants 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 made available under section 9835(a)(2)(E) of this title to monitor the operation of such programs, and funds made available under section 9835(a)(2)(C)(i)(I) of this title to provide training and technical assistance tailored to the particular needs of such programs, consistent with section 9835(c) of this title.

**(2) Training and technical assistance****(A) Activities**

Of the portion set aside under section 9835(a)(2)(C)(i)(I) of this title—

- (i) not less than 50 percent shall be made available to Early Head Start agencies to use directly, which may include, at their discretion, the establishment of local or regional agreements with community experts, institutions of higher education, or private consultants, for training and technical assistance activities in order to

make program improvements identified by such agencies;

(ii) not less than 25 percent shall be available to the Secretary to support a State-based training and technical assistance system, or a national system, described in section 9843(e) of this title, including infant and toddler specialists, to support Early Head Start agencies, consistent with subparagraph (B); and

(iii) the remainder of such amount shall be made available to the Secretary to assist Early Head Start agencies in meeting and exceeding the standards described in section 9836a(a)(1) of this title (directly, or through grants, contracts, or other agreements or arrangements with an entity with demonstrated expertise relating to infants, toddlers, and families) by—

(I) providing ongoing training and technical assistance to Early Head Start agencies, including developing training and technical assistance materials and resources to support program development and improvement and best practices in providing services to children and families served by Early Head Start programs;

(II) supporting a national network of infant and toddler specialists designed to improve the quality of Early Head Start programs;

(III) providing ongoing training and technical assistance on Early Head Start program development and improvement for regional staff charged with monitoring and overseeing the administration of the program carried out under this section; and

(IV) if funds remain after the activities described in subclauses (I), (II), and (III) are carried out, carry out 1 or more of the following activities:

(aa) Providing support and program planning and implementation assistance for new Early Head Start agencies, including for agencies who want to use funds as described in section 9840(a)(5) of this title to serve infants and toddlers.

(bb) Creating special training and technical assistance initiatives targeted to serving high-risk populations, such as children in the child welfare system and homeless children.

(cc) Providing professional development designed to increase program participation for underserved populations of eligible children.

#### **(B) Contracts**

For the purposes of supporting a State-based system, as described in subparagraph (A)(ii), that will meet the needs of Early Head Start agencies and provide high-quality, sustained, and intensive training and technical assistance on programming for infants and toddlers to Early Head Start agencies, and in order to help such agencies meet or exceed the standards described in section 9836a(a)(1) of this title, the Secretary shall—

(i) use funds reserved under subparagraph (A)(ii) in combination with funds reserved under section 9835(a)(2)(C)(i)(II)(bb) of this title to ensure the contracts described in section 9843(e)(1) of this title provide for a minimum of 1 full-time specialist with demonstrated expertise in the development of infants and toddlers; and

(ii) ensure that such contracts and the services provided in the contracts are integrated with and augment the contracts awarded and services provided under section 9843(e) of this title;

#### **(h) Center-based staff**

The Secretary shall—

(1) ensure that, not later than September 30, 2010, all teachers providing direct services to children and families participating in Early Head Start programs located in Early Head Start centers, have a minimum of a child development associate credential, and have been trained (or have equivalent coursework) in early childhood development; and

(2) establish staff qualification goals to ensure that not later than September 30, 2012, all such teachers have been trained (or have equivalent coursework) in early childhood development with a focus on infant and toddler development.

#### **(i) Staff qualifications and development**

##### **(1) Home visitor staff standards**

In order to further enhance the quality of home visiting services provided to families of children participating in home-based, center-based, or combination program options under this subchapter, the Secretary shall establish standards for training, qualifications, and the conduct of home visits for home visitor staff in Early Head Start programs.

##### **(2) Contents of standards**

The standards for training, qualifications, and the conduct of home visits shall include content related to—

(A) structured child-focused home visiting that promotes parents' ability to support the child's cognitive, social, emotional, and physical development;

(B) effective strengths-based parent education, including methods to encourage parents as their child's first teachers;

(C) early childhood development with respect to children from birth through age 3;

(D) methods to help parents promote emergent literacy in their children from birth through age 3, including use of research-based strategies to support the development of literacy and language skills for children who are limited English proficient;

(E) ascertaining what health and developmental services the family receives and working with providers of these services to eliminate gaps in service by offering annual health, vision, hearing, and developmental screening for children from birth to entry into kindergarten, when needed;

(F) strategies for helping families coping with crisis; and

(G) the relationship of health and well-being of pregnant women to prenatal and early child development.

(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; Pub. L. 110–134, § 15, Dec. 12, 2007, 121 Stat. 1418.)

### Editorial Notes

#### REFERENCES IN TEXT

The Individuals with Disabilities Education Act, referred to in subsec. (b)(11), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, which is classified generally to chapter 33 (§ 1400 et seq.) of Title 20, Education. Part C of the Act is classified generally to subchapter III (§ 1431 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.

