

ARIZONA STATE RETIREMENT SYSTEM
Title 2, Chapter 8, State Retirement System Board

Amend: R2-8-104, R2-8-117, R2-8-118, R2-8-201, R2-8-202, R2-8-204,
R2-8-205, R2-8-206, R2-8-207, R2-8-404, R2-8-502, R2-8-507



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

MEETING DATE: March 2, 2021

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: February 12, 2021

SUBJECT: Arizona State Retirement System
Title 2, Chapter 8

Amend: R2-8-104, R2-8-117, R2-8-118, R2-8-201, R2-8-202, R2-8-204,
R2-8-205, R2-8-206, R2-8-207, R2-8-404, R2-8-502, R2-8-507

This expedited rulemaking from the Arizona State Retirement System (ASRS) seeks to amend several rules in Title 2, Chapter 8, relating to the Arizona State Retirement System Board. In this expedited rulemaking, the Department seeks to address issues identified in the recent Five-Year Review Report (5YRR) for these rules, which the Council approved in July 2020.

ASRS received an exemption from the rulemaking moratorium to conduct this expedited rulemaking on October 8, 2020.

1. Do the rules satisfy the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)?

Yes. ASRS states that it is conducting this expedited rulemaking pursuant to A.R.S. § 41-1027(A) (7). The Council approved a 5YRR on these rules in July 2020. Upon review of this statute and the Department's 5YRR on these rules, Council staff agrees that this rulemaking meets the criteria for expedited rulemaking.

2. **Are the rules legal, consistent with legislative intent, and within the agency's statutory authority?**

Yes. ASRS cites both general and specific statutory authority for these rules.

3. **Do the rules establish a new fee or contain a fee increase?**

No. The rules do not establish a new fee or contain fee increase.

4. **Does the agency adequately address the comments on the proposed rules and any supplemental proposals?**

No. ASRS indicates they did not receive any comments.

5. **Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?**

No. No changes were made between the proposed expedited rulemaking and the final expedited rulemaking

6. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

Not applicable. There is no corresponding federal law.

7. **Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The rules do not require the issuance of a permit or license.

8. **Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?**

The Department did not review or rely on a study in conducting this expedited rulemaking.

9. **Conclusion**

ASRS seeks to implement a proposed course of action from its recent 5YRR on these rules. Council staff finds that as amended, the rules would be more clear, concise, understandable, effective, and consistent with other rules and statutes. If approved, this rulemaking would be effective immediately upon the Department filing its Certificate of Approval and rulemaking with the Secretary of State. Council staff recommends approval of this expedited rulemaking.



PHOENIX: 3300 North Central Avenue | PO Box 33910 Phoenix, AZ 85067-3910 | 602.240.2000
TUCSON: 4400 East Broadway Boulevard, Suite 200 Tucson, AZ 85711-3554 | 520.239.3100
TOLL FREE: 1.800.621.3778 | AzASRS.gov
ASRS DIRECTOR: Paul Matson

1/6/2021

Ms. Nicole Sornsins, Chair
The Governor's Regulatory Review Council
100 North 15th Avenue, Ste. 305
Phoenix, AZ 85007

**Re: A.A.C. Title 2. Administration
Chapter 8. State Retirement System Board**

Dear Ms. Sornsins:

The attached final expedited rule package is submitted for review and approval by the Council. The following information is provided for Council's use in reviewing the expedited rule package:

1. Close of record date: The rulemaking record was closed on December 22, 2020 following a period for public comment.
2. Explanation of meeting A.R.S. § 41-1027(A): A.R.S. § 41-1027(A)(7) allows an agency to complete an expedited rulemaking if it "implements, without material change, a course of action that is proposed in a five-year review report approved by the council." In its 2020 five-year review report, the ASRS proposed to make these changes and the Council approved that proposed action in July 2020.
3. Relation of the rulemaking to a five-year-review report: This rulemaking relates to the Five-year Review Report approved by the Council in July 2020.
4. Certification regarding studies: I certify that the Board did not rely on any studies for this rulemaking.
6. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify that the rules in this rulemaking will not require a state agency to employ a new full-time employee. No notification was provided to JLBC.
7. List of documents enclosed:
 - a. Cover letter signed by the Board's Assistant Director; and
 - b. Notice of Final Expedited Rulemaking including the preamble, table of contents for the rulemaking, and rule text.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Scott", is written over a light blue circular stamp.

Jeremiah Scott
Assistant Director

NOTICE OF FINAL EXPEDITED RULEMAKING
TITLE 2. ADMINISTRATION
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD
PREAMBLE

1. Articles, Parts, and Sections Affected

Rulemaking Action

R2-8-104	Amend
R2-8-117	Amend
R2-8-118	Amend
R2-8-201	Amend
R2-8-202	Amend
R2-8-204	Amend
R2-8-205	Amend
R2-8-206	Amend
R2-8-207	Amend
R2-8-404	Amend
R2-8-502	Amend
R2-8-507	Amend

2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):

Authorizing statute: A.R.S. § 38-714(E)(4)

Implementing statutes: A.R.S. §§ 38-711 et seq.

3. The effective date for the rules:

a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):

Not applicable.

b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):

None

4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:

Notice of Proposed Expedited Rulemaking: 26 A.A.R. 2840, November 6, 2020

5. The agency's contact person who can answer questions about the rulemaking:

Name: Jessica A.R. Thomas, Rules Writer
Address: Arizona State Retirement System
3300 N. Central Ave., Ste. 1400
Phoenix, AZ 85012-0250
Telephone: (602) 240-2039
E-Mail: Ruleswriter@azasrs.gov

6. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:

The agency needs to amend these rules consistent with its five-year review report that was approved by the Governor's Regulatory Review Council in July 2020. These amendments will correct minor formatting and grammatical errors, as well as remove some information requirements that are no longer necessary. A.R.S. § 41-1027(A)(7) allows an agency to complete an expedited rulemaking if it "implements, without materials change, a course of action that is proposed in a five-year review report approved by the council." In its 2020 five-year review report, the ASRS proposed to make these changes and the Council approved that proposed action in July 2020.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

No study was reviewed.

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

9. The preliminary summary of the economic, small business, and consumer impact:

Under A.R.S. § 41-1055(D)(2), ASRS is not required to provide an economic, small business, and consumer impact statement.

10. A description of any changes between the proposed rulemaking, including supplemental notices, and the final rulemaking:

None

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

The ASRS received no written comments regarding the rulemaking.

12. All agencies shall list any other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

None.

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

The rules do not require a permit.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

There are no federal laws applicable to these rules.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No analysis was submitted.

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:

No materials are incorporated by reference.

14. Whether the rule was previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the *Register* as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

Not applicable.

15. The full text of the rules follows:

TITLE 2. ADMINISTRATION
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD
ARTICLE 1. RETIREMENT SYSTEM

- R2-8-104. Definitions
- R2-8-117. Return to Work After Retirement
- R2-8-118. Application of Interest Rates

ARTICLE 2. HEALTH INSURANCE PREMIUM BENEFIT

- R2-8-201. Definitions
- R2-8-202. Premium Benefit Eligibility and Benefit Determination
- R2-8-204. Premium Benefit Calculation
- R2-8-205. Premium Benefit Documentation
- R2-8-206. Six-Month Reimbursement Program
- R2-8-207. Optional Premium Benefit

ARTICLE 4. PRACTICE AND PROCEDURE BEFORE THE BOARD

- R2-8-404. Board Decisions on Hearings before the Office of Administrative Hearings

ARTICLE 5. PURCHASING SERVICE CREDIT

- R2-8-502. Request to Purchase Service Credit and Notification of Cost
- R2-8-507. Required Documentation and Calculations for Forfeited Service Credit

ARTICLE 1. RETIREMENT SYSTEM

R2-8-104. Definitions

- A. The definitions in A.R.S. § 38-711 apply to this Chapter.
- B. Unless otherwise specified, in this Chapter:
1. “Actuarial assumption” means an estimate of an uncertain future event that affects pension liabilities, or assets, or both.
 2. “Assumed actuarial investment earnings rate” means the assumed rate of investment return approved by the Board and contained in R2-8-118(A).
 3. “Authorized employer representative” means an individual specified by the ~~ASRS employer~~ Employer to provide the ASRS with information about a member who previously worked for the ASRS employer.
 4. “Contribution” means:
 - a. Amounts required by A.R.S. Title 38, Chapter 5, Articles 2 and 2.1 to be paid to the ASRS by a member or an employer on behalf of a member;
 - b. Any voluntary amounts paid to the ASRS pursuant to 2 A.A.C. 8, Article 5 by a member to be placed in the member’s account; and
 - c. Amounts credited by transfer under ~~A.R.S. § 38-9242~~ A.A.C. 8, Article 11.
 5. “Day” means a calendar day, and excludes the:
 - a. Day of the act or event from which a designated period of time begins to run; and
 - b. Last day of the period if a Saturday, Sunday, or official state holiday.
 6. “Designated beneficiary” means the same as in A.R.S. § 38-762(G) or another person designated as a beneficiary by law.

7. “Director” means the Director appointed by the Board as provided in A.R.S. § 38-715.
8. “Individual retirement account” or “IRA” means the types of eligible retirement plans specified in A.R.S. § 38-770(D)(3)(a) and (b).
9. “Party” means the same as in A.R.S. § 41-1001(14).
10. “Person” means the same as in A.R.S. § 41-1001(15).
11. “Plan” means the same as “defined benefit plan” in A.R.S. § 38-712(B), and as administered by the ASRS.
12. “Retirement account” means the same as in A.R.S. § 38-771(J)(2).
13. “Rollover” means a contribution to the ASRS by an eligible member of an eligible rollover distribution from one or more of the retirement plans listed in A.R.S. § 38-747(H)(2) and (H)(3).
14. “Terminate employment” means to end the employment relationship between a member and an ASRS employer with the intent that the member does not return to employment with an ASRS employer.
15. “United States” means the same as in A.R.S. § 1-215(39).

R2-8-117. Return to Work After Retirement

A. Unless otherwise specified, in this Section:

1. “Commencing employment” means the date a retired member who is not independently contracted or leased from a third party pursuant to R2-8-116(A)(4) renders services directly to an Employer for which the retired member is entitled to be paid.
2. “Returns to work” means the member retired from the ASRS prior to ~~commencing employment~~ Commencing Employment with an Employer.

- B.** Pursuant to A.R.S. § 38-766.01(C), a retired member who returns to work directly with an Employer shall submit a Working After Retirement form to each of the retired member's current Employers through the retired member's secure website account within 30 days of the retired member ~~commencing employment~~ Commencing Employment with an Employer.
- C.** Pursuant to A.R.S. § 38-766.02(E), within 14 days of receipt of a Working After Retirement form, an Employer shall verify the retired member's employment information and submit the verified Working After Retirement form to the ASRS through the Employer's secure website account for each retired member who returns to work with the Employer.
- D.** After a retired member returns to work, the Employer shall submit a verified Working After Retirement form to the ASRS through the Employer's secure website account within 30 days of a change in the actual hours or intent of each retired member's employment that results in:
1. The member's number of hours worked per week increasing from less than 20 hours per week to 20 or more hours per week; or
 2. The member's number of weeks worked in a fiscal year increasing from less than 20 weeks per fiscal year to 20 or more weeks per fiscal year.
- E.** The Working After Retirement form shall contain the following information:
1. The retired member's ~~social security~~ Social Security number or U.S. Tax Identification number;
 2. The retired member's full name;
 3. The date the member retired;
 4. Whether the retired member terminated employment, and if so, the date the retired member terminated employment;

5. The first date of ~~commencing employment~~ Commencing Employment upon the retired member's return to work;
 6. The intent of the retired member's employment reflected as:
 - a. The anticipated number of hours the retired member is engaged to work per week and the anticipated number of weeks the retired member is engaged to work per fiscal year;
or
 - b. The actual number of hours the retired member works for an Employer per week and the actual number of weeks the retired member works for an Employer in a fiscal year.
 7. Acknowledgement by the retired member that the retired member has read the Return to Work information on the ASRS website and intends to ~~continue submitting the Working After Retirement form to the retired member's Employer~~ submit the Working After Retirement form to the Employer and submit any additional Working After Retirement forms to the Employer as required.
- F.** Upon discovering that the retired member's employment violates A.R.S. §§ 38-766 or 38-766.01, the ASRS shall send the retired member a Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form.
- G.** By the due date specified on the Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form, the retired member shall return the completed form and any supporting documentation to the ASRS indicating the action the retired member will take to correct the violation of A.R.S. §§ 38-766 or 38-766.01.
- H.** If the member does not submit the Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form pursuant to subsection (G), the ASRS shall suspend the retired member's

retirement benefits from the date on the Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form.

- I. If the ASRS suspends the retired member’s retirement benefits pursuant to subsection (H), the ASRS shall reinstate the retired member’s retirement benefits upon notice from the Employer that all violations pursuant to subsection (F) have been corrected.

R2-8-118. Application of Interest Rates

- A. Application of interest from inception of the ASRS Plan through the present is as follows:

Effective Date of Interest Rate Change	Assumed Actuarial Investment Earnings Rate	Interest Rate Used to Determine Return of Contributions Upon Termination of Membership by Separation from Service by Other Than Retirement or Death
7-1-1953	2.50%	2.50%
7-1-1959	3.00%	3.00%
7-1-1966	3.75%	3.75%
7-1-1969	4.25%	4.25%
7-1-1971	4.75%	4.75%
7-1-1975	5.50%	5.50%
7-1-1976	6.00%	5.50%
7-1-1981	7.00%	5.50%
7-1-1982	7.00%	7.00%
7-1-1984	8.00%	8.00%
7-1-2005	8.00%	4.00%
7-1-2013	8.00%	2.00%
7-1-2018	7.50%	2.00%

- B. At the beginning of each fiscal year, interest is credited to the retirement account of each member on the June 30 that marks the end of the fiscal year based on the balance in the

member's account as of the previous June 30. The balance on which interest is credited includes:

1. Employer and employee contributions;
2. Voluntary additional contributions made by members pursuant to A.R.S. §§ 38-742, 38-743, 38-744, and 38-745, if applicable;
3. Amounts credited by transfer under ~~A.R.S. § 38-922-2~~ A.A.C. 8, Article 11; and
4. Interest credited in previous years.

C. Notwithstanding subsection (B), the retirement account of each member stops accruing interest the last full month prior to the member's retirement date.

ARTICLE 2. HEALTH INSURANCE PREMIUM BENEFIT

R2-8-201. Definitions

The following definitions apply to this Article unless otherwise specified:

1. "Coverage" means a medical and/or dental insurance plan a retired member, Disabled member, or ~~contingent annuitant~~ beneficiary obtains through the ASRS or an Employer.
2. "Contingent annuitant" means the same as in A.R.S. § 38-711(8) and the person is eligible for Coverage.
3. "Disabled" means the member has a disability and is receiving long-term disability benefits pursuant to A.R.S. § 38-797 et seq.
4. "Family calculation" means the family Coverage premium described in A.R.S. § 38-783(B).
5. "Joint & survivor" means the annuity option described in A.R.S. § 38-760(B)(1).
6. "Net premium" means the amount of the Coverage premium reduced by the amount of the Premium Benefit provided by the ASRS.

~~7.~~ 7. “On file” means the same as in R2-8-115.

~~7.8.~~ 7.8. “Original retirement date” means the same as in R2-8-126.

~~8.9.~~ 8.9. “Optional premium benefit” means the election, upon retirement, to have the Premium Benefit paid on behalf of the member’s Contingent Annuitant upon death of the member pursuant to A.R.S. § 38-783.

~~9.10.~~ 9.10. “Period-certain” means the annuity option described in A.R.S. § 38-760(B)(2).

~~10.11.~~ 10.11. “Premium benefit” means the amount the ASRS provides on behalf of a retired member or Disabled member in order to offset the Coverage premium of the retired or Disabled member pursuant to A.R.S. § 38-783.

~~11.12.~~ 11.12. “Single calculation” means the single Coverage premium calculation described in A.R.S. § 38-783(A).

~~12.13.~~ 12.13. “Subsidized” means the same as in A.R.S. § 38-783(M)(4).

R2-8-202. Premium Benefit Eligibility and Benefit Determination

A. A retired member or Disabled member who has five or more years of service and who elects to maintain Coverage is eligible for a Premium Benefit as follows:

1. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member only, is eligible for a Single Calculation of the Premium Benefit as described in R2-8-204(A);
2. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member and a dependent who is not a retired member or Disabled member is eligible for a Family Calculation of the Premium Benefit as described in R2-8-204(B).

3. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member and a dependent who is a retired member or Disabled member is eligible for the greater of:
 - a. Two Single Calculations of the Premium Benefit described in R2-8-204(A); or
 - b. One Family Calculation of the Premium Benefit described in R2-8-204(B).
 4. A retired member or Disabled member who is enrolled as a dependent on ~~an~~ a ~~active~~ member's insurance plan is eligible for a Single Calculation of the Premium Benefit described in R2-8-204(A) if:
 - a. The retired member has an Original Retirement Date prior to August 2, 2012; or
 - b. The Disabled member became Disabled prior to August 2, 2012;
 5. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member and multiple dependents, some of whom are retired members or Disabled members, is eligible for the greater of:
 - a. Two Single Calculations of the Premium Benefit described in R2-8-204(A); or
 - b. One Family Calculation of the Premium Benefit described in R2-8-204(B).
- B.** Pursuant to A.R.S. § 38-783(E), a retired member who returns to work ~~as an active member~~ with an Employer and elects to maintain Coverage is eligible to receive a Premium Benefit if the member has an Original Retirement Date prior to August 2, 2012.
- C.** Pursuant to A.R.S. § 38-783(E), a Disabled member who elects to maintain Coverage is eligible to receive a Premium Benefit if the Disabled member became Disabled prior to August 2, 2012.
- D.** A member who receives a lump sum distribution from the ASRS upon retirement is eligible to receive a Premium Benefit pursuant to this Article.

E. Notwithstanding any other Section, a retired member who has an Original Retirement Date on or after August 2, 2012, or a Disabled member who became Disabled on or after August 2, 2012 is eligible to receive a Premium Benefit pursuant to this Article, only if Coverage is not Subsidized.

R2-8-204. Premium Benefit Calculation

A. A Single Calculation for a Premium Benefit is based on the retired member's or Disabled member's Coverage election, years of service, and Medicare or non-Medicare status.

B. A Family Calculation for a Premium Benefit is based on the retired member's or Disabled member's Coverage election, years of service, and Medicare or Non-Medicare status, and the Medicare or Non-Medicare status of any dependents for which the retired member or ~~disabled~~ Disabled member has obtained Coverage.

C. A Contingent Annuitant who is eligible to receive an Optional Premium Benefit pursuant to R2-8-207 shall receive an Optional Premium Benefit amount based on:

1. The retired member's years of service and optional retirement benefit election pursuant to A.R.S. § 38-760; and
2. The Contingent Annuitant's Coverage and Medicare or non-Medicare status.

D. Notwithstanding R2-8-203(H), if a Contingent Annuitant is a retired member, the Contingent Annuitant may be entitled to receive more than one Premium Benefit.

R2-8-205. Premium Benefit Documentation

A. Every year, prior to the effective date of Coverage, an Employer shall report to the ASRS all the Coverage plans and premium rates the Employer offers to its retired or Disabled employees.

- B.** An Employer shall inform the ASRS of any changes to the retired member's, Disabled member's, or Contingent Annuitant's Coverage, including enrollment in Coverage, maintained through the Employer within 30 days of the changes taking effect.
- C.** Using the Employer's secure ASRS website account, or another ASRS approved method, an Employer shall submit the following health insurance enrollment, change, and/or deletion information pursuant to subsection (B):
1. The retired member's, Disabled member's, or Contingent Annuitant's ~~social security~~ Social Security number or U.S. Tax Identification number;
 2. The retired member's, Disabled member's, or Contingent Annuitant's full name;
 3. ~~The retired member's, Disabled member's, or Contingent Annuitant's residential mailing address and telephone number~~;
 - 4.3. The retired member's, Disabled member's, or Contingent Annuitant's date of birth;
 - 5.4. The Coverage in which the retired member, Disabled member, or Contingent Annuitant is enrolling;
 - 6.5. The type of change that is being made to the Coverage;
 - 7.6. The following information for each dependent enrolled in, or to be enrolled in, Coverage:
 - a. First and last name;
 - b. Social ~~security~~ Security number or U.S. Tax Identification number;
 - c. Date of birth; and
 - d. Medicare number, if applicable.
 - 8.7. The old and new premium amounts for Coverage;
 - 9.8. The effective date of the change, deletion, and/or enrollment;

~~10.9.~~ The Employer's name and telephone number;

~~11.10.~~ A certification by the Employer representative's dated signature that the information is current and correct.

R2-8-206. Six-Month Reimbursement Program

- A. For a retired member or Disabled member who is eligible for a Premium Benefit pursuant to R2-8-202(A)(4) or (B), the ASRS shall remit the Premium Benefit to the retired member or Disabled member pursuant to subsection (B).
- B. Pursuant to subsection (A), the ASRS shall remit the Premium Benefit to the retired member or Disabled member every six months, payable in July and January. For purposes of this Section, the Premium Benefit shall be the aggregate amounts of the Premium Benefit the retired member or Disabled member is entitled to receive during the previous six months.
- C. In order to receive a Premium Benefit payment pursuant to subsection (B), a retired member or Disabled member shall submit to the ASRS the Reimbursement of Medical and/or Dental Cost (Six-Month Reimbursement Program) form after the last day of the last month for which the retired member or Disabled member is seeking reimbursement.
- D. The Reimbursement of Medical and/or Dental Cost (Six-Month Reimbursement Program) form that a retired member or Disabled member submits pursuant to subsection (C) shall include the following information:
1. The retired member's or Disabled member's ~~social security~~ Social Security number or U.S. Tax Identification number;
 2. The retired member's or Disabled member's full name;
 3. The retired member's or Disabled member's mailing address and phone number;
 4. The retired member's or Disabled member's date of birth;

5. The retired member's or Disabled member's status with the ASRS;
6. The retired member's or Disabled member's status with the retired member's or Disabled member's Employer;
7. The following Coverage information for the Coverage policy holder:
 - a. First and last names;
 - b. Social ~~security~~ Security number or U.S. Tax Identification number;
 - c. Date of birth;
 - d. Effective date of Coverage;
8. The following information for each dependent enrolled in, or to be enrolled in, Coverage:
 - a. First and last name;
 - b. Social ~~security~~ Security number or U.S. Tax Identification number;
 - c. Date of birth;
 - d. Effective date of Coverage;
9. Six-month reimbursement totals identified by:
 - a. The month and year the premium is due for Coverage;
 - b. The total medical plan premium per month;
 - c. The total dental plan premium per month;
 - d. The employee's out-of-pocket payroll deduction for a medical premium per month;
 - e. The employee's out-of-pocket payroll deduction for a dental premium per month;
 - f. The employee's total out-of-pocket payroll deduction for medical and dental premiums per month;
10. The Employer's name;
11. The Employer's phone number;

12. The Employer's email address;
13. The name of the Employer's representative; and
14. The dated signature of the Employer's representative.

R2-8-207. Optional Premium Benefit

- A.** A member who retires on or after January 1, 2004 is eligible to elect the Optional Premium Benefit to be effective on the date of the retired member's retirement and may designate a Contingent Annuitant to receive the Optional Premium Benefit upon the death of the retired member if:
1. The retired member elects a retirement option under A.R.S. § 38-760; and
 2. The retired member elects to maintain Coverage.
- B.** A retired member who returns to active membership for 60 consecutive months or more before retiring again, may elect or re-elect the Optional Premium Benefit pursuant to subsection (A).
- C.** A retired member who does not return to active membership for 60 consecutive months or more before retiring again is not eligible to elect the Optional Premium Benefit pursuant to subsection (A) unless the retired member elected the Optional Premium Benefit to be effective on the date of the retired member's Original Retirement Date.
- D.** In order to elect, re-elect, or terminate the Optional Premium Benefit pursuant to subsection (A), the retired member shall submit to the ASRS the Optional Premium Benefit Program Election or Termination form containing the following information:
1. The retired member's Social Security ~~Number~~ number or U.S. Tax Identification number;
 2. ~~The retired member's full name and gender;~~
 3. ~~The retired member's current mailing address;~~
 4. ~~The retired member's date of birth;~~

5. ~~The retired member's email address;~~
6. ~~The retired member's phone number;~~
- 7.2. Whether the retired member is electing, declining, or terminating the Optional Premium Benefit;
- 8.3. The following information for the Contingent Annuitant if the retired member is electing or re-electing the Optional Premium Benefit:
 - a. The Social Security ~~Number~~ number or U.S. Tax Identification number;
 - b. The full name; and
 - e. ~~The mailing address;~~
 - d. ~~The phone number;~~
 - e.c. The date of birth, if not On File; and
 - f. ~~The gender and relationship to the retired member; and~~
- 9.4. Certification of understanding by the retired member's dated signature of the following statements:
 - a. I have a one-time election at the time of retirement for this benefit, and have a retirement date on or after January 1, 2004;
 - b. I must elect a Joint & Survivor or Period-Certain annuity option;
 - c. If I elect to participate, my Contingent Annuitant must ~~either be~~ be either participating or eligible to participate in my retiree health care plan at the time of my death;
 - d. I must provide ~~a Social Security Number and~~ proof of birth date for my Contingent Annuitant;

- e. The Premium Benefit will be actuarially reduced for the remainder of my benefit and my Contingent Annuitant's benefit as long as the Optional Premium Benefit is elected; and
 - f. I may rescind the election at any time and be eligible for the unreduced Premium Benefit payable as provided by law.
- E.** In order to elect or re-elect the Optional Premium Benefit, a member shall submit the Optional Premium Benefit Program Election or Termination form to the ASRS prior to the member's ~~retirement date~~ Original Retirement Date.
- F.** A Contingent Annuitant the retired member designates to receive the Optional Premium Benefit upon the retired member's death is eligible to receive a Premium Benefit if:
1. The retired member designates the Contingent Annuitant as the primary beneficiary on the member's retirement account;
 2. The Contingent Annuitant is enrolled in a Coverage plan at the time of the member's death or the Contingent Annuitant enrolls in a Coverage plan within six months of the retired member's death pursuant to A.R.S. § 38-782(A); and
 3. The Contingent Annuitant is eligible to receive at least one monthly payment.
- G.** Upon the death of a retired member who elected the Optional Premium Benefit pursuant to subsection (A), the ASRS shall provide the Optional Premium Benefit on behalf of the retired member's Contingent Annuitant who is eligible to receive the Optional Premium Benefit pursuant to subsection (F).
- H.** Notwithstanding subsection (G), the amount of the Optional Premium Benefit the ASRS provides on behalf of a Contingent Annuitant shall not exceed the actual amount of the Coverage premium.

- I. Unless otherwise indicated by law, the Optional Premium Benefit shall not terminate upon the death of the retired member if a Contingent Annuitant is eligible for the Optional Premium Benefit pursuant to subsection (F).

ARTICLE 4. PRACTICE AND PROCEDURE BEFORE THE BOARD

R2-8-404. Board Decisions on Hearings before the Office of Administrative Hearings

A recommended decision from the Office of Administrative Hearings that is sent to ASRS at least 30 days before the Board's next regular ~~monthly~~ meeting, shall be reviewed by the Board at that ~~monthly~~ meeting. At the ~~monthly~~ meeting, the Board shall render a decision to accept, reject, or modify the findings of fact, conclusions of law and recommendations in whole or in part. If the Board modifies or rejects a recommended decision, the Board shall state the reasons for the modification or rejection. The Board shall deliver the Board's final decision to the Office of Administrative Hearings within five days after the ~~monthly~~ meeting at which the Board made the final decision.

ARTICLE 5. PURCHASING SERVICE CREDIT

R2-8-502. Request to Purchase Service Credit and Notification of Cost

- A. An Eligible Member may request to purchase Service Credit electronically. The Eligible Member shall verify at the time of request, the following information for the Eligible Member:
1. Name;
 2. Mailing address;
 3. Date of birth;
 4. Marital status;
 5. Gender;
 6. Primary email address;

7. Primary phone number; and
 8. Which category of Service Credit the Eligible Member is requesting to purchase.
- B.** An Eligible Member who requests to purchase Service Credit pursuant to subsection (A) shall acknowledge the following statements of understanding:
1. Any person who knowingly makes any false statement or who falsifies or permits to be falsified any record of the retirement plan with an intent to defraud the plan is guilty of a class 6 felony per Arizona Revised Statutes Section 38-793; and
 2. This transaction is subject to audit. If any errors or misrepresentations are discovered as a result of an audit, the Eligible Member's total credited service with the ASRS will be adjusted as necessary and if the Eligible Member is retired, the Eligible Member's retirement benefit will also be adjusted. Any overpayment(s) will be refunded. However, if a payment made with a rollover or pre-tax dollars is returned to the Eligible Member, there may be tax consequences as a result of this refund.
- C.** Upon receipt of the documentation required by this Article from the Eligible Member and if the Eligible Member's request to purchase Service Credit meets the requirements of this Article, the ASRS shall provide the following to the Eligible Member:
1. A An SP Invoice stating the cost to purchase the amount of Service Credit the member is eligible to purchase;
 2. Instructions for electing method of payment; and
 3. The date payment election is due.
- D.** An Eligible Member who requests to purchase Service Credit pursuant to this section shall elect one or more methods of payment and submit the election to the ASRS by the date payment election is due.

E. An Eligible Member who elects to purchase Service Credit using after-tax payments shall acknowledge the following information:

1. After-tax payments must be from the Eligible Member and remitted to the ASRS by the Eligible Member;
2. After-tax payments cannot be used to purchase political subdivision employment with a United States territory, commonwealth, overseas possession, or insular area; and
3. If the Eligible Member joined the ASRS on or after July 1, 1999, §§ 415(b) and 415(c) of the IRC limit the after-tax money the Eligible Member can use to purchase Service Credit.

R2-8-507. Required Documentation and Calculations for Forfeited Service Credit

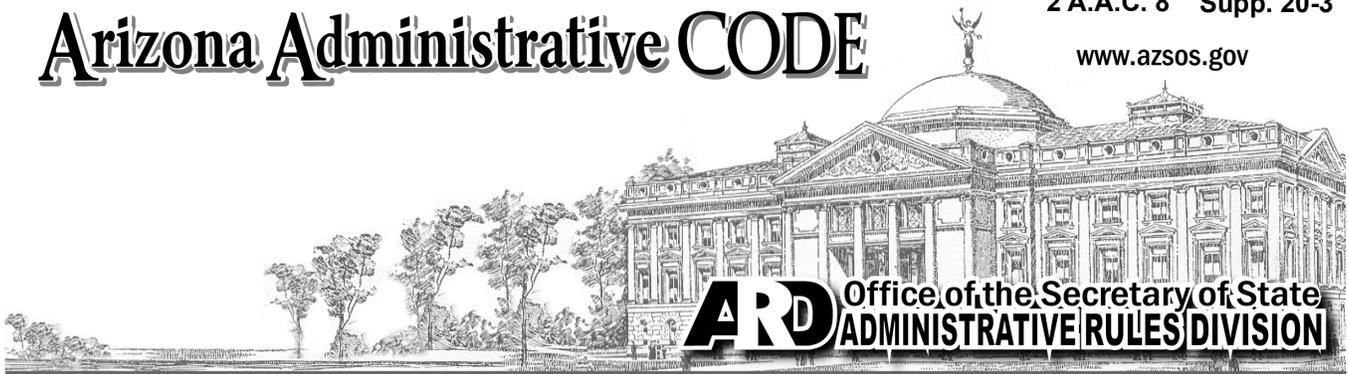
A. An Eligible Member who requests to purchase Service Credit for Forfeited Service under A.R.S. § 38-742 shall provide the ASRS:

1. The name of an Employer, if known, for which the Eligible Member is requesting to purchase Service Credit for Forfeited Service; and
2. The year and month the Eligible Member believes the ASRS returned retirement contributions.

B. Upon receipt of payment as specified in subsection (D), the ASRS shall apply the Service Credit to the Eligible Member's account based on the most recent Forfeited Service available for purchase.

C. Notwithstanding subsection (B), if an Eligible Member has more than one return of contributions pursuant to A.R.S. § 38-740, the Eligible Member may elect to purchase Forfeited Service for any of the return of contributions and the ASRS shall apply the Service Credit to the Eligible Member's account based on the most recent Forfeited Service available for purchase.

D. The amount the Eligible Member shall pay to purchase Service Credit for previously Forfeited Service is the amount of retirement contributions that the ASRS ~~returned~~issued, plus interest on that amount from the date on the return of retirement contributions check to the date of redeposit at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A).



TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

The table of contents on the first page contains quick links to the referenced page numbers in this Chapter. Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

Sections, Parts, Exhibits, Tables or Appendices codified in this supplement. The list provided contains quick links to the updated rules.

This Chapter contains rule Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of July 1, 2020 through September 30, 2020.

R2-8-115.	Return of Contributions Upon Termination of Membership by Separation from All ASRS Employment by Other Than Retirement or Death	5	R2-8-129.	Period Certain and Life Annuity Retirement Options	15
R2-8-120.	Repealed	8	R2-8-130.	Rescind or Revert Retirement Election; Change of Contingent Annuitant	15
R2-8-126.	Retirement Application	12	R2-8-131.	Designating a Beneficiary; Spousal Consent to Beneficiary Designation	17
R2-8-127.	Re-Retirement Application	14	R2-8-132.	Survivor Benefit Options	18
R2-8-128.	Joint and Survivor Retirement Benefit Options	15	R2-8-133.	Survivor Benefit Applications	19

Questions about these rules? Contact:

Name: Jessica A.R. Thomas, Rules Writer
Address: Arizona State Retirement System
3300 N. Central Ave., Suite 1400
Phoenix, AZ 85012-0250
Telephone: (602) 240-2039
E-mail: JessicaT@azasrs.gov

The release of this Chapter in Supp. 20-3 replaces Supp. 20-1, 1-44 pages

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the *Administrative Code*. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION

RULES

The definition for a rule is provided for under A.R.S. § 41-1001. “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

The *Code* is separated by subject into titles. Titles are divided into chapters. A chapter includes state agency rules. Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each chapter.

First Quarter: January 1 - March 31

Second Quarter: April 1 - June 30

Third Quarter: July 1 - September 30

Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2019 is cited as Supp. 19-1.

Please note: The Office publishes by chapter, not by individual rule section. Therefore there might be only a few sections codified in each chapter released in a supplement. Historical notes at the end of a section provide an effective date and information when a rule was last updated.

AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate chapters of the *Administrative Code* in Supp. 18-1 to comply with A.R.S. § 41-1012(B) and A.R.S. § 5302(1), (2)(d) through (e), and (3)(d) through (e).

A certification verifies the authenticity of each *Code* chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document’s content has been compromised.

HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, www.azleg.gov. An agency’s authority

note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

SESSION LAW REFERENCES

Arizona Session Law references in a chapter can be found at the Secretary of State’s website, under Services-> Legislative Filings.

EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at www.azsos.gov/rules, click on the *Administrative Register* link.

Editor’s notes at the beginning of a chapter provide information about rulemaking sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

EXEMPTIONS AND PAPER COLOR

At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

PERSONAL USE/COMMERCIAL USE

This chapter is posted as a public courtesy online, and is for private use only. Those who wish to use the contents for resale or profit should contact the Office about Commercial Use fees. For information on commercial use fees review A.R.S. § 39-121.03 and 1 A.A.C. 1, R1-1-113.

Rhonda Paschal, managing rules editor, assisted with the editing of this chapter.



Administrative Rules Division
The Arizona Secretary of State electronically publishes each A.A.C. Chapter with a digital certificate. The certificate-based signature displays the date and time the document was signed and can be validated in Adobe Acrobat Reader.

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

Authority: A.R.S. § 38-701 et seq.

ARTICLE 1. RETIREMENT SYSTEM

Section		Table 3.	Repealed	21
R2-8-101.	Repealed	Table 4.	Repealed	21
R2-8-102.	Repealed	Table 5.	Repealed	21
R2-8-103.	Repealed	Table 6.	Repealed	21
R2-8-104.	Definitions	Table 7.	Repealed	21
R2-8-105.	Repealed	Table 8.	Repealed	22
R2-8-106.	Reserved	Table 9.	Repealed	22
R2-8-107.	Reserved	Table 10.	Repealed	22
R2-8-108.	Reserved	Table 11.	Repealed	22
R2-8-109.	Reserved	Exhibit A.	Repealed	22
R2-8-110.	Reserved	Exhibit B, Table 1.	Repealed	22
R2-8-111.	Reserved	Exhibit B, Table 2.	Repealed	22
R2-8-112.	Reserved	Exhibit B, Table 3.	Repealed	22
R2-8-113.	Emergency Expired	Exhibit C.	Repealed	22
R2-8-114.	Emergency Expired	Exhibit D, Table 1.	Repealed	22
R2-8-115.	Return of Contributions Upon Termination of Membership by Separation from All ASRS Employment by Other Than Retirement or Death	Exhibit D, Table 2.	Repealed	23
R2-8-116.	Alternate Contribution Rate	Exhibit D, Table 3.	Repealed	23
R2-8-117.	Return to Work After Retirement	Exhibit D, Table 4.	Repealed	23
R2-8-118.	Application of Interest Rates	Exhibit D, Table 5.	Repealed	23
R2-8-119.	Expired	Exhibit D, Table 6.	Repealed	23
R2-8-120.	Repealed	Exhibit E, Table 1.	Repealed	23
R2-8-121.	Repealed	Exhibit E, Table 2.	Repealed	23
R2-8-122.	Remittance of Contributions	Exhibit E, Table 3.	Repealed	23
R2-8-123.	Actuarial Assumptions and Actuarial Value of Assets	Exhibit E, Table 4.	Repealed	23
Table 1.	Expired	Exhibit E, Table 5.	Repealed	23
Table 2.	Expired	Exhibit E, Table 6.	Repealed	24
Table 3.	Repealed	Exhibit F, Table 1.	Repealed	24
Table 3A.	Expired	Exhibit F, Table 2.	Repealed	24
Table 3B.	Expired	Exhibit F, Table 3.	Repealed	24
Table 4.	Expired	Exhibit F, Table 4.	Repealed	24
Table 4A.	Repealed	Exhibit F, Table 5.	Repealed	24
Table 4B.	Repealed	Exhibit F, Table 6.	Repealed	24
Table 4C.	Repealed	Exhibit G.	Repealed	24
Table 5.	Expired	Exhibit H.	Repealed	24
Table 6.	Expired	Exhibit I.	Repealed	24
Table 7.	Expired	Exhibit J.	Repealed	25
R2-8-124.	Termination Incentive Program by Agreement; Unfunded Liability Calculations	Exhibit K.	Repealed	25
R2-8-125.	Termination Incentive Program by 30% Salary Increase; Unfunded Liability Calculations	Exhibit L, Table 1.	Repealed	25
R2-8-126.	Retirement Application	Exhibit L, Table 2.	Repealed	25
R2-8-127.	Re-Retirement Application	Exhibit L, Table 3.	Repealed	25
R2-8-128.	Joint and Survivor Retirement Benefit Options	Exhibit L, Table 4.	Repealed	25
R2-8-129.	Period Certain and Life Annuity Retirement Options	Exhibit L, Table 5.	Repealed	25
R2-8-130.	Rescind or Revert Retirement Election; Change of Contingent Annuitant	Exhibit L, Table 6.	Repealed	25
R2-8-131.	Designating a Beneficiary; Spousal Consent to Beneficiary Designation	Exhibit L, Table 7.	Repealed	25
R2-8-132.	Survivor Benefit Options	Exhibit M, Table 1.	Repealed	26
R2-8-133.	Survivor Benefit Applications	Exhibit M, Table 2.	Repealed	26
Table 1.	Repealed	Exhibit M, Table 3.	Repealed	26
Table 2.	Repealed	Exhibit M, Table 4.	Repealed	26
		Exhibit M, Table 5.	Repealed	26
		Exhibit M, Table 6.	Repealed	26

ARTICLE 2. HEALTH INSURANCE PREMIUM BENEFIT

Article 2, consisting of R2-8-201 through R2-8-207, made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017; under the authority of A.R.S. § 38-714(E)(4) (Supp. 17-2).

Article 2, consisting of R2-8-201 through R2-8-207, made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp.

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

04-2).

Section

R2-8-201. Definitions 26

R2-8-202. Premium Benefit Eligibility and Benefit Determination 26

R2-8-203. Payment of Premium Benefit 27

R2-8-204. Premium Benefit Calculation 28

R2-8-205. Premium Benefit Documentation 28

R2-8-206. Six-Month Reimbursement Program 28

R2-8-207. Optional Premium Benefit 29

ARTICLE 3. LONG-TERM DISABILITY

Article 3, consisting of R2-8-301 through R2-8-306, made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3).

Section

R2-8-301. Definitions 29

R2-8-302. Application for Long-Term Disability Benefit .. 30

R2-8-303. Long-Term Disability Calculation 30

R2-8-304. Payment of Long-Term Disability Benefit 30

R2-8-305. Social Security Disability Appeal 30

R2-8-306. Approval of Social Security Disability 30

ARTICLE 4. PRACTICE AND PROCEDURE BEFORE THE BOARD

Article 4, consisting of R2-8-401 through R2-8-405, made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1).

Section

R2-8-401. Definitions 31

R2-8-402. General Procedures 31

R2-8-403. Letters of Appeal; Request for a Hearing of an Appealable Agency Action 31

R2-8-404. Board Decisions on Hearings before the Office of Administrative Hearings 31

R2-8-405. Motion for Rehearing Before the Board; Motion for Review of a Final Decision 31

ARTICLE 5. PURCHASING SERVICE CREDIT

Article 5, consisting of R2-8-501 through R2-8-521, made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2).

Section

R2-8-501. Definitions 32

R2-8-502. Request to Purchase Service Credit and Notification of Cost 33

R2-8-503. Requirements Applicable to All Service Credit Purchases 34

R2-8-504. Service Credit Calculation for Purchasing Service Credit 34

R2-8-505. Restrictions on Purchasing Overlapping Service Credit 34

R2-8-506. Cost Calculation for Purchasing Service Credit 34

R2-8-507. Required Documentation and Calculations for Forfeited Service Credit 34

R2-8-508. Required Documentation and Calculations for Leave of Absence Service Credit 35

R2-8-509. Required Documentation and Calculations for Military Service Credit 35

R2-8-510. Required Documentation and Calculations for Military Call-up Service Credit 36

R2-8-511. Required Documentation and Calculations for Other Public Service Credit 36

R2-8-512. Purchasing Service Credit by Check, Cashier’s Check, or Money Order37

R2-8-513. Purchasing Service Credit by Irrevocable PDA .37

R2-8-513.01. Irrevocable PDA and Transfer of Employment to a Different Employer38

R2-8-513.02. Termination Date39

R2-8-514. Purchasing Service Credit by Direct Rollover or Trustee-to-Trustee Transfer39

R2-8-515. Repealed40

R2-8-516. Expired40

R2-8-517. Expired40

R2-8-518. Repealed40

R2-8-519. Purchasing Service Credit by Termination Pay .40

R2-8-520. Termination of Employment and Request Return of Retirement Contributions or Death of Member While Purchasing Service Credit by an Irrevocable PDA41

R2-8-521. Adjustment of Errors41

ARTICLE 6. PUBLIC PARTICIPATION IN RULEMAKING

Article 6, consisting of R2-8-601 through R2-8-607, made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1).

Section

R2-8-601. Definitions41

R2-8-602. Reviewing Agency Rulemaking Record and Directory of Substantive Policy Statements41

R2-8-603. Petition for Rulemaking42

R2-8-604. Review of a Rule, Agency Practice, or Substantive Policy Statement42

R2-8-605. Objection to Rule Based Upon Economic, Small Business and Consumer Impact42

R2-8-606. Oral Proceedings42

R2-8-607. Petition for Delayed Effective Date43

ARTICLE 7. CONTRIBUTIONS NOT WITHHELD

Article 7, consisting of R2-8-701 through R2-8-709, made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4).

Section

R2-8-701. Definitions43

R2-8-702. General Information43

R2-8-703. Employer’s Discovery of Error43

R2-8-704. Member’s Discovery of Error44

R2-8-705. ASRS’ Discovery of Error44

R2-8-706. Determination of Contributions Not Withheld ..44

R2-8-707. Submission of Payment44

R2-8-708. Expired45

R2-8-709. Repealed45

ARTICLE 8. RECOVERY OF OVERPAYMENTS

Article 8, consisting of R2-8-801 through R2-8-810, made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

Section

R2-8-801. Definitions45

R2-8-802. Estimated Social Security Disability Income Amount and Revised Social Security Disability Income Amount45

R2-8-803. Reimbursement of Overpayments45

R2-8-804. Collection of Overpayments from Forfeiture46

R2-8-805. Collection of Overpayments from Retirement Benefit46

R2-8-806. Collection of Overpayments from Survivor Benefit46

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

R2-8-807. Collection of Overpayments from LTD Benefit 46
R2-8-808. Collection of Overpayments by the Attorney
General 46
R2-8-809. Collection of Overpayments by the Arizona
Department of Revenue 46
R2-8-810. Collection of Overpayments by Garnishment or
Levy 47

ARTICLE 9. EXPIRED

Article 9, consisting of R2-8-901 through R2-8-905, made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3).

Article 9, consisting of R2-8-901 through R2-8-905, expired at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2).

Section
R2-8-901. Expired 47
R2-8-902. Expired 47
R2-8-903. Expired 47
R2-8-904. Expired 47
R2-8-905. Expired 47

ARTICLE 10. MEMBERSHIP

Article 10, consisting of Sections R2-8-1001 through R2-8-1005, made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

Section
R2-8-1001. Definitions47
R2-8-1002. Employee Membership47
R2-8-1003. Charter School Employer Membership48
R2-8-1004. Other Political Subdivision and Political
Subdivision Entity Employer Membership49
R2-8-1005. Employer Reporting49
R2-8-1006. Prior Service Purchase Cost for New Employers ...
.....50

ARTICLE 11. TRANSFER OF SERVICE CREDIT

Section
R2-8-1101. Definitions51
R2-8-1102. Required Documentation and Calculations for
Transfer In Service Credit51
R2-8-1103. Transferring Service to Other Retirement Plans .52

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

ARTICLE 1. RETIREMENT SYSTEM**R2-8-101. Repealed****Historical Note**

Former Rule, Social Security Regulation 1; Former Section R2-8-01 renumbered as Section R2-8-101 without change effective May 21, 1982 (Supp. 82-3). Amended subsections (A) and (C) effective April 12, 1984 (Supp. 84-2). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

R2-8-102. Repealed**Historical Note**

Former Rule, Social Security Regulation 2; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-02 renumbered as Section R2-8-102 without change effective May 21, 1982 (Supp. 82-3). Amended as an emergency by adding subsection (E) effective January 1, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Emergency expired. Permanent rule, subsections (A), (B), and (D), amended effective April 12, 1984 (Supp. 84-2). Correction, subsection (B), as amended effective April 12, 1984 (Supp. 84-3). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

R2-8-103. Repealed**Historical Note**

Former Rule, Social Security Regulation 3; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-03 renumbered as Section R2-8-103 without change effective May 21, 1982 (Supp. 82-3). Amended as an emergency by adding subsection (E) effective January 1, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Emergency expired. Permanent rule, subsections (A) thru (C), amended effective April 12, 1984 (Supp. 84-2). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

R2-8-104. Definitions

- A. The definitions in A.R.S. § 38-711 apply to this Chapter.
- B. Unless otherwise specified, in this Chapter:
1. "Actuarial assumption" means an estimate of an uncertain future event that affects pension liabilities, or assets, or both.
 2. "Assumed actuarial investment earnings rate" means the assumed rate of investment return approved by the Board and contained in R2-8-118(A).
 3. "Authorized employer representative" means an individual specified by the ASRS employer to provide the ASRS with information about a member who previously worked for the ASRS employer.
 4. "Contribution" means:
 - a. Amounts required by A.R.S. Title 38, Chapter 5, Articles 2 and 2.1 to be paid to the ASRS by a member or an employer on behalf of a member;
 - b. Any voluntary amounts paid to the ASRS by a member to be placed in the member's account; and
 - c. Amounts credited by transfer under A.R.S. § 38-924.
 5. "Day" means a calendar day, and excludes the:
 - a. Day of the act or event from which a designated period of time begins to run; and
 - b. Last day of the period if a Saturday, Sunday, or official state holiday.

6. "Designated beneficiary" means the same as in A.R.S. § 38-762(G).
7. "Director" means the Director appointed by the Board as provided in A.R.S. § 38-715.
8. "Individual retirement account" or "IRA" means the types of eligible retirement plans specified in A.R.S. § 38-770(D)(3)(a) and (b).
9. "Party" means the same as in A.R.S. § 41-1001(14).
10. "Person" means the same as in A.R.S. § 41-1001(15).
11. "Plan" means the same as "defined benefit plan" in A.R.S. § 38-712(B), and as administered by the ASRS.
12. "Retirement account" means the same as in A.R.S. § 38-771(J)(2).
13. "Rollover" means a contribution to the ASRS by an eligible member of an eligible rollover distribution from one or more of the retirement plans listed in A.R.S. § 38-747(H)(2) and (H)(3).
14. "Terminate employment" means to end the employment relationship between a member and an ASRS employer with the intent that the member does not return to employment with an ASRS employer.
15. "United States" means the same as in A.R.S. § 1-215(39).

Historical Note

Former Rule, Social Security Regulation 4; Former Section R2-8-04 renumbered as Section R2-8-104 without change effective May 21, 1982 (Supp. 82-3). Amended subsections (G), (J), and (K) effective April 12, 1984 (Supp. 84-2). Typographical error corrected in subsection (5)(c) "required" corrected to "required" (Supp. 97-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2).

R2-8-105. Repealed**Historical Note**

Former Rule, Social Security Regulation 5; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-05 renumbered as Section R2-8-105 without change effective May 21, 1982 (Supp. 82-3). Amended as an emergency by adding subsection (E) effective January 1, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Emergency expired. Permanent rule amended effective April 12, 1984 (Supp. 84-2). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

R2-8-106. Reserved**R2-8-107. Reserved****R2-8-108. Reserved****R2-8-109. Reserved****R2-8-110. Reserved****R2-8-111. Reserved****R2-8-112. Reserved****R2-8-113. Emergency Expired****Historical Note**

New Section made by emergency rulemaking at 11 A.A.R. 579, effective January 4, 2005 (05-1). Emergency rule expired (Supp. 05-2).

R2-8-114. Emergency Expired

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

Historical Note

New Section made by emergency rulemaking at 11 A.A.R. 579, effective January 4, 2005 (05-1). Emergency rule expired (Supp. 05-2).

R2-8-115. Return of Contributions Upon Termination of Membership by Separation from All ASRS Employment by Other Than Retirement or Death

- A.** The following definitions apply to this Section unless otherwise specified:
1. "DRO" means the same as "domestic relations order" in A.R.S. § 38-773(H)(1).
 2. "Eligible retirement plan" means the same as in A.R.S. § 38-770(D)(3).
 3. "Employer number" means a unique identifier the ASRS assigns to a member employer.
 4. "Employer plan" means the types of eligible retirement plans specified in A.R.S. § 38-770(D)(3)(c), (d), (e), and (f).
 5. "LTD" Means the same as in R2-8-301.
 6. "On file" means ASRS has received the information.
 7. "Process date" means the calendar day the ASRS generates contribution withdrawal documents to be sent to a member.
 8. "Warrant" means a voucher authorizing payment of funds due to a member.
- B.** A member who terminates from all ASRS employment by other than retirement or death and desires a return of the member's contributions, including amounts received for the purchase of service, any employer contributions authorized under A.R.S. § 38-740, and interest on the contributions, shall request from the ASRS, in writing or verbally, the documents necessary to apply for the withdrawal of the member's contributions.
- C.** Upon request to withdraw by the member, the ASRS shall provide:
1. An Application for Withdrawal of Contributions and Termination of Membership form to the member, and
 2. An Ending Payroll Verification - Withdrawal of Contribution and Termination of Membership form to the employer, if ASRS has received contributions for the member within the six months immediately preceding the date the member submitted the request to ASRS.
- D.** The member shall complete and return to the ASRS the Application for Withdrawal of Contributions and Termination of Membership form that includes the following information:
1. The member's full name;
 2. The member's Social Security number or U.S. Tax Identification number;
 3. The member's current mailing address, if not On File with ASRS;
 4. The member's birth date, if not On File with ASRS;
 5. Notarized signature of the member certifying that the member:
 - a. Is no longer employed by any Employer;
 - b. Is neither under contract nor has any verbal or written agreement for future employment with an Employer;
 - c. Is not currently in a leave of absence status with an Employer;
 - d. Understands that each of the member's former Employers will complete an ending payroll verification form if ASRS has received contributions for the member within the six months immediately preceding the date the member submitted the request to ASRS;
 2. The member's Social Security number or U.S. Tax Identification number;
- E.** If ASRS has received contributions for the member within six months immediately preceding the date the member submitted the request to ASRS each Employer shall complete an Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership form electronically that includes the following information:
1. The member's full name;
 2. The member's Social Security number or U.S. Tax Identification number;
 3. The member's current mailing address, if not On File with ASRS;
 4. The member's birth date, if not On File with ASRS;
 5. Notarized signature of the member certifying that the member:
 - a. Is no longer employed by any Employer;
 - b. Is neither under contract nor has any verbal or written agreement for future employment with an Employer;
 - c. Is not currently in a leave of absence status with an Employer;
 - d. Understands that each of the member's former Employers will complete an ending payroll verification form if ASRS has received contributions for the member within the six months immediately preceding the date the member submitted the request to ASRS;
 6. Specify that:
 - a. The entire amount of the distribution be paid directly to the member,
 - b. The entire amount of the distribution be rolled over to an eligible retirement plan, or
 - c. An identified amount of the distribution be rolled over to an eligible retirement plan and the remaining amount be paid directly to the member; and
 7. If the member selects all or a portion of the withdrawal be rolled over to an eligible retirement plan, specify:
 - a. The type of eligible retirement plan; and
 - b. The name and mailing address of the eligible retirement plan.
- F.** Understands that the member's most recent Employer will complete an ending payroll verification form for the member if the member has reached the member's required beginning date pursuant to A.R.S. § 38-775;
- G.** Has read and understands the Special Tax Notice Regarding Plan Payments the member received with the application and the member elects to waive the member's 30-day waiting period to consider a rollover or a cash distribution;
- H.** Understands that the member is forfeiting all future retirement rights and privileges of membership with ASRS;
- I.** Understands that LTD benefits will be canceled if the member elects to withdraw contributions while receiving or electing to receive long-term disability benefits;
- J.** Understands that if the member elects to roll over all or any portion of the member's distribution to another employer plan, it is the member's responsibility to verify that the receiving employer plan will accept the rollover and, if applicable, agree to separately account for the pre-tax and post-tax amounts rolled over and the related subsequent earnings on the amounts;
- K.** Understands that if the member elects to roll over all or any portion of the member's distribution to an individual retirement account, it is the member's responsibility to separately account for pre-tax and post-tax amounts; and
- L.** Understands that if the member elects a rollover to another employer plan or individual retirement account, any portion of the distribution not designated for roll over will be paid directly to the member and any taxable amounts will be subject to applicable state and federal tax withholding;
- M.** Understands that the member is not considered terminated and cannot withdraw the member's ASRS contribution if the member was called to active military service and is not currently performing services for an Employer;
- N.** Understands that any person who knowingly makes any false statement with an intent to defraud the ASRS is guilty of a Class 6 felony in accordance with A.R.S. § 38-793.

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

3. The member's termination date;
4. The member's final pay period ending date;
5. The final amount of contributions, including any adjustments or corrections, but not including any long-term disability contributions;
6. The Employer's name and telephone number;
7. The Employer Number;
8. The name and title of the authorized Employer representative;
9. Certification by the authorized Employer representative that:
 - a. The member Terminated Employment and is neither under contract nor bound by any verbal or written agreement for employment with the Employer;
 - b. There is no agreement to re-employ the member;
 - c. Any person who knowingly makes any false statement or who falsifies any record of the retirement plan with an intent to defraud the plan, is guilty of a Class 6 felony according to A.R.S. § 38-793; and
 - d. The authorized Employer representative certifies that they are the Employer user named on the Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership form and their title and contact information is current and correct.
- F. If the member has attained a required beginning distribution date as of the date the member submitted the request to ASRS, the most recent Employer shall complete an Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership form electronically that includes the information contained in subsection (E).
- G. If the member requests a return of contributions and a Warrant is distributed during the fiscal year that the member began membership in the ASRS, no interest is paid to the account of the member.
- H. If the member requests a return of contributions after the first fiscal year of membership, the ASRS shall credit interest at the rate specified in Column 3 of the table in R2-8-118(A) to the account of the member as of June 30 of each year, on the basis of the balance in the account of the member as of the previous June 30. The ASRS shall credit interest for a partial fiscal year of membership in the ASRS on the previous June 30 balance based on the number of days of membership up to and including the day the ASRS issues the Warrant divided by the total number days in the fiscal year. Contributions made after the previous June 30 are returned without interest.
- I. Upon submitting to the ASRS the completed and accurate Application for Withdrawal of Contributions and Termination of Membership form and, if applicable, after the ASRS has received any Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership forms, a member is entitled to payment of the amount due to the member as specified in subsection (G) or (H) unless a present or former spouse submits to the ASRS a certified copy or original DRO that specifies entitlement to all or part of the return of contributions under A.R.S. § 38-773 before the ASRS returns the contributions as specified by the member.
- J. A member may cancel an Application for Withdrawal of Contributions and Termination of Membership form at any time before the return of contributions is disbursed by submitting written notice to ASRS to cancel the request.
- K. If an Application for Withdrawal of Contributions and Termination of Membership form is completed through the member's secure ASRS account, the secure login and successful submission of the knowledge based answers shall serve as the member's notarized signature required under subsection (D)(5).

Historical Note

Former Rule, Social Security Regulation 1; Amended effective Dec. 20, 1979 (Supp. 79-6). Former Section R2-8-15 renumbered as Section R2-8-115 without change effective May 21, 1982 (Supp. 82-3). Amended by final rulemaking at 11 A.A.R. 1416, effective April 5, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 644, effective February 7, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 79, effective March 6, 2016 (Supp. 16-1). Amended by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

R2-8-116. Alternate Contribution Rate

- A. For purposes of this Section, the following definitions apply:
1. "ACR" means an alternate contribution rate pursuant to A.R.S. § 38-766.02, the resulting amount of which is not deducted from the employee's compensation.
 2. "Class of positions" means all employment positions of the employer that perform the same, or substantially similar, function or duties, for the employer as determined by the ASRS in subsection (B).
 3. "Compensation" has the same meaning as A.R.S. § 38-711(7) and does not include ACR amounts.
 4. "Leased from a third party" means:
 - a. The employee is not employed by an employer; and
 - b. A co-employment relationship, as defined in A.R.S. § 23-561(4), does not exist.
- B. An employer that employs a retired member shall pay an ACR to the ASRS, unless the employer provides proof that:
1. The retired member is leased from a third party; and
 2. All employees in the entire class of positions, to which the retired member's position belongs, have been leased from a third party; and
 3. No employee who has not been leased is performing the same, or substantially similar, function or duties, as the retired member.
- C. In order to determine whether an employer satisfies the criteria in subsection (B), the employer shall submit information and documentation, pursuant to A.R.S. § 38-766.02(E), within 14 days of written request by the ASRS.
- D. The employer shall directly remit payment of an ACR to the ASRS from the employer's funds, through the employer's secure ASRS account within 14 days of the first pay period end date after the hire of the retired member.
- E. If the employer does not remit the ACR by the date it is due pursuant to subsection (D), the ASRS shall charge interest on the ACR amount from the date it was due to the date the ACR payment is remitted to the ASRS at the assumed actuarial investment earnings rate listed in R2-8-118(A).
- F. A payment of an ACR on behalf of a retired member pursuant to A.R.S. § 38-766.02, shall not entitle a retired member to a refund of an ACR payment or any additional ASRS benefit as described in A.R.S. § 38-766.01(E).

Historical Note

Former Rule, Retirement System Regulation 2; Former Section R2-8-16 renumbered as Section R2-8-116 without change effective May 21, 1982 (Supp. 82-3). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 22 A.A.R. 1341, effective July 4, 2016 (Supp. 16-2). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2).

R2-8-117. Return to Work After Retirement

- A. Unless otherwise specified, in this Section:

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

- 1. "Commencing employment" means the date a retired member who is not independently contracted or leased from a third party pursuant to R2-8-116(A)(4) renders services directly to an Employer for which the retired member is entitled to be paid.
- 2. "Returns to work" means the member retired from the ASRS prior to commencing employment with an Employer.
- B.** Pursuant to A.R.S. § 38-766.01(C), a retired member who returns to work directly with an Employer shall submit a Working After Retirement form to each of the retired member's current Employers through the retired member's secure website account within 30 days of the retired member commencing employment with an Employer.
- C.** Pursuant to A.R.S. § 38-766.02(E), within 14 days of receipt of a Working After Retirement form, an Employer shall verify the retired member's employment information and submit the verified Working After Retirement form to the ASRS through the Employer's secure website account for each retired member who returns to work with the Employer.
- D.** After a retired member returns to work, the Employer shall submit a verified Working After Retirement form to the ASRS through the Employer's secure website account within 30 days of a change in the intent of each retired member's employment that results in:
 - 1. The member's number of hours worked per week increasing from less than 20 hours per week to 20 or more hours per week; or
 - 2. The member's number of weeks worked in a fiscal year increasing from less than 20 weeks per fiscal year to 20 or more weeks per fiscal year.
- E.** The Working After Retirement form shall contain the following information:
 - 1. The retired member's social security number;
 - 2. The retired member's full name;
 - 3. The date the member retired;
 - 4. Whether the retired member terminated employment, and if so, the date the retired member terminated employment;
 - 5. The first date of commencing employment upon the retired member's return to work;
 - 6. The intent of the retired member's employment reflected as:
 - a. The anticipated number of hours the retired member is engaged to work per week and the anticipated number of weeks the retired member is engaged to work per fiscal year; or
 - b. The actual number of hours the retired member works for an Employer per week and the actual number of weeks the retired member works for an Employer in a fiscal year.
 - 7. Acknowledgement by the retired member that the retired member has read the Return to Work information on the ASRS website and intends to continue submitting the Working After Retirement form to the retired member's Employer.
- F.** Upon discovering that the retired member's employment violates A.R.S. §§ 38-766 or 38-766.01, the ASRS shall send the retired member a Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form.
- G.** By the due date specified on the Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form, the retired member shall return the completed form and any supporting documentation to the ASRS indicating the action the retired member will take to correct the violation of A.R.S. §§ 38-766 or 38-766.01.

- H.** If the member does not submit the Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form pursuant to subsection (G), the ASRS shall suspend the retired member's retirement benefits from the date on the Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form.
- I.** If the ASRS suspends the retired member's retirement benefits pursuant to subsection (H), the ASRS shall reinstate the retired member's retirement benefits upon notice from the Employer that all violations pursuant to subsection (F) have been corrected.

Historical Note

Former Rule, Retirement System Regulation 3; Former Section R2-8-17 renumbered as Section R2-8-117 without change effective May 21, 1982 (Supp. 82-3). Section repealed by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). New Section made by final rulemaking at 23 A.A.R. 209, effective March 5, 2017 (Supp. 17-1).

R2-8-118. Application of Interest Rates

- A.** Application of interest from inception of the ASRS Plan through the present is as follows:

Effective Date of Interest Rate Change	Assumed Actuarial Investment Earnings Rate	Interest Rate Used to Determine Return of Contributions Upon Termination of Membership by Separation from Service by Other Than Retirement or Death
7-1-1953	2.50%	2.50%
7-1-1959	3.00%	3.00%
7-1-1966	3.75%	3.75%
7-1-1969	4.25%	4.25%
7-1-1971	4.75%	4.75%
7-1-1975	5.50%	5.50%
7-1-1976	6.00%	5.50%
7-1-1981	7.00%	5.50%
7-1-1982	7.00%	7.00%
7-1-1984	8.00%	8.00%
7-1-2005	8.00%	4.00%
7-1-2013	8.00%	2.00%
7-1-2018	7.50%	2.00%

- B.** At the beginning of each fiscal year, interest is credited to the retirement account of each member on the June 30 that marks the end of the fiscal year based on the balance in the member's account as of the previous June 30. The balance on which interest is credited includes:
 - 1. Employer and employee contributions;
 - 2. Voluntary additional contributions made by members pursuant to A.R.S. §§ 38-742, 38-743, 38-744, and 38-745, if applicable;
 - 3. Amounts credited by transfer under A.R.S. § 38-922; and
 - 4. Interest credited in previous years.
- C.** Notwithstanding subsection (B), the retirement account of each member stops accruing interest the last full month prior to the retirement date.

Historical Note

Former Rule, Retirement System Regulation 4; Amended effective July 1, 1975 (Supp. 75-1). Amended effective June 23, 1976 (Supp. 76-3). Former Section R2-8-18 renumbered and amended as Section R2-8-118 effective May 21, 1982 (Supp. 82-3). Amended by final rulemaking at 11 A.A.R. 1416, effective April 5, 2005 (Supp. 05-

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

2). Amended by final rulemaking at 19 A.A.R. 764, effective June 1, 2013 (Supp. 13-2). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 79, effective March 6, 2016 (Supp. 16-1). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2).

R2-8-119. Expired**Historical Note**

Former Rule, Retirement System Regulation 5; Amended effective July 1, 1975 (Supp. 75-1). Amended effective June 23, 1976 (Supp. 76-3). Former Section R2-8-19 renumbered and amended as Section R2-8-119 effective May 21, 1982 (Supp. 82-3). Section R2-8-119 and Appendix A and B expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

R2-8-120. Repealed**Historical Note**

Former Rule, Social Security Regulation 6; Amended effective June 19, 1975 (Supp. 75-1). Amended effective July 13, 1979 (Supp. 79-4). Former Section R2-8-20 renumbered and amended as Section R2-8-120 effective May 21, 1982 (Supp. 82-3). Repealed effective July 24, 1985 (Supp. 85-4). New Section made by final rulemaking at 20 A.A.R. 2236, effective October 4, 2014 (Supp. 14-3). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Repealed by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

R2-8-121. Repealed**Historical Note**

Former Rule, Retirement System Regulation 7; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-21 renumbered as Section R2-8-121 without change effective May 21, 1982 (Supp. 82-3). Amended subsection (A) effective May 30, 1985 (Supp. 85-3). Section repealed by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (05-1).

R2-8-122. Remittance of Contributions

- A.** Each Employer shall certify on each payroll the amount to be contributed by each one of their employee members of the ASRS and shall remit the amount of employee member contributions to the ASRS not later than 14 days after the last day of each payroll period. Payments of employee member contributions not received in the offices of the ASRS by the 14th day after the last day of the applicable payroll period shall become delinquent after that date and shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A) per annum from and after the date of delinquency until payment is received by the ASRS.
- B.** Each Employer shall remit the amount of employer contributions to the ASRS not later than 14 days after the last day of each payroll period. Payments of employer contributions not received in the offices of the ASRS by the 14th day after the last day of the applicable payroll period shall become delinquent after that date and shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A) per annum from and after the date of delinquency until payment is received by the ASRS.
- C.** Each Employer shall remit contributions pursuant to this Section based on the contribution rate in effect on the pay period end date.

- D.** Each Employer shall certify on each payroll that each employee included on that payroll has met the requirements for active member eligibility and that all contributions to be remitted are for eligible compensation under A.R.S. § 38-711.

Historical Note

Former Rule, Retirement System Regulation 8; Amended effective Dec. 8, 1978 (Supp. 78-6). Former Section R2-8-22 renumbered as Section R2-8-122 without change effective May 21, 1982 (Supp. 82-3). Amended by final rulemaking at 22 A.A.R. 79, effective March 6, 2016 (Supp. 16-1). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2). Amended by final rulemaking at 26 A.A.R. 371, effective April 11, 2020 (Supp. 20-1).

R2-8-123. Actuarial Assumptions and Actuarial Value of Assets

- A.** For the purposes of this Section, “market value” means an estimated monetary worth of an asset based on the current demand for the asset and the amount of that type of asset available for sale.
- B.** The Board adopts the following actuarial assumptions and asset valuation method:
- The interest and investment return rate assumptions are determined by the Board.
 - The actuarial value of assets equals the market value of assets:
 - Minus a 10-year phase-in of the excess for years in which actual investment return exceeds expected investment return; and
 - Plus a 10-year phase-in of the shortfall for years in which actual investment return falls short of expected investment return.

Historical Note

Adopted effective July 1, 1975 (Supp. 75-1). Amended effective June 23, 1976 (Supp. 76-3). Amended effective December 20, 1977 (Supp. 77-6). Former Section R2-8-23 renumbered and amended as Section R2-8-123 effective May 21, 1982 (Supp. 82-3). Emergency amendments effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency amendments adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent amendments adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Amended by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 1006, effective February 24, 2003 for a period of 180 days (Supp. 03-1). Emergency rulemaking renewed at 9 A.A.R. 3963, effective August 21, 2003 for a period of 180 days (Supp. 03-3). Amended by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 20 A.A.R. 3043, effective January 3, 2015 (Supp. 14-4). Amended by final

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4).

Table 1. Expired**Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments to Table 1 adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

Table 2. Expired**Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments to Table 2 adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

Table 3. Repealed**Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments to Table 3 adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Table 3 repealed; new Table 3 renumbered from Table 4 by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Table 3A. Expired**Historical Note**

New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). New Table made by final

rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

Table 3B. Expired**Historical Note**

New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). New Table made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

Table 4. Expired**Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table 4 renumbered as Table 3 by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). New Table made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

Table 4A. Repealed**Historical Note**

New Table made by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Table 4B. Repealed**Historical Note**

New Table made by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Table 4C. Repealed**Historical Note**

New Table made by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Table 5. Expired**Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

December 22, 1993 (Supp. 93-4). Table 5 repealed, new Table 5 adopted by emergency action effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Table 5 repealed, new Table 5 adopted by regular rulemaking action effective September 12, 1997 (Supp. 97-3). Table 5 repealed; new Table 5 renumbered from Table 6 and amended by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed; new Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Former Table 5 renumbered to Table 6; new Table 5 made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

Table 6. Expired**Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table repealed, new Table adopted effective September 12, 1997 (Supp. 97-3). Former Table 6 renumbered to Table 5; new Table 6 renumbered from Table 7 and amended by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed; new Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Former Table 6 renumbered to Table 7; new Table 6 renumbered from Table 5 and amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

Table 7. Expired**Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table repealed, new Table adopted effective September 12, 1997 (Supp. 97-3). Renumbered to Table 6 by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table 7 renumbered from Table 6 and amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

R2-8-124. Termination Incentive Program by Agreement; Unfunded Liability Calculations

- A. The following definitions apply to this Section unless otherwise specified:
1. "Compensation" means the same as in A.R.S. § 38-711(7).
 2. "Termination Incentive Program" means the same as in A.R.S. § 38-749(D)(2).

- B. An Employer that intends to implement a Termination Incentive Program shall provide the following information to the ASRS through the Employer's secure ASRS account:
1. Within 90 days before implementation of the program, a complete description of the program terms and conditions, including the program contract, understanding, or agreement; and
 2. Within 90 days before implementation of the program, the following information for each member who may be eligible to participate in the program:
 - a. The member's full name;
 - b. The member's date of birth; and
 - c. The member's current Compensation;
- C. The ASRS may use the information provided by the Employer pursuant to subsection (B) and the information on file with the ASRS to determine an estimated unfunded liability amount in consultation with the ASRS actuary, which may result from the implementation of the Employer's Termination Incentive Program.
- D. If the ASRS determines an estimated unfunded liability amount pursuant to subsection (C), the ASRS may send a Notice of Estimated Liability to the Employer through the Employer's secure ASRS account, in order to notify the Employer of the estimated unfunded liability amount the Employer may owe to the ASRS as a result of implementing the Termination Incentive Program identified under subsection (B). An Employer may owe the ASRS more or less than the estimated unfunded liability amount based on actual employee participation in the Employer's Termination Incentive Program pursuant to subsection (F).
- E. Within 30 days of termination of employment of each member who participated in a Termination Incentive Program identified under subsection (B), the Employer shall provide the following information to the ASRS through the Employer's secure ASRS account:
1. The member's full name;
 2. The member's date of birth;
 3. The member's Compensation at termination;
 4. The date the member terminated employment; and
 5. The amount and type of any additional pay the member received, or was entitled to receive, from the Employer as a result of participating in the Employer's Termination Incentive Program.
- F. Upon receipt of all the information identified in subsection (E) and in consultation with the ASRS actuary, the ASRS shall calculate the actual unfunded liability amount which resulted from the implementation of the Employer's Termination Incentive Program.
- G. If the ASRS calculates an unfunded liability of less than \$0.00 for any member who participated in the Employer's Termination Incentive Program, the amount will be applied against the aggregate unfunded liability of the Employer.
- H. Upon calculating the unfunded liability pursuant to subsections (F) and (G), the ASRS shall send the Employer a Termination Incentive Program Liability Invoice through the Employer's secure ASRS account.
- I. An Employer that owes an unfunded liability amount to the ASRS pursuant to A.R.S. § 38-749, shall remit full payment of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice.
- J. Pursuant to A.R.S. § 38-735(C), if the ASRS does not receive full payment from the Employer of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice, the unpaid portion of the unfunded liability amount shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A).

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

- K. The ASRS may collect any unfunded liability amount pursuant to A.R.S. §§ 38-723 and 38-735(C).

Historical Note

Adopted as an emergency effective August 25, 1975 (Supp. 75-1). Former Section R2-8-24 renumbered as Section R2-8-124 without change effective May 21, 1982 (Supp. 82-3). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1). New Section made by final rulemaking at 23 A.A.R. 2743, effective January 1, 2018 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2).

R2-8-125. Termination Incentive Program by 30% Salary Increase; Unfunded Liability Calculations

- A. The following definitions apply to this Section unless otherwise specified:
1. "Average monthly compensation" means the same as in A.R.S. § 38-711(5).
 2. "Baseline salary" means a member's Average Monthly Compensation during the 12 consecutive months in which the member received Compensation immediately preceding the first month of Compensation used to calculate the member's retirement benefit. The Baseline Salary shall include only Compensation from the Same Employer that paid the Compensation used in the calculation of a member's retirement benefit. If the member has less than 12 consecutive months in which the member received Compensation immediately preceding the first month of Compensation used to calculate the member's retirement benefit, then the ASRS will calculate the member's Baseline Salary as the total of the 12 months of Compensation the member received:
 - a. Starting with the first month of Compensation the member received in the 12 months immediately preceding the member's Average Monthly Compensation, or within the Average Monthly Compensation; and
 - b. Ending with the 12th month of Compensation the member received after the first month of Compensation used in subsection (A)(2)(a).
 3. "Compensation" means the same as in A.R.S. § 38-711(7).
 4. "Job reclassification" means a change in the classification of an employment position made by the Employer when it finds the duties and responsibilities of the position have changed significantly, materially, and permanently from when the position was last classified.
 5. "Promotion" means, excluding a Salary Regrade or Job Reclassification, the act of advancing an employee to a higher salary or higher rank within the organization, which is characterized by:
 - a. A change in the employee's primary job responsibilities; and
 - b. A pay increase that is supported by a standard salary administration practice that is documented by the Employer; and
 - c. A competitive selection process or a noncompetitive selection process supported by a standard hiring practice that is documented by the Employer.
 6. "Salary regrade" means a change in the salary scale of an employment position made by the Employer in order to align the position's salary scale with market factors and/or the Employer's current salary practices.
 7. "Same employer" means the Employer has the same ownership as another Employer, except that for purposes

of this Section, each agency, board, commission, and department of the State of Arizona shall be considered a separate Employer.

8. "Termination Incentive Program" means the same as in A.R.S. § 38-749(D)(1).
- B. Upon a member's retirement on or after January 1, 2018, the ASRS shall compare the member's Baseline Salary to the Average Monthly Compensation for each consecutive 12 months of Compensation used to calculate the member's retirement benefit in order to determine whether an Employer utilized a Termination Incentive Program as defined in A.R.S. § 38-749(D)(1). This subsection only applies to members who earned the Compensation used to calculate the member's Baseline Salary, on or after July 1, 2005.
- C. Upon determining that a Termination Incentive Program exists under subsection (B), the ASRS shall send a Request for Documentation to the Employer through the Employer's secure ASRS account, in order to notify the Employer that the ASRS has identified a Termination Incentive Program for a particular member and the Employer may be required to pay the ASRS for the unfunded liability resulting from the Termination Incentive Program, unless the Employer can prove the increase in the member's salary was the result of a Promotion.
- D. Within 90 days of the date on the Request for Documentation, the Employer shall respond to the Request for Documentation by:
 1. Submitting documentation through the Employer's secure ASRS account that shows the member's increase in Compensation was the result of a Promotion; or
 2. Acknowledging in writing that the increase in the member's salary was not the result of a Promotion.
- E. Pursuant to subsection (D), the Employer bears the burden of producing evidence that a Promotion has occurred as defined in subsection (A)(5).
- F. The ASRS shall use any evidence the Employer submits to the ASRS pursuant to subsection (D) to determine whether a Promotion occurred.
- G. If the Employer does not respond to the Request for Documentation within 90 days of the date on the Request for Documentation, the ASRS shall determine that the increase in the member's salary was not the result of a Promotion.
- H. If the ASRS determines that the increase in the member's salary was not the result of a Promotion pursuant to subsections (F) or (G), the ASRS shall calculate the unfunded liability amount pursuant to subsection (I).
- I. In consultation with the ASRS actuary, the ASRS shall use a determination under subsection (B) to calculate the unfunded liability resulting from the implementation of the Employer's Termination Incentive Program.
- J. Upon calculating an unfunded liability amount pursuant to subsection (I), the ASRS shall send a Termination Incentive Program Liability Invoice to the Employer through the Employer's secure ASRS account, in order to notify the Employer of the unfunded liability amount the Employer shall owe to the ASRS as a result of implementing the Termination Incentive Program identified under subsection (B).
- K. An Employer that owes an unfunded liability amount to the ASRS pursuant to A.R.S. § 38-749, shall remit full payment of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice.
- L. Pursuant to A.R.S. § 38-735(C), if the ASRS does not receive full payment from the Employer of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice, the unpaid portion of the unfunded liability amount shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A).

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

- M.** The ASRS may collect any unfunded liability amount pursuant to A.R.S. §§ 38-723 and 38-735(C).
- Historical Note**
- Adopted as an emergency effective July 30, 1975 (Supp. 75-1). Former Section R2-8-25 renumbered as Section R2-8-125 without change effective May 21, 1982 (Supp. 82-3). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1). New Section made by final rulemaking at 23 A.A.R. 2743, effective January 1, 2018 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2).
- R2-8-126. Retirement Application**
- A.** For the purposes of this Section, the following definitions apply, unless stated otherwise:
1. "Acceptable documentation" means any written request containing all the accurate, required information, dates, and signatures necessary to process the request.
 2. "Acceptable form" means any ASRS form request containing all the accurate, required information, dates, and signatures necessary to process the form request.
 3. "Applicable retirement date" means the later of:
 - a. The date a member retires from the ASRS for the first time; or
 - b. The date a member re-retires from the ASRS after returning to active membership.
 4. "Conservator" means the same as in A.R.S. § 14-7651.
 5. "DRO" means the same as in R2-8-115.
 6. "Joint and survivor retirement benefit option" means an optional form of retirement benefits described in A.R.S. § 38-760(B)(1).
 7. "Legal documentation" means:
 - a. One document issued from a United States government entity; or
 - b. Two documents issued from one or more federal, state, local, sovereign, medical, or religious institution.
 8. "LTD" means the same as in R2-8-301.
 9. "Irrevocable PDA" means the same as in R2-8-501.
 10. "On file" means the same as in R2-8-115.
 11. "Original retirement date" means the later of:
 - a. The date a member retires from the ASRS for the first time; or
 - b. The date a member re-retires from the ASRS after returning to active membership for 60 consecutive months or more according to A.R.S. § 38-766(C).
 11. "Period certain and life annuity retirement benefit option" means an optional form of retirement benefits described in A.R.S. § 38-760(B)(2).
 12. "Spouse" means the individual to whom a member is married under Arizona law.
 13. "Straight life annuity" means the same as monthly life annuity according to A.R.S. § 38-757.
- B.** A member may retire from the ASRS by submitting a Retirement Application to the ASRS that contains the following information:
1. The member's full name;
 2. The member's Social Security number or U.S. Tax Identification number;
 3. The member's marital status, if not On File with ASRS;
 4. The member's current mailing address; if not On File with ASRS;
 5. The member's date of birth, if not On File with ASRS;
 6. A retirement date according to A.R.S. § 38-764(A);
 7. The retirement option the member is electing;
8. If the member is electing to roll over a lump sum distribution amount to another retirement account, then:
 - a. The type of account and account number, if applicable, to which the member is electing to roll over the lump sum distribution; and
 - b. The name and address of the financial institution of the account to which the member is electing to roll over the lump sum distribution;
 9. The following information for each primary beneficiary, unless the member is receiving a mandatory lump sum distribution under subsection (M):
 - a. The beneficiary's full name;
 - b. The beneficiary's Social Security number, if the beneficiary is a U.S. citizen;
 - c. The beneficiary's date of birth;
 - d. The beneficiary's relationship to the member; and
 - e. The percent of benefit the beneficiary may receive upon death of the member, if the member is designating more than one beneficiary.
 10. Whether the member is electing the Optional Health Insurance Premium Benefit;
 11. The following spousal consent information, if the member is married and is electing a retirement option other than a Joint and Survivor Retirement Benefit Option with at least 50% of the retirement benefit designated to the member's spouse:
 - a. Whether the member's spouse consents to the member making a beneficiary election that provides the member's spouse with less than 50% of the member's account balance;
 - b. Whether the member's spouse consents to the member electing a retirement option other than a Joint and Survivor Retirement Benefit Option;
 - c. The member's spouse's full name; and
 - d. The member's spouse's notarized signature;
 12. Whether the member is electing to receive a partial lump sum distribution according to A.R.S. § 38-760 and if so:
 - a. How many months of annuity, up to 36 months, the member is electing to receive as a partial lump sum;
 - b. Whether the member is electing to directly receive the partial lump sum distribution reduced by applicable tax withholding amounts;
 - c. Whether the member is electing to roll over all or a portion of the partial lump sum distribution amount to one other retirement account; and
 - d. Whether the member is electing to use the partial lump sum distribution to purchase service credit with ASRS based on a service purchase request dated before January 6, 2013;
 13. Acknowledgement of the following statements of understanding:
 - a. The member is aware of the member's LTD stop-payment date and any disability benefits the member is receiving shall cease upon the retirement date the member elects according to subsection (B)(6);
 - b. The member understands that if an overpayment exists, ASRS shall collect the remaining overpayment amount according to 2 A.A.C. 8, Article 8 and all repayment plans previously established with ASRS LTD claims administrator shall cease;
 - c. The member understands that if the member is submitting written notice of a changed retirement date, benefit option, or partial lump sum increment selection, ASRS shall distribute the member's benefit as of the later of:

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

- i. The date ASRS receives the most recent Acceptable Documentation; or
 - ii. The retirement date contained in the most recent Acceptable Documentation.
 - d. The member has received the Special Tax Notice Regarding Plan Payments;
 - e. The member has received the Return to Work information and will comply with the laws and rules governing the member's return to work;
 - f. The member authorizes ASRS and the banking institution identified in subsection (W) to debit the member's account for the purposes of correcting errors and returning any payments inadvertently made after the member's death;
 - g. The member understands that the member may have a one-time option to rescind a Joint and Survivor Retirement Benefit Option or a Period Certain and Life Annuity Retirement Benefit Option according to R2-8-130;
 - h. The member understands that any person who knowingly makes any false statement with the intent to defraud ASRS is guilty of a Class 6 felony in accordance with A.R.S. § 38-793; and
 - i. The member acknowledges that the member has complied with A.R.S. §§ 38-755 and 38-776 regarding spousal consent; and
14. The member's notarized signature.
- C.** If a Retirement Application is completed through the member's secure ASRS account, the member's notarized signature is not required under subsection (B)(14).
- D.** If the retirement date the member elects according to subsection (B)(6) is not allowed, the ASRS shall change the retirement date to the earliest eligible date according to A.R.S. 38-764(A), unless the member is not eligible to retire.
- E.** A member who elects to roll over all or a portion of the partial lump sum distribution amount according to subsection (B)(12)(c), shall submit the following written information to the ASRS:
- 1. The type of account and account number to which the member is electing to roll over;
 - 2. The name and address of the financial institution of the account to which the member is electing to roll over; and
 - 3. If the member is electing to roll over a portion of the partial lump sum distribution, then the amount the member is electing to roll over.
- F.** If the member elects to roll over all or a portion of their lump sum or partial lump sum distribution, the ASRS shall only roll over the distribution to one retirement account.
- G.** Any portion of the partial lump sum distribution that is not rolled over to another retirement account according to subsection (B) shall be distributed directly to the member.
- H.** If the member elects to use the partial lump sum distribution to purchase service credit according to subsection (B)(12)(d) the member shall submit the following written information to the ASRS:
- 1. The number of the service purchase invoice;
 - 2. Whether the member is electing to apply the partial lump sum distribution to all eligible service on that invoice;
 - 3. If the member is not electing to apply the partial lump sum distribution to all eligible service on that invoice, then:
 - a. The amount of the partial lump sum distribution to be applied to that invoice; or
 - b. The number of years on that invoice the member is electing to purchase with the partial lump sum distribution;
 - 4. If the member is electing to make a payment on that service purchase invoice with after-tax payments, a rollover, or termination pay according to A.R.S. § 38-747;
 - 5. Whether the member is electing to authorize the ASRS to increase the number of months of annuity, not to exceed 36 months, to purchase the eligible service on that service purchase invoice, if the member elected an insufficient number of months of annuity to receive as a partial lump sum according to subsection (G) to complete the service purchase invoice;
 - 6. If the member does not have eligible service to purchase on that invoice, whether the member is electing to cancel the member's election to receive a partial lump sum distribution.
- I.** A member who elects to receive a partial lump sum distribution shall receive an actuarially reduced annuity retirement benefit according to A.R.S. § 38-760.
- J.** ASRS shall disburse any partial lump sum amount that is not applied to a service purchase invoice according to subsection (G) directly to the member after withholding applicable taxes.
- K.** After submitting a Retirement Application according to subsection (B), a member may make changes to the member's Retirement Application by submitting written notice to the ASRS of the specific changes according to A.R.S. § 38-764(H).
- L.** If ASRS has received contributions for the member within the three years immediately preceding the member's retirement date, the ASRS shall send a New Retirement Ending Payroll Verification form to the Employer. If ASRS has received contributions for the member within the six months immediately preceding the member's retirement date and the member shall receive a one-time lump sum payment according to subsection (P), the ASRS shall send a New Retirement Ending Payroll Verification form to the Employer.
- M.** If the member has reached the age for minimum required distribution according to A.R.S. § 38-775(H)(4), the ASRS shall send a New Retirement Ending Payroll Verification form to the member's most recent Employer.
- N.** The Employer shall submit the completed New Retirement Ending Payroll Verification form to ASRS with the following information:
- 1. The member's Termination date or last day of ASRS membership with that Employer, if applicable;
 - 2. The member's total salary paid during their last fiscal year;
 - 3. The member's compensation for the last pay period;
 - 4. The name and title of the authorized Employer representative;
 - 5. Certification by the authorized Employer representative that:
 - a. Any person who knowingly makes any false statement or who falsifies any record of the retirement plan with an intent to defraud the plan, is guilty of a Class 6 felony according to A.R.S. § 38-793; and
 - b. The authorized Employer representative certifies that they are the Employer user named on the New Retirement Ending Payroll Verification form and their title and contact information is current and correct.
- O.** The ASRS shall cancel a member's Retirement Application if ASRS does not receive all forms and information required under this Section within six months immediately after the member's retirement date.
- P.** As authorized under A.R.S. § 38-764(F), if a member's Straight Life Annuity, after any applicable early retirement reduction factor, is less than a monthly amount of \$100, the

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

ASRS shall not pay the annuity. Instead, the ASRS shall make a one-time mandatory lump sum payment in the amount determined by using appropriate actuarial assumptions.

- Q. For purposes of calculating a member's retirement benefit according to A.R.S. §§ 38-758 and 38-759, ASRS shall calculate age to the nearest day as of the member's retirement date.
- R. Based on the retirement option the member elects according to A.R.S. § 38-760, the ASRS shall calculate a member's actuarially reduced benefits, based on the attained age of the member, and if necessary, the attained age of the contingent annuitant as of the date of the member's retirement as follows:
 1. For a partial lump sum retirement benefit option, ASRS shall calculate age to the nearest day as of the member's retirement date;
 2. For a Joint and Survivor Retirement Benefit Option, ASRS shall calculate age to the nearest day as of the member's retirement date; and
 3. For a mandatory lump sum payment according to subsection (O) or a Period Certain and Life Annuity Retirement Benefit Option, ASRS shall calculate age to the nearest full month in addition to calculating age according to subsection (P) as necessary.
- S. If the ASRS is unable to verify the age of the member or a contingent annuitant, the member or contingent annuitant shall provide Legal Documentation showing the member's or contingent annuitant's age.
- T. If a member does not retire by the date minimum distribution payments are required according to A.R.S. §§ 38-759 and 38-775, the required minimum distribution payments will accrue interest at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A) and in effect on the date the required minimum distribution payments should have begun.
- U. The ASRS shall distribute any required minimum distribution payments with interest according to subsection (T) with the member's first finalized benefits payment.
- V. If a member submits a retirement application after the member's minimum required distribution date, the ASRS shall determine that the member's Applicable Retirement Date is the date the required minimum distribution payments should have begun.
- W. Notwithstanding any other Section, an inactive member who does not have contributions related to compensation is not eligible for retirement.
- X. The ASRS shall issue a debit benefit card, if the annuitant does not provide the following direct deposit information through the annuitant's secure ASRS account or by a notarized Direct Deposit form:
 1. The member's full name;
 2. The member's bank account routing number;
 3. The member's bank account number; and
 4. The type of the account.
- Y. The ASRS shall disburse benefits payments according to subsection (R), only retroactive to the later date specified in A.R.S. § 38-759(B).
- Z. ASRS shall not issue additional estimate checks to a member whose retirement is canceled.

Historical Note

Adopted effective September 12, 1977 (Supp. 77-5). Amended effective July 13, 1979 (Supp. 79-4). Former Section R2-8-26 renumbered and amended as Section R2-8-126 effective May 21, 1982 (Supp. 82-3). Amended subsections (A) through (D) effective October 18, 1984 (Supp. 84-5). Amended subsections (A) through (D) effective July 24, 1985 (Supp. 85-4). Amended by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency

amendments adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Amended by emergency rulemaking at 7 A.A.R. 1621, effective March 21, 2001 (Supp. 01-1). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Amended by final rulemaking at 19 A.A.R. 332, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 79, effective March 6, 2016 (Supp. 16-1). Amended by final rulemaking at 22 A.A.R. 3081, effective December 3, 2016 (Supp. 16-4). Amended by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

R2-8-127. Re-Retirement Application

- A. The definitions in R2-8-126 apply to this Section.
- B. If a member has previously retired from ASRS, the member may re-retire from ASRS by submitting a Re-Retirement Application to the ASRS that contains:
 1. The information identified in R2-8-126(B)(1) through (B)(8);
 2. The retirement option the member is electing, if the member suspended the member's annuity from the member's previous retirement from ASRS and returned to work for 60 consecutive months or more according to A.R.S. § 38-766(C);
 3. The information identified in R2-8-126(B)(11);
 4. Whether the member is electing the Optional Health Insurance Premium Benefit, if the member suspended the member's annuity from the member's previous retirement from ASRS and returned to work for 60 consecutive months or more according to A.R.S. § 38-766(C);
 5. The information identified in R2-8-126(B)(13), if the member suspended the member's annuity from the member's previous retirement from ASRS and returned to work for 60 consecutive months or more according to A.R.S. § 38-766(C);
 6. Acknowledgement of the following statements of understanding:
 - a. The member's signature confirms the member's intent to re-retire and applies to all the sections included in the Re-Retirement Application.
 - b. The member understands that as a re-retiree, the member must keep the same retirement option and beneficiary the member elected when the member previously retired from ASRS, unless the member returned to active membership for 60 consecutive months or more according to A.R.S. § 38-766(C);
 - c. The member may change the member's beneficiary after re-retiring and changing the beneficiary may change the member's monthly annuity;
 - d. The member has complied with A.R.S. §§ 38-755 and 38-766 regarding spousal consent;
 - e. The member certifies that the member has read and understands the instructions and Special Tax Notice Regarding Plan Payments;
 - f. The member authorizes ASRS and the banking institution the member listed for direct deposit to debit the member's account for the purpose of correcting errors and returning any payments inadvertently paid after the member's death;

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

- g. The member understands that any person who knowingly makes any false statement with the intent to defraud ASRS is guilty of a Class 6 felony in accordance with A.R.S. § 38-793; and
 - h. The member understands that if an overpayment exists, the ASRS shall collect the remaining overpayment amount according to 2 A.A.C. 8, Article 8 and all repayment plans previously established with the ASRS LTD claims administrator shall cease.
7. The member's notarized signature.
- C. If the retirement date the member elects according to R2-8-126(B)(6) is not allowed, the ASRS shall change the retirement date to the earliest eligible date according to A.R.S. 38-764(A), unless the member is not eligible to retire.
- C. An individual who is 93 years of age or older at the time of retirement is not eligible to elect a Period Certain and Life Annuity Retirement Benefit Option with ten years certain or 15 years certain.
 - D. An individual who is 85 years of age or older at the time of retirement is not eligible to elect a Period Certain and Life Annuity Retirement Benefit Option with 15 years certain.
 - E. The ASRS shall calculate the period certain term as beginning on the first day of the first full calendar month following the member's Applicable Retirement Date.
 - F. Notwithstanding subsection (E), the ASRS shall calculate the period certain term as beginning on the member's Applicable Retirement Date if the member's Applicable Retirement Date is the first day of the month.

Historical Note

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

R2-8-128. Joint and Survivor Retirement Benefit Options

- A. The definitions in R2-8-126 apply to this Section.
- B. A member who is ten years and one day, or more, older than the member's non-spouse contingent annuitant is not eligible to elect a 100% Joint and Survivor Retirement Benefit Option.
- C. A member who is 24 years and one day, or more, older than the member's non-spouse contingent annuitant is not eligible to elect a 66 2/3% Joint and Survivor Retirement Benefit Option.
- D. For members whose Original Retirement Date is on or after March 6, 2016, notwithstanding subsection (B), a member who is ten years and one day, or more, older than the member's ex-spouse contingent annuitant is eligible to participate in a 100% Joint and Survivor Retirement Benefit Option, if:
 1. The member elected the ex-spouse as the contingent annuitant prior to divorce from the ex-spouse; and
 2. The member submits an original or certified copy of a DRO to ASRS which requires the ex-spouse to remain as the contingent annuitant on the member's account.
- E. For members whose Original Retirement Date is on or after March 6, 2016, notwithstanding subsection (C), a member who is 24 years and one day, or more, older than the member's ex-spouse contingent annuitant is eligible to participate in a 66 2/3% Joint and Survivor Retirement Benefit Option, if:
 1. The member elected the ex-spouse as the contingent annuitant prior to divorce from the ex-spouse; and
 2. The member submits an original or certified copy of a DRO to the ASRS which requires the ex-spouse to remain as the contingent annuitant on the member's account.
- F. Notwithstanding any other Section, for purposes of determining whether a member is eligible to participate in a Joint and Survivor Retirement Benefit Option, the ASRS shall calculate the difference in a member's age and the contingent annuitant's age based on the birthdates of the member and the contingent annuitant. For purposes of this Section, a contingent annuitant must be a living person.

Historical Note

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

R2-8-129. Period Certain and Life Annuity Retirement Options

- A. The definitions in R2-8-126 apply to this Section.
- B. An individual who is 104 years of age or older at the time of retirement is not eligible to elect a Period Certain and Life Annuity Retirement Benefit Option.

Historical Note

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

R2-8-130. Rescind or Revert Retirement Election; Change of Contingent Annuitant

- A. The definitions in R2-8-126 apply to this Section.
- B. According to A.R.S. § 38-760(B)(2), for a member whose Original Retirement Date is after August 9, 2001, upon the expiration of a member's period certain term the ASRS shall rescind the member's election and the ASRS shall provide the member a Straight Life Annuity retirement benefit subject to any retirement reductions applicable at the member's Original Retirement Date.
- C. According to A.R.S. § 38-760(B)(2), a member whose Original Retirement Date is after August 9, 2001 and before July 1, 2008 and who elected a Period Certain and Life Annuity Retirement Benefit Option, may rescind the election and elect to receive a Straight Life Annuity retirement benefit prior to the expiration of the member's period certain term.
- D. According to A.R.S. § 38-760(B)(1), a member whose Original Retirement Date is before July 1, 2008 and who elected a Joint and Survivor Retirement Benefit Option may rescind the election and elect to receive a Straight Life Annuity retirement benefit prior to the member's death.
- E. A member whose Original Retirement Date is on or after July 1, 2008 and who elected a Period Certain and Life Annuity Retirement Benefit Option may exercise a one-time election to rescind the election and elect to receive a Straight Life Annuity retirement benefit prior to the expiration of the member's period certain term if the member provides proof to ASRS of the death of the primary beneficiary or an original or certified copy of a DRO showing that the primary beneficiary has ceased to be a primary beneficiary.
- F. A member whose Original Retirement Date is on or after July 1, 2008 and who elected a Joint and Survivor Retirement Benefit Option may exercise a one-time election to rescind the election and elect to receive a Straight Life Annuity retirement benefit prior to the death of the member if the member provides proof to ASRS of the death of the contingent annuitant or an original or certified copy of a DRO showing that the contingent annuitant has ceased to be a contingent annuitant.
- G. A member who elected to rescind a Period Certain and Life Annuity Retirement Benefit Option according to subsection (C) may elect to revert to the Period Certain and Life Annuity Retirement Benefit Option by submitting an Application to Rescind, Revert or Change Contingent Annuitant as specified in subsection (M).
- H. A member who elected to rescind a Joint and Survivor Retirement Benefit Option according to subsection (D) may elect to revert to the Joint and Survivor Retirement Benefit Option by

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

submitting an Application to Rescind, Revert or Change Contingent Annuitant as specified in subsection (M).

- I. A member may only revert to the same Period Certain and Life Annuity Retirement Benefit Option the member rescinded according to subsection (C) prior to the expiration of the period certain term the member elected at the member's most recent retirement.
- J. A member who rescinds their election according to subsections (E) or (F) is not eligible to revert to a Period Certain and Life Annuity Retirement Benefit Option or a Joint and Survivor Retirement Benefit Option.
- K. Notwithstanding any other provision, the time period of a Period Certain and Life Annuity Retirement Benefit Option shall be continuous from the member's retirement date until the term expires regardless of whether the member rescinds or reverts to another retirement option.
- L. A member who wants to rescind or revert a retirement election according to subsections (C) through (H) shall ensure ASRS receives an Application to Rescind, Revert or Change Contingent Annuitant at least one day prior to the member's death.
- M. In order to rescind, revert, or change a contingent annuitant, the member shall submit an Application to Rescind, Revert or Change Contingent Annuitant with the following information:
 - 1. The member's full name;
 - 2. The member's Social Security number or U.S. Tax Identification number;
 - 3. The member's marital status, if not On File with ASRS;
 - 4. Whether the member is electing to rescind, revert, or change a contingent annuitant;
 - 5. The member's notarized signature acknowledging the following statements of understanding:
 - a. For rescinding a retirement election:
 - i. By this action, and the member's signature, the member is aware that the member's designated beneficiary or contingent annuitant will not continue with monthly benefits after the member's death;
 - ii. The member is aware that a certified copy of the member's designated beneficiary's or contingent annuitant's death certificate or an original or certified copy of a DRO is required if the member retired or re-retired on or after July 1, 2008;
 - iii. At the time of the member's death, if the ASRS has not disbursed the total employee contributions on the member's account, plus interest at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A) through the month prior to the member's retirement date, the balance will be payable in a lump sum to the beneficiary named on the member's most recent Acceptable Form.
 - b. For changing a contingent annuitant or beneficiary:
 - i. For a Joint and Survivor Retirement Benefit Option, by this action, and the member's signature, the contingent annuitant named on the member's most recent Acceptable Form will receive the previously elected percentage amount of the member's monthly benefit for their lifetime following the member's death;
 - ii. For a Joint and Survivor Retirement Benefit Option, the member is aware that a copy of the contingent annuitant's Legal Documentation is required and the member's benefit will be recalculated based on the member's age and the age of the member's new contingent annuitant as of the effective date of the member's request according to this Section;
 - iii. For a Joint and Survivor Retirement Benefit Option, the member is in compliance with the age difference limitations in R2-8-128; and
 - iv. For a Period Certain and Life Annuity Retirement Benefit Option, by this action, and the member's signature, the beneficiary named on the member's most recent Acceptable Form will receive the remaining term of monthly payments.
- 6. If the member is electing to change a contingent annuitant, the following information for the new contingent annuitant:
 - a. Full name;
 - b. Social Security number, if the contingent annuitant is a U.S. citizen;
 - c. Date of birth; and
 - d. Legal relationship to the member.
- 7. If the member is married, whether the member's spouse consents to the following with the spouse's notarized signature:
 - a. The member making a beneficiary designation that provides the member's spouse with less than 50% of the member's account balance;
 - b. The member electing a retirement option other than a Joint and Survivor Retirement Benefit Option; or
 - c. The member changing or ending the spouse's contingent annuitant status.
- 8. Whether the spouse's consent is not required because:
 - a. The spouse predeceased the member and if so, provide a copy of the spouse's death certificate; or
 - b. The member is divorced and if so, provide an original or certified copy of a DRO.
- N. If the ASRS is unable to verify the age of the member or a contingent annuitant, the member or contingent annuitant shall provide Legal Documentation showing the member's or contingent annuitant's age.

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

- O.** The effective date of the member's request according to this Section is the date on which ASRS receives the Application to Rescind, Revert or Change Contingent Annuitant.
- P.** According to A.R.S. § 38-760(B)(2), a member whose Original Retirement Date is on or after July 1, 2008 and who elects a Period Certain and Life Annuity Retirement Benefit Option, may rescind the election according to subsection (E) and elect to receive a Straight Life Annuity prior to the expiration of the member's period certain term if one or more of the member's primary beneficiaries dies or ceases to be a beneficiary according to the terms of an original or certified copy of a DRO.
- Q.** The ASRS shall cancel a member's Application to Rescind, Revert, or Change Contingent Annuitant if ASRS does not receive all forms and information required under this Section within six months immediately after the ASRS receives the application.
- Historical Note**
New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).
- R2-8-131. Designating a Beneficiary; Spousal Consent to Beneficiary Designation**
- A.** The definitions in R2-8-126 apply to this Section.
- B.** In order to designate a beneficiary, a member shall submit an Acceptable Form containing the following information:
1. The Member's full name and one or more of the following information:
 - a. The Member's Social Security number or U.S. Tax Identification number; or
 - b. The Member's address; or
 - c. The Member's date of birth;
 2. The following information for the beneficiary:
 - a. The full name of the person or entity the member is designating as beneficiary;
 - b. Whether the beneficiary is being designated as primary or secondary beneficiary;
 - c. The percentage of the benefit the member is allocating to the beneficiary; and
 3. The member's notarized signature.
- C.** If a change in a designated beneficiary is completed through the member's secure ASRS account, the member's notarized signature is not required under subsection (B)(3).
- D.** If a member submits an Acceptable Form designating a beneficiary without indicating the percentage of the benefit the member is allocating to the beneficiary, the ASRS shall determine that each beneficiary is designated to receive an equal amount of the benefit.
- E.** Effective July 1, 2013, a married member:
1. Who is not retired shall name and maintain the member's current spouse as primary beneficiary of at least 50% of the member's retirement account unless:
 - a. Naming or maintaining the current spouse as beneficiary violates another law, existing contract, or court order; or
 - b. The spouse consents to an alternate beneficiary;
 2. Who retires shall choose a Joint and Survivor Retirement Benefit Option and name the member's current spouse as contingent annuitant unless:
 - a. Naming or maintaining the current spouse as contingent annuitant violates another law, existing contract, or court order; or
 - b. The spouse consents to an alternate contingent annuitant; or
 - c. The spouse consents to an alternate annuity option under A.R.S. §§ 38-757 or 38-760.
- F.** The ASRS shall honor a beneficiary designation last made or a retirement election submitted before July 1, 2013, even if the beneficiary designation or retirement election fails to comply with subsection (E).
- G.** Subsection (E) does not apply to a member who is receiving a mandatory lump sum distribution according to A.R.S. § 38-764.
- H.** Subsection (E) does not apply to a member who submits a Spousal Consent Exception form that contains the member's notarized signature to the ASRS affirming under penalty of perjury that the member's spouse's consent is not required because of one of the reasons specified in A.R.S. § 38-776(C).
- I.** In order to change a beneficiary designation, a member shall submit the information contained in subsection (B) and:
1. A married member who changes a beneficiary designation on or after July 1, 2013, shall ensure the new beneficiary designation is consistent with subsection (E); or
 2. A married member who retired before July 1, 2013, and who wishes to change the contingent annuitant or beneficiary, shall ensure that the new designation is consistent with subsection (E).
- J.** A married member who re-retires according to A.R.S. § 38-766:
1. Within less than 60 consecutive months of active membership from the member's previous retirement date, is not eligible to elect a different annuity option or different beneficiary than the member elected at the time of the previous retirement; or
 2. At least 60 consecutive months of active membership after the member's previous retirement date, may elect a different annuity option and different beneficiary than the member elected at the time of the previous retirement, and the election shall comply with subsection (E).
- K.** If a married member submits a retirement application that fails to comply with subsection (E), the member shall submit a new retirement application or written notice of new retirement elections that comply with subsection (E) within six months of the member's Original Retirement Date. The member's new Original Retirement Date is the date ASRS receives the new application or written notice unless the member elects a later date according to A.R.S. § 38-764.
- L.** If a married member made a beneficiary designation on or after July 1, 2013 that is not consistent with the requirements specified in subsection (E), the ASRS shall, at the time of the member's death:
1. Notify both the spouse and designated beneficiary and:
 - a. Provide the spouse with an opportunity to waive the right under subsection (E); and
 - b. Provide the designated beneficiary with an opportunity to provide documentation that revokes the spouse's right under subsection (E); and
 2. Designate 50% of the member's retirement benefit to the spouse if neither the spouse nor designated beneficiary respond to notification according to subsection (L)(1) within 30 days after notification.
- M.** If a married member designated a beneficiary before July 1, 2013 that does not comply with subsection (E), upon the death of the member, the member's spouse may submit written notice to the ASRS prior to disbursement of the member's account with the following information:
1. The member's full name;
 2. The member's Social Security number or U.S. Tax Identification number;
 3. The spouse's assertion to the spouse's right to community property;
 4. An original or copy of the marriage certificate; and

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

5. An original or certified copy of the member's death certificate.
- N. If a spouse submits written notice according to subsection (M), the ASRS shall designate the spouse as beneficiary of a percentage of the member's account according to A.R.S. §§25-211 and 25-214 and notify the member's designated beneficiary of the spouse's assertion.
- O. The ASRS shall determine a spouse's percentage of the member's account according to subsection (L) based on the amount of service credit the member acquired during the marriage divided by the total amount of service credit the member acquired, multiplied by 50%.
- P. If a beneficiary is notified of a spouse's assertion according to subsection (N), then before ASRS disburses a survivor benefit, the beneficiary may notify ASRS of the beneficiary's intent to appeal the spouse's right to a survivor benefit.
- Q. Within 30 days, a beneficiary who has notified ASRS of the beneficiary's intent to appeal a survivor benefit disbursement according to subsection (P), shall submit an appeal to ASRS according to 2 A.A.C. 8, Article 4.
- R. An original or certified copy of a DRO may supersede the requirements in subsection (B).
- S. To consent to an alternative retirement benefit option or beneficiary designation, a member's spouse shall complete and have notarized a Spousal Consent form containing the following information:
 1. Member's full name;
 2. Member's Social Security number or U.S. Tax Identification number;
 3. Whether the member's spouse is consenting to one or more of the following:
 - a. The member making a beneficiary designation that provides the spouse with less than 50% of the member's account balance;
 - b. The member electing a retirement option other than a Joint and Survivor Retirement Benefit Option;
 - c. The member naming a contingent annuitant other than the spouse; and
 - d. The spouse's notarized signature.
- T. A member's spouse may revoke the spouse's consent to an alternative retirement benefit option or beneficiary designation by sending written notice to ASRS with the following information:
 1. The member's full name
 2. The member's Social Security number or U.S. Tax Identification number;
 3. The spouse's full name;
 4. The spouse's dated signature indicating the spouse is revoking all previous Spousal Consent forms.
- U. A spouse who is revoking a Spousal Consent form shall ensure the written notice is received no later than the earlier of one day before the member dies or ASRS disburses a retirement benefit to the member.
- ASRS shall calculate the benefits effective date as of the day after the member's death and the ASRS shall pay interest up to the benefits effective date.
- D. According to A.R.S. § 38-763, if the member elected a Period Certain and Life Annuity Retirement Benefit Option and deceases prior to the expiration of the period certain term, the member's beneficiary may elect to complete the remaining period certain term or the beneficiary may elect to receive a lump sum distribution which is the greater of:
 1. The present value of the benefits based on the remaining period certain term; or
 2. The member's ASRS account balance plus interest at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A) through the month prior to the member's retirement date, reduced by all retirement benefits due to the member.
- E. Notwithstanding subsection (D), a beneficiary is not eligible to elect to complete the remaining period certain term if the period certain term has expired.
- F. If the beneficiary elects to complete the remaining period certain term or elects to receive a lump sum that is the present value of the benefits based on the remaining period certain term according to subsection (D), the ASRS shall not pay interest.
- G. If a member's beneficiary or contingent annuitant does not want to receive a survivor benefit according to 26 U.S.C. § 2518, within nine months after the member's death, the beneficiary or contingent annuitant may submit a written request to the ASRS with the following information for the beneficiary or contingent annuitant:
 1. Full name;
 2. Social Security number if the beneficiary or contingent annuitant is a U.S. citizen;
 3. Address; and
 4. Notarized signature acknowledging the following statements:
 - a. The beneficiary or contingent annuitant is aware that, as a beneficiary or contingent annuitant of the member, the beneficiary or contingent annuitant is entitled to a survivor benefit in the amount specified by the ASRS;
 - b. The beneficiary is renouncing a portion or all of the beneficiary's rights to the member's benefit;
 - c. The contingent annuitant is renouncing all of the contingent annuitant's rights to the member's benefit;
 - d. The beneficiary understands that by renouncing rights to the member's benefit, the portion that the beneficiary is renouncing will be paid to any other survivor on the member's account, or if there is no other designated survivor, the benefit will be paid to the member's estate; and
 - e. The contingent annuitant understands that by renouncing rights to the member's benefit, the ASRS shall pay the member's ASRS account balance plus interest at the Assumed Actuarial Interest and Investment Return Rate specified in R2-8-118(A) through the month prior to the member's retirement date, reduced by all retirement benefits due to the member, to any other survivor on the member's account, or if there is no other designated survivor, to the member's estate.
- H. According to 26 U.S.C. § 2518, a minor beneficiary's or contingent annuitant's survivor benefit cannot be renounced.

Historical Note

New Section made by final rulemaking at 26 A.A.R.
2036, effective November 8, 2020 (Supp. 20-3).

R2-8-132. Survivor Benefit Options

- A. The definitions in R2-8-126 apply to this Section.
- B. If the beneficiary is eligible to elect the survivor benefit as monthly income for life according to A.R.S. § 38-762(C), the ASRS shall calculate the benefits based on the attained age of the beneficiary, calculated to the nearest full month, as of the date of the member's death.
- C. If the beneficiary elects to receive the survivor benefit as monthly income for life according to A.R.S. § 38-762(C), the

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

Historical Note

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

R2-8-133. Survivor Benefit Applications

- A.** The definitions in R2-8-126 apply to this Section.
- B.** The ASRS shall not distribute a survivor benefit until a claimant notifies the ASRS of a member's death by telephone or submission of a death certificate, unless the member elected a Joint and Survivor Benefit Option upon retirement.
- C.** Upon notification of the death of a member, the ASRS shall distribute the survivor benefits according to the most recent, Acceptable Form that is On File with the ASRS that was received at least one day prior to the date of the member's death, unless otherwise provided by law.
- D.** The designated beneficiary or other person specified in A.R.S. § 38-762(E) shall provide the following:
1. An original certified death certificate or a certified copy of a court order that establishes the member's death;
 2. If the claimant is not a designated beneficiary, but is a person specified in A.R.S. § 38-762(E), a copy of a document issued from a federal, state, local, sovereign, or medical institution showing the claimant's relationship to the deceased member;
 3. A certified copy of the court order of appointment as administrator, if applicable; and
 4. Except if the deceased member was retired and elected the joint and survivor option, complete and have notarized an Application for Survivor Benefits, provided by the ASRS that includes:
 - a. The deceased member's full name,
 - b. The deceased member's Social Security number or U.S. Tax Identification number,
 - c. The benefit the designated beneficiary or other person specified in A.R.S. § 38-762(E) is electing;
 - d. If the designated beneficiary or other person specified in A.R.S. § 38-762(E) is electing to roll over a benefit, the following information:
 - i. The claimant's full name;
 - ii. The name of the institution to which the claimant is electing to roll over;
 - iii. The address of the institution to which the claimant is electing to roll over;
 - iv. The full name of the authorized representative of the institution to which the claimant is electing to roll over;
 - v. The signature of the authorized representative of the institution to which the claimant is electing to roll over;
 - e. If the beneficiary is electing to have any of the survivor benefits directly deposited into a bank account, the following information:
 - i. Whether the bank account is a checking or savings account;
 - ii. The name of the banking institution to which the benefit is being sent;
 - iii. The routing number;
 - iv. The account number; and
 - f. The following information for the designated beneficiary or other person specified in A.R.S. § 38-762(E):
 - i. Full name;
 - ii. Mailing address, if not On File with ASRS;
 - iii. Date of birth, if applicable; and
 - iv. Social Security number or U.S. Tax Identification number, if not On File with ASRS.
 - g. The following statements of understanding:
 - i. The designated beneficiary or other person specified in A.R.S. § 38-762(E) has read and understands the Special Tax Notice Regarding Plan Payments they received with this application;
 - ii. The designated beneficiary or other person specified in A.R.S. § 38-762(E) authorizes the ASRS to make payments as indicated above and agree on behalf of themselves and their heirs that such payments shall be a complete discharge of the claim and shall constitute a release of the ASRS from any further obligation on account of the benefit;
 - iii. The designated beneficiary or other person specified in A.R.S. § 38-762(E) authorizes the ASRS and the Banking Institution listed above to debit their account for the purposes of correcting errors and returning any payments inadvertently made after their death;
 - iv. Under penalties of perjury, the designated beneficiary or other person specified in A.R.S. § 38-762(E) certifies that:
 - (1) The Social Security number or U.S. Tax Identification number shown on this application is correct;
 - (2) They are not subject to backup withholding because:
 - (a) They are exempt from backup withholding, or
 - (b) They have not been notified by the Internal Revenue Service that they are subject to backup withholding as a result of a failure to report all interest or dividends, or
 - (c) The Internal Revenue Service has notified them that they are no longer subject to backup withholding; and
 - (3) They are a legal resident of the United States, unless they are an estate or trust.
 - v. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands their right to a 30-day notice period to consider a rollover or a cash distribution and they elect to waive the notice period by their election for payment on this application;
 - vi. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over all or any portion of their distribution to another eligible retirement plan, it is their responsibility to verify that the receiving plan will accept the rollover and, if applicable, agree to separately account for the taxable and nontaxable amounts rolled over and the related subsequent earnings on such amounts;
 - vii. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over all or any portion of their distribution to an IRA plan, it is their responsibility to verify that the receiving IRA institution will accept the rollover and, if applicable, it is their responsibility to separately account for taxable and nontaxable amounts;
 - viii. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over to another eligible retirement plan, any portion of the distribution not

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

- designated for a rollover will be paid directly to them and any taxable amounts will be subject to federal and state income tax withholding;
- ix. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over to an inherited IRA plan, any portion of the distribution not designated for a rollover will be paid directly to them and any taxable amounts will be subject to federal and state income tax withholding.
 - xi. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over to an inherited IRA plan, they may be required to receive a minimum distribution and they certify that the date of birth shown on this form is correct.
5. For a member who elected a Joint and Survivor Retirement Benefit Option, a contingent annuitant shall submit a Joint and Survivor Certification form containing:
 - a. The following information for the member:
 - i. Full name;
 - ii. Social Security number or U.S. Tax Identification number;
 - iii. Date of death; and
 - b. The following information for the beneficiary:
 - i. Legal relationship to the member;
 - ii. Full name;
 - iii. Social Security number or United States Tax Identification number, if not On File with ASRS;
 - iv. Mailing address, if not On File with ASRS;
 - v. Date of birth, if not On File with ASRS;
 - vi. If the contingent annuitant is electing to have any of the survivor benefits directly deposited into a bank account, the following information:
 - (1) Whether the bank account is a checking or savings account;
 - (2) The name of the banking institution to which the benefit is being sent;
 - (3) The routing number;
 - (4) The account number; and
 - c. The following statements of understanding:
 - i. The contingent annuitant has read and understands the Special Tax Notice Regarding Plan Payments they received with the Joint and Survivor Certification form;
 - ii. The contingent annuitant authorizes the ASRS to make payments as indicated above and agree on behalf of themselves and their heirs that such payments shall be a complete discharge of the claim and shall constitute a release of the ASRS from any further obligation on account of the benefit; and
 - iii. The contingent annuitant authorizes the ASRS and the Banking Institution listed above to debit their account for the purposes of correcting errors and returning any payments inadvertently made after their death.
 - d. The contingent annuitant's notarized signature.
 - E. Notwithstanding R2-8-132(H), if the beneficiary or contingent annuitant is a minor as of the date of the member's death, the beneficiary or contingent annuitant may submit a written request with the information contained in R2-8-132(G)(1) through (4) within nine months after the minor attains 18 years of age.
 - F. For a member who deceases prior to the member's retirement date, if there is no designation of beneficiary or if the designated beneficiary predeceases the member, the ASRS shall pay a survivor benefit as specified in A.R.S. § 38-762(E).
 - G. The ASRS shall begin disbursing a survivor benefit to a contingent annuitant according to A.R.S. § 38-760(B)(1) upon notification and verification of the member's death by a third party.
 - H. The ASRS shall suspend a survivor benefit for a contingent annuitant unless the contingent annuitant provides the information in subsection (D) within two months of the ASRS disbursing a survivor benefit.
 - I. If the member is domiciled in Arizona, according to A.R.S. § 14-3971, and there is no designated beneficiary, the ASRS shall distribute the balance of a member's account to a claimant if the claimant submits an Affidavit for Collection of Personal Property to ASRS with the following:
 1. The claimant's name;
 2. The claimant's Social Security number or U.S. Tax Identification number;
 3. The claimant's mailing address;
 4. The member's name;
 5. The member's Social Security number or U.S. Tax Identification number;
 6. The date of the member's death;
 7. The state and county where the member died;
 8. Statements indicating:
 - a. According to A.R.S. § 14-3971(B)(2)(a), no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction and the value of the member's entire estate, less liens and encumbrances, does not exceed the amount in A.R.S. § 14-3971 as valued as of the date of the member's death;
 - b. According to A.R.S. § 14-3971(B)(2)(b), the personal representative has been discharged, or more than a year has elapsed since a closing statement has been filed and the value of the member's entire estate, less liens and encumbrances, does not exceed the amount in A.R.S. § 14-3971 as valued as of the date the ASRS receives the Affidavit for Collection of Personal Property;
 - c. The claimant is the successor of the member and is entitled to the member's personal property because:
 - i. The claimant is named in the member's will; or
 - ii. The member did not have a will and the claimant is entitled to the member's personal property by right of intestate succession according to A.R.S. § 14-2103;
 - d. If the claimant is entitled to the member's personal property according to subsection (I)(8)(c)(i), then a copy of the member's will;
 - e. If the claimant is entitled to the member's personal property according to subsection (I)(8)(c)(ii), then the relationship between the member and the claimant and whether there are other surviving heirs;
 - f. If there are other surviving heirs, then the name and relationship of each surviving heir;
 - g. A statement indicating the claimant is making the Affidavit for Collection of Personal Property according to A.R.S. § 14-3971 for the purpose of making a claim to the member's ASRS account; and
 - h. The claimant's notarized signature.
 - J. If the member is not domiciled in Arizona and there is no designated beneficiary, the ASRS shall distribute the balance of a member's account to a claimant if the claimant submits legal

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

documentation to claim the member's ASRS account that complies with the statutory requirements of the state in which the member was domiciled at the time of the member's death.

- K.** Notwithstanding any other provision, if the amount of the survivor benefit as valued at the date of disbursement is less than \$10,000 per annum, the ASRS shall not distribute a survivor benefit to a minor beneficiary unless the minor beneficiary's legal guardian submits the following written information:
1. The member's full name;
 2. The member's Social Security number or U.S. Tax Identification number;
 3. The minor beneficiary's full name;
 4. The minor beneficiary's Social Security number or U.S. Tax Identification number;
 5. The full name of the minor beneficiary's legal guardian;
 6. The minor beneficiary's legal guardian's address, if not On File with ASRS; and
 7. The minor beneficiary's legal guardian's signature certifying the minor beneficiary's legal guardian has care and custody of the minor beneficiary.
- L.** Notwithstanding any other provision, if the amount of the survivor benefit as valued at the date of disbursement is \$10,000 or more per annum, the ASRS shall not distribute a survivor benefit to a minor beneficiary unless the minor beneficiary's conservator submits proof of court-appointed fiduciary responsibility for the minor beneficiary.
- M.** The ASRS shall remit payment to the minor beneficiary according to subsection (K) by sending the minor beneficiary's conservator a check, if the document providing proof of the court-appointed fiduciary responsibility requires payment to be made to a restricted or secure account.
- N.** If a person claims that a beneficiary or claimant is not entitled to a survivor benefit, then before ASRS disburses a survivor benefit, the person may notify ASRS of the person's intent to appeal the beneficiary's or claimant's right to a survivor benefit.
- O.** Within 30 days, a person who has notified ASRS of the person's intent to appeal a survivor benefit disbursement according to subsection (N), shall submit an appeal to ASRS according to 2 A.A.C. 8, Article 4.
- P.** If the ASRS receives documentation from, or confirmed by, a law enforcement agency, that a beneficiary or claimant may be guilty of the felonious and intentional killing of the member, the ASRS shall not distribute any benefits to the beneficiary or claimant that may be guilty of the felonious and intentional killing of the member until the matter has been adjudicated.
- Q.** If the member's estate has an appointed personal representative, the member's estate shall submit a court document identifying the personal representative for the member's estate before ASRS may distribute a survivor benefit.
- R.** If the member's estate is closed, the person claiming a right to the member's ASRS account shall provide a court document proving the estate is closed.
- S.** If the survivor receives a monthly annuity and does not provide the direct deposit information according to subsection (D)(4)(e) or (D)(5)(b)(vi), ASRS shall issue a debit benefit card.

Historical Note

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

Table 1. Repealed**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 1 repealed, new Table 1 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July

6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

Table 2. Repealed**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 2 repealed, new Table 2 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

Table 3. Repealed**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 3 repealed, new Table 3 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

Table 4. Repealed**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 4 repealed, new Table 4 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

Table 5. Repealed**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 5 repealed, new Table 5 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

Table 6. Repealed**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 6 repealed, new Table 6 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

Table 7. Repealed**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 7 repealed, new Table 7 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

Table 8. Repealed**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 8 repealed, new Table 8 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

Table 9. Repealed**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 9 repealed, new Table 9 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

Table 10. Repealed**Historical Note**

Adopted effective October 18, 1984 (Supp. 84-5). Table 10 repealed, new Table 10 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

Table 11. Repealed**Historical Note**

Adopted effective October 18, 1984 (Supp. 84-5). Table 11 repealed, new Table 11 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

Exhibit A. Repealed**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit B, Table 1. Repealed**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit B, Table 2. Repealed**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit B, Table 3. Repealed**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit C. Repealed**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit D, Table 1. Repealed**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit D, Table 2. Repealed

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit M, Table 2. Repealed**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit M, Table 3. Repealed**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit M, Table 4. Repealed**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit M, Table 5. Repealed**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit M, Table 6. Repealed**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

ARTICLE 2. HEALTH INSURANCE PREMIUM BENEFIT**R2-8-201. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "Coverage" means a medical and/or dental insurance plan a retired member, Disabled member, or contingent annuitant obtains through the ASRS or an Employer.
2. "Contingent annuitant" means the same as in A.R.S. § 38-711(8) and the person is eligible for Coverage.
3. "Disabled" means the member has a disability and is receiving long-term disability benefits pursuant to A.R.S. § 38-797 et seq.
4. "Family calculation" means the family Coverage premium described in A.R.S. § 38-783(B).
5. "Joint & survivor" means the annuity option described in A.R.S. § 38-760(B)(1).
6. "Net premium" means the amount of the Coverage premium reduced by the amount of the Premium Benefit provided by the ASRS.
7. "Original retirement date" means the same as in R2-8-126.
8. "Optional premium benefit" means the election, upon retirement, to have the Premium Benefit paid on behalf of the member's Contingent Annuitant upon death of the member pursuant to A.R.S. § 38-783.
9. "Period-certain" means the annuity option described in A.R.S. § 38-760(B)(2).
10. "Premium benefit" means the amount the ASRS provides on behalf of a retired member or Disabled member in order to offset the Coverage premium of the retired or Disabled member pursuant to A.R.S. § 38-783.
11. "Single calculation" means the single Coverage premium calculation described in A.R.S. § 38-783(A).
12. "Subsidized" means the same as in A.R.S. § 38-783(M)(4).

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 34, effective May 31, 2015 (Supp. 16-4). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2).

R2-8-202. Premium Benefit Eligibility and Benefit Determination

A. A retired member or Disabled member who has five or more years of service and who elects to maintain Coverage is eligible for a Premium Benefit as follows:

1. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member only, is eligible for a Single Calculation of the Premium Benefit as described in R2-8-204(A);
2. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

- member and a dependent who is not a retired member or Disabled member is eligible for a Family Calculation of the Premium Benefit as described in R2-8-204(B).
3. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member and a dependent who is a retired member or Disabled member is eligible for the greater of:
 - a. Two Single Calculations of the Premium Benefit described in R2-8-204(A); or
 - b. One Family Calculation of the Premium Benefit described in R2-8-204(B).
 4. A retired member or Disabled member who is enrolled as a dependent on an active member's insurance plan is eligible for a Single Calculation of the Premium Benefit described in R2-8-204(A) if:
 - a. The retired member has an Original Retirement Date prior to August 2, 2012; or
 - b. The Disabled member became Disabled prior to August 2, 2012;
 5. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member and multiple dependents, some of whom are retired members or Disabled members, is eligible for the greater of:
 - a. Two Single Calculations of the Premium Benefit described in R2-8-204(A); or
 - b. One Family Calculation of the Premium Benefit described in R2-8-204(B).
- B.** Pursuant to A.R.S. § 38-783(E), a retired member who returns to work as an active member with an Employer and elects to maintain Coverage is eligible to receive a Premium Benefit if the member has an Original Retirement Date prior to August 2, 2012.
- C.** Pursuant to A.R.S. § 38-783(E), a Disabled member who elects to maintain Coverage is eligible to receive a Premium Benefit if the Disabled member became Disabled prior to August 2, 2012.
- D.** A member who receives a lump sum distribution from the ASRS upon retirement is eligible to receive a Premium Benefit pursuant to this Article.
- E.** Notwithstanding any other Section, a retired member who has an Original Retirement Date on or after August 2, 2012, or a Disabled member who became Disabled on or after August 2, 2012 is eligible to receive a Premium Benefit pursuant to this Article, only if Coverage is not Subsidized.
- Historical Note**
- New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Amended by emergency rulemaking at 10 A.A.R. 4259, effective September 30, 2004 (Supp. 04-3). Amended by final rulemaking at 10 A.A.R. 4346, effective October 5, 2004 (Supp. 04-3). Section amended and Table 1 repealed by final rulemaking at 13 A.A.R. 4581, effective February 2, 2008 (Supp. 07-4). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2).
- R2-8-203. Payment of Premium Benefit**
- A.** Every month, the ASRS shall provide a Premium Benefit to the Employer on behalf of a retired member, Disabled member, or Contingent Annuitant who maintains Coverage and is eligible to receive a Premium Benefit pursuant to R2-8-202.
 - B.** Notwithstanding subsection (A), if a retired member who is eligible to receive a Premium Benefit pursuant to R2-8-202 elects to maintain Coverage with the Arizona Department of Administration or the ASRS, the ASRS shall reduce the retired member's pension amount by the amount of the retired member's Net Premium for Coverage pursuant to this Article, unless the Net Premium exceeds the pension amount.
 - C.** Notwithstanding subsection (A), if a retired member who is eligible to receive a Premium Benefit pursuant to R2-8-202 elects to maintain Coverage with the ASRS and the Net Premium exceeds the retired member's pension amount, the retired member shall be responsible for remitting the Net Premium to the retired member's insurance company and the ASRS shall:
 1. Not reduce the retired member's pension amount; and
 2. Remit payment of the Premium Benefit to the retired member's insurance company.
 - D.** Notwithstanding subsection (A), if a retired member who is eligible to receive a Premium Benefit pursuant to R2-8-202 elects to maintain Coverage with the Arizona Department of Administration and the Net Premium exceeds the retired member's pension amount, the retired member shall be responsible for remitting the Net Premium to the Arizona Department of Administration and the ASRS shall:
 1. Not reduce the retired member's pension amount; and
 2. Remit payment of the Premium Benefit to the Arizona Department of Administration.
 - E.** If a Disabled member who is eligible to receive a Premium benefit pursuant to R2-8-202 maintains Coverage with the Arizona Department of Administration, the ASRS shall remit the Premium Benefit to the Arizona Department of Administration, unless the Disabled member is participating in the Six-Month Reimbursement Program pursuant to R2-8-206.
 - F.** If a Disabled member who is eligible to receive a Premium Benefit pursuant to R2-8-202 maintains Coverage with the ASRS, the ASRS shall remit the Premium Benefit to the Disabled member's insurance company and the Disabled member shall be responsible for remitting the Net Premium to the Disabled member's insurance company.
 - G.** If a retired member or Disabled member who is eligible to receive a Premium Benefit pursuant to R2-8-202 maintains Coverage with an Employer other than the ASRS or the Arizona Department of Administration, the ASRS shall remit the Premium Benefit to the retired member's or Disabled member's Employer, unless the retired member or Disabled member is participating in the Six-Month Reimbursement Program pursuant to R2-8-206.
 - H.** If a retired member or Disabled member is eligible to receive a Premium Benefit pursuant to R2-8-202, the ASRS shall provide the lesser of the following for any one retired member or Disabled member:
 1. The actual cost of the Coverage premium; or
 2. The greatest Premium Benefit calculation for which the retired member or Disabled member is eligible pursuant to R2-8-202.
 - I.** If a retired member is eligible to receive a Premium Benefit pursuant to R2-8-202 and the member retires from the ASRS in addition to retiring from another State retirement system or plan described in A.R.S. § 38-921, each month, the ASRS shall remit any Premium Benefit for which the retired member is eligible under this Article to the other State retirement system or plan from which the member retired.
- Historical Note**
- New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2).

R2-8-204. Premium Benefit Calculation

- A. A Single Calculation for a Premium Benefit is based on the retired member's or Disabled member's Coverage election, years of service, and Medicare or non-Medicare status.
- B. A Family Calculation for a Premium Benefit is based on the retired member's or Disabled member's Coverage election, years of service, and Medicare or Non-Medicare status, and the Medicare or Non-Medicare status of any dependents for which the retired member or disabled member has obtained Coverage.
- C. A Contingent Annuitant who is eligible to receive an Optional Premium Benefit pursuant to R2-8-207 shall receive an Optional Premium Benefit amount based on:
 1. The retired member's years of service and optional retirement benefit election pursuant to A.R.S. § 38-760; and
 2. The Contingent Annuitant's Coverage and Medicare or non-Medicare status.
- D. Notwithstanding R2-8-203(H), if a Contingent Annuitant is a retired member, the Contingent Annuitant may be entitled to receive more than one Premium Benefit.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2).

R2-8-205. Premium Benefit Documentation

- A. Every year, prior to the effective date of Coverage, an Employer shall report to the ASRS all the Coverage plans and premium rates the Employer offers to its retired or Disabled employees.
- B. An Employer shall inform the ASRS of any changes to the retired member's, Disabled member's, or Contingent Annuitant's Coverage, including enrollment in Coverage, maintained through the Employer within 30 days of the changes taking effect.
- C. Using the Employer's secure ASRS website account, or another ASRS approved method, an Employer shall submit the following health insurance enrollment, change, and/or deletion information pursuant to subsection (B):
 1. The retired member's, Disabled member's, or Contingent Annuitant's social security number;
 2. The retired member's, Disabled member's, or Contingent Annuitant's full name;
 3. The retired member's, Disabled member's, or Contingent Annuitant's residential mailing address and telephone number;
 4. The retired member's, Disabled member's, or Contingent Annuitant's date of birth;
 5. The Coverage in which the retired member, Disabled member, or Contingent Annuitant is enrolling;
 6. The type of change that is being made to the Coverage;
 7. The following information for each dependent enrolled in, or to be enrolled in, Coverage:
 - a. First and last name;
 - b. Social security number;
 - c. Date of birth; and
 - d. Medicare number, if applicable.
 8. The old and new premium amounts for Coverage;
 9. The effective date of the change, deletion, and/or enrollment;
 10. The Employer's name and telephone number;

11. A certification by the Employer representative's dated signature that the information is current and correct.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2).

R2-8-206. Six-Month Reimbursement Program

- A. For a retired member or Disabled member who is eligible for a Premium Benefit pursuant to R2-8-202(A)(4) or (B), the ASRS shall remit the Premium Benefit to the retired member or Disabled member pursuant to subsection (B).
- B. Pursuant to subsection (A), the ASRS shall remit the Premium Benefit to the retired member or Disabled member every six months, payable in July and January. For purposes of this Section, the Premium Benefit shall be the aggregate amounts of the Premium Benefit the retired member or Disabled member is entitled to receive during the previous six months.
- C. In order to receive a Premium Benefit payment pursuant to subsection (B), a retired member or Disabled member shall submit to the ASRS the Reimbursement of Medical and/or Dental Cost (Six-Month Reimbursement Program) form after the last day of the last month for which the retired member or Disabled member is seeking reimbursement.
- D. The Reimbursement of Medical and/or Dental Cost (Six-Month Reimbursement Program) form that a retired member or Disabled member submits pursuant to subsection (C) shall include the following information:
 1. The retired member's or Disabled member's social security number;
 2. The retired member's or Disabled member's full name;
 3. The retired member's or Disabled member's mailing address and phone number;
 4. The retired member's or Disabled member's date of birth;
 5. The retired member's or Disabled member's status with the ASRS
 6. The retired member's or Disabled member's status with the retired member's or Disabled member's Employer.
 7. The following Coverage information for the Coverage policy holder:
 - a. First and last names;
 - b. Social security number;
 - c. Date of birth;
 - d. Effective date of Coverage;
 8. The following information for each dependent enrolled in, or to be enrolled in, Coverage:
 - a. First and last name;
 - b. Social security number;
 - c. Date of birth;
 - d. Effective date of Coverage;
 9. Six-month reimbursement totals identified by:
 - a. The month and year the premium is due for Coverage;
 - b. The total medical plan premium per month;
 - c. The total dental plan premium per month;
 - d. The employee's out-of-pocket payroll deduction for a medical premium per month;
 - e. The employee's out-of-pocket payroll deduction for a dental premium per month;
 - f. The employee's total out-of-pocket payroll deduction for medical and dental premiums per month;
 10. The Employer's name;
 11. The Employer's phone number;

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

12. The Employer's email address;
13. The name of the Employer's representative; and
14. The dated signature of the Employer's representative.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2).

R2-8-207. Optional Premium Benefit

- A. A member who retires on or after January 1, 2004 is eligible to elect the Optional Premium Benefit to be effective on the date of the retired member's retirement and may designate a Contingent Annuitant to receive the Optional Premium Benefit upon the death of the retired member if:
 1. The retired member elects a retirement option under A.R.S. § 38-760; and
 2. The retired member elects to maintain Coverage.
- B. A retired member who returns to active membership for 60 consecutive months or more before retiring again, may elect or re-elect the Optional Premium Benefit pursuant to subsection (A).
- C. A retired member who does not return to active membership for 60 consecutive months or more before retiring again is not eligible to elect the Optional Premium Benefit pursuant to subsection (A) unless the retired member elected the Optional Premium Benefit to be effective on the date of the retired member's Original Retirement Date.
- D. In order to elect, re-elect, or terminate the Optional Premium Benefit pursuant to subsection (A), the retired member shall submit to the ASRS the Optional Premium Benefit Program Election or Termination form containing the following information:
 1. The retired member's Social Security Number;
 2. The retired member's full name and gender;
 3. The retired member's current mailing address;
 4. The retired member's date of birth;
 5. The retired member's email address;
 6. The retired member's phone number;
 7. Whether the retired member is electing, declining, or terminating the Optional Premium Benefit;
 8. The following information for the Contingent Annuitant if the retired member is electing or re-electing the Optional Premium Benefit:
 - a. The Social Security Number;
 - b. The full name;
 - c. The mailing address;
 - d. The phone number;
 - e. The date of birth; and
 - f. The gender and relationship to the retired member; and
 9. Certification of understanding by the retired member's dated signature of the following statements:
 - a. I have a one-time election at the time of retirement for this benefit, and have a retirement date on or after January 1, 2004;
 - b. I must elect a Joint & Survivor or Period-Certain annuity option;
 - c. If I elect to participate, my Contingent Annuitant must either be participating or eligible to participate in my retiree health care plan at the time of my death;
 - d. I must provide a Social Security Number and proof of birth date for my Contingent Annuitant;

- e. The Premium Benefit will be actuarially reduced for the remainder of my benefit and my Contingent Annuitant's benefit as long as the Optional Premium Benefit is elected; and
- f. I may rescind the election at any time and be eligible for the unreduced Premium Benefit payable as provided by law.

- E. In order to elect or re-elect the Optional Premium Benefit, a member shall submit the Optional Premium Benefit Program Election or Termination form to the ASRS prior to the member's retirement date.
- F. A Contingent Annuitant the retired member designates to receive the Optional Premium Benefit upon the retired member's death is eligible to receive a Premium Benefit if:
 1. The retired member designates the Contingent Annuitant as the primary beneficiary on the member's retirement account;
 2. The Contingent Annuitant is enrolled in a Coverage plan at the time of the member's death or the Contingent Annuitant enrolls in a Coverage plan within six months of the retired member's death pursuant to A.R.S. § 38-782(A); and
 3. The Contingent Annuitant is eligible to receive at least one monthly payment.
- G. Upon the death of a retired member who elected the Optional Premium Benefit pursuant to subsection (A), the ASRS shall provide the Optional Premium Benefit on behalf of the retired member's Contingent Annuitant who is eligible to receive the Optional Premium Benefit pursuant to subsection (F).
- H. Notwithstanding subsection (G), the amount of the Optional Premium Benefit the ASRS provides on behalf of a Contingent Annuitant shall not exceed the actual amount of the Coverage premium.
- I. Unless otherwise indicated by law, the Optional Premium Benefit shall not terminate upon the death of the retired member if a Contingent Annuitant is eligible for the Optional Premium Benefit pursuant to subsection (F).

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 34, effective May 31, 2015 (Supp. 16-4). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2).

ARTICLE 3. LONG-TERM DISABILITY**R2-8-301. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "Attending Physician" means a provider:
 - a. Who is a qualified medical provider or other legally qualified practitioner of a healing art that the claims administrator recognizes or is required by law to recognize;
 - b. Whose medical training and clinical experience are qualified to treat the member's disabling condition;
 - c. Whose diagnosis and treatment is consistent with the diagnosis of the disabling condition, according to guidelines established by medical, research, and rehabilitative organizations;
 - d. Who is licensed to practice in the jurisdiction where care is being given;
 - e. Who is practicing within the scope of the license; and
 - f. Who is not related to the member by blood or marriage.

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

2. "Direct Care" means the member is actively receiving treatment from a provider for the member's disability at least once per calendar year.
2. "Estimated Social Security disability income amount" means the same as in R2-8-801(2).
3. "Legal proceeding" means an appeal of an appealable agency decision at the Office of Administrative Hearings pursuant to A.R.S. § 41-1092 et seq. or an appeal of a Social Security determination at the Social Security Administration, or any other review by a formal body, which determines the rights and responsibilities of the member or survivor.
4. "LTD" means the Long-Term Disability program described in A.R.S. § 38-797 et seq.
5. "LTD benefit" means the amount of funds the member receives from the ASRS or the ASRS contracted LTD claims administrator, for the period of time a member has an eligible disability as described in A.R.S. § 38-797.07(A)(11).
6. "LTD contribution" means the amount of funds the member remits to the ASRS from the member's compensation as payment for the LTD program.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3).
Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3).

R2-8-302. Application for Long-Term Disability Benefit

- A. In order to claim an LTD benefit, a disabled member shall submit to the disabled member's Employer all the completed forms prescribed by the ASRS contracted LTD claims administrator within 12 months of the date the disabled member became disabled.
- B. Pursuant to A.R.S. § 38-797.07(D), in order to continue receiving an LTD benefit, a disabled member shall submit documentation regarding the disabled member's ongoing disability and occupation as required by the ASRS contracted LTD claims administrator to determine the disabled member's continuing eligibility for an LTD benefit.
- C. Pursuant to A.R.S. § 38-797.07(11), in order to submit an application for an LTD benefit, a member must provide objective medical evidence from an Attending Physician.
- D. Pursuant to A.R.S. § 38-797.07(7)(b)(i), in order to continue receiving an LTD benefit, the disabled member must be under the Direct Care of a doctor.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3).
Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3).

R2-8-303. Long-Term Disability Calculation

- A. The ASRS contracted LTD claims administrator shall calculate an LTD benefit for a member using the member's monthly compensation as described in A.R.S. § 38-797(11).
- B. For a member whose monthly compensation is \$0 as of the date of disability, the ASRS shall pay a monthly benefit of \$50 unless the benefit is reduced pursuant to R2-8-807 or required to be reduced pursuant to A.R.S. § 38-797.07(A)(2).
- C. The ASRS shall reduce a member's LTD benefit in accordance with A.R.S. § 38-797.07(A).

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3).

Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3).

R2-8-304. Payment of Long-Term Disability Benefit

- A. The ASRS contracted LTD claims administrator shall begin providing an LTD benefit to an eligible disabled member no sooner than six months after the date the disabled member became disabled.
- B. Notwithstanding subsection (A), the ASRS contracted LTD claims administrator may begin providing an LTD benefit to an eligible disabled member sooner than six months if the disability is related to the member's disability that occurred within six months immediately preceding the disability.
- C. The ASRS contracted LTD claims administrator may provide an eligible disabled member's LTD benefit to a third party pursuant to A.R.S. § 38-797.09.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3).
Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3).

R2-8-305. Social Security Disability Appeal

- A. Upon request by the ASRS contracted LTD claims administrator, a member who claims an LTD benefit pursuant to R2-8-302(A) shall submit a Social Security disability income application as prescribed by the ASRS contracted LTD claims administrator.
- B. In order to continue receiving an LTD benefit, a member whose application for Social Security disability income has been denied or terminated must appeal the most recent determination of denial or termination through a hearing before an administrative law judge pursuant to A.R.S. § 38-797.07(A)(10)(a) until the ASRS contracted LTD claims administrator or the Social Security Claims Administrator determines the member is not eligible for a Social Security benefit.
- C. Within 10 days after a member receives notice of the status of the member's Social Security disability income application, the member shall notify:
 1. The ASRS of the member's application status by submitting a copy of the notice identifying the status of the member's Social Security disability income application to the ASRS, if the member is not receiving an LTD benefit; or
 2. The ASRS contracted LTD claims administrator of the member's application status by submitting a copy of the notice identifying the status of the member's Social Security disability income application to the ASRS contracted LTD claims administrator, if the member is not receiving an LTD benefit.
- D. A member who disagrees with an LTD determination by the ASRS contracted LTD claims administrator may submit an appeal pursuant to 2 A.A.C. 8, Article 4.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3).

R2-8-306. Approval of Social Security Disability

- Upon receipt of a Social Security disability income benefit, a member shall immediately remit to:
1. The ASRS the amount of the Social Security disability income benefit necessary to offset the LTD benefit; or
 2. The ASRS contracted LTD claims administrator the amount of the Social Security disability income benefit necessary to offset the LTD benefit.

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3).

ARTICLE 4. PRACTICE AND PROCEDURE BEFORE THE BOARD**R2-8-401. Definitions**

The following definitions apply to this Article, unless otherwise specified:

1. "Appealable agency action" has the same meaning as in A.R.S. § 41-1092.
2. "Board" means, if established, a Committee designated by the Board to take action on appeals as described in A.R.S. § 38-714(E)(1) or, if a Committee is not established, the same as in A.R.S. § 38-711(6).
3. "Final administrative action" has the same meaning as in A.R.S. § 41-1092 and is rendered by the Board.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 23 A.A.R. 487, effective April 8, 2017 (Supp. 17-1). Amended by final rulemaking at 23 A.A.R. 2749, effective November 13, 2017 (Supp. 17-3).

R2-8-402. General Procedures

In computing any time period, parties shall exclude the day from which the designated time period begins to run. Parties shall include the last day of the period unless it falls on a Saturday, Sunday, or legal holiday. When the time period is 10 days or less, parties shall exclude Saturdays, Sundays, and legal holidays.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1).

R2-8-403. Letters of Appeal; Request for a Hearing of an Appealable Agency Action

- A. After receipt of an agency decision, a person who is not satisfied with the agency decision, may submit a letter of appeal:
 1. To the ASRS's vendor for long-term disability benefits, if the appeal relates to a long-term disability decision; or
 2. To the ASRS Member Services Division Assistant Director, or such director's designee, if the appeal relates to an agency decision other than a long-term disability decision.
- B. Upon receipt of a letter of appeal, the long-term disability vendor, or the Member Services Division Assistant Director, or such director's designee, shall send a response letter to the person requesting the appeal notifying the person of:
 1. The decision the agency is making in response to the letter of appeal; and
 2. The person's right to appeal the agency response by submitting a letter of appeal to the ASRS Director or such director's designee.
- C. A person who is not satisfied with the agency response pursuant to subsection (B) may submit a letter of appeal to the ASRS Director or such director's designee within 60 days of the date on the agency response letter.
- D. Within 30 days of the date the ASRS receives a letter of appeal pursuant to subsection (C), the ASRS director or such director's designee shall send a response letter by certified mail to the person requesting the appeal that includes:
 1. The agency action the ASRS is taking in response to the letter of appeal; and

2. Notice of Appealable Agency Action, as required pursuant to A.R.S. § 41-1092.03 informing the person requesting the appeal, that the person has a right to appeal the agency action by submitting a Request for Hearing pursuant to subsections (E) and (F).
- E. For an appealable agency action, a person who is not satisfied with an agency action pursuant to subsection (D) may file a Request for a Hearing, in writing, with the ASRS. The date the Request is filed is established by the ASRS date stamp on the face of the first page of the Request. The Request shall include the following:
 1. The name and mailing address of the member, employer, or other person filing the Request;
 2. The name and mailing address of the attorney for the person filing the Request, if applicable;
 3. A concise statement of the reasons for the appeal.
 - F. The person requesting a hearing shall file the Request for a Hearing with the ASRS within 30 days after receiving a response letter including a Notice of an Appealable Agency Action, pursuant to subsection (E).
 - G. Upon receipt of the Request for a Hearing, the ASRS shall notify the Office of Administrative Hearings as required in A.R.S. § 41-1092.03(B).
 - H. Pursuant to subsection (B):
 1. The long-term disability vendor shall send a response letter to the person requesting the appeal within 120 days of the date the long-term disability vendor receives the letter of appeal; and
 2. The Member Services Division Assistant Director, or such director's designee, shall send a response letter to the person requesting the appeal within 30 days of the date the ASRS receives the letter of appeal.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1). Amended by final rulemaking at 23 A.A.R. 487, effective April 8, 2017 (Supp. 17-1).

R2-8-404. Board Decisions on Hearings before the Office of Administrative Hearings

A recommended decision from the Office of Administrative Hearings that is sent to ASRS at least 30 days before the Board's next regular monthly meeting, shall be reviewed by the Board at that monthly meeting. At the monthly meeting, the Board shall render a decision to accept, reject, or modify the findings of fact, conclusions of law and recommendations in whole or in part. If the Board modifies or rejects a recommended decision, the Board shall state the reasons for the modification or rejection. The Board shall deliver the Board's final decision to the Office of Administrative Hearings within five days after the monthly meeting at which the Board made the final decision.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1).

R2-8-405. Motion for Rehearing Before the Board; Motion for Review of a Final Decision

- A. Except as provided in subsection (H), within 30 days after service of the final administrative decision, any aggrieved party in an appealable agency action may file with the Board a Motion for Rehearing Before the Board, in writing, specifying the particular grounds for rehearing before the Board.
- B. Except as provided in subsection (H), within 30 days after service of the final administrative decision, any aggrieved party of an appealable agency action may file with the Board a Motion for Review of a Final Decision, in writing, specifying

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

the particular grounds for reviewing the Board's final administrative decision.

- C. A party may amend a Motion for Rehearing Before the Board or a Motion for Review of a Final Decision at any time before the Board rules on the motion. A party may file a response within 15 days after the motion or the amended motion is filed. The Board may require the filing of written briefs upon the issues raised in the motion or the amended motion, and may provide for oral argument.
- D. The Board may grant a Motion for Rehearing Before the Board or a Motion for Review of a Final Decision for any of the following causes that materially affects the moving party's rights:
1. Irregularity in the administrative proceedings of the agency or the hearing officer, or any order or abuse of discretion that deprives the moving party of a fair hearing;
 2. Misconduct of the Board, the hearing officer, or the prevailing party;
 3. Accident or surprise that could not have been prevented by ordinary prudence;
 4. Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original hearing;
 5. Excessive or insufficient penalties;
 6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing or during the process of the action; or
 7. That the decision, or findings of fact, is not justified by the evidence or is contrary to law.
- E. The Board may affirm or modify the final administrative decision or grant a rehearing before the Board or review of final administrative decision to all or any of the parties on all or part of the issues for any of the reasons in subsection (C). An order granting a rehearing or review shall specify with particularity the grounds for the order.
- F. Not later than 10 days after the final administrative decision, the Board may, after giving each party notice and an opportunity to be heard, order a rehearing or review of its final administrative decision for any reason for which it might have granted a rehearing or review on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing or review for a reason not stated in the motion. In either case, the order granting a rehearing or review shall specify the grounds on which it is granted.
- G. When a motion for rehearing or review is based upon an affidavit, the affidavit shall be filed with the motion. An opposing party may, within 15 days after filing, file an opposing affidavit. The Board may extend the period for filing an opposing affidavit for not more than 20 days for good cause shown or by written stipulation of the parties. The Board may permit a reply affidavit.
- H. The Board shall rule on the motion within 15 days after the response to the motion is filed or if a response is not filed, within five days of the expiration of the response period.
- I. If the Board makes a specific finding that the immediate effectiveness of a particular decision is necessary for the preservation of the public peace, health, and safety and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing or review, an application for judicial review of the decision may be made within the time limits permitted

for applications for judicial review of the Board's final decisions.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1). Amended by final rulemaking at 23 A.A.R. 487, effective April 8, 2017 (Supp. 17-1).

ARTICLE 5. PURCHASING SERVICE CREDIT**R2-8-501. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "Active duty" means full-time duty in a branch of the United States uniformed service, other than Active Reserve Duty.
2. "Active reserve duty" means participating in required meetings and annual training in a Reserve or National Guard branch of the United States uniformed service.
3. "Actuarial present value" means an amount in today's dollars of a member's future retirement benefit calculated using appropriate actuarial assumptions and the:
 - a. Eligible Member's Current Years of Credited Service;
 - b. Eligible Member's age as of the date the Eligible Member submits to the ASRS a request to purchase service pursuant to this Article;
 - c. Amount of Service Credit the member wishes to purchase; and
 - d. Member's current annual compensation.
4. "Authorized representative" means an individual who has been delegated the authority to act on behalf of a Custodian, Trustee, Plan Administrator, or a member, if the member's IRA or 403(b) is not maintained by the member's Employer.
5. "Current years of credited service" means the amount of credited service a member has earned or purchased, and the amount of Service Credit for which an Irrevocable PDA is in effect for which the member has not yet completed payment, but does not include any current requests to purchase Service Credit for which the member has not yet paid.
6. "Custodian" means a financial institution that holds financial assets for guaranteed safekeeping.
7. "Direct rollover" means distribution of Eligible Funds made payable to the ASRS as a contribution for the benefit of an eligible member from a retirement plan listed in A.R.S. § 38-747(H)(2) or (H)(3).
8. "Eligible funds" means payments listed in A.R.S. § 38-747(H)(2) and (H)(3).
9. "Eligible member" means a member who is eligible to purchase service pursuant to A.R.S. §§ 38-742, 38-743, 38-744, or 38-745.
10. "Forfeited service" means credited service for which the ASRS has returned retirement contributions to the member under A.R.S. § 38-740.
11. "IRC" means the same as "Internal Revenue Code" in A.R.S. § 38-711(18).
12. "Irrevocable PDA" means an irrevocable "Payroll Deduction Authorization" contract between an Eligible Member, an Employer, and the ASRS that requires the Employer to withhold payments from an Eligible Member's pay for a specified amount and for a specified number of payments, as provided in A.R.S. § 38-747.
13. "Leave of absence service" means an approved leave of absence without pay as specified in A.R.S. § 38-744.
14. "LTD" means the same as in R2-8-301.

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

15. "Military Call-up service" means a member is called to Active Duty in a branch of the United States Uniformed Services.
16. "Military service" means Active Duty or Active Reserve Duty with any branch of the United States Uniformed Services or the Commissioned Corps of the National Oceanic and Atmospheric Administration.
17. "Military service record" means a United States Uniformed Services or National Oceanic and Atmospheric Administration document that provides the following information:
 - a. The member's full name;
 - b. The member's Social Security number;
 - c. Type of discharge the member received; and
 - d. Active Duty dates, if applicable; or
 - e. Active Reserve Duty dates, if applicable; and
 - f. Point history for Active Reserve Duty dates, if applicable.
18. "Other public service" means previous employment listed in A.R.S. § 38-743(A).
19. "PDA pay-off invoice" means written correspondence from the ASRS to an Eligible Member that specifies the amount necessary to be paid by the Eligible Member to complete an Irrevocable PDA to receive the total credited service specified in the Irrevocable PDA.
20. "Plan administrator" means the person authorized to represent a specific eligible plan as addressed in IRC § 414(g).
21. "Service credit" means Forfeited Service, Leave of Absence Service, Military Service and Military Call-up Service under A.R.S. § 38-745, and Other Public Service that an Eligible Member may purchase.
22. "SP invoice" means a written correspondence from the ASRS informing an Eligible Member of the amount of money required to purchase a specified amount of Service Credit.
23. "Termination pay" means an Employer's payment to the ASRS of an Eligible Member's pay received as a result of terminating employment to purchase Service Credit as specified in A.R.S. § 38-747(B)(2).
24. "Three full calendar months" means the first day of the first full month through the last day of the third consecutive full month.
25. "Transfer employment" means to terminate employment with one Employer with which an Eligible Member has an Irrevocable PDA:
 - a. After accepting an offer to work for a new Employer;
 - b. While working as an active member for a different Employer; or
 - c. Before returning to work with any Employer within 120 days of terminating employment.
26. "Trustee-to-Trustee transfer" means a transfer of assets to the ASRS as authorized in A.R.S. § 38-747(I), from a retirement program from which, at the time of the transfer, a member is not eligible to receive a distribution.
27. "Uniformed services" means the United States Army, Army Reserve, Army National Guard, Navy, Navy Reserve, Air Force, Air Force Reserve, Air Force National Guard, Marine Corps, Marine Corps Reserve, Coast Guard, Coast Guard Reserve, and the Commissioned Corps of the Public Health Service.
28. "Window credit" means overpayments made on previously purchased Service Credit by members of the ASRS as provided by Laws 1997, Ch. 280, § 21, and Laws 2003, Ch. 164, § 3.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4). Amended by final rulemaking at 19 A.A.R. 764, effective June 1, 2013 (Supp. 13-2). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-502. Request to Purchase Service Credit and Notification of Cost

- A. An Eligible Member may request to purchase Service Credit electronically. The Eligible Member shall verify at the time of request, the following information for the Eligible Member:
 1. Name;
 2. Mailing address;
 3. Date of birth;
 4. Marital status;
 5. Gender;
 6. Primary email address;
 7. Primary phone number; and
 8. Which category of Service Credit the Eligible Member is requesting to purchase.
- B. An Eligible Member who requests to purchase Service Credit pursuant to subsection (A) shall acknowledge the following statements of understanding:
 1. Any person who knowingly makes any false statement or who falsifies or permits to be falsified any record of the retirement plan with an intent to defraud the plan is guilty of a class 6 felony per Arizona Revised Statutes Section 38-793; and
 2. This transaction is subject to audit. If any errors or misrepresentations are discovered as a result of an audit, the Eligible Member's total credited service with the ASRS will be adjusted as necessary and if the Eligible Member is retired, the Eligible Member's retirement benefit will also be adjusted. Any overpayment(s) will be refunded. However, if a payment made with a rollover or pre-tax dollars is returned to the Eligible Member, there may be tax consequences as a result of this refund.
- C. Upon receipt of the documentation required by this Article from the Eligible Member and if the Eligible Member's request to purchase Service Credit meets the requirements of this Article, the ASRS shall provide the following to the Eligible Member:
 1. A SP Invoice stating the cost to purchase the amount of Service Credit the member is eligible to purchase;
 2. Instructions for electing method of payment; and
 3. The date payment election is due.
- D. An Eligible Member who requests to purchase Service Credit pursuant to this Section shall elect one or more methods of payment and submit the election to the ASRS by the date payment election is due.
- E. An Eligible Member who elects to purchase Service Credit using after-tax payments shall acknowledge the following information:
 1. After-tax payments must be from the Eligible Member and remitted to the ASRS by the Eligible Member;
 2. After-tax payments cannot be used to purchase political subdivision employment with a United States territory, commonwealth, overseas possession, or insular area; and
 3. If the Eligible Member joined the ASRS on or after July 1, 1999, §§ 415(b) and 415(c) of the IRC limit the after-

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

tax money the Eligible Member can use to purchase Service Credit.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-503. Requirements Applicable to All Service Credit Purchases

- A. To purchase Service Credit at the amount provided in an SP Invoice, an Eligible Member shall purchase the Service Credit by check or money order, or request an Irrevocable PDA, Direct Rollover, Trustee-to-Trustee Transfer, or Termination Pay as specified in this Article, by the due date specified by the method of payment the Eligible Member elected.
- B. An Eligible Member may purchase all of the Service Credit or a portion of the Service Credit. If the Eligible Member wishes to purchase only a portion of the Service Credit, the Eligible Member shall specify:
 1. Either the number of years or partial years of Service Credit the Eligible Member wishes to purchase; or
 2. The cost for the number of years or partial years of Service Credit the Eligible Member wishes to purchase, not exceeding the years or partial years and cost specified on the SP Invoice.
- C. The ASRS shall not consider more than one active request at a time from a member to purchase Service Credit in a single category. The categories are:
 1. Leave of Absence Service;
 2. Military Service;
 3. Forfeited Service; and
 4. Other Public Service.
- D. An Eligible Member may cancel an active request by notifying the ASRS in writing.
- E. If an Eligible Member is entitled to a Window Credit, the Eligible Member may apply the Window Credit to purchase Service Credit. To apply a Window Credit to a purchase of Service Credit, the Eligible Member shall make a request to the ASRS in writing by the date payment election is due as specified on the SP Invoice and include the following information:
 1. The amount the Eligible Member wants to apply, and
 2. The Eligible Member's dated signature.
- F. On or before the due date specified on the SP Invoice, an Eligible Member may request an extension of a due date for purchasing Service Credit.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-504. Service Credit Calculation for Purchasing Service Credit

- A. An Eligible Member who purchases Service Credit shall receive one month of credited service for one or more days of service in a calendar month.
- B. Pursuant to A.R.S. 38-739(B), an Eligible Member who purchases Service Credit shall receive a proportionate amount of

credited service based on the length of the Eligible Member's service year.

- C. Notwithstanding any other provision, an Eligible Member whose membership date is on or after July 20, 2011, cannot purchase more than five years of Service Credit for each of the following based on the length of the Eligible Member's service year:
 1. Leave of Absence Service;
 2. Military Service; and
 3. Other Public Service.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-505. Restrictions on Purchasing Overlapping Service Credit

The ASRS shall not permit an Eligible Member to purchase Service Credit that, when added to credited service earned in any plan year, results in more than:

1. One year of credited service in any plan year, or
2. One month of credited service in any one calendar month.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-506. Cost Calculation for Purchasing Service Credit

- A. For Service Credit for Leave of Absence Service, Military Service, and Other Public Service, the ASRS shall calculate, as of the date of the request to purchase Service Credit:
 1. The Actuarial Present Value of the future retirement benefit for the Eligible Member including the Service Credit that the Eligible Member requests to purchase, and
 2. The Actuarial Present Value of the future retirement benefit for the Eligible Member without the Service Credit that the Eligible Member requests to purchase.
- B. The cost for purchasing the Service Credit that the Eligible Member requests to purchase is the difference between the Actuarial Present Value in subsection (A)(1) and the Actuarial Present Value in subsection (A)(2).

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-507. Required Documentation and Calculations for Forfeited Service Credit

- A. An Eligible Member who requests to purchase Service Credit for Forfeited Service under A.R.S. § 38-742 shall provide the ASRS:
 1. The name of an Employer, if known, for which the Eligible Member is requesting to purchase Service Credit for Forfeited Service; and
 2. The year and month the Eligible Member believes the ASRS returned retirement contributions.
- B. Upon receipt of payment as specified in subsection (D), the ASRS shall apply the Service Credit to the Eligible Member's account based on the most recent Forfeited Service available for purchase.
- C. Notwithstanding subsection (B), if an Eligible Member has more than one return of contributions pursuant to A.R.S. § 38-

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

740, the Eligible Member may elect to purchase Forfeited Service for any of the return of contributions and the ASRS shall apply the Service Credit to the Eligible Member's account based on the most recent Forfeited Service available for purchase.

- D. The amount the Eligible Member shall pay to purchase Service Credit for previously Forfeited Service is the amount of retirement contributions that the ASRS returned, plus interest on that amount from the date on the return of retirement contributions check to the date of redeposit at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A).

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-508. Required Documentation and Calculations for Leave of Absence Service Credit

- A. An Eligible Member who requests to purchase Service Credit for Leave of Absence Service under A.R.S. § 38-744 shall provide to the ASRS an Approved Leave of Absence form that includes:
1. The following information completed by the Eligible Member:
 - a. The start date and end date of the approved leave of absence;
 - b. The date the Eligible Member returned to work or a statement of why employment was not resumed;
 - c. The name of the Employer;
 - d. Whether the Eligible Member participated in another public retirement system during this leave of absence; and
 - e. If the Eligible Member participated in another public retirement system during the leave of absence, whether the Eligible Member is receiving a benefit or is eligible to receive a benefit, from the other public retirement system; and
 2. Acknowledgement of the following statements of understanding:
 - a. The Eligible Member understands that up to one year of Service Credit may be purchased for each approved leave of absence, if the Eligible Member returns to work for the Employer that approved the leave of absence unless employment could not be resumed because of disability or nonavailability of a position;
 - b. The Eligible Member authorizes the Employer to provide any necessary personal information to ASRS in order to process this request; and
 - c. The Eligible Member certifies that if the Eligible Member participated in another public retirement system during the approved leave of absence, the Eligible Member is not receiving, and is not eligible to receive, a benefit from the other public retirement system for the time during the approved leave of absence; and
 3. The Eligible Member's dated signature.
- B. Pursuant to A.R.S. § 38-744, a member who participated in another public retirement system during the leave of absence, and is receiving a benefit or is eligible to receive a benefit from the other public retirement system, is not an Eligible Member for purposes of this Section.
- C. If the information provided by the Eligible Member pursuant to subsection (A) is correct, the Employer shall validate the

information and submit the information to the ASRS through the Employer's secure ASRS account. If the information provided by the Eligible Member pursuant to subsection (A) is incorrect, the Employer shall correct the information and submit the information to the ASRS through the Employer's secure ASRS account.

- D. Upon submitting the information specified in subsection (B), the Employer shall acknowledge the following statements of understanding:
1. The Employer has verified all the dates for the approved leave of absence period are correct; and
 2. The contact individual has the legal power to bind the Employer in transactions with the ASRS.
- E. The amount the Eligible Member shall pay to purchase Service Credit for an approved leave of absence is determined as provided in R2-8-506.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-509. Required Documentation and Calculations for Military Service Credit

- A. An Eligible Member who requests to purchase Service Credit for Military Service under A.R.S. § 38-745(A) and (B) shall provide to the ASRS:
1. A copy of the Eligible Member's Military Service Record within 30 days of the Eligible Member's request to purchase Service Credit; and
 2. A Military Service form that contains:
 - a. Whether the Eligible Member is receiving a benefit or is eligible to receive a benefit, from the military.
 - b. The branch of the Uniformed Services the Eligible Member was in;
 - c. Whether the Eligible Member was on Active Duty or Active Reserve Duty;
 - d. The start date and end date of the Eligible Member's Military Service for which the Eligible Member is requesting to purchase Service Credit;
 - e. Acknowledgement that the Eligible Member will submit to the ASRS:
 - i. Proof of honorable separation for each type of Military Service listed on the form; and
 - ii. The Eligible Member's Military Service Record that supports all of the service listed on the form;
 - f. Acknowledgement of the following statements of understanding:
 - i. The Eligible Member understands that the service listed on this form does not include time that the Eligible Member either volunteered or was ordered into Active Duty service as part of a military call-up while employed by an Employer. This service is purchased under Military Call-up Service and requires a Military Call-up form to be completed by the Eligible Member's Employer; and
 - ii. The Eligible Member understands that any time the Eligible Member has listed on this form for Reserve or National Guard time reflects the months that the Eligible Member attended at least one drill or assembly for each month listed.

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

- B. The amount the Eligible Member pays to purchase Service Credit for Military Service is determined as provided in R2-8-506.
- C. The ASRS determines the amount of Service Credit an Eligible Member receives for Active Duty and Active Reserve Duty time by the time listed on the Military Service form, if the service listed is supported by the information contained in the Eligible Member's Military Service Record.
- D. If the ASRS has not received complete and correct documents pursuant to this Section within 30 days of the request to purchase Service Credit, the ASRS shall cancel the Eligible Member's request to purchase Service Credit.
- gible Member returning to employment, receipt of a declaration of disability, or receipt of a death certificate. These contributions are based on the salary the Eligible Member would have earned if the Eligible Member had not volunteered or been ordered into Active Duty;
- d. The Eligible Member may receive a maximum of 60 months of Service Credit for Military Call-up Service pursuant to A.R.S. § 38-745; and
- e. The contact individual has the legal power to bind the Employer in transactions with the ASRS.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-510. Required Documentation and Calculations for Military Call-up Service Credit

- A. An Eligible Member who meets the requirements under A.R.S. § 38-745(D) shall receive up to 60 months of Service Credit, not to exceed 5 years of Service Credit for Military Call-up Service under A.R.S. § 38-745(D) through (K). In order to determine the amount of contributions the Employer owes to purchase Service Credit for Military Call-up Service, the Eligible Member's Employer shall provide to the ASRS a copy of the Eligible Member's Military Service Record and a completed Military Call-up form that includes the following:
1. The Eligible Member's full name;
 2. The Eligible Member's Social Security number;
 3. The start date of Military Call-up Service;
 4. The end date of Military Call-up Service;
 5. The date the Eligible Member returned to work for the Employer;
 6. The salary for each pay period in each fiscal year while the Eligible Member was on military call-up, including any salary increases the Eligible Member would have received had the Eligible Member not left work due to military call-up;
 7. The name of a contact individual for the Employer, and that individual's business telephone number;
 8. The contact individual's dated signature;
 9. If applicable, the dates that the Eligible Member was hospitalized and released from the hospital as a result of participating in a military call-up.
 10. If applicable, the date the Eligible Member became disabled during or as a result of participating in a military call-up;
 11. If applicable, the date of the Eligible Member's death during or as a result of participating in a military call-up; and
 12. Acknowledgement of the following statements of understanding:
 - a. All the dates and payroll information for the Military Call-up Service are correct;
 - b. The Eligible Member:
 - i. Was honorably separated from Active Duty and returned to the same Employer within 90 days of either discharge from Active Duty or release from service-related hospitalization; or
 - ii. Was disabled and unable to return to work; or
 - iii. Died during or as a result of Active Duty.
 - c. The Employer must pay both the employee and Employer contributions in a lump sum upon the Eligible Member returning to employment, receipt of a declaration of disability, or receipt of a death certificate. These contributions are based on the salary the Eligible Member would have earned if the Eligible Member had not volunteered or been ordered into Active Duty;
- B. An Employer shall make the request to purchase Service Credit for Military Call-up Service within 30 days after the earlier of the dates listed in A.R.S. § 38-745(E).
- C. The ASRS calculates the amount the Employer pays to purchase Military Call-up Service pursuant to A.R.S. § 38-745(G) by multiplying the Eligible Member's salary per pay period at the time Active Duty commences, by the contribution rate in effect for the period of Active Duty. Included in the calculation are any salary increases the Eligible Member would have received if the Eligible Member had not left work to participate in a military call-up.
- D. The ASRS shall send the Employer a statement of cost for purchase of the Service Credit for Military Call-up Service based on the calculation in subsection (C). Within 90 days from the date on the ASRS statement of cost, the Employer shall pay to the ASRS the amount on the statement. If the Employer fails to make full payment within 90 days, interest shall accrue on the unpaid balance at the Assumed Actuarial Investment Earnings Rate in effect on the date of the statement of cost as specified in R2-8-118(A). The ASRS may collect the unpaid balance plus interest pursuant to A.R.S. § 38-735(C).
- E. If an Employer remits retirement or long-term disability contributions on behalf of an Eligible Member while the Eligible Member is on military call-up, the Employer shall reverse the contributions after the ASRS receives the information in subsection (A).
- F. If an Employer remits retirement contributions on behalf of an Eligible Member while the Eligible Member is on military call-up, and the Eligible Member does not return to the Employer after separation from active Military Service, the ASRS shall apply the retirement contributions to the Eligible Member's credited service.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-511. Required Documentation and Calculations for Other Public Service Credit

- A. An Eligible Member who requests to purchase Service Credit for Other Public Service under A.R.S. § 38-743 shall provide to the ASRS a completed Other Public Service form, signed and dated by the Eligible Member, that includes the following:
1. The name and mailing address of the Other Public Service employer;
 2. The position the Eligible Member held while working for the Other Public Service employer;
 3. The start date and end date of the Eligible Member's employment with the Other Public Service employer;
 4. The actual months and years the Eligible Member was employed with the Other Public Service employer;
 5. A statement of whether the Eligible Member participated in the Other Public Service employer's retirement plan;

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

6. If the Eligible Member participated in the Other Public Service employer's retirement plan, the name of the retirement plan, identifying whichever one of the following applies:
 - a. The approximate date the Eligible Member took a return of retirement contributions;
 - b. The plan is non-contributory and the Eligible Member is not eligible for benefits from the plan; or
 - c. That, if not using all of the retirement contributions as a rollover, the Eligible Member will request a return of retirement contributions and forfeit all rights to any benefits from the plan and provide the ASRS with documentation that the Eligible Member has forfeited all rights to benefits from the plan no later than the due date specified on the SP Invoice; and
 7. Acknowledgement that if an audit determines that the Eligible Member is eligible for a benefit from the Other Public Service employer's retirement plan, the Eligible Member is required to take necessary steps to forfeit the benefit, and if the forfeiture is not completed within 90 days of being notified of the audit results, the Service Credit purchase listed on this application will be revoked and any funds paid to purchase the Service Credit will be refunded to the member.
- B.** The amount the Eligible Member shall pay to purchase Service Credit for Other Public Service is determined as provided in R2-8-506.
- C.** Notwithstanding R2-8-512, the ASRS shall not accept after-tax monies for the purchase of Service Credit for Other Public Service with a territory, commonwealth, overseas possession or insular area pursuant to A.R.S. § 38-743.
- Historical Note**
- New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).
- R2-8-512. Purchasing Service Credit by Check, Cashier's Check, or Money Order**
- A.** An Eligible Member may purchase Service Credit by personal check in the Eligible Member's name, cashier's check, or money order remitted by the Eligible Member.
- B.** By the due date specified by the method of payment the Eligible Member elected, the Eligible Member shall ensure that the ASRS receives a check, cashier's check, or money order made payable to the ASRS in the amount to purchase the requested Service Credit.
- Historical Note**
- New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).
- R2-8-513. Purchasing Service Credit by Irrevocable PDA**
- A.** An Eligible Member may purchase Service Credit by Irrevocable PDA.
- B.** If the Eligible Member elects to pay for Service Credit by Irrevocable PDA, the Eligible Member shall elect the terms of the Irrevocable PDA and submit the Irrevocable PDA to the ASRS and the Employer with the following:
 1. Acknowledgements:
 - a. This Irrevocable PDA is binding and irrevocable;
 - b. This Irrevocable PDA shall remain in effect until the earlier of:
 - i. The authorized payroll deductions are completed; or
 - ii. The Eligible Member terminates employment.
 - c. The ASRS cannot terminate the Irrevocable PDA due to financial hardship;
 - d. The amount of Irrevocable PDA payments the Eligible Member makes is subject to federal laws;
 - e. The cost to purchase Service Credit by Irrevocable PDA includes an administrative interest charge at the Assumed Actuarial Investment Earnings Rate in effect at the time of the authorization as specified in R2-8-118(A);
 - f. Payments specified in this Irrevocable PDA are in addition to the regular contributions required pursuant to A.R.S. §§ 38-736 and 38-797.05;
 - g. The ASRS shall apply credited service to the Eligible Member's account upon receipt of payments authorized by the Eligible Member under this Irrevocable PDA; and
 - h. The ASRS shall not transfer, refund, or disburse the administrative interest that the ASRS charges pursuant to subsection (B)(1)(e); and
- 2. Statements of Understanding:**
- a.** It is the Eligible Member's responsibility to ensure the Eligible Member's Employer properly deducts payments and submits contributions as provided by the terms of the Irrevocable PDA;
- b.** Payments specified by the terms of this Irrevocable PDA shall be made directly to the ASRS from the Eligible Member's Employer and the Eligible Member does not have the option of receiving such payments directly from the Employer;
- c.** The Eligible Member's Employer shall make payments pursuant to this Irrevocable PDA after other mandatory deductions are made;
- d.** The Eligible Member's Employer cannot accept an election to change this Irrevocable PDA;
- e.** The Eligible Member has up to 14 days to request the ASRS calculate the remaining balance of this Irrevocable PDA after the earlier of:
 - i. Terminating employment;
 - ii. Terminating LTD without returning to work with an Employer; or
 - iii. The effective ASRS retirement date;
- f.** The Eligible Member must complete a purchase of the remaining balance on this Irrevocable PDA by the due date specified on the PDA Pay-off Invoice;
- g.** It is the Eligible Member's responsibility to notify the ASRS of any changes in the Eligible Member's employment that may affect the status of this Irrevocable PDA;
- h.** If the Eligible Member terminates employment and returns to work with an Employer within 120 days of terminating employment, this Irrevocable PDA must continue with the new Employer pursuant to R2-8-513.01; and
- i.** If the Eligible member terminates employment and does not return to work with an Employer within 120 days of terminating employment, the ASRS shall terminate this Irrevocable PDA pursuant to R2-8-513.01.
- C.** By submitting the Irrevocable PDA to the ASRS, the Irrevocable PDA is deemed to be signed by the Eligible Member.

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

- D.** At the time the Eligible Member elects the Irrevocable PDA, the Eligible Member may elect to use Termination Pay towards the balance of the Irrevocable PDA if the Eligible Member terminates employment. If the Eligible Member elects to use Termination Pay, the Eligible Member shall submit the Irrevocable PDA to the ASRS with the following information:
1. A statement that the Eligible Member:
 - a. Understands and agrees that the Eligible Member must continue working at least Three Full Calendar Months after the date of submission of the form before Termination Pay may be used on a pre-tax basis;
 - b. Understands that if the Termination Pay exceeds the balance owed on the Irrevocable PDA, the overage will be returned to the Employer to be distributed to the Eligible Member;
 - c. Understands that the election to use Termination Pay is binding and irrevocable;
 - d. The Eligible Member's Termination Pay must be received and processed before the ASRS will accept any other form of payment;
 - e. The Eligible Member's Employer is required to make payment directly to the ASRS after mandatory deductions are made, and the Eligible Member does not have the option of receiving the funds directly from the Employer;
 - f. It is the Eligible Member's responsibility to ensure that the Eligible Member's Employer properly deducts Termination Pay;
 - g. The amount of Termination Pay the Eligible Member elects is irrevocable pursuant to § 414(h)(2) of the IRC;
 - h. If the Eligible Member terminates employment and immediately retires, the Eligible Member's retirement processing may be delayed; and
 2. Whether the Eligible Member is electing either all Termination Pay or a specified amount of Termination Pay to be applied to the balance of the Irrevocable PDA.
- E.** The ASRS shall:
1. Charge interest on the unpaid balance at the Assumed Actuarial Investment Earnings Rate in effect at the time the Eligible Member submitted the request to purchase service as specified in R2-8-118(A);
 2. Limit the payroll deduction time period to a maximum of 520 payments; and
 3. Require a minimum payment of \$10.00 per payroll period, or payment in an amount to purchase at least .001 years of Service Credit per payroll period, whichever is greater.
- F.** The Employer shall implement the payroll deduction on the first pay period after receiving the Irrevocable PDA.
- G.** If a deduction is not made under an Irrevocable PDA within six months after the Eligible Member submits the authorization, the authorization lapses and the Eligible Member may make another request, which is recalculated based on the new request date unless the failure to begin deductions is due to an ASRS error.
- H.** A period of leave of absence, LTD, or military call-up shall not cancel the Irrevocable PDA. The Employer shall resume deductions immediately upon the Eligible Member's return to that Employer. The period during which the Eligible Member is on leave of absence, on LTD, or leaves work because of a military call-up is not included in the payment time limitation under subsection (D)(2). If the Eligible Member does not return to active working status, whether due to termination of employment or retirement, the Eligible Member may elect to purchase the balance of unpaid service under the Irrevocable PDA at the time of termination or retirement as specified in this Section.
- I.** Deductions made pursuant to an Irrevocable PDA continue until the:
1. Irrevocable PDA is completed;
 2. Eligible Member retires, whether or not the Eligible Member continues employment as allowed in A.R.S. §§ 38-766.01 and 38-764(I);
 3. Eligible Member terminates all ASRS employment without transferring employment; or
 4. Date of the Eligible Member's death.
- J.** If an Eligible Member retires or terminates employment from all Employers without transferring employment as stated in R2-8-513.01 before all deductions are made as authorized by the Irrevocable PDA, the ASRS shall cancel the Eligible Member's Irrevocable PDA unless the Eligible Member notifies the ASRS of the Eligible Member's intent to purchase the remaining amount within 14 days after the earlier of either termination or retirement.
- K.** When the Eligible Member notifies the ASRS of retirement or termination from all ASRS employment and requests to pay off the Irrevocable PDA, the ASRS shall send the Eligible Member a PDA Pay-off Invoice through the Eligible Member's secure ASRS account. The ASRS shall calculate the amount owed by the Eligible Member.
- L.** By the date payment election is due, the Eligible Member shall ensure that the ASRS receives the information specified in R2-8-502(C).
- M.** The Eligible Member may purchase the remaining Service Credit by one or more of the following methods by the due date specified on the PDA Pay-off Invoice:
1. By any method specified in R2-8-512;
 2. By making a request to the ASRS for a rollover or transfer under R2-8-514 and completing the rollover or transfer by the due date specified on the PDA Pay-off Invoice; or
 3. By Termination Pay under R2-8-519, if the Eligible Member authorized this option at the time the Eligible Member signed the Irrevocable PDA.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-513.01. Irrevocable PDA and Transfer of Employment to a Different Employer

- A.** If an Eligible Member Transfers Employment, the Eligible Member's new Employer shall continue to make deductions pursuant to an Irrevocable PDA.
- B.** If an Eligible Member terminates employment without having accepted an offer to work with an Employer, the ASRS shall terminate an Irrevocable PDA.
- C.** Notwithstanding subsection (B), if a retirement contribution is due from a new Employer within 120 days from the Eligible Member's termination date with the previous Employer, the ASRS shall determine that the Eligible Member Transferred Employment, unless the Eligible Member notified the ASRS of the termination of employment.
- D.** If an Eligible Member who has elected Termination Pay pursuant to R2-8-513(D) Transfers Employment, the ASRS shall

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

not accept any Termination Pay that the ASRS receives from the Eligible Member's previous Employer.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4).

Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-513.02. Termination Date

For the purpose of an Irrevocable PDA, the date an Eligible Member is considered terminated from an Employer is:

1. For an Eligible Member terminating employment, the Eligible Member's last pay period end date with that Employer;
2. For an Eligible Member on military call-up who does not return to the same Employer:
 - a. 90 days from the date of separation from military call-up;
 - b. 90 days from the date released from the hospital, if injured while on military call-up; or
 - c. The date the Eligible Member has been hospitalized for two years for injuries sustained as a result of participating in a military call-up.
3. For an Eligible Member on leave of absence without pay who does not return to the same Employer, the date the Employer required the Eligible Member to return to work;
4. For an Eligible Member who is unable to work because of a disability, the later of:
 - a. The date the Eligible Member's request for long-term disability benefits are denied;
 - b. The date the Eligible Member no longer has leave with pay available; or
 - c. For an Eligible Member on long-term disability who does not return to the same Employer or Transfer Employment, the date long-term disability benefits are terminated.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4).

Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-514. Purchasing Service Credit by Direct Rollover or Trustee-to-Trustee Transfer

- A. An Eligible Member may purchase Service Credit by Direct Rollover or Trustee-to-Trustee Transfer pursuant to this Article.
 - B. By the due date specified by the method of payment the Eligible Member elected, the Eligible Member shall ensure that the ASRS receives the payment for the service purchase and a completed Direct Rollover/Transfer Certification to Purchase Service Credit form.
 - C. An Eligible Member who chooses to purchase Service Credit shall provide the following to the ASRS:
 1. The name of the financial institution or plan;
 2. Whether the Eligible Member is choosing to rollover/transfer the entire balance of their account and if not, the amount of the rollover/transfer;
 3. Acknowledgement of the following information:
 - a. After-tax funds are only acceptable from 401(a) and 403(b) plans and must be listed separately from the portion that is pre-tax on the payment as after-tax amounts. This information must be provided to the ASRS with the payment.
 - b. The only fund types that the ASRS accepts are:
 - i. 401(a);
 - ii. 401(k) pre-tax only;
 - iii. 403(b);
 - iv. Governmental 457 pre-tax only;
 - v. 403(a) pre-tax only;
 - vi. 408 Traditional IRA pre-tax only;
 - vii. 408(k) SEP IRA pre-tax only;
 - viii. 408(p) Simple IRA pre-tax only and only if the Eligible Member participated for at least 2 years in this plan;
 - D. An Eligible Member who chooses to purchase Service Credit pursuant to this Section shall submit a Direct Rollover/Transfer Certification to Purchase Service Credit form that includes:
 1. The Eligible Member's full name;
 2. The last 4 digits of the Eligible Member's Social Security number;
- c. The ASRS shall not accept the following fund types:
 - i. Roth funds;
 - ii. Funds already distributed to the Eligible Member from a retirement plan listed in subsection (C)(3)(b);
 - iii. Inherited IRA;
 - iv. Coverdale Education Savings Account funds;
 - v. Hardship distributions;
 - vi. Funds not includable in gross income;
 - vii. Funds required under § 401(a)(9) of the IRC because the Eligible Member have attained age 70 1/2;
 - viii. One of a series of substantially equal periodic payments made at least annually for the Eligible Member's life;
 - ix. One of a series of substantially equal periodic payments made for 10 years or more;
 - x. After-tax contributions from any plan other than a 401(a) or 403(b) qualified plan;
 - d. The funds must be sent as a Direct Rollover from a plan listed in subsection (C)(3)(b) and issued to the ASRS for the benefit of the Eligible Member. If the payment is issued to anyone other than the ASRS, including the Eligible Member, then within 60 days of the plan issuing the payment, the Eligible Member must place the payment into a plan specified in subsection (C)(3)(b) to be reissued directly to the ASRS.
 - e. It is the Eligible Member's responsibility to contact the administrator of the plan from which the Direct Rollover will be made and have it initiated. The Eligible Member must also ensure all rollovers are completed by the due date. If the ASRS does not receive payment by the due date, the invoice will expire and the payment will be returned to the Eligible Member.
 - f. If the ASRS accepts a rollover and later determines that it was not eligible, the ASRS will distribute the invalid payment directly to the Eligible Member. Any taxes, penalties, and interest that the IRS, any taxing authority, or financial institution may assess against the Eligible Member due to an invalid payment are solely the Eligible Member's responsibility.
 - g. The plan from which the Eligible Member is rolling over funds must be solely in the Eligible Member's name. The Eligible Member may be a spousal beneficiary of a deceased person or an alternate payee on the plan from which the Eligible Member is rolling over funds.

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

3. The Eligible Member's signature certifying that the Eligible Member understands the requirements, limitations, and entitlements for the rollover/transfer that is being used to purchase Service Credit, and has read and understands the Direct Rollover/Transfer Certification to Purchase Service Credit form and any accompanying instructions and information;
4. The Authorized Representative's name and title;
5. The Authorized Representative's telephone number; and
6. Certification by the Authorized Representative's dated signature that:
 - a. The plan is either:
 - i. A qualified pension, profit sharing, or 401(k) plan described in IRC § 401(a), or a qualified annuity plan described in IRC § 403(a);
 - ii. A deferred compensation plan described in IRC § 457(b) maintained by a state of the United States, a political subdivision of a state of the United States, or an agency or instrumentality of a state of the United States;
 - iii. An annuity contract described in IRC § 403(b); or
 - iv. An IRA described in A.R.S. § 38-747(H)(3);
 - b. The rollover/transfer specified on the form from which the pre-tax funds are being rolled over or transferred is intended to satisfy the requirements of the applicable Section of the IRC;
 - c. The Authorized Representative is not aware of any plan provision or any other reason that would cause the plan/IRA not to satisfy the applicable Section of the IRC; and
 - d. The funds will be sent to the ASRS as a direct plan rollover, IRA rollover, or a Trustee-to-Trustee Transfer.
- E. The Eligible Member shall contact the Plan Administrator to have the funds distributed and transferred to the ASRS. Unless the ASRS receives a check for the correct amount from the plan and all documents required by this Article by the due date specified by the method of payment the Eligible Member elected, the ASRS shall cancel the request to purchase Service Credit.
- F. The Eligible Member shall ensure that the ASRS receives a check from the plan, made payable to the ASRS, for an amount that does not exceed the amount specified on the SP Invoice.
- G. If the payment from the eligible plan exceeds the amount specified on the SP Invoice, the ASRS shall return the entire payment to the Eligible Member.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Citations to subsection (C)(3)(b) corrected in subsections (C)(3)(c)(ii) and (C)(3)(d) (Supp. 20-1).

R2-8-515. Repealed**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Repealed by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-516. Expired**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 3195, effective October 11, 2016 (Supp. 16-3).

R2-8-517. Expired**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 3195, effective October 11, 2016 (Supp. 16-3).

R2-8-518. Repealed**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Repealed by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4).

R2-8-519. Purchasing Service Credit by Termination Pay

- A. To purchase Service Credit using Termination Pay, an Eligible Member shall elect to use Termination Pay by the date payment election is due.
- B. An Eligible Member who elects to use Termination Pay pursuant to this Section, shall provide the ASRS with the Eligible Member's anticipated termination date which cannot be more than six months from the date the ASRS issues the SP Invoice and must be at least Three Full Calendar Months after the date the Eligible Member elects and submits Termination Pay as a method of payment.
- C. An Eligible Member who elects to use Termination Pay pursuant to this Section, shall provide the ASRS with a Termination Pay Authorization for the Purchase of Service Credit form with the following information:
 1. The name of the Employer that will be submitting the Termination Pay to the ASRS;
 2. Whether the Eligible Member elects to use all Termination Pay or a specific amount of Termination Pay;
 3. Signature of the Eligible Member, certifying that the Eligible Member understands that:
 - a. The Eligible Member is required to continue working at least Three Full Calendar Months after the date the Eligible Member submits the Termination Pay Authorization for the Purchase of Service Credit form before Termination Pay may be used on a pre-tax basis;
 - b. If the Eligible Member terminates employment more than six months after the date on the SP Invoice, the Eligible Member may purchase the Service Credit at a newly calculated rate and possibly at a higher cost;
 - c. The terms elected in the Termination Pay Authorization for the Purchase of Service Credit form are binding and irrevocable;
 - d. The Eligible Member's Employer is required to make payment directly to the ASRS after mandatory deductions are made, and the Eligible Member does not have the option of receiving the funds directly from the Employer;

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

- e. The Eligible Member's Termination Pay must be received and processed before the ASRS will accept any other form of payment;
 - f. It is the Eligible Member's responsibility to ensure that the Eligible Member's Employer properly deducts Termination Pay, as provided in the Termination Pay Authorization for the Purchase of Service Credit form; and
 - g. The amount of Termination Pay the Eligible Member elects is irrevocable pursuant to § 414(h)(2) of the IRC;
 - h. If the Termination Pay exceeds the balance due on the SP Invoice, the ASRS will return the difference to the Eligible Member's Employer to be distributed to the Eligible Member;
 - i. If the Eligible Member terminates employment and immediately retires, the Eligible Member's retirement processing may be delayed; and
 - j. The ASRS will send a notification to the Eligible Member's Employer two weeks prior to the Eligible Member's termination date, as indicated on the Termination Pay Authorization form, to notify the Employer that the Eligible Member's Termination Pay must be sent directly to the ASRS.
- D.** The ASRS shall not apply Termination Pay to an SP Invoice covered by an Irrevocable PDA in effect at the time of termination, unless the Eligible Member elected the Termination Pay pursuant to R2-8-513(D) at the time the member authorized the Irrevocable PDA.
- E.** If an Eligible Member elects to use Termination Pay to purchase Service Credit, the ASRS shall not apply any other form of payment to the Service Credit purchase until the ASRS receives the Termination Pay.
- F.** Notwithstanding any other Section, if an Eligible Member dies prior to terminating employment, the ASRS shall not accept Termination Pay.
- G.** If an Eligible Member Transfers Employment, the ASRS shall not accept Termination Pay from the Eligible Member's previous Employer.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-520. Termination of Employment and Request Return of Retirement Contributions or Death of Member While Purchasing Service Credit by an Irrevocable PDA

- A.** If an Eligible Member terminates employment without transferring employment as specified in R2-8-513.01 while purchasing Service Credit by an Irrevocable PDA and requests return of retirement contributions pursuant to A.R.S. § 38-740, the ASRS shall return any principal payments made for the purchase of Service Credit including interest earned on those principal payments at the interest rate specified in R2-8-118(A), column 3.
- B.** If an Eligible Member dies while purchasing Service Credit, the ASRS shall credit the Eligible Member's account with:
1. The Service Credit for which the ASRS received payment pursuant to a PDA before the Eligible Member's death;
 2. The principal payments made by the Eligible Member; and
 3. Interest earned on payment through the date of distribution at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A).

- C.** If an Eligible Member dies while purchasing Service Credit, the ASRS shall not permit the survivor or an estate to purchase the remaining balance.
- D.** The ASRS shall not transfer, disburse, or refund the administrative interest the ASRS charged as part of an Irrevocable PDA as specified in R2-8-513.
- E.** The ASRS shall not credit a member's account with the administrative interest the ASRS charged as part of an Irrevocable PDA as specified in R2-8-513.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-521. Adjustment of Errors

- A.** If the ASRS determines an error has been made in the information provided by the member or in the calculations made by the ASRS, the ASRS shall make an adjustment to the member's account and return ineligible payments, if any.
- B.** The ASRS shall notify the member in writing of any adjustments.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

ARTICLE 6. PUBLIC PARTICIPATION IN RULEMAKING**R2-8-601. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "Rulemaking record" means a file the ASRS maintains as specified in A.R.S. § 41-1029.
2. "Oral proceeding" means a public gathering the ASRS holds for the purpose of receiving comment and answering questions about a proposed rule as specified in A.R.S. § 41-1023.
3. "Presiding officer" means an individual selected by the ASRS Director to oversee oral proceedings.
4. "Substantive policy statement" means the same as in A.R.S. § 41-1001(22).

Historical Note

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4).

R2-8-602. Reviewing Agency Rulemaking Record and Directory of Substantive Policy Statements

Except on a state holiday, a person may review a rulemaking record or the directory of substantive policy statements at the Phoenix office of the ASRS, Monday through Friday, from 8:00 a.m. until 5:00 p.m.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

R2-8-603. Petition for Rulemaking

- A.** A person submitting a petition to the ASRS to make or amend a rule under A.R.S. § 41-1033 shall include the following in the petition:

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

1. The name and current address of the person submitting the petition;
 2. An identification of the rule to be made or amended;
 3. The suggested language of the rule;
 4. The reason why a new rule should be made or a current rule should be amended with supporting information, including:
 - a. An identification of the persons who would be affected by the rule and how the persons would be affected; and
 - b. If applicable, statistical data with references to attached exhibits;
 5. The signature of the person submitting the petition; and
 6. The date the person signs the petition.
- B.** The ASRS shall send a written notice of the ASRS's decision regarding the Petition for Rulemaking to the person within 60 days of receipt of the petition.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

R2-8-604. Review of a Rule, Agency Practice, or Substantive Policy Statement

- A.** A person submitting a petition to the ASRS under A.R.S. § 41-1033 requesting that the ASRS review an agency practice or substantive policy statement that the person alleges constitutes a rule shall include the following in the petition:
1. The name and current address of the person submitting the petition,
 2. The reason the person alleges that the agency practice or substantive policy statement constitutes a rule,
 3. The signature of the person submitting the petition, and
 4. The date the person signs the petition.
- B.** The person who submits a petition under subsection (A) shall attach a copy of the substantive policy statement or a description of the agency practice to the petition.
- C.** The ASRS shall send a written notice of the ASRS's decision regarding the petition to the person within 60 days of receipt of the petition.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

R2-8-605. Objection to Rule Based Upon Economic, Small Business and Consumer Impact

- A.** A person submitting an objection to a rule based upon the economic, small business and consumer impact under A.R.S. § 41-1056.01 shall include the following in the objection:
1. The name and current address of the person submitting the objection;
 2. Identification of the rule;
 3. Either evidence that the actual economic, small business and consumer impact:
 - a. Significantly exceeded the impact estimated in the economic, small business and consumer impact statement submitted during the making of the rule with supporting information attached as exhibits; or
 - b. Was not estimated in the economic, small business and consumer impact statement submitted during the making of the rule and that actual impact imposes a significant burden on persons subject to the rule with supporting information attached as exhibits; or

- c. Reflects that the ASRS did not select the alternative that imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

4. The signature of the person submitting the objection; and
5. The date the person signs the objection.

- B.** The ASRS shall respond to the objection as specified in A.R.S. § 41-1056.01(C).

Historical Note

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

R2-8-606. Oral Proceedings

- A.** A person requesting an oral proceeding under A.R.S. § 41-1023(C) shall submit a written request to the ASRS that includes:
1. The name and current address of the person making the request;
 2. If applicable, the name of the public or private organization, partnership, corporation or association, or the name of the governmental entity the person represents; and
 3. Reference to the proposed rule including, if known, the date and issue of the Arizona Administrative Register in which the Notice of Proposed Rulemaking was published.
- B.** The ASRS shall record an oral proceeding by either electronic or stenographic means and any CDs, cassette tapes, transcripts, lists, speaker slips, and written comments received shall become part of the official record.
- C.** A presiding officer shall perform the following acts on behalf of the ASRS when conducting an oral proceeding as prescribed under A.R.S. § 41-1023:
1. Provide a method for a person who attends the oral proceeding to voluntarily note the person's attendance;
 2. Provide a Request to Present Oral Comment form that includes space for:
 - a. The name of the person submitting the Request to Present Oral Comment form,
 - b. The entity the person represents, if applicable, and
 - c. The rule on which the person wishes to comment or about which the person has a question;
 3. Open the proceeding by identifying the rules to be considered, the location, date, time, purpose of the proceeding, and the agenda;
 4. Explain the background and general content of the proposed rulemaking;
 5. Provide for public comment as specified in A.R.S. § 41-1023(D); and
 6. Close the oral proceeding by announcing the location where written public comments are to be sent and specifying the close of record date and time.
- D.** A presiding officer may limit comments to a reasonable time period, as determined by the presiding officer. Oral comments may be limited to prevent undue repetition.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

R2-8-607. Petition for Delayed Effective Date

- A.** A person who wishes to delay the effective date of a rule under A.R.S. § 41-1032 shall file a petition with the ASRS prior to

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

the proposed rule's close of record date. The petition shall contain the:

1. Name and current address of the person submitting the petition;
 2. Identification of the proposed rule;
 3. Need for the delay, specifying the undue hardship or other adverse impact that may result if the request for a delayed effective date is not granted;
 4. Reason why the public interest will not be harmed by the delayed effective date;
 5. Signature of the person submitting the petition; and
 6. Date the person signs the petition.
- B. The ASRS shall send a written notice of the ASRS's decision to the person within 30 days of receipt of the Petition for Delayed Effective Date.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

ARTICLE 7. CONTRIBUTIONS NOT WITHHELD**R2-8-701. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "218 agreement" means a written agreement between the state, political subdivision, or political subdivision entity and the Social Security Administration, under the provisions of § 218 of the Social Security Act, to provide Social Security and Medicare or Medicare-only coverage to employees of the state, political subdivision, or political subdivision entity.
2. "Documentation" means a pay stub, completed W-2 form, completed Verification of Contributions Not Withheld form, Employer letter or spreadsheet, completed State Personnel Action Request Form, Social Security Earnings Report, employment contract, payroll record, timesheet, or other Employer-provided form that includes:
 - a. Whether the employee was covered under the Employer's 218 Agreement prior to July 24, 2014,
 - b. The number of hours the member worked for the Employer per pay period, and
 - c. The amount and type of compensation earned by the member within each pay period.
3. "Eligible service" means employment with an Employer:
 - a. That is no more than 15 years before the date the ASRS receives written credible evidence that less than the correct amount of contributions were paid into the ASRS or the ASRS otherwise determines that less than the correct amount of contributions were made as specified in A.R.S. § 38-738(C); and
 - b. In which the member was Engaged to Work for an Employer.
4. "Engaged to Work" means the same as in R2-8-1001.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-702. General Information

- A. The Employer shall pay the Employer's portion of the contributions the ASRS determines is owed under R2-8-706 whether

or not the member pays the member's portion of the contributions.

- B. The person who initiates the claim that contributions were not withheld for Eligible Service has the burden to prove a contribution error was made.
- C. The ASRS shall not waive payment of contributions or interest owed under this Article.
- D. If a member is not able to establish eligibility for purchasing service credit pursuant to this Article, the member may be eligible to purchase service pursuant to A.R.S. § 38-743 and Article 5 of this Chapter.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-703. Employer's Discovery of Error

If an Employer determines that any amount of contributions have not been withheld for a member for a period of Eligible Service, the Employer shall notify the ASRS by submitting through the Employer's secure ASRS account a Verification of Contributions Not Withheld form with the following information:

1. The member's full name;
2. The member's Social Security number;
3. The range of dates that any contribution was not withheld;
4. The member's position title during the date range listed in subsection (3);
5. The amount and type of compensation the member was entitled to receive, and the number of hours the member worked for the Employer per pay period for each fiscal year;
6. The member's hire date;
7. Whether the member was Engaged to Work for the Employer;
8. Whether the position was covered under the Employer's 218 Agreement for periods prior to July 24, 2014; and
9. The dated signature of the Employer's authorized agent certifying:
 - a. All the dates and salary information is correct;
 - b. The person submitting this form has the legal power to enter into binding transactions with the ASRS;
 - c. Acknowledgement the Employer will receive an invoice for the contributions owed for Eligible Service only, as well as the accumulated interest on the contributions that were not withheld for both the member and Employer contributions; and
 - d. Acknowledgement the member will receive an invoice for their contributions owed.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-704. Member's Discovery of Error

- A. If a member believes that an Employer has not withheld contributions for the member for a period of Eligible Service, the member shall:
1. Notify the member's Employer that the Employer has not withheld contributions correctly by contacting the Employer directly; or
 2. Submit to the ASRS a Contributions Not Withheld Request form through the member's secure ASRS account with the following:

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

- a. The name of the Employer that should have remitted contributions;
 - b. The range of dates that any contribution was not withheld;
 - c. The member's position title during the date range listed in subsection (b);
 - d. Whether the member was Engaged to Work for the Employer; and
 - e. Dated signature of the member certifying the member understands:
 - i. The ASRS will be providing the member's Social Security number to the Employer for verification; and
 - ii. If the member's Employer cannot verify this request, it is the member's responsibility to provide Documentation of Eligible Service.
- B.** If the information provided by the eligible member pursuant to subsection (A) is correct, the Employer shall validate the information and submit the information to the ASRS through the Employer's secure ASRS account. If the information provided by the eligible member pursuant to subsection (A) is incorrect, the Employer shall correct the information and submit the information to the ASRS through the Employer's secure ASRS account, along with the information identified in R2-8-703.
- C.** If the Employer refuses to fill out the Verification of Contributions Not Withheld form, or if the member disputes the information the Employer completes on the form, the member shall provide the ASRS with the Documentation the member believes supports the allegation that contributions should have been withheld.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Section amended by final rulemaking at 22 A.A.R. 3326, effective January 1, 2017 (Supp. 16-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-705. ASRS' Discovery of Error

If the ASRS determines, as specified in A.R.S. § 38-738(B)(7), that all contributions have not been withheld for a member for a period of Eligible Service, the ASRS shall notify the Employer in writing and shall request the Employer submit through the Employer's secure ASRS account a Verification of Contributions Not Withheld form pursuant to R2-8-703.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-706. Determination of Contributions Not Withheld

- A.** Upon receipt of the information listed in R2-8-703, R2-8-704, or R2-8-705, the ASRS shall review the information to determine whether or not member contributions should have been withheld by the Employer, the length of time those contributions should have been withheld, and the amount of contributions that should have been withheld.
- B.** Except for a member who met the requirements to be an active member while simultaneously contributing to another retirement plan listed in subsection (B)(2), for purposes of this Article, the ASRS shall determine that contributions should not have been withheld for the period of service in question if:
1. An Employer remits an accurate ACR amount pursuant to R2-8-116; or

2. The employee participates in:
 - a. Another Arizona retirement plan listed in A.R.S. Title 38, Chapter 5, Articles 3, 4, or 6; or
 - b. In an optional retirement plan listed in A.R.S. Title 15, Chapter 12, Article 3 or A.R.S. Title 15, Chapter 13, Article 2.
- C.** Except for returning to work under A.R.S. § 38-766.01, the presence of a contract between a member and the Employer does not alter the contribution requirements of A.R.S. §§ 38-736 and 38-737.
- D.** If there is any discrepancy between the Documentation provided by the Employer and the Documentation provided by the member, a document used in the usual course of business prepared at the time in question is controlling.
- E.** The ASRS shall provide to each, the Employer and the member, an invoice with the following:
1. The amount of Eligible Service for which contributions were not withheld,
 2. The dollar amount of the contributions to be paid to the ASRS by the Employer,
 3. The interest on the Employer contributions and member contributions to be paid to the ASRS by the Employer pursuant to A.R.S. § 38-738,
 4. The amount of the delinquent interest late charge to be paid to the ASRS by the Employer pursuant to A.R.S. § 38-735, and
 5. The dollar amount of contributions to be paid to the ASRS by the member.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Section amended by final rulemaking at 22 A.A.R. 3326, effective January 1, 2017 (Supp. 16-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-707. Submission of Payment

- A.** Within 90 days from the date on the statement identified in R2-8-706(E), the Employer shall pay to the ASRS the amount due to be paid by the Employer. An Employer who makes payment under A.R.S. § 38-738(B)(3) is not liable for additional interest that may accrue as a result of a member's failure to remit payment required by A.R.S. § 38-738(B)(1). If the ASRS does not receive full payment of the Employer's amount due within 90 days after the ASRS notifies the Employer of the amount due, the full amount due will accrue interest as provided in A.R.S. § 38-738. The ASRS may collect the unpaid balance plus interest pursuant to A.R.S. § 38-735(C).
- B.** The member shall make payment to the ASRS pursuant to A.R.S. § 38-738 by the due date specified on the member's invoice identified in R2-8-706(E).
- C.** If the ASRS does not receive full payment of the member's amount due by the due date specified on the member's invoice identified in R2-8-706(E), the full amount due will accrue interest, as provided in A.R.S. § 38-738.
- D.** A member does not receive service credit or credit for salary until both the Employer and member portions of the contributions and all interest has been paid pursuant to A.R.S. § 38-738.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4).

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-708. Expired**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2982, effective September 15, 2016 (Supp. 16-3).

R2-8-709. Repealed**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Repealed by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

ARTICLE 8. RECOVERY OF OVERPAYMENTS**R2-8-801. Definitions**

For purposes of this article, the following definitions apply, unless specified otherwise:

1. "DRO" means the same as in R2-8-120.
2. "Estimated Social Security disability income amount" and "Revised Social Security disability income amount" mean the amount of funds the ASRS is entitled to collect pursuant to R2-8-802.
3. "LTD" means long-term disability program as described in A.R.S. § 38-797 et seq.
4. "LTD benefit" means the same as in R2-8-301
5. "Overpayment" means:
 - a. Any funds the ASRS distributes in excess of the amount to which the recipient is legally entitled; and
 - b. Any estimated social security disability income amount or revised social security disability income amount the ASRS is entitled to collect pursuant to A.R.S. § 38-765.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

R2-8-802. Estimated Social Security Disability Income Amount and Revised Social Security Disability Income Amount

- A. The ASRS contracted LTD claims administrator shall determine a member's estimated Social Security disability income amount as follows:
 1. Prior to the death, retirement, or forfeiture of a member, the estimated Social Security disability income amount shall be equal to the member's full monthly LTD benefit reduced by \$50 per month pursuant to A.R.S. § 38-797.07(A)(9); and
 2. Upon the member's death, retirement, or forfeiture, the estimated Social Security disability income amount shall be equal to the total amount of the member's LTD benefit, reduced by \$50 per month pursuant to A.R.S. § 38-797.07(A)(9).
- B. A member or survivor who disputes the estimated Social Security disability income amount based on the conclusions of a legal proceeding may request a revised Social Security disability income amount by submitting supporting documentation from the legal proceeding to the ASRS contracted LTD claims administrator within 30 days of the date of conclusion of the legal proceeding.

- C. Pursuant to subsection (B), the ASRS or the ASRS contracted LTD claims administrator shall determine whether the estimated Social Security disability income amount needs to be revised based on the conclusions of the legal proceeding.
- D. If the ASRS or the ASRS contracted LTD claims administrator determines the estimated Social Security disability income amount was inaccurate, the ASRS or the ASRS contracted LTD claims administrator shall calculate a revised Social Security disability income amount based on the supporting documentation provided by the member or survivor pursuant to subsection (B).
- E. Pursuant to subsection (B), if the revised Social Security disability amount is less than the amount of the estimated Social Security disability benefit, the ASRS or the ASRS contracted LTD claims administrator shall:
 1. Refund a portion of the amount of the estimated Social Security disability benefit that the ASRS retained upon forfeiture of the member in order to offset the difference between the estimated Social Security disability income amount and the revised Social Security disability income amount, or
 2. Adjust the member's retirement benefits or the survivor's benefits to offset the difference between the estimated Social Security disability income amount and the revised Social Security disability income amount.
- F. If a member or survivor is not satisfied with the determination on the request for a revised Social Security disability income amount, the member or survivor may appeal the determination pursuant to 2 A.A.C. 8, Article 4.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

R2-8-803. Reimbursement of Overpayments

- A. Upon the ASRS discovering that it has made an overpayment to a member, survivor, or alternate payee, the ASRS shall send a letter to notify the necessary person that an overpayment was provided and the person shall reimburse the ASRS in the amount of the overpayment.
- B. A person who reimburses the ASRS for an overpayment shall do so by remitting a check, made payable to the ASRS, by the due date specified in the letter providing notice of the overpayment.
- C. If the ASRS is unable to collect the amount of an overpayment by reducing future payments to members, survivors, or alternate payees as provided in this Article, the ASRS shall allow the appropriate person to reimburse the ASRS for the amount of the overpayment by making payments over the course of as many months as the number of months in which an overpayment was made by the ASRS, not to exceed 36 months.
- D. A person may request to reimburse the amount of the overpayment to the ASRS sooner than provided in this Article.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

R2-8-804. Collection of Overpayments from Forfeiture

- A. Unless a member cancels a forfeiture request by submitting written notice to the ASRS within 30 days of the request to forfeit, the ASRS shall reduce a member's refund amount in order to offset the member's overpayment amount pursuant to subsection (B).
- B. The ASRS shall reduce the member's refund amount by the amount of any overpayment and the ASRS shall:
 1. Pursue collection of any remaining overpayment amount pursuant to this Article; and

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

2. Distribute the remaining refund amount to the member pursuant to R2-8-115.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

R2-8-805. Collection of Overpayments from Retirement Benefit

- A.** Notwithstanding A.R.S. § 38-768, the ASRS may reduce a person's benefit pursuant to this Section.
- B.** Upon retirement, the ASRS shall reduce the amount of a member's retirement benefit by the amount of any overpayments that have not been reimbursed to the ASRS, pursuant to R2-8-803 as follows:
1. If the member elects to receive a lump sum or partial lump sum benefit, the amount of the lump sum or partial lump sum shall be reduced by the amount of the overpayment to no less than \$5.00 and the ASRS shall pursue overpayment collections for any remaining overpayment amount pursuant to this Article;
 2. If the member elects to receive retirement benefits as a monthly annuity and the amount of the overpayment is equal to or less than the amount of the member's first annuity disbursement minus \$5.00, the ASRS shall reduce the amount of the first annuity disbursement by the amount of any overpayment to no less than \$5.00;
 3. If the member elects to receive retirement benefits as a monthly annuity and the amount of the overpayment exceeds the amount of the member's first annuity disbursement plus \$5.00, the ASRS shall reduce the amount of the first annuity disbursement by the amount of the overpayment to no less than \$5.00 and pursue collection pursuant to subsection (C).
- C.** The ASRS shall reduce a member's or alternate payee's monthly annuity as follows in order to offset any overpayments which have not been reimbursed or collected pursuant to this Article:
1. The ASRS shall reduce the member's monthly annuity by up to 10% for 36 months, if the amount of the overpayment can be collected by the ASRS within that time.
 2. If the amount of the overpayment cannot be collected pursuant to subsection (C)(1), the ASRS will notify the member that the member must make payment arrangements within 60 days of the date on the notice. If the member does not make payment arrangements within 60 days of the date on the notice, the ASRS shall actuarially reduce the amount of the member's monthly annuity.
- D.** Notwithstanding subsection (B), the ASRS shall not reduce a member's or alternate payee's monthly annuity by an estimated Social Security disability income amount while the member is pursuing a Social Security disability income determination pursuant to R2-8-305, if the member submits documentation to the ASRS every six months informing the ASRS of the status of the member's Social Security disability income request until a determination is made regarding the amount of Social Security disability income.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

R2-8-806. Collection of Overpayments from Survivor Benefit

- A.** Notwithstanding A.R.S. § 38-768, the ASRS may reduce a person's benefit pursuant to this Section.
- B.** If a member, survivor, or alternate payee does not repay the amount of an overpayment pursuant to this Article, the ASRS

shall reduce the necessary person's amount of benefits pursuant to subsection (C).

- C.** The ASRS shall collect the amount of any remaining overpayment by reducing the necessary person's monthly annuity over the same number of months in which the overpayment was made, up to 3 months for each month an overpayment was made by the ASRS.
- D.** If the ASRS is unable to collect the amount of any overpayment pursuant to subsection (C), the ASRS shall pursue collection of any remaining overpayment amount pursuant to this Article.
- E.** Notwithstanding subsection (C), the ASRS shall not reduce a survivor's monthly annuity by an estimated Social Security disability income amount while the survivor is pursuing a Social Security disability income determination on behalf of the member pursuant to R2-8-305, if the survivor submits documentation to the ASRS every six months informing the ASRS of the status of the member's Social Security disability income request until a determination is made regarding the amount of Social Security disability income to which the member was entitled.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

R2-8-807. Collection of Overpayments from LTD Benefit

Upon disability of the member, the ASRS shall reduce the amount of the disabled member's LTD benefit by the amount of any overpayment the member received from the ASRS and has not reimbursed pursuant to this Section.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).
Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3).

R2-8-808. Collection of Overpayments by the Attorney General

If a member does not reimburse the ASRS for an overpayment pursuant to R2-8-802, the ASRS may submit the overpayment amount for collection by the Arizona Attorney General's Office.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

R2-8-809. Collection of Overpayments by the Arizona Department of Revenue

If a member does not reimburse the ASRS for an overpayment pursuant to R2-8-802, the ASRS may submit the overpayment amount for collection by the Arizona Department of Revenue.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

R2-8-810. Collection of Overpayments by Garnishment or Levy

Pursuant to A.R.S. § 38-723, the ASRS may collect the amount of any overpayment that has not been reimbursed or collected pursuant to this article by garnishing wages and/or placing a levy on the appropriate person's bank account.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

ARTICLE 9. EXPIRED**R2-8-901. Expired**

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3). Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2).

R2-8-902. Expired**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3). Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2).

R2-8-903. Expired**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3). Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2).

R2-8-904. Expired**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3). Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2).

R2-8-905. Expired**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3). Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2).

ARTICLE 10. MEMBERSHIP**R2-8-1001. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "218 Agreement" means the same as in R2-8-701.
2. "218 Resolution" means written authorization for a potential Employer to provide Social Security and Medicare or Medicare-only coverage to employees under the provisions of § 218 of the Social Security Act.
3. "Acceptable Documentation" means the same as in R2-8-115.
4. "Designated Employer Administrator" means an individual designated by the Employer and who has authorized access to the Employer's secure ASRS account in order to fulfill the Employer's responsibilities.
5. "Engaged To Work" means the earlier of:
 - a. The date the employee begins rendering services for the Employer and the Employer intends the employee to work for at least 20 hours a week for at least 20 weeks in a fiscal year or;
 - b. The week an employer renders services to an Employer for at least 20 hours a week for at least 20 weeks in a fiscal year.
6. "Leasing An Employee From A Third Party" means the same as "Leased from a third party" in R2-8-116.
7. "State Social Security Administrator" means the ASRS staff designated by the Board to approve 218 Agreements.
8. "Week" means 12:00 a.m. on Sunday through 11:59 p.m. on the following Saturday.

Historical Note

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

R2-8-1002. Employee Membership

- A. For purposes of active member eligibility, an employee of an Employer becomes a member of the ASRS pursuant to A.R.S. § 38-711(23) when the employee is Engaged To Work for the Employer.
- B. If the Employer does not provide an accurate date for which an employee was Engaged To Work pursuant to subsection (A), the ASRS shall determine that an employee's membership effective date will be the member's hire date, if provided by the Employer and within 30 days of the first pay period end date after the hire date, for which the Employer was required to submit contributions.
- C. If the Employer does not provide a hire date pursuant to subsection (B), the effective date is the first pay period end date of contributions received for that member.
- D. Unless a member terminates employment or retires from the ASRS, for purposes of determining active member eligibility, a member will continue to be an active member for the remainder of a fiscal year in which the employee met the requirements to be an active member in the ASRS with that Employer pursuant to A.R.S. § 38-711.
- E. Within 30 days of employment, an employee who is eligible for ASRS membership pursuant to A.R.S. § 38-711(23) shall create a secure ASRS account and submit to the ASRS through the employee's secure ASRS account the following information:
 1. The Employee's full name;
 2. The Employee's Social Security number;
 3. The Employee's date of birth;
 4. The Employee's gender;
 5. The Employee's marital status;
 6. The Employee's primary phone number;
 7. The Employee's personal email address;
 8. The Employee's current mailing address; and
 9. The Employee's designated beneficiary.
- F. Within 30 days of a change in the member's name, the member shall submit to the ASRS through the member's secure ASRS account a Change of Name form that contains:
 1. The member's full name that is on file with the ASRS;
 2. The member's Social Security number;
 3. The member's current mailing address;
 4. The member's date of birth;
 5. The member's personal email address;
 6. The member's primary phone number;
 7. The member's gender;
 8. The member's marital status;
 9. The member's retired, active, inactive, or LTD status with the ASRS;
 10. The member's new full name;
 11. The type of legal document establishing the member's new name;
 12. A copy of the legal document establishing the member's new name; and
 13. The member's dated signature.
- G. Within 30 days of a change in the member's contact information, the member shall notify the ASRS of the change.
- H. If an employee of an Employer meets the requirements of A.R.S. § 38-727(A)(8), the employee may elect to not participate in the ASRS.
- I. Within 30 days after employment, an Employer whose employee is 65 years of age or older as of the date of employment and who has elected not to participate in the ASRS pursuant to subsection (H), shall submit to the ASRS through the

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

Employer's secure ASRS account a 65+ Membership Waiver form that contains:

1. The employee's full name;
2. The employee's Social Security number;
3. The employee's current mailing address;
4. The employee's date of birth;
5. The employee's dated signature acknowledging the following statements:
 - a. The employee is electing to waive any rights to ASRS membership and the employee will not be eligible for any retirement, disability, or health insurance benefits offered by the ASRS;
 - b. The employee is not a member of the ASRS as of the date of employment; and
 - c. The employee understands that this election is irrevocable for the remainder of the employee's employment with that Employer and the time the employee works under this election is not eligible for purchase in the ASRS;
6. The Employer's name;
7. The date employee's employment began; and
8. The name and dated signature of the Employer's representative.

- J.** A corrected and completed 65+ Membership Waiver form must be resubmitted to the ASRS pursuant to subsection (I) within 14 days of the date the ASRS notifies the employee that the 65+ Membership Waiver form is incorrect or incomplete.

Historical Note

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

R2-8-1003. Charter School Employer Membership

- A.** Pursuant to A.R.S. § 15-187(C), a charter school in Arizona is considered a political subdivision that is eligible to participate in the ASRS if the charter school is sponsored by:

1. A state university;
2. A community college district;
3. A group of community college districts;
4. The state board of education; or
5. The state board for charter schools.

- B.** In order to participate as an Employer in the ASRS, a charter school shall notify the ASRS in writing of the charter school's intent to join the ASRS and provide:

1. A copy of the current and active Charter Contract, including any amendments, which is approved by the entity sponsoring the charter school pursuant to subsection (A);
2. Documentation showing the name and location of all schools authorized by the Charter Contract identified in subsection (B)(1); and
3. Documentation showing the charter school board's approval to pursue ASRS membership and complete ASRS requirements for membership.

- C.** Upon receipt of the information contained in subsection (B), the ASRS shall determine if the charter school is eligible to participate in the ASRS. If the charter school is not eligible to participate in the ASRS, the ASRS shall send the charter school a notice of ineligibility. If the charter school is eligible to participate, the ASRS shall provide the charter school a Potential New Employer Letter.

- D.** In order to participate as an Employer in the ASRS, an eligible charter school shall submit to the ASRS the following original documents by the due date listed on the Potential New Employer Letter:

1. The current retirement plan or a statement signed by the designated authorized agent for the charter school acknowledging there is no current retirement plan.

2. Two ASRS Agreements showing:
 - a. The legal name and current mailing address of the charter school as sponsored pursuant to subsection (A);
 - b. What amount of prior service the charter school shall purchase for employees pursuant to R2-8-1006;
 - c. The approximate number of employees that will become members upon the effective date of the ASRS Agreement;
 - d. The name, title, email address, and telephone number of the designated authorized agent for the charter school;
 - e. The designated authorized agent is authorized and directed to conduct all negotiations, conclude all arrangements, and sign all documents necessary to administer the supplemental ASRS retirement plan pursuant to A.R.S. Title 38, Chapter 5, Articles 2 and 2.1; and
 - f. The ASRS Agreement is binding and irrevocable;
 - g. The effective date of the ASRS Agreement;
 - h. The charter school agrees to be bound by the provisions of A.R.S. Title 38, Chapter 5, Article 2 and Article 2.1 unless otherwise indicated by law; and
 - i. The dated signature of the designated authorized agent for the charter school.

3. Two ASRS Resolutions showing:
 - a. The legal name of the charter school as sponsored pursuant to subsection (A);
 - b. The charter school is adopting a supplemental ASRS retirement plan pursuant to A.R.S. § 38-729;
 - c. The charter school agrees to be bound by the provisions of A.R.S. Title 38, Chapter 5, Article 2 and Article 2.1 unless otherwise indicated by law;
 - d. The designated authorized agent for the charter school;
 - e. The designated authorized agent is authorized and directed to conduct all negotiations, conclude all arrangements, and sign all documents necessary to administer the supplemental ASRS retirement plan pursuant to A.R.S. Title 38, Chapter 5, Articles 2 and 2.1; and
 - f. The dated and notarized signature of the designated authorized agent.

4. Two 218 Agreements either electing or declining coverage. If the charter school is electing coverage pursuant to a 218 Agreement, the 218 Agreement must be completed and approved by the Social Security Administration prior to joining the ASRS.

5. Two 218 Resolutions, if the charter school is electing coverage pursuant to subsection (D)(4). The 218 Resolutions must be completed and approved by the Social Security Administration prior to joining the ASRS.

- E.** Upon receipt of Acceptable Documentation identified in subsection (D), the ASRS may approve the charter school's request for membership pursuant to A.R.S. § 38-729. If the request to join the ASRS is approved, the state Social Security administrator shall sign the 218 Agreements and the ASRS Director shall sign the ASRS Agreements before the ASRS shall send one of each of the original documents identified in subsection (D) to the charter school.

- F.** Any charter school that is established under the charter contract of a participating charter school shall participate in the ASRS.

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

Historical Note

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

R2-8-1004. Other Political Subdivision and Political Subdivision Entity Employer Membership

- A.** A political subdivision or political subdivision entity, other than a charter school, may be eligible to participate in the ASRS pursuant to A.R.S. §§ 38-711 and 38-729 if it notifies the ASRS in writing of the political subdivision's or political subdivision entity's intent to join the ASRS and provides to the ASRS:
1. A copy of the current legal authority establishing the political subdivision or political subdivision entity;
 2. Documentation showing the name and location of the political subdivision or political subdivision entity; and
 3. Documentation showing the political subdivision or political subdivision entity has taken the necessary legal action to be eligible to participate pursuant to A.R.S. § 38-729.
- B.** Upon receipt of the information contained in subsection (C), the ASRS shall determine if the political subdivision or political subdivision entity is eligible to participate in the ASRS. If the political subdivision or political subdivision entity is not eligible to participate in the ASRS, the ASRS shall send the political subdivision or political subdivision entity a notice of ineligibility. If the political subdivision or political subdivision entity is eligible to participate, the ASRS shall provide the political subdivision or political subdivision entity a Potential New Employer Letter.
- C.** In order to participate as an Employer in the ASRS, an eligible political subdivision or political subdivision entity shall submit to the ASRS the following original documents by the due date listed on the Potential New Employer Letter:
1. The current retirement plan or a statement signed by the designated authorized agent for the political subdivision or political subdivision entity acknowledging there is no current retirement plan.
 2. Two ASRS Agreements showing:
 - a. The legal name and current mailing address of the political subdivision or political subdivision entity;
 - b. What amount of prior service the political subdivision or political subdivision entity shall purchase for employees pursuant to R2-8-1006;
 - c. The approximate number of employees that will become members upon the effective date of the ASRS Agreement;
 - d. The name, title, email address, and telephone number of the designated authorized agent for the political subdivision or political subdivision entity;
 - e. The designated authorized agent is authorized and directed to conduct all negotiations, conclude all arrangements, and sign all documents necessary to administer the supplemental ASRS retirement plan pursuant to A.R.S. Title 38, Chapter 5, Articles 2 and 2.1; and
 - f. The ASRS Agreement is binding and irrevocable;
 - g. The effective date of the ASRS Agreement;
 - h. The political subdivision or political subdivision entity agrees to be bound by the provisions of A.R.S. Title 38, Chapter 5, Article 2 and Article 2.1 unless otherwise indicated by law; and
 - i. The dated signature of the designated authorized agent for the political subdivision or political subdivision entity.
 3. Two ASRS Resolutions showing:

- a. The legal name of the political subdivision or political subdivision entity;
 - b. The political subdivision or political subdivision entity is adopting a supplemental ASRS retirement plan pursuant to A.R.S. § 38-729;
 - c. The political subdivision or political subdivision entity agrees to be bound by the provisions of A.R.S. Title 38, Chapter 5, Article 2 and Article 2.1 unless otherwise indicated by law;
 - d. The designated authorized agent for the political subdivision or political subdivision entity;
 - e. The designated authorized agent is authorized and directed to conduct all negotiations, conclude all arrangements, and sign all documents necessary to administer the supplemental ASRS retirement plan pursuant to A.R.S. Title 38, Chapter 5, Articles 2 and 2.1; and
 - f. The dated and notarized signature of the designated authorized agent.
4. Two 218 Agreements either electing or declining coverage. If the political subdivision or political subdivision entity is electing coverage pursuant to a 218 Agreement, the 218 Agreement must be completed and approved by the Social Security Administration prior to joining the ASRS.
 5. Two 218 Resolutions, if the political subdivision or political subdivision entity is electing coverage pursuant to subsection (C)(4). The 218 Resolutions must be completed and approved by the Social Security Administration prior to joining the ASRS.
- D.** Upon receipt of Acceptable Documentation identified in subsection (B), the ASRS may approve the political subdivision's or political subdivision entity's request for membership pursuant to A.R.S. § 38-729. If the request to join the ASRS is approved, the state Social Security administrator shall sign the 218 Agreements and the ASRS Director shall sign the ASRS Agreements before the ASRS shall send one of each of the original documents identified in subsection (B) to the political subdivision or political subdivision entity.

Historical Note

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

R2-8-1005. Employer Reporting

- A.** An Employer shall submit contribution information and contribution payments pursuant to A.R.S. § 38-735, through the Employer's secure ASRS account.
- B.** Within 14 days of receiving the information contained in subsection R2-8-1002(E)(1) through (E)(3), the Employer shall:
1. Verify the information the employee provided;
 2. Confirm the employee meets membership requirements pursuant to A.R.S. § 38-711; and
 3. Submit the verified information to the ASRS through the Employer's secure ASRS account.
- C.** For an Employer whose employee elects to participate in an Optional Retirement Plan in lieu of the ASRS pursuant to A.R.S. §15-1628, within 30 days of electing to participate in an Optional Retirement Plan, the Employer shall submit to the ASRS through the Employer's secure ASRS account the:
1. Employee's full name;
 2. Employee's Social Security number;
 3. Date of the employee's employment; and
 4. Date of the employee's Optional Retirement Plan election.
- D.** For an Employer who has submitted information pursuant to subsection (C), within 30 days of that employee terminating

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

employment with that Employer, the Employer shall notify the ASRS through the Employer's secure ASRS account of the employee's termination date.

- E. Within 14 days before the effective date of joining the ASRS, an Employer shall submit an initial online authorization and designation form in writing to the ASRS with the following information:
1. The Employer's name;
 2. The following information for the person authorized by the Employer to approve the Employer's Designated Employer Administrator:
 - a. The person's full name;
 - b. The person's title;
 - c. The person's phone number;
 - d. The person's email address;
 - e. The person's dated signature affirming that person has the authority to approve the Employer's Designated Employer Administrator;
 3. The full name of the individual the Employer is designating as the Employer's Designated Employer Administrator;
 4. The title of the individual the Employer is designating as the Employer's Designated Employer Administrator;
 5. The phone number of the individual the Employer is designating as the Employer's Designated Employer Administrator;
 6. The email address of the individual the Employer is designating as the Employer's Designated Employer Administrator;
 7. The dated signature of the individual the Employer is designating as the Employer's Designated Employer Administrator.
- F. An Employer's Designated Employer Administrator shall establish a new Employer's Designated Employer Administrator as needed through the Employer's secure ASRS account.
- G. Within 30 days of an Employer no longer having an Employer's Designated Employer Administrator, the Employer shall submit in writing an initial online authorization and designation form pursuant to subsection (E).
- H. Within 30 days of change in the Employer's address, the Employer shall notify the ASRS of the change through the Employer's secure ASRS account.
- I. Within 10 days of any change in the name or ownership of the Employer, the Employer shall provide written notice of the change to the ASRS through the Employer's secure ASRS account by providing the Employer's previous account information and the changes to that information.
- J. Within 30 days of any change in the character of an Employer's organizational structure, the Employer shall send to the ASRS through the Employer's secure ASRS account, written notice of the previous organizational structure and the effective changes to the Employer's organizational structure.
- K. Within 30 days of Leasing An Employee From A Third Party, an Employer shall submit the following information:
1. The employee's full name;
 2. The number of hours per week the employee works for the Employer;
 3. The title of the employee's position;
 4. A copy of the agreement showing the Employer Leasing An Employee From A Third Party; and
 5. Whether the employee is retired from the ASRS.

Historical Note

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

R2-8-1006. Prior Service Purchase Cost for New Employers

- A. Pursuant to A.R.S. § 38-729, upon the effective date of joining the ASRS, an Employer may elect to purchase service credit for a period of employment prior to the effective date of joining the ASRS for employees Engaged To Work for the Employer on the effective date of joining the ASRS who are members of the ASRS as of the effective date of joining the ASRS.
- B. The ASRS may provide to a potential Employer an estimated cost to purchase service credit pursuant to this Section. In order for the ASRS to estimate the cost to purchase service credit pursuant to this Section, a potential Employer shall provide the following information to the ASRS for each employee of the potential Employer who is Engaged To Work for the potential Employer and for whom the potential Employer intends to purchase service credit pursuant to this Section:
1. The employee's full name;
 2. The employee's date of birth;
 3. The employee's Social Security number;
 4. The employee's current salary; and
 5. The date the employee began employment with the potential Employer.
- C. An Employer who elects to purchase service credit pursuant to this Section shall submit the following information for each member for which the Employer is purchasing service credit:
1. Member's full name;
 2. Member's date of birth;
 3. Member's Social Security number;
 4. Member's date of employment;
 5. Documentation showing the Member is Engaged To Work for the Employer as of the effective date of joining the ASRS;
 6. Member's current salary as of the effective date of joining the ASRS; and
 7. The number of years the Employer is electing to purchase for the member pursuant to this Section or the dollar amount the Employer is electing to pay to purchase service for the member pursuant to this Section.
- D. The cost to purchase service credit pursuant to this Section shall be determined using an actuarial present value calculation.
- E. An Employer who elects to purchase service credit pursuant to this Section shall submit payment for the full cost of the service purchase to the ASRS within 90 days of the date of notification by the ASRS.
- F. If an Employer who elects to purchase service credit pursuant to this Section does not submit payment for the full cost of the service purchase within 90 days of the date of notification, the Employer is not eligible to purchase service credit pursuant to this Section.

Historical Note

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

ARTICLE 11. TRANSFER OF SERVICE CREDIT**R2-8-1101. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "Actuarial present value" means an amount in today's dollars of a member's future retirement benefit calculated using appropriate actuarial assumptions and the:
 - a. Member's Current Years of Credited Service;
 - b. Member's age as of the date the Member submits to the ASRS a request to transfer service credit pursuant to this Article; and
 - c. Member's most recent annual compensation.
2. "Current years of credited service" means:

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

- a. For Transfer In Service, the amount of credited service a member has earned or purchased, and the amount of service credit for which an Irrevocable PDA is in effect for which the member has not yet completed payment, but does not include any current requests to purchase service credit for which the member has not yet paid; and
- b. For transferring service credit to the Other Retirement Plan, the amount of credited service a member has earned or purchased, but does not include service credit for which the member has not yet paid.
3. "Irrevocable PDA" means the same as in R2-8-501.
4. "Funded Actuarial Present Value" means the Actuarial Present Value reduced to the extent funded on market value basis as of the most recent actuarial evaluation of the ASRS.
5. "Member's accumulated contribution account balance" means the sum of all the member's retirement contributions and any principal payments made for:
 - a. The purchase of service credit;
 - b. Contributions not withheld; and
 - c. Previous transfers of service credit.
6. "Other retirement plan" means the state retirement plans specified in A.R.S. § 38-921, other than the ASRS, or a retirement plan of a charter city as specified in A.R.S. § 38-730.
7. "Other Retirement Plan's cost" means the amount determined by the ASRS pursuant to R2-8-1102(D).
8. "Other public service" means the same as in R2-8-501.
9. "Transfer in service" means credited service with the Other Retirement Plan that a member is eligible to transfer to the ASRS pursuant to A.R.S. §§ 38-730 and 38-921.
2. The Member's Accumulated Contribution Account Balance in the Other Retirement Plan;
3. The amount of service credit the member has accumulated in the Other Retirement Plan; and
4. The start date and end date for the member's participation in the Other Retirement Plan.
- C. Upon receipt of the information specified in subsection (B), the ASRS shall calculate the Actuarial Present Value as specified in R2-8-506 necessary to transfer full service credit to the ASRS.
- D. The ASRS shall calculate the Other Retirement Plan's Cost as follows:
 1. If the ASRS Actuarial Present Value is greater than the Other Retirement Plan's Funded Actuarial Present Value, then the Other Retirement Plan's Cost is the greater of:
 - a. The Other Retirement Plan's Funded Actuarial Present Value; or
 - b. The Member's Accumulated Contribution Account Balance in the Other Retirement Plan;
 2. If the ASRS Actuarial Present Value is less than or equal to the Other Retirement Plan's Funded Actuarial Present Value, then the Other Retirement Plan's Cost is the greater of:
 - a. The ASRS Actuarial Present Value; or
 - b. The Member's Accumulated Contribution Account Balance in the Other Retirement Plan.
- E. The ASRS shall compare the Other Retirement Plan's Cost to the ASRS Actuarial Present Value calculated pursuant to subsection (C) and:
 1. If the Other Retirement Plan's Cost is less than the ASRS Actuarial Present Value, then the member may elect to transfer service credit to the ASRS and:
 - a. Pay the difference between the Other Retirement Plan's Cost and the ASRS Actuarial Present Value; or
 - b. Accept a proportionately reduced amount of service credit;
 2. If the Other Retirement Plan's Cost is greater than or equal to the ASRS Actuarial Present Value, then the member may elect to transfer the service to the ASRS pursuant to subsection (F).
- F. Upon completion of the comparison specified in subsections (D) and (E), the ASRS shall send the member a transfer in invoice notifying the member of the member's options to complete the transfer of service credit through the member's secure ASRS account.
- G. The member may elect to complete a transfer of service credit pursuant to this Section by submitting the member's election by the election due date specified on the transfer in invoice.
- H. Upon receipt of the member's election to complete a transfer of service credit, the ASRS shall send the transfer in invoice to the Other Retirement Plan and the Other Retirement Plan shall make payment to the ASRS by submitting a check made payable to the ASRS for the Other Retirement Plan's Cost specified on the transfer in invoice by the payment due date specified on the transfer in invoice.
- I. If a member elects to pay the total difference between the ASRS Actuarial Present Value and the Other Retirement Plan's Cost pursuant to R2-8-1102(E), the member shall elect the method of payment by the payment due date specified on the transfer in invoice.
- J. A member may elect to pay the total difference between the ASRS Actuarial Present Value and the Other Retirement Plan's Cost pursuant to R2-8-1102(E) by any one or more methods specified in R2-8-512, R2-8-513, R2-8-514, or R2-8-519.

Historical Note

New Section made by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-1102. Required Documentation and Calculations for Transfer In Service Credit

- A. A member who is eligible to Transfer In Service credit, may request to transfer service credit by providing a Transfer In form to the ASRS with the following:
 1. The name of the Other Retirement Plan;
 2. The date the member either terminated employment with an employer of the Other Retirement Plan or ceased to participate in the Other Retirement Plan;
 3. The date the member began employment with the employer through which the member was participating in the Other Retirement Plan;
 4. The number of years the member participated in the Other Retirement Plan;
 5. Acknowledgement the member agrees that:
 - a. Knowingly making a false statement or falsifying or permitting falsification of any record of the ASRS with an intent to defraud ASRS is a Class 6 felony, pursuant to A.R.S. § 38-793; and
 - b. The Transfer In Service credit transaction is subject to audit and if any errors are discovered, the ASRS shall adjust a member's account, or if the member is already retired, adjustments to the member's account may affect the member's retirement benefit.
- B. Upon receipt of the information specified in subsection (A), the ASRS shall submit the information to the Other Retirement Plan and request:
 1. The Other Retirement Plan's Funded Actuarial Present Value pursuant to A.R.S. §§ 38-730 and 38-922;

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

- K.** For a member who elects to accept a proportionately reduced amount of service pursuant to subsection (E)(1)(b), the ASRS shall calculate the proportionately reduced amount of service credit based on the member's service credits in the Other Retirement Plan multiplied by the ratio of the Other Retirement Plan's Cost to the ASRS Actuarial Present Value.
- L.** The member shall submit payment to transfer service credit pursuant to this Section by the payment due date specified on the transfer in invoice.
- M.** If the member does not submit payment for the total difference in the calculations pursuant to R2-8-1102(E) by the payment due date specified on the transfer in invoice, the member may be eligible to purchase the remaining service credit as Other Public Service, and the member is not eligible to purchase the remaining service credit based on the cost specified in the transfer in invoice.
- Historical Note**
New Section made by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).
- R2-8-1103. Transferring Service to Other Retirement Plans**
- A.** Upon receipt of a request to transfer a member's service credit from the ASRS to the Other Retirement Plan, the ASRS shall calculate:
1. The ASRS Funded Actuarial Present Value pursuant to A.R.S. §§ 38-730 and 38-922; and
 2. The Member's Accumulated Contribution Account Balance in the ASRS.
- B.** Upon completing the calculations specified in subsection (A), the ASRS shall submit the calculations and member information to the Other Retirement Plan with a due date for the Other Retirement Plan to submit a fund request to the ASRS pursuant to subsection (C).
- C.** If a member elects to transfer service credit to the Other Retirement Plan, the member shall ensure that the Other Retirement Plan submits a fund request on the Other Retirement Plan's letterhead by the due date specified in subsection (B) to the ASRS with the following information:
1. The member's full name;
 2. The last four digits of the member's Social Security number;
 3. The name of the Other Retirement Plan; and
4. The Actuarial Present Value necessary to transfer full service credit to the Other Retirement Plan.
- D.** Upon receipt of the information specified in subsection (C), the ASRS shall compare the calculations specified in subsection (A) to the Other Retirement Plan's Actuarial Present Value specified in subsection (C) and transfer funds as follows:
1. If the Other Retirement Plan's Actuarial Present Value specified in subsection (C) is greater than the ASRS Funded Actuarial Present Value specified in subsection (A), then the ASRS shall transfer the greater of:
 - a. The ASRS Funded Actuarial Present Value specified in subsection (A); or
 - b. The Member's Accumulated Contribution Account Balance in the ASRS.
 2. If the Other Retirement Plan's Actuarial Present Value specified in subsection (C) is less than or equal to the ASRS Funded Actuarial Present Value, then the ASRS shall transfer the greater of:
 - a. The Other Retirement Plan's Actuarial Present Value specified in subsection (C); or
 - b. The Member's Accumulated Contribution Account Balance in the ASRS.
- E.** Transferring service credit to the Other Retirement Plan pursuant to this Section constitutes a withdrawal from ASRS membership and results in a forfeiture of all other benefits under ASRS.
- F.** Notwithstanding subsection (E), pursuant to A.R.S. § 38-750, a transferred employee who continues an Irrevocable PDA after transferring service credit to the Other Retirement Plan may be eligible to:
1. Transfer service credit associated with the remaining balance of the Irrevocable PDA for which the transferred employee paid for the purchase of service credit plus interest at the Assumed Actuarial Investment Earnings Rate pursuant to A.R.S. § 38-922, not including any administrative interest charge the transferred employee paid pursuant to an Irrevocable PDA; or
 2. Receive a return of contributions plus interest as specified in R2-8-118(A), column 3, pursuant to A.R.S. § 38-740.
- Historical Note**
New Section made by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

38-714. Powers and duties of ASRS and board

A. ASRS shall have the powers and privileges of a corporation, shall have an official seal and shall transact all business in the name "Arizona state retirement system", and in that name may sue and be sued.

B. The board is responsible for supervising the administration of this article by the director of ASRS.

C. The board is responsible for the performance of fiduciary duties and other responsibilities required to preserve and protect the retirement trust fund established by section 38-712.

D. The board shall not advocate for or against legislation providing for benefit modifications, except that the board shall provide technical and administrative information regarding the impact of benefit modification legislation.

E. The board may:

1. Determine the rights, benefits or obligations of any person under this article and any member under articles 2.1 and 7 of this chapter and afford any person dissatisfied with a determination a hearing on the determination. The board may delegate the duty and authority to act on the board's behalf to a committee of the board for the purposes of this paragraph and title 41, chapter 6, article 10 relating to any decision made under this paragraph by that committee of the board.

2. Determine the amount, manner and time of payment of any benefits under this article.

3. Recommend amendments to this article and articles 2.1 and 7 of this chapter that are required for efficient and effective administration.

4. Adopt, amend or repeal rules for the administration of the plan, this article and articles 2.1 and 7 of this chapter.

F. Beginning June 30, 2016, the board shall determine which of the generally accepted actuarial cost methods shall be used in the annual actuarial valuation of the plan.

G. The board and ASRS are not subject to title 41, chapter 6, except title 41, chapter 6, article 10, for actuarial assumptions and calculations, investment strategy and decisions and accounting methodology.

H. The board shall submit to the governor and legislature for each fiscal year no later than eight months after the close of the fiscal year a report of its operations and the operations of ASRS. The report shall follow generally accepted accounting principles and generally accepted financial reporting standards and shall include:

1. A report on an actuarial valuation of ASRS assets and liabilities.

2. Any other statistical and financial data that may be necessary for the proper understanding of the financial condition of ASRS and the results of board operations.

3. On request of the governor or the legislature, a list of investments owned. This list shall be provided in an electronic format.

4. An estimate of the aggregate fees paid for private equity investments, including management fees and performance fees.

I. The board shall:

1. Prepare and publish a synopsis of the annual report for the information of ASRS members.

2. Contract for a study of the mortality, disability, service and other experiences of the members and employers participating in ASRS. The study shall be conducted for fiscal year 1990-1991 and for at least every fifth fiscal year

thereafter. A report of the study shall be completed within eight months after the close of the applicable fiscal year and shall be submitted to the governor and the legislature.

3. Conduct an annual actuarial valuation of ASRS assets and liabilities.

J. The auditor general may make an annual audit of ASRS and transmit the results to the governor and the legislature.

38-711. Definitions

In this article, unless the context otherwise requires:

1. "Active member" means a member as defined in paragraph 23, subdivision (b) of this section who satisfies the eligibility criteria prescribed in section 38-727 and who is currently making member contributions as prescribed in section 38-736.

2. "Actuarial equivalent" means equality in value of the aggregate amounts expected to be received under two different forms of payment, based on mortality and interest rate assumptions approved from time to time by the board.

3. "ASRS" means the Arizona state retirement system established by this article.

4. "Assets" means the resources of ASRS including all cash, investments or securities.

5. "Average monthly compensation" means:

(a) For a member whose membership in ASRS commenced before January 1, 1984 and who left the member's contributions on deposit or reinstated forfeited credited service pursuant to section 38-742 for a period of employment that commenced before January 1, 1984, the higher of either:

(i) The monthly average of compensation that is calculated pursuant to subdivision (b) of this paragraph.

(ii) The monthly average of compensation on which contributions were remitted during a period of sixty consecutive months during which the member receives the highest compensation within the last one hundred twenty months of credited service. Any month for which no contributions are reported to ASRS or that falls within a period of nonpaid or partially paid leave of absence or sabbatical leave shall be excluded from the computation. The sixty consecutive months may entirely precede, may be both before and after or may be completely after any excluded months. If the member was employed for less than sixty consecutive months, the average monthly compensation is based on the total consecutive months worked. Payments for accumulated vacation or annual leave, sick leave, compensatory time or other forms of termination pay that, before August 12, 2005, constitute compensation for members whose membership in ASRS commenced before January 1, 1984, do not cease to be included as compensation if paid in the form of nonelective employer contributions under a 26 United States Code section 403(b) plan if all payments of employer and employee contributions are made at the time of termination. Contributions shall be made to ASRS on these amounts pursuant to sections 38-735, 38-736 and 38-737.

(b) For a member whose membership in ASRS commenced on or after January 1, 1984 but before July 1, 2011, the monthly average of compensation on which contributions were remitted during a period of thirty-six consecutive months during which a member receives the highest compensation within the last one hundred twenty months of credited service. Any month for which no contributions are reported to ASRS or that falls within a period of nonpaid or partially paid leave of absence or sabbatical leave shall be excluded from the computation. The thirty-six consecutive months may entirely precede, may be both before and after or may be completely after any excluded months. If the member was employed for less than thirty-six consecutive months, the average monthly compensation shall be based on the total consecutive months worked.

(c) For a member whose membership in ASRS commenced on or after July 1, 2011, the monthly average of compensation on which contributions were remitted during a period of sixty consecutive months during which a member receives the highest compensation within the last one hundred twenty months of credited service. Any month for which no contributions are reported to ASRS or that falls within a period of nonpaid or partially paid leave of absence or sabbatical leave shall be excluded from the computation. The sixty consecutive months may entirely precede, may be both before and after or may be completely after any excluded months. If the member was employed for less than sixty consecutive months, the average monthly compensation shall be based on the total consecutive months worked.

6. "Board" means the ASRS board established in section 38-713.

7. "Compensation" means:

(a) For members whose membership began on or before December 31, 2019, the gross amount paid to a member by an employer as salary or wages, including amounts that are subject to deferred compensation or tax shelter agreements, for services rendered to or for an employer, or that would have been paid to the member except for the member's election or a legal requirement that all or part of the gross amount be used for other purposes, but does not include amounts paid in excess of compensation limits established in section 38-746. Compensation includes amounts paid as salary or wages to a member by a second employer if the member meets the requirements prescribed in paragraph 23, subdivision (b) of this section with that second employer. Compensation, as provided in paragraph 5, subdivision (b) or (c) of this section, does not include:

- (i) Lump sum payments, on termination of employment, for accumulated vacation or annual leave, sick leave, compensatory time or any other form of termination pay whether the payments are made in one payment or by installments over a period of time.
 - (ii) Damages, costs, attorney fees, interest or other penalties paid pursuant to a court order or a compromise settlement or agreement to satisfy a grievance or claim even though the amount of the payment is based in whole or in part on previous salary or wage levels, except that, if the court order or compromise settlement or agreement directs salary or wages to be paid for a specific period of time, the payment is compensation for that specific period of time. If the amount directed to be paid is less than the actual salary or wages that would have been paid for the period if service had been performed, the contributions for the period shall be based on the amount of compensation that would have been paid if the service had been performed.
 - (iii) Payment, at the member's option, in lieu of fringe benefits that are normally paid for or provided by the employer.
 - (iv) Merit awards pursuant to section 38-613 and performance bonuses paid to assistant attorneys general pursuant to section 41-192.
 - (v) Amounts that are paid as salary or wages to a member for which employer contributions have not been paid.
- (b) For a member whose membership began on or after January 1, 2020, only gross wages paid to a member by the employer for services rendered to the employer during the period considered as credited service, including amounts reported as wages and tips and other compensation on the member's federal form W-2 wage and tax statement, including pretax deductions, except for the following:
- (i) Payments made for accrued leave that is not being used to replace regular work hours, whether paid in a lump sum or in installments.
 - (ii) Payments made on termination from employment, whether paid in a lump sum or in installments or as a bonus or an incentive for termination or retirement.
 - (iii) Employer-paid contributions that are made to, and any distributions from, plans, programs or arrangements qualified under section 117, 125, 129, 401, 403, 408 or 457 of the internal revenue code.
 - (iv) Payments for allowances.
 - (v) Reimbursements for employee business expenses or employee personal expenses.
 - (vi) Employer-paid contributions for coverage under, or distributions from, an accident, health or life insurance plan, program or arrangement.
 - (vii) Payments made in lieu of any employer-paid insurance coverage.
 - (viii) Workers' compensation, unemployment compensation payments and disability payments.

(ix) Merit awards pursuant to section 38-613.

(x) Payments paid pursuant to a court order or settlement agreement to satisfy a claim even though the amount of the payment is based on previous salary or wage levels, except if the court order or settlement agreement directs salary or wages to be paid for a specific period of time, the payment is compensation for that specific period of time.

(xi) Payments made in the form of goods or services in lieu of gross wages.

(xii) Any other payment that is not reported as wages and tips and other compensation on the member's federal W-2 wage and tax statement for actual services rendered.

(xiii) Payments in excess of the section 415 of the internal revenue code limits established in section 38-746.

(xiv) Payments for any other employment benefit.

(xv) Payments for which employer or employee contributions have not been paid.

8. "Contingent annuitant" means the person named by a member to receive retirement income payable following a member's death after retirement as provided in section 38-760.

9. "Credited service" means, subject to section 38-739, the number of years standing to the member's credit on the books of ASRS during which the member made the required contributions.

10. "Current annual compensation" means the greater of:

(a) Annualized compensation of the typical pay period amount immediately before the date of a request to ASRS to purchase credited service pursuant to section 38-743, 38-744 or 38-745. The typical pay period amount shall be determined by taking the five pay periods immediately before the date of a request, disregarding the highest and lowest compensation amount pay periods and averaging the three remaining pay periods.

(b) Annualized compensation of the partial year, disregarding the first compensation amount pay period, if the member has less than twelve months total compensation on the date of a request to purchase credited service pursuant to section 38-743, 38-744 or 38-745.

(c) The sum of the twelve months of compensation immediately before the date of a request to ASRS to purchase credited service pursuant to section 38-743, 38-744 or 38-745.

(d) The sum of the thirty-six months of compensation immediately before the date of a request to ASRS to purchase credited service pursuant to section 38-743, 38-744 or 38-745 divided by three.

(e) If the member has retired one or more times from ASRS, the average monthly compensation that was used for calculating the member's last pension benefit times twelve.

11. "Early retirement" means retirement before a member's normal retirement date after five years of total credited service and attainment of age fifty.

12. "Effective date" means July 1, 1970, except with respect to employers and members whose contributions to ASRS commence thereafter, the effective date of their membership in ASRS is as specified in the applicable joinder agreement.

13. "Employer" means:

(a) This state.

(b) Participating political subdivisions.

(c) Participating political subdivision entities.

14. "Employer contributions" means all amounts paid into ASRS by an employer on behalf of a member.

15. "Fiscal year" means the period from July 1 of any year to June 30 of the following year.

16. "Inactive member" means a member who previously made contributions to ASRS and who satisfies each of the following:

(a) Has not retired.

(b) Is not eligible for active membership in ASRS.

(c) Is not currently making contributions to ASRS.

(d) Has not withdrawn contributions from ASRS.

17. "Interest" means the assumed actuarial investment earnings rate approved by the board.

18. "Internal revenue code" means the United States internal revenue code of 1986, as amended.

19. "Investment manager" means the persons, companies, banks, insurance company investment funds, mutual fund companies, management or any combinations of those entities that are appointed by ASRS and that have responsibility and authority for investment of the monies of ASRS.

20. "Late retirement" means retirement after normal retirement.

21. "Leave of absence" means any unpaid leave authorized by the employer, including leaves authorized for sickness or disability or to pursue education or training.

22. "Life annuity" means equal monthly installments payable during the member's lifetime after retirement.

23. "Member":

(a) Means any employee of an employer on the effective date.

(b) Means all employees of an employer who are eligible for membership pursuant to section 38-727 and who are engaged to work at least twenty weeks in each fiscal year and at least twenty hours each week.

(c) Means any person receiving a benefit under ASRS.

(d) Means any person who is a former active member of ASRS and who has not withdrawn contributions from ASRS pursuant to section 38-740.

(e) Does not include any employee of an employer who is otherwise eligible pursuant to this article and who begins service in a limited appointment for not more than eighteen months on or after July 1, 1979. If the employment exceeds eighteen months, the employee shall be covered by ASRS as of the beginning of the nineteenth month of employment. In order to be excluded under this subdivision, classifications of employees designated by employers as limited appointments must be approved by the director.

(f) Does not include any leased employee. For the purposes of section 414(n) of the internal revenue code, "leased employee" means an individual who:

(i) Is not otherwise an employee of an employer.

(ii) Pursuant to a leasing agreement between the employer and another person, performs services for the employer on a

substantially full-time basis for at least one year.

(iii) Performs services under the primary direction or control of the employer.

24. "Member contributions" means all amounts paid to ASRS by a member.

25. "Normal costs" means the sum of the individual normal costs for all active members for each fiscal year. The normal cost for an individual active member is the cost that is assigned to the fiscal year, through June 29, 2016, using the projected unit credit method and, beginning June 30, 2016, using the actuarial cost method determined by the board pursuant to section 38-714.

26. "Normal retirement age" means the age at which a member reaches the member's normal retirement date.

27. "Normal retirement date" means the earliest of the following:

(a) For a member whose membership commenced before July 1, 2011:

(i) A member's sixty-fifth birthday.

(ii) A member's sixty-second birthday and completion of at least ten years of credited service.

(iii) The first day that the sum of a member's age and years of total credited service equals eighty.

(b) For a member whose membership commenced on or after July 1, 2011:

(i) A member's sixty-fifth birthday.

(ii) A member's sixty-second birthday and completion of at least ten years of credited service.

(iii) A member's sixtieth birthday and completion of at least twenty-five years of credited service.

(iv) A member's fifty-fifth birthday and completion of at least thirty years of credited service.

28. "Political subdivision" means any political subdivision of this state and includes a political subdivision entity.

29. "Political subdivision entity" means an entity:

(a) That is located in this state.

(b) That is created in whole or in part by political subdivisions, including instrumentalities of political subdivisions.

(c) Where a majority of the membership of the entity is composed of political subdivisions.

(d) Whose primary purpose is the performance of a government-related service.

30. "Retired member" means a member who is receiving retirement benefits pursuant to this article.

31. "Service year" means fiscal year, except that:

(a) If the normal work year required of a member is less than the full fiscal year but is for a period of at least nine months, the service year is the normal work year.

(b) For a salaried member employed on a contract basis under one contract, or two or more consecutive contracts, for a total period of at least nine months, the service year is the total period of the contract or consecutive contracts.

(c) In determining average monthly compensation pursuant to paragraph 5 of this section, the service year is considered

to be twelve months of compensation.

32. "State" means this state, including any department, office, board, commission, agency, institution or other instrumentality of this state.

33. "Vested" means that a member is eligible to receive a future retirement benefit.

ARIZONA STATE RETIREMENT SYSTEM
Title 2, Chapter 8, State Retirement System Board

New Section: R2-8-121

Amend: R2-8-122



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: March 2, 2021

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: February 8, 2021

SUBJECT: **ARIZONA STATE RETIREMENT SYSTEM**
Title 2, Chapter 8, State Retirement System Board

New Section: R2-8-121

Amend: R2-8-122

Summary:

This regular rulemaking from the Arizona State Retirement System (ASRS) seeks to add one new rule and amend one rule in Title 2, Chapter 8, Article 1. Specifically, ASRS seeks to add a R2-8-121 to clarify how ASRS may invoice an employer for an unfunded liability under A.R.S. § 38-748.

Furthermore, while employers shall certify that each employee for whom they are remitting contributions has met the requirements for active member eligibility and that all contributions are eligible for compensation under A.R.S. § 38-711, ASRS seeks to amend R2-8-122 to clarify that if the employer improperly certifies that the employee has met the requirements for active member eligibility or that all the contributions for that employee are eligible for compensation under A.R.S. § 38-711, the ASRS may charge the employer an unfunded liability amount pursuant to A.R.S. § 38-748.

1. **Are the rules legal, consistent with legislative intent, and within the agency's statutory authority?**

ASRS cites both general and specific statutory authority for these rules.

2. **Do the rules establish a new fee or contain a fee increase?**

ASRS indicates this rulemaking does not establish a new fee or contain a fee increase.

3. **Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?**

ASRS did not review or rely on any study in conducting this rulemaking.

4. **Summary of the agency's economic impact analysis:**

ASRS indicates there is little to no economic, small business, or consumer impact, other than the minimal cost to ASRS to prepare the rule package. ASRS indicates the rules will have minimal economic impact, if any, because the rulemaking simply clarifies statutory requirements that already exist. ASRS states there may be some economic impact to ASRS members and employers with regard to the eligible contributions they are required to submit. However, ASRS states clarifying how the ASRS may charge an unfunded liability to an employer will increase understandability of remitting eligible contributions, thereby reducing the regulatory burden imposed on the public. ASRS indicates this clarification will ensure that ASRS employers have notice about how the ASRS administers its retirement program. Thus, the economic impact is minimized.

5. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

ASRS believes this is the least costly and least intrusive method because it will clarify how ASRS may charge an employer an unfunded liability amount based on ineligible contributions without imposing additional requirements on the public.

6. **What are the economic impacts on stakeholders?**

In general, all members and employers of ASRS will be directly affected by, bear the costs of, and directly benefit from this rulemaking. ASRS incurred the cost of the rulemaking. ASRS currently has a total membership of approximately 608,150. Specifically, employers may be charged an unfunded liability amount based on these rules. Such clarification of how ASRS may charge an unfunded liability amount will benefit employers, members, beneficiaries, and alternate payees by increasing public understanding of how ASRS administers its retirement program.

7. **Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?**

ASRS indicates there were no changes between the proposed rule language in the Notice of Proposed Rulemaking and the proposed rule language in the Notice of Final Rulemaking before the Council for consideration.

8. **Does the agency adequately address the comments on the proposed rules and any supplemental proposals?**

ASRS indicates it received no written public comments related to the rulemaking and no one attended the oral proceeding held on December 22, 2020.

9. **Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. ASRS indicates the rules do not require a permit, license, or agency authorization.

10. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

Not applicable. ASRS indicates there is no corresponding federal law applicable to these rules.

11. **Conclusion**

This regular rulemaking from the Arizona State Retirement System (ASRS) seeks to add one new rule and amend one rule in Title 2, Chapter 8, Article 1. Specifically, ASRS seeks to add a R2-8-121 to clarify how ASRS may invoice an employer for an unfunded liability under A.R.S. § 38-748. Furthermore, ASRS seeks to amend R2-8-122 to clarify that if the employer improperly certifies that the employee has met the requirements for active member eligibility or that all the contributions for that employee are eligible for compensation under A.R.S. § 38-711, the ASRS may charge the employer an unfunded liability amount pursuant to A.R.S. § 38-748.

ASRS is seeking the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A). Council staff recommends approval of this rulemaking.

1/5/2021

Ms. Nicole Sornsins, Chair
The Governor's Regulatory Review Council
100 North 15th Avenue, Ste. 305
Phoenix, AZ 85007

**Re: A.A.C. Title 2. Administration
Chapter 8. State Retirement System Board**

Dear Ms. Sornsins:

The attached final rule package is submitted for review and approval by the Council. The following information is provided for Council's use in reviewing the rule package:

1. Close of record date: The rulemaking record was closed on December 22, 2020 following a period for public comment and an oral proceeding.
2. Relation of the rulemaking to a five-year-review report: This rulemaking does not relate to a Five-year Review Report.
3. New fee or fee increase: This rulemaking does not establish a new fee or increase an existing fee.
4. Immediate effective date: An immediate effective date is not requested.
5. Certification regarding studies: I certify that the Board did not rely on any studies for this rulemaking.
6. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify that the rules in this rulemaking will not require a state agency to employ a new full-time employee. No notification was provided to JLBC.
7. List of documents enclosed:
 - a. Cover letter signed by the Board's Assistant Director;
 - b. Notice of Final Rulemaking including the preamble, table of contents for the rulemaking, and rule text; and
 - c. Economic, Small Business, and Consumer Impact Statement.

Sincerely,



Jeremiah Scott
Assistant Director

NOTICE OF FINAL RULEMAKING
TITLE 2. ADMINISTRATION
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD
PREAMBLE

1. Articles, Parts, and Sections Affected

Rulemaking Action

R2-8-121
R2-8-122

New Section
Amend

2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):

Authorizing statute: A.R.S. § 38-714(E)(4)

Implementing statutes: A.R.S. §§ 38-711, 38-735, 38-736, 38-737, and 38-748

3. The effective date for the rules:

a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):

Not applicable.

b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):

None

4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:

Notice of Rulemaking Docket Opening: 26 A.A.R. 2857, November 6, 2020

Notice of Proposed Rulemaking: 26 A.A.R. 2837, November 6, 2020

5. The agency's contact person who can answer questions about the rulemaking:

Name: Jessica A.R. Thomas, Rules Writer
Address: Arizona State Retirement System
3300 N. Central Ave., Ste. 1400
Phoenix, AZ 85012-0250
Telephone: (602) 240-2039
E-Mail: Ruleswriter@azasrs.gov

6. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:

R2-8-121 will clarify how the ASRS may invoice an employer for an unfunded liability under A.R.S. § 38-748. R2-8-122 clarifies that the Employer shall certify that each employee for whom they are remitting contributions has met the requirements for active member eligibility and that all contributions are eligible for compensation under A.R.S. § 38-711. However, the ASRS needs to clarify that if the employer improperly certifies that the employee has met the requirements for active member eligibility or that all the contributions for that employee are eligible for compensation under A.R.S. § 38-711, the ASRS may charge the Employer an unfunded liability amount pursuant to A.R.S. § 38-748.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

No study was reviewed.

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

9. A summary of the economic, small business, and consumer impact:

The ASRS promulgates rules that allow the agency to provide for the proper administration of the state retirement trust fund. ASRS rules affect ASRS members and ASRS employers regarding how they contribute to, and receive benefits from, the ASRS. The ASRS effectively administrates how public-sector employers and employees participate in the ASRS. As such, the ASRS does not issue permits or licenses, or charge fees, and its rules have little to no economic impact on private-sector businesses, with the exception of some employer partner charter schools, which have voluntarily contracted to join the ASRS. Thus, there is little to no economic, small business, or consumer impact, other than the minimal cost to the ASRS to prepare the rule package. The rules will have minimal economic impact, if any, because it merely clarifies in further detail how the ASRS may charge the Employer an unfunded liability amount pursuant to A.R.S. § 38-748.

10. A description of any changes between the proposed rulemaking, including supplemental notices, and the final rulemaking:

None

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

The ASRS received no written comments regarding the rulemaking. No one attended the oral proceeding on December 22, 2020.

12. All agencies shall list any other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

None.

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

The rules do not require a permit.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

There are no federal laws applicable to these rules.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No analysis was submitted.

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:

No materials are incorporated by reference.

14. Whether the rule was previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

Not applicable.

15. The full text of the rules follows:

TITLE 2. ADMINISTRATION
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD
ARTICLE 1. RETIREMENT SYSTEM

Section

R2-8-121. ~~Repeated~~ Employer Payments for Ineligible Contributions; Unfunded Liability

Invoice

R2-8-122. Remittance of Contributions

ARTICLE 1. RETIREMENT SYSTEM

R2-8-121. ~~Repeated~~ Employer Payments for Ineligible Contributions; Unfunded Liability

Invoice

- A.** Upon calculating an unfunded liability amount under A.R.S. § 38-748, the ASRS shall send an Unfunded Liability Invoice to the Employer through the Employer's secure ASRS account.
- B.** An Employer that owes an unfunded liability amount to the ASRS pursuant to A.R.S. § 38-748, shall remit full payment of the unfunded liability amount within 90 days of being notified of the unfunded liability pursuant to subsection (A).
- C.** Pursuant to A.R.S. § 38-735(C), if the ASRS does not receive full payment from the Employer of the unfunded liability amount within 90 days of being notified of the unfunded liability amount, the unpaid portion of the unfunded liability amount shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A).
- D.** The ASRS may collect any unfunded liability and interest amount pursuant to A.R.S. §§ 38-723 and 38-735(C).

R2-8-122. Remittance of Contributions

- A.** ~~Each Employer shall certify on each payroll the amount to be contributed by each one of their employee members of the ASRS and shall remit the amount of employee member contributions to the ASRS not later than 14 days after the last day of each payroll period. Payments of employee member contributions not received in the offices of the ASRS by~~

the 14th day after the last day of the applicable pay-roll period shall become delinquent after that date and shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A) per annum from and after the date of delinquency until payment is received by the ASRS.

- B.** Each Employer shall remit the amount of employer contributions to the ASRS not later than 14 days after the last day of each payroll period. Payments of employer contributions not received in the offices of the ASRS by the 14th day after the last day of the applicable payroll period shall become delinquent after that date and shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A) per annum from and after the date of delinquency until payment is received by the ASRS.
- C.** Each Employer shall remit contributions pursuant to this Section based on the contribution rate in effect on the pay period end date.
- D.** Each Employer shall certify on each payroll that each employee included on that payroll has met the requirements for active member eligibility and that all contributions to be remitted are for eligible compensation under A.R.S. § 38-711.
- E.** If an Employer improperly certifies that an employee has met the requirements for active member eligibility and that all contributions remitted for the employee are eligible for compensation under subsection D, the ASRS may charge the employer an unfunded liability amount under A.R.S. § 38-748.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT¹

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

1. Identification of the rulemaking:

The ASRS needs to adopt a new rule to clarify how the ASRS may invoice an employer for an unfunded liability under A.R.S. § 38-748. The ASRS also needs to amend an existing rule to clarify that if an employer improperly certifies that the employee has met the requirements for active member eligibility or that all the contributions for that employee are eligible for compensation under A.R.S. § 38-711, the ASRS may charge the Employer an unfunded liability amount pursuant to A.R.S. § 38-748. Such clarification will increase understandability of how the ASRS uses may charge an employer an unfunded liability amount pursuant to A.R.S. § 38-748, but the rules do not impose any additional requirements or burdens on members.

a. The conduct and its frequency of occurrence that the rule is designed to change:

Currently, the ASRS collects approximately \$2 Billion in contributions each year from approximately 212,000 active members and 667 employers. Every year, the ASRS pays approximately \$2.8 billion in pension benefits to approximately 131,536 members. Pension benefits are calculated using the member's average monthly salary which is determined based on the compensation for which the member's Employer has remitted contributions. However, the ASRS may determine if it shall pay benefits to a member based on ineligible contributions. If the ASRS pays benefits to a member based on ineligible contributions, the ASRS may charge an employer an unfunded liability amount resulting from paying benefits based on ineligible contributions. Ensuring that the employer understands that they may be charged an unfunded liability amount for submitting ineligible contributions and how the ASRS may charge the employer such an unfunded liability

¹ If adequate data are not reasonably available, the agency shall explain the limitations of the data, the methods used in an attempt to obtain the data, and characterize the probable impacts in qualitative terms. (A.R.S. § 41-1055(C)).

amount, will clarify how the employer should remit contributions. Such clarification will ensure that the correct amount of compensation is reported and the correct amount of pension is paid to a member. Ultimately, this will increase the accuracy of contributions that are remitted, thereby reducing the need for pension adjustments.

b. The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:

As discussed above, employers need to understand how they may be charged an unfunded liability amount for remitting ineligible contributions.

Misunderstanding how contributions are remitted may lead to the incorrect amount of contributions and/or pension being calculated, which may require and adjustment upon discovery or result in an unfunded liability amount charged to the employer. Since fiscal year 2015, the ASRS has received approximately 30 appeals relating to eligible compensation disputes and has adjusted approximately 724 pensions. By promulgating these rules, Employers will have a better understanding of how they may be charged an unfunded liability amount for remitting ineligible contributions. Increasing understanding of ineligible contributions should reduce the need for adjustments as well as the number of appeals that arise out of Employers' misconceptions.

c. The estimated change in frequency of the targeted conduct expected from the rule change:

This rulemaking will clarify how the ASRS may charge an employer an unfunded liability amount based on ineligible contributions, thereby increasing the understandability of remitting eligible contributions and increasing the efficiency of the administration. Clarifying how Employers may be charged an unfunded liability amount for remitting ineligible contributions will better ensure that the proper amount of contributions are remitted to the ASRS and the ASRS pays the correct amount of pension based

on the eligible contributions it has received for a member. As discussed above and below, these rules will increase the clarity and effectiveness of how contributions are remitted, which should result in reducing confusion, as well as any potential administrative delay caused by a misunderstanding of what compensation is eligible for ASRS purposes.

2. A brief summary of the information included in the economic, small business, and consumer impact statement:

There is little to no economic, small business, or consumer impact, other than the minimal cost to the ASRS to prepare the rule package. The rules will have minimal economic impact, if any, because the rulemaking simply clarifies statutory requirements that already exist. There may be some economic impact to members and Employers with regard to the eligible contributions they are required to submit. Clarifying how the ASRS may charge an unfunded liability to an employer will increase understandability of remitting eligible contributions, thereby reducing the regulatory burden imposed on the public. This clarification will ensure that ASRS Employers have notice about how the ASRS administers its retirement program. Thus, the economic impact is minimized.

3. The person to contact to submit or request additional data on the information included in the economic, small business, and consumer impact statement:

Name: Jessica A.R. Thomas, Rules Writer
Address: Arizona State Retirement System
3300 N. Central Ave., Suite 1400
Phoenix, AZ 85012-0250
Telephone: (602) 240-2039
E-mail: Ruleswriter@azasrs.gov

4. Persons who will be directly affected by, bear the costs of, or directly benefit from the rulemaking:

In general, all members and Employers of the ASRS will be directly affected by, bear the costs of, and directly benefit from this rulemaking. The ASRS incurred the cost of the rulemaking. The ASRS currently has a total membership of approximately 608,150.

Specifically, Employers may be charged an unfunded liability amount based on these rules. Such clarification of how the ASRS may charge an unfunded liability amount will benefit Employers, members, beneficiaries, and alternate payees by increasing public understanding of how the ASRS administers its retirement program.

5. Cost-benefit analysis:

- a. Costs and benefits to state agencies directly affected by the rulemaking including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:

This rulemaking will affect state agencies to the extent that they are an ASRS Employer and must adjust the contributions they remit to the ASRS based on these rules. However, the ASRS has determined that no new full-time employees will be required to implement and enforce the rules.

- b. Costs and benefits to political subdivisions directly affected by the rulemaking:

This rulemaking does not provide any benefits or impose any costs on political subdivisions.

- c. Costs and benefits to businesses directly affected by the rulemaking:

No businesses are directly affected by the rulemaking.

6. Impact on private and public employment:

The rulemaking will have no impact on private or public employment.

7. Impact on small businesses²:

- a. Identification of the small business subject to the rulemaking:

No businesses, regardless of size, are subject to the rulemaking.

² Small business has the meaning specified in A.R.S. § 41-1001(20).

- b. Administrative and other costs required for compliance with the rulemaking:
Not applicable.

 - c. Description of methods that may be used to reduce the impact on small businesses:
Not applicable.
8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:
All ASRS members and Employers are directly affected by the rulemaking. The effect has been previously described above.
9. Probable effects on state revenues:
There will be no effect on state revenues.
10. Less intrusive or less costly alternative methods considered:
The ASRS believes this is the least costly and least intrusive method because it will clarify how the ASRS may charge an employer an unfunded liability amount based on ineligible contributions without imposing additional requirements on the public.

R2-8-121. Repealed

Historical Note

Former Rule, Retirement System Regulation 7; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-21 renumbered as Section R2-8-121 without change effective May 21, 1982 (Supp. 82-3). Amended subsection (A) effective May 30, 1985 (Supp. 85-3). Section repealed by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (05-1).

R2-8-122. Remittance of Contributions

- A.** Each Employer shall certify on each payroll the amount to be contributed by each one of their employee members of the ASRS and shall remit the amount of employee member contributions to the ASRS not later than 14 days after the last day of each payroll period. Payments of employee member contributions not received in the offices of the ASRS by the 14th day after the last day of the applicable payroll period shall become delinquent after that date and shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A) per annum from and after the date of delinquency until payment is received by the ASRS.
- B.** Each Employer shall remit the amount of employer contributions to the ASRS not later than 14 days after the last day of each payroll period. Payments of employer contributions not received in the offices of the ASRS by the 14th day after the last day of the applicable payroll period shall become delinquent after that date and shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A) per annum from and after the date of delinquency until payment is received by the ASRS.
- C.** Each Employer shall remit contributions pursuant to this Section based on the contribution rate in effect on the pay period end date.
- D.** Each Employer shall certify on each payroll that each employee included on that payroll has met the requirements for active member eligibility and that all contributions to be remitted are for eligible compensation under A.R.S. § 38-711.

Historical Note

Former Rule, Retirement System Regulation 8; Amended effective Dec. 8, 1978 (Supp. 78-6). Former Section R2-8-22 renumbered as Section R2-8-122 without change effective May 21, 1982 (Supp. 82-3). Amended by final rulemaking at 22 A.A.R. 79, effective March 6, 2016 (Supp. 16-1). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2). Amended by final rulemaking at 26 A.A.R. 371, effective April 11, 2020 (Supp. 20-1).

38-714. Powers and duties of ASRS and board

A. ASRS shall have the powers and privileges of a corporation, shall have an official seal and shall transact all business in the name "Arizona state retirement system", and in that name may sue and be sued.

B. The board is responsible for supervising the administration of this article by the director of ASRS.

C. The board is responsible for the performance of fiduciary duties and other responsibilities required to preserve and protect the retirement trust fund established by section 38-712.

D. The board shall not advocate for or against legislation providing for benefit modifications, except that the board shall provide technical and administrative information regarding the impact of benefit modification legislation.

E. The board may:

1. Determine the rights, benefits or obligations of any person under this article and any member under articles 2.1 and 7 of this chapter and afford any person dissatisfied with a determination a hearing on the determination. The board may delegate the duty and authority to act on the board's behalf to a committee of the board for the purposes of this paragraph and title 41, chapter 6, article 10 relating to any decision made under this paragraph by that committee of the board.

2. Determine the amount, manner and time of payment of any benefits under this article.

3. Recommend amendments to this article and articles 2.1 and 7 of this chapter that are required for efficient and effective administration.

4. Adopt, amend or repeal rules for the administration of the plan, this article and articles 2.1 and 7 of this chapter.

F. Beginning June 30, 2016, the board shall determine which of the generally accepted actuarial cost methods shall be used in the annual actuarial valuation of the plan.

G. The board and ASRS are not subject to title 41, chapter 6, except title 41, chapter 6, article 10, for actuarial assumptions and calculations, investment strategy and decisions and accounting methodology.

H. The board shall submit to the governor and legislature for each fiscal year no later than eight months after the close of the fiscal year a report of its operations and the operations of ASRS. The report shall follow generally accepted accounting principles and generally accepted financial reporting standards and shall include:

1. A report on an actuarial valuation of ASRS assets and liabilities.

2. Any other statistical and financial data that may be necessary for the proper understanding of the financial condition of ASRS and the results of board operations.

3. On request of the governor or the legislature, a list of investments owned. This list shall be provided in an electronic format.

4. An estimate of the aggregate fees paid for private equity investments, including management fees and performance fees.