#### AMENDMENTS

2007—Pub. L. 110–134, § 15(1), struck out “for families with infants and toddlers” after “programs” in section catchline.

Subsec. (a). Pub. L. 110–134, § 15(2), substituted “The Secretary shall make grants to entities (referred to in this subchapter as ‘Early Head Start agencies’) in accordance with this section for programs (referred to in this subchapter as ‘Early Head Start programs’)” for “The Secretary shall make grants, in accordance with the provisions of this section for programs”.

Subsec. (b)(4). Pub. L. 110–134, § 15(3)(A), added par. (4) and struck out former par. (4) which read as follows: “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);”.

Subsec. (b)(5). Pub. L. 110–134, § 15(3)(B), added par. (5) and struck out former par. (5) which read as follows: “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);”.

Subsec. (b)(6), (7). Pub. L. 110–134, § 15(3)(C), (D), added par. (6) and redesignated former par. (6) as (7). Former par. (7) redesignated (10).

Subsec. (b)(8), (9). Pub. L. 110–134, § 15(3)(E), added pars. (8) and (9).

Pub. L. 110–134, § 15(3)(C), redesignated pars. (8) and (9) as (11) and (12), respectively.

Subsec. (b)(10). Pub. L. 110–134, § 15(3)(C), redesignated par. (7) as (10).

Subsec. (b)(11). Pub. L. 110–134, § 15(3)(F), added par. (11) and struck out former par. (11) which read as follows: “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”.

Pub. L. 110–134, § 15(3)(C), redesignated par. (8) as (11).

Subsec. (b)(12). Pub. L. 110–134, § 15(3)(C), redesignated par. (9) as (12).

Subsec. (c). Pub. L. 110–134, § 15(4), substituted “eligibility criteria specified in section 9840(a)(1) of this title, including the criteria specified in section 9840(a)(1)(B)(ii) of this title” for “income criteria specified for families in section 9840(a)(1) of this title” in concluding provisions.

Subsec. (d)(1) to (3). Pub. L. 110–134, § 15(5), added pars. (1) to (3) and struck out former pars. (1) and (2) which read as follows:

“(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.”

Subsec. (e). Pub. L. 110–134, § 15(6), substituted “The Secretary shall award grants under this section” for “From the portion specified in section 9835(a)(6) of this title, the Secretary shall award grants under this subsection”.

Subsec. (g). Pub. L. 110–134, § 15(7), added subsec. (g) and struck out former subsec. (g) which related to monitoring, training, technical assistance, and evaluation of programs assisted under this section.

Subsecs. (h), (i). Pub. L. 110–134, § 15(8), added subsecs. (h) and (i).

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 “programs 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)” for “subsection (a)(1)” 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.

### Statutory Notes and Related Subsidiaries

#### 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.

**§ 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—

(1) procedures to assure that 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) procedures to assure that 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) procedures to assure that financial assistance under this subchapter may be terminated or reduced, and an application for refunding may be denied, after the recipient has been afforded reasonable notice and opportunity for a full and fair hearing, including—

(A) a right to file a notice of appeal of a decision not later than 30 days after notice of the decision from the Secretary; and

(B) access to a full and fair hearing of the appeal, not later than 120 days after receipt by the Secretary of the notice of appeal;

(4) procedures (including mediation procedures) are developed and published, to be used in order to—

(A) resolve in a timely manner conflicts potentially leading to an adverse action between—

(i) recipients of financial assistance under this subchapter; and

(ii) delegate agencies, or policy councils of Head Start agencies;

(B) avoid the need for an administrative hearing on an adverse action; and

(C) prohibit a Head Start agency from expending financial assistance awarded under this subchapter for the purpose of paying legal fees, or other costs incurred, pursuant to an appeal under paragraph (3);

(5) procedures to assure that the Secretary may suspend financial assistance to a recipient under this subchapter—

(A) except as provided in subparagraph (B), for not more than 30 days; or

(B) in the case of a recipient under this subchapter that has multiple and recurring deficiencies for 180 days or more and has not made substantial and significant progress toward meeting the goals of the grantee's quality improvement plan or eliminating all deficiencies identified by the Secretary, during the hearing of an appeal described in paragraph (3), for any amount of time; and

(6) procedures to assure that in cases where a Head Start agency prevails in a decision

under paragraph (4), the Secretary may determine and provide a reimbursement to the Head Start agency for fees deemed reasonable and customary.

**(b) Notification of conflict by Head Start agency to regional office**

In prescribing procedures for the mediation described in subsection (a)(4), the Secretary shall specify—

(1) the date by which a Head Start agency engaged in a conflict described in subsection (a)(4) 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).

(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; Pub. L. 110-134, §16, Dec. 12, 2007, 121 Stat. 1421.)