I. The board shall:

1. Prepare and publish a synopsis of the annual report for the information of ASRS members.

2. Contract for a study of the mortality, disability, service and other experiences of the members and employers participating in ASRS. The study shall be conducted for fiscal year 1990-1991 and for at least every fifth fiscal year thereafter. A report of the study shall be completed within eight months after the close of the applicable fiscal year and shall be submitted to the governor and the legislature.

3. Conduct an annual actuarial valuation of ASRS assets and liabilities.

J. The auditor general may make an annual audit of ASRS and transmit the results to the governor and the legislature.

38-711. Definitions

In this article, unless the context otherwise requires:

1. "Active member" means a member as defined in paragraph 23, subdivision (b) of this section who satisfies the eligibility criteria prescribed in section 38-727 and who is currently making member contributions as prescribed in section 38-736.

2. "Actuarial equivalent" means equality in value of the aggregate amounts expected to be received under two different forms of payment, based on mortality and interest rate assumptions approved from time to time by the board.

3. "ASRS" means the Arizona state retirement system established by this article.

4. "Assets" means the resources of ASRS including all cash, investments or securities.

5. "Average monthly compensation" means:

(a) For a member whose membership in ASRS commenced before January 1, 1984 and who left the member's contributions on deposit or reinstated forfeited credited service pursuant to section 38-742 for a period of employment that commenced before January 1, 1984, the higher of either:

(i) The monthly average of compensation that is calculated pursuant to subdivision (b) of this paragraph.

(ii) The monthly average of compensation on which contributions were remitted during a period of sixty consecutive months during which the member receives the highest compensation within the last one hundred twenty months of credited service. Any month for which no contributions are reported to ASRS or that falls within a period of nonpaid or partially paid leave of absence or sabbatical leave shall be excluded from the computation. The sixty consecutive months may entirely precede, may be both before and after or may be completely after any excluded months. If the member was employed for less than sixty consecutive months, the average monthly compensation

is based on the total consecutive months worked. Payments for accumulated vacation or annual leave, sick leave, compensatory time or other forms of termination pay that, before August 12, 2005, constitute compensation for members whose membership in ASRS commenced before January 1, 1984, do not cease to be included as compensation if paid in the form of nonelective employer contributions under a 26 United States Code section 403(b) plan if all payments of employer and employee contributions are made at the time of termination. Contributions shall be made to ASRS on these amounts pursuant to sections 38-735, 38-736 and 38-737.

(b) For a member whose membership in ASRS commenced on or after January 1, 1984 but before July 1, 2011, the monthly average of compensation on which contributions were remitted during a period of thirty-six consecutive months during which a member receives the highest compensation within the last one hundred twenty months of credited service. Any month for which no contributions are reported to ASRS or that falls within a period of nonpaid or partially paid leave of absence or sabbatical leave shall be excluded from the computation. The thirty-six consecutive months may entirely precede, may be both before and after or may be completely after any excluded months. If the member was employed for less than thirty-six consecutive months, the average monthly compensation shall be based on the total consecutive months worked.

(c) For a member whose membership in ASRS commenced on or after July 1, 2011, the monthly average of compensation on which contributions were remitted during a period of sixty consecutive months during which a member receives the highest compensation within the last one hundred twenty months of credited service. Any month for which no contributions are reported to ASRS or that falls within a period of nonpaid or partially paid leave of absence or sabbatical leave shall be excluded from the computation. The sixty consecutive months may entirely precede, may be both before and after or may be completely after any excluded months. If the member was employed for less than sixty consecutive months, the average monthly compensation shall be based on the total consecutive months worked.

6. "Board" means the ASRS board established in section 38-713.

7. "Compensation" means:

(a) For members whose membership began on or before December 31, 2019, the gross amount paid to a member by an employer as salary or wages, including amounts that are subject to deferred compensation or tax shelter agreements, for services rendered to or for an employer, or that would have been paid to the member except for the member's election or a legal requirement that all or part of the gross amount be used for other purposes, but does not include amounts paid in excess of compensation limits established in section 38-746. Compensation includes amounts paid as salary or wages to a member by a second employer if the member meets the requirements prescribed in paragraph 23, subdivision (b) of this section with that second employer. Compensation, as provided in paragraph 5, subdivision (b) or (c) of this section, does not include:

(i) Lump sum payments, on termination of employment, for accumulated vacation or annual leave, sick leave, compensatory time or any other form of termination pay whether the payments are made in one payment or by installments over a period of time.

(ii) Damages, costs, attorney fees, interest or other penalties paid pursuant to a court order or a compromise settlement or agreement to satisfy a grievance or claim even though the amount of the payment is based in whole or in part on previous salary or wage levels, except that, if the court order or compromise settlement or agreement directs salary or wages to be paid for a specific period of time, the payment is compensation for that specific period of time. If the amount directed to be paid

is less than the actual salary or wages that would have been paid for the period if service had been performed, the contributions for the period shall be based on the amount of compensation that would have been paid if the service had been performed.

(iii) Payment, at the member's option, in lieu of fringe benefits that are normally paid for or provided by the employer.

(iv) Merit awards pursuant to section 38-613 and performance bonuses paid to assistant attorneys general pursuant to section 41-192.

(v) Amounts that are paid as salary or wages to a member for which employer contributions have not been paid.

(b) For a member whose membership began on or after January 1, 2020, only gross wages paid to a member by the employer for services rendered to the employer during the period considered as credited service, including amounts reported as wages and tips and other compensation on the member's federal form W-2 wage and tax statement, including pretax deductions, except for the following:

(i) Payments made for accrued leave that is not being used to replace regular work hours, whether paid in a lump sum or in installments.

(ii) Payments made on termination from employment, whether paid in a lump sum or in installments or as a bonus or an incentive for termination or retirement.

(iii) Employer-paid contributions that are made to, and any distributions from, plans, programs or arrangements qualified under section 117, 125, 129, 401, 403, 408 or 457 of the internal revenue code.

(iv) Payments for allowances.

(v) Reimbursements for employee business expenses or employee personal expenses.

(vi) Employer-paid contributions for coverage under, or distributions from, an accident, health or life insurance plan, program or arrangement.

(vii) Payments made in lieu of any employer-paid insurance coverage.

(viii) Workers' compensation, unemployment compensation payments and disability payments.

(ix) Merit awards pursuant to section 38-613.

(x) Payments paid pursuant to a court order or settlement agreement to satisfy a claim even though the amount of the payment is based on previous salary or wage levels, except if the court order or settlement agreement directs salary or wages to be paid for a specific period of time, the payment is compensation for that specific period of time.

(xi) Payments made in the form of goods or services in lieu of gross wages.

(xii) Any other payment that is not reported as wages and tips and other compensation on the member's federal W-2 wage and tax statement for actual services rendered.

(xiii) Payments in excess of the section 415 of the internal revenue code limits established in section 38-746.

(xiv) Payments for any other employment benefit.

(xv) Payments for which employer or employee contributions have not been paid.

8. "Contingent annuitant" means the person named by a member to receive retirement income payable following a member's death after retirement as provided in section 38-760.

9. "Credited service" means, subject to section 38-739, the number of years standing to the member's credit on the books of ASRS during which the member made the required contributions.

10. "Current annual compensation" means the greater of:

(a) Annualized compensation of the typical pay period amount immediately before the date of a request to ASRS to purchase credited service pursuant to section 38-743, 38-744 or 38-745. The typical pay period amount shall be determined by taking the five pay periods immediately before the date of a request, disregarding the highest and lowest compensation amount pay periods and averaging the three remaining pay periods.

(b) Annualized compensation of the partial year, disregarding the first compensation amount pay period, if the member has less than twelve months total compensation on the date of a request to purchase credited service pursuant to section 38-743, 38-744 or 38-745.

(c) The sum of the twelve months of compensation immediately before the date of a request to ASRS to purchase credited service pursuant to section 38-743, 38-744 or 38-745.

(d) The sum of the thirty-six months of compensation immediately before the date of a request to ASRS to purchase credited service pursuant to section 38-743, 38-744 or 38-745 divided by three.

(e) If the member has retired one or more times from ASRS, the average monthly compensation that was used for calculating the member's last pension benefit times twelve.

11. "Early retirement" means retirement before a member's normal retirement date after five years of total credited service and attainment of age fifty.

12. "Effective date" means July 1, 1970, except with respect to employers and members whose contributions to ASRS commence thereafter, the effective date of their membership in ASRS is as specified in the applicable joinder agreement.

13. "Employer" means:

(a) This state.

(b) Participating political subdivisions.

(c) Participating political subdivision entities.

14. "Employer contributions" means all amounts paid into ASRS by an employer on behalf of a member.

15. "Fiscal year" means the period from July 1 of any year to June 30 of the following year.

16. "Inactive member" means a member who previously made contributions to ASRS and who satisfies each of the following:

(a) Has not retired.

(b) Is not eligible for active membership in ASRS.

(c) Is not currently making contributions to ASRS.

(d) Has not withdrawn contributions from ASRS.

17. "Interest" means the assumed actuarial investment earnings rate approved by the board.

18. "Internal revenue code" means the United States internal revenue code of 1986, as amended.

19. "Investment manager" means the persons, companies, banks, insurance company investment funds, mutual fund companies, management or any combinations of those entities that are appointed by ASRS and that have responsibility and authority for investment of the monies of ASRS.

20. "Late retirement" means retirement after normal retirement.

21. "Leave of absence" means any unpaid leave authorized by the employer, including leaves authorized for sickness or disability or to pursue education or training.

22. "Life annuity" means equal monthly installments payable during the member's lifetime after retirement.

23. "Member":

(a) Means any employee of an employer on the effective date.

(b) Means all employees of an employer who are eligible for membership pursuant to section 38-727 and who are engaged to work at least twenty weeks in each fiscal year and at least twenty hours each week.

(c) Means any person receiving a benefit under ASRS.

(d) Means any person who is a former active member of ASRS and who has not withdrawn contributions from ASRS pursuant to section 38-740.

(e) Does not include any employee of an employer who is otherwise eligible pursuant to this article and who begins service in a limited appointment for not more than eighteen months on or after July

1, 1979. If the employment exceeds eighteen months, the employee shall be covered by ASRS as of the beginning of the nineteenth month of employment. In order to be excluded under this subdivision, classifications of employees designated by employers as limited appointments must be approved by the director.

(f) Does not include any leased employee. For the purposes of section 414(n) of the internal revenue code, "leased employee" means an individual who:

(i) Is not otherwise an employee of an employer.

(ii) Pursuant to a leasing agreement between the employer and another person, performs services for the employer on a substantially full-time basis for at least one year.

(iii) Performs services under the primary direction or control of the employer.

24. "Member contributions" means all amounts paid to ASRS by a member.

25. "Normal costs" means the sum of the individual normal costs for all active members for each fiscal year. The normal cost for an individual active member is the cost that is assigned to the fiscal year, through June 29, 2016, using the projected unit credit method and, beginning June 30, 2016, using the actuarial cost method determined by the board pursuant to section 38-714.

26. "Normal retirement age" means the age at which a member reaches the member's normal retirement date.

27. "Normal retirement date" means the earliest of the following:

(a) For a member whose membership commenced before July 1, 2011:

(i) A member's sixty-fifth birthday.

(ii) A member's sixty-second birthday and completion of at least ten years of credited service.

(iii) The first day that the sum of a member's age and years of total credited service equals eighty.

(b) For a member whose membership commenced on or after July 1, 2011:

(i) A member's sixty-fifth birthday.

(ii) A member's sixty-second birthday and completion of at least ten years of credited service.

(iii) A member's sixtieth birthday and completion of at least twenty-five years of credited service.

(iv) A member's fifty-fifth birthday and completion of at least thirty years of credited service.

28. "Political subdivision" means any political subdivision of this state and includes a political subdivision entity.

29. "Political subdivision entity" means an entity:

(a) That is located in this state.

(b) That is created in whole or in part by political subdivisions, including instrumentalities of political subdivisions.

(c) Where a majority of the membership of the entity is composed of political subdivisions.

(d) Whose primary purpose is the performance of a government-related service.

30. "Retired member" means a member who is receiving retirement benefits pursuant to this article.

31. "Service year" means fiscal year, except that:

(a) If the normal work year required of a member is less than the full fiscal year but is for a period of at least nine months, the service year is the normal work year.

(b) For a salaried member employed on a contract basis under one contract, or two or more consecutive contracts, for a total period of at least nine months, the service year is the total period of the contract or consecutive contracts.

(c) In determining average monthly compensation pursuant to paragraph 5 of this section, the service year is considered to be twelve months of compensation.

32. "State" means this state, including any department, office, board, commission, agency, institution or other instrumentality of this state.

33. "Vested" means that a member is eligible to receive a future retirement benefit.

38-735. Payment of contributions; recovery of delinquent payments

A. All amounts deducted from a member's compensation as provided in section 38-736 and employer contributions required pursuant to section 38-737 shall be paid to ASRS for deposit in the ASRS depository.

B. Each employer shall certify on each payroll the amount to be contributed and shall remit that amount to ASRS.

C. Payments made by employers pursuant to this article or article 2.1, 7 or 8 of this chapter become delinquent after the due date prescribed in the board's rules and thereafter shall be increased by interest from and after that date until payment is received by ASRS. ASRS shall charge interest on the delinquent payments at an annual rate equal to the interest rate assumption approved by the board from time to time for actuarial equivalency. Delinquent payments due under this article or article 2.1, 7 or 8 of this chapter, together with interest charges as provided in this subsection, may be recovered by action in a court of competent jurisdiction against an employer that is liable for payments or, at the request of the director, may be deducted from any other monies, including excise revenue taxes, payable to the employer by any department or agency of this state. The employer shall record delinquent payments that are recovered or deducted from other monies pursuant to this subsection pursuant to applicable accounting and financial reporting standards.

38-736. Member contributions

A. Member contributions are required as a condition of employment and shall be made by payroll deductions. Member contributions shall begin simultaneously with membership in ASRS. Beginning July 1, 2011, member contributions are a percentage of a member's compensation equal to the employer contribution required pursuant to section 38-737. Amounts so deducted by employers shall be deposited in the ASRS depository.

B. The employer shall pay the member contributions required of members on account of compensation earned. The paid contributions shall be treated as employer contributions for the purpose of determining tax treatment under the internal revenue code. The effective date of the employer payment shall not be before the date ASRS has received notification from the United States internal revenue service that pursuant to section 414(h) of the internal revenue code the member contributions paid will not be included in gross income for income tax purposes until the paid contributions are distributed by refund or retirement benefit payments. The employer shall pay the member contributions from monies that are established and available in the retirement deduction account and that would otherwise have been designated as member contributions and paid to ASRS. Member contributions paid pursuant to this subsection shall be treated for all other purposes, in the same manner and to the same extent, as member contributions made before the approval of the United States internal revenue service pursuant to this section.

38-737. Employer contributions

A. Employer contributions shall be a percentage of compensation of all employees of the employers, excluding the compensation of those employees who are members of the defined contribution program administered by ASRS, as determined by the ASRS actuary pursuant to this section for June 30 of the fiscal year immediately preceding the preceding fiscal year, except that beginning with fiscal year 2001-2002 the contribution rate shall not be less than two percent of compensation of all employees of the employers. Beginning July 1, 2011 through June 29, 2016, the total employer contribution shall be determined on the projected unit credit method. Beginning June 30, 2016, the board shall determine the actuarial cost method pursuant to section 38-714. The total employer contributions shall be equal to the employer normal cost plus the amount required to amortize the past service funding requirement over a period that is determined by the board and consistent with generally accepted actuarial standards. In determining the past service funding period, the board shall seek to improve the funded status whenever the ASRS trust fund is less than one hundred percent funded.

B. All contributions made by the employer and allocated to the fund established by section 38-712 are irrevocable and shall be used as benefits under this article or to pay expenses of ASRS.

C. The required employer contributions shall be determined on an annual basis by an actuary who is selected by the board and who is a fellow of the society of actuaries. ASRS shall provide by December 1 of each fiscal year to the governor, the speaker of the house of representatives and the president of the senate the contribution rate for the ensuing fiscal year and the unfunded actuarial accrued liability, the funded status based on the actuarial value of assets and market value of assets and the annualized rate of return and the ten-year rate of return as of June 30 of the prior fiscal year.

38-748. Employer payments for ineligible contributions; definitions

A. If an employer pays contributions on behalf of any person who is not eligible by statute or rule for ASRS membership or pays contributions on compensation that is not eligible by statute or rule for ASRS contributions and either ASRS or a court determines that ASRS is legally obligated to provide a person with any benefit or credit under this article or article 2.1 of this chapter based on such

contributions, the employer shall pay to ASRS any unfunded liability resulting from the provision of benefits or credit to the person.

B. If the employer does not remit full payment of the unfunded liability pursuant to subsection A of this section within ninety days after being notified by ASRS of the amount due, the unpaid amount accrues interest until the amount is paid in full.

C. Credited service ceases to accrue as of the date that ASRS or a court first determines that ASRS is legally obligated to provide any benefit or credit to the person.

D. If the amount in the person's ASRS account is greater than the present value of the benefit or credit, ASRS shall retain the entire account and is not required to refund, credit or offset any excess against future contributions.

E. This section applies to an employer that employs, either directly or indirectly, a person who performs services for a third-party organization and that does not have a written representation by ASRS of the person's eligibility.

F. For the purposes of this section:

1. "Amount in the person's ASRS account" means two times the person's retirement contributions made pursuant to section 38-736:

(a) Plus:

(i) Interest on the person's retirement contributions made pursuant to section 38-736.

(ii) Any contributions made for the purchase of service credits pursuant to section 38-742, 38-743, 38-744 or 38-745.

(iii) Interest on the amount contributed for the purchase of service credits pursuant to section 38-742, 38-743, 38-744 or 38-745.

(b) Minus any amounts paid by ASRS pursuant to this article or article 2.1 of this chapter.

2. "Interest" means the interest rate assumption that is approved by ASRS for actuarial equivalency.

3. "Unfunded liability" means:

(a) For a person who is not eligible by statute or rule for ASRS membership, the amount, if any, that the present value of the person's benefit or credit, using the actuarial assumptions approved by ASRS, exceeds the amount in the person's ASRS account calculated as of the date that ASRS or a court first determines that ASRS is legally obligated to provide any benefit or credit to the person.

(b) For contributions on compensation that is not eligible by statute or rule for ASRS contributions, the difference, if any, of the amount that the present value of a person's benefit or credit, using the actuarial assumptions approved by ASRS, exceeds the amount of the present value of the benefit or credit the person would receive if the ineligible contributions, and the compensation and credit associated with those ineligible contributions, had not been reported to ASRS and the amount in the person's ASRS account that is associated with the ineligible contributions on compensation.

D-3

INDUSTRIAL COMMISSION OF ARIZONA (R21-0303)

Title 20, Chapter 5, Article 10, Wage Claims

Amend: R20-5-1001, R20-5-1002, R20-5-1003, R20-5-1004, R20-5-1006, R20-5-1007,
R20-5-1008, R20-5-1009



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: March 2, 2021

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: January 21, 2021

SUBJECT: INDUSTRIAL COMMISSION OF ARIZONA (R21-0303)
Title 20, Chapter 5, Article 10, Wage Claims

Amend: R20-5-1001, R20-5-1002, R20-5-1003, R20-5-1004, R20-5-1006,
R20-5-1007, R20-5-1008, R20-5-1009

Summary:

This is a regular rulemaking from the Industrial Commission of Arizona (Commission) relating to rules in Title 20, Chapter 5, Article 10, regarding wage claims. In this rulemaking, the Commission proposes to amend the rules to (1) allow for service of documents by electronic means; (2) streamline and eliminate redundancies in the wage claim investigation process to both reduce burdens on the parties involved in wage claim disputes and accelerate the processing of wage claims; and (3) bring R20-5-1006(A)(3) (Dismissal of Claim) into compliance with A.R.S. § 23-356 (Wage claims).

The rulemaking would modernize these rules and implement a course of action proposed in the Commission's recent Five Year Review Report (5YRR) for these rules. The Council approved the 5YRR for these rules at its August 4, 2020 Council Meeting. The Commission received an exemption from the rulemaking moratorium to complete this rulemaking on July 27, 2020.

1. **Are the rules legal, consistent with legislative intent, and within the agency's statutory authority?**

Yes. The Commission cites both general and specific statutory authority for these rules.

2. **Do the rules establish a new fee or contain a fee increase?**

No. The rules do not establish a new fee or contain a fee increase.

3. **Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?**

The Commission did not review or rely on a study in conducting this regular rulemaking.

4. **Summary of the agency's economic impact analysis:**

The Commission anticipates that each of the amendments will reduce regulatory burdens on participants in wage claim proceedings without impacting regulatory objectives and will serve to accelerate the efficient processing of wage claims. The Commission anticipates that the rulemaking will have no adverse economic impact on businesses or consumers. The amendments will primarily benefit all persons and businesses that have a wage claim under A.A.C. Title 20, chapter 5, Article 10 and the Labor Department Investigators.

5. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Commission believes the standards developed are the least intrusive and least costly possible. The new rulemaking does not contain any new fees and does not include a fee increase.

6. **What are the economic impacts on stakeholders?**

The Commission anticipates that the rulemaking will have no adverse economic impact on private and public employment in businesses, agencies, and political subdivisions. The amendments will primarily benefit all persons and businesses that have a wage claim under A.A.C. Title 20, Chapter 5, Article 10 and Labor Department Investigators.

7. **Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?**

No. The Commission did not make any changes to the rules between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking.

8. Does the agency adequately address the comments on the proposed rules and any supplemental proposals?

The Commission did not receive any comments in conducting this rulemaking.

9. Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

No. The rules do not require a permit, license, or agency authorization.

10. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?

Not applicable. There is no corresponding federal law to these rules, which are based on state law.

11. Conclusion

In this regular rulemaking, the Commission seeks to modernize the rules relating to wage claims, implementing a course of action proposed in a 5YRR for these rules. The amended rules will be more clear, concise, understandable, and effective. The Commission is requesting the standard 60-day delayed effective date for this rulemaking. Council staff recommends approval of this rulemaking.

THE INDUSTRIAL COMMISSION OF ARIZONA
OFFICE OF THE DIRECTOR



DALE L. SCHULTZ, CHAIRMAN
JOSEPH M. HENNELLY, JR., VICE CHAIR
SCOTT P. LEMARR, MEMBER
STEVEN J. KRENZEL, MEMBER

P.O. Box 19070
Phoenix, Arizona 85005-9070

JAMES ASHLEY, DIRECTOR
PHONE: (602) 542-4411
FAX: (602) 542-7889

January 7, 2021

Sent via e-mail to grrc@azdoa.gov
Nicole Sornsins, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 402
Phoenix, Arizona 85007

RE: Request for Approval of Rulemaking: A.A.C. Title 20, Chapter 5, Article 10 ("Wage Claims") Rulemaking

Dear Ms. Sornsins:

The Industrial Commission of Arizona (the "Commission") requests that the Governor's Regulatory Review Council (the "Council") approve the above-referenced rulemaking. Pursuant to A.A.C. R1-6-201(A)(1), the Commission provides the following information:

a. The close of record date.

November 30, 2020.

b. Whether the rulemaking activity relates to a five-year review report and, if applicable, the date the report was approved by the Council.

The subject rulemaking activity relates to a five-year review report which was approved by the Council on August 4, 2020.

c. Whether the rule establishes a new fee and, if it does, citation of the statute expressly authorizing the new fee.

The subject rulemaking does not establish a new fee.

d. Whether the rule contains a fee increase.

The subject rulemaking does not contain a fee increase.

e. Whether an immediate effective date is requested for the rule under A.R.S. § 41-1032.

The Commission is not requesting an immediate effective date.

- f. A certification that the preamble discloses a reference to any study relevant to the rule that the agency reviewed and either did or did not rely on in the agency's evaluation of or justification for the rule.**

The Commission did not rely on a study for justification of the subject rulemaking.

- g. If one or more full-time employees are necessary to implement and enforce the rule, a certification that the preparer of the economic, small business, and consumer impact statement has notified the Joint Legislative Budget Committee of the number of new full-time employees necessary to implement and enforce the rule.**

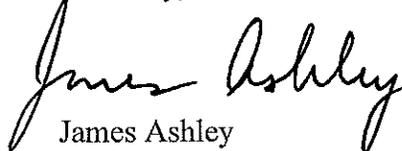
The Commission does not anticipate that it will be necessary to hire any new full-time employees to implement or enforce the subject rulemaking.

- h. A list of all documents enclosed.**

Governor's Office Approval of Rulemaking
Notice of Final Rulemaking
Economic Impact Statement
General and Specific Statutes Authorizing Rulemaking

Thank you for your consideration. Should you have any questions regarding the amendments, please contact Gaetano Testini, Chief Legal Counsel, at 602-542-5905.

Sincerely,



James Ashley
Director

Enclosures

Fwd: Rulemaking

1 message

Trevor Laky <trevor.laky@azica.gov>

Mon, Jul 27, 2020 at 12:56 PM

To: James Ashley <james.ashley@azica.gov>, Gaetano Testini <gaetano.testini@azica.gov>

----- Forwarded message -----

From: **Grace Appelbe** <gappelbe@az.gov>

Date: Mon, Jul 27, 2020 at 12:48 PM

Subject: Re: Rulemaking

To: Trevor Laky <trevor.laky@azica.gov>

Hi Trevor,

Thank you for your patience on this matter. The Governor's Office has reviewed and approved the proposed rules changes and amendments.

Best,
Grace

On Fri, May 1, 2020 at 2:16 PM Trevor Laky <trevor.laky@azica.gov> wrote:

Hey Grace,

Here is the updated rulemaking redline and letter that I sent you a couple of weeks ago.

Give me a call if you have any questions.

Regards,

--

Trevor Laky**Chief of Legislative Affairs****Public Information Officer**

Industrial Commission of Arizona

602-542-4478 Office

Trevor.Laky@azica.gov

--

Grace Appelbe

Policy Assistant

Office of the Arizona Governor

[1700 W Washington St.](https://www.az.gov/1700-Washington-St)

Phoenix, AZ 85007

(602) 769-7470

gappelbe@az.gov

--

Trevor Laky**Chief of Legislative Affairs****Public Information Officer**

Industrial Commission of Arizona
602-542-4478 Office
Trevor.Laky@azica.gov



NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

PREAMBLE

<u>1. Article, Part, or Section Affected (as applicable):</u>	<u>Rulemaking Action:</u>
R20-5-1001	Amend
R20-5-1002	Amend
R20-5-1003	Amend
R20-5-1004	Amend
R20-5-1006	Amend
R20-5-1007	Amend
R20-5-1008	Amend
R20-5-1009	Amend

2. Citations to agency’s statutory rulemaking authority to include the authorizing statute and the implementing statutes:

Authorizing statute: A.R.S. § 23-361
Implementing statutes: A.R.S. Title 23, Chapter 2, Article 7

3. The effective date of the rules:

The amended rules will be effective sixty days after a certified original and two copies of the rule and preamble are filed in the office of the Secretary of State pursuant to A.R.S. § 41-1032(A).

a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):

Not Applicable.

b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):

Not applicable.

4. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:

Notice of Rulemaking Docket Opening: 26 A.A.R. 2767, October 23, 2020

Notice of Proposed Rulemaking: 26 A.A.R. 2741, October 23, 2020

5. The agency's contact person who can answer questions about the rulemaking:

Name: Gaetano Testini, Chief Counsel
Address: Industrial Commission of Arizona
800 W. Washington St.
Phoenix, AZ 85007
Telephone: (602) 542-5905
Fax: (602) 542-6783
E-mail: gaetano.testini@azica.gov

6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

Title 20, Chapter 5, Article 10 of the Arizona Administrative Code contains rules related to wage claims filed with the Industrial Commission of Arizona (the "Commission"), Labor Department ("Labor Department" or "Department"). The amendments will modernize the rules, including by: (1) allowing for service of documents by electronic means; (2) streamlining and eliminating redundancies in the wage claim investigation process to both reduce burdens on the parties involved in wage claim disputes and accelerate the processing of wage claims; and (3) bringing R20-5-1006(A)(3) into compliance with A.R.S. § 23-356. Specifically, the rulemaking includes following rule changes:

- R20-5-1001(8), R20-5-1002, R20-5-1003(F), R20-5-1004, R20-5-1008(B), R20-5-1009 - Modernize rules to authorize service of documents by electronic means, with a party's consent.
- R20-5-1002 – Correct website address of Commission, clarify information that must be provided by parties to a wage claim, and specifically authorize electronic signatures on wage claim and employer response forms.
- R20-5-1003(E) – Delete antiquated and unnecessary language regarding forms being completed in "ink or type."

- R20-5-1003(F) – Extend time for a claimant’s response to a deficiency notice from 10 to 14 calendar days.
- R20-5-1004(A) – Delete unnecessary and burdensome requirement that the Labor Department serve wage claims “within 10 days” of the Department’s receipt and extend time period for an employer’s response from 10 to 14 calendar days.
- R20-5-1004(B) - Extend time period for an employer’s response from 10 to 14 calendar days.
- R20-5-1004(C) – Delete redundant and unnecessary provision that requires additional Labor Department action when an employer’s response is incomplete. Pursuant to R20-5-1004(F), the Labor Department already has authority to request additional information from a claimant or employer.
- R20-5-1004(D) – Streamline the wage claim investigation process to always provide a claimant with an opportunity to reply to an employer’s response to a wage claim and extend the time period for a claimant’s reply from 10 to 14 days.
- R20-5-1004(F) – Allow, rather than require, the Department to administer oaths for the purpose of taking affidavits and allow, rather than require, the Department to record interviews or discussions with a claimant or employer.
- R20-5-1006(A)(3) – Update jurisdictional limit for wage claims filed with the Department to be consistent with A.R.S. § 23-356.
- R20-5-1007(B) – Delete the provision, as it is redundant of R20-5-1005(G).
- R20-5-1008(A) – Authorize a wage claimant to pick up a wage payment in person from the Department.
- R20-5-1008(B) – Streamline the process where an employer claims to have paid wages due directly to the claimant by authorizing dismissal of a wage claim either where the claimant confirms receipt of the wages or where the claimant does not timely respond to a notice of wage payment from the Department. Extend the time period for a claimant to respond to such a notice from 10 to 14 calendar days.

7. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The Commission did not review or rely on any study relevant to the amended rules.

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

9. The preliminary summary of the economic, small business and consumer impact:

The proposed changes to Article 10: (1) authorize service of documents by electronic means; (2) clarify information that must be provided by parties to a wage claim; (3) authorize electronic signatures on wage claim and employer response forms; (4) extend time periods for claimants and employers to respond to the Labor Department; (5) delete unnecessary and burdensome requirement that the Labor Department serve wage claims “within 10 days” of the Department’s receipt; (6) streamline the wage claim investigation process to always provide a claimant with an opportunity to reply to an employer’s response to a wage claim; (7) allow, rather than require, the Department to administer oaths for the purpose of taking affidavits; (8) allow, rather than require, the Department to record interviews or discussions with a claimant or employer; (9) authorize a wage claimant to pick up a payment in person from the Department; and (10) streamline the wage process when an employer claims to have paid wages due directly to the claimant by authorizing dismissal of a wage claim either where the claimant confirms receipt of the wages or where the claimant does not timely respond to a notice of wage payment from the Department. The Commission anticipates that each of the amendments will reduce regulatory burden on participants in wage claim proceedings (without impacting the regulatory objective) and will serve to accelerate the efficient processing of wage claims. The Commission anticipates that the rulemaking will have no adverse economic impact on small businesses or consumers.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

No changes were made to the proposed rulemaking.

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

No written or oral comments were received by the Commission.

12. All agencies shall list other matters prescribed by statute applicable to the specific

agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

None.

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

The amendments do not require issuance of a regulatory permit or license.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

There is no federal law directly applicable to the subject of the rulemaking. The rule amendments implement Arizona's wage laws and do not implicate federal law.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

An analysis was not submitted.

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

Not Applicable.

14. The full text of the rules follows:

**TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE
CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA
ARTICLE 10-. WAGE CLAIMS**

R20-5-1001. Definitions

In this Article, unless the context otherwise requires:

1. "Claim" means a wage claim pursuant to A.R.S. § 23- 356.
2. "Claimant" means an individual who files a claim.
3. "Day" means calendar day.
4. "Department" means the Labor Department of the Industrial Commission of Arizona.
5. "Determination" means a finding by the Department under A.R.S. § 23-357 that a claim is either valid or invalid or that the Department cannot resolve the dispute.

6. "Director" means the Director of the Department.
7. "Dismissal" means an action by the Department in which the Department dismisses the claim and refers the claimant to other statutory remedies.
8. "Notice" or "notification" when made by the Department or the Director means a written communication ~~transmitted to~~ served on the employer or claimant, or both, ~~by regular mail.~~

R20-5-1002. Forms

The following forms are available upon request from the Department or from the Industrial Commission's ~~of Arizona's Internet web site~~ website at ~~www.ica.state.az.us~~ www.azica.gov:

1. Wage claim. When making a claim, a claimant shall provide the following information to the Department:

- a. Claimant's name, mailing address, e-mail address, telephone number, and date of birth;
- b. Employer's name, address, telephone number, and description of business;
- c. Claimant's dates of employment, position, and pay;
- d. The amount of the wages claimed owed and ~~whether the claimant requested payment of the wages from employer~~ the time period worked related to the unpaid wages; and
- e. Claimant's signature or electronic signature and signature date.

2. Employer response. The employer responding to a claim shall provide the following information to the Department:

- a. Employer's legal name, including any trade names, legal domicile state, address, telephone number, ~~and~~ description of business, and an e-mail address for the designated representative of employer;
- b. Claimant's dates of employment, position, and pay;
- c. Whether claimant is owed any wages, and, if so, employer's reason for nonpayment; and
- d. Employer's signature or electronic signature and signature date.

R20-5-1003. Filing Requirements; Time for Filing; Computation of Time

A. A claimant shall file a claim with the Department within one year of the date of the accrual of the claim.

B. In computing any period of time prescribed or allowed by this Article, the day of the act or event from which the designated period of time begins to run is not included. The last day of the period and Saturdays, Sundays, and legal holidays are included in the computation of time.

C. The date of filing of the claim is the date the claimant's wage claim form is received by the Department.

D. The Department shall deem a form, document, instrument, or other written record filed at the Tucson office as filed at the Phoenix office for the purpose of computing time.

E. An individual filing a form or document related to a claim shall legibly fill out the form or document ~~in ink or type~~.

F. If the wage claim form received from a claimant does not include the information required by R20-5-1002(1), the Department shall return the wage claim form to the claimant ~~by regular mail~~ with a request that the claimant provide the required information and return the completed wage claim form to the Department within ~~10~~ 14 days ~~of the date of service from the date of~~ the Department's request. If the Department does not receive the completed wage claim form within ~~10~~ 14 days, the Department shall not initiate an investigation of the claim and the Department shall consider the claim withdrawn without prejudice. The claimant may re-file a withdrawn wage claim with the information required by R20-5-1002(1), if the claim is re-filed within one year of the date of the accrual of the claim.

R20-5-1004. Investigation of Claim

A. The Department shall ~~mail~~ serve a copy of a claimant's wage claim form ~~within 10 days after the Department's receipt of the form to~~ on the employer listed on the wage claim, with a request that the employer complete and file the employer response form within ~~10~~ 14 days of the date of service of the Department's mailing request.

B. If the Department does not receive the employer response form under subsection (A), the Department shall ~~provide~~ serve written notice ~~to~~ on the employer stating that the employer must pay the amount claimed or file a written response to the wage claim within ~~10~~ 14 days of the date of service of the Department's written notice.

~~C. If the employer timely files the employer response under subsection (A), but the response is incomplete, the Department shall mail the employer a notice requesting that the employer file the required information within 10 days of the date of the Department's notice. If the Department does not receive the required information within 10 days, the Department shall make a determination regarding the claim based on the evidence in the file.~~

~~C-D. If the employer's response disputes the amount of wages claimed by the claimant, the Department shall mail serve a copy of the employer's response to on the claimant and offer the claimant the opportunity to file a written reply to the employer's response within 10 14 days from the date of service the Department's mailing. If the Department does not receive claimant's reply within 10 14 days, the Department shall make a determination of the claim based on the evidence in the file.~~

~~D-E. If the employer fails or refuses to pay the amount claimed or submit a written response to the claim in accordance with subsection (B), the Department shall make a determination of the claim based on the evidence in the file.~~

~~E-F. Upon request from the Department, and if necessary to complete the Department's investigation, the claimant, the employer, or both, shall submit further written information or~~

meet with the Director or ~~his~~ the Director's designee. Except for statements made during settlement, mediation, or an informal conference, the Director or ~~his~~ the Director's designee ~~shall~~ may administer oaths for the purpose of taking affidavits and ~~may shall tape~~ record the meeting.

~~FG.~~ Upon completion of its investigation, the Department shall ~~notify the parties to the claim of~~ serve the Department's determination in writing on the parties.

R20-5-1006. Dismissal of Claim

A. The Department shall dismiss a claim if:

1. The claim is filed more than one year after the date of the accrual of the claim,
2. The claimant does not comply with R20-5-1003(F),
3. The amount of wages ~~claimed~~ owed exceeds ~~\$2,500.00~~ \$5,000.00,
4. The Department's investigation of the claimant's evidence reveals no possible violation of A.R.S. § 23-350 et seq.,
5. The claimant has filed a civil action regarding the same claim,
6. The employer listed on the claim is in bankruptcy,
7. The Department is unable to locate the employer based on the information provided by the claimant, or
8. The wages in question have been withheld from the claimant pursuant to the claimant's prior written authorization.

B. The Department shall send a notice of dismissal to the claimant and, except as provided in subsections (A)(1) through (A)(3) and (7), the Department shall send a notice of dismissal to the employer. Notices of dismissal shall notify the claimant of the availability of other remedies.

R20-5-1007. Notice of Right of Review

~~A.~~ A determination issued under A.R.S. § 23-357 shall include a notice informing the parties of their right to seek review under A.R.S. § 23-358 and § 12-901 et seq.

~~B. The Department shall serve a determination on the parties by regular mail.~~

R20-5-1008. Payment of Claim

A. The Department shall send any payment of a wage claim received by the Department to the claimant by certified mail, return receipt requested, unless the claimant elects to pick up the check in person at the Department.

B. If the Department discovers that payment of a wage claim is alleged to have been made directly to the claimant, the Department shall verify the payment by ~~sending a letter to~~ servicing the claimant with notice that payment of the wage claim is alleged to have been made directly to the claimant ~~by regular mail~~. If the claimant confirms that payment of the wage claim was made

directly to the claimant or does not respond to the Department's letter notice within 10 14 days of the date of service of the date of the Department's letter notice, the Department shall deem the claim to have been paid and shall dismiss the wage claim.

C. Payment of a partial amount of a wage claim does not preclude the Department from completing its investigation of the balance of the claim.

D. In the case of a determination and directive for payment issued by the Department under A.R.S. § 23-357, the Department shall, if the employer agrees and with the written consent of the claimant, enter into a payment agreement with the employer for payment of the amount of wages found to be owed the claimant.

R20-5-1009. Service of Determinations, Notices, and Other Documents

A. A determination, notice, or other document required by this Article or other law to be ~~mailed~~ ~~or~~ served upon a party, shall be made upon the party, or, if represented by legal counsel, the party's legal counsel. Service upon legal counsel is considered service upon the party.

B. Service may be made and is deemed complete by:

1. Depositing the document in regular or certified mail, addressed to the party served at the address shown in the records of the Department, or by personal delivery upon the party.

2. With a party's consent, transmission by e-mail to the e-mail address shown in the records of the Department.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 5. WAGE CLAIMS

1. Identification of the proposed rulemaking:

Title 20, Chapter 5, Article 10 of the Arizona Administrative Code contains rules related to wage claims filed with the Industrial Commission of Arizona (the “Commission”), Labor Department (“Labor Department” or “Department”). The amendments will modernize the rules, including by: (1) allowing for service of documents by electronic means; (2) streamlining and eliminating redundancies in the wage claim investigation process to both reduce burdens on the parties involved in wage claim disputes and accelerate the processing of wage claims; and (3) bringing R20-5-1006(A)(3) into compliance with A.R.S. § 23-356. Specifically, the rulemaking includes following rule changes:

- R20-5-1001(8), R20-5-1002, R20-5-1003(F), R20-5-1004, R20-5-1008(B), R20-5-1009 - Modernize rules to authorize service of documents by electronic means, with a party’s consent.
- R20-5-1002 – Correct website address of Commission, clarify information that must be provided by parties to a wage claim, and specifically authorize electronic signatures on wage claim and employer response forms.
- R20-5-1003(E) – Delete antiquated and unnecessary language regarding forms being completed in “ink or type.”
- R20-5-1003(F) – Extend time for a claimant’s response to a deficiency notice from 10 to 14 calendar days.
- R20-5-1004(A) – Delete unnecessary and burdensome requirement that the Labor Department serve wage claims “within 10 days” of the Department’s receipt and extend time period for an employer’s response from 10 to 14 calendar days.
- R20-5-1004(B) - Extend time period for an employer’s response from 10 to 14 calendar days.
- R20-5-1004(C) – Delete redundant and unnecessary provision that requires

additional Labor Department action when an employer's response is incomplete. Pursuant to R20-5-1004(F), the Labor Department already has authority to request additional information from a claimant or employer.

- R20-5-1004(D) – Streamline the wage claim investigation process to always provide a claimant with an opportunity to reply to an employer's response to a wage claim and extend the time period for a claimant's reply from 10 to 14 days.
- R20-5-1004(F) – Allow, rather than require, the Department to administer oaths for the purpose of taking affidavits and allow, rather than require, the Department to record interviews or discussions with a claimant or employer.
- R20-5-1006(A)(3) – Update jurisdictional limit for wage claims filed with the Department to be consistent with A.R.S. § 23-356.
- R20-5-1007(B) – Delete the provision, as it is redundant of R20-5-1005(G).
- R20-5-1008(A) – Authorize a wage claimant to pick up a wage payment in person from the Department.
- R20-5-1008(B) – Streamline the process where an employer claims to have paid wages due directly to the claimant by authorizing dismissal of a wage claim either where the claimant confirms receipt of the wages or where the claimant does not timely respond to a notice of wage payment from the Department. Extend the time period for a claimant to respond to such a notice from 10 to 14 calendar days.

2. Identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the proposed rulemaking:

The proposed changes to Article 10: (1) authorize service of documents by electronic means; (2) clarify information that must be provided by parties to a wage claim; (3) authorize electronic signatures on wage claim and employer response forms; (4) extend time periods for claimants and employers to respond to the Labor Department; (5) delete unnecessary and burdensome requirement that the Labor Department serve wage claims “within 10 days” of the Department's receipt; (6) streamline the wage claim investigation process to always provide a claimant with an opportunity to reply to an employer's response to a wage claim; (7) allow, rather than require, the Department to administer oaths

for the purpose of taking affidavits; (8) allow, rather than require, the Department to record interviews or discussions with a claimant or employer; (9) authorize a wage claimant to pick up a payment in person from the Department; and (10) streamline the wage process when an employer claims to have paid wages due directly to the claimant by authorizing dismissal of a wage claim either where the claimant confirms receipt of the wages or where the claimant does not timely respond to a notice of wage payment from the Department. The Commission anticipates that each of the amendments will reduce regulatory burden on participants in wage claim proceedings (without impacting the regulatory objective) and will serve to accelerate the efficient processing of wage claims. The Commission anticipates that the rulemaking will have no adverse economic impact on businesses or consumers. The amendments will primarily benefit all persons and businesses that have a wage claim under A.A.C. Title 20, Chapter 5, Article 10 and the Labor Department Investigators.

3. A cost benefit analysis of the following:

- (a) Costs and benefits to state agencies directly affected by the rulemaking, including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:

The Commission is the only state agency directly affected by the rulemaking. However, no new full-time employees will be required as a result of the rulemaking. The amendments should benefit the Commission by: (1) authorizing service of documents by electronic means; (2) clarifying information that must be provided by parties to a wage claim; (3) authorizing electronic signatures on wage claim and employer response forms; (4) deleting unnecessary and burdensome requirement that the Labor Department serve wage claims “within 10 days” of the Department’s receipt; (5) streamlining the wage claim investigation process to always provide a claimant with an opportunity to reply to an employer’s response to a wage claim; (6) allowing, rather than requiring, the Department to administer oaths for the purpose of taking affidavits; (7) allowing, rather than requiring, the Department to record interviews or discussions with a claimant or employer; (8) authorizing a wage claimant to pick up a payment in person from the Department; and (9) streamlining the wage process when an employer claims to have paid wages due directly to the claimant by authorizing dismissal of a wage claim either where the claimant confirms

receipt of the wages or where the claimant does not timely respond to a notice of wage payment from the Department. The Commission anticipates that each of the amendments will serve to accelerate the efficient processing of wage claims.

(b) Costs and benefits to political subdivisions directly affected by the rulemaking;

The rulemaking applies to political subdivisions subject to Title 23, Chapter 2, Article 7. For further discussion regarding the anticipated benefits to entities affected by the rulemaking, *see supra* Section 2.

(c) Costs and benefits to businesses directly affected by the rulemaking:

See supra Section 2.

4. Impact on private and public employment in businesses, agencies and political subdivisions:

The Commission anticipates that each of the amendments will reduce regulatory burden on participants in wage claim proceedings and will serve to accelerate the efficient processing of wage claims. The Commission anticipates that the rulemaking will have no adverse economic impact on private and public employment in businesses, agencies, and political subdivisions. The amendments will primarily benefit all persons and businesses that have a wage claim under A.A.C. Title 20, Chapter 5, Article 10.

5. Impact on small businesses:

(a) Identification of the small businesses subject to the rulemaking:

Title 20, Chapter 5, Article 10 of the Arizona Administrative Code contains rules related to wage claims filed with the Labor Department. As such, Article 10 and the proposed amendments to Article 10 apply to all persons and businesses (including small businesses) that have a wage claim under A.A.C. Title 20, Chapter 5, Article 10.

(b) Administrative and other costs required for compliance with the rulemaking:

The rulemaking is not intended to impose new costs for compliance on employers or employees. Instead, the amendments are intended to reduce regulatory burden. *See supra* Section 2.

(c) Description of the methods that may be used to reduce the impact on small businesses:

Not applicable.

(d) Cost and benefit to private persons and consumers who are directly affected by proposed rulemaking:

The amendments are not anticipated to increase any costs on private persons and instead are expected to benefit individuals by providing clear, streamlined, and modern rules.

6. Probable effect on state revenues:

The Commission does not anticipate that the amendments will have an effect on state revenues.

7. Less intrusive or less costly alternative methods considered:

Not applicable. The Commission crafted the amendments to reduce regulatory burden.

See supra Section 2

8. Data on which the rule is based:

The Commission did not perform any studies or review data as a basis for the rulemaking.

GENERAL AND SPECIFIC STATUTES

A.R.S. §23-107. General powers

A. The commission has full power, jurisdiction and authority to:

1. Formulate and adopt rules and regulations for effecting the purposes of this article.
2. Administer and enforce all laws for the protection of life, health, safety and welfare of employees in every case and under every law when such duty is not specifically delegated to any other board or officer, and, when such duty is specifically delegated, to counsel, advise and assist in the administration and enforcement of such laws and for such purposes may conduct investigations.
3. Promote the voluntary arbitration, mediation and conciliation of disputes between employers and employees.
4. License and supervise the work of private employment offices, bring together employers seeking employees and working people seeking employment, and make known the opportunities for employment in the state.
5. Collect, collate and publish all statistical and other information relating to employees, employers, employments and places of employment with other appropriate statistics.
6. Act as the regulatory agency insuring that workers' compensation carriers are processing claims in accordance with chapter 6 of this title.
7. Provide nonpublic, confidential or privileged documents, materials or other information to another state, local or federal regulatory agency for the purpose of the legitimate administrative needs of the programs administered by that agency if the recipient agency agrees and warrants that it has the authority to maintain and will maintain the confidentiality and privileged status of the documents, materials or other information.
8. Receive nonpublic documents, materials and other information from another state, local or federal regulatory agency to properly administer programs of the commission. The commission shall maintain as confidential or privileged any document, material or other information that is identified by the exchange agency as confidential or privileged under the laws of the jurisdiction that is the source of the document, material or other information.
9. Enter into agreements that govern the exchange of nonpublic documents, materials and other information that are consistent with paragraphs 7 and 8. The commission may request nondisclosure of information that is identified as privileged or confidential. Any disclosure pursuant to paragraph 7 or 8 or this paragraph is not a waiver of any applicable privilege or claim of confidentiality in the documents, materials or other information.

B. Upon petition by any person that any employment or place of employment is not safe or is injurious to the welfare of any employee, the commission has power and authority, with or without notice, to make investigations necessary to determine the matter complained of.

C. The members of the commission may confer and meet with officers of other states and officers of the United States on matters pertaining to their official duties.

D. Notwithstanding any other law, the commission may protect from public inspection the financial information that is received from a private entity that applies to self-insure or that renews its self-insurance plan pursuant to section 23-961, subsection A if the information is kept confidential by the private entity in its ordinary and regular course of business.

A.R.S. §23-350. Definitions

In this article, unless the context otherwise requires:

1. “Department” means the labor department of the industrial commission of Arizona.
2. “Employee” means any person who performs services for an employer under a contract of employment either made in this state or to be performed wholly or partly within this state.
3. “Employer” means any individual, partnership, association, joint stock company, trust or corporation, the administrator or executor of the estate of a deceased individual or the receiver, trustee or successor of any of such persons employing any person. Employer also includes this state and any county, municipality, school district or other political subdivision of this state.
4. “Hours worked” includes all time an employee is employed.
5. “Minimum wage” means the nondiscretionary minimum compensation due an employee by reason of employment, including the employee's commissions, but excluding tips or gratuities.
6. “Payroll card account” means an account that is directly or indirectly established through an employer and to which electronic fund transfers of an employee's wages are made on a recurring basis whether the account is operated or managed by the employer, a third-party payroll processor, a depository institution or any other person.
7. “Wages” means nondiscretionary compensation due an employee in return for labor or services rendered by an employee for which the employee has a reasonable expectation to be paid whether determined by a time, task, piece, commission or other method of calculation.

A.R.S. §23-356. Wage claims

A. Instead of proceeding under section 23-355, an employee may file a written claim with the department for unpaid wages against an employer if the amount of such wages does not exceed five thousand dollars and if such claim is filed within one year of the accrual of such claim.

B. The department may, on behalf of an employee, or the employee may obtain judgment and execution, garnishment, attachment or other available remedies for collection of unpaid wages established by final determination by the department.

C. The department may receive payment on wage claims on behalf of employees. The department may deposit, pursuant to sections 35-146 and 35-147 , monies it receives as payment on wage claims in a special state fund for disbursement to wage claimants on proper authorization by the department.

A.R.S. §23-357. Investigation of wage and nonwage compensation claims

A. The department shall investigate wage and nonwage claims timely filed under section 23-356 to determine if wages are due or if a dispute exists between the parties to the claim.

B. Upon completion of its investigation, the department shall notify the parties to the claim of its findings in writing, which may include a finding that a dispute exists which cannot be resolved by the department's investigation. If it is determined that the claim for unpaid wages is valid, the department shall direct that the unpaid wages be paid by the party responsible for their payment.

A.R.S. §23-358. Review of department determination

A. A party aggrieved by a determination under section 23-357 may seek review pursuant to title 12, chapter 7, article 6.

B. If the department's determination finds that there is a dispute which cannot be resolved by investigation, the employee may attempt to recover the amount of wages claimed to be due by instituting a civil action pursuant to section 23-355.

A.R.S. §23-359. Effect of department determination

Unless review is sought pursuant to section 23-358, the department's determination shall be final upon the expiration of the time for seeking review. A final determination by the department shall be in writing and signed by the director. The final determination may be filed, recorded and executed upon in the same manner as provided by law for judgments and shall draw interest at the same rate as a judgment from the date of final determination. A final determination of the department which determines or purports to determine the validity or amount of any counterclaim or any claim of debt, reimbursement, recoupment or set-off by the employer shall be binding and conclusive only as to the amount of wages to be paid the employee, if any, and shall not in any way preclude the employer from raising and litigating such counterclaim or claim in a civil action.

A.R.S. §23-361. Rules and regulations

The commission may adopt such rules and regulations as necessary for the purpose of administering and enforcing this article.

E-1

NOTE: *This 5YRR was previously considered at the January 26, 2021 Study Session and February 2, 2021 Council Meeting. At the February 2, 2021 Council Meeting, the Council voted to table consideration of the report and directed the Department to revise the proposed course of action to amend R13-6-103(D) and re-submit the 5YRR. The revised 5YRR with an updated proposed course of action was submitted on February 2, 2021 and is included in these final materials for your reference.*

DEPARTMENT OF PUBLIC SAFETY

Title 13, Chapter 6, Department of Public Safety - Security Guards



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: March 2, 2021

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: February 11, 2021

SUBJECT: DEPARTMENT OF PUBLIC SAFETY
Title 13, Chapter 6, Department of Public Safety - Security Guards

Summary

This Five-Year Review Report (5YRR) from the Department of Public Safety (Department) relates to all rules in Title 13, Chapter 6 related to the licensing and regulation of security guards.

This 5YRR was first considered at the January 26, 2021 Study Session and February 2, 2021 Council Meeting. At those meetings the Council voiced concerns with the Department's proposed course of action to amend R13-6-103(D) to remove acceptance of cash payments. At the February 2, 2021 Council Meeting, the Council voted to table consideration of this report to the current meeting cycle and, with agreement from the Department, requested that the 5YRR be revised to remove the proposed course of action to amend R13-6-103(D) to remove acceptance of cash payments.

On February 2, 2021, the Department submitted a revised report which removed the proposed course of action to amend R13-6-103(D) to remove acceptance of cash payments. That report is included in the final materials for the Council's consideration.

Conclusion

As outlined in Council staff's January 12, 2021 memo related to this 5YRR, the Department has identified rules that are not clear, concise, understandable, effective, consistent, and effective. The Department intends to make the changes to its rules to address these issues. Additionally, the Department intends to add new rules based on statutory changes to A.R.S. §§ 32-2625 and 2632, which occurred in 2017. Specifically, the Department intends to add a new Article 8 related to security guard training instructors. The Department indicates that it would prefer to complete a rulemaking to implement the changes outlined in this report by July 1, 2021.

Council staff recommends approval of this report.

Arizona Department of Public Safety
Five-year Review Report
13 A.A.C. 6, Security Guards
February 2, 2021

- A. List any rule you intend to expire on the date the five-year review is due under A.R.S. § 41-1056(J) and R1-6-301. An explanation of why the rule is intended to expire is required. Once a rule has expired, only a formal rulemaking process can reestablish it.

The Department does not intend for any rule to expire.

- B. Provide a certification the rules are in compliance with A.R.S. § 41-1091 on substantive policy statements.

The Department does not have any substantive policy statements and is therefore in compliance with the statute.

Complete the following for each rule, table and exhibit pursuant to A.R.S. § 41-1056(A) and R1-6-301:

1. Authorization of the rule by existing statutes:

General Authority

A.R.S. § 41-1713(A)(4). To make rules necessary for the operation of the Department.

Specific Authority

A.R.S. § 32-2602(D) specifies the Department to adopt and enforce rules that are not in conflict with the laws of the state and that are necessary to enforce the statutes relating to security guards.

Additional Statutory Authority

- A.R.S. § 28-101(4) specifies the definition of an authorized emergency vehicle.
- A.R.S. § 32-2601(18),(21) specifies the definition of *proprietary company* and *registration certificate*.
- A.R.S. § 32-2607 *Fees; renewal of license or registration certificate*
- A.R.S. § 32-2608 *License or registration required; violation, classification*
- A.R.S. § 32-2611 *Necessity of an agency license*
- A.R.S. § 32-2612 *Qualifications of applicant for agency license; substantiation of work experience.*
- A.R.S. § 32-2613 *Application for agency license; financial responsibility; notice and opportunity to supply additional information.*
- A.R.S. § 32-2614 *Issuance of an agency license and identification card; deadline for completing application.*
- A.R.S. § 32-2616 *Qualifying party; responsibilities*
- A.R.S. § 32-2617 *Branch office certificate*

- A.R.S. § 32-2621 *Necessity of security guard registration*
- A.R.S. § 32-2622 *Qualifications of applicant for associate, security guard or armed security guard registration certificate*
- A.R.S. § 32-2623 *Application for employee registration certificate*
- A.R.S. § 32-2624 *Issuance of registration certificates and identification cards*
- A.R.S. § 32-2625 *Qualifications of applicant for security guard training instructor or firearms safety training instructor registration certificate*
- A.R.S. § 32-2632 *Duty of licensee to provide training of security guards; records; firearms training; rules*
- A.R.S. § 32-2633 *Identification cards*
- A.R.S. § 32-2634 *Authority; limitations*
- A.R.S. § 32-2635 *Uniform and insignia*
- A.R.S. § 32-2636 *Grounds for disciplinary action; emergency summary suspension; judicial review*
- A.R.S. § 32-2639 *Authority to investigate complaint; filing and response to complaints; retention of records*
- A.R.S. § 32-2640 *Grounds for refusal to issue or renew an agency license; judicial review; good cause exceptions*
- A.R.S. § 32-2641 *Grounds for refusal to issue a security guard identification card or registration certificate; judicial review*
- A.R.S. § 41-1072 et seq. *Licensing time frames*

2. The objective of the rule:

Rule	Objective
101	To define words that are used in the rules.
102	To establish the general requirements for the various licenses relating to security guards and to point applicants for various licenses to the rule that provides more detailed application information for a specific license.
103	To establish fees the Department collects for its various licensing activities to security guards.
104	To identify the licensees and certificate holders to whom the Department issues an identification card, the information the Department places on an identification card and the manner in which a licensee or certificate holder is required to treat the identification card.
105	To describe the manner and time in which the Department reviews and acts upon a license or registration application.
201	To provide detail regarding the information required to be submitted by the qualifying party of a security guard agency for which an agency license is sought. If the security guard agency will have a resident manager, information is also provided regarding the information required from the resident manager.
202	To describe the steps that must be taken by an applicant after the Department provides notice the applicant's agency license is ready for issuance. The rule also provides information regarding posting, transferring or surrendering a license.

203	To provide information regarding when, how and by whom an agency license is required to be renewed and the consequences of failing to renew timely.
204	To describe the procedure for the qualifying party of a licensed agency to obtain a certificate to operate a branch office and the manner in which a branch office certificate is to be handled.
205	To describe the consequence for a licensed agency if the qualifying party leaves as well as the procedure for obtaining a new qualifying party.
206	To describe the information that must be submitted to the Department when a licensed agency changes the form in which it does business.
207	To protect the public by establishing standards for the name of a licensed agency that minimize confusion or deceit.
301	To establish the procedure and information required to apply for a registration certificate as an associate, security guard or armed security guard.
302	To provide information regarding when and how a registration certificate is required to be renewed and the consequences of failing to renew timely.
303	To describe the procedure for obtaining a new registration certificate or identification card when a previous one is lost or stolen.
304	To describe the procedure for notifying the Department that a registrant's name has changed.
401	To establish the standards used by the Department to decide whether to deny a license or registration certificate to an applicant, the procedure for appealing denial and the manner the Department handles an appeal.
402	To describe the circumstances under which the Director may fix a period and terms of probation for a licensee or registrant and the consequences of being on probation.
403	To establish the responsibility of the qualifying party to maintain employee and business records, the term for which the records must be maintained and to whom the records must be disclosed.
404	To establish against whom an individual may submit a written complaint and the manner the Department handles a submitted complaint.
501	To describe the requirements and limitations for the uniform worn by security guards and to establish standards to ensure a reasonable person does not mistake a security guard for a peace officer.
502	To indicate that a security guard wearing business attire or plain clothes is forbidden to display a badge.
503	To establish standards for markings, emblems and insignias on a vehicle under the control of a security guard to ensure a reasonable person does not mistake the vehicle for that of a law enforcement agency or peace officer.
601	To establish the minimum standards for the training required before an individual may submit an application for a security guard registration certificate.
602	To establish minimum standards for the training required before a security guard may submit an application for the renewal of the security guard registration certificate.
603	To establish minimum standards for the training required of a security guard who uses a firearm within the scope of the security guard's employment.

701	To establish the procedure and information to apply for a registration certificate as a firearms-safety training instructor. Note: In 2017, legislative action chaptered A.R.S. § 32-2625 <i>Qualifications of applicant for security guard training instructor or firearms safety training instructor registration certificate</i> and modified A.R.S. § 32-2632. The title of this rule will be changed to <i>Application for Firearms Safety Training Instructor</i> .
702	To provide information regarding when and how a firearms safety training instructor registration certificate is required to be renewed and the consequences of failing to renew timely. Note: In 2017, legislative action chaptered A.R.S. § 32-2625 <i>Qualifications of applicant for security guard training instructor or firearms safety training instructor registration certificate</i> and modified A.R.S. § 32-2632. The title of this rule will be changed to <i>Renewal of Firearms Safety Training Instructor</i> .
703	To establish standards for obtaining the renewal of certification as a firearms safety instructor.
704	To provide requirements on the program provided by a certified firearms safety instructor and to establish recordkeeping requirements.

3. Are the rules effective in achieving their objectives? No

Rule	Explanation
102	It could be improved by amending Section F to allow for applications and fees to be submitted electronically through a Department-approved web-based portal.
103	<ul style="list-style-type: none"> • Section A can be improved by specifying a penalty fee for a late application to renew an associate or security guard registration certificate, an armed security guard registration certificate, a firearms safety training instructor registration certificate and a security guard training instructor registration certificate. This amendment makes the renewal consistent with the renewal of an agency license and resident manager license. • Section B and C will need to be corrected to reference the changes in Section A. • R13-6-202(H) can be moved to this rule to consolidate information on fees.
202	<ul style="list-style-type: none"> • Section H can be moved to R13-6-103 to consolidate information on fees.
203	It could be improved if language was added that allowed for the applicant to request to pick up the license at the Department’s office in Phoenix and if no request is made, the Department shall send the license to the applicant’s mailing address; refer to R13-6-202(C).
204	It could be improved if the notice to the Department in Section A regarding the operation of a branch office included the telephone number for the branch office.
301	It could be improved for armed applications by requiring military members to provide all discharge documents with the application to verify the person’s eligibility under A.R.S. § 32-2622(B)(4).
403	It could be improved by including the requirement for the qualifying party to maintain documentation of all Department-required training received by the individuals specified.

404	It could be improved if Section B stated the Department <i>upon request</i> instead of <i>shall</i> forward a copy of the complaint to the person against whom the complaint is made and amend the Director <i>may</i> instead of <i>shall</i> take an action listed in A.R.S. §32-2636. See also Consistency with Statute and consistency with R13-2-204, Private Investigator licensing which uses <i>may</i> .
501	It could be improved by providing a procedure for requesting an exemption from some of the uniform requirements. This was a past request from some agencies. The exemption would be available only in offices or businesses that generally are not open to the public.
701	Not in compliance with A.R.S. §§ 32-2625 and 2632 due to legislative changes in 2017. The rule needs to be completely re-written.
702	Not in compliance with A.R.S. §§ 32-2625 and 2632 due to legislative changes in 2017. The rule needs to be completely re-written.
703	Not in compliance with A.R.S. §§ 32-2625 and 2632 due to legislative changes in 2017. The rule needs to be completely re-written.
704	It could be improved by including the name and registration number of the firearms safety instructor conducting the training in Section D.

4. Are the rules consistent with other rules and statutes? No

Rule	Statute	Explanation
101	13-3101(A)(7)	The statutory reference for <i>prohibited possessor</i> changed.
102	32-2625	In 2017, legislative action changed the content of the statute. The requirements need to be incorporated into Sections C and D referencing the statute and not R13-6-701.
103	32-2625	In 2017, legislative action changed the content of the statute. The fees for the new registration certificates need to be incorporated as Section A.
104	32-2625	In 2017, legislative action changed the content of the statute. The new registration certificates need to be added to the rule in Section A. If the rule is amended to add the fees in Sections D and E (see also R13-6-103 penalty fee), then Section A needs to be amended to add firearms safety instructor and security guard instructor identification cards and the references to fees need to be changed in Section D to R13-6-103(A)(17) and Section E R13-6-103(A)(16).
105	32-2625	In 2017, legislative action changed the content of the statute. <ul style="list-style-type: none"> • Section B needs amending to reflect the addition of these registration certificates. • Section C(4) needs to reference R13-6-802 for requirements of a security guard training instructor registration certificate.
201	Administrative Procedures Act	The rule is incorrectly listed in the Arizona Administrative Code as R13-2-201. It needs to be changed from Chapter 2 to Chapter 6.

202	32-2614(D)	<ul style="list-style-type: none"> • Section B needs to be amended to 90 calendar days. • Section G needs to be amended to 60 calendar days.
204	32-2614(D)	Section F needs to be amended to 30 calendar days.
301	32-2625	Section A(4)(f,g) needs to be amended to reflect the new procedures for submitting training certificates. If the rule is amended with changes to the fee, then the reference to R13-6-103 will need to be updated.
302	32-2625	Section B(3,4) needs to be amended to reflect the new procedures for submitting training certificates.
303	R13-6-103	If the rule is amended with changes to the fees then the references to R13-6-103 will need to be updated.
304	R13-6-103	The reference should be amended to more specifically identify R13-6-103(A)(14).
401	32-2612, 2622, 2640, 2641	The Department does not have statutory authority for Section G which requires an applicant who is denied a license or certification to wait one year before reapplying. The authorizing statutes only refer to the revoking a license or certification and does not specifically use the term <i>denied</i> . The Department intends to remove the one-year waiting period for denied licenses and certifications.
403	32-2601(25)(D)	Client documentation is not addressed in the rule. The Department needs to add the qualifying party shall maintain adequate records on a client containing at least sufficient information to identify the client, the dates of service, the fee for service and the payments for service.
404	32-2636	States the Director <i>may</i> take action. The rule uses <i>shall</i> .
601	32-2625, 2632	Statutory changes made in 2017 need to be incorporated.
602	32-2625, 2632	Statutory changes made in 2017 need to be incorporated.
603	32-2625, 2632	Statutory changes made in 2017 need to be incorporated.
701	32-2625, 2632	Statutory changes made in 2017 need to be incorporated.
703	32-2625, 2632	Statutory changes made in 2017 need to be incorporated.
702	32-2625, 2632	Statutory changes made in 2017 need to be incorporated.

5. Are the rules enforced as written? No

Rule	Explanation
See Item 4	The rules are enforced in a manner consistent with how they are written except for rules that are inconsistent with their authorizing statute. In the latter, the rule is then enforced according to the statute.

6. Are the rules clear, concise and understandable? No

Rule	Explanation
101	<i>Classifiable fingerprint</i> can be made clearer by updating the incorporated by reference date for Form FD-258.
104	In Section E, <i>duplicate</i> should be replaced with <i>replacement</i> for consistency with R13-6-103(A)(16).
105	It can be made clearer to specify <i>business days</i> for the Department's review time frame and <i>calendar days</i> for the applicant's time frame to respond. The Department works on business days whereas the applicant can work on supplying the additional information required on weekends and holidays.
202	It can be made clearer by removing <i>renewal</i> from Section C as R13-6-203 deals with renewals.
301	It can be made clearer by changing the title to <i>Application for Associate, Security Guard or Armed Security Guard Registration Certificate</i> to distinguish from the 2017 amended statute A.R.S. § 32-2625 requiring registration certificates for firearms safety training instructors and security guard training instructors.
303	It can be made clearer by replacing <i>new</i> with <i>replacement</i> for consistency with R13-6-103(A)(14).
304	It can be made clearer by changing Section A from <i>new</i> to <i>replacement identification card</i> .
403	It can be made clearer by adding a new paragraph stating the qualified party shall maintain adequate records on a client containing at least sufficient information to identify the client, the dates of service, the fees for service and the payments for service.
701	Needs to be amended to meet the new statutory requirement mentioned earlier in this report.
703	Needs to be amended to meet the new statutory requirement mentioned earlier in this report.
702	Needs to be amended to meet the new statutory requirement mentioned earlier in this report.

7. Has the agency received written criticisms of the rules within the last five years? No

Rule	Explanation
501	The Department noted in its previous report there were some requests for alternative uniforms. The Department agrees with the exemption request to evaluate if a uniform can be altered for only that specific contract the company is working on.

8. Economic, small business and consumer impact comparison:

The Department determined the previous EIS are still relevant for these rules. Included with this report is a detailed explanation of the Unit’s FY19 and FY20 budgets and a comparison of fees to other states to justify its economic impact and fees. Additionally, the Department examined security guard licensing rules in the other states and Washington D.C. The Department’s licensing rules are in line with 43 other states. Four states are more restrictive on Rules 601 and 602 which pertains to security guard pre-assignment and refresher training. Three states have no state licensing requirements.

9. Has the agency received any business competitiveness analysis of the rules? No.

10. Has the agency completed the course of action indicated in the agency’s previous five-year review report?

No action was taken from the previous report. The Department was uncertain whether it would pursue a rulemaking moratorium exemption and did not initiate a rulemaking since the rules were reviewed in 2015. Over the last five years, the Security Guard Licensing Unit was engaging in other prolonged and complex activities and internal restructuring that hindered opportunities for rulemaking. For example,

- Engaged with planning and moving to a new building.
- Upgrading its online web-based system and report mechanism.
- Rotated through three supervisors in five years due to retirement, promotion and attrition.
- The current supervisor earned a green belt in Lean Six Sigma and has implemented changes to improve efficiencies which resulted in the removal of backlogs resulting in one business day processing time.
- There were statutory changes in 2017.
- There were no major challenges to the current rules.

Rule	Action Needed	Action Taken
102	<ol style="list-style-type: none"> 1. Amend Section F to allow for applications and fees to be submitted electronically. 2. Amend Section G prohibit signatures from being photocopied. 	<ol style="list-style-type: none"> 1. Identified as current in this report. 2. This is no longer relevant as applications are moving to electronic submission.
103	<ol style="list-style-type: none"> 1. Specify a late penalty for a late application renewal. 2. Amend Section A to <i>Under the authority provided by A.R.S. § 32-2607 the Department establishes and shall collect fees for the following services.</i> 	<ol style="list-style-type: none"> 1. Identified as current in this report. 2. No longer relevant. The Department is unsure why the previous supervisor wanted this change.

	<ol style="list-style-type: none"> 3. Remove all fee amounts from Sections A(1-18), B and C and publish fees on-line on the website. *Impacts Rules 104, 201, 301, 302, 303, 304, 702, 703. 4. The Department no longer performs fingerprinting and digital photo services. 5. Amend Section D to remove cash payment in lieu of electronic payment. 6. Rule 202(H) should be moved to this rule to consolidate information on fees. 	<ol style="list-style-type: none"> 3. No action as removing fees from the rules is not in compliance with the Administrative Procedures Act for licensing. 4. No action as the Department reversed its position and continues to perform these services. 5. Identified as current in this report. 6. Identified as current in this report.
*104, 201, 302, 303, 304, 702, 703	Impacted by Rule 103 on fees.	No action as fees will remain listed in the rule.
105	Specify the days as business days.	Identified as current in this report.
202	<ol style="list-style-type: none"> 1. Liability and workers' compensation insurance issue in Section A for out-of-state addresses to provide in the description of operations the insurance is for security guards in Arizona. 2. Statutory change for the number of days to notify the Department. Remove the word <i>renewal</i>. 	<ol style="list-style-type: none"> 1. No action. Legal counsel has advised the language is not necessary. The certificate of insurance is valid without this language and it is an extra step insurance providers are not accustomed to include in a certificate of insurance. 2. Identified as current in this report. Identified as current in this report.
203	Add language for the option to pick up the license at the Department in lieu of mailing.	Identified as current in this report.
204	<ol style="list-style-type: none"> 1. Have branch offices provide a telephone number. 2. Update the number of days for notification of change of address. 	<ol style="list-style-type: none"> 1. Identified as current in this report. 2. Identified as current in this report.
301	<ol style="list-style-type: none"> 1. Impacted by Rule 103 on fees. 2. Require military to provide all discharge paperwork. 	<ol style="list-style-type: none"> 1. No action as fees will remain listed in the rule. 2. Identified as current in this report.
401	No statutory authority for a one year waiting period before reapplying.	Identified as current in this report.
403	<ol style="list-style-type: none"> 1. Amend to require documentation of training received. 	Both are identified as current in this report.

	2. Amend to require maintenance of adequate business records.	
501	Provide procedure for an exemption from some uniform requirements.	Identified as current in this report.
703	Impacted by Rule 103 on fees.	No action as fees will remain as listed in the rule.
704	Add to Section 3 the make, model and serial number of each weapon the instructor is trained in using.	No action as there is no statutory authorization to record the serial number. The company already has on file the make and model of weapon. The Department only needs to know the type of weapon; for example, shotgun, handgun.

11. A determination the probable benefits of the rule outweigh within this state the probable costs of the rule and the rule imposes the least burden and costs to regulated persons by the rules including paperwork and other compliance costs necessary to achieve the underlying regulatory objective:

The Department is statutorily required to regulate individual security guards, security guard businesses, uniforms and vehicle markings, firearms and training pursuant to Item 1 of this report. The Department agrees with the Governor and Legislature the statutes provide a necessary and reasonable level of protection to the public who may place trust in security guards and armed security guards.

Included with this report is a detailed explanation of the Unit's FY19 and FY20 budgets and a comparison of fees to other states to justify its economic impact and fees. Additionally, the Department examined security guard licensing rules in the other states and Washington D.C. The Department's licensing rules are in line with 43 other states. Four states are more restrictive on Rules 601 and 602 which pertains to security guard pre-assignment and refresher training. Three states have no state licensing requirements.

12. Are the rules more stringent than corresponding federal laws? No

This is no corresponding federal law.

13. For rules adopted or amended after July 29, 2010 that require the issuance of a regulatory permit, license or agency authorization whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes and exception applies:

The rules were enacted on September 9, 2006 and no amendments were made after that date. The issuance of a general permit is not applicable as there are specific statutory requirements for each license or certificate authorized by statute. Individuals receive a background check and verification of training including firearms training therefore a blanket general license cannot be issued for all employees.

14. Proposed course of action:

The Department intends to make the changes identified above and add new rules based on A.R.S. §§ 32-2625 and 2632:

- New Article 8 security guard training instructor
- New Rule 801 application for security guard training instructor registration certificate.
- New Rule 802 renewal of security guard training instructor registration certificate.
- New Rule 803 requirements of security guard training instructor.

The Department has expressed to GRRC staff at two rulewriters' meetings that Executive Order 2020-02 was substantially suppressing the ability of agencies to conduct rulemakings. The Department submitted two expedited rulemaking waiver requests on March 9, 2020 and after lengthy involvement of the Department's government liaison, the Governor's Office approved the expedited rulemakings on November 18, 2020. However, the Department is still trying to ascertain from the Governor's Office on if future regular rulemakings will be approved given the requirement to repeal three rules for every new or amended rule: *Rule of Three*.

Given the EO's impact of the *Rule of Three*, the length of time the Governor's Office may take to evaluate a request and the regular rulemaking required to make the identified changes and add a new article and new rules the Department cannot commit to any timeline even though it would prefer to have this rulemaking completed by July 1, 2021.

DEPARTMENT OF ECONOMIC SECURITY

Title 6, Chapter 10, Department of Economic Security - The Jobs Program



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: March 2, 2021

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: February 12, 2021

SUBJECT: Arizona Department of Economic Security
Title 6, Chapter 10

This Five-Year-Review Report (5YRR) from the Department of Economic Security relates to rules in Title 6, Chapter 10, regarding the Jobs Program.

In the last 5YRR of these rules, the Department indicated it would amend several of its rules. The Department completed a rulemaking that addressed the changes on December 7, 2019.

Proposed Action

The Department is not proposing any changes to the rules.

1. **Has the agency analyzed whether the rules are authorized by statute?**

Yes, the Department cites to both general and specific statutory authority.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

Arizona's Jobs Program is charged with assuring that recipients receive Temporary Assistance for Needy Families (TANF) Cash Assistance (CA) and employment services to help them avoid long-term welfare dependence. The Jobs Program provided eligible

TANF CA recipients the opportunity to become economically independent through employment. The Jobs Program helps remove barriers to employment by providing a variety of services that make a positive difference in participants' lives.

Funding for the Jobs Program comes through TANF Block Grant federal and state Maintenance of Effort sources. Arizona's State Fiscal Year (SFY) 2020 annual cost of operating the Jobs Programs is \$10,705,600, including \$3,450,976 for participant services. Participant service expenditures assist those participants with barriers which restrict participation in work activities or employment. Examples of these expenditures include services such as transportation allowances, GED training, and vocational skills training.

The Jobs Program reaches all of Arizona, except the areas served by the Native Employment Works Program, and the Tribal TANF Program. Approximately 7,315 TANF CA recipients were served by the Arizona Jobs Program Contractors in SFY 2020.

A rulemaking adopted and effective December 7, 2019 was implemented following consultation with those Arizona Department of Economic Security (DES/Agency) divisions that administer TANF CA and the Jobs Program. This rulemaking updated Jobs Program definitions and aligned program rules with both current practice and A.R.S. § 46-300 requirements mandating that Jobs Program participants demonstrate compliance with work requirements in order to both maintain eligibility and avoid sanctions. These rules are not anticipated to have any economic small business, or consumer impact.

3. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

Through analysis provided by the Financial Services Administration and other DES programs subject matter experts, the Agency believes that the rule impose the least burden and cost to persons regulated by these rules, including paperwork and other compliance costs, necessary to achieve the underlying regulator objectives.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No, the Department indicates they did not receive any written criticisms to the rules.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes, the Department indicates the rules are clear, concise, and understandable.

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

Yes, the Department indicates the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes, the Department indicates the rules are effective in achieving their objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**

Yes, the Department indicates the rules are enforced as written.

9. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

No, the Department indicates the rules are not more stringent than corresponding federal laws; 42 U.S.C. Chapter 7 and 45 CFR Part 261.

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The rules do not require the issuance of a permit.

11. **Conclusion**

As mentioned above, the Department indicates the rules are overall clear, concise, and understandable and is not proposing any changes. Council staff recommend approval of this report.



DEPARTMENT OF ECONOMIC SECURITY

Your Partner For A Stronger Arizona

Douglas A. Ducey
Governor

Michael Wisehart
Director

December 28, 2020

Ms. Nicole Sornsin
Council Chair
Governor's Regulatory Review Council
Department of Administration
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

Dear Ms. Sornsin:

Attached is the Arizona Department of Economic Security (Department) Five-Year Review Report on A.A.C. Title 6, Chapter 10, the Jobs Program. Also attached are copies of the authorizing statutes and rules.

Pursuant to A.R.S. § 41-1056(A) and A.A.C. R1-6-301(C)(4), the Department certifies that it is in compliance with A.R.S. § 41-1091.

Thank you for your attention to this report. The Department will be present at the Council meetings to respond to any questions the Council members may have about the report.

If you have any questions, please contact Shawn Hyde, Legal and Administrative Rules Analyst, Policy and Planning Administration, at (480) 647-3106 or at shyde@azdes.gov.

Sincerely,

Michael Wisehart
Director

Attachments

-Preface-

Arizona Department of Economic Security Five – Year Review Reports

A.R.S. § 41-1056 requires that at least once every five years, each agency shall review its administrative rules and produce reports that assess the rules with respect to considerations including the rule’s effectiveness, clarity, conciseness and understandability. The reports also describe the agency’s proposed action to respond to any concerns identified during the review. The reports are submitted in compliance with the schedule provided by the Governor’s Regulatory Review Council (GRRC). A.R.S. § 18-305, enacted in 2016, requires that statutorily required reports be posted on the agency's website.

**Arizona Department of Economic Security
Title 6, Chapter 10
Five-Year Review Report**

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. §§ 41-1954(A)(1)(b) and (c), (A)(3), and (E), 46-134(10), and 42 U.S.C. Chapter 7, Subchapter IV, Part A.

Specific Statutory Authority: A.R.S. §§ 46-101, 46-299, and 46-300, and 45 CFR Part 261.

2. The objective of each rule:

Rule	Objective
R6-10-101	The objective of this rule is to define terms used in Chapter 10.
R6-10-101.01	The objective of this rule is to identify the persons to whom Chapter 10 applies.
R6-10-102	The objectives of this rule are to explain work requirements for both single-parent family and two-parent family recipients of Temporary Assistance for Needy Families (TANF) Cash Assistance (CA), conditions under which a recipient is not required to participate in work activities, minimum hourly requirements for work activities, sanction and withholding requirements, conditions for voluntary Jobs Program participation for recipients already participating in work activities, and to ensure that the requirements are clearly represented and easily understood by the public.
R6-10-103	The objective of this rule is to ensure that a Preliminary Orientation is provided to work eligible TANF CA recipients, and to clarify that this requirement does not apply to non-Two-Parent Employment Program (TPEP) Jobs Program participants.
R6-10-104	The objective of this rule is to explain that the Jobs Program does not serve persons eligible for a tribal CA program or for services through a tribal program similar to the Jobs Program.
R6-10-105	The objective of this rule is to ensure all Jobs Program participants are selected and referred in the appropriate manner, and that TPEP Jobs

	Program participants begin receiving services upon reporting to the program office.
R6-10-106	The objective of this rule is to ensure that work eligible individuals receive appropriate notification for an initial Jobs Program case management appointment and understand attendance requirements, available supportive services, the structure of the meeting, the requirement of developing an Employment and Career Development Plan (ECDP), and procedures for rescheduling a meeting.
R6-10-107	The objective of this rule is to notify TANF CA recipients of situations that may exclude participation in the Jobs Program, and to provide the process for requesting and supporting an exclusion.
R6-10-108	The objective of this rule is to notify TANF CA recipients of situations that may warrant deferral from the requirement to participate in work activities, and to provide the process for requesting and supporting a deferral.
R6-10-109	The objective of this rule is to explain the requirement for assessments during and after the initial Jobs Program case management appointment, and the referral process for services resulting from the assessment.
R6-10-110	The objective of this rule is to explain the requirements of an ECDP, including what must be included in the ECDP, and how the ECDP may be revised.
R6-10-111	The objective of this rule is to notify all recipients, including TPEP recipients, what constitute core activities.
R6-10-112	The objective of this rule is to explain what participation meets the minimum work requirement, and that additional participation in work activities is allowed when minimum work requirements are met.
R6-10-113	The objectives of this rule are to explain that appropriate non-core activities may be offered and assigned, as appropriate, when participation in required core activities have first been met.
R6-10-114	The objectives of this rule are to ensure that job search and job readiness assistance are assigned appropriately and that participation meets the minimum hours as indicated in the participant's ECDP.

R6-10-115	The objective of this rule is to ensure the proper assignment, operation, and execution of the on-the-job training component, including the requirements set forth in the participant's training plan.
R6-10-116	The objective of this rule is to ensure work experience activities are properly assigned to improve the participant's employability, or to meet work participation requirements, and that the Jobs Program appropriately evaluates a participant's entitlement to supplemental payments.
R6-10-117	The objective of this rule is to explain the circumstances under which the Jobs Program may assign a participant to a community service program, as well as to ensure that community service is properly assigned and that the Jobs Program appropriately evaluates a participant's entitlement to supplemental payments.
R6-10-118	The objective of this rule is to specify the circumstances under which the Jobs Program may assign, or allow a participant to remain in, vocational educational training, to ensure that vocational education training is properly assigned, that it is assigned for no more than the allowable time period, and that the participant is allowed appropriate homework time.
R6-10-119	The objective of this rule is to explain the circumstances under which the Jobs Program may assign a participant to high school, General Education Development (GED) preparation, and education directly related to employment, and to ensure that these activities are assigned appropriately and that their respective guidelines are followed.
R6-10-120	The objective of this rule is to explain and ensure the provision of allowable supportive services within the budget and guidelines of the Jobs Program.
R6-10-121	The objective of this rule is to explain and ensure the continued delivery of services and support to transitional program participants.
R6-10-122	The objective of this rule is to explain the participant complaint resolution process by which participant complaints are addressed and resolved, including participant and program responsibilities during the complaint process, to ensure participant complaints are handled accurately, fairly, and efficiently.

R6-10-123	The objective of this rule is to clarify what constitutes a failure to participate in the Jobs Program, as well as to explain good cause, verification procedures, and notice requirements.
R6-10-124	The objective of this rule is to ensure an accurate understanding of the sanction process for non-TPEP participants, to assist participants in avoiding sanctions, and to facilitate accurate sanctioning.
R6-10-125	The objective of this rule is to ensure an accurate understanding of the withholding process for TPEP assistance units as a result of a parent failing to participate with Jobs Program requirements, as well as to facilitate accurate withholdings.
R6-10-126	The objective of this rule is to explain case management services available to participants who have reached their lifetime TANF CA limit, for 12 months following that limit, to allow participants who may still benefit from case management to access these services, as well as to establish requirements for the notification of participants.
R6-10-301	The objective of this rule is to define terms used in Article 3.
R6-10-302	The objective of this rule is to ensure an employee displaced by a Jobs Program participant retains the right to seek an administrative redress for their grievance.
R6-10-303	The objective of this rule is to ensure that regular employees, displaced employees, and Jobs Program employers have a clear understanding of the Jobs Program grievance process.

3. **Are the rules effective in achieving their objectives?** Yes No

If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.

Rule	Explanation
N/A	N/A

4. **Are the rules consistent with other rules and statutes?** Yes No

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule	Explanation
------	-------------

N/A	N/A
-----	-----

5. **Are the rules enforced as written?** Yes * No

If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency’s proposal for resolving the issue.

Rule	Explanation
N/A*	N/A*

*In accordance with Executive Order 2020-07, Laws 2020, Chapter 53 (waiver), and the Governor’s Declaration of a Public Health Emergency, (COVID-19), issued March 11, 2020, the Jobs Program has provided for a general waiver of the work requirements for TANF CA, as well as related sanctions. This has resulted in a temporary suspension of the rules as they pertain to work requirements. The affected rules are as follows: R6-10-102; R6-10-107; R6-10-112; R6-10-123; R6-10-124; and R6-10-125.

Enforcement of these rule components will immediately resume, as written, when the aforementioned Governor’s Declaration of a Public Health Emergency has been rescinded.

6. **Are the rules clear, concise, and understandable?** Yes No

If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

Rule	Explanation
N/A	N/A

7. **Has the agency received written criticisms of the rules within the last five years?**

Yes No

If yes, please fill out the table below:

Commenter	Comment	Agency’s Response
N/A	N/A	N/A

8. **Economic, small business, and consumer impact comparison:**

Arizona’s Jobs Program is charged with assuring that recipients receive TANF CA and employment services to help them avoid long-term welfare dependence. The Jobs Program provides eligible TANF CA recipients the opportunity to become economically independent through employment. The Jobs Program helps remove barriers to employment by providing a variety of services that make a positive difference in participants’ lives. Jobs Program participants are employed in a wide variety of settings in the private and public sectors. The Jobs Program is also responsible for referring a TANF CA recipient to the Division of

Employment and Rehabilitation Services' Finance and Business Operations Administration for reduction or closure (sanction) if a TANF CA recipient does not comply with Jobs Program work requirements.

Funding for the Jobs Program comes through TANF Block Grant federal and state Maintenance of Effort sources. Arizona's State Fiscal Year (SFY) 2020 annual cost of operating the Jobs Program is \$10,705,600, including \$3,450,976 for participant services. Participant service expenditures assist those participants with barriers which restrict participation in work activities or employment. Examples of these expenditures include services such as transportation allowances, GED training, and vocational skills training.

The Jobs Program reaches all of Arizona, except the areas served by the Native Employment Works Program, and the Tribal TANF Program. Approximately 7,315 TANF CA recipients were served by the Arizona Jobs Program Contractors in SFY 2020.

Rulemaking adopted and effective December 7, 2019 was implemented following consultation with those Arizona Department of Economic Security (DES/Agency) divisions that administer TANF CA and the Jobs Program. This rulemaking updated Jobs Program definitions and aligned program rules with both current practice and A.R.S. § 46-300 requirements mandating that Jobs Program participants demonstrate compliance with work requirements in order to both maintain eligibility and avoid sanctions. These rules are not anticipated to have any economic, small business, or consumer impact.

Since the 2015 five-year review, sanction levels for the subsequent years were as follows:

SFY	TOTAL
2016	4,028
2017	2,103
2018	1,238
2019	1,197
2020	804**

The monthly case closures due to failure to comply with the Jobs Program participation requirements in SFY 2020 are:

Jul 2019	Aug 2019	Sep 2019	Oct 2019	Nov 2019	Dec 2019	Jan 2020	Feb 2020	Mar 2020	Apr 2020	May 2020	Jun 2020
140	115	129	119	129	134	139	139	0**	0**	0**	0**

**Sanctions (including case closures) due to work requirement non-compliance were temporarily suspended beginning in March, 2020 per Executive Order 2020-07, Laws 2020, Chapter 53, and the Governor's Declaration of a Public Health Emergency issued March 11, 2020.

9. Has the agency received any business competitiveness analyses of the rules?

Yes No

DES did not receive a business competitive analysis from a member of the public during this report period.

10. Has the agency completed the course of action indicated in the agency's previous five-year review report? Yes No

Please state what the previous course of action was and if the agency did not complete the action, please explain why not.

In 2019, after extensive legal review, stakeholder input, and rulemaking revision, DES' proposed amendments to the rules were approved by the GRRC, published, and became effective on December 7, 2019.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:

Through analysis provided by the Financial Services Administration and other DES program subject matter experts, the Agency believes that the rules impose the least burden and cost to persons regulated by these rules, including paperwork and other compliance costs, necessary to achieve the underlying regulator objectives.

12. Are the rules more stringent than corresponding federal laws? Yes No

Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of federal law(s)?

- 42 U.S.C. Chapter 7, Subchapter IV, Part A; and

- 45 CFR Part 261.

DES has determined that the rules in Chapter 10 are not more stringent than the corresponding federal authorities cited.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

DES has determined that A.R.S. § 41-1037 does not apply to these rules, because the Agency is not proposing a new rule or an amendment to an existing rule that requires the issuance of a regulatory permit, license, or agency authorization.

14. **Proposed course of action:**

If possible, please identify a month and year by which the agency plans to complete the course of action.

DES does not propose any action, as it does not anticipate promulgating new rules or amending existing rules in the immediate future, nor does it seek any legislative changes to the authorizing statutes.

NOT OFFICIAL – The authenticated pdf version of this Chapter is the official codified version of these rules.

TITLE 6. ECONOMIC SECURITY
CHAPTER 10. DEPARTMENT OF ECONOMIC SECURITY - THE JOBS PROGRAM
Supp. 19-4

This Chapter contains rule Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of October 1, 2019 through December 31, 2019

Questions about these rules? Contact:

Name: Nicole Tolton
Address: Department of Economic Security
P.O. Box 6123, Mail Drop 1292
Phoenix, AZ 85005
or
Department of Economic Security
1789 W. Jefferson St., Mail Drop 1292
Phoenix, AZ 85007
Telephone: (602) 542-6555
Fax: (602) 542-6000
E-mail: ntolton@azdes.gov

TITLE 6. ECONOMIC SECURITY
CHAPTER 10. DEPARTMENT OF ECONOMIC SECURITY - THE JOBS PROGRAM

(Authority: A.R.S. §§ 41-1954(1)(b) and 41-1954(3))

Editor’s Note: The editor’s notes at the beginning of Sections that were “repealed and adopted under an exemption” in Supp. 97-3 have been removed because the Sections have been amended or made under the regular rulemaking process. This means the public had an opportunity to comment on these rules. Refer to the historical notes for more information (Supp. 19-4).

Editor’s Note: The Office of the Secretary of State publishes all Code Chapters on white paper (Supp. 05-4).

Editor’s Note: Sections of this Chapter were repealed and adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Chapter 300, § 74(A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor’s Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on these rules. Under Laws 1997, Ch. 300, § 74(B), the Department is required to institute the formal rulemaking process on these Sections on or before December 31, 1997. Because these rules are exempt from the regular rulemaking process, the Chapter is being printed on blue paper (Supp 97-3).

ARTICLE 1. THE JOBS PROGRAM: GENERAL PROVISIONS

Article 1, consisting of Sections R6-10-101 thru R6-10-121, repealed; new Sections R6-10-101 thru R6-10-125 adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

Section	
R6-10-101.	Definitions 2
R6-10-101.01	Applicability
	4
R6-10-102.	Work Requirement 4
R6-10-103.	Preliminary Orientation
	4
R6-10-104.	Tribal Program
	4
R6-10-105.	Selection for Participation in the Jobs Program
	4

R6-10-106.	Initial Case Management Appointment5
R6-10-107.	Work Requirement Exclusion5
R6-10-108.	Temporary Deferrals
	6
R6-10-109.	Participant Assessment; Referral
	6
R6-10-110.	Employment and Career Development Plan
	7
R6-10-111.	Core Activities
	7
R6-10-112.	Participation that Meets the Work Requirement
	7
R6-10-113.	Non-Core Activities
	8
R6-10-114.	Job Search and Job Readiness Assistance
	8
R6-10-115.	On-the-job Training (OJT)
	8
R6-10-116.	Work Experience
	8

CHAPTER 10. DEPARTMENT OF ECONOMIC SECURITY - THE JOBS PROGRAM

R6-10-117. Community Service Programs
9

R6-10-118. Vocational Educational Training
9

R6-10-119. High School, GED Preparation, and Education
Directly Related to Employment
..... 9

R6-10-120. Support Services
9

R6-10-121. Transitional Support Services 10

R6-10-122. Participant Complaint Resolution
10

R6-10-123. Failure to Participate; Good Cause Reasons;
Verification
..... 10

R6-10-124. All Assistance Units, Except TPEP Assistance
Units: Sanction Process
..... 12

R6-10-125. TPEP: Failure to Participate; Withholding
12

R6-10-126. Jobs Program Eligibility After the TANF Cash
Assistance Time Limit
..... 12

R6-10-127. Repealed 13

R6-10-128. Repealed 13

ARTICLE 2. REPEALED

Article 2, consisting of Sections R6-10-201 thru R6-10-220, repealed under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

Article 2, consisting of Sections R6-10-201 thru R6-10-220, adopted effective December 11, 1995 (Supp. 95-4).

R6-10-201. Repealed 13

R6-10-202. Repealed 13

R6-10-203. Repealed 13

R6-10-204. Repealed 13

R6-10-205. Repealed 13

R6-10-206. Repealed 13

R6-10-207. Repealed 13

R6-10-208. Repealed 13

R6-10-209. Repealed 13

R6-10-210. Repealed 13

R6-10-211. Repealed 13

R6-10-212. Repealed 13

R6-10-213. Repealed 14

R6-10-214. Repealed 14

R6-10-215. Repealed 14

R6-10-216. Repealed 14

R6-10-217. Repealed 14

R6-10-218. Repealed 14

R6-10-219. Repealed 14

R6-10-220. Repealed 14

ARTICLE 3. JOB DISPLACEMENT GRIEVANCE PROCEDURES

Article 3, consisting of Sections R6-10-301 thru R6-10-304, adopted effective December 11, 1995 (Supp. 95-4).

Section

R6-10-301. Definitions 14

R6-10-302. Job Displacement 14

R6-10-303. Grievance Process 14

R6-10-304. Expired 15

CHAPTER 10. DEPARTMENT OF ECONOMIC SECURITY - THE JOBS PROGRAM

ARTICLE 1. THE JOBS PROGRAM: GENERAL PROVISIONS

R6-10-101. Definitions

The definitions in A.R.S. § 46-101 and the following definitions apply to this Chapter, unless the context otherwise requires:

1. "Acceptable medical source" means the same as A.A.C. R6-12-101 and includes a vocational rehabilitation specialist, licensed naturopathic doctor, licensed chiropractor, and other personnel authorized to act on a physician's behalf.
2. "AHCCCS" means the Arizona Health Care Cost Containment System.
3. "Assessment" means the evaluation of a participant by a case manager, with the assistance of the participant, to determine employment potential, as well as services necessary to remove barriers to employment. The case manager shall use the assessment as a guide for employment and career development planning.
4. "Assistance unit" means the same as A.R.S. § 46-101.
5. "Barrier" means a circumstance that, if not addressed, may prevent or delay participation in work activities. A barrier includes one or more of the following circumstances, or any similar circumstance:
 - a. A temporary physical or mental condition, including behavioral health issues of the participant or the participant's family member for whom the participant is the primary caregiver;
 - b. A lack of transportation;
 - c. A lack of child care;
 - d. Limited English proficiency;
 - e. A threat of domestic violence toward the participant, the participant's family member, or the caregiver for a minor child, if the threat interferes with the participant's ability to participate in work activities;
 - f. Illiteracy; insufficient education; lack of vocational skills; or
 - g. An ongoing family crisis that interferes with the participant's ability to participate in work activities.
 - h. Other similar circumstances that prevent or delay participation in work activities.
6. "Caretaker relative" means the same as A.A.C. R6-12-101(19).
7. "Case management" means the process through which the Jobs Program determines the needs of the participant requesting or receiving services through the Jobs Program. Appropriate services or benefits for participants are identified, planned, obtained, provided, recorded, monitored, and terminated, and follow-up is provided, as necessary and subject to budgetary constraints, in accordance with A.R.S. § 46-299.
8. "Case manager" means the Jobs Program staff who determines the needs of an individual requesting or receiving services through the Jobs Program.
9. "Community resource" means an organization that provides services to the general public at no cost to the participant or the Jobs Program.
10. "Community service program" means the same as 45 CFR 261.2(h).
11. "Complaint" means a formal accusation or charge expressing dissatisfaction or a grievance with a service provider, an agency, or a Jobs Program action or decision.
12. "Core activity" means a work activity that counts toward the work requirement, pursuant to 45 CFR 261.33 through 261.35.
13. "Day" means a calendar day, unless otherwise specified. If a deadline falls on a weekend day or a holiday, the Jobs Program shall consider the deadline to fall on the next business day.
14. "Deferral" means the same as A.R.S. § 46-299(A).
15. "Demonstrate compliance" means attending appointments to prevent sanctions, developing an employment and career development plan, and includes beginning and continuing participation in work activities in accordance with the employment and career development plan.
16. "Department" means the Arizona Department of Economic Security.
17. "Dependent child" means the same as A.R.S. § 46-101(8).
18. "Disability" means a physical or mental impairment that substantially limits one or more major life activities and includes being mentally, physically, or functionally incapable of participating in work activities.
19. "Education directly related to employment" means the same as 45 CFR 261.2(k).
20. "Employment and career development plan" means the document described in R6-10-110, prepared by the participant and the Jobs Program case manager and lists the activities a participant is required to complete, the services to be provided by the Jobs Program, and the referrals made to address barriers to employment.
21. "FAA" means the Family Assistance Administration, an administrative unit within the Department's Division of Benefits and Medical Eligibility responsible for providing TANF Cash Assistance to eligible persons.
22. "Fails to participate" or "failure to participate" means the same as R6-10-123(A).
23. "Family member" means any person who lives in a home with a participant and is related to the participant by blood, marriage, or adoption.
24. "GED" means general education development, which includes a series of five tests that, when passed, demonstrate high school skills equivalency.
25. "Good cause" means one or more of the circumstances listed at R6-10-123(F).

CHAPTER 10. DEPARTMENT OF ECONOMIC SECURITY - THE JOBS PROGRAM

26. "High school equivalency" or "HSE" means equivalent to high school.
27. "Job search readiness assistance" means the same as 45 CFR 261.2(g).
28. "Job skills training directly related to employment" means the same as 45 CFR 261.2(j).
29. "Jobs Program" means the Department's employment and training program for work-eligible individuals in an assistance unit receiving TANF Cash Assistance authorized by A.R.S. § 46-299. The Jobs Program is also available to program participants who lose eligibility for TANF Cash Assistance and meet the conditions of R6-10-121 or R6-10-126.
30. "Non-core activity" means a work activity that counts toward the work requirement only after the participant completes the required number of hours in core activities at 45 CFR 261.31 through 261.35.
31. "On-the-job training" or "OJT" means the same as 45 CFR 261.2(f).
32. "Participant" means a work-eligible individual selected to participate in the Jobs Program.
33. "Permanent disability" means a physical or mental impairment that substantially limits one or more major life activities and includes being mentally, physically, or functionally incapable of participating in work activities that is expected to last for the life of the individual.
34. "Program Administrator" means the Department employee who administers the Jobs Program.
35. "Sanction" means a reduction or termination of TANF Cash Assistance consistent with A.R.S. § 46-300, for all families, except TPEP families, who fail to participate in the Jobs Program without good cause or demonstrate compliance.
36. "Satisfactory attendance in high school or equivalent" means the same as 45 CFR 261.2(l) and A.R.S. § 46-299(C)(1).
37. "Services" means the same as A.R.S. § 46-101(21).
38. "Service provider" means an entity that is responsible for providing services to participants. This includes Jobs Program staff, an agency or organization, public or nonprofit, or a person awarded a grant or contract by the Jobs Program to provide services to participants.
39. "Single custodial parent" means an unmarried custodial parent.
40. "Specialized assessments" means a medical assessment or a psycho-social assessment to determine a participant's functioning level and ability to participate in work activities.
41. "Subsidized employment" means paid employment in the public or private sector or any other organization that receives a subsidy from TANF Cash Assistance or other public funds to offset the cost of wages and benefits paid by the employer, as described at 45 CFR 261.2(c) and (d).
42. "Supplemental payment" means an amount paid by the Department to a participant when the individual engages in work activities, subject to the Fair Labor Standards Act (FLSA), for more hours than the monthly TANF Cash Assistance benefit amount, plus the monthly Nutrition Assistance allotment, divided by the federal or state minimum wage, whichever is higher. Work experience and community service activities are generally subject to the FLSA.
43. "Support services" means specific services and goods paid with TANF-funded program dollars to help the Jobs Program engage participants in work activities, accept and maintain employment, and successfully make the transition from welfare dependence to financial independence through working.
44. "TANF Cash Assistance" means the state Temporary Assistance for Needy Families program established by 42 U.S.C. § 601 et. seq.
45. "Teen custodial parent" means a parent age 13 through 19 years, who is caring for that parent's own child.
46. "Temporary disability" means a physical or mental impairment that substantially limits one or more major life activities and includes being mentally, physically, or functionally incapable of participating in work activities that is not expected to last for the life of the individual.
47. "TPEP" means the Two-Parent Employment Program as defined at A.A.C. R6-12-101(93).
48. "Unavailable child care" means that:
 - a. The location of a child care provider is at a distance that requires a one-way travel time by vehicular transportation equal to or greater than one hour, measured from the participant's residence to the child care provider and then to work, or if walking, a distance that requires a one-way travel time equal to or greater than 1/2 hour, measured in the same manner;
 - b. Child care providers do not have available slots or vacancies;
 - c. Child care providers cannot provide services to a child with a disability who has special needs;
 - d. Child care providers related to the child are unavailable or unwilling to provide care;
 - e. Child care is available through a non-relative provider, but the provider is unwilling to apply for DES certification; or
 - f. A child age 13 or older requires adult supervision:
 - i. Due to a disability, which includes mental health or other health-related issues;
 - ii. Because the child would be harmful to himself, herself, or others if left alone; or
 - iii. Because the child is on court-ordered probation that requires the child to remain in the home or under house arrest.
49. "Unsubsidized employment" means full- or part-time employment with wages that meet FLSA requirements and meet or exceed the state minimum wage requirements, with the exception of self-employment, in the public or private sector that is not subsidized by TANF Cash Assistance or other public programs, as described at 45 CFR 261.2(b).
50. "Unsuitable child care" means that child care is available through a provider, but the participant declares in writing that the provider is unsuitable based on factors, such as the following. The provider:

CHAPTER 10. DEPARTMENT OF ECONOMIC SECURITY - THE JOBS PROGRAM

- a. Has a history of child neglect or abuse;
 - b. Is experiencing domestic violence;
 - c. Has a history of serious crime;
 - d. Has a history of substance abuse;
 - e. Has an emotional, mental, or physical condition that prevents the provider from providing safe care;
 - f. Resides in a home that is unsafe for children; or
 - g. Possesses similar attributes that render the provider unsuitable to furnish child care services.
51. "Verification" means any documentation that substantiates an individual's claim.
52. "Vocational educational training" means the same as 45 CFR 261.2(i).
53. "Volunteer" means an individual who is excluded from work requirements under R6-10-107 or temporarily deferred from work requirements under R6-10-108 and chooses to participate in the Jobs Program.
54. "Wages" means hourly pay for employment, including tips, and meets or exceeds the state minimum wage.
55. "Withholding" means retention of semi-monthly TPEP Cash Assistance payments for parents who participate in TPEP and who fail to participate or comply with Jobs Program requirements without good cause.
56. "Work-eligible individual" means an adult or minor child head of household receiving TANF Cash Assistance, or a non-recipient parent living with a child who receives TANF Cash Assistance, unless the individual is:
- a. A minor parent and not the head of household or spouse of the head of household;
 - b. An individual who is ineligible to receive assistance due to the individual's immigration status;
 - c. A recipient of Supplemental Security Income, unless the recipient is employed and meeting the federal work participation rate; or
 - d. A parent otherwise mandated to participate in work activities who is providing care for a family member with a disability living in the home if the need for such care is supported by medical documentation.
57. "Work activities" means the same as A.R.S. § 46-101(27).
58. "Work experience" means the same as 45 CFR 261.2(e).
59. "Work requirement" means the minimum number of hours required for a Jobs Program participant to participate in work activities as a condition of eligibility for TANF Cash Assistance pursuant to 45 CFR 261.31 through 261.35.

Historical Note

Adopted effective January 10, 1977 (Supp. 77-1). Amended effective July 27, 1983 (Supp. 83-4). Section repealed, new Section adopted effective June 6, 1995 (Supp. 95-2). Section repealed; new Section adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (05-4). Amended by final rulemaking at 25 A.A.R. 3235, effective December 7, 2019 (Supp. 19-4).

R6-10-101.01 Applicability

The rules in this Chapter apply to all Jobs Program providers and participants.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (05-4). Amended by final rulemaking at 25 A.A.R. 3235, effective December 7, 2019 (Supp. 19-4).

R6-10-102. Work Requirement

- A. A Jobs Program participant shall participate in work activities in order for an assistance unit to remain eligible for TANF Cash Assistance.
- B. The Jobs Program shall assign a participant to work activities that meet the federal work participation requirement, unless a participant is:
 - 1. Excluded under R6-10-107;
 - 2. Temporarily deferred under R6-10-108; or
 - 3. Has unresolved barriers.
- C. A single custodial parent may participate in educational activities on a full-time basis as an alternative to the federal work participation requirements if the state is meeting the federal work participation rate pursuant to 45 CFR 261.21 and 45 CFR 231.23. Allowable education activities include high school equivalency programs, career and technical education programs, and postsecondary education programs. Full-time status, as defined by the educational program, shall be verified by the Jobs Program. Verification sources include:
 - 1. A statement from the provider;
 - 2. A documented phone call with the provider;
 - 3. Information from the provider's website; or
 - 4. Any other information from the educational activity provider that substantiates the participant's full-time status.
- D. The Jobs Program shall assign all participants, other than those listed at R6-10-102(B), to no more than 40 hours of work activities per week, as required to meet the federal work participation rate, as described at 42 U.S.C. 607(a).
- E. The Department shall impose a sanction under R6-10-124, or a withholding under R6-10-125, if a participant who is required to participate in work activities fails to do so without good cause, pursuant to R6-10-123(F).
- F. The Jobs Program shall permit an individual who is excluded or temporarily deferred to voluntarily participate in the Jobs Program.

CHAPTER 10. DEPARTMENT OF ECONOMIC SECURITY - THE JOBS PROGRAM

- G. The Jobs Program shall not sanction a volunteer who fails to participate in work activities if the volunteer meets the requirements for an exclusion or temporary deferral.
- H. TPEP participants shall participate with the Jobs Program for a minimum of three consecutive business days before the Department authorizes issuance of the initial TANF Cash Assistance payment.

Historical Note

Adopted effective January 10, 1977 (Supp. 77-1). Amended effective July 27, 1983 (Supp. 83-4). Section repealed, new Section adopted effective June 6, 1995 (Supp. 95-2). Section repealed; new Section adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (05-4). Amended by final rulemaking at 25 A.A.R. 3235, effective December 7, 2019 (Supp. 19-4).

R6-10-103. Preliminary Orientation

- A. A work eligible applicant shall receive a preliminary orientation as part of the TANF Cash Assistance eligibility requirement. This requirement does not apply to a TPEP assistance unit.
- B. The preliminary orientation information shall be provided to a work eligible applicant prior to the approval of TANF Cash Assistance by the FAA.
- C. The preliminary orientation shall provide a work eligible applicant with a general overview of the Jobs Program, its purpose, and its relationship to the receipt of TANF Cash Assistance and continued eligibility for the Jobs Program under R6-10-126 regarding TANF Cash Assistance case closure due to the time limit.

Historical Note

Adopted effective January 10, 1977 (Supp. 77-1). Amended effective July 27, 1983 (Supp. 83-4). Section repealed, new Section adopted effective June 6, 1995 (Supp. 95-2). Section repealed; new Section adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (05-4). Section R6-10-103 renumbered to R6-10-104; new Section R6-10-103 made by final rulemaking at 25 A.A.R. 3235, effective December 7, 2019 (Supp. 19-4).

R6-10-104. Tribal Program

The Jobs Program shall not serve an individual who is eligible to receive assistance through a tribal cash assistance program or services through a tribal program similar to the Jobs Program.

Historical Note

Adopted effective January 10, 1977 (Supp. 77-1). Amended effective July 27, 1983 (Supp. 83-4). Section repealed, new Section adopted effective June 6, 1995 (Supp. 95-2). Section repealed; new Section adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (05-4). Section R6-10-104 renumbered to R6-10-105; new Section R6-10-104 renumbered from R6-10-103 and amended by final rulemaking at 25 A.A.R. 3235, effective December 7, 2019 (Supp. 19-4).

R6-10-105. Selection for Participation in the Jobs Program

- A. The FAA approves an assistance unit for TANF Cash Assistance and shall refer a work eligible individual to the Jobs Program.
- B. The Jobs Program shall begin Jobs Program services for a TPEP individual at the time the individual reports to a Jobs Program local office.

Historical Note

Adopted effective January 10, 1977 (Supp. 77-1). Amended effective July 27, 1983 (Supp. 83-4). Section repealed, new Section adopted effective June 6, 1995 (Supp. 95-2). Section repealed; new Section adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (05-4). Section R6-10-105 repealed; new Section R6-10-105 renumbered from R6-10-104 and amended by final rulemaking at 25 A.A.R. 3235, effective December 7, 2019 (Supp. 19-4).

R6-10-106. Initial Case Management Appointment

- A. The Jobs Program shall notify a work-eligible individual of the initial Jobs Program case management appointment in writing when the work-eligible individual is selected to participate in the Jobs Program. The notice shall include:
 - 1. The date and time of the initial Jobs Program case management appointment and the address of the Jobs Program local office where the initial Jobs Program case management appointment shall be held;
 - 2. Information regarding transportation, translation, and child care assistance that may be available for the initial Jobs Program case management appointment and the contact information necessary to obtain available services;
 - 3. A provision explaining that if the participant needs transportation, translation, or child care services to attend the appointment, and the services are not available, the recipient has good cause for not attending the initial Jobs Program case management appointment under R6-10-123(F).
 - 4. The Jobs Program contact information to reschedule the initial Jobs Program case management appointment; and

CHAPTER 10. DEPARTMENT OF ECONOMIC SECURITY - THE JOBS PROGRAM

5. A statement that the consequence of failing, without good cause or a demonstration of compliance, to attend the initial Jobs Program case management appointment is subject to:
 - a. Progressive sanctioning pursuant to A.R.S. § 46-300; and
 - b. Ineligibility for TANF Cash Assistance beyond the lifetime limit, pursuant to A.R.S. § 46-294(G)(1).
- B. The work-eligible individual shall contact the Jobs Program before the appointment date if the participant is unable to attend the scheduled appointment. The Jobs Program shall reschedule the appointment.
- C. The work-eligible individual shall contact the Jobs Program before the appointment date if the work-eligible individual needs transportation, translation, or child care services to attend the appointment. The Jobs Program shall arrange such services. If services are not available, the provisions under R6-10-106(D) apply.
- D. A work-eligible individual selected under R6-10-106(A) shall become a participant in the Jobs Program and shall attend an initial Jobs Program case management appointment provided by the Jobs Program. The Jobs Program shall provide the participant with transportation, translation, and child care assistance, if services are available, to enable the participant to attend the initial Jobs Program case management appointment. If a participant is unable to attend the initial Jobs Program case management appointment because services are not available, the participant shall be granted good cause under R6-10-123(F).
- E. The Jobs Program, during the initial Jobs Program case management appointment, shall:
 1. Explain the rights and responsibilities of the participant, the Jobs Program, and the Department's child care program to the participant, including:
 - a. A statement that the consequence of non-compliance with the Jobs Program requirements, without good cause or a demonstration of compliance, is that the participant may be subject to progressive sanctioning, pursuant to A.R.S. § 46-300; and
 - b. The deferral and exclusion procedures, as well as good cause reasons;
 2. Complete an assessment with the participant; and
 3. Complete an employment and career development plan with the participant that takes into account the participant's background and skills, any barriers to employment, and any available services that may assist in the removal of barriers to employment.

Historical Note

Adopted effective January 10, 1977 (Supp. 77-1). Amended effective July 27, 1983 (Supp. 83-4). Section repealed, new Section adopted effective June 6, 1995 (Supp. 95-2). Section repealed; new Section adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (05-4). Section R6-10-106 renumbered to R6-10-108; new Section R6-10-106 made by final rulemaking at 25 A.A.R. 3235, effective December 7, 2019 (Supp. 19-4).

R6-10-107. Work Requirement Exclusion

- A. A participant who is providing care for a family member with a disability, may request an exclusion from the work requirement. If the request for an exclusion from the work requirement is approved, the participant shall be considered non-work eligible and shall not be required to participate in work activities.
- B. A participant who requests an exclusion from the work requirement shall provide medical documentation to substantiate the need to provide care for a family member with a disability. Medical documentation shall:
 1. Be obtained from an acceptable medical source;
 2. State that the participant is required to provide care for the family member; and
 3. Include all of the following information:
 - a. The name of the person for whom care is to be provided;
 - b. The time period of the disability;
 - c. A statement that the participant is needed to provide full-time care for the family member; and
 - d. A prognosis of the family member's recovery or the date of the reexamination.

Historical Note

Adopted effective January 10, 1977 (Supp. 77-1). Amended effective July 27, 1983 (Supp. 83-4). Section repealed, new Section adopted effective June 6, 1995 (Supp. 95-2). Section repealed; new Section adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (05-4). Section R6-10-107 renumbered to R6-10-109; new Section R6-10-107 made by final rulemaking at 25 A.A.R. 3235, effective December 7, 2019 (Supp. 19-4).

R6-10-108. Temporary Deferrals

- A. The Jobs Program shall determine whether to temporarily defer a participant from engaging in work activities under A.R.S. § 46-299(A) and this Section.
 1. The Jobs Program shall determine the length of time that a participant is temporarily deferred based on the information in this Section.
 2. The Jobs Program shall obtain verification that certifies that the participant is mentally or physically incapable of engaging in work activities or employment due to a circumstance established under this Section.
- B. The Jobs Program shall defer a participant with a temporary or permanent disability. A participant with a temporary or permanent disability may opt to participate and receive a reasonable accommodation to facilitate participation. The Jobs Program shall not request a sanction under R6-10-124 if the participant is then subsequently unable to participate due to the disability.

CHAPTER 10. DEPARTMENT OF ECONOMIC SECURITY - THE JOBS PROGRAM

- C. The Jobs Program shall accept verification of a temporary or permanent disability from a participant that has been provided by an acceptable medical source. The Jobs Program shall assist the participant in obtaining verification of a temporary or permanent disability when a participant is experiencing difficulty with obtaining such verification. A medical statement shall include:
1. Employment limitations, including the extent and duration of any limitation;
 2. A specified period of disability;
 3. A prognosis of disability;
 4. A statement of any reasonable accommodation that may enable a participant to work or participate; and
 5. The date by which reexamination or reevaluation is recommended.
- D. The Jobs Program shall temporarily defer a participant from work activities if the participant or the participant's child is a victim of domestic violence.
1. The Jobs Program shall grant a temporary deferral for domestic violence if:
 - a. Participation in the Jobs Program threatens the safety of or, in the perception of the participant, causes an immediate threat of physical, mental, or emotional harm to the participant, the participant's child, or any child living with the participant; or
 - b. Due to domestic violence, the participant has been physically or emotionally harmed to such an extent that the participant is incapable of participation in the Jobs Program.
 2. The Jobs Program shall provide a participant who is a victim of domestic violence with:
 - a. A deferral from Program requirements, under A.R.S. § 46-244 and this rule, for a period of time that will enable the participant to safely participate in work activities. The maximum deferral period is six months. The Jobs Program may grant additional deferrals consistent with A.R.S. § 46-299; and
 - b. A referral to appropriate and available services.
 3. A participant who requests a deferral due to domestic violence shall provide the Jobs Program with verification of domestic violence. The Jobs Program shall accept the following as verification of domestic violence:
 - a. A written statement from the participant;
 - b. Police reports;
 - c. Court records;
 - d. Medical records indicating the presence of domestic violence;
 - e. Physical evidence of domestic violence;
 - f. Documentation from a domestic violence shelter staff, an attorney, clergy, medical or other professional from whom the participant has sought assistance regarding domestic violence;
 - g. A statement from the Arizona Department of Child Safety that substantiates domestic violence exists within the participant's home;
 - h. Other documentation, such as news stories from television, newspaper, or radio; or
 - i. Other corroborating evidence, such as a statement from another individual with knowledge of the circumstances that provide the basis for the claim.
- E. The Jobs Program shall temporarily defer a participant who is a single custodial parent less than age 18 and personally caring for a child less than 12 weeks of age.
- F. The Jobs Program shall temporarily defer a participant who is a single custodial parent or a caretaker relative personally caring for a child less than one year of age, for no more than 12 months in the participant's lifetime, unless the participant is a teenaged custodial parent who does not have a high school diploma or HSE diploma.
- G. The Jobs Program shall temporarily defer a TPEP parent if the parent has a temporary disability or illness that is expected to last less than 30 days, as verified by an acceptable medical source. If the disability is expected to last more than 30 days, the family is not a TPEP family and shall have eligibility for TANF Cash Assistance determined as an assistance unit with deprivation due to the parent having a disability.

Historical Note

Adopted effective Jan 10, 1977 (Supp.77-1). Amended effective July 27, 1983 (Supp. 83-4). Section repealed, new Section adopted effective June 6, 1995 (Supp. 95-2). Section repealed; new Section adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (05-4). Section R6-10-108 renumbered to R6-10-110; new Section R6-10-108 renumbered from R6-10-106 and amended by final rulemaking at 25 A.A.R. 3235, effective December 7, 2019 (Supp. 19-4).

R6-10-109. Participant Assessment; Referral

- A. The Jobs Program case manager and the participant shall complete assessments during the initial Jobs Program case management appointment, and as needed thereafter, to identify any possible barriers to employability or participation in the Jobs Program. The participant shall provide, either orally or in writing, all personal information necessary to accurately complete the assessments. In-depth barrier assessments shall include questions to determine whether the participant needs services to address:
1. Past or ongoing domestic violence;
 2. Substance abuse or chemical dependency;
 3. Psychological or psychiatric needs;
 4. Education or training insufficient to obtain or sustain employment;
 5. Mental, physical, or functional incapacity or disability, including a learning disability;

CHAPTER 10. DEPARTMENT OF ECONOMIC SECURITY - THE JOBS PROGRAM

6. Issues regarding retaining or maintaining employment;
 7. Inadequate housing;
 8. Inadequate child care;
 9. Inadequate transportation;
 10. Criminal background and involvement with the criminal justice system; or
 11. Other issues that affect an individual's ability to participate in work activities.
- B.** The Jobs Program shall provide appropriate services or community resources to a participant who is identified as in need of services using the information from the assessments. When the Jobs Program is unable to provide services, the Jobs Program shall refer a participant to appropriate services or community resources. If the Jobs Program case manager determines that a needed service is not available through the Jobs Program services or community resources after researching available options, the Jobs Program shall not make a referral and shall grant the participant good cause for not engaging in work activities under R6-10-123.
- C.** If a participant does not provide all personal information necessary to complete the assessments, either orally or in writing, the Jobs Program is not required to provide the participant with support services or referrals to service providers.
- D.** The Jobs Program shall use the information provided by the participant during the assessments to develop the employment and career development plan described in R6-10-110. Additional information from previous employers, educational providers, medical providers, and others may be gathered to help determine planned activities and services.
- E.** Based on the initial assessments or if a participant experiences difficulty implementing the employment and career development plan, the Jobs Program may determine that a participant may benefit from further specialized assessments. A licensed professional or licensed agency shall administer all specialized assessments.

Historical Note

Adopted effective January 10, 1977 (Supp. 77-1). Section repealed, new Section adopted effective June 6, 1995 (Supp. 95-2). Section repealed; new Section adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (05-4). Section R6-10-109 renumbered to R6-10-111; new Section R6-10-109 renumbered from R6-10-107 and amended by final rulemaking at 25 A.A.R. 3235, effective December 7, 2019 (Supp. 19-4).

R6-10-110. Employment and Career Development Plan

- A.** The Jobs Program and the participant shall complete an employment and career development plan for the participant that takes into consideration barriers to employment and incorporates work activities and agreed upon services. The employment and career development plan shall include:
1. Employment goals;
 2. Work activities;
 3. Locations for each assigned activity;
 4. Dates for beginning and ending activities;
 5. Available services offered by the Jobs Program or community resources;
 6. A list of referrals made as a result of the participant's assessments; and
 7. Signatures of the participant and the case manager assigned to oversee provision of services to the participant. The Jobs Program shall not sanction a participant solely for refusing to sign the employment and career development plan.
- B.** The Jobs Program case manager, in consultation with the participant, may revise the employment and career development plan as necessary to ensure the participant continues to advance toward the employment goal. The case manager shall revise an employment plan when:
1. A change in services needs to address newly identified barriers to participation by the Jobs Program case manager or the participant; or
 2. When a participant's circumstances require a change in work activities or services.

Historical Note

Adopted effective January 10, 1977 (Supp. 77-1). Amended effective July 27, 1983 (Supp. 83-4). Section repealed, new Section adopted effective June 6, 1995 (Supp. 95-2). Section repealed; new Section adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Title 41, Chapter 6 (Supp. 97-3). Amended by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (05-4). Section R6-10-110 renumbered to R6-10-112; new Section R6-10-110 renumbered from R6-10-108 and amended by final rulemaking at 25 A.A.R. 3235, effective December 7, 2019 (Supp. 19-4).

R6-10-111. Core Activities

The following are core activities:

1. Unsubsidized employment;
2. Job search and job readiness assistance, as described in R6-10-114;
3. Subsidized employment, as described in R6-10-115;
4. OJT, as described in R6-10-115;
5. Work experience, as described in R6-10-116;
6. Community service programs, as described in R6-10-117;
7. Vocational educational training, as described in R6-10-118; and

CHAPTER 10. DEPARTMENT OF ECONOMIC SECURITY - THE JOBS PROGRAM

8. Satisfactory attendance in high school or GED preparation classes or education directly related to employment, as described in R6-10-119, for a participant who is a head of household and has not obtained a high school diploma or HSE diploma for any parent under 20 years of age who is
 - a. A single teen custodial parent; or
 - b. A married teen parent.

Historical Note

Adopted effective January 10, 1977 (Supp. 77-1). Amended effective July 27, 1983 (Supp. 83-4). Section repealed, new Section adopted effective June 6, 1995 (Supp. 95-2). Amended effective December 11, 1995 (Supp. 95-4). Section repealed; new Section adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (05-4). Section R6-10-111 renumbered to R6-10-113; new Section R6-10-111 renumbered from R6-10-109 and amended by final rulemaking at 25 A.A.R. 3235, effective December 7, 2019 (Supp. 19-4).

R6-10-112. Participation that Meets the Work Requirement

- A. The following participants meet the work requirement:
 1. A participant who is participating in work activities for at least the minimum average number of hours per week under 45 CFR 261.31 and 45 CFR 261.32.
 2. A single custodial parent or caretaker relative with a child less than age six, who participates for the minimum hours required per week under 45 CFR 261.35.
 3. A single or married head of household less than age 20 who participates under 45 CFR 261.33(b).
 4. A single custodial parent who is participating in educational activities, as described at R6-10-119 and R6-10-102(C).
- B. A participant who falls into one of the categories listed in subsections (A)(1) through (4), who is meeting the work requirement, may participate in additional work activities beyond those that meet the work requirement.

Historical Note

Adopted effective January 10, 1977 (Supp. 77-1). Amended effective July 27, 1983 (Supp. 83-4). Section repealed, new Section adopted effective June 6, 1995 (Supp. 95-2). Section repealed; new Section adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (05-4). Section R6-10-112 renumbered to R6-10-114; new Section R6-10-112 renumbered from R6-10-110 and amended by final rulemaking at 25 A.A.R. 3235, effective December 7, 2019 (Supp. 19-4).

R6-10-113. Non-Core Activities

- A. The Jobs Program may assign a participant to non-core activities based on information obtained through assessments or contained in the participant's employment and career development plan only after the participant meets required participation in primary core activity hours under R6-10-111.
- B. The following are non-core activities:
 1. Job skills training directly related to employment;
 2. High school or GED preparation for a participant, other than a single, teen custodial parent who is a head of household, who has not obtained a high school diploma or HSE diploma; and
 3. Education directly related to employment for a participant, other than a single, teen custodial parent who is a head of household, who has not obtained a high school diploma or HSE diploma.

Historical Note

Adopted effective January 10, 1977 (Supp. 77-1). Amended effective July 27, 1983 (Supp. 83-4). Section repealed, new Section adopted effective June 6, 1995 (Supp. 95-2). Section repealed; new Section adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (05-4). Section R6-10-113 renumbered to R6-10-115; new Section R6-10-113 renumbered from R6-10-111 and amended by final rulemaking at 25 A.A.R. 3235, effective December 7, 2019 (Supp. 19-4).

R6-10-114. Job Search and Job Readiness Assistance

- A. Based on information obtained through assessments or contained in a participant's employment and career development plan, the Jobs Program may assign a participant to job search and job readiness assistance as a core activity, according to 45 CFR 261.34.
- B. A participant assigned to job search and job readiness assistance as a core activity shall participate in job search and job readiness assistance for at least the minimum number of hours identified in the participant's employment and career development plan.

Historical Note

Adopted effective January 10, 1977 (Supp. 77-1). Amended effective July 27, 1983 (Supp. 83-4). Section repealed, new Section adopted effective June 6, 1995 (Supp. 95-2). Section repealed; new Section adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (05-4). Section R6-10-114 renumbered to R6-10-116; new Section R6-10-114 renumbered from R6-10-112 and amended by final rulemaking at 25 A.A.R. 3235, effective December 7, 2019 (Supp. 19-4).

CHAPTER 10. DEPARTMENT OF ECONOMIC SECURITY - THE JOBS PROGRAM

R6-10-115. On-the-job Training (OJT)

- A. Based on information obtained through assessments or contained in a participant's employment and career development plan, the Jobs Program may assign a participant to OJT.
- B. The Jobs Program shall approve OJT worksites and assignments that:
 - 1. Are designed to improve the participant's chances for employment, and
 - 2. Provide compensation in accordance with applicable wage laws.
- C. OJT activities shall include a written training plan that contains:
 - 1. A job description that lists the skills to be learned;
 - 2. General employment competencies and occupation-specific skills;
 - 3. An evaluation of the participant's progress; and
 - 4. A schedule that indicates the estimated date of acquisition of each skill.

Historical Note

Adopted effective January 10, 1977 (Supp. 77-1). Amended effective July 27, 1983 (Supp. 83-4). Section repealed, new Section adopted effective June 6, 1995 (Supp. 95-2). Section repealed; new Section adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (05-4). Section R6-10-115 renumbered to R6-10-117; new Section R6-10-115 renumbered from R6-10-113 and amended by final rulemaking at 25 A.A.R. 3235, effective December 7, 2019 (Supp. 19-4).

R6-10-116. Work Experience

- A. Based on information obtained through assessments or contained in a participant's employment and career development plan, the Jobs Program may assign a participant to work experience to improve the participant's employability, or meet work participation requirements. The Jobs Program staff shall evaluate a participant's entitlement to a supplemental payment each month following the conclusion of participation in work experience
- B. When assigning work experience, the Jobs Program shall select work experience that is consistent with the participant's employment and career development plan and consider the participant's prior training and experience.

Historical Note

Adopted effective January 10, 1977 (Supp. 77-1). Amended effective July 27, 1983 (Supp. 83-4). Section repealed, new Section adopted effective June 6, 1995 (Supp. 95-2). Section repealed; new Section adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (05-4). Section R6-10-116 renumbered to R6-10-118; new Section R6-10-116 renumbered from R6-10-114 and amended by final rulemaking at 25 A.A.R. 3235, effective December 7, 2019 (Supp. 19-4).

R6-10-117. Community Service Programs

Based on information obtained through assessments or contained in a participant's employment and career development plan, the Jobs Program may assign a participant to community service program activities to establish good work habits if the participant is unlikely to meet work participation requirements by participating in other primary activities. The Jobs Program staff shall evaluate a participant's entitlement to supplemental payment each month following the conclusion of participation in community service activities and process payments, if owed, by the seventh day of the following month after participation concludes.

Historical Note

Adopted effective January 10, 1977 (Supp. 77-1). Amended effective July 27, 1983 (Supp. 83-4). Section repealed, new Section adopted effective June 6, 1995 (Supp. 95-2). Section repealed; new Section adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (05-4). Section R6-10-117 renumbered to R6-10-119; new Section R6-10-117 renumbered from R6-10-115 and amended by final rulemaking at 25 A.A.R. 3235, effective December 7, 2019 (Supp. 19-4).

R6-10-118. Vocational Educational Training

- A. Based on information obtained through the assessment or contained in a participant's employment and career development plan, the Jobs Program may assign a participant to vocational educational training as a core activity, for any period of time up to the maximum of 12 months if other work activities have not resulted in employment and vocational educational training that is consistent with the participant's employment plan, according to 45 CFR 261.33(a).
- B. In addition to criteria in subsection (A), the Jobs Program shall use the following criteria to determine whether a participant shall be assigned to, or remain in, vocational educational training:
 - 1. The participant:
 - a. Lacks a self-supporting skill for available jobs in the participant's geographical area; and
 - b. Remains in good standing with the educational or training institution and maintains satisfactory attendance, as defined by the institution.
 - 2. The participant seeks the education or training activities to attain skills directly related to job opportunities for self-supporting employment in a recognized occupation that does not have high turnover due to substandard wages or working conditions.

CHAPTER 10. DEPARTMENT OF ECONOMIC SECURITY - THE JOBS PROGRAM

- C. The Jobs Program may approve, as vocational educational training, the educational or training activities of an individual who is already enrolled in educational, vocational, or technical training at the time the individual is selected for the Jobs Program.
- D. The Jobs Program shall use the following criteria to determine whether the educational or training activities of an individual already enrolled in education or training is approved:
 - 1. The individual is:
 - a. Attending an educational or training facility that is legally authorized, accredited, or recognized in the United States as providing a program to prepare students for gainful employment; and
 - b. In good standing with the educational or training institution and is maintaining satisfactory attendance, as defined by the institution.
 - 2. The individual seeks the education or training activities to attain skills directly related to job opportunities for self-supporting employment in a recognized occupation that does not have high turnover due to substandard wages or working conditions.
- E. The Jobs Program shall allow homework time under 45 CFR 261.60(e).

Historical Note

Adopted effective January 10, 1977 (Supp. 77-1). Amended effective July 27, 1983 (Supp. 83-4). Section repealed, new Section adopted effective June 6, 1995 (Supp. 95-2). Section repealed; new Section adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (05-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 1393, effective December 31, 2015 (Supp. 16-2). New Section R6-10-118 renumbered from R6-10-116 and amended by final rulemaking at 25 A.A.R. 3235, effective December 7, 2019 (Supp. 19-4).

R6-10-119. High School, GED Preparation, and Education Directly Related to Employment

- A. Based on information obtained through assessments or contained in a participant's employment and career development plan, the Jobs Program may assign a teen custodial parent who has not obtained a high school diploma or HSE diploma to education directly related to employment.
- B. The Jobs Program may assign a single, teen custodial parent, who is head of household and has not obtained a high school diploma or HSE diploma to education directly related to employment.
- C. The Jobs Program may assign an adult participant, who does not have a high school diploma or HSE diploma, to education directly related to employment as a non-core activity.
- D. The Jobs Program shall allow homework time, as described in 45 CFR 261.60(e).

Historical Note

Adopted effective January 10, 1977 (Supp. 77-1). Amended effective July 27, 1983 (Supp. 83-4). Section repealed, new Section adopted effective June 6, 1995 (Supp. 95-2). Section repealed; new Section adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (05-4). Section R6-10-119 renumbered to R6-10-120; new Section R6-10-119 renumbered from R6-10-117 and amended by final rulemaking at 25 A.A.R. 3235, effective December 7, 2019 (Supp. 19-4).

R6-10-120. Support Services

- A. The Jobs Program may provide a participant with support services as the Department budget for state TANF Cash Assistance permits to enable participation in the Jobs Program. Support services may include:
 - 1. Transportation services to assist a participant with transportation expenses that may be incurred as a result of participation in the Jobs Program, which may include:
 - a. Transportation-related expenses,
 - b. Bus tickets or passes,
 - c. Vehicle repair,
 - d. Vehicle general maintenance,
 - e. Liability insurance, or
 - f. Contracted transportation services.
 - 2. Health-related services not covered by AHCCCS or other medical insurance, but necessary to enable a participant to become employed or to make a determination of employability, including:
 - a. Medical examinations and tests,
 - b. Eyeglasses and other optical services,
 - c. Dental services, or
 - d. Mental health counseling.
 - 3. Other support services, including:
 - a. Clothing,
 - b. Tools, equipment, or specialized garments used in specific occupations such as uniforms, hard hats, or other similar attire,
 - c. Licenses,
 - d. Educational testing fees,

CHAPTER 10. DEPARTMENT OF ECONOMIC SECURITY - THE JOBS PROGRAM

- e. Relocation, or
 - f. Shelter or utility assistance.
- B.** The Department shall provide a participant with subsidized child care pursuant to A.A.C., Chapter 5, Article 49. Other child care related expenses include:
1. Transportation to and from child care centers and to and from school,
 2. Child care registration fees, and
 3. Participants' co-pay obligations.

Historical Note

Adopted effective January 10, 1977 (Supp. 77-1). Amended effective July 27, 1983 (Supp. 83-4). Section repealed, new Section adopted effective June 6, 1995 (Supp. 95-2). Section repealed; new Section adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (05-4). Section R6-10-120 renumbered to R6-10-122; new Section R6-10-120 renumbered from R6-10-119 and amended by final rulemaking at 25 A.A.R. 3235, effective December 7, 2019 (Supp. 19-4).

R6-10-121. Transitional Support Services

Participants who have entered unsubsidized employment and subsequently become ineligible for TANF Cash Assistance may be eligible to receive transitional support services, as Department budget permits, for up to 180 days from the first day of the month following the month of the TANF Cash Assistance case closure when it has been verified by the Jobs Program that the participant was employed in unsubsidized employment at the time of TANF Cash Assistance case closure. Transitional support services include those identified in R6-10-120 and:

1. Post-employment case management; and
2. Post-employment education and training opportunities.

Historical Note

Adopted effective January 10, 1977 (Supp. 77-1). Amended effective July 27, 1983 (Supp. 83-4). Section repealed, new Section adopted effective June 6, 1995 (Supp. 95-2). Section repealed; new Section adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Former R6-10-121 renumbered to R6-10-123; new Section R6-10-121 renumbered from R6-10-122 and amended by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (05-4). Section R6-10-121 renumbered to R6-10-123; new Section R6-10-121 made by final rulemaking at 25 A.A.R. 3235, effective December 7, 2019 (Supp. 19-4).

R6-10-122. Participant Complaint Resolution

- A.** This Section applies to participant complaints about the Jobs Program, including complaints about service providers.
- B.** Each service provider shall establish a written complaint resolution procedure that shall be posted and given to participants. The complaint resolution procedure shall include an opportunity for an informal dispute resolution meeting between the participant and the service provider and inform the participant of the right to elevate the complaint to the Program Administrator if the participant is not satisfied with the service provider decision.
- C.** A participant shall continue to participate in the Jobs Program while the complaint resolution is pending, unless the participant has established a good cause reason for not participating. If a participant fails to participate, the Jobs Program shall initiate the sanction process as provided in R6-10-124 or withholding as provided in R6-10-125.
- D.** A participant shall use all applicable steps of the following process to seek a resolution of a complaint:
1. The participant shall attempt to informally resolve a complaint at the lowest management level. However, if a participant believes that a complaint to the service provider would be futile, the participant may complain directly to the Program Administrator under R6-10-122(D)(4).
 2. The participant shall submit the complaint orally or in writing to the participant's service provider. The service provider shall assist the participant with writing the complaint upon request of the participant.
 3. Upon receipt of the participant's complaint, the service provider shall respond in writing within seven days of the date the complaint was received. The response shall provide the reason for the decision and identify any action taken by the provider to remedy the complaint. The response shall explain the participant's right to elevate the complaint for review to the Program Administrator or designee if the participant does not agree with the decision.
 4. If the service provider takes no action to resolve the complaint or the participant is not satisfied with the action, the participant may submit a complaint orally or in writing to the Program Administrator or designee.
 5. The Program Administrator or designee shall issue a written decision within 30 days after the date the complaint is received. The Program Administrator or designee shall consider the participant's employment and career development plan, applicable statutes, rules, and policy, and, if applicable, the terms of the service provider's contract in reaching a decision.

Historical Note

Adopted effective January 10, 1977 (Supp. 77-1). Amended effective July 27, 1983 (Supp. 83-4). Repealed effective June 6, 1995 (Supp. 95-2). New Section adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Former R6-10-122 renumbered to R6-10-121; new R6-10-122 made by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (05-4). Section R6-10-122 repealed; new Section R6-10-122 renumbered from R6-10-120 and amended by final rulemaking at 25 A.A.R. 3235, effective December 7, 2019 (Supp. 19-4).

CHAPTER 10. DEPARTMENT OF ECONOMIC SECURITY - THE JOBS PROGRAM

R6-10-123. Failure to Participate; Good Cause Reasons; Verification

- A.** Failure to participate includes:
1. Failure to appear for a scheduled appointment with a Jobs Program case manager;
 2. Failure to attend a scheduled work activity, assessment, or appointment that is documented in the employment and career development plan;
 3. Refusing to submit a completed application for employment, when required;
 4. Refusing to accept suitable employment, voluntarily reducing employment hours, or voluntarily quitting employment without good cause, as described at R6-10-123(F);
 5. Providing false or inaccurate information to a Jobs Program case manager;
 6. Behaving in a manner that constitutes a threat or hazard to agency staff or others; or
 7. Intentionally disrupting an activity or the orderly administration of the overall program, such as:
 - a. Attending, but refusing to participate in a class, workshop, or other assigned activity; or
 - b. Disruptive behavior that makes it difficult to conduct an activity.
- B.** If a participant does not actively engage with the Jobs Program, the Jobs Program case manager shall determine if a barrier to participation exists, and if so, whether services have been offered or provided to address the barrier.
1. If services have not been offered or provided to address an identified barrier, the Jobs Program case manager shall refer the participant to Jobs Program support services or community resources to address a barrier.
 2. If services have been offered or provided to address all identified barriers, the Jobs Program case manager shall send the participant a Good Cause/Last Chance to Stop the Sanction Appointment notice. The participant shall provide verification of good cause or attend a Last Chance to Stop the Sanction Appointment within ten days of the date the notice is mailed. The deadline shall be stated in the notice.
 3. If there are no services available to address an identified barrier, the Jobs Program Case Manager shall grant a participant good cause for not participating, as described in R6-10-123(F) and shall reevaluate the situation every 30 days from the date the employment and career development plan is revised to determine whether the barrier has been resolved or services have become available.
- C.** If the participant timely submits verification of good cause, the Jobs Program shall determine if good cause exists, as described at R6-10-123(F).
1. If verification meets the requirements of acceptable verification under R6-10-123(G) and establishes good cause, the Jobs Program shall notify the participant and state that good cause has been established and the Department shall not impose a sanction.
 2. If verification does not meet the requirement of acceptable verification at R6-10-123(G) and does not establish good cause, the Jobs Program shall notify the participant and state that good cause was not established and shall allow the participant an additional ten days from the date the notice is mailed to attend a Last Chance to Stop the Sanction Appointment.
- D.** If the participant fails to provide any verification but attended the Last Chance to Stop the Sanction Appointment and demonstrates compliance, the Jobs Program shall notify the participant and state that the Department shall not impose a sanction.
- E.** If the participant does not timely establish good cause under R6-10-123(F), attend the Last Chance to Stop the Sanction Appointment, or demonstrate compliance, the Jobs Program shall notify the participant and state that the participant did not establish good cause and did not attend the Last Chance to Stop the Sanction Appointment. The Jobs Program shall initiate the sanction process under R6-10-125.
- F.** Good cause is subject to verification under R6-10-123(G). Circumstances that prevent a participant from engaging in work activities under R6-10-102 constitute good cause, including when:
1. The participant has a barrier to participation for which services are not available;
 2. The participant is participating in referred services to address a barrier to participation;
 3. The participant has an illness;
 4. The participant is required to care for a family member with an illness or a disability;
 5. Either the participant or a dependent child has an appointment that cannot be rescheduled, such as a court-ordered appearance, medical appointment, or another comparable appointment;
 6. The participant has a family emergency;
 7. The participant lacks transportation with no reasonable alternate means of transportation;
 8. The participant is prevented from participating due to inclement weather;
 9. The participant is unable to obtain child care for a child who is less than 13 years old because the child care is unavailable, unaffordable, or unsuitable;
 10. Child care is unavailable for a child age 13 or over who requires adult supervision because the child:
 - a. Has a disability, including mental health or other health-related issues;
 - b. Would be harmful to himself, herself, or others if left alone; or
 - c. Is on court-ordered probation that requires the child to remain in the home or is under house arrest.
 11. The participant needs translation services that are not available or not provided.
 12. The participant is incapable of performing the work activity due to:
 - a. Unsafe worksite conditions;
 - b. Physical demands of the job;
 - c. Lack of skills, aptitude, or knowledge for the position;
 - d. Strike, lockout, or other bona fide labor dispute; or
 - e. Conditions of the participant's membership in a union representing employees in the occupation.

CHAPTER 10. DEPARTMENT OF ECONOMIC SECURITY - THE JOBS PROGRAM

13. The participant is a victim or perceives himself or herself to be a victim of domestic violence whose current situation:
 - a. Threatens the safety of the participant or any child living with the participant; or
 - b. Causes physical, mental, or emotional harm to the participant or any child living with the participant.
 14. The Department fails to provide the participant with services agreed upon in the employment and career development plan; or
 15. Other comparable circumstances beyond the participant's control, including an error by the Department.
- G.** Verification. Acceptable verification that establishes a participant's good cause, as described in R6-10-123(F), includes:
1. A statement from an acceptable medical source;
 2. An appointment notice from a court, FAA, or other comparable entity;
 3. Death certificate;
 4. Newspaper article, or other similar evidence of public knowledge;
 5. Document or statement from the DES Child Care Administration, FAA, a court, or other comparable entity;
 6. Police report;
 7. Statement from crisis shelter staff or a witness to the domestic violence;
 8. Statement from a third party; or
 9. Signed participant statement explaining the circumstances that establish good cause if no other verification is possible.

Historical Note

Adopted effective January 10, 1977 (Supp. 77-1). Amended effective July 27, 1983 (Supp. 83-4). Repealed effective June 6, 1995 (Supp. 95-2). New Section adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Former R6-10-123 renumbered to R6-10-124; new Section R6-10-123 renumbered from R6-10-121 and amended by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (05-4). Section R6-10-123 renumbered to R6-10-124; new Section R6-10-123 renumbered from R6-10-121 and amended by final rulemaking at 25 A.A.R. 3235, effective December 7, 2019 (Supp. 19-4).

R6-10-124. All Assistance Units, Except TPEP Assistance Units: Sanction Process

If a participant fails to participate in work activities without good cause under R6-10-123, the case manager shall initiate the sanction process.

1. Case review. Before requesting a sanction, the case manager shall review the case to determine whether all necessary steps have been taken, including barrier identification, available service referrals, and an opportunity to establish good cause.
2. Notice. If a sanction is approved by a Jobs Program supervisor, the Jobs Program case manager shall send the participant a written Notice of Adverse Action under A.A.C. R6-12-907.
3. Preventing sanction progression. The Jobs Program shall send additional written notification to a participant within five days of mailing the Notice of Adverse Action for a 50 percent sanction and state that the participant may attend a Last Chance to Stop the Sanction Appointment in order to prevent the sanction from progressing to termination of the assistant unit's Cash Assistance grant, pursuant to A.R.S. § 46-300(D). The Jobs Program shall schedule an appointment ten days from the date on the notice. A participant may attend the appointment, develop an employment and career development plan, and begin and continue to participate in the established work activity to continue to demonstrate compliance. If a barrier is identified, the Jobs Program case manager shall follow the process in R6-10-123(B).
4. Sanction levels. The Department shall impose a sanction, which is a percentage of the original cash assistance amount, in accordance with A.R.S. § 46-300.
5. A participant who wishes to appeal a sanction may request an appeals hearing under A.A.C. R6-12-1002.

Historical Note

Adopted effective January 10, 1977 (Supp. 77-1). Amended effective July 27, 1983 (Supp. 83-4). Repealed effective June 6, 1995 (Supp. 95-2). New Section adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Former R6-10-124 renumbered to R6-10-125; new Section R6-10-124 renumbered from R6-10-123 and amended by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (05-4). Section R6-10-124 renumbered to R6-10-125; new Section R6-10-124 renumbered from R6-10-123 and amended by final rulemaking at 25 A.A.R. 3235, effective December 7, 2019 (Supp. 19-4).

R6-10-125. TPEP: Failure to Participate; Withholding

- A.** If one parent of a TPEP assistance unit fails to comply with Jobs Program requirements, the Jobs Program shall determine whether good cause exists under R6-10-123(F).
- B.** If the Jobs Program determines that the TPEP parent failed to participate without good cause, the Department shall withhold TANF Cash Assistance.
- C.** TANF Cash Assistance shall be withheld until a participant complies with Jobs Program requirements and demonstrates compliance. The Jobs Program shall send the participant a Notice of Adverse Action notice at least ten days before the change in TANF Cash Assistance takes effect. This notice shall include:
 1. The date and location of the alleged failure to participate;
 2. How or why the participant failed to participate;
 3. The month in which the Department intends to impose the withholding;
 4. The length of time that the withholding will be imposed;

CHAPTER 10. DEPARTMENT OF ECONOMIC SECURITY - THE JOBS PROGRAM

5. How the participant can stop the proposed withholding or resume participation; and
 6. Department contact information where a participant may request more information regarding the withholding of the participant's TANF Cash Assistance.
- D.** The Department may grant a TPEP assistance unit a three-month extension to the six-month limit if:
1. A parent is enrolled in a vocational education training activity;
 2. A parent has an offer of unsubsidized employment that will begin within the three-month extension period;
 3. The TPEP work requirements were not met and good cause was established for one or more months during the six-month period;
or
 4. The Jobs Program shall determine if an assistance unit meets the criteria for a three-month extension prior to expiration of the TPEP benefits and notify the FAA when the criteria is met.
- E.** The Jobs Program shall close the TANF Cash Assistance when three TPEP payments are withheld in any six-month period.
- F.** A participant who wishes to appeal a withholding may request a fair hearing under A.A.C. R6-12-1002.

Historical Note

Adopted effective January 10, 1977 (Supp. 77-1). Amended effective July 27, 1983 (Supp. 83-4). Repealed effective June 6, 1995 (Supp. 95-2). New Section adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Former R6-10-125 renumbered to R6-10-126; new Section R6-10-125 renumbered from R6-10-124 and amended by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (Supp. 05-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 1393, effective December 31, 2015 (Supp. 16-2). New Section R6-10-125 renumbered from R6-10-124 and amended by final rulemaking at 25 A.A.R. 3235, effective December 7, 2019 (Supp. 19-4).

R6-10-126. Jobs Program Eligibility After the TANF Cash Assistance Time Limit

- A.** The Jobs Program case management and employment services shall continue for up to 12 months after:
1. A participant's TANF Cash Assistance closed due to the time limit in A.R.S. § 46-294(G);
 2. The Jobs Program case is active at the time the TANF Cash Assistance case is closed; and
 3. The participant does not have a Jobs Program sanction imposed in the month of case closure.
- B.** The Jobs Program shall provide written notification to the participant of the participant's continued eligibility for the Jobs Program when the Jobs Program is informed of the participant's TANF Cash Assistance case closure. The notification shall inform the participant about how the participant may receive employment and case management services.
- C.** Continued eligibility for the Jobs Program stops when the participant's mail is returned to the Jobs Program with no forwarding address and the Jobs Program is unable to obtain the current address through other means. The Jobs Program shall close the Jobs Program case within 20 calendar days of receiving the returned mail.
- D.** Support services, as described at R6-10-120, may be provided with the exception of subsidized child care, pursuant to 6 A.A.C. 5, Article 49.

Historical Note

Adopted effective January 10, 1977 (Supp. 77-1). Amended effective July 27, 1983 (Supp. 83-4). Repealed effective June 6, 1995 (Supp. 95-2). New Section R6-10-126 renumbered from R6-10-125 and amended by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (Supp. 05-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 1393, effective December 31, 2015 (Supp. 16-2). New Section R6-10-126 made by final rulemaking at 25 A.A.R. 3235, effective December 7, 2019 (Supp. 19-4).

R6-10-127. Repealed**Historical Note**

Adopted effective January 10, 1977 (Supp. 77-1). Amended effective July 27, 1983 (Supp. 83-4). Repealed effective June 6, 1995 (Supp. 95-2).

R6-10-128. Repealed**Historical Note**

Adopted effective January 10, 1977 (Supp. 77-1). Amended effective July 27, 1983 (Supp. 83-4). Repealed effective June 6, 1995 (Supp. 95-2).

ARTICLE 2. REPEALED**R6-10-201. Repealed****Historical Note**

Adopted effective December 11, 1995 (Supp. 95-4). Amended effective January 10, 1997 (Supp. 97-1). Repealed effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

R6-10-202. Repealed

CHAPTER 10. DEPARTMENT OF ECONOMIC SECURITY - THE JOBS PROGRAM

Historical Note

Adopted effective December 11, 1995 (Supp. 95-4). Repealed effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

R6-10-203. Repealed**Historical Note**

Adopted effective December 11, 1995 (Supp. 95-4). Repealed effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

R6-10-204. Repealed**Historical Note**

Adopted effective December 11, 1995 (Supp. 95-4). Repealed effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

R6-10-205. Repealed**Historical Note**

Adopted effective December 11, 1995 (Supp. 95-4). Repealed effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

R6-10-206. Repealed**Historical Note**

Adopted effective December 11, 1995 (Supp. 95-4). Repealed effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

R6-10-207. Repealed**Historical Note**

Adopted effective December 11, 1995 (Supp. 95-4). Repealed effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

R6-10-208. Repealed**Historical Note**

Adopted effective December 11, 1995 (Supp. 95-4). Repealed effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

R6-10-209. Repealed**Historical Note**

Adopted effective December 11, 1995 (Supp. 95-4). Repealed effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

R6-10-210. Repealed**Historical Note**

Adopted effective December 11, 1995 (Supp. 95-4). Repealed effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

R6-10-211. Repealed**Historical Note**

Adopted effective December 11, 1995 (Supp. 95-4). Repealed effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

R6-10-212. Repealed**Historical Note**

Adopted effective December 11, 1995 (Supp. 95-4). Repealed effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

R6-10-213. Repealed

CHAPTER 10. DEPARTMENT OF ECONOMIC SECURITY - THE JOBS PROGRAM

Historical Note

Adopted effective December 11, 1995 (Supp. 95-4). Repealed effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

R6-10-214. Repealed**Historical Note**

Adopted effective December 11, 1995 (Supp. 95-4). Repealed effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

R6-10-215. Repealed**Historical Note**

Adopted effective December 11, 1995 (Supp. 95-4). Repealed effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

R6-10-216. Repealed**Historical Note**

Adopted effective December 11, 1995 (Supp. 95-4). Repealed effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

R6-10-217. Repealed**Historical Note**

Adopted effective December 11, 1995 (Supp. 95-4). Repealed effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

R6-10-218. Repealed**Historical Note**

Adopted effective December 11, 1995 (Supp. 95-4). Repealed effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

R6-10-219. Repealed**Historical Note**

Adopted effective December 11, 1995 (Supp. 95-4). Repealed effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

R6-10-220. Repealed**Historical Note**

Adopted effective December 11, 1995 (Supp. 95-4). Repealed effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

ARTICLE 3. JOB DISPLACEMENT GRIEVANCE PROCEDURES**R6-10-301. Definitions**

In addition to the definitions in R6-10-101, the following definitions apply to Article 3, unless the context otherwise requires:

1. "Displacement" means assignment of a participant to a position that:
 - a. Results in the termination or reassignment of a regular employee;
 - b. Results in the reduction of non-overtime work, wages, or benefits for a regular employee;
 - c. Fills the position of a regular employee on layoff status; or
 - d. Creates a new position for the participant that has substantially the same job functions as the position held by a regular employee who is on layoff or subsequently terminated;
2. "Regular employee" means an unsubsidized individual currently employed by an employer.

Historical Note

Adopted effective December 11, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (Supp. 05-4). Section R6-10-301 amended by final rulemaking at 25 A.A.R. 3235, effective December 7, 2019 (Supp. 19-4).

R6-10-302. Job Displacement

An employee who has been displaced by a Jobs Program participant may file a grievance, as prescribed in this Article.

CHAPTER 10. DEPARTMENT OF ECONOMIC SECURITY - THE JOBS PROGRAM

Historical Note

Adopted effective December 11, 1995 (Supp. 95-4). Amended by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (Supp. 05-4). Section R6-10-302 amended by final rulemaking at 25 A.A.R. 3235, effective December 7, 2019 (Supp. 19-4).

R6-10-303. Grievance Process

- A. The Jobs Program shall provide information to regular employees and employers regarding the regular employee's right to file a grievance and the procedure for doing so.
- B. An aggrieved party may seek to informally resolve a grievance with the Department or may request an appeals hearing with the Department's Office of Appeals.
- C. To pursue informal resolution, an aggrieved party shall file a grievance within 20 days of the alleged displacement with the Department. The grievance shall contain the following information:
 1. Aggrieved party's name, address, telephone number, and email address, if available;
 2. Date of the grievance;
 3. Contact person, if other than the aggrieved party;
 4. Department contact information, address, telephone number, and email address, if available;
 5. A description of the action that is the subject of the grievance and the date of the action; and
 6. The proposed resolution.
- D. If the aggrieved party requests an informal resolution, the Jobs Program shall hold an informal resolution meeting with the aggrieved party, within 15 business days from the date the Department receives the grievance.
- E. If a grievance is not resolved at the informal meeting, the aggrieved party may request an appeals hearing with the Department's Office of Appeals, within 20 days from the date of the informal meeting, by submitting a request for an appeals hearing to the Jobs Program local office.
- F. If the aggrieved party does not choose to seek an informal resolution under R6-10-303(C) and (D), the aggrieved party may request an appeals hearing by filing a written request with the local Jobs Program office within 20 days of the alleged displacement. Upon request, the Jobs Program shall assist the aggrieved party in preparing the hearing request. Assistance shall include a party's right to an appeals hearing and the appeals hearing process and procedures.
- G. The Jobs Program shall prepare a request for an appeals hearing, if requested by the aggrieved party, and forward the request for an appeals hearing to the Department's Office of Appeals. The request for an appeals hearing forwarded by the Jobs Program shall include:
 1. The information submitted under subsection R6-10-303(C);
 2. The decision reached at the informal resolution meeting, if any; and
 3. Any decision, notice, or other documents relating to the hearing request.
- H. Upon receipt of a request for an appeals hearing, the Office of Appeals shall conduct the hearing in accordance with A.A.C. R6-12-1005 through A.A.C. R6-12-1007 and A.A.C. R6-12-1009 through A.A.C. R6-12-1013(A), except that references to "FAA" are replaced by "Jobs Program."

Historical Note

Adopted effective December 11, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (Supp. 05-4). Section R6-10-303 amended by final rulemaking at 25 A.A.R. 3235, effective December 7, 2019 (Supp. 19-4).

R6-10-304. Expired**Historical Note**

Adopted effective December 11, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (Supp. 05-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 1393, effective December 31, 2015 (Supp. 16-2).

Arizona Department of Economic Security
FIVE-YEAR REVIEW REPORT
Title 6, Chapter 10, The Jobs Program

STATUTES REFERENCED

General Statutory Authority:

A.R.S. § 46-134(10).....	1
A.R.S. § 41-1954(A)(1)(b).....	1
A.R.S. § 41-1954(A)(1)(c).....	1
A.R.S. § 41-1954 (A)(3).....	2
A.R.S. § 41-1954(E).....	2
42 U.S.C. Chapter 7, Subchapter IV, Part A.....	3

Specific Statutory Authority:

A.R.S. § 46-101.....	219
A.R.S. § 46-299.....	222
A.R.S. § 46-300.....	227
45 CFR Part 261.....	228

General Statutory Authority:

A.R.S. § 46-134(10)

46-134. Powers and duties; expenditure; limitation

The state department shall:

...

10. Make rules, and take action necessary or desirable to carry out the provisions of this title, that are not inconsistent with this title.

A.R.S. § 41-1954(A)(1)(b)

41-1954. Powers and duties

A. In addition to the powers and duties of the agencies listed in section 41-1953, subsection E, the department shall:

1. Administer the following services:

...

(b) Individual and family services, which shall include a section on aging, services to children, youth and adults and other related functions in furtherance of social service programs under the social security act, as amended, title IV, except parts B and E, grants to states for aid and services to needy families with children and for child welfare services, title XX, grants to states for services, the older Americans act, as amended, the family support act of 1988 (P.L. 100-485) and other related federal acts and titles.

A.R.S. § 41-1954(A)(1)(c)

41-1954. Powers and duties

A. In addition to the powers and duties of the agencies listed in section 41-1953, subsection E, the department shall:

1. Administer the following services:

...

(c) Income maintenance services, including categorical assistance programs, special services unit, child support collection services, establishment of paternity services, maintenance and operation of a state case registry of child support orders, a state directory of new hires, a support payment clearinghouse and other related functions in furtherance of programs under the social security act, title IV, grants to states for aid and services to needy families with children and for child welfare services, title XX, grants to states for services, as amended, and other related federal acts and titles.

A.R.S. § 41-1954(A)(3)

41-1954. Powers and duties

A. In addition to the powers and duties of the agencies listed in section 41-1953, subsection E, the department shall:

...

3. Adopt rules it deems necessary or desirable to further the objectives and programs of the department.

A.R.S. § 41-1954(E)

41-1954. Powers and duties

...

E. In implementing the temporary assistance for needy families program pursuant to Public Law 104-193, the department shall provide for cash assistance to two-parent families if both parents are able to work only on documented participation by both parents in work activities described in title 46, chapter 2, article 5, except that payments may be made to families who do not meet the participation requirements if:

1. It is determined on an individual case basis that they have emergency needs.
2. The family is determined to be eligible for diversion from long-term cash assistance pursuant to title 46, chapter 2, article 5.

42 U.S.C. Chapter 7, Subchapter IV, Part A

Part A—Block Grants to States for Temporary Assistance for Needy Families

Prior Provisions

A prior part A relating to aid to families with dependent children and consisting of sections 601 to 618 of this title was repealed, except for section 618, by Pub. L. 104–193, title I, §103(a)(1), Aug. 22, 1996, 110 Stat. 2112.

§601. Purpose

(a) In general

The purpose of this part is to increase the flexibility of States in operating a program designed to—

- (1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;
- (2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;
- (3) prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and
- (4) encourage the formation and maintenance of two-parent families.

(b) No individual entitlement

This part shall not be interpreted to entitle any individual or family to assistance under any State program funded under this part.

(Aug. 14, 1935, ch. 531, title IV, §401, as added Pub. L. 104–193, title I, §103(a)(1), Aug. 22, 1996, 110 Stat. 2112; amended Pub. L. 105–33, title V, §5514(c), Aug. 5, 1997, 111 Stat. 620.)

Prior Provisions

A prior section 601, acts Aug. 14, 1935, ch. 531, title IV, §401, 49 Stat. 627; 1946 Reorg. Plan No. 2, §4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; 1953 Reorg. Plan No. 1, §§5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Aug. 1, 1956, ch. 836, title III, §312(a), 70 Stat. 848; July 25, 1962, Pub. L. 87–543, title I, §104(a)(4), (c)(2), 76 Stat. 185, 186; Jan. 2, 1968, Pub. L. 90–248, title II, §241(b)(1), 81 Stat. 916, related to authorization of appropriations for Aid to Families With Dependent Children program prior to repeal by Pub. L. 104–193, §103(a)(1), as amended by Pub. L. 105–33, title V, §5514(c), Aug. 5, 1997, 111 Stat. 620.

Amendments

1997—Pub. L. 105–33 made technical amendment to directory language of Pub. L. 104–193, §103(a)(1), which enacted this section.

Effective Date of 1997 Amendment

Amendment by Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 862a of Title 21, Food and Drugs.

Effective Date

Pub. L. 104–193, title I, §116, Aug. 22, 1996, 110 Stat. 2181, as amended by Pub. L. 104–327, §1(a), (c), Oct. 19, 1996, 110 Stat. 4002, 4003; Pub. L. 105–33, title V, §§5516(b), 5517, Aug. 5, 1997, 111 Stat. 620, 621, provided that:

"(a) Effective Dates.—

"(1) In general.—Except as otherwise provided in this title [see Tables for classification], this title and the amendments made by this title shall take effect on July 1, 1997.

"(2) Delayed effective date for certain provisions.—Notwithstanding any other provision of this section (but subject to subsection (b)(1)(A)(ii)), paragraphs (2), (3), (4), (5), (8), and (10) of section 409(a) and section 411(a) of the Social Security Act [42 U.S.C. 609(a), 611(a)] (as added by the amendments made by section 103(a) of this Act) shall not take effect with respect to a State until, and shall apply only with respect to conduct that occurs on or after, the later of—

"(A) July 1, 1997; or

"(B) the date that is 6 months after the date the Secretary of Health and Human Services receives from the State a plan described in section 402(a) of the Social Security Act [42 U.S.C. 602(a)] (as added by such amendment).

"(3) Grants to outlying areas.—The amendments made by section 103(b) [amending section 1308 of this title] shall take effect on October 1, 1996.

"(4) Elimination of child care programs.—The amendments made by section 103(c) [amending sections 602 and 603 of this title] shall take effect on October 1, 1996.

"(5) Definitions applicable to new child care entitlement.—Sections 403(a)(1)(C), 403(a)(1)(D), and 419(4) of the Social Security Act [42 U.S.C. 603(a)(1)(C), (D), 619(4)], as added by the amendments made by section 103(a) of this Act, shall take effect on October 1, 1996.

"(6) Research, evaluations, and national studies.—Section 413 of the Social Security Act [42 U.S.C. 613], as added by the amendment made by section 103(a) of this Act, shall take effect on the date of the enactment of this Act [Aug. 22, 1996].

"(b) Transition Rules.—Effective on the date of the enactment of this Act [Aug. 22, 1996]:

"(1) State option to accelerate effective date; limitation on fiscal years 1996 and 1997 payments.—

"(A) In general.—If the Secretary of Health and Human Services receives from a State a plan described in section 402(a) of the Social Security Act [42 U.S.C. 602(a)] (as added by the amendment made by section 103(a)(1) of this Act), then—

"(i) on and after the date of such receipt—

"(I) except as provided in clause (ii), this title and the amendments made by this title (other than by section 103(c) of this Act [amending sections 602 and 603 of this title]) shall apply with respect to the State; and

"(II) the State shall be considered an eligible State for purposes of part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.] (as in effect pursuant to the amendments made by such section 103(a)); and

"(ii) during the period that begins on the date of such receipt and ends on the later of June 30, 1997, or the day before the date described in subsection (a)(2)(B) of this section, there shall remain in effect with respect to the State—

"(I) section 403(h) of the Social Security Act [42 U.S.C. 603(h)] (as in effect on September 30, 1995); and

"(II) all State reporting requirements under parts A and F of title IV of the Social Security Act [42 U.S.C. 601 et seq., 681 et seq.] (as in effect on September 30, 1995), modified by the Secretary as appropriate, taking into account the State program under part A of title IV of the Social Security Act (as in effect pursuant to the amendments made by such section 103(a)).

"(B) Limitations on federal obligations.—

"(i) Under afdc program.—The total obligations of the Federal Government to a State under part A of title IV of the Social Security Act (as in effect on September 30, 1995) with respect to expenditures in fiscal year 1997 shall not exceed an amount equal to the State family assistance grant.

"(ii) Under temporary family assistance program.—Notwithstanding section 403(a)(1) of the Social Security Act [42 U.S.C. 603(a)(1)] (as in effect pursuant to the amendments made by section 103(a) of this Act), the total obligations of the Federal Government to a State under such section 403(a)(1)—

"(I) for fiscal year 1996, shall be an amount equal to—

"(aa) the State family assistance grant; multiplied by

"(bb) $\frac{1}{366}$ of the number of days during the period that begins on the date the Secretary of Health and Human Services first receives from the State a plan described in section 402(a) of the Social Security Act [42 U.S.C. 602(a)] (as added by the amendment made by section 103(a)(1) of this Act) and ends on September 30, 1996; and

"(II) for fiscal year 1997, shall be an amount equal to the lesser of—

"(aa) the amount (if any) by which the sum of the State family assistance grant and the amount, if any, that the State would have been eligible to be paid under the Contingency Fund for State Welfare Programs established under section 403(b) of the Social Security Act [42 U.S.C. 603(b)] (as amended by section 103(a)(1) of this Act), during the period beginning on October 1, 1996, and ending on the date the Secretary of Health and Human Services first receives from the State a plan described in section 402(a) of the Social Security Act [42 U.S.C. 602(a)] (as so amended) if, with respect to such State, the effective date of this Act [title] under subsection (a)(1) were August 22, 1996, exceeds the total obligations of the Federal Government to the State under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.] (as in effect on September 30, 1995) with respect to expenditures in fiscal year 1997; or

"(bb) the sum of the State family assistance grant, multiplied by 1/365 of the number of days during the period that begins on October 1, 1996, or the date the Secretary of Health and Human Services first receives from the State a plan described in section 402(a) of the Social Security Act (as added by the amendment made by section 103(a)(1) of this Act), whichever is later, and ends on September 30, 1997, and the amount, if any, that the State would have been eligible to be paid under the Contingency Fund for State Welfare Programs established under section 403(b) of the Social Security Act (as amended by section 103(a)(1) of this Act), during the period beginning on October 1, 1996, and ending on the date the Secretary of Health and Human Services first receives from the State a plan described in section 402(a) of the Social Security Act (as so amended) if, with respect to such State, the effective date of this Act [title] under subsection (a)(1) were August 22, 1996.

"(iii) Child care obligations excluded in determining federal afdc obligations.—As used in this subparagraph, the term 'obligations of the Federal Government to the State under part A of title IV of the Social Security Act' does not include any obligation of the Federal Government with respect to child care expenditures by the State.

"(C) Submission of state plan for fiscal year 1996 or 1997 deemed acceptance of grant limitations and formula and termination of afdc entitlement.—The submission of a plan by a State pursuant to subparagraph (A) is deemed to constitute—

"(i) the State's acceptance of the grant reductions under subparagraph (B) (including the formula for computing the amount of the reduction); and

"(ii) the termination of any entitlement of any individual or family to benefits or services under the State AFDC program.

"(D) Definitions.—As used in this paragraph:

"(i) State afdc program.—The term 'State AFDC program' means the State program under parts A and F of title IV of the Social Security Act (as in effect on September 30, 1995).

"(ii) State.—The term 'State' means the 50 States and the District of Columbia.

"(iii) State family assistance grant.—The term 'State family assistance grant' means the State family assistance grant (as defined in section 403(a)(1)(B) of the Social Security Act [42 U.S.C. 603(a)(1)(B)], as added by the amendment made by section 103(a)(1) of this Act).

"(2) Claims, actions, and proceedings.—The amendments made by this title [see Tables for classification] shall not apply with respect to—

"(A) powers, duties, functions, rights, claims, penalties, or obligations applicable to aid, assistance, or services provided before the effective date of this title under the provisions amended; and

"(B) administrative actions and proceedings commenced before such date, or authorized before such date to be commenced, under such provisions.

"(3) Closing out account for those programs terminated or substantially modified by this title.—In closing out accounts, Federal and State officials may use scientifically acceptable statistical sampling techniques. Claims made with respect to State expenditures under a State plan approved under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.] (as in effect on September 30, 1995) with respect to assistance or services provided on or before September 30, 1995, shall be treated as claims with respect to expenditures during fiscal year 1995 for purposes of reimbursement even if payment was made by a State on or after October 1, 1995. Each State shall complete the filing of all claims

under the State plan (as so in effect) within 2 years after the date of the enactment of this Act [Aug. 22, 1996]. The head of each Federal department shall—

"(A) use the single audit procedure to review and resolve any claims in connection with the close out of programs under such State plans; and

"(B) reimburse States for any payments made for assistance or services provided during a prior fiscal year from funds for fiscal year 1995, rather than from funds authorized by this title.

"(4) Continuance in office of assistant secretary for family support.—The individual who, on the day before the effective date of this title, is serving as Assistant Secretary for Family Support within the Department of Health and Human Services shall, until a successor is appointed to such position—

"(A) continue to serve in such position; and

"(B) except as otherwise provided by law—

"(i) continue to perform the functions of the Assistant Secretary for Family Support under section 417 of the Social Security Act [42 U.S.C. 617] (as in effect before such effective date); and

"(ii) have the powers and duties of the Assistant Secretary for Family Support under section 416 of the Social Security Act [42 U.S.C. 616] (as in effect pursuant to the amendment made by section 103(a)(1) of this Act).

"(c) Termination of Entitlement Under AFDC Program.—Effective October 1, 1996, no individual or family shall be entitled to any benefits or services under any State plan approved under part A or F of title IV of the Social Security Act [42 U.S.C. 601 et seq., 681 et seq.] (as in effect on September 30, 1995)."

Extension of the Temporary Assistance for Needy Families Program and Related Programs

Pub. L. 116–136, div. A, title III, §3824, Mar. 27, 2020, 134 Stat. 433, provided that: "Activities authorized by part A of title IV [42 U.S.C. 601 et seq.] and section 1108(b) [42 U.S.C. 1308(b)] of the Social Security Act shall continue through November 30, 2020, in the manner authorized for fiscal

year 2019, and out of any money in the Treasury of the United States not otherwise appropriated, there are hereby appropriated such sums as may be necessary for such purpose."

Congressional Findings

Pub. L. 104–193, title I, §101, Aug. 22, 1996, 110 Stat. 2110, provided that: "The Congress makes the following findings:

"(1) Marriage is the foundation of a successful society.

"(2) Marriage is an essential institution of a successful society which promotes the interests of children.

"(3) Promotion of responsible fatherhood and motherhood is integral to successful child rearing and the well-being of children.

"(4) In 1992, only 54 percent of single-parent families with children had a child support order established and, of that 54 percent, only about one-half received the full amount due. Of the cases enforced through the public child support enforcement system, only 18 percent of the caseload has a collection.

"(5) The number of individuals receiving aid to families with dependent children (in this section referred to as 'AFDC') has more than tripled since 1965. More than two-thirds of these recipients are children. Eighty-nine percent of children receiving AFDC benefits now live in homes in which no father is present.

"(A)(i) The average monthly number of children receiving AFDC benefits—

"(I) was 3,300,000 in 1965;

"(II) was 6,200,000 in 1970;

"(III) was 7,400,000 in 1980; and

"(IV) was 9,300,000 in 1992.

"(ii) While the number of children receiving AFDC benefits increased nearly threefold between 1965 and 1992, the total number of children in the United States aged 0 to 18 has declined by 5.5 percent.

"(B) The Department of Health and Human Services has estimated that 12,000,000 children will receive AFDC benefits within 10 years.

"(C) The increase in the number of children receiving public assistance is closely related to the increase in births to unmarried women. Between 1970 and 1991, the percentage of live births to unmarried women increased nearly threefold, from 10.7 percent to 29.5 percent.

"(6) The increase of out-of-wedlock pregnancies and births is well documented as follows:

"(A) It is estimated that the rate of nonmarital teen pregnancy rose 23 percent from 54 pregnancies per 1,000 unmarried teenagers in 1976 to 66.7 pregnancies in 1991. The overall rate of nonmarital pregnancy rose 14 percent from 90.8 pregnancies per 1,000 unmarried women in 1980 to 103 in both 1991 and 1992. In contrast, the overall pregnancy rate for married couples decreased 7.3 percent between 1980 and 1991, from 126.9 pregnancies per 1,000 married women in 1980 to 117.6 pregnancies in 1991.

"(B) The total of all out-of-wedlock births between 1970 and 1991 has risen from 10.7 percent to 29.5 percent and if the current trend continues, 50 percent of all births by the year 2015 will be out-of-wedlock.

"(7) An effective strategy to combat teenage pregnancy must address the issue of male responsibility, including statutory rape culpability and prevention. The increase of teenage pregnancies among the youngest girls is particularly severe and is linked to predatory sexual practices by men who are significantly older.

"(A) It is estimated that in the late 1980's, the rate for girls age 14 and under giving birth increased 26 percent.

"(B) Data indicates that at least half of the children born to teenage mothers are fathered by adult men. Available data suggests that almost 70 percent of births to teenage girls are fathered by men over age 20.

"(C) Surveys of teen mothers have revealed that a majority of such mothers have histories of sexual and physical abuse, primarily with older adult men.

"(8) The negative consequences of an out-of-wedlock birth on the mother, the child, the family, and society are well documented as follows:

"(A) Young women 17 and under who give birth outside of marriage are more likely to go on public assistance and to spend more years on welfare once enrolled. These combined effects of 'younger and longer' increase total AFDC costs per household by 25 percent to 30 percent for 17-year-olds.

"(B) Children born out-of-wedlock have a substantially higher risk of being born at a very low or moderately low birth weight.

"(C) Children born out-of-wedlock are more likely to experience low verbal cognitive attainment, as well as more child abuse, and neglect.

"(D) Children born out-of-wedlock were more likely to have lower cognitive scores, lower educational aspirations, and a greater likelihood of becoming teenage parents themselves.

"(E) Being born out-of-wedlock significantly reduces the chances of the child growing up to have an intact marriage.

"(F) Children born out-of-wedlock are 3 times more likely to be on welfare when they grow up.

"(9) Currently 35 percent of children in single-parent homes were born out-of-wedlock, nearly the same percentage as that of children in single-parent homes whose parents are divorced (37 percent). While many parents find themselves, through divorce or tragic circumstances beyond their control, facing the difficult task of raising children alone, nevertheless, the negative consequences of raising children in single-parent homes are well documented as follows:

"(A) Only 9 percent of married-couple families with children under 18 years of age have income below the national poverty level. In contrast, 46 percent of female-headed households with children under 18 years of age are below the national poverty level.

"(B) Among single-parent families, nearly ½ of the mothers who never married received AFDC while only 1/5 of divorced mothers received AFDC.

"(C) Children born into families receiving welfare assistance are 3 times more likely to be on welfare when they reach adulthood than children not born into families receiving welfare.

"(D) Mothers under 20 years of age are at the greatest risk of bearing low birth weight babies.

"(E) The younger the single-parent mother, the less likely she is to finish high school.

"(F) Young women who have children before finishing high school are more likely to receive welfare assistance for a longer period of time.

"(G) Between 1985 and 1990, the public cost of births to teenage mothers under the aid to families with dependent children program, the food stamp program, and the medicaid program has been estimated at \$120,000,000,000.

"(H) The absence of a father in the life of a child has a negative effect on school performance and peer adjustment.

"(I) Children of teenage single parents have lower cognitive scores, lower educational aspirations, and a greater likelihood of becoming teenage parents themselves.

"(J) Children of single-parent homes are 3 times more likely to fail and repeat a year in grade school than are children from intact 2-parent families.

"(K) Children from single-parent homes are almost 4 times more likely to be expelled or suspended from school.

"(L) Neighborhoods with larger percentages of youth aged 12 through 20 and areas with higher percentages of single-parent households have higher rates of violent crime.

"(M) Of those youth held for criminal offenses within the State juvenile justice system, only 29.8 percent lived primarily in a home with both parents. In contrast to these incarcerated youth, 73.9 percent of the 62,800,000 children in the Nation's resident population were living with both parents.

"(10) Therefore, in light of this demonstration of the crisis in our Nation, it is the sense of the Congress that prevention of out-of-wedlock pregnancy and reduction in out-of-wedlock birth are very important Government interests and the policy contained in part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.] (as amended by section 103(a) of this Act) is intended to address the crisis."

[References to the food stamp program established under the Food and Nutrition Act of 2008 considered to refer to the supplemental nutrition assistance program established under that Act, see section 4002(c) of Pub. L. 110–246, set out as a note under section 2012 of Title 7, Agriculture.]

Appropriation by State Legislatures

Pub. L. 104–193, title IX, §901, Aug. 22, 1996, 110 Stat. 2347, provided that:

"(a) In General.—Any funds received by a State under the provisions of law specified in subsection (b) shall be subject to appropriation by the State legislature, consistent with the terms and conditions required under such provisions of law.

"(b) Provisions of Law.—The provisions of law specified in this subsection are the following:

"(1) Part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.] (relating to block grants for temporary assistance for needy families).

"(2) The Child Care and Development Block Grant Act of 1990 [42 U.S.C. 9857 et seq.] (relating to block grants for child care)."

§602. Eligible States; State plan

(a) In general

As used in this part, the term "eligible State" means, with respect to a fiscal year, a State that, during the 27-month period ending with the close of the 1st quarter of the fiscal year, has submitted to the Secretary a plan that the Secretary has found includes the following:

(1) Outline of family assistance program

(A) General provisions

A written document that outlines how the State intends to do the following:

(i) Conduct a program, designed to serve all political subdivisions in the State (not necessarily in a uniform manner), that provides assistance to needy families with (or expecting) children and provides parents with job preparation, work, and support services to enable them to leave the program and become self-sufficient.

(ii) Require a parent or caretaker receiving assistance under the program to engage in work (as defined by the State) once the State determines the parent or caretaker is ready to engage in work, or once the parent or caretaker has received assistance under the program for 24 months (whether or not consecutive), whichever is earlier, consistent with section 607(e)(2) of this title.

(iii) Ensure that parents and caretakers receiving assistance under the program engage in work activities in accordance with section 607 of this title.

(iv) Take such reasonable steps as the State deems necessary to restrict the use and disclosure of information about individuals and families receiving assistance under the program attributable to funds provided by the Federal Government.

(v) Establish goals and take action to prevent and reduce the incidence of out-of-wedlock pregnancies, with special emphasis on teenage pregnancies, and establish numerical goals for reducing the illegitimacy ratio of the State (as defined in section 603(a)(2)(C)(iii) 1 of this title) for calendar years 1996 through 2005.

(vi) Conduct a program, designed to reach State and local law enforcement officials, the education system, and relevant counseling services, that provides education and training on the problem of statutory rape so that teenage pregnancy prevention programs may be expanded in scope to include men.

(vii) Implement policies and procedures as necessary to prevent access to assistance provided under the State program funded under this part through any electronic fund transaction in an automated teller machine or point-of-sale device located in a place described in section 608(a)(12) of this title, including a plan to ensure that recipients of the assistance have adequate access to their cash assistance.

(viii) Ensure that recipients of assistance provided under the State program funded under this part have access to using or withdrawing assistance with minimal fees or charges, including an opportunity to access assistance with no fee or charges, and are provided information on applicable fees and surcharges that apply to electronic fund transactions involving the assistance, and that such information is made publicly available.

(B) Special provisions

(i) The document shall indicate whether the State intends to treat families moving into the State from another State differently than other families under the program, and if so, how the State intends to treat such families under the program.

(ii) The document shall indicate whether the State intends to provide assistance under the program to individuals who are not citizens of the United States, and if so, shall include an overview of such assistance.

(iii) The document shall set forth objective criteria for the delivery of benefits and the determination of eligibility and for fair and equitable treatment, including an explanation of how the State will provide opportunities for recipients who have been adversely affected to be heard in a State administrative or appeal process.

(iv) Not later than 1 year after August 22, 1996, unless the chief executive officer of the State opts out of this provision by notifying the Secretary, a State shall, consistent with the exception provided in section 607(e)(2) of this title, require a parent or caretaker receiving assistance under the program who, after receiving such assistance for 2 months is not exempt from work requirements and is not engaged in work, as determined under section 607(c) of this title, to participate in community service employment, with minimum hours per week and tasks to be determined by the State.

(v) The document shall indicate whether the State intends to assist individuals to train for, seek, and maintain employment—

(I) providing direct care in a long-term care facility (as such terms are defined under section 1397j of this title); or

(II) in other occupations related to elder care determined appropriate by the State for which the State identifies an unmet need for service personnel,

and, if so, shall include an overview of such assistance.

(2) Certification that the State will operate a child support enforcement program

A certification by the chief executive officer of the State that, during the fiscal year, the State will operate a child support enforcement program under the State plan approved under part D.

(3) Certification that the State will operate a foster care and adoption assistance program

A certification by the chief executive officer of the State that, during the fiscal year, the State will operate a foster care and adoption assistance program under the State plan approved under part E, and that the State will take such actions as are necessary to ensure that children receiving assistance under such part are eligible for medical assistance under the State plan under subchapter XIX.

(4) Certification of the administration of the program

A certification by the chief executive officer of the State specifying which State agency or agencies will administer and supervise the program referred to in paragraph (1) for the fiscal year, which shall include assurances that local governments and private sector organizations—

(A) have been consulted regarding the plan and design of welfare services in the State so that services are provided in a manner appropriate to local populations; and

(B) have had at least 45 days to submit comments on the plan and the design of such services.

(5) Certification that the State will provide Indians with equitable access to assistance

A certification by the chief executive officer of the State that, during the fiscal year, the State will provide each member of an Indian tribe, who is domiciled in the State and is not eligible for assistance under a tribal family assistance plan approved under section 612 of this title, with equitable access to assistance under the State program funded under this part attributable to funds provided by the Federal Government.

(6) Certification of standards and procedures to ensure against program fraud and abuse

A certification by the chief executive officer of the State that the State has established and is enforcing standards and procedures to ensure against program fraud and abuse, including standards and procedures concerning nepotism, conflicts of interest among individuals responsible for the administration and supervision of the State program, kickbacks, and the use of political patronage.

(7) Optional certification of standards and procedures to ensure that the State will screen for and identify domestic violence

(A) In general

At the option of the State, a certification by the chief executive officer of the State that the State has established and is enforcing standards and procedures to—

(i) screen and identify individuals receiving assistance under this part with a history of domestic violence while maintaining the confidentiality of such individuals;

(ii) refer such individuals to counseling and supportive services; and

(iii) waive, pursuant to a determination of good cause, other program requirements such as time limits (for so long as necessary) for individuals receiving assistance, residency requirements, child support cooperation requirements, and family cap provisions, in cases where compliance with such requirements would make it more difficult for individuals receiving assistance under this part to escape domestic violence or unfairly penalize such individuals who are or have been victimized by such violence, or individuals who are at risk of further domestic violence.

(B) "Domestic violence" defined

For purposes of this paragraph, the term "domestic violence" has the same meaning as the term "battered or subjected to extreme cruelty", as defined in section 608(a)(7)(C)(iii) of this title.

(b) Plan amendments

Within 30 days after a State amends a plan submitted pursuant to subsection (a), the State shall notify the Secretary of the amendment.

(c) Public availability of State plan summary

The State shall make available to the public a summary of any plan or plan amendment submitted by the State under this section.

(Aug. 14, 1935, ch. 531, title IV, §402, as added Pub. L. 104–193, title I, §103(a)(1), Aug. 22, 1996, 110 Stat. 2113; amended Pub. L. 105–33, title V, §§5501, 5514(c), Aug. 5, 1997, 111 Stat. 606, 620; Pub. L. 106–169, title IV, §401(a), Dec. 14, 1999, 113 Stat. 1858; Pub. L. 111–148, title VI, §6703(a)(2)(A), Mar. 23, 2010, 124 Stat. 798; Pub. L. 112–96, title IV, §4004(c), Feb. 22, 2012, 126 Stat. 198.)

References in Text

Section 603(a)(2) of this title, referred to in subsec. (a)(1)(A)(v), was amended generally by Pub. L. 109–171, title VII, §7103(a), Feb. 8, 2006, 120 Stat. 138, and, as so amended, no longer defines "illegitimacy ratio".

Prior Provisions

A prior section 602, acts Aug. 14, 1935, ch. 531, title IV, §402, 49 Stat. 627; Aug. 10, 1939, ch. 666, title IV, §401, 53 Stat. 1379; Aug. 28, 1950, ch. 809, title III, pt. 2, §321, pt. 6, §361(c), (d), 64 Stat. 549, 558; Aug. 1, 1956, ch. 836, title III, §312(b), 70 Stat. 849; July 25, 1962, Pub. L. 87–543, title I, §§103, 104(a)(2), (3)(A), (B), (5)(A), 106(b), 76 Stat. 185, 188; July 30, 1965, Pub. L. 89–97, title IV, §§403(b), 410, 79 Stat. 418, 423; Jan. 2, 1968, Pub. L. 90–248, title II, §§201(a), (b), 202(a), (b), 204(b), (e), 205(a), 210(a)(2), 211(a), 213(b), 81 Stat. 877, 879, 881, 890, 892, 895, 896, 898; Dec. 28, 1971, Pub. L. 92–223, §3(a)(1)–(7), 85 Stat. 803, 804; Oct. 30, 1972, Pub. L. 92–603, title II, §299E(c), title IV, §414(a), 86 Stat. 1462, 1492; Jan. 4, 1975, Pub. L. 93–647, §§3(a)(1), (2), (8), 101(c)(2)–(5), (8), 88 Stat. 2348, 2349, 2359, 2360; Aug. 9, 1975, Pub. L. 94–88, title II, §§202, 207, 208(a), 209, 89 Stat. 434, 436, 437; Dec. 20, 1977, Pub. L. 95–216, title IV, §403(c), 91 Stat. 1561; Apr. 1, 1980, Pub. L. 96–222, title I, §101(a)(2)(A), 94 Stat. 195; June 9, 1980, Pub. L. 96–265, title IV, §§401(a)–(f), 403(a), 406(b), 94 Stat. 460–462, 465, 466; June 17, 1980, Pub. L. 96–272, title I, §101(a)(3)(A), title III, §302(a), 94 Stat. 512, 528; Oct. 19, 1980, Pub. L. 96–473, §6(f), 94 Stat. 2266; Aug. 13, 1981, Pub. L. 97–35, title XXIII, §§2301–2306(a), 2310, 2313(b), (c)(1), 2314,

2315(a), 2316, 2318, 2320(a), (b)(1), 2353(b)(1), (c), 95 Stat. 843–846, 852, 854-857, 872; Sept. 3, 1982, Pub. L. 97–248, title I, §§151(a), 152(a), 154(a), 96 Stat. 395, 396; Oct. 13, 1982, Pub. L. 97–300, title VI, §603, formerly title V, §503, 96 Stat. 1398, renumbered title VI, §603, Nov. 7, 1988, Pub. L. 100–628, title VII, §712(a)(1), (2), 102 Stat. 3248; Jan. 6, 1983, Pub. L. 97–424, title V, §545(b), 96 Stat. 2198; Apr. 20, 1983, Pub. L. 98–21, title IV, §404(b), 97 Stat. 140; July 18, 1984, Pub. L. 98–369, div. B, title VI, §§2621–2624(a), 2625(a), 2626, 2628, 2629, 2631–2634, 2636, 2639(a), (c), 2640(a), (c), 2642(a), (b), 2651(b)(1), (2), 2663(c)(1), (3)(B), (l)(1), 98 Stat. 1134–1137, 1141, 1142, 1144-1146, 1149, 1165, 1166, 1171; Aug. 16, 1984, Pub. L. 98–378, §9(a)(2), 98 Stat. 1316; Apr. 7, 1986, Pub. L. 99–272, title XII, §§12303(a), 12304(a), 100 Stat. 292; Oct. 22, 1986, Pub. L. 99–514, §2, title XVIII, §1883(a)(5)(B), (b)(1)(A), (2)(A), (B), (3)(A), (4), (5), 100 Stat. 2095, 2916, 2917; Nov. 6, 1986, Pub. L. 99–603, title II, §201(b)(1), title III, §§302(b)(1), 303(e)(1), 100 Stat. 3403, 3422, 3431; Dec. 22, 1987, Pub. L. 100–203, title IX, §§9102(b), 9133(b)(1), 101 Stat. 1330–300, 1330-314; Oct. 13, 1988, Pub. L. 100–485, title I, §§102(a), 123(d), title II, §§201(a), 202(b)(1)–(3), title III, §§301, 302(a), (b)(1), (c), 303(b)(3), (f)(2)(B), (C), 304(b)(2), title IV, §§401(a)(1), (2)(A), (b)(2), (f), (h), 402(a)–(c), 403(a), 404(a), title VI, §§604(a), 605(a), 102 Stat. 2346, 2353, 2356, 2377, 2382-2384, 2392, 2393, 2395-2398, 2409; Dec. 19, 1989, Pub. L. 101–239, title X, §10403(a)(1)(B)(i), (C)(i), 103 Stat. 2487; Nov. 5, 1990, Pub. L. 101–508, title V, §§5051(a), (b), 5053(a), 5054(a), 5055(a), 5060(a), 5081(a), (c), (d), title XI, §11115(a), 104 Stat. 1388–227 to 1388-229, 1388-231, 1388-233, 1388-236, 1388-414; Aug. 10, 1993, Pub. L. 103–66, title XIII, §13742(a), 107 Stat. 663; Oct. 20, 1994, Pub. L. 103–382, title III, §394(k), 108 Stat. 4029; Oct. 31, 1994, Pub. L. 103–432, title II, §§235(a), 264(c), 108 Stat. 4466, 4468; Aug. 22, 1996, Pub. L. 104–193, title I, §103(c)(1), (2)(A), 110 Stat. 2161, related to State plans for aid and services to needy families with children prior to repeal by Pub. L. 104–193, §103(a)(1), as amended by Pub. L. 105–33, title V, §5514(c), Aug. 5, 1997, 111 Stat. 620, effective July 1, 1997.

Amendments

2012—Subsec. (a)(1)(A)(vii), (viii). Pub. L. 112–96 added cls. (vii) and (viii).

2010—Subsec. (a)(1)(B)(v). Pub. L. 111–148 added cl. (v).

1999—Subsec. (a)(1)(B)(iv). Pub. L. 106–169 made technical amendment to reference in original act which appears in text as reference to August 22, 1996.

1997—Pub. L. 105–33, §5514(c), made technical amendment to directory language of Pub. L. 104–193, §103(a)(1), which enacted this section.

Subsec. (a). Pub. L. 105–33, §5501(a), substituted "27-month period ending with the close of the 1st quarter of" for "2-year period immediately preceding" in introductory provisions.

Subsec. (a)(1)(A)(ii). Pub. L. 105–33, §5501(b), inserted ", consistent with section 607(e)(2) of this title" before period at end.

Subsec. (a)(1)(A)(v). Pub. L. 105–33, §5501(c), substituted "section 603(a)(2)(C)(iii)" for "section 603(a)(2)(B)".

Subsec. (b). Pub. L. 105–33, §5501(d)(1), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 105–34, §5501(d)(2), inserted "or plan amendment" after "plan".

Pub. L. 105–33, §5501(d)(1), redesignated subsec. (b) as (c).

Effective Date of 2010 Amendment

Pub. L. 111–148, title VI, §6703(a)(2)(B), Mar. 23, 2010, 124 Stat. 798, provided that: "The amendment made by subparagraph (A) [amending this section] shall take effect on January 1, 2011."

Effective Date of 1999 Amendment

Pub. L. 106–169, title IV, §401(q), Dec. 14, 1999, 113 Stat. 1859, provided that: "Except as provided in subsection (l) [amending section 604 of this title and enacting provisions set out as a note under section 604 of this title], the amendments made by this section [amending this section and sections 604, 609, 613, 616, 629a, 652, 654, 655, 657, 666, 671, and 1320b–7 of this title] shall take effect as if included in the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193; 110 Stat. 2105)."

Effective Date of 1997 Amendment

Amendment by section 5514(c) of Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 862a of Title 21, Food and Drugs.

Pub. L. 105–33, title V, §5518(a), Aug. 5, 1997, 111 Stat. 621, provided that: "The amendments made by this chapter to a provision of part A of title IV of the Social Security Act [chapter 1 (§§5501–5518) of subtitle F of title V of Pub. L. 105–33, amending this section and sections 603, 604, 607, 608, 609, 611, 612, 613, and 616 of this title] shall take effect as if the amendments had been included in section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [Pub. L. 104–193] at the time such section became law."

Effective Date

Section 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 a note under section 601 of this title.

Demonstration of Family Independence Program

Pub. L. 100–203, title IX, §9121, Dec. 22, 1987, 101 Stat. 1330–310, authorized State of Washington, upon application of State and approval by Secretary of Health and Human Services, to conduct demonstration project for purpose of testing whether operation of its Family Independence Program enacted in May 1987, as alternative to AFDC program under this subchapter, would more effectively break the cycle of poverty and provide families with opportunities for economic independence and strengthened family functioning, prior to repeal by Pub. L. 104–193, title I, §110(b), Aug. 22, 1996, 110 Stat. 2171.

Child Support Demonstration Program in New York State

Pub. L. 100–203, title IX, §9122, Dec. 22, 1987, 101 Stat. 1330–312, authorized State of New York, upon application by State and approval by Secretary of Health and Human Services, to conduct demonstration program in accordance with this section for purpose of testing State's Child Support Supplemental Program as alternative to the program of Aid to Families with Dependent Children under this subchapter, prior to repeal by Pub. L. 104–193, title I, §110(c), Aug. 22, 1996, 110 Stat. 2171.

Utility Payments Made by Tenants in Assisted Housing

Pub. L. 98–181, title I [title II, §221], Nov. 30, 1983, 97 Stat. 1188, as amended by Pub. L. 98–479, title I, §102(g)(3), Oct. 17, 1984, 98 Stat. 2222, provided that notwithstanding any other provision of law, for purposes of determining eligibility, or amount of benefits payable, under this part, any utility payment made in lieu of any rental payment by person living in dwelling unit in lower income housing project assisted under the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) or section 1715z–1 of Title 12, Banks and Banking, was to be considered to be shelter payment, prior to repeal by Pub. L. 104–193, title I, §110(d), Aug. 22, 1996, 110 Stat. 2171.

Exclusion From Income

Pub. L. 97–248, title I, §159, Sept. 3, 1982, 96 Stat. 400, provided that payments made under statutorily established State program to meet certain needs of children receiving aid under State's plan approved under this part were to be excluded from income of such children and their families for purposes of section 602(a)(17) of this title and for all other purposes of this part and of such plan, effective Sept. 3, 1982, if the payments were made to such children by State agency administering such plan, but were made without Federal financial participation under section 603(a) of this title or otherwise, and if State program had been continuously in effect since before Jan. 1, 1979, prior to repeal by Pub. L. 104–193, title I, §110(e), Aug. 22, 1996, 110 Stat. 2171.

State Plans To Disregard Earned Income of Individuals in Determination of Need for Aid; Effective Date

Pub. L. 90–248, title II, §202(d), Jan. 2, 1968, 81 Stat. 882, provided that effective with respect to quarters beginning after June 30, 1968, in determining need of individuals claiming aid under State plan approved under this part, State was to apply provisions of this part notwithstanding any provisions of law other than this chapter requiring State to disregard earned income of such individuals in determining need under such State plan, prior to repeal by Pub. L. 104–193, title I, §110(f), Aug. 22, 1996, 110 Stat. 2171.

1 See References in Text note below.

§603. Grants to States

(a) Grants

(1) Family assistance grant

(A) In general

Each eligible State shall be entitled to receive from the Secretary, for each of fiscal years 2017 and 2018, a grant in an amount equal to the State family assistance grant.

(B) State family assistance grant

The State family assistance grant payable to a State for a fiscal year shall be the amount that bears the same ratio to the amount specified in subparagraph (C) of this paragraph (as in effect just before February 22, 2012), reduced by the percentage specified in section 613(h)(1) of this title with respect to the fiscal year, as the amount required to be paid to the State under this paragraph (as so in effect) for fiscal year 2002 (determined without regard to any reduction pursuant to section 609 or 612(a)(1) of this title) bears to the total amount required to be paid under this paragraph for fiscal year 2002 (as so determined).

(C) Appropriation

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for each of fiscal years 2017 and 2018 \$16,566,542,000 for grants under this paragraph.

(2) Healthy marriage promotion and responsible fatherhood grants

(A) In general

(i) Use of funds

Subject to subparagraphs (B), (C), and (E), the Secretary may use the funds made available under subparagraph (D) for the purpose of conducting and supporting research and demonstration projects by public or private entities, and providing technical assistance to States, Indian tribes and tribal organizations, and such other entities as the Secretary may specify that are receiving a grant under another provision of this part.

(ii) Limitations

The Secretary may not award funds made available under this paragraph on a noncompetitive basis, and may not provide any such funds to an entity for the purpose of carrying out healthy marriage promotion activities or for the purpose of carrying out activities promoting responsible fatherhood unless the entity has submitted to the Secretary an application (or, in the case of an entity seeking funding to carry out healthy marriage promotion activities and activities promoting responsible fatherhood, a combined application that contains assurances that the entity will carry out such activities under separate programs and shall not combine any funds awarded to carry out either such activities) which—

(I) describes—

(aa) how the programs or activities proposed in the application will address, as appropriate, issues of domestic violence; and

(bb) what the applicant will do, to the extent relevant, to ensure that participation in the programs or activities is voluntary, and to inform potential participants that their participation is voluntary; and

(II) contains a commitment by the entity—

(aa) to not use the funds for any other purpose; and

(bb) to consult with experts in domestic violence or relevant community domestic violence coalitions in developing the programs and activities.

(iii) Healthy marriage promotion activities

In clause (ii), the term "healthy marriage promotion activities" means the following:

(I) Public advertising campaigns on the value of marriage and the skills needed to increase marital stability and health.

(II) Education in high schools on the value of marriage, relationship skills, and budgeting.

(III) Marriage education, marriage skills, and relationship skills programs, that may include parenting skills, financial management, conflict resolution, and job and career advancement.

(IV) Pre-marital education and marriage skills training for engaged couples and for couples or individuals interested in marriage.

(V) Marriage enhancement and marriage skills training programs for married couples.

(VI) Divorce reduction programs that teach relationship skills.

(VII) Marriage mentoring programs which use married couples as role models and mentors in at-risk communities.

(VIII) Programs to reduce the disincentives to marriage in means-tested aid programs, if offered in conjunction with any activity described in this subparagraph.

(B) Limitation on use of funds for demonstration projects for coordination of provision of child welfare and TANF services to tribal families at risk of child abuse or neglect

(i) In general

Of the amounts made available under subparagraph (D) for a fiscal year, the Secretary may not award more than \$2,000,000 on a competitive basis to fund demonstration projects designed to test the effectiveness of tribal governments or tribal consortia in coordinating the provision to tribal families at risk of child abuse or neglect of child welfare services and services under tribal programs funded under this part.

(ii) Limitation on use of funds

A grant made pursuant to clause (i) to such a project shall not be used for any purpose other than—

(I) to improve case management for families eligible for assistance from such a tribal program;

(II) for supportive services and assistance to tribal children in out-of-home placements and the tribal families caring for such children, including families who adopt such children; and

(III) for prevention services and assistance to tribal families at risk of child abuse and neglect.

(iii) Reports

The Secretary may require a recipient of funds awarded under this subparagraph to provide the Secretary with such information as the Secretary deems relevant to enable the Secretary to facilitate and oversee the administration of any project for which funds are provided under this subparagraph.

(C) Limitation on use of funds for activities promoting responsible fatherhood

(i) In general

Of the amounts made available under subparagraph (D) for a fiscal year, the Secretary may not award more than \$75,000,000 on a competitive basis to States, territories, Indian tribes and tribal organizations, and public and nonprofit community entities, including religious organizations, for activities promoting responsible fatherhood.

(ii) Activities promoting responsible fatherhood

In this paragraph, the term "activities promoting responsible fatherhood" means the following:

(I) Activities to promote marriage or sustain marriage through activities such as counseling, mentoring, disseminating information about the benefits of marriage and 2-parent involvement for children, enhancing relationship skills, education regarding how to control aggressive behavior, disseminating information on the causes of domestic violence and child abuse, marriage preparation programs, premarital counseling, marital inventories, skills-based marriage education, financial planning seminars, including improving a family's ability to effectively manage family business affairs by means such as education, counseling, or mentoring on matters related to family finances, including household management, budgeting, banking, and handling of financial transactions and home maintenance, and divorce education and reduction programs, including mediation and counseling.

(II) Activities to promote responsible parenting through activities such as counseling, mentoring, and mediation, disseminating information about good parenting practices, skills-based parenting education, encouraging child support payments, and other methods.

(III) Activities to foster economic stability by helping fathers improve their economic status by providing activities such as work first services, job search, job training, subsidized employment, job retention, job enhancement, and encouraging education, including career-advancing education, dissemination of employment materials, coordination with existing employment services such as welfare-to-work programs, referrals to local employment training initiatives, and other methods.

(IV) Activities to promote responsible fatherhood that are conducted through a contract with a nationally recognized, nonprofit fatherhood promotion organization, such as the development, promotion, and distribution of a media campaign to encourage the appropriate involvement of parents in the life of any child and specifically the issue of responsible fatherhood, and the development of a

national clearinghouse to assist States and communities in efforts to promote and support marriage and responsible fatherhood.

(D) Appropriation

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for each of fiscal years 2017 and 2018 for expenditure in accordance with this paragraph—

(i) \$75,000,000 for awarding funds for the purpose of carrying out healthy marriage promotion activities; and

(ii) \$75,000,000 for awarding funds for the purpose of carrying out activities promoting responsible fatherhood.

If the Secretary makes an award under subparagraph (B)(i) for fiscal year 2017 or 2018, the funds for such award shall be taken in equal portion from the amounts appropriated under clauses (i) and (ii).

(E) Preference

In awarding funds under this paragraph for fiscal year 2011, the Secretary shall give preference to entities that were awarded funds under this paragraph for any prior fiscal year and that have demonstrated the ability to successfully carry out the programs funded under this paragraph.

(3) Supplemental grant for population increases in certain States

(A) In general

Each qualifying State shall, subject to subparagraph (F), be entitled to receive from the Secretary—

(i) for fiscal year 1998 a grant in an amount equal to 2.5 percent of the total amount required to be paid to the State under former section 603 of this title (as in effect during fiscal year 1994) for fiscal year 1994; and

(ii) for each of fiscal years 1999, 2000, and 2001, a grant in an amount equal to the sum of—

(I) the amount (if any) required to be paid to the State under this paragraph for the immediately preceding fiscal year; and

(II) 2.5 percent of the sum of—

(aa) the total amount required to be paid to the State under former section 603 of this title (as in effect during fiscal year 1994) for fiscal year 1994; and

(bb) the amount (if any) required to be paid to the State under this paragraph for the fiscal year preceding the fiscal year for which the grant is to be made.

(B) Preservation of grant without increases for States failing to remain qualifying States
Each State that is not a qualifying State for a fiscal year specified in subparagraph (A)(ii) but was a qualifying State for a prior fiscal year shall, subject to subparagraph (F), be entitled to receive from the Secretary for the specified fiscal year, a grant in an amount equal to the amount required to be paid to the State under this paragraph for the most recent fiscal year for which the State was a qualifying State.

(C) Qualifying State

(i) In general

For purposes of this paragraph, a State is a qualifying State for a fiscal year if—

(I) the level of welfare spending per poor person by the State for the immediately preceding fiscal year is less than the national average level of State welfare spending per poor person for such preceding fiscal year; and

(II) the population growth rate of the State (as determined by the Bureau of the Census) for the most recent fiscal year for which information is available exceeds the average population growth rate for all States (as so determined) for such most recent fiscal year.

(ii) State must qualify in fiscal year 1998

Notwithstanding clause (i), a State shall not be a qualifying State for any fiscal year after 1998 by reason of clause (i) if the State is not a qualifying State for fiscal year 1998 by reason of clause (i).

(iii) Certain States deemed qualifying States

For purposes of this paragraph, a State is deemed to be a qualifying State for fiscal years 1998, 1999, 2000, and 2001 if—

(I) the level of welfare spending per poor person by the State for fiscal year 1994 is less than 35 percent of the national average level of State welfare spending per poor person for fiscal year 1994; or

(II) the population of the State increased by more than 10 percent from April 1, 1990 to July 1, 1994, according to the population estimates in publication CB94–204 of the Bureau of the Census.

(D) Definitions

As used in this paragraph:

(i) Level of welfare spending per poor person

The term "level of State welfare spending per poor person" means, with respect to a State and a fiscal year—

(I) the sum of—

(aa) the total amount required to be paid to the State under former section 603 of this title (as in effect during fiscal year 1994) for fiscal year 1994; and

(bb) the amount (if any) paid to the State under this paragraph for the immediately preceding fiscal year; divided by

(II) the number of individuals, according to the 1990 decennial census, who were residents of the State and whose income was below the poverty line.

(ii) National average level of State welfare spending per poor person

The term "national average level of State welfare spending per poor person" means, with respect to a fiscal year, an amount equal to—

(I) the total amount required to be paid to the States under former section 603 of this title (as in effect during fiscal year 1994) for fiscal year 1994; divided by

(II) the number of individuals, according to the 1990 decennial census, who were residents of any State and whose income was below the poverty line.

(iii) State

The term "State" means each of the 50 States of the United States and the District of Columbia.

(E) Appropriation

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for fiscal years 1998, 1999, 2000, and 2001 such sums as are necessary for grants under this paragraph, in a total amount not to exceed \$800,000,000.

(F) Grants reduced pro rata if insufficient appropriations

If the amount appropriated pursuant to this paragraph for a fiscal year (or portion of a fiscal year) is less than the total amount of payments otherwise required to be made under this paragraph for the fiscal year (or portion of the fiscal year), then the amount otherwise payable to any State for the fiscal year (or portion of the fiscal year) under this paragraph shall be reduced by a percentage equal to the amount so appropriated divided by such total amount.

(G) Budget scoring

Notwithstanding section 907(b)(2) of title 2, the baseline shall assume that no grant shall be made under this paragraph after fiscal year 2001.

(H) Reauthorization

Notwithstanding any other provision of this paragraph—

(i) any State that was a qualifying State under this paragraph for fiscal year 2001 or any prior fiscal year shall be entitled to receive from the Secretary for each of fiscal years 2002 and 2003 a grant in an amount equal to the amount required to be paid to the State under this paragraph for the most recent fiscal year in which the State was a qualifying State;

(ii) subparagraph (G) shall be applied as if "fiscal year 2011" were substituted for "fiscal year 2001";

1

(iii) out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for each of fiscal years 2002 and 2003 such sums as are necessary for grants under this subparagraph.

(4) Bonus to reward high performance States

(A) In general

The Secretary shall make a grant pursuant to this paragraph to each State for each bonus year for which the State is a high performing State.

(B) Amount of grant

(i) In general

Subject to clause (ii) of this subparagraph, the Secretary shall determine the amount of the grant payable under this paragraph to a high performing State for a bonus year, which shall be based on the score assigned to the State under subparagraph (D)(i) for the fiscal year that immediately precedes the bonus year.

(ii) Limitation

The amount payable to a State under this paragraph for a bonus year shall not exceed 5 percent of the State family assistance grant.

(C) Formula for measuring State performance

Not later than 1 year after August 22, 1996, the Secretary, in consultation with the National Governors' Association and the American Public Welfare Association, shall develop a formula for measuring State performance in operating the State program funded under this part so as to achieve the goals set forth in section 601(a) of this title.

(D) Scoring of State performance; setting of performance thresholds

For each bonus year, the Secretary shall—

(i) use the formula developed under subparagraph (C) to assign a score to each eligible State for the fiscal year that immediately precedes the bonus year; and

(ii) prescribe a performance threshold in such a manner so as to ensure that—

(I) the average annual total amount of grants to be made under this paragraph for each bonus year equals \$200,000,000; and

(II) the total amount of grants to be made under this paragraph for all bonus years equals \$1,000,000,000.

(E) Definitions

As used in this paragraph:

(i) Bonus year

The term "bonus year" means fiscal years 1999, 2000, 2001, 2002, and 2003.

(ii) High performing State

The term "high performing State" means, with respect to a bonus year, an eligible State whose score assigned pursuant to subparagraph (D)(i) for the fiscal year immediately preceding the bonus year equals or exceeds the performance threshold prescribed under subparagraph (D)(ii) for such preceding fiscal year.

(F) Appropriation

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for fiscal years 1999 through 2003 \$1,000,000,000 for grants under this paragraph.

(5) Welfare-to-work grants

(A) Formula grants

(i) Entitlement

A State shall be entitled to receive from the Secretary of Labor a grant for each fiscal year specified in subparagraph (H) of this paragraph for which the State is a welfare-to-work State, in an amount that does not exceed the lesser of—

(I) 2 times the total of the expenditures by the State (excluding qualified State expenditures (as defined in section 609(a)(7)(B)(i) of this title) and any expenditure described in subclause (I), (II), or

(IV) of section 609(a)(7)(B)(iv) of this title) during the period permitted under subparagraph (C)(vii) of this paragraph for the expenditure of funds under the grant for activities described in subparagraph (C)(i) of this paragraph; or

(II) the allotment of the State under clause (iii) of this subparagraph for the fiscal year.

(ii) Welfare-to-work State

A State shall be considered a welfare-to-work State for a fiscal year for purposes of this paragraph if the Secretary of Labor determines that the State meets the following requirements:

(I) The State has submitted to the Secretary of Labor and the Secretary of Health and Human Services (in the form of an addendum to the State plan submitted under section 602 of this title) a plan which—

(aa) describes how, consistent with this subparagraph, the State will use any funds provided under this subparagraph during the fiscal year;

(bb) specifies the formula to be used pursuant to clause (vi) to distribute funds in the State, and describes the process by which the formula was developed;

(cc) contains evidence that the plan was developed in consultation and coordination with appropriate entities in sub-State areas;

(dd) contains assurances by the Governor of the State that the private industry council (and any alternate agency designated by the Governor under item (ee)) for a service delivery area in the State will coordinate the expenditure of any funds provided under this subparagraph for the benefit of the service delivery area with the expenditure of the funds provided to the State under paragraph (1);

(ee) if the Governor of the State desires to have an agency other than a private industry council administer the funds provided under this subparagraph for the benefit of 1 or more service delivery areas in the State, contains an application to the Secretary of Labor for a waiver of clause (vii)(I) with respect to the area or areas in order to permit an alternate agency designated by the Governor to so administer the funds; and

(ff) describes how the State will ensure that a private industry council to which information is disclosed pursuant to section 603(a)(5)(K) 3 or 654A(f)(5) of this title has procedures for safeguarding the information and for ensuring that the information is used solely for the purpose described in that section.

(II) The State has provided to the Secretary of Labor an estimate of the amount that the State intends to expend during the period permitted under subparagraph (C)(vii) of this paragraph for the expenditure of funds under the grant (excluding expenditures described in section 609(a)(7)(B)(iv) of this title (other than subclause (III) thereof)) pursuant to this paragraph.

(III) The State has agreed to negotiate in good faith with the Secretary of Health and Human Services with respect to the substance and funding of any evaluation under section 613(j) of this title, and to cooperate with the conduct of any such evaluation.

(IV) The State is an eligible State for the fiscal year.

(V) The State certifies that qualified State expenditures (within the meaning of section 609(a)(7) of this title) for the fiscal year will be not less than the applicable percentage of historic State expenditures (within the meaning of section 609(a)(7) of this title) with respect to the fiscal year.

(iii) Allotments to welfare-to-work States

(I) In general

Subject to this clause, the allotment of a welfare-to-work State for a fiscal year shall be the available amount for the fiscal year, multiplied by the State percentage for the fiscal year.

(II) Minimum allotment

The allotment of a welfare-to-work State (other than Guam, the Virgin Islands, or American Samoa) for a fiscal year shall not be less than 0.25 percent of the available amount for the fiscal year.

(III) Pro rata reduction

Subject to subclause (II), the Secretary of Labor shall make pro rata reductions in the allotments to States under this clause for a fiscal year as necessary to ensure that the total of the allotments does not exceed the available amount for the fiscal year.

(iv) Available amount

As used in this subparagraph, the term "available amount" means, for a fiscal year, the sum of—

(I) 75 percent of the sum of—

(aa) the amount specified in subparagraph (H) for the fiscal year, minus the total of the amounts reserved pursuant to subparagraphs (E), (F), and (G) for the fiscal year; and

(bb) any amount reserved pursuant to subparagraph (E) for the immediately preceding fiscal year that has not been obligated; and

(II) any available amount for the immediately preceding fiscal year that has not been obligated by a State, other than funds reserved by the State for distribution under clause (vi)(III) and funds distributed pursuant to clause (vi)(I) in any State in which the service delivery area is the State.

(v) State percentage

As used in clause (iii), the term "State percentage" means, with respect to a fiscal year, $\frac{1}{2}$ of the sum of—

(I) the percentage represented by the number of individuals in the State whose income is less than the poverty line divided by the number of such individuals in the United States; and

(II) the percentage represented by the number of adults who are recipients of assistance under the State program funded under this part divided by the number of adults in the United States who are recipients of assistance under any State program funded under this part.

(vi) Procedure for distribution of funds within States

(I) Allocation formula

A State to which a grant is made under this subparagraph shall devise a formula for allocating not less than 85 percent of the amount of the grant among the service delivery areas in the State, which—

(aa) determines the amount to be allocated for the benefit of a service delivery area in proportion to the number (if any) by which the population of the area with an income that is less than the poverty line exceeds 7.5 percent of the total population of the area, relative to such number for all such areas in the State with such an excess, and accords a weight of not less than 50 percent to this factor;

(bb) may determine the amount to be allocated for the benefit of such an area in proportion to the number of adults residing in the area who have been recipients of assistance under the State program funded under this part (whether in effect before or after the amendments made by section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 first applied to the State) for at least 30 months (whether or not consecutive) relative to the number of such adults residing in the State; and

(cc) may determine the amount to be allocated for the benefit of such an area in proportion to the number of unemployed individuals residing in the area relative to the number of such individuals residing in the State.

(II) Distribution of funds

(aa) In general

If the amount allocated by the formula to a service delivery area is at least \$100,000, the State shall distribute the amount to the entity administering the grant in the area.

(bb) Special rule

If the amount allocated by the formula to a service delivery area is less than \$100,000, the sum shall be available for distribution in the State under subclause (III) during the fiscal year.

(III) Projects to help long-term recipients of assistance enter unsubsidized jobs

The Governor of a State to which a grant is made under this subparagraph may distribute not more than 15 percent of the grant funds (plus any amount required to be distributed under this subclause by reason of subclause (II)(bb)) to projects that appear likely to help long-term recipients of assistance under the State program funded under this part (whether in effect before or after the amendments made by section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 first applied to the State) enter unsubsidized employment.

(vii) Administration

(I) Private industry councils

The private industry council for a service delivery area in a State shall have sole authority, in coordination with the chief elected official (as defined in section 3 of the Workforce Innovation and Opportunity Act [29 U.S.C. 3102]) of the area, to expend the amounts distributed under clause (vi)(II)(aa) for the benefit of the service delivery area, in accordance with the assurances described in clause (ii)(I)(dd) provided by the Governor of the State.

(II) Enforcement of coordination of expenditures with other expenditures under this part

Notwithstanding subclause (I) of this clause, on a determination by the Governor of a State that a private industry council (or an alternate agency described in clause (ii)(I)(dd)) has used funds provided under this subparagraph in a manner inconsistent with the assurances described in clause (ii)(I)(dd)—

(aa) the private industry council (or such alternate agency) shall remit the funds to the Governor; and

(bb) the Governor shall apply to the Secretary of Labor for a waiver of subclause (I) of this clause with respect to the service delivery area or areas involved in order to permit an alternate agency designated by the Governor to administer the funds in accordance with the assurances.

(III) Authority to permit use of alternate administering agency

The Secretary of Labor shall approve an application submitted under clause (ii)(I)(ee) or subclause (II)(bb) of this clause to waive subclause (I) of this clause with respect to 1 or more service delivery areas if the Secretary determines that the alternate agency designated in the application would improve the effectiveness or efficiency of the administration of amounts distributed under clause (vi)(II)(aa) for the benefit of the area or areas.

(viii) Data to be used in determining the number of adult TANF recipients

For purposes of this subparagraph, the number of adult recipients of assistance under a State program funded under this part for a fiscal year shall be determined using data for the most recent 12-month period for which such data is available before the beginning of the fiscal year.

(ix) Reversion of unallotted formula funds

If at the end of any fiscal year any funds available under this subparagraph have not been allotted due to a determination by the Secretary that any State has not met the requirements of clause (ii), such funds shall be transferred to the General Fund of the Treasury of the United States.

(B) Competitive grants

(i) In general

The Secretary of Labor shall award grants in accordance with this subparagraph, in fiscal years 1998 and 1999, for projects proposed by eligible applicants, based on the following:

(I) The effectiveness of the proposal in—

(aa) expanding the base of knowledge about programs aimed at moving recipients of assistance under State programs funded under this part who are least job ready into unsubsidized employment.⁴

(bb) moving recipients of assistance under State programs funded under this part who are least job ready into unsubsidized employment; and

(cc) moving recipients of assistance under State programs funded under this part who are least job ready into unsubsidized employment, even in labor markets that have a shortage of low-skill jobs.

(II) At the discretion of the Secretary of Labor, any of the following:

(aa) The history of success of the applicant in moving individuals with multiple barriers into work.

(bb) Evidence of the applicant's ability to leverage private, State, and local resources.

(cc) Use by the applicant of State and local resources beyond those required by subparagraph (A).

(dd) Plans of the applicant to coordinate with other organizations at the local and State level.

(ee) Use by the applicant of current or former recipients of assistance under a State program funded under this part as mentors, case managers, or service providers.

(ii) Eligible applicants

As used in clause (i), the term "eligible applicant" means a private industry council for a service delivery area in a State, a political subdivision of a State, or a private entity applying in conjunction with the private industry council for such a service delivery area or with such a political subdivision, that submits a proposal developed in consultation with the Governor of the State.

(iii) Determination of grant amount

In determining the amount of a grant to be made under this subparagraph for a project proposed by an applicant, the Secretary of Labor shall provide the applicant with an amount sufficient to ensure that the project has a reasonable opportunity to be successful, taking into account the number of long-term recipients of assistance under a State program funded under this part, the level of unemployment, the job opportunities and job growth, the poverty rate, and such other factors as the Secretary of Labor deems appropriate, in the area to be served by the project.

(iv) Consideration of needs of rural areas and cities with large concentrations of poverty

In making grants under this subparagraph, the Secretary of Labor shall consider the needs of rural areas and cities with large concentrations of residents with an income that is less than the poverty line.

(v) Funding

For grants under this subparagraph for each fiscal year specified in subparagraph (H), there shall be available to the Secretary of Labor an amount equal to the sum of—

(I) 25 percent of the sum of—

(aa) the amount specified in subparagraph (H) for the fiscal year, minus the total of the amounts reserved pursuant to subparagraphs (E), (F), and (G) for the fiscal year; and

(bb) any amount reserved pursuant to subparagraph (E) for the immediately preceding fiscal year that has not been obligated; and

(II) any amount available for grants under this subparagraph for the immediately preceding fiscal year that has not been obligated.

(C) Limitations on use of funds

(i) Allowable activities

An entity to which funds are provided under this paragraph shall use the funds to move individuals into and keep individuals in lasting unsubsidized employment by means of any of the following:

(I) The conduct and administration of community service or work experience programs.

(II) Job creation through public or private sector employment wage subsidies.

(III) On-the-job training.

(IV) Contracts with public or private providers of readiness, placement, and post-employment services, or if the entity is not a private industry council or workforce investment board, the direct provision of such services.

(V) Job vouchers for placement, readiness, and postemployment services.

(VI) Job retention or support services if such services are not otherwise available.

(VII) Not more than 6 months of vocational educational or job training.

Contracts or vouchers for job placement services supported by such funds must require that at least $\frac{1}{2}$ of the payment occur after an eligible individual placed into the workforce has been in the workforce for 6 months.

(ii) General eligibility

An entity that operates a project with funds provided under this paragraph may expend funds provided to the project for the benefit of recipients of assistance under the program funded under this part of the State in which the entity is located who—

(I) has received assistance under the State program funded under this part (whether in effect before or after the amendments made by section 103 of the Personal Responsibility and Work Opportunity

Reconciliation Act of 1996 first apply to the State) for at least 30 months (whether or not consecutive); or

(II) within 12 months, will become ineligible for assistance under the State program funded under this part by reason of a durational limit on such assistance, without regard to any exemption provided pursuant to section 608(a)(7)(C) of this title that may apply to the individual.

(iii) Noncustodial parents

An entity that operates a project with funds provided under this paragraph may use the funds to provide services in a form described in clause (i) to noncustodial parents with respect to whom the requirements of the following subclauses are met:

(I) The noncustodial parent is unemployed, underemployed, or having difficulty in paying child support obligations.

(II) At least 1 of the following applies to a minor child of the noncustodial parent (with preference in the determination of the noncustodial parents to be provided services under this paragraph to be provided by the entity to those noncustodial parents with minor children who meet, or who have custodial parents who meet, the requirements of item (aa)):

(aa) The minor child or the custodial parent of the minor child meets the requirements of subclause (I) or (II) of clause (ii).

(bb) The minor child is eligible for, or is receiving, benefits under the program funded under this part.

(cc) The minor child received benefits under the program funded under this part in the 12-month period preceding the date of the determination but no longer receives such benefits.

(dd) The minor child is eligible for, or is receiving, assistance under the Food and Nutrition Act of 2008 [7 U.S.C. 2011 et seq.], benefits under the supplemental security income program under subchapter XVI of this chapter, medical assistance under subchapter XIX of this chapter, or child health assistance under subchapter XXI of this chapter.

(III) In the case of a noncustodial parent who becomes enrolled in the project on or after November 29, 1999, the noncustodial parent is in compliance with the terms of an oral or written personal responsibility contract entered into among the noncustodial parent, the entity, and (unless the entity demonstrates to the Secretary that the entity is not capable of coordinating with such agency) the agency responsible for administering the State plan under part D, which was developed taking into account the employment and child support status of the noncustodial parent, which was entered into not later than 30 (or, at the option of the entity, not later than 90) days after the noncustodial parent was enrolled in the project, and which, at a minimum, includes the following:

(aa) A commitment by the noncustodial parent to cooperate, at the earliest opportunity, in the establishment of the paternity of the minor child, through voluntary acknowledgement or other procedures, and in the establishment of a child support order.

(bb) A commitment by the noncustodial parent to cooperate in the payment of child support for the minor child, which may include a modification of an existing support order to take into account the ability of the noncustodial parent to pay such support and the participation of such parent in the project.

(cc) A commitment by the noncustodial parent to participate in employment or related activities that will enable the noncustodial parent to make regular child support payments, and if the noncustodial parent has not attained 20 years of age, such related activities may include completion of high school, a general equivalency degree, or other education directly related to employment.

(dd) A description of the services to be provided under this paragraph, and a commitment by the noncustodial parent to participate in such services, that are designed to assist the noncustodial parent obtain and retain employment, increase earnings, and enhance the financial and emotional contributions to the well-being of the minor child.

In order to protect custodial parents and children who may be at risk of domestic violence, the preceding provisions of this subclause shall not be construed to affect any other provision of law requiring a custodial parent to cooperate in establishing the paternity of a child or establishing or enforcing a support order with respect to a child, or entitling a custodial parent to refuse, for good cause, to provide such cooperation as a condition of assistance or benefit under any program, shall not

be construed to require such cooperation by the custodial parent as a condition of participation of either parent in the program authorized under this paragraph, and shall not be construed to require a custodial parent to cooperate with or participate in any activity under this clause. The entity operating a project under this clause with funds provided under this paragraph shall consult with domestic violence prevention and intervention organizations in the development of the project.

(iv) Targeting of hard to employ individuals with characteristics associated with long-term welfare dependence

An entity that operates a project with funds provided under this paragraph may expend not more than 30 percent of all funds provided to the project for programs that provide assistance in a form described in clause (i)—

(I) to recipients of assistance under the program funded under this part of the State in which the entity is located who have characteristics associated with long-term welfare dependence (such as school dropout, teen pregnancy, or poor work history), including, at the option of the State, by providing assistance in such form as a condition of receiving assistance under the State program funded under this part;

(II) to children—

(aa) who have attained 18 years of age but not 25 years of age; and

(bb) who, before attaining 18 years of age, were recipients of foster care maintenance payments (as defined in section 675(4) of this title) under part E or were in foster care under the responsibility of a State;

(III) to recipients of assistance under the State program funded under this part, determined to have significant barriers to self-sufficiency, pursuant to criteria established by the local private industry council; or

(IV) to custodial parents with incomes below 100 percent of the poverty line (as defined in section 9902(2) of this title, including any revision required by such section, applicable to a family of the size involved).

To the extent that the entity does not expend such funds in accordance with the preceding sentence, the entity shall expend such funds in accordance with clauses (ii) and (iii) and, as appropriate, clause (v).

(v) Authority to provide work-related services to individuals who have reached the 5-year limit
An entity that operates a project with funds provided under this paragraph may use the funds to provide assistance in a form described in clause (i) of this subparagraph to, or for the benefit of, individuals who (but for section 608(a)(7) of this title) would be eligible for assistance under the program funded under this part of the State in which the entity is located.

(vi) Relationship to other provisions of this part

(I) Rules governing use of funds

The rules of section 604 of this title, other than subsections (b), (f), and (h) of section 604 of this title, shall not apply to a grant made under this paragraph.

(II) Rules governing payments to States

The Secretary of Labor shall carry out the functions otherwise assigned by section 605 of this title to the Secretary of Health and Human Services with respect to the grants payable under this paragraph.

(III) Administration

Section 616 of this title shall not apply to the programs under this paragraph.

(vii) Prohibition against use of grant funds for any other fund matching requirement

An entity to which funds are provided under this paragraph shall not use any part of the funds, nor any part of State expenditures made to match the funds, to fulfill any obligation of any State, political subdivision, or private industry council to contribute funds under subsection (b) or section 618 of this title or any other provision of this chapter or other Federal law.

(viii) Deadline for expenditure

An entity to which funds are provided under this paragraph shall remit to the Secretary of Labor any part of the funds that are not expended within 5 years after the date the funds are so provided.

(ix) Regulations

Within 90 days after August 5, 1997, the Secretary of Labor, after consultation with the Secretary of Health and Human Services and the Secretary of Housing and Urban Development, shall prescribe such regulations as may be necessary to implement this paragraph.

(x) Reporting requirements

The Secretary of Labor, in consultation with the Secretary of Health and Human Services, States, and organizations that represent State or local governments, shall establish requirements for the collection and maintenance of financial and participant information and the reporting of such information by entities carrying out activities under this paragraph.

(D) Definitions

(i) Individuals with income less than the poverty line

For purposes of this paragraph, the number of individuals with an income that is less than the poverty line shall be determined for a fiscal year—

(I) based on the methodology used by the Bureau of the Census to produce and publish intercensal poverty data for States and counties (or, in the case of Puerto Rico, the Virgin Islands, Guam, and American Samoa, other poverty data selected by the Secretary of Labor); and

(II) using data for the most recent year for which such data is available before the beginning of the fiscal year.

(ii) Private industry council

As used in this paragraph, the term "private industry council" means, with respect to a service delivery area, the private industry council or local workforce development board established for the local workforce development area pursuant to title I of the Workforce Innovation and Opportunity Act [29 U.S.C. 3111 et seq.], as appropriate.

(iii) Service delivery area

As used in this paragraph, the term "service delivery area" shall have the meaning given such term for purposes of the Job Training Partnership Act or.6

(E) Funding for Indian tribes

1 percent of the amount specified in subparagraph (H) for fiscal year 1998 and \$15,000,000 of the amount so specified for fiscal year 1999 shall be reserved for grants to Indian tribes under section 612(a)(3) of this title.

(F) Funding for evaluations of welfare-to-work programs

0.6 percent of the amount specified in subparagraph (H) for fiscal year 1998 and \$9,000,000 of the amount so specified for fiscal year 1999 shall be reserved for use by the Secretary to carry out section 613(j) of this title.

(G) Funding for evaluation of abstinence education programs

(i) In general

0.2 percent of the amount specified in subparagraph (H) for fiscal year 1998 and \$3,000,000 of the amount so specified for fiscal year 1999 shall be reserved for use by the Secretary to evaluate programs under section 710 of this title, directly or through grants, contracts, or interagency agreements.

(ii) Authority to use funds for evaluations of welfare-to-work programs

Any such amount not required for such evaluations shall be available for use by the Secretary to carry out section 613(j) of this title.

(iii) Deadline for outlays

Outlays from funds used pursuant to clause (i) for evaluation of programs under section 710 of this title shall not be made after fiscal year 2005.

(iv) Interim report

Not later than January 1, 2002, the Secretary shall submit to the Congress an interim report on the evaluations referred to in clause (i).

(H) Appropriations

(i) In general

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for grants under this paragraph—

(I) \$1,500,000,000 for fiscal year 1998; and

(II) \$1,400,000,000 for fiscal year 1999.

(ii) Availability

The amounts made available pursuant to clause (i) shall remain available for such period as is necessary to make the grants provided for in this paragraph.

(I) Worker protections

(i) Nondisplacement in work activities

(I) General prohibition

Subject to this clause, an adult in a family receiving assistance attributable to funds provided under this paragraph may fill a vacant employment position in order to engage in a work activity.

(II) Prohibition against violation of contracts

A work activity engaged in under a program operated with funds provided under this paragraph shall not violate an existing contract for services or a collective bargaining agreement, and such a work activity that would violate a collective bargaining agreement shall not be undertaken without the written concurrence of the labor organization and employer concerned.

(III) Other prohibitions

An adult participant in a work activity engaged in under a program operated with funds provided under this paragraph shall not be employed or assigned—

(aa) when any other individual is on layoff from the same or any substantially equivalent job;

(bb) if the employer has terminated the employment of any regular employee or otherwise caused an involuntary reduction in its workforce with the intention of filling the vacancy so created with the participant; or

(cc) if the employer has caused an involuntary reduction to less than full time in hours of any employee in the same or a substantially equivalent job.

(ii) Health and safety

Health and safety standards established under Federal and State law otherwise applicable to working conditions of employees shall be equally applicable to working conditions of other participants engaged in a work activity under a program operated with funds provided under this paragraph.

(iii) Nondiscrimination

In addition to the protections provided under the provisions of law specified in section 608(c) of this title, an individual may not be discriminated against by reason of gender with respect to participation in work activities engaged in under a program operated with funds provided under this paragraph.

(iv) Grievance procedure

(I) In general

Each State to which a grant is made under this paragraph shall establish and maintain a procedure for grievances or complaints from employees alleging violations of clause (i) and participants in work activities alleging violations of clause (i), (ii), or (iii).

(II) Hearing

The procedure shall include an opportunity for a hearing.

(III) Remedies

The procedure shall include remedies for violation of clause (i), (ii), or (iii), which may continue during the pendency of the procedure, and which may include—

(aa) suspension or termination of payments from funds provided under this paragraph;

(bb) prohibition of placement of a participant with an employer that has violated clause (i), (ii), or (iii);

(cc) where applicable, reinstatement of an employee, payment of lost wages and benefits, and reestablishment of other relevant terms, conditions and privileges of employment; and

(dd) where appropriate, other equitable relief.

(IV) Appeals

(aa) Filing

Not later than 30 days after a grievant or complainant receives an adverse decision under the procedure established pursuant to subclause (I), the grievant or complainant may appeal the decision to a State agency designated by the State which shall be independent of the State or local agency that is administering the programs operated with funds provided under this paragraph and the State agency administering, or supervising the administration of, the State program funded under this part.

(bb) Final determination

Not later than 120 days after the State agency designated under item (aa) receives a grievance or complaint made under the procedure established by a State pursuant to subclause (I), the State agency shall make a final determination on the appeal.

(v) Rule of interpretation

This subparagraph shall not be construed to affect the authority of a State to provide or require workers' compensation.

(vi) Nonpreemption of State law

The provisions of this subparagraph shall not be construed to preempt any provision of State law that affords greater protections to employees or to other participants engaged in work activities under a program funded under this part than is afforded by such provisions of this subparagraph.

(J) Information disclosure

If a State to which a grant is made under this section establishes safeguards against the use or disclosure of information about applicants or recipients of assistance under the State program funded under this part, the safeguards shall not prevent the State agency administering the program from furnishing to a private industry council the names, addresses, telephone numbers, and identifying case number information in the State program funded under this part, of noncustodial parents residing in the service delivery area of the private industry council, for the purpose of identifying and contacting noncustodial parents regarding participation in the program under this paragraph.

(b) Contingency Fund

(1) Establishment

There is hereby established in the Treasury of the United States a fund which shall be known as the "Contingency Fund for State Welfare Programs" (in this section referred to as the "Fund").

(2) Deposits into fund

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for fiscal year 2018 such sums as are necessary for payment to the Fund in a total amount not to exceed \$608,000,000.

(3) Grants

(A) Provisional payments

If an eligible State submits to the Secretary a request for funds under this paragraph during an eligible month, the Secretary shall, subject to this paragraph, pay to the State, from amounts appropriated pursuant to paragraph (2), an amount equal to the amount of funds so requested.

(B) Payment priority

The Secretary shall make payments under subparagraph (A) in the order in which the Secretary receives requests for such payments.

(C) Limitations

(i) Monthly payment to a State

The total amount paid to a single State under subparagraph (A) during a month shall not exceed 1/12 of 20 percent of the State family assistance grant.

(ii) Payments to all States

The total amount paid to all States under subparagraph (A) during fiscal year 2011 and 2012, respectively, shall not exceed the total amount appropriated pursuant to paragraph (2) for each such fiscal year.

(4) "Eligible month" defined

As used in paragraph (3)(A), the term "eligible month" means, with respect to a State, a month in the 2-month period that begins with any month for which the State is a needy State.

(5) Needy State

For purposes of paragraph (4), a State is a needy State for a month if—

(A) the average rate of—

(i) total unemployment in such State (seasonally adjusted) for the period consisting of the most recent 3 months for which data for all States are published equals or exceeds 6.5 percent; and

(ii) total unemployment in such State (seasonally adjusted) for the 3-month period equals or exceeds 110 percent of such average rate for either (or both) of the corresponding 3-month periods ending in the 2 preceding calendar years; or

(B) as determined by the Secretary of Agriculture (in the discretion of the Secretary of Agriculture), the monthly average number of individuals (as of the last day of each month) participating in the supplemental nutrition assistance program in the State in the then most recently concluded 3-month period for which data are available exceeds by not less than 10 percent the lesser of—

(i) the monthly average number of individuals (as of the last day of each month) in the State that would have participated in the supplemental nutrition assistance program in the corresponding 3-month period in fiscal year 1994 if the amendments made by titles IV [8 U.S.C. 1601 et seq.] and VIII of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 had been in effect throughout fiscal year 1994; or

(ii) the monthly average number of individuals (as of the last day of each month) in the State that would have participated in the supplemental nutrition assistance program in the corresponding 3-month period in fiscal year 1995 if the amendments made by titles IV and VIII of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 had been in effect throughout fiscal year 1995.

(6) Annual reconciliation

(A) In general

Notwithstanding paragraph (3), if the Secretary makes a payment to a State under this subsection in a fiscal year, then the State shall remit to the Secretary, within 1 year after the end of the first subsequent period of 3 consecutive months for which the State is not a needy State, an amount equal to the amount (if any) by which—

(i) the total amount paid to the State under paragraph (3) of this subsection in the fiscal year; exceeds

(ii) the product of—

(I) the Federal medical assistance percentage for the State (as defined in section 1396d(b) of this title, as such section was in effect on September 30, 1995);

(II) the State's reimbursable expenditures for the fiscal year; and

(III) 1/12 times the number of months during the fiscal year for which the Secretary made a payment to the State under such paragraph (3).

(B) Definitions

As used in subparagraph (A):

(i) Reimbursable expenditures

The term "reimbursable expenditures" means, with respect to a State and a fiscal year, the amount (if any) by which—

(I) countable State expenditures for the fiscal year; exceeds

(II) historic State expenditures (as defined in section 609(a)(7)(B)(iii) of this title), excluding any amount expended by the State for child care under subsection (g) or (i) of section 602 of this title (as in effect during fiscal year 1994) for fiscal year 1994.

(ii) Countable State expenditures

The term "countable expenditures" means, with respect to a State and a fiscal year—

(I) the qualified State expenditures (as defined in section 609(a)(7)(B)(i) of this title (other than the expenditures described in subclause (I)(bb) of such section)) under the State program funded under this part for the fiscal year; plus

(II) any amount paid to the State under paragraph (3) during the fiscal year that is expended by the State under the State program funded under this part.

(C) Adjustment of State remittances

(i) In general

The amount otherwise required by subparagraph (A) to be remitted by a State for a fiscal year shall be increased by the lesser of—

(I) the total adjustment for the fiscal year, multiplied by the adjustment percentage for the State for the fiscal year; or

(II) the unadjusted net payment to the State for the fiscal year.

(ii) Total adjustment

As used in clause (i), the term "total adjustment" means—

(I) in the case of fiscal year 1998, \$2,000,000;

(II) in the case of fiscal year 1999, \$9,000,000;

(III) in the case of fiscal year 2000, \$16,000,000; and

(IV) in the case of fiscal year 2001, \$13,000,000.

(iii) Adjustment percentage

As used in clause (i), the term "adjustment percentage" means, with respect to a State and a fiscal year—

(I) the unadjusted net payment to the State for the fiscal year; divided by

(II) the sum of the unadjusted net payments to all States for the fiscal year.

(iv) Unadjusted net payment

As used in this subparagraph, the term, "unadjusted net payment" means with respect to a State and a fiscal year—

(I) the total amount paid to the State under paragraph (3) in the fiscal year; minus

(II) the amount that, in the absence of this subparagraph, would be required by subparagraph (A) or by section 609(a)(10) of this title to be remitted by the State in respect of the payment.

(7) "State" defined

As used in this subsection, the term "State" means each of the 50 States and the District of Columbia.

(8) Annual reports

The Secretary shall annually report to the Congress on the status of the Fund.

(Aug. 14, 1935, ch. 531, title IV, §403, as added Pub. L. 104–193, title I, §103(a)(1), Aug. 22, 1996, 110 Stat. 2115; amended Pub. L. 104–327, §1(b), Oct. 19, 1996, 110 Stat. 4002; Pub. L. 105–33, title V, §§5001(a)(1), 5502, 5514(c), Aug. 5, 1997, 111 Stat. 577, 606, 620; Pub. L. 105–78, title VI, §608, Nov. 13, 1997, 111 Stat. 1522; Pub. L. 105–89, title IV, §404(a), (b), Nov. 19, 1997, 111 Stat. 2134; Pub. L. 105–200, title IV, §408, July 16, 1998, 112 Stat. 672; Pub. L. 105–277, div. A, §101(f) [title I, §102, title VIII, §405(d)(30), (f)(22)], Oct. 21, 1998, 112 Stat. 2681–337, 2681-346, 2681-425, 2681-432; Pub. L. 105–306, §6(a), Oct. 28, 1998, 112 Stat. 2928; Pub. L. 106–113, div. B, §1000(a)(4) [title VIII, §§801(a), (b)(1), (c), 802, 803, 804(b), 805(a)(2), (b), 806], Nov. 29, 1999, 113 Stat. 1535, 1501A-280, 1501A-281, 1501A-283 to 1501A-286; Pub. L. 106–246, div. B, title II, §2402, July 13, 2000, 114 Stat. 555; Pub. L. 106–554, §1(a)(1) [title I, §§103, 107(a)–(b)(4), (c), title V, §513], Dec. 21, 2000, 114 Stat. 2763, 2763A-11, 2763A-12, 2763A-71; Pub. L. 107–147, title VI, §§616, 617, Mar. 9, 2002, 116 Stat. 62; Pub. L. 108–40, §3(a), (c)–(e), June 30, 2003, 117 Stat. 836, 837; Pub. L. 108–89, title I, §101(b)(1), (2), Oct. 1, 2003, 117 Stat. 1131; Pub. L. 108–210, §2(b), Mar. 31, 2004, 118 Stat. 564; Pub. L. 108–262, §2(b), June 30, 2004, 118 Stat. 696; Pub. L. 108–308, §2(b)(1), (2), Sept. 30, 2004, 118 Stat. 1135; Pub. L. 109–4, §2(b), Mar. 25, 2005, 119 Stat. 17; Pub. L. 109–19, §2(b), July 1, 2005, 119 Stat. 344; Pub. L. 109–68, §2(b)(2)(A), (B), Sept. 21, 2005, 119 Stat. 2003; Pub. L. 109–161, §2(b), Dec. 30, 2005, 119 Stat. 2958; Pub. L. 109–171, title VII, §§7101(b)(1), (2), 7103(a), Feb. 8, 2006, 120 Stat. 135, 138; Pub. L. 110–234, title IV, §4002(b)(1)(A), (B), (2)(V), May 22, 2008, 122 Stat. 1095–1097; Pub. L. 110–246, §4(a), title IV, §4002(b)(1)(A), (B), (2)(V), June 18, 2008, 122 Stat. 1664, 1857, 1858; Pub. L. 110–275, title III, §301(b), July 15, 2008, 122 Stat. 2594; Pub. L. 111–5, div. B, title II, §§2101(a), 2102(b), Feb. 17, 2009, 123 Stat. 446, 449; Pub. L. 111–242, §131(b)(1), (2), Sept. 30, 2010, 124 Stat. 2612; Pub. L. 111–291, title VIII, §811(b)–(d), Dec. 8, 2010, 124 Stat. 3159; Pub. L. 112–96, title IV, §4002(a), (b), Feb. 22, 2012, 126 Stat. 194, 195; Pub. L. 112–275, §9(a), Jan. 14, 2013, 126 Stat. 2465; Pub. L.

113–128, title V, §512(dd)(1), July 22, 2014, 128 Stat. 1717; Pub. L. 115–31, div. M, title I, §102(a)(1), (2), (b), (c)(2), May 5, 2017, 131 Stat. 800, 803.)

References in Text

Section 603(a)(5)(K) of this title, referred to in subsec. (a)(5)(A)(ii)(I)(ff), was redesignated as section 603(a)(5)(J) by Pub. L. 106–554, §1(a)(1) [title I, §107(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A-12.

Section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, referred to in subsec. (a)(5)(A)(vi)(I)(bb), (III), (C)(ii)(I), is section 103 of Pub. L. 104–193, which enacted this part, amended sections 602, 603, and 1308 of this title, and repealed provisions formerly set out as this part. For complete classification of section 103 to the Code, see Tables.

The Food and Nutrition Act of 2008, referred to in subsec. (a)(5)(C)(iii)(II)(dd), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, which is classified generally to chapter 51 (§2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

The Workforce Innovation and Opportunity Act, referred to in subsec. (a)(5)(D)(ii), is Pub. L. 113–128, July 22, 2014, 128 Stat. 1425. Title I of the Act is classified generally to subchapter I (§3111 et seq.) of chapter 32 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of Title 29 and Tables.

The Job Training Partnership Act, referred to in subsec. (a)(5)(D)(iii), is Pub. L. 97–300, Oct. 13, 1982, 96 Stat. 1322, which was classified generally to chapter 19 (§1501 et seq.) of Title 29, Labor, and 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 former section 2940(b) of Title 29, references to a provision of the Job Training Partnership Act, effective Aug. 7, 1998, were 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, were deemed to refer to the corresponding provision of the Workforce Investment Act of 1998. The Workforce Investment Act of 1998 was repealed by Pub. L. 113–128, title V, §§506, 511(a), July 22, 2014, 128 Stat. 1703, 1705, effective July 1, 2015. For complete classification of the Job Training Partnership Act and the Workforce Investment Act of 1998 to the Code, see Tables.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, referred to in subsec. (b)(5)(B), is Pub. L. 104–193, Aug. 22, 1996, 110 Stat. 2105. Title IV of the Act is classified principally to chapter 14 (§1601 et seq.) of Title 8, Aliens and Nationality. For complete classification of titles IV and VIII of the Act to the Code, see Tables.

Codification

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

Prior Provisions

A prior section 603, acts Aug. 14, 1935, ch. 531, title IV, §403, 49 Stat. 628; Aug. 10, 1939, ch. 666, title IV, §402, 53 Stat. 1380; Aug. 10, 1946, ch. 951, title V, §502, 60 Stat. 992; June 14, 1948, ch. 468, §3(b), 62 Stat. 439; Aug. 28, 1950, ch. 809, title III, pt. 2, §322(a), pt. 6, §361(c), (d), 64 Stat. 550, 558; July 18, 1952, ch. 945, §8(b), 66 Stat. 778; Sept. 1, 1954, ch. 1206, title III, §303(a), 68 Stat. 1097; Aug. 1, 1956, ch. 836, title III, §§302, 312(c), 342, 351(a), 70 Stat. 847, 849, 852, 854; Aug. 28, 1958, Pub. L. 85–840, title V, §502, 72 Stat. 1048; July 25, 1962, Pub. L. 87–543, title I, §§101(a)(2), (b)(2)(A)–(C), 104(a)(3)(C), 108(b), (c), 76 Stat. 174, 180, 185, 190; July 30, 1965, Pub. L. 89–97, title I, §122, title IV, §401(c), 79 Stat. 353, 415; Jan. 2, 1968, Pub. L. 90–248, title II, §§201(c)–(e)(3), 205(b), 206(a), 207(b), 208, 241(b)(2), (3), 81 Stat. 879, 880, 892–894, 916; June 28, 1968, Pub. L. 90–364, title III, §301, 82 Stat. 273; July 9, 1969, Pub. L. 91–41, §3, 83 Stat. 45; Dec. 28, 1971, Pub. L. 92–223, §3(a)(8), (9), 85 Stat. 805; Oct. 20, 1972, Pub. L. 92–512, title III, §301(b)–(d), 86 Stat. 946, 947; Oct. 30, 1972, Pub. L. 92–603, title II, §§299E(d), 299F, 86 Stat. 1462, 1463; Jan. 4, 1975, Pub. L. 93–647, §§3(a)(3), (4), (e)(2), 5(b), 101(c)(6)(A), 88 Stat. 2348–2350, 2360; Aug. 9, 1975, Pub. L. 94–88, title II, §204, 89 Stat. 435; Nov. 12, 1977, Pub. L. 95–171, §3(a)(1), 91 Stat. 1354; Dec. 20, 1977, Pub. L. 95–216, title IV, §§401, 402(a), 91 Stat. 1559, 1560; June 9, 1980, Pub. L. 96–265, title IV, §§401(g), (h), 406(a), 407(c), 94 Stat. 462, 465, 467; Aug. 13, 1981, Pub. L. 97–35, title XXI, §§2181(a)(1), 2184(b)(1), title XXIII, §§2307(b), 2315(b), 2317(a), 2319(a)–(c), 2353(b)(1), (d), 95 Stat. 815, 817, 848, 855–857, 872; Sept. 3, 1982, Pub. L. 97–248, title I, §§154(b), 156(a)–(c), 157(a), 96 Stat. 397–399; July 18, 1984, Pub. L. 98–369, div. B, title VI, §2663(c)(2), (j)(2)(B)(i), (3)(B)(i), 98 Stat. 1166, 1170, 1171; Aug. 16, 1984, Pub. L. 98–378, §9(b), 98 Stat. 1316; Nov. 6, 1986, Pub. L. 99–603, title I, §121(b)(1), 100 Stat. 3390; Dec. 22, 1987, Pub. L. 100–203, title IX, §9102(c), 101 Stat. 1330–300; Oct. 13, 1988, Pub. L. 100–485, title II, §§201(c), (d), 202(b)(4)–(6), 204(b)(2), title III, §§302(b)(2), 304(b)(2), title VI, §§601(c)(1), 606, 609(a), 102 Stat. 2372, 2377, 2381, 2384, 2393, 2407, 2410, 2424; Dec. 19, 1989, Pub. L. 101–239, title VIII,

§8004(b), 103 Stat. 2460; Nov. 5, 1990, Pub. L. 101–508, title V, §5081(b), 104 Stat. 1388–235; Aug. 10, 1993, Pub. L. 103–66, title XIII, §13741(a), 107 Stat. 663; July 27, 1995, Pub. L. 104–19, title I, 109 Stat. 215; Apr. 26, 1996, Pub. L. 104–134, title III, 110 Stat. 1321–355; Aug. 22, 1996, Pub. L. 104–193, title I, §103(c)(2)(B), 110 Stat. 2161; June 12, 1997, Pub. L. 105–18, title II, 111 Stat. 204, related to payments to States with approved plans for aid and services to needy families with children, prior to repeal by Pub. L. 104–193, §103(a)(1), as amended by Pub. L. 105–33, title V, §5514(c), Aug. 5, 1997, 111 Stat. 620, effective July 1, 1997.

Amendments

2017—Subsec. (a)(1)(A). Pub. L. 115–31, §102(a)(1), substituted "each of fiscal years 2017 and 2018" for "fiscal year 2012".

Subsec. (a)(1)(B). Pub. L. 115–31, §102(c)(2), inserted ", reduced by the percentage specified in section 613(h)(1) of this title with respect to the fiscal year," before "as the amount".

Subsec. (a)(1)(C). Pub. L. 115–31, §102(a)(1), substituted "each of fiscal years 2017 and 2018" for "fiscal year 2012".

Subsec. (a)(2)(D). Pub. L. 115–31, §102(a)(2), substituted "each of fiscal years 2017 and 2018" for "fiscal year 2012" in introductory provisions and "fiscal year 2017 or 2018" for "fiscal year 2012" in concluding provisions.

Subsec. (b)(2). Pub. L. 115–31, §102(b), amended par. (2) generally. Prior to amendment, text read as follows: "Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for fiscal years 2013 and 2014 such sums as are necessary for payment to the Fund in a total amount not to exceed \$612,000,000 for each fiscal year, of which \$2,000,000 shall be reserved for carrying out the activities of the commission established by the Protect our Kids Act of 2012 to reduce fatalities resulting from child abuse and neglect."

2014—Subsec. (a)(5)(A)(vii)(I). Pub. L. 113–128, §512(dd)(1)(A), substituted "chief elected official (as defined in section 3 of the Workforce Innovation and Opportunity Act)" for "chief elected official (as defined in section 101 of the Workforce Investment Act of 1998)".

Subsec. (a)(5)(D)(ii). Pub. L. 113–128, §512(dd)(1)(B), which directed the substitution of "local workforce development board established for the local workforce development area pursuant to title I of the Workforce Innovation and Opportunity Act, as appropriate" for "local workforce investment board established for the service delivery area pursuant to title I of the Workforce Investment Act of 1998, as appropriate", was executed by making the substitution for "local workforce investment board established for the service delivery area pursuant to title I of the Workforce Investment Area of 1998, as appropriate" to reflect the probable intent of Congress.

2013—Subsec. (b)(2). Pub. L. 112–275 substituted "for fiscal years 2013 and 2014 such sums as are necessary for payment to the Fund in a total amount not to exceed \$612,000,000 for each fiscal year, of which \$2,000,000 shall be reserved for carrying out the activities of the commission established by the Protect our Kids Act of 2012 to reduce fatalities resulting from child abuse and neglect." for "for fiscal years 2011 and 2012 such sums as are necessary for payment to the Fund in a total amount not to exceed, in the case of fiscal year 2011, such sums as are necessary for amounts obligated on or after October 1, 2010, and before December 8, 2010, and in the case of fiscal year 2012, \$612,000,000."

2012—Subsec. (a)(1)(A). Pub. L. 112–96, §4002(a)(1), substituted "fiscal year 2012" for "each of fiscal years 1996, 1997, 1998, 1999, 2000, 2001, 2002, and 2003".

Subsec. (a)(1)(B). Pub. L. 112–96, §4002(a)(2), inserted "(as in effect just before February 22, 2012)" after "subparagraph (C) of this paragraph" and "(as so in effect)" after "State under this paragraph".

Subsec. (a)(1)(C). Pub. L. 112–96, §4002(a)(3), substituted "2012" for "2003".

Subsec. (a)(2)(D). Pub. L. 112–96, §4002(b), substituted "2012" for "2011" in two places.

2010—Subsec. (a)(2)(A)(i). Pub. L. 111–291, §811(b)(1)(A), substituted ", (C), and (E)" for "and (C)".

Subsec. (a)(2)(A)(ii). Pub. L. 111–291, §811(b)(1)(B), inserted "(or, in the case of an entity seeking funding to carry out healthy marriage promotion activities and activities promoting responsible fatherhood, a combined application that contains assurances that the entity will carry out such

activities under separate programs and shall not combine any funds awarded to carry out either such activities)" after "an application" in introductory provisions.

Subsec. (a)(2)(A)(iii)(III). Pub. L. 111–291, §811(b)(1)(C), added subcl. (III) and struck out former subcl. (III) which read as follows: "Marriage education, marriage skills, and relationship skills programs, that may include parenting skills, financial management, conflict resolution, and job and career advancement, for non-married pregnant women and non-married expectant fathers."

Subsec. (a)(2)(C)(i). Pub. L. 111–291, §811(b)(2), substituted "\$75,000,000" for "\$50,000,000".

Subsec. (a)(2)(D), (E). Pub. L. 111–291, §811(b)(3), (4), added subpars. (D) and (E) and struck out former subpar. (D). Prior to amendment, text of subpar. (D) read as follows: "Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated \$150,000,000 for each of fiscal years 2006 through 2010, for expenditure in accordance with this paragraph."

Subsec. (a)(3)(F). Pub. L. 111–291, §811(d)(1), inserted "(or portion of a fiscal year)" after "a fiscal year" and inserted "(or portion of the fiscal year)" after "the fiscal year" in two places.

Subsec. (a)(3)(H)(ii). Pub. L. 111–291, §811(d)(2), added cl. (ii) and struck out former cl. (ii) which read as follows: "subparagraph (G) shall be applied as if 'the date specified in section 106(3) of the Continuing Appropriations Act, 2011' were substituted for 'fiscal year 2001'; and".

Pub. L. 111–242, §131(b)(1), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: "subparagraph (G) shall be applied as if 'fiscal year 2010' were substituted for 'fiscal year 2001'; and".

Subsec. (b)(2). Pub. L. 111–291, §811(c), substituted "such sums as are necessary for amounts obligated on or after October 1, 2010, and before December 8, 2010," for "\$506,000,000" and struck out ", reduced by the sum of the dollar amounts specified in paragraph (6)(C)(ii)" before period at end.

Pub. L. 111–242, §131(b)(2)(A), substituted "fiscal years 2011 and 2012" for "fiscal years 1997, 1998, 1999, 2000, 2001, 2002, and 2003" and ", in the case of fiscal year 2011, \$506,000,000 and in the case of fiscal year 2012, \$612,000,000" for "\$2,000,000,000".

Subsec. (b)(3)(C)(ii). Pub. L. 111–242, §131(b)(2)(B), substituted "fiscal year 2011 and 2012, respectively, shall not exceed the total amount appropriated pursuant to paragraph (2) for each such fiscal year" for "fiscal years 1997 through 2010 shall not exceed the total amount appropriated pursuant to paragraph (2)".

2009—Subsec. (a)(3)(H)(ii). Pub. L. 111–5, §2102(b), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: "subparagraph (G) shall be applied as if 'fiscal year 2009' were substituted for 'fiscal year 2001'; and".

Subsec. (c). Pub. L. 111–5, §2101(a)(2), struck out subsec. (c) which related to the Emergency Contingency Fund for State TANF Programs.

Pub. L. 111–5, §2101(a)(1), added subsec. (c).

2008—Subsec. (a)(3)(H)(ii). Pub. L. 110–275 amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: "subparagraph (G) shall be applied as if 'fiscal year 2008' were substituted for 'fiscal year 2001'; and".

Subsec. (a)(5)(C)(iii)(II)(dd). Pub. L. 110–246, §4002(b)(1)(B), (2)(V), substituted "Food and Nutrition Act of 2008" for "Food Stamp Act of 1977".

Subsec. (b)(5)(B). Pub. L. 110–246, §4002(b)(1)(A), (2)(V), substituted "supplemental nutrition assistance program" for "food stamp program" wherever appearing.

2006—Subsec. (a)(2). Pub. L. 109–171, §7103(a), amended heading and text of par. (2) generally. Prior to amendment, text related to bonus grant to reward decrease in illegitimacy ratio and defined for purposes of par. (2) terms "eligible State", "bonus year", and "illegitimacy ratio".

Subsec. (a)(3)(H)(ii). Pub. L. 109–171, §7101(b)(1), which directed substitution of "fiscal year 2008" for "December, 31, 2005", was executed by making the substitution for "December 31, 2005" to reflect the probable intent of Congress.

Subsec. (b)(3)(C)(ii). Pub. L. 109–171, §7101(b)(2), substituted "2010" for "2006".

2005—Subsec. (a)(3)(H)(ii). Pub. L. 109–161, which directed substitution of "March 31, 2006" for "December 31, 2005", could not be executed due to amendment by Pub. L. 109–171, §7101(b)(1). See 2006 Amendment note above and Effective Date of 2006 Amendment note below.

Pub. L. 109–68, §2(b)(2)(A), substituted "December 31" for "September 30".

Pub. L. 109–19 substituted "September 30" for "June 30".

Pub. L. 109–4 substituted "June 30" for "March 31".

Subsec. (b)(3)(C)(ii). Pub. L. 109–68, §2(b)(2)(B), substituted "2006" for "2005".

2004—Subsec. (a)(3)(H)(ii). Pub. L. 108–308, §2(b)(1), substituted "March 31, 2005" for "September 30, 2004".

Pub. L. 108–262 substituted "September 30" for "June 30".

Pub. L. 108–210 substituted "June 30" for "March 31".

Subsec. (b)(3)(C)(ii). Pub. L. 108–308, §2(b)(2), substituted "2005" for "2004".

2003—Subsec. (a)(1)(A). Pub. L. 108–40, §3(a)(1), substituted "2002, and 2003" for "and 2002".

Subsec. (a)(1)(B) to (E). Pub. L. 108–40, §3(a)(2), added subpars. (B) and (C) and struck out former subpars. (B) to (E) which related to, in subpar. (B), definition of "State family assistance grant", in subpar. (C), definition of "total amount required to be paid to the State under former section 603 of this title", in subpar. (D), information to be used in determining amounts of grants for fiscal years 1992 to 1995, and, in subpar. (E), appropriations for fiscal years 1996 to 2002.

Subsec. (a)(2)(C)(ii). Pub. L. 108–40, §3(c)(1), substituted "2002, and 2003" for "and 2002".

Subsec. (a)(2)(D). Pub. L. 108–40, §3(c)(2), substituted "2003" for "2002".

Subsec. (a)(3)(H). Pub. L. 108–40, §3(d)(1), and Pub. L. 108–89, §101(b)(1)(A), amended subpar. identically, striking out "of grants for fiscal year 2002" after "Reauthorization" in heading.

Subsec. (a)(3)(H)(i). Pub. L. 108–40, §3(d)(2), substituted "each of fiscal years 2002 and 2003" for "fiscal year 2002".

Subsec. (a)(3)(H)(ii). Pub. L. 108–89, §101(b)(1)(B), substituted "March 31, 2004" for "2003" and "fiscal year 2001" for "2001".

Pub. L. 108–40, §3(d)(3), substituted "2003" for "2002".

Subsec. (a)(3)(H)(iii). Pub. L. 108–40, §3(d)(4), substituted "each of fiscal years 2002 and 2003" for "fiscal year 2002".

Subsec. (b)(2). Pub. L. 108–40, §3(e)(1), substituted "2002, and 2003" for "and 2002".

Subsec. (b)(3)(C)(ii). Pub. L. 108–89, §101(b)(2), substituted "2004" for "2003".

Pub. L. 108–40, §3(e)(2), substituted "2003" for "2002".

2002—Subsec. (a)(3)(H). Pub. L. 107–147, §616, added subpar. (H).

Subsec. (b)(2). Pub. L. 107–147, §617(1), substituted "2001, and 2002" for "and 2001".

Subsec. (b)(3)(C)(ii). Pub. L. 107–147, §617(2), substituted "2002" for "2001".

2000—Subsec. (a)(5)(A)(i). Pub. L. 106–554, §1(a)(1) [title I, §107(b)(1)], substituted "subparagraph (H)" for "subparagraph (I)" in introductory provisions.

Subsec. (a)(5)(A)(iv)(I)(aa). Pub. L. 106–554, §1(a)(1) [title I, §107(b)(2)(A)], substituted "(H)" for "(I)" and "and (G)" for "(G), and (H)".

Subsec. (a)(5)(A)(iv)(I)(bb). Pub. L. 106–554, §1(a)(1) [title I, §107(b)(2)(B)], substituted "subparagraph (E)" for "subparagraph (F)".

Subsec. (a)(5)(B)(v). Pub. L. 106–554, §1(a)(1) [title I, §107(b)(3)], substituted "subparagraph (H)" for "subparagraph (I) " in introductory provisions.

Subsec. (a)(5)(B)(v)(I)(aa). Pub. L. 106–554, §1(a)(1) [title I, §107(b)(2)(A)], substituted "(H)" for "(I)" and "and (G)" for "(G), and (H)".

Subsec. (a)(5)(B)(v)(I)(bb). Pub. L. 106–554, §1(a)(1) [title I, §107(b)(2)(B)], substituted "subparagraph (E)" for "subparagraph (F)".

Subsec. (a)(5)(C)(viii). Pub. L. 106–554, §1(a)(1) [title I, §103]], substituted "5 years" for "3 years".

Subsec. (a)(5)(E). Pub. L. 106–554, §1(a)(1) [title I, §107(a), (b)(4)], redesignated subpar. (F) as (E), substituted "subparagraph (H)" for "subparagraph (I)", and struck out former subpar. (E), which established a set-aside for successful performance bonuses.

Subsec. (a)(5)(F). Pub. L. 106–554, §1(a)(1) [title I, §107(a), (b)(4)], redesignated subpar. (G) as (F) and substituted "subparagraph (H)" for "subparagraph (I)". Former subpar. (F) redesignated (E).

Pub. L. 106–246, §2402(1), substituted "\$15,000,000" for "\$1,500,000".

Subsec. (a)(5)(G). Pub. L. 106–554, §1(a)(1) [title V, §513], which directed the amendment of subpar. (H) by substituting "2005" for "2001" in cl. (iii) and adding cl. (iv), was executed by making amendments to subpar. (G), to reflect the probable intent of Congress and the redesignation of subpar. (H) as (G) by Pub. L. 106–554, §1(a)(1) [title V, §107(a)]. See below.

Pub. L. 106–554, §1(a)(1) [title I, §107(a), (b)(4)], redesignated subpar. (H) as (G) and substituted "subparagraph (H)" for "subparagraph (I)" in cl. (i). Former subpar. (G) redesignated (F).

Pub. L. 106–246, §2402(2), substituted "\$9,000,000" for "\$900,000".

Subsec. (a)(5)(H). Pub. L. 106–554, §1(a)(1) [title I, §107(a), (c)], redesignated subpar. (I) as (H) and substituted "\$1,400,000,000" for "\$1,450,000,000" in cl. (i)(II). Former subpar. (H) redesignated (G).

Pub. L. 106–246, §2402(3), substituted "\$3,000,000" for "\$300,000" in cl. (i).

Subsec. (a)(5)(I) to (K). Pub. L. 106–554, §1(a)(1) [title I, §107(a)], redesignated subpars. (J) and (K) as (I) and (J), respectively. Former subpar. (I) redesignated (H).

1999—Subsec. (a)(5)(A)(ii)(I)(ff). Pub. L. 106–113, §1000(a)(4) [title VIII, §805(b)], added item (ff).

Subsec. (a)(5)(C)(i)(IV). Pub. L. 106–113, §1000(a)(4) [title VIII, §803], inserted before period at end ", or if the entity is not a private industry council or workforce investment board, the direct provision of such services".

Subsec. (a)(5)(C)(i)(VII). Pub. L. 106–113, §1000(a)(4) [title VIII, §802], added subcl. (VII).

Subsec. (a)(5)(C)(ii). Pub. L. 106–113, §1000(a)(4) [title VIII, §801(a)], amended heading and text of cl. (ii) generally, substituting provisions relating to general eligibility for provisions relating to required beneficiaries.

Subsec. (a)(5)(C)(iii). Pub. L. 106–113, §1000(a)(4) [title VIII, §801(b)(1)(B)], added cl. (iii). Former cl. (iii) redesignated (iv).

Subsec. (a)(5)(C)(iv). Pub. L. 106–113, §1000(a)(4) [title VIII, §801(c)], inserted "hard to employ" before "individuals" in heading, substituted "clauses (ii) and (iii) and, as appropriate, clause (v)" for "clause (ii)" before period at end of concluding provisions, added subcls. (II) to (IV), and struck out former subcl. (II) which read as follows: "to individuals—

"(aa) who are noncustodial parents of minors whose custodial parent is such a recipient; and

"(bb) who have such characteristics."

Pub. L. 106–113, §1000(a)(4) [title VIII, §801(b)(1)(A)], redesignated cl. (iii) as (iv). Former cl. (iv) redesignated (v).

Subsec. (a)(5)(C)(v) to (ix). Pub. L. 106–113, §1000(a)(4) [title VIII, §801(b)(1)(A)], redesignated cls. (iv) to (viii) as (v) to (ix), respectively.

Subsec. (a)(5)(C)(x). Pub. L. 106–113, §1000(a)(4) [title VIII, §804(b)], added cl. (x).

Subsec. (a)(5)(E)(i). Pub. L. 106–113, §1000(a)(4) [title VIII, §806(c)], substituted "award" for "make" and inserted ", but shall not make any outlay to pay any such grant before October 1, 2000" before period at end.

Subsec. (a)(5)(E)(iv)(I)(bb), (vi). Pub. L. 106–113, §1000(a)(4) [title VIII, §806(a)], substituted "\$50,000,000" for "\$100,000,000".

Subsec. (a)(5)(F). Pub. L. 106–113, §1000(a)(4) [title VIII, §806(b)(1)], inserted "\$1,500,000" before "of the amount so specified for fiscal year 1999".

Subsec. (a)(5)(G). Pub. L. 106–113, §1000(a)(4) [title VIII, §806(b)(2)], inserted "\$900,000" before "of the amount so specified for fiscal year 1999".

Subsec. (a)(5)(H)(i). Pub. L. 106–113, §1000(a)(4) [title VIII, §806(b)(3)], inserted "\$300,000" before "of the amount so specified for fiscal year 1999".

Subsec. (a)(5)(I)(i). Pub. L. 106–113, §1000(a)(4) [title VIII, §806(b)(4)], substituted "for grants under this paragraph—" and subcls. (I) and (II) for "\$1,500,000,000 for each of fiscal years 1998 and 1999 for grants under this paragraph."

Subsec. (a)(5)(K). Pub. L. 106–113, §1000(a)(4) [title VIII, §805(a)(2)], added subpar. (K).

1998—Subsec. (a)(5)(A)(iv)(II). Pub. L. 105–306 substituted ", other than funds reserved by the State for distribution under clause (vi)(III) and funds distributed pursuant to clause (vi)(I) in any State in which the service delivery area is the State" for "or sub-State entity".

Subsec. (a)(5)(A)(vii)(I). Pub. L. 105–277, §101(f) [title VIII, §405(f)(22)(A)], struck out "described in section 103(c) of the Job Training Partnership Act or" before "defined in section 101 of the Workforce".

Pub. L. 105–277, §101(f) [title VIII, §405(d)(30)(A)], substituted "(as described in section 103(c) of the Job Training Partnership Act or defined in section 101 of the Workforce Investment Act of 1998)" for "(as described in section 103(c) of the Job Training Partnership Act)".

Subsec. (a)(5)(A)(ix). Pub. L. 105–277, §101(f) [title I, §102], added cl. (ix).

Subsec. (a)(5)(C)(ii). Pub. L. 105–200, §408(1), struck out "of minors whose custodial parent is such a recipient" after "noncustodial parents" in introductory provisions.

Subsec. (a)(5)(C)(ii)(I). Pub. L. 105–200, §408(2), inserted "or the noncustodial parent" after "recipient" in introductory provisions.

Subsec. (a)(5)(C)(ii)(II). Pub. L. 105–200, §408(3), substituted "The recipient or the minor children of the noncustodial parent—" for "The individual—" in introductory provisions.

Subsec. (a)(5)(D)(ii). Pub. L. 105–277, §101(f) [title VIII, §405(f)(22)(B)(i)], struck out "the Job Training Partnership Act or" before "title I of the Workforce Investment".

Pub. L. 105–277, §101(f) [title VIII, §405(d)(30)(B)(i)], substituted "means, with respect to a service delivery area, the private industry council or local workforce investment board established for the service delivery area pursuant to the Job Training Partnership Act or title I of the Workforce Investment Area of 1998, as appropriate" for "means, with respect to a service delivery area, the private industry council (or successor entity) established for the service delivery area pursuant to the Job Training Partnership Act".

Subsec. (a)(5)(D)(iii). Pub. L. 105–277, §101(f) [title VIII, §405(f)(22)(B)(ii)], struck out before period at end "shall mean a local area as defined in section 101 of the Workforce Investment Act of 1998, as appropriate".

Pub. L. 105–277, §101(f) [title VIII, §405(d)(30)(B)(ii)], substituted "shall have the meaning given such term for purposes of the Job Training Partnership Act or shall mean a local area as defined in section 101 of the Workforce Investment Act of 1998, as appropriate" for "shall have the meaning given such term (or the successor to such term) for purposes of the Job Training Partnership Act".

1997—Pub. L. 105–33, §5514(c), made technical amendment to directory language of Pub. L. 104–193, §103(a)(1), which enacted this section.

Subsec. (a)(2). Pub. L. 105–33, §5502(b)(1), inserted "ratio" after "illegitimacy" in heading.

Subsec. (a)(2)(A). Pub. L. 105–33, §5502(b)(2), struck out "for which the State demonstrates a net decrease in out-of-wedlock births" after "bonus year".

Subsec. (a)(2)(B). Pub. L. 105–33, §5502(a)(1), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows:

"(i) If 5 eligible States.—If there are 5 eligible States for a bonus year, the amount of the grant shall be \$20,000,000.

"(ii) If fewer than 5 eligible States.—If there are fewer than 5 eligible States for a bonus year, the amount of the grant shall be \$25,000,000."

Subsec. (a)(2)(C)(i)(I)(aa). Pub. L. 105–33, §5502(b)(3)(A)(i), substituted "illegitimacy ratio of the State for" for "number of out-of-wedlock births that occurred in the State during" and "illegitimacy ratio of the State for" for "number of such births that occurred during".

Pub. L. 105–33, §5502(a)(2), inserted at end "In the case of a State that is not a territory specified in subparagraph (B), the comparative magnitude of the decrease for the State shall be determined without regard to the magnitude of the corresponding decrease for any such territory."

Subsec. (a)(2)(C)(i)(I)(bb). Pub. L. 105–33, §5502(c)(1)(A), substituted "the calendar year for which the most recent data are available" for "the fiscal year" and "calendar year 1995" for "fiscal year 1995".

Subsec. (a)(2)(C)(i)(II). Pub. L. 105–33, §5502(c)(1)(B), substituted "calendar" for "fiscal" wherever appearing.

Subsec. (a)(2)(C)(i)(II)(aa). Pub. L. 105–33, §5502(b)(3)(A)(ii), substituted "illegitimacy ratio of" for "number of out-of-wedlock births that occurred in" in two places and "calculate the illegitimacy ratio" for "calculate the number of out-of-wedlock births".

Subsec. (a)(2)(C)(ii). Pub. L. 105–33, §5502(c)(2), substituted "calendar years" for "fiscal years".

Subsec. (a)(2)(C)(iii). Pub. L. 105–33, §5502(b)(3)(B), added cl. (iii).

Subsec. (a)(3)(C)(ii). Pub. L. 105–33, §5502(d), substituted "1998" for "1997" in heading.

Subsec. (a)(5). Pub. L. 105–33, §5001(a)(1), added par. (5).

Subsec. (a)(5)(A)(i)(I), (ii)(II). Pub. L. 105–78 substituted "during the period permitted under subparagraph (C)(vii) of this paragraph for the expenditure of funds under the grant" for "during the fiscal year".

Subsec. (b)(2). Pub. L. 105–89, §404(a), inserted ", reduced by the sum of the dollar amounts specified in paragraph (6)(C)(ii)" before period.

Subsec. (b)(4), (5). Pub. L. 105–33, §5502(e)(2), redesignated pars. (5) and (6) as (4) and (5), respectively, and struck out former par. (4) which required each State to remit to the Secretary at the end of each fiscal year certain excess amounts paid to the State under par. (3) during the fiscal year.

Subsec. (b)(6). Pub. L. 105–33, §5502(e)(3), added par. (6).

Pub. L. 105–33, §5502(e)(2), redesignated par. (6) as (5).

Pub. L. 105–33, §5502(e)(1), substituted "paragraph (4)" for "paragraph (5)" in introductory provisions.

Subsec. (b)(6)(C). Pub. L. 105–89, §404(b), added subpar. (C).

Subsec. (b)(7). Pub. L. 105–33, §5502(f), amended heading and text of par. (7) generally. Prior to amendment, text read as follows: "As used in this subsection:

"(A) State.—The term 'State' means each of the 50 States of the United States and the District of Columbia.

"(B) Secretary.—The term 'Secretary' means the Secretary of the Treasury."

1996—Subsec. (b)(4)(A)(i)(II). Pub. L. 104–327, §1(b)(1), struck out "minus any Federal payment with respect to such child care expenditures" after "for fiscal year 1994".

Subsec. (b)(4)(A)(ii)(I). Pub. L. 104–327, §1(b)(2), inserted "the sum of" before "the expenditures" and ", and any additional qualified State expenditures, as defined in section 609(a)(7)(B)(i) of this title, for child care assistance made under the Child Care and Development Block Grant Act of 1990" before "; exceeds".

Effective Date of 2014 Amendment

Amendment by Pub. L. 113–128 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 an Effective Date note under section 3101 of Title 29, Labor.

Effective Date of 2012 Amendment

Pub. L. 112–96, title IV, §4002(j), Feb. 22, 2012, 126 Stat. 195, provided that: "This section [amending this section and sections 609, 612 to 614, 618, and 1308 of this title] and the amendments made by this section shall take effect on the date of the enactment of this Act [Feb. 22, 2012]."

Effective Date of 2009 Amendment; Savings Provision

Pub. L. 111–5, div. B, title II, §2101(a)(2), Feb. 17, 2009, 123 Stat. 448, provided that: "Effective October 1, 2010, subsection (c) of section 403 of the Social Security Act (42 U.S.C. 603) (as added by paragraph (1)) is repealed, except that paragraph (9) of such subsection shall remain in effect until October 1, 2011, but only with respect to section 407(b)(3)(A)(i) of such Act [42 U.S.C. 607(b)(3)(A)(i)]."

Effective Date of 2008 Amendment

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 4002(b)(1)(A), (B), (2)(V) of Pub. L. 110–246 effective Oct. 1, 2008, see section 4407 of Pub. L. 110–246, set out as a note under section 1161 of Title 2, The Congress.

Effective Date of 2006 Amendment

Pub. L. 109–171, title VII, §7701, Feb. 8, 2006, 120 Stat. 155, provided that: "Except as otherwise provided in this title [amending this section and sections 607, 608, 609, 611, 618, 622, 629f, 629h, 652, 653, 654, 655, 657, 664, 666, 671 to 673, 674, 1383, and 1383b of this title and section 6402 of Title 26, Internal Revenue Code, repealing section 1675c of Title 19, Customs Duties, enacting provisions set out as notes under sections 607, 608, 652, 654, 655, 657, 664, 666, and 1383 of this title and section 1675c of Title 19, and amending provisions set out as a note under section 1169 of Title 29, Labor], this title and the amendments made by this title shall take effect as if enacted on October 1, 2005."

Effective Date of 2003 Amendment

Pub. L. 108–40, §8, June 30, 2003, 117 Stat. 838, provided that: "The amendments made by this Act [amending this section and sections 606, 609, 612, 614, 618, 710, 1308, 1320a–9, 1396a, and 1396r–6 of this title] shall take effect on July 1, 2003."

Effective Date of 2000 Amendment

Pub. L. 106–554, §1(a)(1) [title I, §107(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A-12, provided that: "The amendments made by subsections (a), (b), and (c) of this section [amending this section and section 612 of this title] shall take effect on October 1, 2000."

Effective Date of 1999 Amendment

Pub. L. 106–113, div. B, §1000(a)(4) [title VIII, §801(e)], Nov. 29, 1999, 113 Stat. 1535, 1501A-283, provided that: "The amendments made by this section [amending this section and sections 604 and 612 of this title]—

"(1) shall be effective January 1, 2000, with respect to the determination of eligible individuals for purposes of section 403(a)(5)(B) of the Social Security Act [42 U.S.C. 603(a)(5)(B)] (relating to competitive grants);

"(2) shall be effective July 1, 2000, except that expenditures from allotments to the States shall not be made before October 1, 2000—

"(A) with respect to the determination of eligible individuals for purposes of section 403(a)(5)(A) of the Social Security Act [42 U.S.C. 603(a)(5)(A)] (relating to formula grants) in the case of those individuals who may be determined to be so eligible, but would not have been eligible before July 1, 2000; or

"(B) for allowable activities described in section 403(a)(5)(C)(i)(VII) of the Social Security Act [42 U.S.C. 603(a)(5)(C)(i)(VII)] (as added by section 802 of this title) provided to any individuals determined to be eligible for purposes of section 403(a)(5)(A) of the Social Security Act (relating to formula grants)."

Effective Date of 1998 Amendments

Pub. L. 105–306, §6(b), Oct. 28, 1998, 112 Stat. 2928, provided that: "The amendment made by subsection (a) [amending this section] shall take effect as if included in the enactment of section 5001 of the Balanced Budget Act of 1997 [Pub. L. 105–33]."

Amendment by section 101(f) [title VIII, §405(d)(30)] of Pub. L. 105–277 effective Oct. 21, 1998, and amendment by section 101(f) [title VIII, §405(f)(22)] 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 1997 Amendments

Amendment by Pub. L. 105–89 effective Nov. 19, 1997, except as otherwise provided, with delay permitted if State legislation is required, see section 501 of Pub. L. 105–89, set out as a note under section 622 of this title.

Amendment by section 5502 of Pub. L. 105–33 effective as if included in section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, at the

time such section 103(a) became law, see section 5518(a) of Pub. L. 105–33, set out as a note under section 602 of this title.

Amendment by section 5514(c) of Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 862a of Title 21, Food and Drugs.

Effective Date of 1996 Amendment

Pub. L. 104–327, §1(d), Oct. 19, 1996, 110 Stat. 4003, provided that: "The amendments made by this section [amending this section and provisions set out as a note under section 601 of this title] shall take effect as if included in the provisions of and the amendments made by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [Pub. L. 104–193]."

Effective Date

Subsec. (a)(1)(C), (D) of this section effective Oct. 1, 1996, and remainder of this section 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 a note under section 601 of this title.

Regulations

Pub. L. 106–113, div. B, §1000(a)(4) [title VIII, §801(f)], Nov. 29, 1999, 113 Stat. 1535, 1501A-284, provided that: "Interim final regulations shall be prescribed to implement the amendments made by this section [amending this section and sections 604 and 612 of this title] not later than January 1, 2000. Final regulations shall be prescribed within 90 days after the date of the enactment of this Act [Nov. 29, 1999] to implement the amendments made by this Act to section 403(a)(5) of the Social Security Act [42 U.S.C. 603(a)(5)], in the same manner as described in section 403(a)(5)(C)(ix) of the Social Security Act (as so redesignated by subsection (b)(1)(A) of this section)."

1 So in original. Probably should be followed by "and".

2 So in original. Probably should be "entities".

3 See References in Text note below.

4 So in original. The period probably should be a semicolon.

6 So in original.

§603a. Transferred

Codification

Section, Pub. L. 94–566, title V, §508(b), Oct. 20, 1976, 90 Stat. 2689; Pub. L. 104–193, title I, §110(a), Aug. 22, 1996, 110 Stat. 2171, which related to reimbursement to State employment offices for expenses incurred for furnishing information requested of such offices by State or local agency administering this part, was transferred to section 655a of this title.

§604. Use of grants

(a) General rules

Subject to this part, a State to which a grant is made under section 603 of this title may use the grant—

(1) in any manner that is reasonably calculated to accomplish the purpose of this part, including to provide low income households with assistance in meeting home heating and cooling costs; or

(2) in any manner that the State was authorized to use amounts received under part A or F, as such parts were in effect on September 30, 1995, or (at the option of the State) August 21, 1996.

(b) Limitation on use of grant for administrative purposes

(1) Limitation

A State to which a grant is made under section 603 of this title shall not expend more than 15 percent of the grant for administrative purposes.

(2) Exception

Paragraph (1) shall not apply to the use of a grant for information technology and computerization needed for tracking or monitoring required by or under this part.

(c) Authority to treat interstate immigrants under rules of former State

A State operating a program funded under this part may apply to a family the rules (including benefit amounts) of the program funded under this part of another State if the family has moved to the State from the other State and has resided in the State for less than 12 months.

(d) Authority to use portion of grant for other purposes

(1) In general

Subject to paragraph (2), a State may use not more than 30 percent of the amount of any grant made to the State under section 603(a) of this title for a fiscal year to carry out a State program pursuant to any or all of the following provisions of law:

(A) Division A of subchapter XX of this chapter.

(B) The Child Care and Development Block Grant Act of 1990 [42 U.S.C. 9857 et seq.].

(2) Limitation on amount transferable to division A 1 of subchapter XX programs

(A) In general

A State may use not more than the applicable percent of the amount of any grant made to the State under section 603(a) of this title for a fiscal year to carry out State programs pursuant to division A 1 of subchapter XX.

(B) Applicable percent

For purposes of subparagraph (A), the applicable percent is 4.25 percent in the case of fiscal year 2001 and each succeeding fiscal year.

(3) Applicable rules

(A) In general

Except as provided in subparagraph (B) of this paragraph, any amount paid to a State under this part that is used to carry out a State program pursuant to a provision of law specified in paragraph (1) shall not be subject to the requirements of this part, but shall be subject to the requirements that apply to Federal funds provided directly under the provision of law to carry out the program, and the expenditure of any amount so used shall not be considered to be an expenditure under this part.

(B) Exception relating to division A 1 of subchapter XX programs

All amounts paid to a State under this part that are used to carry out State programs pursuant to division A 1 of subchapter XX shall be used only for programs and services to children or their families whose income is less than 200 percent of 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 title) applicable to a family of the size involved.

(e) Authority to carry over certain amounts for benefits or services or for future contingencies

A State or tribe may use a grant made to the State or tribe under this part for any fiscal year to provide, without fiscal year limitation, any benefit or service that may be provided under the State or tribal program funded under this part.

(f) Authority to operate employment placement program

A State to which a grant is made under section 603 of this title may use the grant to make payments (or provide job placement vouchers) to State-approved public and private job placement agencies that provide employment placement services to individuals who receive assistance under the State program funded under this part.

(g) Implementation of electronic benefit transfer system

A State to which a grant is made under section 603 of this title is encouraged to implement an electronic benefit transfer system for providing assistance under the State program funded under this part, and may use the grant for such purpose.

(h) Use of funds for individual development accounts

(1) In general

A State to which a grant is made under section 603 of this title may use the grant to carry out a program to fund individual development accounts (as defined in paragraph (2)) established by individuals eligible for assistance under the State program funded under this part.

(2) Individual development accounts

(A) Establishment

Under a State program carried out under paragraph (1), an individual development account may be established by or on behalf of an individual eligible for assistance under the State program operated under this part for the purpose of enabling the individual to accumulate funds for a qualified purpose described in subparagraph (B).

(B) Qualified purpose

A qualified purpose described in this subparagraph is 1 or more of the following, as provided by the qualified entity providing assistance to the individual under this subsection:

(i) Postsecondary educational expenses

Postsecondary educational expenses paid from an individual development account directly to an eligible educational institution.

(ii) First home purchase

Qualified acquisition costs with respect to a qualified principal residence for a qualified first-time homebuyer, if paid from an individual development account directly to the persons to whom the amounts are due.

(iii) Business capitalization

Amounts paid from an individual development account directly to a business capitalization account which is established in a federally insured financial institution and is restricted to use solely for qualified business capitalization expenses.

(C) Contributions to be from earned income

An individual may only contribute to an individual development account such amounts as are derived from earned income, as defined in section 911(d)(2) of the Internal Revenue Code of 1986.

(D) Withdrawal of funds

The Secretary shall establish such regulations as may be necessary to ensure that funds held in an individual development account are not withdrawn except for 1 or more of the qualified purposes described in subparagraph (B).

(3) Requirements

(A) In general

An individual development account established under this subsection shall be a trust created or organized in the United States and funded through periodic contributions by the establishing individual and matched by or through a qualified entity for a qualified purpose (as described in paragraph (2)(B)).

(B) "Qualified entity" defined

As used in this subsection, the term "qualified entity" means—

(i) a not-for-profit organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code; or

(ii) a State or local government agency acting in cooperation with an organization described in clause (i).

(4) No reduction in benefits

Notwithstanding any other provision of Federal law (other than the Internal Revenue Code of 1986) that requires consideration of 1 or more financial circumstances of an individual, for the purpose of determining eligibility to receive, or the amount of, any assistance or benefit authorized by such law to be provided to or for the benefit of such individual, funds (including interest accruing) in an individual development account under this subsection shall be disregarded for such purpose with respect to any period during which such individual maintains or makes contributions into such an account.

(5) Definitions

As used in this subsection—

(A) Eligible educational institution

The term "eligible educational institution" means the following:

(i) An institution described in section 1088(a)(1) or 1141(a) of title 20, as such sections are in effect on August 22, 1996.

(ii) An area vocational education school (as defined in subparagraph (C) or (D) of section 2471(4) of title 20) which is in any State (as defined in section 2471(33) of title 20), as such sections are in effect on August 22, 1996.

(B) Post-secondary educational expenses

The term "post-secondary educational expenses" means—

(i) tuition and fees required for the enrollment or attendance of a student at an eligible educational institution, and

(ii) fees, books, supplies, and equipment required for courses of instruction at an eligible educational institution.

(C) Qualified acquisition costs

The term "qualified acquisition costs" means the costs of acquiring, constructing, or reconstructing a residence. The term includes any usual or reasonable settlement, financing, or other closing costs.

(D) Qualified business

The term "qualified business" means any business that does not contravene any law or public policy (as determined by the Secretary).

(E) Qualified business capitalization expenses

The term "qualified business capitalization expenses" means qualified expenditures for the capitalization of a qualified business pursuant to a qualified plan.

(F) Qualified expenditures

The term "qualified expenditures" means expenditures included in a qualified plan, including capital, plant, equipment, working capital, and inventory expenses.

(G) Qualified first-time homebuyer

(i) In general

The term "qualified first-time homebuyer" means a taxpayer (and, if married, the taxpayer's spouse) who has no present ownership interest in a principal residence during the 3-year period ending on the date of acquisition of the principal residence to which this subsection applies.

(ii) Date of acquisition

The term "date of acquisition" means the date on which a binding contract to acquire, construct, or reconstruct the principal residence to which this subparagraph applies is entered into.

(H) Qualified plan

The term "qualified plan" means a business plan which—

(i) is approved by a financial institution, or by a nonprofit loan fund having demonstrated fiduciary integrity,

(ii) includes a description of services or goods to be sold, a marketing plan, and projected financial statements, and

(iii) may require the eligible individual to obtain the assistance of an experienced entrepreneurial advisor.

(I) Qualified principal residence

The term "qualified principal residence" means a principal residence (within the meaning of section 1034 of the Internal Revenue Code of 1986), the qualified acquisition costs of which do not exceed 100 percent of the average area purchase price applicable to such residence (determined in accordance with paragraphs (2) and (3) of section 143(e) of such Code).

(i) Sanction welfare recipients for failing to ensure that minor dependent children attend school

A State to which a grant is made under section 603 of this title shall not be prohibited from sanctioning a family that includes an adult who has received assistance under any State program funded under this part attributable to funds provided by the Federal Government or under the supplemental nutrition assistance program, as defined in section 2012(l) 1 of title 7, if such adult fails to ensure that the minor dependent children of such adult attend school as required by the law of the State in which the minor children reside.

(j) Requirement for high school diploma or equivalent

A State to which a grant is made under section 603 of this title shall not be prohibited from sanctioning a family that includes an adult who is older than age 20 and younger than age 51 and who has received assistance under any State program funded under this part attributable to funds provided by the Federal Government or under the supplemental nutrition assistance program, as defined in section 2012(l) 1 of title 7, if such adult does not have, or is not working toward attaining, a secondary school diploma or its recognized equivalent unless such adult has been determined in the judgment of medical, psychiatric, or other appropriate professionals to lack the requisite capacity to

complete successfully a course of study that would lead to a secondary school diploma or its recognized equivalent.

(k) Limitations on use of grant for matching under certain Federal transportation program

(1) Use limitations

A State to which a grant is made under section 603 of this title may not use any part of the grant to match funds made available under section 3037 of the Transportation Equity Act for the 21st Century, unless—

(A) the grant is used for new or expanded transportation services (and not for construction) that benefit individuals described in subparagraph (C), and not to subsidize current operating costs;

(B) the grant is used to supplement and not supplant other State expenditures on transportation;

(C) the preponderance of the benefits derived from such use of the grant accrues to individuals who are—

(i) recipients of assistance under the State program funded under this part;

(ii) former recipients of such assistance;

(iii) noncustodial parents who are described in section 603(a)(5)(C)(iii) of this title; and

(iv) low-income individuals who are at risk of qualifying for such assistance; and

(D) the services provided through such use of the grant promote the ability of such recipients to engage in work activities (as defined in section 607(d) of this title).

(2) Amount limitation

From a grant made to a State under section 603(a) of this title, the amount that a State uses to match funds described in paragraph (1) of this subsection shall not exceed the amount (if any) by which 30 percent of the total amount of the grant exceeds the amount (if any) of the grant that is used by the State to carry out any State program described in subsection (d)(1) of this section.

(3) Rule of interpretation

The provision by a State of a transportation benefit under a program conducted under section 3037 of the Transportation Equity Act for the 21st Century, to an individual who is not otherwise a recipient of assistance under the State program funded under this part, using funds from a grant made under section 603(a) of this title, shall not be considered to be the provision of assistance to the individual under the State program funded under this part.

(Aug. 14, 1935, ch. 531, title IV, §404, as added Pub. L. 104–193, title I, §103(a)(1), Aug. 22, 1996, 110 Stat. 2124; amended Pub. L. 105–33, title V, §§5002(a), 5503, 5514(c), Aug. 5, 1997, 111 Stat. 593, 609, 620; Pub. L. 105–178, title VIII, §8401(b), June 9, 1998, 112 Stat. 499; Pub. L. 105–200, title IV, §403(a), July 16, 1998, 112 Stat. 670; Pub. L. 106–113, div. B, §1000(a)(4) [title VIII, §801(d)], Nov. 29, 1999, 113 Stat. 1535, 1501A-283; Pub. L. 106–169, title IV, §401(l), Dec. 14, 1999, 113 Stat. 1858; Pub. L. 110–234, title IV, §§4002(b)(1)(A), (B), (2)(V), 4115(c)(2)(G), May 22, 2008, 122 Stat. 1095–1097, 1110; Pub. L. 110–246, §4(a), title IV, §§4002(b)(1)(A), (B), (2)(V), 4115(c)(2)(G), June 18, 2008, 122 Stat. 1664, 1857, 1858, 1871; Pub. L. 111–5, div. B, title II, §2103, Feb. 17, 2009, 123 Stat. 449; Pub. L. 111–148, title VI, §6703(d)(2)(A), Mar. 23, 2010, 124 Stat. 803; Pub. L. 112–96, title IV, §4005(a), Feb. 22, 2012, 126 Stat. 198.)

References in Text

Part F, referred to in subsec. (a)(2), was classified to section 681 et seq. of this title, prior to repeal by Pub. L. 104–193, title I, §108(e), Aug. 22, 1996, 110 Stat. 2167.

The Child Care and Development Block Grant Act of 1990, referred to in subsec. (d)(1)(B), is 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, which is classified generally to subchapter II–B (§9857 et seq.) of chapter 105 of this title. For complete classification of this Act to the Code, see section 9857(a) of this title and Tables.

Division A of subchapter XX, referred to in subsec. (d)(2), (3)(B), was in the original a reference to subtitle 1 of title XX, which was translated as if referring to subtitle A of title XX of the Social Security Act, to reflect the probable intent of Congress. Title XX of the Act, enacting subchapter XX of this chapter, does not contain a subtitle 1.

The Internal Revenue Code of 1986, referred to in subsec. (h)(2)(C), (3)(B)(i), (4), (5)(I), is classified generally to Title 26, Internal Revenue Code.

Section 1088(a) of title 20, referred to in subsec. (h)(5)(A)(i), was repealed and section 1088(d) was redesignated section 1088(a), by Pub. L. 105–244, title I, §101(c), Oct. 7, 1998, 112 Stat. 1617. Provisions similar to those in former section 1088(a)(1) are now contained in section 1002(a)(1) of Title 20, Education.

Section 1141(a) of title 20, referred to in subsec. (h)(5)(A)(i), 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.

Section 2471 of title 20, referred to in subsec. (h)(5)(A)(ii), was omitted in the general amendment of chapter 44 (§2301 et seq.) of Title 20, Education, by Pub. L. 105–332, §1(b), Oct. 31, 1998, 112 Stat. 3076.

Section 2012(l) of title 7, referred to in subsecs. (i) and (j), was struck out, and a new section 2012(t) of title 7 similarly defining "supplemental nutrition assistance program" was enacted, by Pub. L. 113–79, title IV, §4030(a)(3), (5), Feb. 7, 2014, 128 Stat. 813.

Section 3037 of the Transportation Equity Act for the 21st Century, referred to in subsec. (k)(1), (3), is section 3037 of Pub. L. 105–178, title III, June 9, 1998, 112 Stat. 387, which was formerly set out as a note under section 5309 of Title 49, Transportation, and was repealed by Pub. L. 109–59, title III, §3018(c), Aug. 10, 2005, 119 Stat. 1605, effective Oct. 1, 2005.

Codification

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

Prior Provisions

A prior section 604, acts Aug. 14, 1935, ch. 531, title IV, §404, 49 Stat. 628; Aug. 28, 1950, ch. 809, title III, pt. 6, §361(c), (d), 64 Stat. 558; May 8, 1961, Pub. L. 87–31, §4, 75 Stat. 77; July 25, 1962, Pub. L. 87–543, title I, §§104(a)(5)(B), 107(b), 76 Stat. 185, 189; Jan. 2, 1968, Pub. L. 90–248, title II, §§241(b)(4), 245, 81 Stat. 916, 918; Jan. 4, 1975, Pub. L. 93–647, §101(c)(6)(B), 88 Stat. 2360; July 18, 1984, Pub. L. 98–369, div. B, title VI, §2663(l)(1), 98 Stat. 1171, related to deviation from

State plan, prior to repeal by Pub. L. 104–193, §103(a)(1), as amended by Pub. L. 105–33, title V, §5514(c), Aug. 5, 1997, 111 Stat. 620.

Amendments

2012—Subsec. (d)(1)(A). Pub. L. 112–96 made technical amendment to reference in original act which appears in text as reference to division A of subchapter XX.

2010—Subsec. (d)(1)(A). Pub. L. 111–148, §6703(d)(2)(A)(i), inserted "division A of" before "subchapter XX".

Subsec. (d)(2). Pub. L. 111–148, §6703(d)(2)(A)(ii), inserted "division A of" before "subchapter XX" in heading.

Subsec. (d)(2)(A). Pub. L. 111–148, §6703(d)(2)(A)(i), inserted "division A of" before "subchapter XX".

Subsec. (d)(3)(B). Pub. L. 111–148, §6703(d)(2)(A)(iii), inserted "division A of" before "subchapter XX" in heading.

Pub. L. 111–148, §6703(d)(2)(A)(i), inserted "division A of" before "subchapter XX".

2009—Subsec. (e). Pub. L. 111–5 amended subsec. (e) generally. Prior to amendment, text read as follows: "A State or tribe may reserve amounts paid to the State or tribe under this part for any fiscal year for the purpose of providing, without fiscal year limitation, assistance under the State or tribal program funded under this part."

2008—Subsecs. (i), (j). Pub. L. 110–246, §4115(c)(2)(G), substituted "section 2012(l)" for "section 2012(h)".

Pub. L. 110–246, §4002(b)(1)(A), (B), (2)(V), substituted "supplemental nutrition assistance program" for "food stamp program" and made technical amendment to reference in original act which appears in text as reference to section 2012(h) of title 7.

1999—Subsec. (e). Pub. L. 106–169 inserted "or tribe" after "A State" and "to the State" and inserted "or tribal" after "under the State".

Subsec. (k)(1)(C)(iii). Pub. L. 106–113 substituted "section 603(a)(5)(C)(iii) of this title" for "item (aa) or (bb) of section 603(a)(5)(C)(ii)(II) of this title".

1998—Subsec. (d)(2). Pub. L. 105–178 amended heading and text of par. (2) generally. Prior to amendment, text read as follows: "A State may use not more than 10 percent of the amount of any grant made to the State under section 603(a) of this title for a fiscal year to carry out State programs pursuant to subchapter XX of this chapter."

Subsec. (k). Pub. L. 105–200 added subsec. (k).

1997—Pub. L. 105–33, §5514(c), made technical amendment to directory language of Pub. L. 104–193, §103(a)(1), which enacted this section.

Subsec. (a)(2). Pub. L. 105–33, §5503, inserted ", or (at the option of the State) August 21, 1996" before period.

Subsec. (d)(1). Pub. L. 105–33, §5002(a)(1), substituted "Subject to paragraph (2), a State may" for "A State may".

Subsec. (d)(2). Pub. L. 105–33, §5002(a)(2), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: "Notwithstanding paragraph (1), not more than 1/3 of the total amount paid to a State under this part for a fiscal year that is used to carry out State programs pursuant to provisions of law specified in paragraph (1) may be used to carry out State programs pursuant to subchapter XX of this chapter."

Effective Date of 2008 Amendment

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by sections 4002(b)(1)(A), (B), (2)(V) and 4115(c)(2)(G) of Pub. L. 110–246 effective Oct. 1, 2008, see section 4407 of Pub. L. 110–246, set out as a note under section 1161 of Title 2, The Congress.

Effective Date of 1999 Amendments

Pub. L. 106–169, title IV, §401(l), Dec. 14, 1999, 113 Stat. 1858, provided that the amendment made by section 401(l) is effective Dec. 14, 1999.

For effective date of amendment by Pub. L. 106–113, see section 1000(a)(4) [title VIII, §801(e)] of Pub. L. 106–113, set out as a note under section 603 of this title.

Effective Date of 1998 Amendment

Pub. L. 105–178, title VIII, §8401(c), June 9, 1998, 112 Stat. 499, provided that: "The amendments made by this section [amending this section and section 1397b of this title] take effect on October 1, 1998."

Effective Date of 1997 Amendment

Pub. L. 105–33, title V, §5002(b), Aug. 5, 1997, 111 Stat. 594, provided that: "The amendments made by subsection (a) of this section [amending this section] shall take effect as if included in the enactment of section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [Pub. L. 104–193]."

Amendment by section 5503 of Pub. L. 105–33 effective as if included in section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, at the time such section 103(a) became law, see section 5518(a) of Pub. L. 105–33, set out as a note under section 602 of this title.

Amendment by section 5514(c) of Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 862a of Title 21, Food and Drugs.

Effective Date

Section 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 a note under section 601 of this title.

Assets for Independence

Pub. L. 105–285, title IV, Oct. 27, 1998, 112 Stat. 2759, as amended by Pub. L. 106–554, §1(a)(1) [title VI, §§602–607(a), 608(a), 609, 610], Dec. 21, 2000, 114 Stat. 2763, 2763A-74 to 2763A-76; Pub. L. 107–110, title VII, §702(h), Jan. 8, 2002, 115 Stat. 1947; Pub. L. 114–95, title IX, §9215(l), Dec. 10, 2015, 129 Stat. 2168, provided that:

"SEC. 401. SHORT TITLE.

"This title may be cited as the 'Assets for Independence Act'.

"SEC. 402. FINDINGS.

"Congress makes the following findings:

"(1) Economic well-being does not come solely from income, spending, and consumption, but also requires savings, investment, and accumulation of assets because assets can improve economic independence and stability, connect individuals with a viable and hopeful future, stimulate development of human and other capital, and enhance the welfare of offspring.

"(2) Fully ½ of all Americans have either no, negligible, or negative assets available for investment, just as the price of entry to the economic mainstream, the cost of a house, an adequate education, and starting a business, is increasing. Further, the household savings rate of the United States lags far behind other industrial nations, presenting a barrier to economic growth.

"(3) In the current tight fiscal environment, the United States should invest existing resources in high-yield initiatives. There is reason to believe that the financial returns, including increased income, tax revenue, and decreased welfare cash assistance, resulting from individual development accounts will far exceed the cost of investment in those accounts.

"(4) Traditional public assistance programs concentrating on income and consumption have rarely been successful in promoting and supporting the transition to increased economic self-sufficiency.

Income-based domestic policy should be complemented with asset-based policy because, while income-based policies ensure that consumption needs (including food, child care, rent, clothing, and health care) are met, asset-based policies provide the means to achieve greater independence and economic well-being.

"SEC. 403. PURPOSES.

"The purposes of this title are to provide for the establishment of demonstration projects designed to determine—

"(1) the social, civic, psychological, and economic effects of providing to individuals and families with limited means an incentive to accumulate assets by saving a portion of their earned income;

"(2) the extent to which an asset-based policy that promotes saving for postsecondary education, homeownership, and microenterprise development may be used to enable individuals and families with limited means to increase their economic self-sufficiency; and

"(3) the extent to which an asset-based policy stabilizes and improves families and the community in which the families live.

"SEC. 404. DEFINITIONS.

"In this title:

"(1) Applicable period.—The term 'applicable period' means, with respect to amounts to be paid from a grant made for a project year, the calendar year immediately preceding the calendar year in which the grant is made.

"(2) Eligible individual.—The term 'eligible individual' means an individual who is selected to participate in a demonstration project by a qualified entity under section 409.

"(3) Emergency withdrawal.—The term 'emergency withdrawal' means a withdrawal by an eligible individual that—

"(A) is a withdrawal of only those funds, or a portion of those funds, deposited by the individual in the individual development account of the individual;

"(B) is permitted by a qualified entity on a case-by-case basis; and

"(C) is made for—

"(i) expenses for medical care or necessary to obtain medical care, for the individual or a spouse or dependent of the individual described in paragraph (8)(D);

"(ii) payments necessary to prevent the eviction of the individual from the residence of the individual, or foreclosure on the mortgage for the principal residence of the individual, as defined in paragraph (8)(B); or

"(iii) payments necessary to enable the individual to meet necessary living expenses following loss of employment.

"(4) Household.—The term 'household' means all individuals who share use of a dwelling unit as primary quarters for living and eating separate from other individuals.

"(5) Individual development account.—

"(A) In general.—The term 'individual development account' means a trust created or organized in the United States exclusively for the purpose of paying the qualified expenses of an eligible individual, or enabling the eligible individual to make an emergency withdrawal, but only if the written governing instrument creating the trust contains the following requirements:

"(i) No contribution will be accepted unless the contribution is in cash or by check.

"(ii) The trustee is a federally insured financial institution, or a State insured financial institution if no federally insured financial institution is available.

"(iii) The assets of the trust will be invested in accordance with the direction of the eligible individual after consultation with the qualified entity providing deposits for the individual under section 410.

"(iv) The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund.

"(v) Except as provided in clause (vi), any amount in the trust that is attributable to a deposit provided under section 410 may be paid or distributed out of the trust only for the purpose of paying the qualified expenses of the eligible individual.

"(vi) Any balance in the trust on the day after the date on which the individual for whose benefit the trust is established dies shall be distributed within 30 days of that date as directed by that individual to another individual development account established for the benefit of an eligible individual.

"(B) Custodial accounts.—For purposes of subparagraph (A), a custodial account shall be treated as a trust if the assets of the custodial account are held by a bank (as defined in section 408(n) of the Internal Revenue Code of 1986 [26 U.S.C. 408(n)]) or another person who demonstrates, to the satisfaction of the Secretary, that the manner in which such person will administer the custodial account will be consistent with the requirements of this title, and if the custodial account would, except for the fact that it is not a trust, constitute an individual development account described in subparagraph (A). For purposes of this title, in the case of a custodial account treated as a trust by reason of the preceding sentence, the custodian of that custodial account shall be treated as the trustee of the account.

"(6) Project year.—The term 'project year' means, with respect to a demonstration project, any of the 5 consecutive 12-month periods beginning on the date the project is originally authorized to be conducted.

"(7) Qualified entity.—

"(A) In general.—The term 'qualified entity' means—

"(i) one or more not-for-profit organizations described in section 501(c)(3) of the Internal Revenue Code of 1986 [26 U.S.C. 501(c)(3)] and exempt from taxation under section 501(a) of such Code;

"(ii) a State or local government agency, or a tribal government, submitting an application under section 405 jointly with an organization described in clause (i); or

(iii) an entity that—

(I) is—

(aa) a credit union designated as a low-income credit union by the National Credit Union Administration (NCUA); or

(bb) an organization designated as a community development financial institution by the Secretary of the Treasury (or the Community Development Financial Institutions Fund); and

(II) can demonstrate a collaborative relationship with a local community-based organization whose activities are designed to address poverty in the community and the needs of community members for economic independence and stability.

"(B) Rule of construction.—Nothing in this paragraph shall be construed as preventing an organization described in subparagraph (A)(i) from collaborating with a financial institution or for-profit community development corporation to carry out the purposes of this title.

"(8) Qualified expenses.—The term 'qualified expenses' means one or more of the following, as provided by a qualified entity:

"(A) Postsecondary educational expenses.—Postsecondary educational expenses paid from an individual development account directly to an eligible educational institution. In this subparagraph:

"(i) Postsecondary educational expenses.—The term 'postsecondary educational expenses' means the following:

"(I) Tuition and fees.—Tuition and fees required for the enrollment or attendance of a student at an eligible educational institution.

"(II) Fees, books, supplies, and equipment.—Fees, books, supplies, and equipment required for courses of instruction at an eligible educational institution.

"(ii) Eligible educational institution.—The term 'eligible educational institution' means the following:

"(I) Institution of higher education.—An institution described in section 101 or 102 of the Higher Education Act of 1965 [20 U.S.C. 1001, 1002].

"(II) Postsecondary vocational education school.—An area vocational education school (as defined in subparagraph (C) or (D) of section 521(4) of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2471(4))) which is in any State (as defined in section 521(33) of such Act), as such sections are in effect on the date of enactment of this title [Oct. 27, 1998].

"(B) First-home purchase.—Qualified acquisition costs with respect to a principal residence for a qualified first-time homebuyer, if paid from an individual development account directly to the persons to whom the amounts are due. In this subparagraph:

"(i) Principal residence.—The term 'principal residence' means a main residence, the qualified acquisition costs of which do not exceed 120 percent of the average area purchase price applicable to such residence.

"(ii) Qualified acquisition costs.—The term 'qualified acquisition costs' means the costs of acquiring, constructing, or reconstructing a residence. The term includes any usual or reasonable settlement, financing, or other closing costs.

"(iii) Qualified first-time homebuyer.—

"(I) In general.—The term 'qualified first-time homebuyer' means an individual participating in the project involved (and, if married, the individual's spouse) who has no present ownership interest in a principal residence during the 3-year period ending on the date of acquisition of the principal residence to which this subparagraph applies.

"(II) Date of acquisition.—The term 'date of acquisition' means the date on which a binding contract to acquire, construct, or reconstruct the principal residence to which this subparagraph applies is entered into.

"(C) Business capitalization.—Amounts paid from an individual development account directly to a business capitalization account that is established in a federally insured financial institution (or in a State insured financial institution if no federally insured financial institution is available) and is restricted to use solely for qualified business capitalization expenses. In this subparagraph:

"(i) Qualified business capitalization expenses.—The term 'qualified business capitalization expenses' means qualified expenditures for the capitalization of a qualified business pursuant to a qualified plan.

"(ii) Qualified expenditures.—The term 'qualified expenditures' means expenditures included in a qualified plan, including capital, plant, equipment, working capital, and inventory expenses.

"(iii) Qualified business.—The term 'qualified business' means any business that does not contravene any law or public policy (as determined by the Secretary).

"(iv) Qualified plan.—The term 'qualified plan' means a business plan, or a plan to use a business asset purchased, which—

"(I) is approved by a financial institution, a microenterprise development organization, or a nonprofit loan fund having demonstrated fiduciary integrity;

"(II) includes a description of services or goods to be sold, a marketing plan, and projected financial statements; and

"(III) may require the eligible individual to obtain the assistance of an experienced entrepreneurial adviser.

"(D) Transfers to idas of family members.—Amounts paid from an individual development account directly into another such account established for the benefit of an eligible individual who is—

"(i) the individual's spouse; or

"(ii) any dependent of the individual with respect to whom the individual is allowed a deduction under section 151 of the Internal Revenue Code of 1986 [26 U.S.C. 151].

"(9) Qualified savings of the individual for the period.—The term 'qualified savings of the individual for the period' means the aggregate of the amounts contributed by an individual to the individual development account of the individual during the period.

"(10) Secretary.—The term 'Secretary' means the Secretary of Health and Human Services, acting through the Director of Community Services.

"(11) Tribal government.—The term 'tribal government' means a tribal organization, as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) [now 25 U.S.C. 5304] or a Native Hawaiian organization, as defined in section 6207 of the Native Hawaiian Education Act [20 U.S.C. 7517].

"SEC. 405. APPLICATIONS.

"(a) Announcement of Demonstration Projects.—Not later than 3 months after the date of enactment of this title [Oct. 27, 1998], the Secretary shall publicly announce the availability of funding under this title for demonstration projects and shall ensure that applications to conduct the demonstration projects are widely available to qualified entities.

"(b) Submission.—Not later than 6 months after the date of enactment of this title, a qualified entity may submit to the Secretary an application to conduct a demonstration project under this title.

"(c) Criteria.—In considering whether to approve an application to conduct a demonstration project under this title, the Secretary shall assess the following:

"(1) Sufficiency of project.—The degree to which the project described in the application appears likely to aid project participants in achieving economic self-sufficiency through activities requiring one or more qualified expenses.

"(2) Administrative ability.—The experience and ability of the applicant to responsibly administer the project.

"(3) Ability to assist participants.—The experience and ability of the applicant in recruiting, educating, and assisting project participants to increase their economic independence and general well-being through the development of assets.

"(4) Commitment of non-federal funds.—The aggregate amount of direct funds from non-Federal public sector and from private sources that are formally committed to the project as matching contributions.

"(5) Adequacy of plan for providing information for evaluation.—The adequacy of the plan for providing information relevant to an evaluation of the project.

"(6) Other factors.—Such other factors relevant to the purposes of this title as the Secretary may specify.

"(d) Preferences.—In considering an application to conduct a demonstration project under this title, the Secretary shall give preference to an application that—

"(1) demonstrates the willingness and ability to select individuals described in section 408 who are predominantly from households in which a child (or children) is living with the child's biological or adoptive mother or father, or with the child's legal guardian;

"(2) provides a commitment of non-Federal funds with a proportionately greater amount of such funds committed from private sector sources; and

"(3) targets such individuals residing within one or more relatively well-defined neighborhoods or communities (including rural communities) that experience high rates of poverty or unemployment.

"(e) Approval.—Not later than 9 months after the date of enactment of this title [Oct. 27, 1998], the Secretary shall, on a competitive basis, approve such applications to conduct demonstration projects under this title as the Secretary considers to be appropriate, taking into account the assessments required by subsections (c) and (d). The Secretary shall ensure, to the maximum extent practicable, that the applications that are approved involve a range of communities (both rural and urban) and diverse populations.

"(f) Contracts With Nonprofit Entities.—The Secretary may contract with an entity described in section 501(c)(3) of the Internal Revenue Code of 1986 [26 U.S.C. 501(c)(3)] and exempt from

taxation under section 501(a) of such Code to carry out any responsibility of the Secretary under this section or section 412 if—

"(1) such entity demonstrates the ability to carry out such responsibility; and

"(2) the Secretary can demonstrate that such responsibility would not be carried out by the Secretary at a lower cost.

"(g) Grandfathering of Existing Statewide Programs.—Any statewide individual asset-building program that is carried out in a manner consistent with the purposes of this title, that is established under State law as of the date of enactment of this Act [Oct. 27, 1998], and that as of such date is operating with an annual State appropriation of not less than \$1,000,000 in non-Federal funds, shall be deemed to meet the eligibility requirements of this subtitle [title], and the entity carrying out the program shall be deemed to be a qualified entity. The Secretary shall consider funding the statewide program as a demonstration project described in this subtitle [title]. In considering the statewide program for funding, the Secretary shall review an application submitted by the entity carrying out such statewide program under this section, notwithstanding the preference requirements listed in subsection (d). Any program requirements under sections 407 through 411 that are inconsistent with State statutory requirements in effect on the date of enactment of this Act, governing such statewide program, shall not apply to the program.

"SEC. 406. DEMONSTRATION AUTHORITY; ANNUAL GRANTS.

"(a) Demonstration Authority.—If the Secretary approves an application to conduct a demonstration project under this title, the Secretary shall, not later than 10 months after the date of enactment of this title [Oct. 27, 1998], authorize the applicant to conduct the project for 5 project years in accordance with the approved application and the requirements of this title.

"(b) Grant Authority.—For each project year of a demonstration project conducted under this title, the Secretary may make a grant to the qualified entity authorized to conduct the project. In making such a grant, the Secretary shall make the grant on the first day of the project year in an amount not to exceed the lesser of—

"(1) the aggregate amount of funds committed as matching contributions from non-Federal public or private sector sources; or

"(2) \$1,000,000.

"SEC. 407. RESERVE FUND.

"(a) Establishment.—A qualified entity under this title, other than a State or local government agency or a tribal government, shall establish a Reserve Fund that shall be maintained in accordance with this section.

"(b) Amounts in Reserve Fund.—

"(1) In general.—As soon after receipt as is practicable, a qualified entity shall deposit in the Reserve Fund established under subsection (a)—

"(A) all funds provided to the qualified entity from any public or private source in connection with the demonstration project; and

"(B) the proceeds from any investment made under subsection (c)(2).

"(2) Uniform accounting regulations.—The Secretary shall prescribe regulations with respect to accounting for amounts in the Reserve Fund established under subsection (a).

"(c) Use of Amounts in the Reserve Fund.—

"(1) In general.—A qualified entity shall use the amounts in the Reserve Fund established under subsection (a) to—

"(A) assist participants in the demonstration project in obtaining the skills (including economic literacy, budgeting, credit, and counseling skills) and information necessary to achieve economic self-sufficiency through activities requiring qualified expenses;

"(B) provide deposits in accordance with section 410 for individuals selected by the qualified entity to participate in the demonstration project;

"(C) administer the demonstration project; and

"(D) provide the research organization evaluating the demonstration project under section 414 with such information with respect to the demonstration project as may be required for the evaluation.

"(2) Authority to invest funds.—

"(A) Guidelines.—The Secretary shall establish guidelines for investing amounts in the Reserve Fund established under subsection (a) in a manner that provides an appropriate balance between return, liquidity, and risk.

"(B) Investment.—A qualified entity shall invest the amounts in its Reserve Fund that are not immediately needed to carry out the provisions of paragraph (1), in accordance with the guidelines established under subparagraph (A).

"(3) Limitation on uses.—Not more than 15 percent of the amounts provided to a qualified entity under section 406(b) shall be used by the qualified entity for the purposes described in subparagraphs (A), (C), and (D) of paragraph (1), of which not less than 2 percent of the amounts shall be used by the qualified entity for the purposes described in paragraph (1)(D). Of the total amount specified in this paragraph, not more than 7.5 percent shall be used for administrative functions under paragraph (1)(C), including program management, reporting requirements, recruitment and enrollment of individuals, and monitoring. The remainder of the total amount specified in this paragraph (not including the amount specified for use for the purposes described in paragraph (1)(D)) shall be used for nonadministrative functions described in paragraph (1)(A), including case management, budgeting, economic literacy, and credit counseling. If the cost of nonadministrative functions described in paragraph (1)(A) is less than 5.5 percent of the total amount specified in this paragraph, such excess funds may be used for administrative functions. If two or more qualified entities are jointly administering a project, no qualified entity shall use more than its proportional share for the purposes described in subparagraphs (A), (C), and (D) of paragraph (1).

"(d) Unused Federal Grant Funds Transferred to the Secretary When Project Terminates.—
Notwithstanding subsection (c), upon the termination of any demonstration project authorized under this section, the qualified entity conducting the project shall transfer to the Secretary an amount equal to—

"(1) the amounts in its Reserve Fund at the time of the termination; multiplied by

"(2) a percentage equal to—

"(A) the aggregate amount of grants made to the qualified entity under section 406(b); divided by

"(B) the aggregate amount of all funds provided to the qualified entity from all sources to conduct the project.

"SEC. 408. ELIGIBILITY FOR PARTICIPATION.

"(a) In General.—Any individual who is a member of a household that is eligible for assistance under the State temporary assistance for needy families program established under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), or that meets each of the following requirements shall be eligible to participate in a demonstration project conducted under this title:

"(1) Income test.—The adjusted gross income of the household is equal to or less than 200 percent of the poverty line (as determined by the Office of Management and Budget) or the earned income amount described in section 32 of the Internal Revenue Code of 1986 [26 U.S.C. 32] (taking into account the size of the household).

"(2) Net worth test.—

"(A) In general.—The net worth of the household, as of the end of the calendar year preceding the determination of eligibility, does not exceed \$10,000.

"(B) Determination of net worth.—For purposes of subparagraph (A), the net worth of a household is the amount equal to—

"(i) the aggregate market value of all assets that are owned in whole or in part by any member of the household; minus

"(ii) the obligations or debts of any member of the household.

"(C) Exclusions.—For purposes of determining the net worth of a household, a household's assets shall not be considered to include the primary dwelling unit and one motor vehicle owned by a member of the household.

"(b) Individuals Unable To Complete the Project.—The Secretary shall establish such regulations as are necessary to ensure compliance with this title if an individual participating in the demonstration project moves from the community in which the project is conducted or is otherwise unable to continue participating in that project, including regulations prohibiting future eligibility to participate in any other demonstration project conducted under this title.

"SEC. 409. SELECTION OF INDIVIDUALS TO PARTICIPATE.

"From among the individuals eligible to participate in a demonstration project conducted under this title, each qualified entity shall select the individuals—

"(1) that the qualified entity determines to be best suited to participate; and

"(2) to whom the qualified entity will provide deposits in accordance with section 410.

"SEC. 410. DEPOSITS BY QUALIFIED ENTITIES.

"(a) In General.—Not less than once every 3 months during each project year, each qualified entity under this title shall deposit in the individual development account of each individual participating in the project, or into a parallel account maintained by the qualified entity—

"(1) from the non-Federal funds described in section 405(c)(4), a matching contribution of not less than \$0.50 and not more than \$4 for every \$1 of earned income (as defined in section 911(d)(2) of the Internal Revenue Code of 1986 [26 U.S.C. 911(d)(2)]) deposited in the account by a project participant during that period;

"(2) from the grant made under section 406(b), an amount equal to the matching contribution made under paragraph (1); and

"(3) any interest that has accrued on amounts deposited under paragraph (1) or (2) on behalf of that individual into the individual development account of the individual or into a parallel account maintained by the qualified entity.

"(b) Limitation on Deposits for an Individual.—Not more than \$2,000 from a grant made under section 406(b) shall be provided to any one individual over the course of the demonstration project.

"(c) Limitation on Deposits for a Household.—Not more than \$4,000 from a grant made under section 406(b) shall be provided to any one household over the course of the demonstration project.

"(d) Withdrawal of Funds.—The Secretary shall establish such guidelines as may be necessary to ensure that funds held in an individual development account are not withdrawn, except for one or more qualified expenses, or for an emergency withdrawal. Such guidelines shall include a requirement that a responsible official of the qualified entity conducting a project approve a withdrawal from such an account in writing. The guidelines shall provide that no individual may withdraw funds from an individual development account earlier than 6 months after the date on which the individual first deposits funds in the account.

"(e) Reimbursement.—An individual shall reimburse an individual development account for any funds withdrawn from the account for an emergency withdrawal, not later than 12 months after the date of the withdrawal. If the individual fails to make the reimbursement, the qualified entity administering the account shall transfer the funds deposited into the account or a parallel account under this section to the Reserve Fund of the qualified entity, and use the funds to benefit other individuals participating in the demonstration project involved.

"SEC. 411. LOCAL CONTROL OVER DEMONSTRATION PROJECTS.

"A qualified entity under this title, other than a State or local government agency or a tribal government, shall, subject to the provisions of section 413, have sole authority over the administration of the project. The Secretary may prescribe only such regulations or guidelines with respect to demonstration projects conducted under this title as are necessary to ensure compliance with the approved applications and the requirements of this title.

"SEC. 412. ANNUAL PROGRESS REPORTS.

"(a) In General.—Each qualified entity under this title shall prepare an annual report on the progress of the demonstration project. Each report shall include both program and participant information and shall specify for the period covered by the report the following information:

"(1) The number and characteristics of individuals making a deposit into an individual development account.

"(2) The amounts in the Reserve Fund established with respect to the project.

"(3) The amounts deposited in the individual development accounts.

"(4) The amounts withdrawn from the individual development accounts and the purposes for which such amounts were withdrawn.

"(5) The balances remaining in the individual development accounts.

"(6) The savings account characteristics (such as threshold amounts and match rates) required to stimulate participation in the demonstration project, and how such characteristics vary among different populations or communities.

"(7) What service configurations of the qualified entity (such as configurations relating to peer support, structured planning exercises, mentoring, and case management) increased the rate and consistency of participation in the demonstration project and how such configurations varied among different populations or communities.

"(8) Such other information as the Secretary may require to evaluate the demonstration project.

"(b) Submission of Reports.—The qualified entity shall submit each report required to be prepared under subsection (a) to—

"(1) the Secretary; and

"(2) the Treasurer (or equivalent official) of the State in which the project is conducted, if the State or a local government or a tribal government committed funds to the demonstration project.

"(c) Timing.—The first report required by subsection (a) shall be submitted not later than 60 days after the end of the project year in which the Secretary authorized the qualified entity to conduct the

demonstration project, and subsequent reports shall be submitted every 12 months thereafter, until the conclusion of the project.

"SEC. 413. SANCTIONS.

"(a) Authority To Terminate Demonstration Project.—If the Secretary determines that a qualified entity under this title is not operating a demonstration project in accordance with the entity's approved application under section 405 or the requirements of this title (and has not implemented any corrective recommendations directed by the Secretary), the Secretary shall terminate such entity's authority to conduct the demonstration project.

"(b) Actions Required Upon Termination.—If the Secretary terminates the authority to conduct a demonstration project, the Secretary—

"(1) shall suspend the demonstration project;

"(2) shall take control of the Reserve Fund established pursuant to section 407;

"(3) shall make every effort to identify another qualified entity (or entities) willing and able to conduct the project in accordance with the approved application (or, if modification is necessary to incorporate the recommendations, the application as modified) and the requirements of this title;

"(4) shall, if the Secretary identifies an entity (or entities) described in paragraph (3)—

"(A) authorize the entity (or entities) to conduct the project in accordance with the approved application (or, if modification is necessary to incorporate the recommendations, the application as modified) and the requirements of this title;

"(B) transfer to the entity (or entities) control over the Reserve Fund established pursuant to section 407; and

"(C) consider, for purposes of this title—

"(i) such other entity (or entities) to be the qualified entity (or entities) originally authorized to conduct the demonstration project; and

"(ii) the date of such authorization to be the date of the original authorization; and

"(5) if, by the end of the 1-year period beginning on the date of the termination, the Secretary has not found a qualified entity (or entities) described in paragraph (3), shall—

"(A) terminate the project; and

"(B) from the amount remaining in the Reserve Fund established as part of the project, remit to each source that provided funds under section 405(c)(4) to the entity originally authorized to conduct the project, an amount that bears the same ratio to the amount so remaining as the amount provided from the source under section 405(c)(4) bears to the amount provided from all such sources under that section.

"SEC. 414. EVALUATIONS.

"(a) In General.—Not later than 10 months after the date of enactment of this title [Oct. 27, 1998], the Secretary shall enter into a contract with an independent research organization to evaluate the demonstration projects conducted under this title, individually and as a group, including evaluating all qualified entities participating in and sources providing funds for the demonstration projects conducted under this title.

"(b) Factors To Evaluate.—In evaluating any demonstration project conducted under this title, the research organization shall address the following factors:

"(1) The effects of incentives and organizational or institutional support on savings behavior in the demonstration project.

"(2) The savings rates of individuals in the demonstration project based on demographic characteristics including gender, age, family size, race or ethnic background, and income.

"(3) The economic, civic, psychological, and social effects of asset accumulation, and how such effects vary among different populations or communities.

"(4) The effects of individual development accounts on savings rates, homeownership, level of postsecondary education attained, and self-employment, and how such effects vary among different populations or communities.

"(5) The potential financial returns to the Federal Government and to other public sector and private sector investors in individual development accounts over a 5-year and 10-year period of time.

"(6) The lessons to be learned from the demonstration projects conducted under this title and if a permanent program of individual development accounts should be established.

"(7) Such other factors as may be prescribed by the Secretary.

"(c) Methodological Requirements.—In evaluating any demonstration project conducted under this title, the research organization shall—

"(1) for at least one site, use control groups to compare participants with nonparticipants;

"(2) before, during, and after the project, obtain such quantitative data as are necessary to evaluate the project thoroughly; and

"(3) develop a qualitative assessment, derived from sources such as in-depth interviews, of how asset accumulation affects individuals and families.

"(d) Reports by the Secretary.—

"(1) Interim reports.—Not later than 90 days after the end of the project year in which the Secretary first authorizes a qualified entity to conduct a demonstration project under this title, and every 12 months thereafter until all demonstration projects conducted under this title are completed, the Secretary shall submit to Congress an interim report setting forth the results of the reports submitted pursuant to section 412(b).

"(2) Final reports.—Not later than 12 months after the conclusion of all demonstration projects conducted under this title, the Secretary shall submit to Congress a final report setting forth the results and findings of all reports and evaluations conducted pursuant to this title.

"(e) Evaluation Expenses.—Of the amount appropriated under section 416 for a fiscal year, the Secretary may expend not more than \$500,000 for such fiscal year to carry out the objectives of this section.

"SEC. 415. NO REDUCTION IN BENEFITS.

"Notwithstanding any other provision of Federal law (other than the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.]) that requires consideration of one or more financial circumstances of an individual, for the purpose of determining eligibility to receive, or the amount of, any assistance or benefit authorized by such law to be provided to or for the benefit of such individual, funds (including interest accruing) in an individual development account under this Act [see Short Title of 1998 Amendment note set out under section 9801 of this title] shall be disregarded for such purpose with respect to any period during which such individual maintains or makes contributions into such an account.

"SEC. 416. AUTHORIZATION OF APPROPRIATIONS.

"There is authorized to be appropriated to carry out this title, \$25,000,000 for each of fiscal years 1999, 2000, 2001, 2002, and 2003, to remain available until expended."

[Pub. L. 106–554, §1(a)(1) [title VI, §607(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-76, provided that: "Notwithstanding the amendment made by subsection (a) [amending section 412(c) of Pub. L. 105–285, set out above], the submission of the initial report of a qualified entity under section 412(c) [section 412(c) of Pub. L. 105–285, set out above] shall not be required prior to the date that is 90 days after the date of enactment of this title [Dec. 21, 2000]."]

[Pub. L. 106–554, §1(a)(1) [title VI, §608(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-76, provided that: "Notwithstanding the amendment made by subsection (a) [amending section 414(d)(1) of Pub. L. 105–285, set out above], the submission of the initial interim report of the Secretary under section 412(c) [section 412(c) of Pub. L. 105–285, set out above] shall not be required prior to the date that is 90 days after the date of enactment of this title [Dec. 21, 2000]."]

1 See References in Text note below.

§604a. Services provided by charitable, religious, or private organizations

(a) In general

(1) State options

A State may—

(A) administer and provide services under the programs described in subparagraphs (A) and (B)(i) of paragraph (2) through contracts with charitable, religious, or private organizations; and

(B) provide beneficiaries of assistance under the programs described in subparagraphs (A) and (B)(i) of paragraph (2) with certificates, vouchers, or other forms of disbursement which are redeemable with such organizations.

(2) Programs described

The programs described in this paragraph are the following programs:

(A) A State program funded under this part (as amended by section 103(a) of this Act).

(B) Any other program established or modified under title I or II of this Act, that—

(i) permits contracts with organizations; or

(ii) permits certificates, vouchers, or other forms of disbursement to be provided to beneficiaries, as a means of providing assistance.

(b) Religious organizations

The purpose of this section is to allow States to contract with religious organizations, or to allow religious organizations to accept certificates, vouchers, or other forms of disbursement under any program described in subsection (a)(2), on the same basis as any other nongovernmental provider without impairing the religious character of such organizations, and without diminishing the religious freedom of beneficiaries of assistance funded under such program.

(c) Nondiscrimination against religious organizations

In the event a State exercises its authority under subsection (a), religious organizations are eligible, on the same basis as any other private organization, as contractors to provide assistance, or to accept certificates, vouchers, or other forms of disbursement, under any program described in subsection

(a)(2) so long as the programs are implemented consistent with the Establishment Clause of the United States Constitution. Except as provided in subsection (k), neither the Federal Government nor a State receiving funds under such programs shall discriminate against an organization which is or applies to be a contractor to provide assistance, or which accepts certificates, vouchers, or other forms of disbursement, on the basis that the organization has a religious character.

(d) Religious character and freedom

(1) Religious organizations

A religious organization with a contract described in subsection (a)(1)(A), or which accepts certificates, vouchers, or other forms of disbursement under subsection (a)(1)(B), shall retain its independence from Federal, State, and local governments, including such organization's control over the definition, development, practice, and expression of its religious beliefs.

(2) Additional safeguards

Neither the Federal Government nor a State shall require a religious organization to—

(A) alter its form of internal governance; or

(B) remove religious art, icons, scripture, or other symbols;

in order to be eligible to contract to provide assistance, or to accept certificates, vouchers, or other forms of disbursement, funded under a program described in subsection (a)(2).

(e) Rights of beneficiaries of assistance

(1) In general

If an individual described in paragraph (2) has an objection to the religious character of the organization or institution from which the individual receives, or would receive, assistance funded under any program described in subsection (a)(2), the State in which the individual resides shall provide such individual (if otherwise eligible for such assistance) within a reasonable period of time after the date of such objection with assistance from an alternative provider that is accessible to the individual and the value of which is not less than the value of the assistance which the individual would have received from such organization.

(2) Individual described

An individual described in this paragraph is an individual who receives, applies for, or requests to apply for, assistance under a program described in subsection (a)(2).

(f) 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)(2).

(g) Nondiscrimination against beneficiaries

Except as otherwise provided in law, a religious organization shall not discriminate against an individual in regard to rendering assistance funded under any program described in subsection (a)(2) on the basis of religion, a religious belief, or refusal to actively participate in a religious practice.

(h) Fiscal accountability

(1) In general

Except as provided in paragraph (2), any religious organization contracting to provide assistance funded under any program described in subsection (a)(2) shall be subject to the same regulations as other contractors to account in accord with generally accepted auditing principles for the use of such funds provided under such programs.

(2) Limited audit

If such organization segregates Federal funds provided under such programs into separate accounts, then only the financial assistance provided with such funds shall be subject to audit.

(i) Compliance

Any party which seeks to enforce its rights under this section may assert a civil action for injunctive relief exclusively in an appropriate State court against the entity or agency that allegedly commits such violation.

(j) Limitations on use of funds for certain purposes

No funds provided directly to institutions or organizations to provide services and administer programs under subsection (a)(1)(A) shall be expended for sectarian worship, instruction, or proselytization.

(k) Preemption

Nothing in this section shall be construed to preempt any provision of a State constitution or State statute that prohibits or restricts the expenditure of State funds in or by religious organizations.

(Pub. L. 104–193, title I, §104, Aug. 22, 1996, 110 Stat. 2161.)

References in Text

Section 103(a) of this Act, referred to in subsec. (a)(2)(A), means section 103(a) of Pub. L. 104–193, which enacted this part and struck out former part A of this subchapter, except for section 618. For complete classification of section 103(a) to the Code, see Tables.

Titles I and II of this Act, referred to in subsec. (a)(2)(B), means titles I and II of Pub. L. 104–193, Aug. 22, 1996, 110 Stat. 2110, 2185. For complete classification of these titles to the Code, see Tables.

Codification

Section was enacted as part of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and not as part of the Social Security Act which comprises this chapter.

Effective Date

Section 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 a note under section 601 of this title.

§605. Administrative provisions

(a) Quarterly

The Secretary shall pay each grant payable to a State under section 603 of this title in quarterly installments, subject to this section.

(b) Notification

Not later than 3 months before the payment of any such quarterly installment to a State, the Secretary shall notify the State of the amount of any reduction determined under section 612(a)(1)(B) of this title with respect to the State.

(c) Computation and certification of payments to States

(1) Computation

The Secretary shall estimate the amount to be paid to each eligible State for each quarter under this part, such estimate to be based on a report filed by the State containing an estimate by the State of the total sum to be expended by the State in the quarter under the State program funded under this part and such other information as the Secretary may find necessary.

(2) Certification

The Secretary of Health and Human Services shall certify to the Secretary of the Treasury the amount estimated under paragraph (1) with respect to a State, reduced or increased to the extent of any overpayment or underpayment which the Secretary of Health and Human Services determines was made under this part to the State for any prior quarter and with respect to which adjustment has not been made under this paragraph.

(d) Payment method

Upon receipt of a certification under subsection (c)(2) with respect to a State, the Secretary of the Treasury shall, through the Fiscal Service of the Department of the Treasury and before audit or settlement by the Government Accountability Office, pay to the State, at the time or times fixed by the Secretary of Health and Human Services, the amount so certified.

(Aug. 14, 1935, ch. 531, title IV, §405, as added Pub. L. 104–193, title I, §103(a)(1), Aug. 22, 1996, 110 Stat. 2128; amended Pub. L. 105–33, title V, §5514(c), Aug. 5, 1997, 111 Stat. 620; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814.)

Prior Provisions

A prior section 605, acts Aug. 14, 1935, ch. 531, title IV, §405, 49 Stat. 629; July 25, 1962, Pub. L. 87–543, title I, §107(a), 76 Stat. 188, related to use of payments for benefit of children, prior to repeal by Pub. L. 104–193, §103(a)(1), as amended by Pub. L. 105–33, title V, §5514(c), Aug. 5, 1997, 111 Stat. 620.

Amendments

2004—Subsec. (d). Pub. L. 108–271 substituted "Government Accountability Office" for "General Accounting Office".

1997—Pub. L. 105–33 made technical amendment to directory language of Pub. L. 104–193, §103(a)(1), which enacted this section.

Effective Date of 1997 Amendment

Amendment by Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 862a of Title 21, Food and Drugs.

Effective Date

Section 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 a note under section 601 of this title.

§606. Federal loans for State welfare programs

(a) Loan authority

(1) In general

The Secretary shall make loans to any loan-eligible State, for a period to maturity of not more than 3 years.

(2) Loan-eligible State

As used in paragraph (1), the term "loan-eligible State" means a State against which a penalty has not been imposed under section 609(a)(1) of this title.

(b) Rate of interest

The Secretary shall charge and collect interest on any loan made under this section at a rate equal to the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the period to maturity of the loan.

(c) Use of loan

A State shall use a loan made to the State under this section only for any purpose for which grant amounts received by the State under section 603(a) of this title may be used, including—

(1) welfare anti-fraud activities; and

(2) the provision of assistance under the State program to Indian families that have moved from the service area of an Indian tribe with a tribal family assistance plan approved under section 612 of this title.

(d) Limitation on total amount of loans to State

The cumulative dollar amount of all loans made to a State under this section during fiscal years 1997 through 2003 shall not exceed 10 percent of the State family assistance grant.

(e) Limitation on total amount of outstanding loans

The total dollar amount of loans outstanding under this section may not exceed \$1,700,000,000.

(f) Appropriation

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated such sums as may be necessary for the cost of loans under this section.

(Aug. 14, 1935, ch. 531, title IV, §406, as added Pub. L. 104–193, title I, §103(a)(1), Aug. 22, 1996, 110 Stat. 2128; amended Pub. L. 105–33, title V, §5514(c), Aug. 5, 1997, 111 Stat. 620; Pub. L. 108–40, §3(f), June 30, 2003, 117 Stat. 837.)

Prior Provisions

A prior section 606, acts Aug. 14, 1935, ch. 531, title IV, §406, 49 Stat. 629; Aug. 10, 1939, ch. 666, title IV, §403, 53 Stat. 1380; Aug. 28, 1950, ch. 809, title III, pt. 2, §323(a), 64 Stat. 551; Aug. 1, 1956, ch. 836, title III, §§321, 322, 351(b), 70 Stat. 850, 855; July 25, 1962, Pub. L. 87–543, title I, §§104(a)(3)(D), 108(a), 109, 152, 156(b), 76 Stat. 185, 189, 190, 206, 207; Oct. 13, 1964, Pub. L. 88–641, §2(a), 78 Stat. 1042; July 30, 1965, Pub. L. 89–97, title IV, §409, 79 Stat. 422; Jan. 2, 1968, Pub. L. 90–248, title II, §§201(f), 206(b), 207(a), 241(b)(5), 81 Stat. 880, 893, 916; Jan. 4, 1975, Pub. L. 93–647, §§3(a)(5), 101(c)(7), 88 Stat. 2348, 2360; Nov. 12, 1977, Pub. L. 95–171, §3(a)(2), 91 Stat.

1354; Dec. 28, 1980, Pub. L. 96-611, §4, 94 Stat. 3567; Aug. 13, 1981, Pub. L. 97-35, title XXI, §2184(b)(2), title XXIII, §§2311, 2312, 2317(b), 2353(b)(1), 95 Stat. 817, 852, 853, 856, 872; Sept. 3, 1982, Pub. L. 97-248, title I, §153(a), 96 Stat. 396; July 18, 1984, Pub. L. 98-369, div. B, title III, §2361(c), title VI, §2663(c)(3)(A), (B)(i), 98 Stat. 1104, 1166; Aug. 16, 1984, Pub. L. 98-378, §20(a), 98 Stat. 1322, related to definitions used in this part, prior to repeal by Pub. L. 104-193, §103(a)(1), as amended by Pub. L. 105-33, title V, §5514(c), Aug. 5, 1997, 111 Stat. 620.

Amendments

2003—Subsec. (d). Pub. L. 108-40 substituted "2003" for "2002".

1997—Pub. L. 105-33 made technical amendment to directory language of Pub. L. 104-193, §103(a)(1), which enacted this section.

Effective Date of 2003 Amendment

Amendment by Pub. L. 108-40 effective July 1, 2003, see section 8 of Pub. L. 108-40, set out as a note under section 603 of this title.

Effective Date of 1997 Amendment

Amendment by Pub. L. 105-33 effective as if included in the provision of Pub. L. 104-193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105-33, set out as a note under section 862a of Title 21, Food and Drugs.

Effective Date

Section 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 a note under section 601 of this title.

§607. Mandatory work requirements

(a) Participation rate requirements

(1) All families

A State to which a grant is made under section 603 of this title for a fiscal year shall achieve the minimum participation rate specified in the following table for the fiscal year with respect to all families receiving assistance under the State program funded under this part or any other State program funded with qualified State expenditures (as defined in section 609(a)(7)(B)(i) of this title):

If the fiscal year is:	The minimum participation rate is:
1997	25
1998	30
1999	35
2000	40
2001	45
2002 or thereafter	50.

(2) 2-parent families

A State to which a grant is made under section 603 of this title for a fiscal year shall achieve the minimum participation rate specified in the following table for the fiscal year with respect to 2-parent families receiving assistance under the State program funded under this part or any other State program funded with qualified State expenditures (as defined in section 609(a)(7)(B)(i) of this title):

If the fiscal year is:	The minimum participation rate is:
1997	75
1998	75
1999 or thereafter	90.

(b) Calculation of participation rates

(1) All families

(A) Average monthly rate

For purposes of subsection (a)(1), the participation rate for all families of a State for a fiscal year is the average of the participation rates for all families of the State for each month in the fiscal year.

(B) Monthly participation rates

The participation rate of a State for all families of the State for a month, expressed as a percentage, is—

(i) the number of families receiving assistance under the State program funded under this part or any other State program funded with qualified State expenditures (as defined in section 609(a)(7)(B)(i) of this title) that include an adult or a minor child head of household who is engaged in work for the month; divided by

(ii) the amount by which—

(I) the number of families receiving such assistance during the month that include an adult or a minor child head of household receiving such assistance; exceeds

(II) the number of families receiving such assistance that are subject in such month to a penalty described in subsection (e)(1) but have not been subject to such penalty for more than 3 months within the preceding 12-month period (whether or not consecutive).

(2) 2-parent families

(A) Average monthly rate

For purposes of subsection (a)(2), the participation rate for 2-parent families of a State for a fiscal year is the average of the participation rates for 2-parent families of the State for each month in the fiscal year.

(B) Monthly participation rates

The participation rate of a State for 2-parent families of the State for a month shall be calculated by use of the formula set forth in paragraph (1)(B), except that in the formula the term "number of 2-parent families" shall be substituted for the term "number of families" each place such latter term appears.

(C) Family with a disabled parent not treated as a 2-parent family

A family that includes a disabled parent shall not be considered a 2-parent family for purposes of subsections (a) and (b) of this section.

(3) Pro rata reduction of participation rate due to caseload reductions not required by Federal law and not resulting from changes in State eligibility criteria

(A) In general

The Secretary shall prescribe regulations for reducing the minimum participation rate otherwise required by this section for a fiscal year by the number of percentage points equal to the number of percentage points (if any) by which—

(i) the average monthly number of families receiving assistance during the immediately preceding fiscal year under the State program funded under this part or any other State program funded with qualified State expenditures (as defined in section 609(a)(7)(B)(i) of this title) is less than

(ii) the average monthly number of families that received assistance under any State program referred to in clause (i) during fiscal year 2005.

The minimum participation rate shall not be reduced to the extent that the Secretary determines that the reduction in the number of families receiving such assistance is required by Federal law.

(B) Eligibility changes not counted

The regulations required by subparagraph (A) shall not take into account families that are diverted from a State program funded under this part as a result of differences in eligibility criteria under a State program funded under this part and the eligibility criteria in effect during fiscal year 2005. Such regulations shall place the burden on the Secretary to prove that such families were diverted as a direct result of differences in such eligibility criteria.

(4) State option to include individuals receiving assistance under a tribal family assistance plan or tribal work program

For purposes of paragraphs (1)(B) and (2)(B), a State may, at its option, include families in the State that are receiving assistance under a tribal family assistance plan approved under section 612 of this title or under a tribal work program to which funds are provided under this part.

(5) State option for participation requirement exemptions

For any fiscal year, a State may, at its option, not require an individual who is a single custodial parent caring for a child who has not attained 12 months of age to engage in work, and may disregard such an individual in determining the participation rates under subsection (a) for not more than 12 months.

(c) Engaged in work

(1) General rules

(A) All families

For purposes of subsection (b)(1)(B)(i), a recipient is engaged in work for a month in a fiscal year if the recipient is participating in work activities for at least the minimum average number of hours per week specified in the following table during the month, not fewer than 20 hours per week of which are attributable to an activity described in paragraph (1), (2), (3), (4), (5), (6), (7), (8), or (12) of subsection (d), subject to this subsection:

If the month is in fiscal year:	The minimum average number of hours per week is:
1997	20
1998	20
1999	25
2000 or thereafter	30.

(B) 2-parent families

For purposes of subsection (b)(2)(B), an individual is engaged in work for a month in a fiscal year if—

(i) the individual and the other parent in the family are participating in work activities for a total of at least 35 hours per week during the month, not fewer than 30 hours per week of which are attributable to an activity described in paragraph (1), (2), (3), (4), (5), (6), (7), (8), or (12) of subsection (d), subject to this subsection; and

(ii) if the family of the individual receives federally-funded child care assistance and an adult in the family is not disabled or caring for a severely disabled child, the individual and the other parent in the family are participating in work activities for a total of at least 55 hours per week during the month, not fewer than 50 hours per week of which are attributable to an activity described in paragraph (1), (2), (3), (4), (5), (6), (7), (8), or (12) of subsection (d).

(2) Limitations and special rules

(A) Number of weeks for which job search counts as work

(i) Limitation

Notwithstanding paragraph (1) of this subsection, an individual shall not be considered to be engaged in work by virtue of participation in an activity described in subsection (d)(6) of a State program funded under this part or any other State program funded with qualified State expenditures (as defined in section 609(a)(7)(B)(i) of this title), after the individual has participated in such an activity for 6 weeks (or, if the unemployment rate of the State is at least 50 percent greater than the unemployment rate of the United States or the State is a needy State (within the meaning of section 603(b)(5) of this title), 12 weeks), or if the participation is for a week that immediately follows 4 consecutive weeks of such participation.

(ii) Limited authority to count less than full week of participation

For purposes of clause (i) of this subparagraph, on not more than 1 occasion per individual, the State shall consider participation of the individual in an activity described in subsection (d)(6) for 3 or 4 days during a week as a week of participation in the activity by the individual.

(B) Single parent or relative with child under age 6 deemed to be meeting work participation requirements if parent or relative is engaged in work for 20 hours per week

For purposes of determining monthly participation rates under subsection (b)(1)(B)(i), a recipient who is the only parent or caretaker relative in the family of a child who has not attained 6 years of age is deemed to be engaged in work for a month if the recipient is engaged in work for an average of at least 20 hours per week during the month.

(C) Single teen head of household or married teen who maintains satisfactory school attendance deemed to be meeting work participation requirements

For purposes of determining monthly participation rates under subsection (b)(1)(B)(i), a recipient who is married or a head of household and has not attained 20 years of age is deemed to be engaged in work for a month in a fiscal year if the recipient—

(i) maintains satisfactory attendance at secondary school or the equivalent during the month; or

(ii) participates in education directly related to employment for an average of at least 20 hours per week during the month.

(D) Limitation on number of persons who may be treated as engaged in work by reason of participation in educational activities

For purposes of determining monthly participation rates under paragraphs (1)(B)(i) and (2)(B) of subsection (b), not more than 30 percent of the number of individuals in all families and in 2-parent families, respectively, in a State who are treated as engaged in work for a month may consist of individuals who are determined to be engaged in work for the month by reason of participation in vocational educational training, or (if the month is in fiscal year 2000 or thereafter) deemed to be engaged in work for the month by reason of subparagraph (C) of this paragraph.

(d) "Work activities" defined

As used in this section, the term "work activities" means—

- (1) unsubsidized employment;
- (2) subsidized private sector employment;
- (3) subsidized public sector employment;
- (4) work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available;
- (5) on-the-job training;
- (6) job search and job readiness assistance;
- (7) community service programs;
- (8) vocational educational training (not to exceed 12 months with respect to any individual);
- (9) job skills training directly related to employment;
- (10) education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency;

(11) satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate; and

(12) the provision of child care services to an individual who is participating in a community service program.

(e) Penalties against individuals

(1) In general

Except as provided in paragraph (2), if an individual in a family receiving assistance under the State program funded under this part or any other State program funded with qualified State expenditures (as defined in section 609(a)(7)(B)(i) of this title) refuses to engage in work required in accordance with this section, the State shall—

(A) reduce the amount of assistance otherwise payable to the family pro rata (or more, at the option of the State) with respect to any period during a month in which the individual so refuses; or

(B) terminate such assistance,

subject to such good cause and other exceptions as the State may establish.

(2) Exception

Notwithstanding paragraph (1), a State may not reduce or terminate assistance under the State program funded under this part or any other State program funded with qualified State expenditures (as defined in section 609(a)(7)(B)(i) of this title) based on a refusal of an individual to engage in work required in accordance with this section if the individual is a single custodial parent caring for a child who has not attained 6 years of age, and the individual proves that the individual has a demonstrated inability (as determined by the State) to obtain needed child care, for 1 or more of the following reasons:

(A) Unavailability of appropriate child care within a reasonable distance from the individual's home or work site.

(B) Unavailability or unsuitability of informal child care by a relative or under other arrangements.

(C) Unavailability of appropriate and affordable formal child care arrangements.

(f) Nondisplacement in work activities

(1) In general

Subject to paragraph (2), an adult in a family receiving assistance under a State program funded under this part attributable to funds provided by the Federal Government may fill a vacant employment position in order to engage in a work activity described in subsection (d).

(2) No filling of certain vacancies

No adult in a work activity described in subsection (d) which is funded, in whole or in part, by funds provided by the Federal Government shall be employed or assigned—

(A) when any other individual is on layoff from the same or any substantially equivalent job; or

(B) if the employer has terminated the employment of any regular employee or otherwise caused an involuntary reduction of its workforce in order to fill the vacancy so created with an adult described in paragraph (1).

(3) Grievance procedure

A State with a program funded under this part shall establish and maintain a grievance procedure for resolving complaints of alleged violations of paragraph (2).

(4) No preemption

Nothing in this subsection shall preempt or supersede any provision of State or local law that provides greater protection for employees from displacement.

(g) Sense of Congress

It is the sense of the Congress that in complying with this section, each State that operates a program funded under this part is encouraged to assign the highest priority to requiring adults in 2-parent families and adults in single-parent families that include older preschool or school-age children to be engaged in work activities.

(h) Sense of Congress that States should impose certain requirements on noncustodial, nonsupporting minor parents

It is the sense of the Congress that the States should require noncustodial, nonsupporting parents who have not attained 18 years of age to fulfill community work obligations and attend appropriate parenting or money management classes after school.

(i) Verification of work and work-eligible individuals in order to implement reforms

(1) Secretarial direction and oversight

(A) Regulations for determining whether activities may be counted as "work activities", how to count and verify reported hours of work, and determining who is a work-eligible individual

(i) In general

Not later than June 30, 2006, the Secretary shall promulgate regulations to ensure consistent measurement of work participation rates under State programs funded under this part and State programs funded with qualified State expenditures (as defined in section 609(a)(7)(B)(i) of this title), which shall include information with respect to—

(I) determining whether an activity of a recipient of assistance may be treated as a work activity under subsection (d);

(II) uniform methods for reporting hours of work by a recipient of assistance;

(III) the type of documentation needed to verify reported hours of work by a recipient of assistance; and

(IV) the circumstances under which a parent who resides with a child who is a recipient of assistance should be included in the work participation rates.

(ii) Issuance of regulations on an interim final basis

The regulations referred to in clause (i) may be effective and final immediately on an interim basis as of the date of publication of the regulations. If the Secretary provides for an interim final regulation, the Secretary shall provide for a period of public comment on the regulation after the date of publication. The Secretary may change or revise the regulation after the public comment period.

(B) Oversight of State procedures

The Secretary shall review the State procedures established in accordance with paragraph (2) to ensure that such procedures are consistent with the regulations promulgated under subparagraph (A) and are adequate to ensure an accurate measurement of work participation under the State programs funded under this part and any other State programs funded with qualified State expenditures (as so defined).

(2) Requirement for States to establish and maintain work participation verification procedures

Not later than September 30, 2006, a State to which a grant is made under section 603 of this title shall establish procedures for determining, with respect to recipients of assistance under the State program funded under this part or under any State programs funded with qualified State expenditures (as so defined), whether activities may be counted as work activities, how to count and verify reported hours of work, and who is a work-eligible individual, in accordance with the regulations promulgated pursuant to paragraph (1)(A)(i) and shall establish internal controls to ensure compliance with the procedures.

(Aug. 14, 1935, ch. 531, title IV, §407, as added Pub. L. 104–193, title I, §103(a)(1), Aug. 22, 1996, 110 Stat. 2129; amended Pub. L. 105–33, title V, §§5003(a), 5504, 5514(c), Aug. 5, 1997, 111 Stat. 594, 609, 620; Pub. L. 109–171, title VII, §7102(a), (b)(1), (c)(1), Feb. 8, 2006, 120 Stat. 136; Pub. L. 111–5, div. B, title II, §2101(b), (d)(2), Feb. 17, 2009, 123 Stat. 448, 449; Pub. L. 112–96, title IV, §4005(b), Feb. 22, 2012, 126 Stat. 198.)

Prior Provisions

A prior section 607, act Aug. 14, 1935, ch. 531, title IV, §407, as added May 8, 1961, Pub. L. 87–31, §1, 75 Stat. 75; amended July 25, 1962, Pub. L. 87–543, title I, §§104(a)(3)(E), 131(a), 134, 76 Stat. 185, 193, 196; Oct. 13, 1964, Pub. L. 88–641, §2(b), 78 Stat. 1042; June 29, 1967, Pub. L. 90–36, §2, 81 Stat. 94; Jan. 2, 1968, Pub. L. 90–248, title II, §203(a), 81 Stat. 882; June 28, 1968, Pub. L. 90–364, title III, §302, 82 Stat. 273; Dec. 28, 1971, Pub. L. 92–223, §3(a)(10), (11), 85 Stat. 805; Oct. 20, 1976, Pub. L. 94–566, title V, §507(a), (b), (d), 90 Stat. 2688; Aug. 13, 1981, Pub. L. 97–35, title XXIII, §§2313(a), (c)(2), 2353(q), 95 Stat. 853, 854, 874; July 18, 1984, Pub. L. 98–369, div. B, title VI, §2663(c)(4), (j)(3)(B)(ii), 98 Stat. 1166, 1171; Oct. 13, 1988, Pub. L. 100–485, title II, §202(b)(7)–(11), title IV, §401(a)(2)(B), (C), (b)(1), (3), (c), (h), 102 Stat. 2377, 2378, 2394–2396; Nov. 10, 1988, Pub. L. 100–647, title VIII, §8105(1)–(3), (5), 102 Stat. 3797; Dec. 19, 1989, Pub. L. 101–239, title X, §10403(a)(1)(A)(i), (2), 103 Stat. 2487, 2488; Nov. 5, 1990, Pub. L. 101–508, title V, §§5061(a), 5062(a), 104 Stat. 1388–231, 1388–232, related to dependent children of unemployed

parents, prior to repeal by Pub. L. 104–193, §103(a)(1), as amended by Pub. L. 105–33, title V, §5514(c), Aug. 5, 1997, 111 Stat. 620.

Amendments

2012—Subsec. (c)(2)(A)(i). Pub. L. 112–96 substituted "603(b)(5)" for "603(b)(6)".

2009—Subsec. (b)(3)(A)(i). Pub. L. 111–5, §2101(d)(2), struck out "(or if the immediately preceding fiscal year is fiscal year 2008, 2009, or 2010, then, at State option, during the emergency fund base year of the State with respect to the average monthly assistance caseload of the State (within the meaning of section 603(c)(9) of this title), except that, if a State elects such option for fiscal year 2008, the emergency fund base year of the State with respect to such caseload shall be fiscal year 2007))" before "under the State".

Pub. L. 111–5, §2101(b), inserted "(or if the immediately preceding fiscal year is fiscal year 2008, 2009, or 2010, then, at State option, during the emergency fund base year of the State with respect to the average monthly assistance caseload of the State (within the meaning of section 603(c)(9) of this title), except that, if a State elects such option for fiscal year 2008, the emergency fund base year of the State with respect to such caseload shall be fiscal year 2007))" before "under the State".

2006—Subsecs. (a)(1), (2), (b)(1)(B)(i). Pub. L. 109–171, §7102(b)(1), inserted "or any other State program funded with qualified State expenditures (as defined in section 609(a)(7)(B)(i) of this title)" after "this part".

Subsec. (b)(3)(A)(i). Pub. L. 109–171, §7102(a)(1)(A), inserted "or any other State program funded with qualified State expenditures (as defined in section 609(a)(7)(B)(i) of this title)" after "this part".

Subsec. (b)(3)(A)(ii). Pub. L. 109–171, §7102(a)(1)(B), added cl. (ii) and struck out former cl. (ii) which read as follows: "the average monthly number of families that received aid under the State plan approved under part A of this subchapter (as in effect on September 30, 1995) during fiscal year 1995."

Subsec. (b)(3)(B). Pub. L. 109–171, §7102(a)(2), substituted "and the eligibility criteria in effect during fiscal year 2005" for "and eligibility criteria under the State program operated under the State

plan approved under part A of this subchapter (as such plan and such part were in effect on September 30, 1995)".

Subsecs. (c)(2)(A)(i), (e)(1), (2). Pub. L. 109–171, §7102(b)(1), inserted "or any other State program funded with qualified State expenditures (as defined in section 609(a)(7)(B)(i) of this title)" after "this part".

Subsec. (i). Pub. L. 109–171, §7102(c)(1), amended heading and text generally. Prior to amendment, text read as follows: "During fiscal year 1999, the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate shall hold hearings and engage in other appropriate activities to review the implementation of this section by the States, and shall invite the Governors of the States to testify before them regarding such implementation. Based on such hearings, such Committees may introduce such legislation as may be appropriate to remedy any problems with the State programs operated pursuant to this section."

1997—Pub. L. 105–33, §5514(c), made technical amendment to directory language of Pub. L. 104–193, §103(a)(1), which enacted this section.

Subsec. (b)(2)(C). Pub. L. 105–33, §5504(a), added subpar. (C).

Subsec. (b)(3). Pub. L. 105–33, §5504(b), inserted "and not resulting from changes in State eligibility criteria" after "Federal law" in heading.

Subsec. (b)(4). Pub. L. 105–33, §5504(c), inserted "or tribal work program" after "assistance plan" in heading and "or under a tribal work program to which funds are provided under this part" before period at end of text.

Subsec. (c)(1)(B). Pub. L. 105–33, §5504(e), substituted "participating" for "making progress" in cls. (i) and (ii).

Subsec. (c)(1)(B)(i). Pub. L. 105–33, §5504(d)(1), substituted "and the other parent in the family are" for "is" and inserted "a total of" before "at least".

Subsec. (c)(1)(B)(ii). Pub. L. 105–33, §5504(d)(2), substituted "individual and the other parent in the family are" for "individual's spouse is", inserted "for a total of at least 55 hours per week" before "during the month", and substituted "50" for "20" and "(6), (7), (8), or (12)" for "or (7)".

Subsec. (c)(2)(A)(i). Pub. L. 105–33, §5504(f), inserted "or the State is a needy State (within the meaning of section 603(b)(6) of this title)" after "United States".

Subsec. (c)(2)(B). Pub. L. 105–33, §5504(g), inserted "or relative" after "parent" in two places in heading and substituted "who is the only parent or caretaker relative in the family" for "in a 1-parent family who is the parent".

Subsec. (c)(2)(C). Pub. L. 105–33, §5504(h), in heading substituted "Single teen head of household or married teen" for "Teen head of household" and, in introductory provisions, substituted "married or a" for "a single" and struck out ", subject to subparagraph (D) of this paragraph," after "is deemed".

Subsec. (c)(2)(C)(ii). Pub. L. 105–33, §5504(i), substituted "an average of at least 20 hours per week during the month" for "at least the minimum average number of hours per week specified in the table set forth in paragraph (1)(A) of this subsection".

Subsec. (c)(2)(D). Pub. L. 105–33, §5003(a), amended heading and text of subpar. (D) generally. Prior to amendment, text read as follows: "For purposes of determining monthly participation rates under paragraphs (1)(B)(i) and (2)(B) of subsection (b) of this section, not more than 20 percent of individuals in all families and in 2-parent families may be determined to be engaged in work in the State for a month by reason of participation in vocational educational training or deemed to be engaged in work by reason of subparagraph (C) of this paragraph."

Subsec. (e)(2). Pub. L. 105–33, §5504(j), substituted "engage in work required in accordance with this section" for "work" in introductory provisions.

Effective Date of 2009 Amendment

Pub. L. 111–5, div. B, title II, §2101(d)(2), Feb. 17, 2009, 123 Stat. 449, provided that the amendment by section 2101(d)(2) of Pub. L. 111–5 is effective Oct. 1, 2011.

Effective Date of 2006 Amendment

Amendment by section 7102(c)(1) of Pub. L. 109–171 effective as if enacted on Oct. 1, 2005, except as otherwise provided, see section 7701 of Pub. L. 109–171, set out as a note under section 603 of this title.

Pub. L. 109–171, title VII, §7102(d), Feb. 8, 2006, 120 Stat. 137, provided that: "The amendments made by subsections (a) and (b) [amending this section and section 611 of this title] shall take effect on October 1, 2006."

Effective Date of 1997 Amendment

Pub. L. 105–33, title V, §5003(b), Aug. 5, 1997, 111 Stat. 594, provided that: "The amendment made by subsection (a) of this section [amending this section] shall take effect as if included in the enactment of section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [Pub. L. 104–193]."

Amendment by section 5504 of Pub. L. 105–33 effective as if included in section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, at the time such section 103(a) became law, see section 5518(a) of Pub. L. 105–33, set out as a note under section 602 of this title.

Amendment by section 5514(c) of Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 862a of Title 21, Food and Drugs.

Effective Date

Section 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 a note under section 601 of this title.

§608. Prohibitions; requirements

(a) In general

(1) No assistance for families without a minor child

A State to which a grant is made under section 603 of this title shall not use any part of the grant to provide assistance to a family, unless the family includes a minor child who resides with the family (consistent with paragraph (10)) or a pregnant individual.

(2) Reduction or elimination of assistance for noncooperation in establishing paternity or obtaining child support

If the agency responsible for administering the State plan approved under part D determines that an individual is not cooperating with the State in establishing paternity or in establishing, modifying, or enforcing a support order with respect to a child of the individual, and the individual does not qualify for any good cause or other exception established by the State pursuant to section 654(29) of this title, then the State—

(A) shall deduct from the assistance that would otherwise be provided to the family of the individual under the State program funded under this part an amount equal to not less than 25 percent of the amount of such assistance; and

(B) may deny the family any assistance under the State program.

(3) No assistance for families not assigning certain support rights to the State

A State to which a grant is made under section 603 of this title shall require, as a condition of paying assistance to a family under the State program funded under this part, that a member of the family assign to the State any right the family member may have (on behalf of the family member or of any other person for whom the family member has applied for or is receiving such assistance) to support from any other person, not exceeding the total amount of assistance so paid to the family, which accrues during the period that the family receives assistance under the program.

(4) No assistance for teenage parents who do not attend high school or other equivalent training program

A State to which a grant is made under section 603 of this title shall not use any part of the grant to provide assistance to an individual who has not attained 18 years of age, is not married, has a minor child at least 12 weeks of age in his or her care, and has not successfully completed a high-school education (or its equivalent), if the individual does not participate in—

(A) educational activities directed toward the attainment of a high school diploma or its equivalent; or

(B) an alternative educational or training program that has been approved by the State.

(5) No assistance for teenage parents not living in adult-supervised settings

(A) In general

(i) Requirement

Except as provided in subparagraph (B), a State to which a grant is made under section 603 of this title shall not use any part of the grant to provide assistance to an individual described in clause (ii) of this subparagraph if the individual and the minor child referred to in clause (ii)(II) do not reside in a place of residence maintained by a parent, legal guardian, or other adult relative of the individual as such parent's, guardian's, or adult relative's own home.

(ii) Individual described

For purposes of clause (i), an individual described in this clause is an individual who—

(I) has not attained 18 years of age; and

(II) is not married, and has a minor child in his or her care.

(B) Exception

(i) Provision of, or assistance in locating, adult-supervised living arrangement

In the case of an individual who is described in clause (ii), the State agency referred to in section 602(a)(4) of this title shall provide, or assist the individual in locating, a second chance home, maternity home, or other appropriate adult-supervised supportive living arrangement, taking into consideration the needs and concerns of the individual, unless the State agency determines that the individual's current living arrangement is appropriate, and thereafter shall require that the individual and the minor child referred to in subparagraph (A)(ii)(II) reside in such living arrangement as a condition of the continued receipt of assistance under the State program funded under this part attributable to funds provided by the Federal Government (or in an alternative appropriate arrangement, should circumstances change and the current arrangement cease to be appropriate).

(ii) Individual described

For purposes of clause (i), an individual is described in this clause if the individual is described in subparagraph (A)(ii), and—

(I) the individual has no parent, legal guardian, or other appropriate adult relative described in subclause (II) of his or her own who is living or whose whereabouts are known;

(II) no living parent, legal guardian, or other appropriate adult relative, who would otherwise meet applicable State criteria to act as the individual's legal guardian, of such individual allows the individual to live in the home of such parent, guardian, or relative;

(III) the State agency determines that—

(aa) the individual or the minor child referred to in subparagraph (A)(ii)(II) is being or has been subjected to serious physical or emotional harm, sexual abuse, or exploitation in the residence of the individual's own parent or legal guardian; or

(bb) substantial evidence exists of an act or failure to act that presents an imminent or serious harm if the individual and the minor child lived in the same residence with the individual's own parent or legal guardian; or

(IV) the State agency otherwise determines that it is in the best interest of the minor child to waive the requirement of subparagraph (A) with respect to the individual or the minor child.

(iii) Second-chance home

For purposes of this subparagraph, the term "second-chance home" means an entity that provides individuals described in clause (ii) with a supportive and supervised living arrangement in which such individuals are required to learn parenting skills, including child development, family budgeting, health and nutrition, and other skills to promote their long-term economic independence and the well-being of their children.

(6) No medical services

(A) In general

A State to which a grant is made under section 603 of this title shall not use any part of the grant to provide medical services.

(B) Exception for pre-pregnancy family planning services

As used in subparagraph (A), the term "medical services" does not include pre-pregnancy family planning services.

(7) No assistance for more than 5 years

(A) In general

A State to which a grant is made under section 603 of this title shall not use any part of the grant to provide assistance to a family that includes an adult who has received assistance under any State program funded under this part attributable to funds provided by the Federal Government, for 60 months (whether or not consecutive) after the date the State program funded under this part commences, subject to this paragraph.

(B) Minor child exception

In determining the number of months for which an individual who is a parent or pregnant has received assistance under the State program funded under this part, the State shall disregard any month for which such assistance was provided with respect to the individual and during which the individual was—

(i) a minor child; and

(ii) not the head of a household or married to the head of a household.

(C) Hardship exception

(i) In general

The State may exempt a family from the application of subparagraph (A) by reason of hardship or if the family includes an individual who has been battered or subjected to extreme cruelty.

(ii) Limitation

The average monthly number of families with respect to which an exemption made by a State under clause (i) is in effect for a fiscal year shall not exceed 20 percent of the average monthly number of families to which assistance is provided under the State program funded under this part during the fiscal year or the immediately preceding fiscal year (but not both), as the State may elect.

(iii) Battered or subject to extreme cruelty defined

For purposes of clause (i), an individual has been battered or subjected to extreme cruelty if the individual has been subjected to—

(I) physical acts that resulted in, or threatened to result in, physical injury to the individual;

(II) sexual abuse;

(III) sexual activity involving a dependent child;

(IV) being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities;

(V) threats of, or attempts at, physical or sexual abuse;

(VI) mental abuse; or

(VII) neglect or deprivation of medical care.

(D) Disregard of months of assistance received by adult while living in Indian country or an Alaskan Native village with 50 percent unemployment

(i) In general

In determining the number of months for which an adult has received assistance under a State or tribal program funded under this part, the State or tribe shall disregard any month during which the adult lived in Indian country or an Alaskan Native village if the most reliable data available with respect to the month (or a period including the month) indicate that at least 50 percent of the adults living in Indian country or in the village were not employed.

(ii) "Indian country" defined

As used in clause (i), the term "Indian country" has the meaning given such term in section 1151 of title 18.

(E) Rule of interpretation

Subparagraph (A) shall not be interpreted to require any State to provide assistance to any individual for any period of time under the State program funded under this part.

(F) Rule of interpretation

This part shall not be interpreted to prohibit any State from expending State funds not originating with the Federal Government on benefits for children or families that have become ineligible for assistance under the State program funded under this part by reason of subparagraph (A).

(G) Inapplicability to welfare-to-work grants and assistance

For purposes of subparagraph (A) of this paragraph, a grant made under section 603(a)(5) of this title shall not be considered a grant made under section 603 of this title, and noncash assistance from funds provided under section 603(a)(5) of this title shall not be considered assistance.

(8) Denial of assistance for 10 years to a person found to have fraudulently misrepresented residence in order to obtain assistance in 2 or more States

A State to which a grant is made under section 603 of this title shall not use any part of the grant to provide cash assistance to an individual during the 10-year period that begins on the date the individual is convicted in Federal or State court of having made a fraudulent statement or representation with respect to the place of residence of the individual in order to receive assistance simultaneously from 2 or more States under programs that are funded under this subchapter, subchapter XIX, or the Food and Nutrition Act of 2008 [7 U.S.C. 2011 et seq.], or benefits in 2 or more States under the supplemental security income program under subchapter XVI. The preceding sentence shall not apply with respect to a conviction of an individual, for any month beginning after the President of the United States grants a pardon with respect to the conduct which was the subject of the conviction.

(9) Denial of assistance for fugitive felons and probation and parole violators

(A) In general

A State to which a grant is made under section 603 of this title shall not use any part of the grant to provide assistance to any individual who is—

(i) fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which the individual flees, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the individual flees, or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of such State; or

(ii) violating a condition of probation or parole imposed under Federal or State law.

The preceding sentence shall not apply with respect to conduct of an individual, for any month beginning after the President of the United States grants a pardon with respect to the conduct.

(B) Exchange of information with law enforcement agencies

If a State to which a grant is made under section 603 of this title establishes safeguards against the use or disclosure of information about applicants or recipients of assistance under the State program funded under this part, the safeguards shall not prevent the State agency administering the program from furnishing a Federal, State, or local law enforcement officer, upon the request of the officer, with the current address of any recipient if the officer furnishes the agency with the name of the recipient and notifies the agency that—

(i) the recipient—

(I) is described in subparagraph (A); or

(II) has information that is necessary for the officer to conduct the official duties of the officer; and

(ii) the location or apprehension of the recipient is within such official duties.

(10) Denial of assistance for minor children who are absent from the home for a significant period

(A) In general

A State to which a grant is made under section 603 of this title shall not use any part of the grant to provide assistance for a minor child who has been, or is expected by a parent (or other caretaker relative) of the child to be, absent from the home for a period of 45 consecutive days or, at the option of the State, such period of not less than 30 and not more than 180 consecutive days as the State may provide for in the State plan submitted pursuant to section 602 of this title.

(B) State authority to establish good cause exceptions

The State may establish such good cause exceptions to subparagraph (A) as the State considers appropriate if such exceptions are provided for in the State plan submitted pursuant to section 602 of this title.

(C) Denial of assistance for relative who fails to notify State agency of absence of child

A State to which a grant is made under section 603 of this title shall not use any part of the grant to provide assistance for an individual who is a parent (or other caretaker relative) of a minor child and who fails to notify the agency administering the State program funded under this part of the absence of the minor child from the home for the period specified in or provided for pursuant to subparagraph (A), by the end of the 5-day period that begins with the date that it becomes clear to the parent (or relative) that the minor child will be absent for such period so specified or provided for.

(11) Medical assistance required to be provided for certain families having earnings from employment or child support

(A) Earnings from employment

A State to which a grant is made under section 603 of this title and which has a State plan approved under subchapter XIX shall provide that in the case of a family that is treated (under section 1396u-1(b)(1)(A) of this title for purposes of subchapter XIX) as receiving aid under a State plan approved under this part (as in effect on July 16, 1996), that would become ineligible for such aid because of hours of or income from employment of the caretaker relative (as defined under this part as in effect on such date) or because of section 602(a)(8)(B)(ii)(II) of this title (as so in effect), and that was so treated as receiving such aid in at least 3 of the 6 months immediately preceding the month in which such ineligibility begins, the family shall remain eligible for medical assistance under the State's plan approved under subchapter XIX for an extended period or periods as provided in section 1396r-6 or 1396a(e)(1) of this title (as applicable), and that the family will be appropriately notified of such extension as required by section 1396r-6(a)(2) of this title.

(B) Child support

A State to which a grant is made under section 603 of this title and which has a State plan approved under subchapter XIX shall provide that in the case of a family that is treated (under section 1396u-1(b)(1)(A) of this title for purposes of subchapter XIX) as receiving aid under a State plan approved under this part (as in effect on July 16, 1996), that would become ineligible for such aid as a result (wholly or partly) of the collection of child or spousal support under part D and that was so treated as receiving such aid in at least 3 of the 6 months immediately preceding the month in which such

ineligibility begins, the family shall remain eligible for medical assistance under the State's plan approved under subchapter XIX for an extended period or periods as provided in section 1396u-1(c)(1) of this title.

(12) State requirement to prevent unauthorized spending of benefits

(A) In general

A State to which a grant is made under section 603 of this title shall maintain policies and practices as necessary to prevent assistance provided under the State program funded under this part from being used in any electronic benefit transfer transaction in—

(i) any liquor store;

(ii) any casino, gambling casino, or gaming establishment; or

(iii) any retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment.

(B) Definitions

For purposes of subparagraph (A)—

(i) Liquor store

The term "liquor store" means any retail establishment which sells exclusively or primarily intoxicating liquor. Such term does not include a grocery store which sells both intoxicating liquor and groceries including staple foods (within the meaning of section 3(r) of the Food and Nutrition Act of 2008 (7 U.S.C. 2012(r))).¹

(ii) Casino, gambling casino, or gaming establishment

The terms "casino", "gambling casino", and "gaming establishment" do not include—

(I) a grocery store which sells groceries including such staple foods and which also offers, or is located within the same building or complex as, casino, gambling, or gaming activities; or

(II) any other establishment that offers casino, gambling, or gaming activities incidental to the principal purpose of the business.

(iii) Electronic benefit transfer transaction

The term "electronic benefit transfer transaction" means the use of a credit or debit card service, automated teller machine, point-of-sale terminal, or access to an online system for the withdrawal of funds or the processing of a payment for merchandise or a service.

(b) Individual responsibility plans

(1) Assessment

The State agency responsible for administering the State program funded under this part shall make an initial assessment of the skills, prior work experience, and employability of each recipient of assistance under the program who—

(A) has attained 18 years of age; or

(B) has not completed high school or obtained a certificate of high school equivalency, and is not attending secondary school.

(2) Contents of plans

(A) In general

On the basis of the assessment made under subsection (a) with respect to an individual, the State agency, in consultation with the individual, may develop an individual responsibility plan for the individual, which—

(i) sets forth an employment goal for the individual and a plan for moving the individual immediately into private sector employment;

(ii) sets forth the obligations of the individual, which may include a requirement that the individual attend school, maintain certain grades and attendance, keep school age children of the individual in school, immunize children, attend parenting and money management classes, or do other things that will help the individual become and remain employed in the private sector;

(iii) to the greatest extent possible is designed to move the individual into whatever private sector employment the individual is capable of handling as quickly as possible, and to increase the responsibility and amount of work the individual is to handle over time;

(iv) describes the services the State will provide the individual so that the individual will be able to obtain and keep employment in the private sector, and describe the job counseling and other services that will be provided by the State; and

(v) may require the individual to undergo appropriate substance abuse treatment.

(B) Timing

The State agency may comply with paragraph (1) with respect to an individual—

(i) within 90 days (or, at the option of the State, 180 days) after the effective date of this part, in the case of an individual who, as of such effective date, is a recipient of aid under the State plan approved under part A (as in effect immediately before such effective date); or

(ii) within 30 days (or, at the option of the State, 90 days) after the individual is determined to be eligible for such assistance, in the case of any other individual.

(3) Penalty for noncompliance by individual

In addition to any other penalties required under the State program funded under this part, the State may reduce, by such amount as the State considers appropriate, the amount of assistance otherwise payable under the State program to a family that includes an individual who fails without good cause to comply with an individual responsibility plan signed by the individual.

(4) State discretion

The exercise of the authority of this subsection shall be within the sole discretion of the State.

(c) Sanctions against recipients not considered wage reductions

A penalty imposed by a State against the family of an individual by reason of the failure of the individual to comply with a requirement under the State program funded under this part shall not be construed to be a reduction in any wage paid to the individual.

(d) Nondiscrimination provisions

The following provisions of law shall apply to any program or activity which receives funds provided under this part:

(1) The Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.).

(2) Section 794 of title 29.

(3) The Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

(4) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

(e) Special rules relating to treatment of certain aliens

For special rules relating to the treatment of certain aliens, see title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [8 U.S.C. 1601 et seq.].

(f) Special rules relating to treatment of non-213A aliens

The following rules shall apply if a State elects to take the income or resources of any sponsor of a non-213A alien into account in determining whether the alien is eligible for assistance under the State program funded under this part, or in determining the amount or types of such assistance to be provided to the alien:

(1) Deeming of sponsor's income and resources

For a period of 3 years after a non-213A alien enters the United States:

(A) Income deeming rule

The income of any sponsor of the alien and of any spouse of the sponsor is deemed to be income of the alien, to the extent that the total amount of the income exceeds the sum of—

(i) the lesser of—

(I) 20 percent of the total of any amounts received by the sponsor or any such spouse in the month as wages or salary or as net earnings from self-employment, plus the full amount of any costs incurred by the sponsor and any such spouse in producing self-employment income in such month; or

(II) \$175;

(ii) the cash needs standard established by the State for purposes of determining eligibility for assistance under the State program funded under this part for a family of the same size and composition as the sponsor and any other individuals living in the same household as the sponsor who are claimed by the sponsor as dependents for purposes of determining the sponsor's Federal personal income tax liability but whose needs are not taken into account in determining whether the sponsor's family has met the cash needs standard;

(iii) any amounts paid by the sponsor or any such spouse to individuals not living in the household who are claimed by the sponsor as dependents for purposes of determining the sponsor's Federal personal income tax liability; and

(iv) any payments of alimony or child support with respect to individuals not living in the household.

(B) Resource deeming rule

The resources of a sponsor of the alien and of any spouse of the sponsor are deemed to be resources of the alien to the extent that the aggregate value of the resources exceeds \$1,500.

(C) Sponsors of multiple non-213A aliens

If a person is a sponsor of 2 or more non-213A aliens who are living in the same home, the income and resources of the sponsor and any spouse of the sponsor that would be deemed income and resources of any such alien under subparagraph (A) shall be divided into a number of equal shares equal to the number of such aliens, and the State shall deem the income and resources of each such alien to include 1 such share.

(2) Ineligibility of non-213A aliens sponsored by agencies; exception

A non-213A alien whose sponsor is or was a public or private agency shall be ineligible for assistance under a State program funded under this part, during a period of 3 years after the alien enters the United States, unless the State agency administering the program determines that the sponsor either no longer exists or has become unable to meet the alien's needs.

(3) Information provisions

(A) Duties of non-213A aliens

A non-213A alien, as a condition of eligibility for assistance under a State program funded under this part during the period of 3 years after the alien enters the United States, shall be required to provide to the State agency administering the program—

(i) such information and documentation with respect to the alien's sponsor as may be necessary in order for the State agency to make any determination required under this subsection, and to obtain any cooperation from the sponsor necessary for any such determination; and

(ii) such information and documentation as the State agency may request and which the alien or the alien's sponsor provided in support of the alien's immigration application.

(B) Duties of Federal agencies

The Secretary shall enter into agreements with the Secretary of State and the Attorney General under which any information available to them and required in order to make any determination under this subsection will be provided by them to the Secretary (who may, in turn, make the information available, upon request, to a concerned State agency).

(4) "Non-213A alien" defined

An alien is a non-213A alien for purposes of this subsection if the affidavit of support or similar agreement with respect to the alien that was executed by the sponsor of the alien's entry into the United States was executed other than pursuant to section 213A of the Immigration and Nationality Act [8 U.S.C. 1183a].

(5) Inapplicability to alien minor sponsored by a parent

This subsection shall not apply to an alien who is a minor child if the sponsor of the alien or any spouse of the sponsor is a parent of the alien.

(6) Inapplicability to certain categories of aliens

This subsection shall not apply to an alien who is—

(A) admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act [8 U.S.C. 1157];

(B) paroled into the United States under section 212(d)(5) of such Act [8 U.S.C. 1182(d)(5)] for a period of at least 1 year; or

(C) granted political asylum by the Attorney General under section 208 of such Act [8 U.S.C. 1158].

(g) State required to provide certain information

Each State to which a grant is made under section 603 of this title shall, at least 4 times annually and upon request of the Immigration and Naturalization Service, furnish the Immigration and Naturalization Service with the name and address of, and other identifying information on, any individual who the State knows is not lawfully present in the United States.

(Aug. 14, 1935, ch. 531, title IV, §408, as added Pub. L. 104–193, title I, §103(a)(1), Aug. 22, 1996, 110 Stat. 2134; amended Pub. L. 105–33, title V, §§5001(d), (h)(1), 5505, 5514(c), 5532(b)(2), 5581(a), Aug. 5, 1997, 111 Stat. 591, 593, 610, 620, 626, 642; Pub. L. 109–171, title VII, §7301(a), Feb. 8, 2006, 120 Stat. 141; Pub. L. 110–234, title IV, §4002(b)(1)(B), (2)(V), May 22, 2008, 122 Stat. 1096, 1097; Pub. L. 110–246, §4(a), title IV, §4002(b)(1)(B), (2)(V), June 18, 2008, 122 Stat. 1664, 1857, 1858; Pub. L. 112–96, title IV, §4004(a), Feb. 22, 2012, 126 Stat. 197.)

References in Text

Part D, referred to in subsec. (a)(2), (11)(B), is classified to section 651 et seq. of this title.

The Food and Nutrition Act of 2008, referred to in subsec. (a)(8), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, which is classified generally to chapter 51 (§2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

Section 3(r) of the Food and Nutrition Act of 2008 (7 U.S.C. 2012(r)), referred to in subsec. (a)(12)(B)(i), was redesignated as section 3(q) of the Food and Nutrition Act of 2008, by Pub. L. 113–79, title IV, §4030(a)(4), Feb. 7, 2014, 128 Stat. 813, and is classified to section 2012(q) of Title 7, Agriculture.

For effective date of this part, referred to in subsec. (b)(2)(B)(i), see Effective Date note set out below.

The Age Discrimination Act of 1975, referred to in subsec. (d)(1), is title III of Pub. L. 94–135, Nov. 28, 1975, 89 Stat. 728, 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. (d)(3), is Pub. L. 101–336, July 26, 1990, 104 Stat. 327, 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 Civil Rights Act of 1964, referred to in subsec. (d)(4), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241. 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 Personal Responsibility and Work Opportunity Reconciliation Act of 1996, referred to in subsec. (e), is Pub. L. 104–193, Aug. 22, 1996, 110 Stat. 2105. Title IV of the Act is classified principally to chapter 14 (§1601 et seq.) of Title 8, Aliens and Nationality. For complete classification of title IV to the Code, see Tables.

Codification

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

Prior Provisions

A prior section 608, act Aug. 14, 1935, ch. 531, title IV, §408, as added Dec. 19, 1989, Pub. L. 101–239, title VIII, §8004(a), 103 Stat. 2454; amended Oct. 31, 1994, Pub. L. 103–432, title II, §265(a), 108 Stat. 4469, related to AFDC quality control system, prior to repeal by Pub. L. 104–193, §103(a)(1), as amended by Pub. L. 105–33, title V, §5514(c), Aug. 5, 1997, 111 Stat. 620.

Another prior section 608, act Aug. 14, 1935, ch. 531, title IV, §408, as added May 8, 1961, Pub. L. 87–31, §2, 75 Stat. 76; amended July 25, 1962, Pub. L. 87–543, title I, §§101(b)(2)(D), 104(a)(3)(F), (G), 131(b), 135(a)–(d), 155(a), 76 Stat. 180, 185, 193, 196, 197, 207; Jan. 2, 1968, Pub. L. 90–248, title II, §§201(e)(4), 205(c), 81 Stat. 880, 892; June 17, 1980, Pub. L. 96–272, title I, §§101(a)(5)(A),

102(b), 94 Stat. 513, 515, related to payment to States for foster home care of dependent children, prior to repeal by Pub. L. 96-272, title I, §101(a)(2), June 17, 1980, 94 Stat. 512, effective, with certain exceptions, to expenditures made after Sept. 30, 1980.

Amendments

2012—Subsec. (a)(12). Pub. L. 112-96 added par. (12).

2008—Subsec. (a)(8). Pub. L. 110-246, §4002(b)(1)(B), (2)(V), substituted "Food and Nutrition Act of 2008" for "Food Stamp Act of 1977".

2006—Subsec. (a)(3). Pub. L. 109-171 amended par. (3) generally. Prior to amendment, par. (3) prohibited a State from giving assistance under this part to families not assigning to the State certain rights to support accruing before the date the family ceased to receive assistance, with certain limitations, and prohibited a State from requiring the assignment of future support rights as a condition of providing assistance to a family.

1997—Pub. L. 105-33, §5514(c), made technical amendment to directory language of Pub. L. 104-193, §103(a)(1), which enacted this section.

Subsec. (a)(1). Pub. L. 105-33, §5505(a), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: "A State to which a grant is made under section 603 of this title shall not use any part of the grant to provide assistance to a family—

"(A) unless the family includes—

"(i) a minor child who resides with a custodial parent or other adult caretaker relative of the child; or

"(ii) a pregnant individual; and

"(B) if the family includes an adult who has received assistance under any State program funded under this part attributable to funds provided by the Federal Government, for 60 months (whether or not consecutive) after the date the State program funded under this part commences (unless an exception described in subparagraph (B), (C), or (D) of paragraph (7) applies)."

Subsec. (a)(3). Pub. L. 105–33, §5505(b), substituted "ceases to receive assistance under" for "leaves" in introductory provisions and cl. (ii) of subpar. (A) and in subpar. (B) and substituted "after such date" for "after the date the family leaves the program" in introductory provisions of subpar. (A).

Subsec. (a)(3)(A). Pub. L. 105–33, §5532(b)(2), redesignated cls. (i) and (ii) as subcls. (I) and (II), respectively, of cl. (i) and added a new cl. (ii).

Subsec. (a)(5)(A)(ii). Pub. L. 105–33, §5505(c), made technical correction to heading in original.

Subsec. (a)(7)(C)(ii). Pub. L. 105–33, §5505(d)(1), substituted "The average monthly number" for "The number" and inserted "during the fiscal year or the immediately preceding fiscal year (but not both), as the State may elect" before period at end.

Subsec. (a)(7)(D). Pub. L. 105–33, §5505(d)(2), amended heading and text of subpar. (D) generally. Prior to amendment, text read as follows: "In determining the number of months for which an adult has received assistance under the State program funded under this part, the State shall disregard any month during which the adult lived on an Indian reservation or in an Alaskan Native village if, during the month—

"(i) at least 1,000 individuals were living on the reservation or in the village; and

"(ii) at least 50 percent of the adults living on the reservation or in the village were unemployed."

Subsec. (a)(7)(G). Pub. L. 105–33, §5001(d), added subpar. (G).

Subsecs. (c), (d). Pub. L. 105–33, §5001(h)(1), added subsec. (c) and redesignated former subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 105–33, §5505(e), added subsec. (e) and struck out heading and text of former subsec. (e). Text read as follows: "For special rules relating to the treatment of aliens, see section 1612 of title 8."

Pub. L. 105–33, §5001(h)(1)(A), redesignated subsec. (d) as (e).

Subsec. (f). Pub. B. 105–33, §5505(e), added subsec. (f).

Subsec. (g). Pub. L. 105–33, §5581(a), added subsec. (g).

Effective Date of 2008 Amendment

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 4002(b)(1)(B), (2)(V) of Pub. L. 110–246 effective Oct. 1, 2008, see section 4407 of Pub. L. 110–246, set out as a note under section 1161 of Title 2, The Congress.

Effective Date of 2006 Amendment

Pub. L. 109–171, title VII, §7301(e), Feb. 8, 2006, 120 Stat. 144, provided that:

"(1) In general.—Except as otherwise provided in this section, the amendments made by the preceding provisions of this section [amending this section, sections 654 and 657 of this title, and section 6402 of Title 26, Internal Revenue Code] shall take effect on October 1, 2009, and shall apply to payments under parts A and D of title IV of the Social Security Act [42 U.S.C. 601 et seq., 651 et seq.] for calendar quarters beginning on or after such date, and without regard to whether regulations to implement the amendments (in the case of State programs operated under such part D) are promulgated by such date.

"(2) State option to accelerate effective date.—Notwithstanding paragraph (1), a State may elect to have the amendments made by the preceding provisions of this section apply to the State and to amounts collected by the State (and the payments under parts A and D), on and after such date as the State may select that is not earlier than October 1, 2008, and not later than September 30, 2009."

Effective Date of 1997 Amendment

Pub. L. 105–33, title V, §5001(h)(2), Aug. 5, 1997, 111 Stat. 593, provided that: "The amendments made by paragraph (1) [amending this section] shall take effect as if included in the enactment of section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [Pub. L. 104–193]."

Amendment by section 5505 of Pub. L. 105–33 effective as if included in section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, at the time such section 103(a) became law, see section 5518(a) of Pub. L. 105–33, set out as a note under section 602 of this title.

Amendment by section 5514(c) of Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 862a of Title 21, Food and Drugs.

Pub. L. 105–33, title V, §5557, Aug. 5, 1997, 111 Stat. 637, as amended by Pub. L. 105–200, title IV, §410(e)(1), July 16, 1998, 112 Stat. 673, provided that:

"(a) In General.—Except as provided in subsection (b), the amendments made by this chapter [chapter 3 (§§5531–5557) of subtitle F of title V of Pub. L. 105–33, amending this section, sections 652 to 654, 654b, 655, 656, 657 to 659, 663, 664, and 666 of this title, section 1738B of Title 28, Judiciary and Judicial Procedure, and provisions set out as a note under section 655 of this title] shall take effect as if included in the enactment of title III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193; 110 Stat. 2105).

"(b) Exception.—The amendments made by section 5532(b)(2) of this Act [amending this section] shall take effect as if the amendments had been included in the enactment of section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193; 110 Stat. 2112). The amendment made by section 5536(1)(A) [amending section 666 of this title] shall not take effect with respect to a State until October 1, 2000, or such earlier date as the State may select."

[Pub. L. 105–200, title IV, §410(e)(2), July 16, 1998, 112 Stat. 673, provided that: "The amendment made by paragraph (1) [amending section 5557 of Pub. L. 105–33, set out above] shall take effect as if included in the enactment of section 5557 of the Balanced Budget Act of 1997 (Public Law 105–33; 111 Stat. 637)."]

Pub. L. 105–33, title V, §5581(a), Aug. 5, 1997, 111 Stat. 642, provided that the amendment made by that section is effective July 1, 1997.

Effective Date

Section 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 a note under section 601 of this title.

Abolition of Immigration and Naturalization Service and Transfer of Functions

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

1 See References in Text note below.

§608a. Fraud under means-tested welfare and public assistance programs

(a) In general

If an individual's benefits under a Federal, State, or local law relating to a means-tested welfare or a public assistance program are reduced because of an act of fraud by the individual under the law or program, the individual may not, for the duration of the reduction, receive an increased benefit under any other means-tested welfare or public assistance program for which Federal funds are appropriated as a result of a decrease in the income of the individual (determined under the applicable program) attributable to such reduction.

(b) Welfare or public assistance programs for which Federal funds are appropriated

For purposes of subsection (a), the term "means-tested welfare or public assistance program for which Federal funds are appropriated" includes the food stamp program under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.), any program of public or assisted housing under title I of the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.), and any State program funded under this part.

(Pub. L. 104–193, title IX, §911, Aug. 22, 1996, 110 Stat. 2353.)

References in Text

The Food Stamp Act of 1977, referred to in subsec. (b), subsequently renamed the Food and Nutrition Act of 2008, is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, which is classified generally to chapter

51 (§2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

The 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. Title I of the Act is classified generally to subchapter I (§1437 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.

Codification

Section was enacted as part of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and not as part of the Social Security Act which comprises this chapter.

Change of Name

References to the food stamp program established under the Food and Nutrition Act of 2008 considered to refer to the supplemental nutrition assistance program established under that Act, see section 4002(c) of Pub. L. 110–246, set out as a note under section 2012 of Title 7, Agriculture.

§609. Penalties

(a) In general

Subject to this section:

(1) Use of grant in violation of this part

(A) General penalty

If an audit conducted under chapter 75 of title 31 finds that an amount paid to a State under section 603 of this title for a fiscal year has been used in violation of this part, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year quarter by the amount so used.

(B) Enhanced penalty for intentional violations

If the State does not prove to the satisfaction of the Secretary that the State did not intend to use the amount in violation of this part, the Secretary shall further reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year quarter by an amount equal to 5 percent of the State family assistance grant.

(C) Penalty for misuse of competitive welfare-to-work funds

If the Secretary of Labor finds that an amount paid to an entity under section 603(a)(5)(B) of this title has been used in violation of subparagraph (B) or (C) of section 603(a)(5) of this title, the entity shall remit to the Secretary of Labor an amount equal to the amount so used.

(2) Failure to submit required report

(A) Quarterly reports

(i) In general

If the Secretary determines that a State has not, within 45 days after the end of a fiscal quarter, submitted the report required by section 611(a) of this title for the quarter, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year by an amount equal to 4 percent of the State family assistance grant.

(ii) Rescission of penalty

The Secretary shall rescind a penalty imposed on a State under clause (i) with respect to a report if the State submits the report before the end of the fiscal quarter that immediately succeeds the fiscal quarter for which the report was required.

(B) Report on engagement in additional work activities and expenditures for other benefits and services

(i) In general

If the Secretary determines that a State has not submitted the report required by section 611(c)(1)(A)(i) of this title by May 31, 2011, or the report required by section 611(c)(1)(A)(ii) of this title by August 31, 2011, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year by an amount equal to not more than 4 percent of the State family assistance grant.

(ii) Rescission of penalty

The Secretary shall rescind a penalty imposed on a State under clause (i) with respect to a report required by section 611(c)(1)(A) of this title if the State submits the report not later than—

(I) in the case of the report required under section 611(c)(1)(A)(i) of this title, June 15, 2011; and

(II) in the case of the report required under section 611(c)(1)(A)(ii) of this title, September 15, 2011.

(iii) Penalty based on severity of failure

The Secretary shall impose a reduction under clause (i) with respect to a fiscal year based on the degree of noncompliance.

(3) Failure to satisfy minimum participation rates

(A) In general

If the Secretary determines that a State to which a grant is made under section 603 of this title for a fiscal year has failed to comply with section 607(a) of this title for the fiscal year, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year by an amount equal to the applicable percentage of the State family assistance grant.

(B) "Applicable percentage" defined

As used in subparagraph (A), the term "applicable percentage" means, with respect to a State—

(i) if a penalty was not imposed on the State under subparagraph (A) for the immediately preceding fiscal year, 5 percent; or

(ii) if a penalty was imposed on the State under subparagraph (A) for the immediately preceding fiscal year, the lesser of—

(I) the percentage by which the grant payable to the State under section 603(a)(1) of this title was reduced for such preceding fiscal year, increased by 2 percentage points; or

(II) 21 percent.

(C) Penalty based on severity of failure

The Secretary shall impose reductions under subparagraph (A) with respect to a fiscal year based on the degree of noncompliance, and may reduce the penalty if the noncompliance is due to circumstances that caused the State to become a needy State (as defined in section 603(b)(5) of this title) during the fiscal year or if the noncompliance is due to extraordinary circumstances such as a

natural disaster or regional recession. The Secretary shall provide a written report to Congress to justify any waiver or penalty reduction due to such extraordinary circumstances.

(4) Failure to participate in the income and eligibility verification system

If the Secretary determines that a State program funded under this part is not participating during a fiscal year in the income and eligibility verification system required by section 1320b-7 of this title, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year by an amount equal to not more than 2 percent of the State family assistance grant.

(5) Failure to comply with paternity establishment and child support enforcement requirements under part D

Notwithstanding any other provision of this chapter, if the Secretary determines that the State agency that administers a program funded under this part does not enforce the penalties requested by the agency administering part D against recipients of assistance under the State program who fail to cooperate in establishing paternity or in establishing, modifying, or enforcing a child support order in accordance with such part and who do not qualify for any good cause or other exception established by the State under section 654(29) of this title, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year (without regard to this section) by not more than 5 percent.

(6) Failure to timely repay a Federal Loan Fund for State Welfare Programs

If the Secretary determines that a State has failed to repay any amount borrowed from the Federal Loan Fund for State Welfare Programs established under section 606 of this title within the period of maturity applicable to the loan, plus any interest owed on the loan, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year quarter (without regard to this section) by the outstanding loan amount, plus the interest owed on the outstanding amount. The Secretary shall not forgive any outstanding loan amount or interest owed on the outstanding amount.

(7) Failure of any State to maintain certain level of historic effort

(A) In general

The Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for a fiscal year by the amount (if any) by which qualified State expenditures for the then immediately

preceding fiscal year are less than the applicable percentage of historic State expenditures with respect to such preceding fiscal year.

(B) Definitions

As used in this paragraph:

(i) Qualified State expenditures

(I) In general

The term "qualified State expenditures" means, with respect to a State and a fiscal year, the total expenditures by the State during the fiscal year, under all State programs, for any of the following with respect to eligible families:

(aa) Cash assistance, including any amount collected by the State as support pursuant to a plan approved under part D, on behalf of a family receiving assistance under the State program funded under this part, that is distributed to the family under section 657(a)(1)(B) of this title and disregarded in determining the eligibility of the family for, and the amount of, such assistance.

(bb) Child care assistance.

(cc) Educational activities designed to increase self-sufficiency, job training, and work, excluding any expenditure for public education in the State except expenditures which involve the provision of services or assistance to a member of an eligible family which is not generally available to persons who are not members of an eligible family.

(dd) Administrative costs in connection with the matters described in items (aa), (bb), (cc), and (ee), but only to the extent that such costs do not exceed 15 percent of the total amount of qualified State expenditures for the fiscal year.

(ee) Any other use of funds allowable under section 604(a)(1) of this title.

(II) Exclusion of transfers from other State and local programs

Such term does not include expenditures under any State or local program during a fiscal year, except to the extent that—

(aa) the expenditures exceed the amount expended under the State or local program in the fiscal year most recently ending before August 22, 1996; or

(bb) the State is entitled to a payment under former section 603 of this title (as in effect immediately before August 22, 1996) with respect to the expenditures.

(III) Exclusion of amounts expended to replace penalty grant reductions

Such term does not include any amount expended in order to comply with paragraph (12).

(IV) Eligible families

As used in subclause (I), the term "eligible families" means families eligible for assistance under the State program funded under this part, families that would be eligible for such assistance but for the application of section 608(a)(7) of this title, and families of aliens lawfully present in the United States that would be eligible for such assistance but for the application of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [8 U.S.C. 1601 et seq.].

(V) Counting of spending on certain pro-family activities

The term "qualified State expenditures" includes the total expenditures by the State during the fiscal year under all State programs for a purpose described in paragraph (3) or (4) of section 601(a) of this title.

(ii) Applicable percentage

The term "applicable percentage" means 80 percent (or, if the State meets the requirements of section 607(a) of this title, 75 percent).

(iii) Historic State expenditures

The term "historic State expenditures" means, with respect to a State, the lesser of—

(I) the expenditures by the State under parts A and F (as in effect during fiscal year 1994) for fiscal year 1994; or

(II) the amount which bears the same ratio to the amount described in subclause (I) as—

(aa) the State family assistance grant, plus the total amount required to be paid to the State under former section 603 of this title for fiscal year 1994 with respect to amounts expended by the State for child care under subsection (g) or (i) of section 602 of this title (as in effect during fiscal year 1994); bears to

(bb) the total amount required to be paid to the State under former section 603 of this title (as in effect during fiscal year 1994) for fiscal year 1994.

Such term does not include any expenditures under the State plan approved under part A (as so in effect) on behalf of individuals covered by a tribal family assistance plan approved under section 612 of this title, as determined by the Secretary.

(iv) Expenditures by the State

The term "expenditures by the State" does not include—

(I) any expenditure from amounts made available by the Federal Government;

(II) any State funds expended for the medicaid program under subchapter XIX;

(III) any State funds which are used to match Federal funds provided under section 603(a)(5) of this title; or

(IV) any State funds which are expended as a condition of receiving Federal funds other than under this part.

Notwithstanding subclause (IV) of the preceding sentence, such term includes expenditures by a State for child care in a fiscal year to the extent that the total amount of the expenditures does not exceed the amount of State expenditures in fiscal year 1994 or 1995 (whichever is the greater) that equal the non-Federal share for the programs described in section 618(a)(1)(A) of this title.

(v) Source of data

In determining expenditures by a State for fiscal years 1994 and 1995, the Secretary shall use information which was reported by the State on ACF Form 231 or (in the case of expenditures under part F) ACF Form 331, available as of the dates specified in clauses (ii) and (iii) of section 603(a)(1)(D) 1 of this title.

(8) Noncompliance of State child support enforcement program with requirements of part D

(A) In general

If the Secretary finds, with respect to a State's program under part D, in a fiscal year beginning on or after October 1, 1997—

(i)(I) on the basis of data submitted by a State pursuant to section 654(15)(B) of this title, or on the basis of the results of a review conducted under section 652(a)(4) of this title, that the State program failed to achieve the paternity establishment percentages (as defined in section 652(g)(2) of this title), or to meet other performance measures that may be established by the Secretary;

(II) on the basis of the results of an audit or audits conducted under section 652(a)(4)(C)(i) of this title that the State data submitted pursuant to section 654(15)(B) of this title is incomplete or unreliable; or

(III) on the basis of the results of an audit or audits conducted under section 652(a)(4)(C) of this title that a State failed to substantially comply with 1 or more of the requirements of part D (other than paragraph (24), or subparagraph (A) or (B)(i) of paragraph (27), of section 654 of this title); and

(ii) that, with respect to the succeeding fiscal year—

(I) the State failed to take sufficient corrective action to achieve the appropriate performance levels or compliance as described in subparagraph (A)(i); or

(II) the data submitted by the State pursuant to section 654(15)(B) of this title is incomplete or unreliable;

the amounts otherwise payable to the State under this part for quarters following the end of such succeeding fiscal year, prior to quarters following the end of the first quarter throughout which the State program has achieved the paternity establishment percentages or other performance measures as

described in subparagraph (A)(i)(I), or is in substantial compliance with 1 or more of the requirements of part D as described in subparagraph (A)(i)(III), as appropriate, shall be reduced by the percentage specified in subparagraph (B).

(B) Amount of reductions

The reductions required under subparagraph (A) shall be—

(i) not less than 1 nor more than 2 percent;

(ii) not less than 2 nor more than 3 percent, if the finding is the 2nd consecutive finding made pursuant to subparagraph (A); or

(iii) not less than 3 nor more than 5 percent, if the finding is the 3rd or a subsequent consecutive such finding.

(C) Disregard of noncompliance which is of a technical nature

For purposes of this section and section 652(a)(4) of this title, a State determined as a result of an audit—

(i) to have failed to have substantially complied with 1 or more of the requirements of part D shall be determined to have achieved substantial compliance only if the Secretary determines that the extent of the noncompliance is of a technical nature which does not adversely affect the performance of the State's program under part D; or

(ii) to have submitted incomplete or unreliable data pursuant to section 654(15)(B) of this title shall be determined to have submitted adequate data only if the Secretary determines that the extent of the incompleteness or unreliability of the data is of a technical nature which does not adversely affect the determination of the level of the State's paternity establishment percentages (as defined under section 652(g)(2) of this title) or other performance measures that may be established by the Secretary.

(9) Failure to comply with 5-year limit on assistance

If the Secretary determines that a State has not complied with section 608(a)(7) of this title during a fiscal year, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this

title for the immediately succeeding fiscal year by an amount equal to 5 percent of the State family assistance grant.

(10) Failure of State receiving amounts from Contingency Fund to maintain 100 percent of historic effort

If, at the end of any fiscal year during which amounts from the Contingency Fund for State Welfare Programs have been paid to a State, the Secretary finds that the qualified State expenditures (as defined in paragraph (7)(B)(i) (other than the expenditures described in subclause (I)(bb) of that paragraph)) under the State program funded under this part for the fiscal year are less than 100 percent of historic State expenditures (as defined in paragraph (7)(B)(iii) of this subsection), excluding any amount expended by the State for child care under subsection (g) or (i) of section 602 of this title (as in effect during fiscal year 1994) for fiscal year 1994, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year by the total of the amounts so paid to the State that the State has not remitted under section 603(b)(6) of this title.

(11) Failure to maintain assistance to adult single custodial parent who cannot obtain child care for child under age 6

(A) In general

If the Secretary determines that a State to which a grant is made under section 603 of this title for a fiscal year has violated section 607(e)(2) of this title during the fiscal year, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year by an amount equal to not more than 5 percent of the State family assistance grant.

(B) Penalty based on severity of failure

The Secretary shall impose reductions under subparagraph (A) with respect to a fiscal year based on the degree of noncompliance.

(12) Requirement to expend additional State funds to replace grant reductions; penalty for failure to do so

If the grant payable to a State under section 603(a)(1) of this title for a fiscal year is reduced by reason of this subsection, the State shall, during the immediately succeeding fiscal year, expend under the State program funded under this part an amount equal to the total amount of such reductions. If the State fails during such succeeding fiscal year to make the expenditure required by the preceding

sentence from its own funds, the Secretary may reduce the grant payable to the State under section 603(a)(1) of this title for the fiscal year that follows such succeeding fiscal year by an amount equal to the sum of—

(A) not more than 2 percent of the State family assistance grant; and

(B) the amount of the expenditure required by the preceding sentence.

(13) Penalty for failure of State to maintain historic effort during year in which welfare-to-work grant is received

If a grant is made to a State under section 603(a)(5)(A) of this title for a fiscal year and paragraph (7) of this subsection requires the grant payable to the State under section 603(a)(1) of this title to be reduced for the immediately succeeding fiscal year, then the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for such succeeding fiscal year by the amount of the grant made to the State under section 603(a)(5)(A) of this title for the fiscal year.

(14) Penalty for failure to reduce assistance for recipients refusing without good cause to work

(A) In general

If the Secretary determines that a State to which a grant is made under section 603 of this title in a fiscal year has violated section 607(e) of this title during the fiscal year, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year by an amount equal to not less than 1 percent and not more than 5 percent of the State family assistance grant.

(B) Penalty based on severity of failure

The Secretary shall impose reductions under subparagraph (A) with respect to a fiscal year based on the degree of noncompliance.

(15) Penalty for failure to establish or comply with work participation verification procedures

(A) In general

If the Secretary determines that a State to which a grant is made under section 603 of this title in a fiscal year has violated section 607(i)(2) of this title during the fiscal year, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding

fiscal year by an amount equal to not less than 1 percent and not more than 5 percent of the State family assistance grant.

(B) Penalty based on severity of failure

The Secretary shall impose reductions under subparagraph (A) with respect to a fiscal year based on the degree of noncompliance.

(16) Penalty for failure to enforce spending policies

(A) In general

If, within 2 years after February 22, 2012, any State has not reported to the Secretary on such State's implementation of the policies and practices required by section 608(a)(12) of this title, or the Secretary determines, based on the information provided in State reports, that any State has not implemented and maintained such policies and practices, the Secretary shall reduce, by an amount equal to 5 percent of the State family assistance grant, the grant payable to such State under section 603(a)(1) of this title for—

(i) the fiscal year immediately succeeding the year in which such 2-year period ends; and

(ii) each succeeding fiscal year in which the State does not demonstrate that such State has implemented and maintained such policies and practices.

(B) Reduction of applicable penalty

The Secretary may reduce the amount of the reduction required under subparagraph (A) based on the degree of noncompliance of the State.

(C) State not responsible for individual violations

Fraudulent activity by any individual in an attempt to circumvent the policies and practices required by section 608(a)(12) of this title shall not trigger a State penalty under subparagraph (A).

(b) Reasonable cause exception

(1) In general

The Secretary may not impose a penalty on a State under subsection (a) with respect to a requirement if the Secretary determines that the State has reasonable cause for failing to comply with the requirement.

(2) Exception

Paragraph (1) of this subsection shall not apply to any penalty under paragraph (6), (7), (8), (10), (12), or (13) of subsection (a) and, with respect to the penalty under paragraph (2)(B) of subsection (a), shall only apply to the extent the Secretary determines that the reasonable cause for failure to comply with a requirement of that paragraph is as a result of a one-time, unexpected event, such as a widespread data system failure or a natural or man-made disaster.

(c) Corrective compliance plan

(1) In general

(A) Notification of violation

Before imposing a penalty against a State under subsection (a) with respect to a violation of this part, the Secretary shall notify the State of the violation and allow the State the opportunity to enter into a corrective compliance plan in accordance with this subsection which outlines how the State will correct or discontinue, as appropriate, the violation and how the State will insure continuing compliance with this part.

(B) 60-day period to propose a corrective compliance plan

During the 60-day period that begins on the date the State receives a notice provided under subparagraph (A) with respect to a violation, the State may submit to the Federal Government a corrective compliance plan to correct or discontinue, as appropriate, the violation.

(C) Consultation about modifications

During the 60-day period that begins with the date the Secretary receives a corrective compliance plan submitted by a State in accordance with subparagraph (B), the Secretary may consult with the State on modifications to the plan.

(D) Acceptance of plan

A corrective compliance plan submitted by a State in accordance with subparagraph (B) is deemed to be accepted by the Secretary if the Secretary does not accept or reject the plan during 60-day period that begins on the date the plan is submitted.

(2) Effect of correcting or discontinuing violation

The Secretary may not impose any penalty under subsection (a) with respect to any violation covered by a State corrective compliance plan accepted by the Secretary if the State corrects or discontinues, as appropriate, the violation pursuant to the plan.

(3) Effect of failing to correct or discontinue violation

The Secretary shall assess some or all of a penalty imposed on a State under subsection (a) with respect to a violation if the State does not, in a timely manner, correct or discontinue, as appropriate, the violation pursuant to a State corrective compliance plan accepted by the Secretary.

(4) Inapplicability to certain penalties

This subsection shall not apply to the imposition of a penalty against a State under paragraph (2)(B), (6), (7), (8), (10), (12), (13), or (16) of subsection (a).

(d) Limitation on amount of penalties

(1) In general

In imposing the penalties described in subsection (a), the Secretary shall not reduce any quarterly payment to a State by more than 25 percent.

(2) Carryforward of unrecovered penalties

To the extent that paragraph (1) of this subsection prevents the Secretary from recovering during a fiscal year the full amount of penalties imposed on a State under subsection (a) of this section for a prior fiscal year, the Secretary shall apply any remaining amount of such penalties to the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year.

(Aug. 14, 1935, ch. 531, title IV, §409, as added Pub. L. 104–193, title I, §103(a)(1), Aug. 22, 1996, 110 Stat. 2142; amended Pub. L. 105–33, title V, §§5001(a)(2), (g), 5004(a), 5506, 5514(c), Aug. 5, 1997, 111 Stat. 589, 592, 594, 613, 620; Pub. L. 105–200, title I, §101(b), July 16, 1998, 112 Stat. 647; Pub. L. 106–113, div. B, §1000(a)(4) [title VIII, §807(b)], Nov. 29, 1999, 113 Stat. 1535, 1501A-287; Pub. L. 106–169, title IV, §401(b), Dec. 14, 1999, 113 Stat. 1858; Pub. L. 108–40, §3(g), June 30, 2003, 117 Stat. 837; Pub. L. 108–89, title I, §101(b)(3), Oct. 1, 2003, 117 Stat. 1131; Pub. L. 108–308, §2(b)(3), Sept. 30, 2004, 118 Stat. 1135; Pub. L. 109–68, §2(b)(2)(C), Sept. 21, 2005, 119 Stat. 2003; Pub. L. 109–171, title VII, §§7101(b)(3), 7102(c)(2), 7103(b), Feb. 8, 2006, 120 Stat. 135, 137, 140; Pub. L. 111–242, §131(b)(3), Sept. 30, 2010, 124 Stat. 2612; Pub. L. 111–291, title VIII,

§812(b), Dec. 8, 2010, 124 Stat. 3162; Pub. L. 112–35, §2(b), Sept. 30, 2011, 125 Stat. 384; Pub. L. 112–96, title IV, §§4002(c), 4004(b), (d), 4005(b)–(d), Feb. 22, 2012, 126 Stat. 195, 197, 198.)

References in Text

Part D, referred to in subsec. (a)(5), (7)(B)(i)(I)(aa), (8), is classified to section 651 et seq. of this title.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, referred to in subsec. (a)(7)(B)(i)(IV), is Pub. L. 104–193, Aug. 22, 1996, 110 Stat. 2105. Title IV of the Act is classified principally to chapter 14 (§1601 et seq.) of Title 8, Aliens and Nationality. For complete classification of title IV to the Code, see Tables.

Part F, referred to in subsec. (a)(7)(B)(iii)(I), (v), was classified to section 681 et seq. of this title, prior to repeal by Pub. L. 104–193, title I, §108(e), Aug. 22, 1996, 110 Stat. 2167.

Section 603(a)(1)(D) of this title, referred to in subsec. (a)(7)(B)(v), was repealed by Pub. L. 108–40, §3(a)(2), June 30, 2003, 117 Stat. 836.

Prior Provisions

A prior section 609, act Aug. 14, 1935, ch. 531, title IV, §409, as added Nov. 5, 1990, Pub. L. 101–508, title V, §5052(a), 104 Stat. 1388–228, related to exclusion from AFDC unit of child for whom Federal, State, or local foster care maintenance or adoption assistance payments were made, prior to repeal by Pub. L. 104–193, §103(a)(1), as amended by Pub. L. 105–33, title V, §5514(c), Aug. 5, 1997, 111 Stat. 620.

Another prior section 609, act Aug. 14, 1935, ch. 531, title IV, §409, as added and amended July 25, 1962, Pub. L. 87–543, title I, §§101(b)(2)(E), 105(a), 76 Stat. 180, 186; Aug. 13, 1981, Pub. L. 97–35, title XXIII, §2307(a), 95 Stat. 846; Sept. 3, 1982, Pub. L. 97–248, title I, §154(c), 96 Stat. 397; July 18, 1984, Pub. L. 98–369, div. B, title VI, §§2627, 2641(a), 2663(c)(5), 98 Stat. 1136, 1146, 1166, related to community work experience programs, prior to repeal by Pub. L. 100–485, title II, §§202(b)(12), 204(a), (b)(1)(A), Oct. 13, 1988, 102 Stat. 2378, 2381, effective Oct. 1, 1990, with provision for earlier effective dates in case of States making certain changes in their State plans and formally notifying the Secretary of Health and Human Services of their desire to become subject to the amendments by title II of Pub. L. 100–485 at such earlier effective dates.

Amendments

2012—Subsec. (a)(2)(A)(i), (ii). Pub. L. 112–96, §4005(c), realigned margins.

Subsec. (a)(3)(C). Pub. L. 112–96, §4005(b), substituted "603(b)(5)" for "603(b)(6)".

Subsec. (a)(7)(A). Pub. L. 112–96, §4002(c)(1), substituted "a fiscal year" for "fiscal year 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, or 2013".

Subsec. (a)(7)(B)(ii). Pub. L. 112–96, §4002(c)(2), struck out "for fiscal years 1997 through 2012," after "means" and substituted "607(a) of this title," for "607(a) of this title for the fiscal year,".

Subsec. (a)(16). Pub. L. 112–96, §4004(b), added par. (16).

Subsec. (c)(2). Pub. L. 112–96, §4005(d), inserted comma after "appropriate".

Subsec. (c)(4). Pub. L. 112–96, §4004(d), substituted "(13), or (16)" for "or (13)".

2011—Subsec. (a)(7)(A). Pub. L. 112–35, §2(b)(1), substituted "2012, or 2013" for "or 2012".

Subsec. (a)(7)(B)(ii). Pub. L. 112–35, §2(b)(2), substituted "2012" for "2011".

2010—Subsec. (a)(2). Pub. L. 111–291, §812(b)(1), designated existing provisions as subpar. (A), inserted heading, redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, of subpar. (A), in subpar. (A)(ii), substituted "clause (i)" for "subparagraph (A)", and added subpar. (B).

Subsec. (a)(7)(A). Pub. L. 111–242, §131(b)(3)(A), substituted "2011, or 2012" for "or 2011".

Subsec. (a)(7)(B)(ii). Pub. L. 111–242, §131(b)(3)(B), substituted "2011" for "2010".

Subsec. (b)(2). Pub. L. 111–291, §812(b)(2), inserted before period at end "and, with respect to the penalty under paragraph (2)(B) of subsection (a), shall only apply to the extent the Secretary determines that the reasonable cause for failure to comply with a requirement of that paragraph is as a result of a one-time, unexpected event, such as a widespread data system failure or a natural or man-made disaster".

Subsec. (c)(4). Pub. L. 111–291, §812(b)(3), inserted "(2)(B)," after "paragraph".

2006—Subsec. (a)(7)(A). Pub. L. 109–171, §7101(b)(3)(A), substituted "2007, 2008, 2009, 2010, or 2011" for "or 2007".

Subsec. (a)(7)(B)(i)(V). Pub. L. 109–171, §7103(b), added subcl. (V).

Subsec. (a)(7)(B)(ii). Pub. L. 109–171, §7101(b)(3)(B), substituted "2010" for "2006".

Subsec. (a)(15). Pub. L. 109–171, §7102(c)(2), added par. (15).

2005—Subsec. (a)(7)(A). Pub. L. 109–68, §2(b)(2)(C)(i), substituted "2006, or 2007" for "or 2006".

Subsec. (a)(7)(B)(ii). Pub. L. 109–68, §2(b)(2)(C)(ii), substituted "2006" for "2005".

2004—Subsec. (a)(7)(A). Pub. L. 108–308, §2(b)(3)(A), substituted "2005, or 2006" for "or 2005".

Subsec. (a)(7)(B)(ii). Pub. L. 108–308, §2(b)(3)(B), substituted "2005" for "2004".

2003—Subsec. (a)(7)(A). Pub. L. 108–89, §101(b)(3)(A), substituted "2004, or 2005" for "or 2004".

Pub. L. 108–40, §3(g)(1), substituted "2003, or 2004" for "or 2003".

Subsec. (a)(7)(B)(ii). Pub. L. 108–89, §101(b)(3)(B), substituted "2004" for "2003".

Pub. L. 108–40, §3(g)(2), substituted "2003" for "2002".

1999—Subsec. (a)(7)(B)(i)(II). Pub. L. 106–169 made technical amendment to reference in original act which appears in text as reference to August 22, 1996.

Subsec. (a)(8)(A)(i)(III). Pub. L. 106–113 substituted "paragraph (24), or subparagraph (A) or (B)(i) of paragraph (27), of section 654 of this title" for "section 654(24) of this title".

1998—Subsec. (a)(8)(A)(i)(III). Pub. L. 105–200 inserted "(other than section 654(24) of this title)" before semicolon.

1997—Pub. L. 105–33, §5514(c), made technical amendment to directory language of Pub. L. 104–193, §103(a)(1), which enacted this section.

Subsec. (a)(1)(C). Pub. L. 105–33, §5001(g)(2), added subpar. (C).

Subsec. (a)(2)(A). Pub. L. 105–33, §5506(a), substituted "45 days" for "1 month".

Subsec. (a)(3)(A). Pub. L. 105–33, §5506(n)(1), struck out "not more than" after "an amount equal to".

Subsec. (a)(3)(C). Pub. L. 105–33, §5506(n)(2), inserted before period at end "or if the noncompliance is due to extraordinary circumstances such as a natural disaster or regional recession. The Secretary shall provide a written report to Congress to justify any waiver or penalty reduction due to such extraordinary circumstances".

Subsec. (a)(7)(B)(i)(I)(aa). Pub. L. 105–33, §5506(b), inserted before period at end ", including any amount collected by the State as support pursuant to a plan approved under part D, on behalf of a family receiving assistance under the State program funded under this part, that is distributed to the family under section 657(a)(1)(B) of this title and disregarded in determining the eligibility of the family for, and the amount of, such assistance".

Subsec. (a)(7)(B)(i)(III). Pub. L. 105–33, §5506(c), added subcl. (III). Former subcl. (III) redesignated (IV).

Subsec. (a)(7)(B)(i)(IV). Pub. L. 105–33, §5506(d), substituted "this part, families" for "this part, and families" and "section 608(a)(7) of this title, and families of aliens lawfully present in the United States that would be eligible for such assistance but for the application of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996" for "section 608(a)(7) of this title or section 1612 of title 8".

Pub. L. 105–33, §5506(c), redesignated subcl. (III) as (IV).

Subsec. (a)(7)(B)(ii). Pub. L. 105–33, §5506(e), struck out "reduced (if appropriate) in accordance with subparagraph (C)(ii)" after "75 percent)".

Subsec. (a)(7)(B)(iv). Pub. L. 105–33, §5001(a)(2), amended heading and text of cl. (iv) generally. Prior to amendment, text read as follows: "The term 'expenditures by the State' does not include—

"(I) any expenditures from amounts made available by the Federal Government;

"(II) any State funds expended for the medicaid program under subchapter XIX of this chapter;

"(III) any State funds which are used to match Federal funds; or

"(IV) any State funds which are expended as a condition of receiving Federal funds under Federal programs other than under this part.

Notwithstanding subclause (IV) of the preceding sentence, such term includes expenditures by a State for child care in a fiscal year to the extent that the total amount of such expenditures does not exceed an amount equal to the amount of State expenditures in fiscal year 1994 or 1995 (whichever is greater) that equal the non-Federal share for the programs described in section 618(a)(1)(A) of this title."

Subsec. (a)(7)(B)(v). Pub. L. 105–33, §5506(f), added cl. (v).

Subsec. (a)(8). Pub. L. 105–33, §5506(g), amended heading and text of par. (8) generally. Prior to amendment, par. (8) provided that if a State program operated under part D of this subchapter was found to not have complied substantially with the requirements of such part for any quarter, and was not complying substantially with such requirements at the time of the finding, the Secretary was to reduce the grant payable to the State under section 603(a)(1) of this title for certain quarters until the program was found to be in substantial compliance with such requirements.

Subsec. (a)(9). Pub. L. 105–33, §5506(h), substituted "608(a)(7)" for "608(a)(1)(B)".

Subsec. (a)(10). Pub. L. 105–33, §5506(i), substituted "the qualified State expenditures (as defined in paragraph (7)(B)(i) (other than the expenditures described in subclause (I)(bb) of that paragraph)) under the State program funded under this part for the fiscal year" for "the expenditures under the State program funded under this part for the fiscal year (excluding any amounts made available by the Federal Government)", inserted "excluding any amount expended by the State for child care under subsection (g) or (i) of section 602 of this title (as in effect during fiscal year 1994) for fiscal year 1994," after "(as defined in paragraph (7)(B)(iii) of this subsection)", and inserted before period at end "that the State has not remitted under section 603(b)(6) of this title".

Subsec. (a)(12). Pub. L. 105–33, §5506(j), in heading substituted "Requirement" for "Failure" and "reductions; penalty for failure to do so" for "reductions" and in text inserted at end "If the State fails during such succeeding fiscal year to make the expenditure required by the preceding sentence from its own funds, the Secretary may reduce the grant payable to the State under section 603(a)(1) of this title for the fiscal year that follows such succeeding fiscal year by an amount equal to the sum of—

"(A) not more than 2 percent of the State family assistance grant; and

"(B) the amount of the expenditure required by the preceding sentence."

Subsec. (a)(13). Pub. L. 105–33, §5001(g)(1)(A), added par. (13).

Subsec. (a)(14). Pub. L. 105–33, §5004(a), added par. (14).

Subsec. (b)(2). Pub. L. 105–33, §5506(k), substituted "(6), (7), (8), (10), or (12)" for "(7) or (8)".

Pub. L. 105–33, §5001(g)(1)(B), substituted "(12), or (13)" for "or (12)".

Subsec. (c)(1)(A), (B). Pub. L. 105–33, §5506(l)(1), inserted "or discontinue, as appropriate," after "correct".

Subsec. (c)(2). Pub. L. 105–33, §5506(l)(2), inserted "or discontinuing" after "correcting" in heading and "or discontinues, as appropriate" after "corrects" in text.

Subsec. (c)(3). Pub. L. 105–33, §5506(l)(3), inserted "or discontinue" after "correct" in heading and "or discontinue, as appropriate," before "the violation" in text.

Subsec. (c)(4). Pub. L. 105–33, §5506(m), amended heading and text of par. (4) generally. Prior to amendment, text read as follows: "This subsection shall not apply to the imposition of a penalty against a State under subsection (a)(6) of this section."

Pub. L. 105–33, §5001(g)(1)(C), substituted "(12), or (13)" for "or (12)".

Effective Date of 2006 Amendment

Amendment by Pub. L. 109–171 effective as if enacted on Oct. 1, 2005, except as otherwise provided, see section 7701 of Pub. L. 109–171, set out as a note under section 603 of this title.

Effective Date of 2003 Amendment

Amendment by Pub. L. 108–40 effective July 1, 2003, see section 8 of Pub. L. 108–40, set out as a note under section 603 of this title.

Effective Date of 1999 Amendments

Amendment by Pub. L. 106–169 effective as if included in the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 401(q) of Pub. L. 106–169, set out as a note under section 602 of this title.

Pub. L. 106–113, div. B, §1000(a)(4) [title VIII, §807(c)], Nov. 29, 1999, 113 Stat. 1535, 1501A-287, provided that: "The amendments made by this section [amending this section and section 655 of this title] shall take effect on October 1, 1999."

Effective Date of 1997 Amendment

Pub. L. 105–33, title V, §5004(b), Aug. 5, 1997, 111 Stat. 594, provided that: "The amendment made by subsection (a) of this section [amending this section] shall take effect as if included in the enactment of section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [Pub. L. 104–193]."

Amendment by section 5506 of Pub. L. 105–33 effective as if included in section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, at the

time such section 103(a) became law, see section 5518(a) of Pub. L. 105–33, set out as a note under section 602 of this title.

Amendment by section 5514(c) of Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 862a of Title 21, Food and Drugs.

Effective Date

Section effective July 1, 1997, with delayed effective date for subsec. (a)(2)–(5), (8), (10) of this section, and 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, set out as a note under section 601 of this title.

1 See References in Text note below.

§610. Appeal of adverse decision

(a) In general

Within 5 days after the date the Secretary takes any adverse action under this part with respect to a State, the Secretary shall notify the chief executive officer of the State of the adverse action, including any action with respect to the State plan submitted under section 602 of this title or the imposition of a penalty under section 609 of this title.

(b) Administrative review

(1) In general

Within 60 days after the date a State receives notice under subsection (a) of an adverse action, the State may appeal the action, in whole or in part, to the Departmental Appeals Board established in the Department of Health and Human Services (in this section referred to as the "Board") by filing an appeal with the Board.

(2) Procedural rules

The Board shall consider an appeal filed by a State under paragraph (1) on the basis of such documentation as the State may submit and as the Board may require to support the final decision of

the Board. In deciding whether to uphold an adverse action or any portion of such an action, the Board shall conduct a thorough review of the issues and take into account all relevant evidence. The Board shall make a final determination with respect to an appeal filed under paragraph (1) not less than 60 days after the date the appeal is filed.

(c) Judicial review of adverse decision

(1) In general

Within 90 days after the date of a final decision by the Board under this section with respect to an adverse action taken against a State, the State may obtain judicial review of the final decision (and the findings incorporated into the final decision) by filing an action in—

(A) the district court of the United States for the judicial district in which the principal or headquarters office of the State agency is located; or

(B) the United States District Court for the District of Columbia.

(2) Procedural rules

The district court in which an action is filed under paragraph (1) shall review the final decision of the Board on the record established in the administrative proceeding, in accordance with the standards of review prescribed by subparagraphs (A) through (E) of section 706(2) of title 5. The review shall be on the basis of the documents and supporting data submitted to the Board.

(Aug. 14, 1935, ch. 531, title IV, §410, as added Pub. L. 104–193, title I, §103(a)(1), Aug. 22, 1996, 110 Stat. 2148; amended Pub. L. 105–33, title V, §5514(c), Aug. 5, 1997, 111 Stat. 620.)

Prior Provisions

A prior section 610, act Aug. 14, 1935, ch. 531, title IV, §410, as added Oct. 21, 1976, Pub. L. 94–585, §1(a), 90 Stat. 2901; amended July 18, 1984, Pub. L. 98–369, div. B, title VI, §2663(c)(6), 98 Stat. 1166, related to food stamp program coupons, prior to repeal by Pub. L. 104–193, §103(a)(1), as amended by Pub. L. 105–33, title V, §5514(c), Aug. 5, 1997, 111 Stat. 620.

Another prior section 610, act Aug. 14, 1935, ch. 531, title IV, §410, as added Jan. 2, 1968, Pub. L. 90–248, title II, §211(b), 81 Stat. 897, provided for furnishing by Secretary to Secretary of the Treasury the names of parents contained in reports from State agencies, for ascertainment of

addresses, and authorization for appropriations for such purpose, prior to repeal by Pub. L. 93–647, §101(c)(8), Jan. 4, 1975, 88 Stat. 2360, eff. July 1, 1975.

Amendments

1997—Pub. L. 105–33 made technical amendment to directory language of Pub. L. 104–193, §103(a)(1), which enacted this section.

Effective Date of 1997 Amendment

Amendment by Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 862a of Title 21, Food and Drugs.

Effective Date

Section 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 a note under section 601 of this title.

§611. Data collection and reporting

(a) Quarterly reports by States

(1) General reporting requirement

(A) Contents of report

Each eligible State shall collect on a monthly basis, and report to the Secretary on a quarterly basis, the following disaggregated case record information on the families receiving assistance under the State program funded under this part (except for information relating to activities carried out under section 603(a)(5) of this title) or any other State program funded with qualified State expenditures (as defined in section 609(a)(7)(B)(i) of this title):

(i) The county of residence of the family.

(ii) Whether a child receiving such assistance or an adult in the family is receiving—

(I) Federal disability insurance benefits;

(II) benefits based on Federal disability status;

(III) aid under a State plan approved under subchapter XIV (as in effect without regard to the amendment made by section 301 of the Social Security Amendments of 1972);

(IV) aid or assistance under a State plan approved under subchapter XVI (as in effect without regard to such amendment) by reason of being permanently and totally disabled; or

(V) supplemental security income benefits under subchapter XVI (as in effect pursuant to such amendment) by reason of disability.

(iii) The ages of the members of such families.

(iv) The number of individuals in the family, and the relation of each family member to the head of the family.

(v) The employment status and earnings of the employed adult in the family.

(vi) The marital status of the adults in the family, including whether such adults have never married, are widowed, or are divorced.

(vii) The race and educational level of each adult in the family.

(viii) The race and educational level of each child in the family.

(ix) Whether the family received subsidized housing, medical assistance under the State plan approved under subchapter XIX, supplemental nutrition assistance program benefits, or subsidized child care, and if the latter 2, the amount received.

(x) The number of months that the family has received each type of assistance under the program.

(xi) If the adults participated in, and the number of hours per week of participation in, the following activities:

(I) Education.

(II) Subsidized private sector employment.

(III) Unsubsidized employment.

(IV) Public sector employment, work experience, or community service.

(V) Job search.

(VI) Job skills training or on-the-job training.

(VII) Vocational education.

(xii) Information necessary to calculate participation rates under section 607 of this title.

(xiii) The type and amount of assistance received under the program, including the amount of and reason for any reduction of assistance (including sanctions).

(xiv) Any amount of unearned income received by any member of the family.

(xv) The citizenship of the members of the family.

(xvi) From a sample of closed cases, whether the family left the program, and if so, whether the family left due to—

(I) employment;

(II) marriage;

(III) the prohibition set forth in section 608(a)(7) of this title;

(IV) sanction; or

(V) State policy.

(xvii) With respect to each individual in the family who has not attained 20 years of age, whether the individual is a parent of a child in the family.

(B) Use of samples

(i) Authority

A State may comply with subparagraph (A) by submitting 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 estimates of the performance of State programs funded under this part and any other State programs funded with qualified State expenditures (as defined in section 609(a)(7)(B)(i) of this title). The Secretary may develop and implement procedures for verifying the quality of data submitted by the States.

(2) Report on use of Federal funds to cover administrative costs and overhead

The report required by paragraph (1) for a fiscal quarter shall include a statement of the percentage of the funds paid to the State under this part for the quarter that are used to cover administrative costs or overhead, with a separate statement of the percentage of such funds that are used to cover administrative costs or overhead incurred for programs operated with funds provided under section 603(a)(5) of this title.

(3) Report on State expenditures on programs for needy families

The report required by paragraph (1) for a fiscal quarter shall include a statement of the total amount expended by the State during the quarter on programs for needy families, with a separate statement of

the total amount expended by the State during the quarter on programs operated with funds provided under section 603(a)(5) of this title.

(4) Report on noncustodial parents participating in work activities

The report required by paragraph (1) for a fiscal quarter shall include the number of noncustodial parents in the State who participated in work activities (as defined in section 607(d) of this title) during the quarter, with a separate statement of the number of such parents who participated in programs operated with funds provided under section 603(a)(5) of this title.

(5) Report on transitional services

The report required by paragraph (1) for a fiscal quarter shall include the total amount expended by the State during the quarter to provide transitional services to a family that has ceased to receive assistance under this part because of employment, along with a description of such services.

(6) Report on families receiving assistance

The report required by paragraph (1) for a fiscal quarter shall include for each month in the quarter—

(A) the number of families and individuals receiving assistance under the State program funded under this part (including the number of 2-parent and 1-parent families);

(B) the total dollar value of such assistance received by all families; and

(C) with respect to families and individuals participating in a program operated with funds provided under section 603(a)(5) of this title—

(i) the total number of such families and individuals; and

(ii) the number of such families and individuals whose participation in such a program was terminated during a month.

(7) Regulations

The Secretary shall prescribe such regulations as may be necessary to define the data elements with respect to which reports are required by this subsection, and shall consult with the Secretary of Labor

in defining the data elements with respect to programs operated with funds provided under section 603(a)(5) of this title.

(b) Annual reports to Congress by Secretary

Not later than 6 months after the end of fiscal year 1997, and each fiscal year thereafter, the Secretary shall transmit to the Congress a report describing—

(1) whether the States are meeting—

(A) the participation rates described in section 607(a) of this title; and

(B) the objectives of—

(i) increasing employment and earnings of needy families, and child support collections; and

(ii) decreasing out-of-wedlock pregnancies and child poverty;

(2) the demographic and financial characteristics of families applying for assistance, families receiving assistance, and families that become ineligible to receive assistance;

(3) the characteristics of each State program funded under this part; and

(4) the trends in employment and earnings of needy families with minor children living at home.

(c) Pre-reauthorization State-by-State reports on engagement in additional work activities and expenditures for other benefits and services

(1) State reporting requirements

(A) Reporting periods and deadlines

Each eligible State shall submit to the Secretary the following reports:

(i) March 2011 report

Not later than May 31, 2011, a report for the period that begins on March 1, 2011, and ends on March 31, 2011, that contains the information specified in subparagraphs (B) and (C).

(ii) April-June, 2011 report

Not later than August 31, 2011, a report for the period that begins on April 1, 2011, and ends on June 30, 2011, that contains with respect to the 3 months that occur during that period—

(I) the average monthly numbers for the information specified in subparagraph (B); and

(II) the information specified in subparagraph (C).

(B) Engagement in additional work activities

(i) With respect to each work-eligible individual in a family receiving assistance during a reporting period specified in subparagraph (A), whether the individual engages in any activities directed toward attaining self-sufficiency during a month occurring in a reporting period, and if so, the specific activities—

(I) that do not qualify as a work activity under section 607(d) of this title but that are otherwise reasonably calculated to help the family move toward self-sufficiency; or

(II) that are of a type that would be counted toward the State participation rates under section 607 of this title but for the fact that—

(aa) the work-eligible individual did not engage in sufficient hours of the activity;

(bb) the work-eligible individual has reached the maximum time limit allowed for having participation in the activity counted toward the State's work participation rate; or

(cc) the number of work-eligible individuals engaged in such activity exceeds a limitation under such section.

(ii) Any other information that the Secretary determines appropriate with respect to the information required under clause (i), including if the individual has no hours of participation, the principal reason or reasons for such non-participation.

(C) Expenditures on other benefits and services

(i) Detailed, disaggregated information regarding the types of, and amounts of, expenditures made by the State during a reporting period specified in subparagraph (A) using—

(I) Federal funds provided under section 603 of this title that are (or will be) reported by the State on Form ACF–196 (or any successor form) under the category of other expenditures or the category of benefits or services provided in accordance with the authority provided under section 604(a)(2) of this title; or

(II) State funds expended to meet the requirements of section 609(a)(7) of this title and reported by the State in the category of other expenditures on Form ACF–196 (or any successor form).

(ii) Any other information that the Secretary determines appropriate with respect to the information required under clause (i).

(2) Publication of summary and analysis of engagement in additional activities

Concurrent with the submission of each report required under paragraph (1)(A), an eligible State shall publish on an Internet website maintained by the State agency responsible for administering the State program funded under this part (or such State-maintained website as the Secretary may approve)—

(A) a summary of the information submitted in the report:

(B) an analysis statement regarding the extent to which the information changes measures of total engagement in work activities from what was (or will be) reported by the State in the quarterly report submitted under subsection (a) for the comparable period; and

(C) a narrative describing the most common activities contained in the report that are not countable toward the State participation rates under section 607 of this title.

(3) Application of authority to use sampling

Subparagraph (B) of subsection (a)(1) shall apply to the reports required under paragraph (1) of this subsection in the same manner as subparagraph (B) of subsection (a)(1) applies to reports required under subparagraph (A) of subsection (a)(1).

(4) Secretarial reports to Congress

(A) March 2011 report

Not later than June 30, 2011, the Secretary shall submit to Congress a report on the information submitted by eligible States for the March 2011 reporting period under paragraph (1)(A)(i). The report shall include a State-by-State summary and analysis of such information, identification of any States with missing or incomplete reports, and recommendations for such administrative or legislative changes as the Secretary determines are necessary to require eligible States to report the information on a recurring basis.

(B) April-June, 2011 report

Not later than September 30, 2011, the Secretary shall submit to Congress a report on the information submitted by eligible States for the April-June 2011 reporting period under paragraph (1)(A)(ii). The report shall include a State-by-State summary and analysis of such information, identification of any States with missing or incomplete reports, and recommendations for such administrative or legislative changes as the Secretary determines are necessary to require eligible States to report the information on a recurring basis 1

(5) Authority for expeditious implementation

The requirements of chapter 5 of title 5 (commonly referred to as the "Administrative Procedure Act") or any other law relating to rulemaking or publication in the Federal Register shall not apply to the issuance of guidance or instructions by the Secretary with respect to the implementation of this subsection to the extent the Secretary determines that compliance with any such requirement would impede the expeditious implementation of this subsection.

(d) Data exchange standardization for improved interoperability

(1) Data exchange standards

(A) Designation

The Secretary, in consultation with an interagency work group which shall be established by the Office of Management and Budget, and considering State and tribal perspectives, shall, by rule, designate a data exchange standard for any category of information required to be reported under this part.

(B) Data exchange standards must be nonproprietary and interoperable

The data exchange standard designated under subparagraph (A) shall, to the extent practicable, be nonproprietary and interoperable.

(C) Other requirements

In designating data exchange standards under this section, the Secretary shall, to the extent practicable, incorporate—

(i) interoperable standards developed and maintained by an international voluntary consensus standards body, as defined by the Office of Management and Budget, such as the International Organization for Standardization;

(ii) interoperable standards developed and maintained by intergovernmental partnerships, such as the National Information Exchange Model; and

(iii) interoperable standards developed and maintained by Federal entities with authority over contracting and financial assistance, such as the Federal Acquisition Regulatory Council.

(2) Data exchange standards for reporting

(A) Designation

The Secretary, in consultation with an interagency work group established by the Office of Management and Budget, and considering State and tribal perspectives, shall, by rule, designate data exchange standards to govern the data reporting required under this part.

(B) Requirements

The data exchange standards required by subparagraph (A) shall, to the extent practicable—

(i) incorporate a widely-accepted, nonproprietary, searchable, computer-readable format;

(ii) be consistent with and implement applicable accounting principles; and

(iii) be capable of being continually upgraded as necessary.

(C) Incorporation of nonproprietary standards

In designating reporting standards under this paragraph, the Secretary shall, to the extent practicable, incorporate existing nonproprietary standards, such as the eXtensible Markup Language.

(Aug. 14, 1935, ch. 531, title IV, §411, as added Pub. L. 104–193, title I, §103(a)(1), Aug. 22, 1996, 110 Stat. 2148; amended Pub. L. 105–33, title V, §§5001(e), 5507, 5514(c), Aug. 5, 1997, 111 Stat. 591, 616, 620; Pub. L. 106–113, div. B, §1000(a)(4) [title VIII, §804(a)], Nov. 29, 1999, 113 Stat. 1535, 1501A-284; Pub. L. 109–171, title VII, §7102(b)(2), Feb. 8, 2006, 120 Stat. 136; Pub. L. 110–234, title IV, §4002(b)(1)(E), (2)(V), May 22, 2008, 122 Stat. 1096, 1097; Pub. L. 110–246, §4(a), title IV, §4002(b)(1)(E), (2)(V), June 18, 2008, 122 Stat. 1664, 1857, 1858; Pub. L. 111–291, title VIII, §812(a), Dec. 8, 2010, 124 Stat. 3160; Pub. L. 112–96, title IV, §§4003(a), 4005(e), Feb. 22, 2012, 126 Stat. 195, 198.)

References in Text

Section 301 of the Social Security Amendments of 1972, referred to in subsec. (a)(1)(A)(ii)(III), is section 301 of Pub. L. 92–603, title III, Oct. 30, 1972, 86 Stat. 1465, which enacted sections 1381 to 1382e and 1383 to 1383c of this title.

Codification

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

Prior Provisions

A prior section 611, act Aug. 14, 1935, ch. 531, title IV, §411, as added Dec. 20, 1977, Pub. L. 95–216, title IV, §403(a), 91 Stat. 1561, related to availability of wage information to States and political subdivisions, prior to repeal by Pub. L. 98–369, div. B, title VI, §2651(b)(3), (1)(2), July 18, 1984, 98 Stat. 1149, 1151, effective Apr. 1, 1985, except as otherwise provided. See section 1320b–7 of this title.

Amendments

2012—Subsec. (a)(1)(A)(ii)(III). Pub. L. 112–96, §4005(e), struck out second closing parenthesis after "1972".

Subsec. (d). Pub. L. 112–96, §4003(a), added subsec. (d).

2010—Subsec. (c). Pub. L. 111–291 added subsec. (c).

2008—Subsec. (a)(1)(A)(ix). Pub. L. 110–246, §4002(b)(1)(E), (2)(V), substituted "supplemental nutrition assistance program benefits" for "food stamps".

2006—Subsec. (a)(1)(A). Pub. L. 109–171, §7102(b)(2)(A), inserted "or any other State program funded with qualified State expenditures (as defined in section 609(a)(7)(B)(i) of this title)" before colon at end of introductory provisions.

Subsec. (a)(1)(B)(ii). Pub. L. 109–171, §7102(b)(2)(B), inserted "and any other State programs funded with qualified State expenditures (as defined in section 609(a)(7)(B)(i) of this title)" after "this part".

1999—Subsec. (a)(1)(A). Pub. L. 106–113, §1000(a)(4) [title VIII, §804(a)(1)], in introductory provisions, inserted "(except for information relating to activities carried out under section 603(a)(5) of this title)" after "part".

Subsec. (a)(1)(A)(xviii). Pub. L. 106–113, §1000(a)(4) [title VIII, §804(a)(2)], struck out cl. (xviii) which related to families participating in a program operated with funds provided under section 603(a)(5) of this title.

1997—Pub. L. 105–33, §5514(c), made technical amendment to directory language of Pub. L. 104–193, §103(a)(1), which enacted this section.

Subsec. (a)(1)(A)(ii). Pub. L. 105–33, §5507(1)(A)(i), added cl. (ii) and struck out former cl. (ii) which read as follows: "Whether a child receiving such assistance or an adult in the family is disabled."

Subsec. (a)(1)(A)(iv). Pub. L. 105–33, §5507(1)(A)(ii), substituted "head of" for "youngest child in".

Subsec. (a)(1)(A)(vii), (viii). Pub. L. 105–33, §5507(1)(A)(iii), substituted "level" for "status".

Subsec. (a)(1)(A)(xvii). Pub. L. 105–33, §5507(1)(A)(iv), added cl. (xvii).

Subsec. (a)(1)(A)(xviii). Pub. L. 105–33, §5001(e)(1), added cl. (xviii).

Subsec. (a)(1)(B). Pub. L. 105–33, §5507(1)(B), substituted "samples" for "estimates" in heading and "disaggregated case record information on a sample of families selected" for "an estimate which is obtained" in cl. (i).

Subsec. (a)(2). Pub. L. 105–33, §5001(e)(2), inserted before period at end ", with a separate statement of the percentage of such funds that are used to cover administrative costs or overhead incurred for programs operated with funds provided under section 603(a)(5) of this title".

Subsec. (a)(3). Pub. L. 105–33, §5001(e)(3), inserted before period at end ", with a separate statement of the total amount expended by the State during the quarter on programs operated with funds provided under section 603(a)(5) of this title".

Subsec. (a)(4). Pub. L. 105–33, §5001(e)(4), inserted before period at end ", with a separate statement of the number of such parents who participated in programs operated with funds provided under section 603(a)(5) of this title".

Subsec. (a)(6). Pub. L. 105–33, §5507(2), added par. (6). Former par. (6) redesignated (7).

Subsec. (a)(6)(C). Pub. L. 105–33, §5001(e)(5), added subpar. (C).

Subsec. (a)(7). Pub. L. 105–33, §5507(2), redesignated par. (6) as (7).

Pub. L. 105–33, §5001(e)(6), inserted before period at end ", and shall consult with the Secretary of Labor in defining the data elements with respect to programs operated with funds provided under section 603(a)(5) of this title".

Effective Date of 2012 Amendment; Regulations

Pub. L. 112–96, title IV, §4003(b), Feb. 22, 2012, 126 Stat. 196, provided that:

"(1) Data exchange standards.—The Secretary of Health and Human Services shall issue a proposed rule under section 411(d)(1) of the Social Security Act [42 U.S.C. 611(d)(1)] within 12 months after

the date of the enactment of this section [Feb. 22, 2012], and shall issue a final rule under such section 411(d)(1), after public comment, within 24 months after such date of enactment.

"(2) Data reporting standards.—The reporting standards required under section 411(d)(2) of such Act [42 U.S.C. 611(d)(2)] shall become effective with respect to reports required in the first reporting period, after the effective date of the final rule referred to in paragraph (1) of this subsection, for which the authority for data collection and reporting is established or renewed under the Paperwork Reduction Act [44 U.S.C. 3501 et seq.]."

Effective Date of 2008 Amendment

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 4002(b)(1)(E), (2)(V) of Pub. L. 110–246 effective Oct. 1, 2008, see section 4407 of Pub. L. 110–246, set out as a note under section 1161 of Title 2, The Congress.

Effective Date of 2006 Amendment

Amendment by Pub. L. 109–171 effective Oct. 1, 2006, see section 7102(d) of Pub. L. 109–171, set out as a note under section 607 of this title.

Effective Date of 1997 Amendment

Amendment by section 5507 of Pub. L. 105–33 effective as if included in section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, at the time such section 103(a) became law, see section 5518(a) of Pub. L. 105–33, set out as a note under section 602 of this title.

Amendment by section 5514(c) of Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 862a of Title 21, Food and Drugs.

Effective Date

Section 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, set out as a note under section 601 of this title.

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

§611a. State required to provide certain information

Each State to which a grant is made under section 603 of this title shall, at least 4 times annually and upon request of the Immigration and Naturalization Service, furnish the Immigration and Naturalization Service with the name and address of, and other identifying information on, any individual who the State knows is unlawfully in the United States.

(Aug. 14, 1935, ch. 531, title IV, §411A, as added Pub. L. 104–193, title IV, §404(b), Aug. 22, 1996, 110 Stat. 2267.)

Abolition of Immigration and Naturalization Service and Transfer of Functions

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

§612. Direct funding and administration by Indian tribes

(a) Grants for Indian tribes

(1) Tribal family assistance grant

(A) In general

For each of fiscal years 2017 and 2018, the Secretary shall pay to each Indian tribe that has an approved tribal family assistance plan a tribal family assistance grant for the fiscal year in an amount equal to the amount determined under subparagraph (B), which shall be reduced for a fiscal year, on a pro rata basis for each quarter, in the case of a tribal family assistance plan approved during a fiscal year for which the plan is to be in effect, and shall reduce the grant payable under section 603(a)(1) of this title to any State in which lies the service area or areas of the Indian tribe by that portion of the amount so determined that is attributable to expenditures by the State.

(B) Amount determined

(i) In general

The amount determined under this subparagraph is an amount equal to the total amount of the Federal payments to a State or States under section 603 of this title (as in effect during such fiscal year) for fiscal year 1994 attributable to expenditures (other than child care expenditures) by the State or States under parts A and F (as so in effect) for fiscal year 1994 for Indian families residing in the service area or areas identified by the Indian tribe pursuant to subsection (b)(1)(C) of this section.

(ii) Use of State submitted data

(I) In general

The Secretary shall use State submitted data to make each determination under clause (i).

(II) Disagreement with determination

If an Indian tribe or tribal organization disagrees with State submitted data described under subclause (I), the Indian tribe or tribal organization may submit to the Secretary such additional information as may be relevant to making the determination under clause (i) and the Secretary may consider such information before making such determination.

(2) Grants for Indian tribes that received jobs funds

(A) In general

For each of fiscal years 2017 and 2018, the Secretary shall pay to each eligible Indian tribe that proposes to operate a program described in subparagraph (C) a grant in an amount equal to the amount received by the Indian tribe in fiscal year 1994 under section 682(i) of this title (as in effect during fiscal year 1994).

(B) Eligible Indian tribe

For purposes of subparagraph (A), the term "eligible Indian tribe" means an Indian tribe or Alaska Native organization that conducted a job opportunities and basic skills training program in fiscal year 1995 under section 682(i) of this title (as in effect during fiscal year 1995).

(C) Use of grant

Each Indian tribe to which a grant is made under this paragraph shall use the grant for the purpose of operating a program to make work activities available to such population and such service area or areas as the tribe specifies.

(D) Appropriation

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated \$7,633,287 for each fiscal year specified in subparagraph (A) for grants under subparagraph (A).

(3) Welfare-to-work grants

(A) In general

The Secretary of Labor shall award a grant in accordance with this paragraph to an Indian tribe for each fiscal year specified in section 603(a)(5)(H) of this title for which the Indian tribe is a welfare-to-work tribe, in such amount as the Secretary of Labor deems appropriate, subject to subparagraph (B) of this paragraph.

(B) Welfare-to-work tribe

An Indian tribe shall be considered a welfare-to-work tribe for a fiscal year for purposes of this paragraph if the Indian tribe meets the following requirements:

(i) The Indian tribe has submitted to the Secretary of Labor a plan which describes how, consistent with section 603(a)(5) of this title, the Indian tribe will use any funds provided under this paragraph during the fiscal year. If the Indian tribe has a tribal family assistance plan, the plan referred to in the preceding sentence shall be in the form of an addendum to the tribal family assistance plan.

(ii) The Indian tribe is operating a program under a tribal family assistance plan approved by the Secretary of Health and Human Services, a program described in paragraph (2)(C), or an employment program funded through other sources under which substantial services are provided to recipients of assistance under a program funded under this part.

(iii) The Indian tribe has provided the Secretary of Labor with an estimate of the amount that the Indian tribe intends to expend during the fiscal year (excluding tribal expenditures described in section 609(a)(7)(B)(iv) (other than subclause (III) thereof) of this title) pursuant to this paragraph.

(iv) The Indian tribe has agreed to negotiate in good faith with the Secretary of Health and Human Services with respect to the substance and funding of any evaluation under section 613(j) of this title, and to cooperate with the conduct of any such evaluation.

(C) Limitations on use of funds

(i) In general

Section 603(a)(5)(C) of this title shall apply to funds provided to Indian tribes under this paragraph in the same manner in which such section applies to funds provided under section 603(a)(5) of this title.

(ii) Waiver authority

The Secretary of Labor may waive or modify the application of a provision of section 603(a)(5)(C) (other than clause (viii) thereof) of this title with respect to an Indian tribe to the extent necessary to enable the Indian tribe to operate a more efficient or effective program with the funds provided under this paragraph.

(iii) Regulations

Within 90 days after August 5, 1997, the Secretary of Labor, after consultation with the Secretary of Health and Human Services and the Secretary of Housing and Urban Development, shall prescribe such regulations as may be necessary to implement this paragraph.

(b) 3-year tribal family assistance plan

(1) In general

Any Indian tribe that desires to receive a tribal family assistance grant shall submit to the Secretary a 3-year tribal family assistance plan that—

(A) outlines the Indian tribe's approach to providing welfare-related services for the 3-year period, consistent with this section;

(B) specifies whether the welfare-related services provided under the plan will be provided by the Indian tribe or through agreements, contracts, or compacts with intertribal consortia, States, or other entities;

(C) identifies the population and service area or areas to be served by such plan;

(D) provides that a family receiving assistance under the plan may not receive duplicative assistance from other State or tribal programs funded under this part;

(E) identifies the employment opportunities in or near the service area or areas of the Indian tribe and the manner in which the Indian tribe will cooperate and participate in enhancing such opportunities for recipients of assistance under the plan consistent with any applicable State standards; and

(F) applies the fiscal accountability provisions of section 5(f)(1) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450c(f)(1)),¹ relating to the submission of a single-agency audit report required by chapter 75 of title 31.

(2) Approval

The Secretary shall approve each tribal family assistance plan submitted in accordance with paragraph (1).

(3) Consortium of tribes

Nothing in this section shall preclude the development and submission of a single tribal family assistance plan by the participating Indian tribes of an intertribal consortium.

(c) Minimum work participation requirements and time limits

The Secretary, with the participation of Indian tribes, shall establish for each Indian tribe receiving a grant under this section minimum work participation requirements, appropriate time limits for receipt of welfare-related services under the grant, and penalties against individuals—

(1) consistent with the purposes of this section;

(2) consistent with the economic conditions and resources available to each tribe; and

(3) similar to comparable provisions in section 607(e) of this title.

(d) Emergency assistance

Nothing in this section shall preclude an Indian tribe from seeking emergency assistance from any Federal loan program or emergency fund.

(e) Accountability

Nothing in this section shall be construed to limit the ability of the Secretary to maintain program funding accountability consistent with—

(1) generally accepted accounting principles; and

(2) the requirements of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).¹

(f) Eligibility for Federal loans

Section 606 of this title shall apply to an Indian tribe with an approved tribal assistance plan in the same manner as such section applies to a State, except that section 606(c) of this title shall be applied by substituting "section 612(a)" for "section 603(a)".

(g) Penalties

(1) Subsections (a)(1), (a)(6), (b), and (c) of section 609 of this title, shall apply to an Indian tribe with an approved tribal assistance plan in the same manner as such subsections apply to a State.

(2) Section 609(a)(3) of this title shall apply to an Indian tribe with an approved tribal assistance plan by substituting "meet minimum work participation requirements established under section 612(c) of this title" for "comply with section 607(a) of this title".

(h) Data collection and reporting

Section 611 of this title shall apply to an Indian tribe with an approved tribal family assistance plan.

(i) Special rule for Indian tribes in Alaska

(1) In general

Notwithstanding any other provision of this section, and except as provided in paragraph (2), an Indian tribe in the State of Alaska that receives a tribal family assistance grant under this section shall use the grant to operate a program in accordance with requirements comparable to the requirements applicable to the program of the State of Alaska funded under this part. Comparability of programs shall be established on the basis of program criteria developed by the Secretary in consultation with the State of Alaska and such Indian tribes.

(2) Waiver

An Indian tribe described in paragraph (1) may apply to the appropriate State authority to receive a waiver of the requirement of paragraph (1).

(Aug. 14, 1935, ch. 531, title IV, §412, as added Pub. L. 104–193, title I, §103(a)(1), Aug. 22, 1996, 110 Stat. 2150; amended Pub. L. 105–33, title V, §§5001(c), 5508, 5514(c), Aug. 5, 1997, 111 Stat. 589, 617, 620; Pub. L. 106–113, div. B, §1000(a)(4) [title VIII, §801(b)(2)], Nov. 29, 1999, 113 Stat. 1535, 1501A-283; Pub. L. 106–554, §1(a)(1) [title I, §107(b)(5)], Dec. 21, 2000, 114 Stat. 2763, 2763A-12; Pub. L. 108–40, §3(h), June 30, 2003, 117 Stat. 837; Pub. L. 112–96, title IV, §4002(d), Feb. 22, 2012, 126 Stat. 195; Pub. L. 115–31, div. M, title I, §102(a)(3), May 5, 2017, 131 Stat. 800.)

References in Text

Part F, referred to in subsec. (a)(1)(B)(i), was classified to section 681 et seq. of this title, prior to repeal by Pub. L. 104–193, title I, §108(e), Aug. 22, 1996, 110 Stat. 2167.

Section 682 of this title, referred to in subsec. (a)(2)(A), (B), was repealed by Pub. L. 104–193, title I, §108(e), Aug. 22, 1996, 110 Stat. 2167.

The Indian Self-Determination and Education Assistance Act, referred to in subsecs. (b)(1)(F) and (e)(2), is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, which was classified principally to subchapter II (§450 et seq.) of chapter 14 of Title 25, Indians, prior to editorial reclassification as chapter 46 (§5301 et seq.) of Title 25. Section 5 of the Act was classified to section 450c of Title 25 prior to editorial reclassification as section 5305 of Title 25. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 25 and Tables.

Prior Provisions

A prior section 612, act Aug. 14, 1935, ch. 531, title IV, §412, as added June 17, 1980, Pub. L. 96–272, title III, §303, 94 Stat. 528; amended Aug. 13, 1981, Pub. L. 97–35, title XXIII, §2306(b), 95 Stat. 846; Sept. 3, 1982, Pub. L. 97–248, title I, §155(a), 96 Stat. 397, related to prorating shelter allowance for AFDC family living with another household, prior to repeal by Pub. L. 104–193, §103(a)(1), as amended by Pub. L. 105–33, title V, §5514(c), Aug. 5, 1997, 111 Stat. 620.

Amendments

2017—Subsec. (a)(1)(A), (2)(A). Pub. L. 115–31 substituted "each of fiscal years 2017 and 2018" for "fiscal year 2012".

2012—Subsec. (a)(1)(A), (2)(A). Pub. L. 112–96 substituted "fiscal year 2012" for "each of fiscal years 1997, 1998, 1999, 2000, 2001, 2002, and 2003".

2003—Subsec. (a)(1)(A), (2)(A). Pub. L. 108–40 substituted "2002, and 2003" for "and 2002".

2000—Subsec. (a)(3)(A). Pub. L. 106–554 substituted "603(a)(5)(H)" for "603(a)(5)(I)".

1999—Subsec. (a)(3)(C)(ii). Pub. L. 106–113 substituted "clause (viii)" for "clause (vii)".

1997—Pub. L. 105–33, §5514(c), made technical amendment to directory language of Pub. L. 104–193, §103(a)(1), which enacted this section.

Subsec. (a)(1)(A). Pub. L. 105–33, §5508(a), inserted "which shall be reduced for a fiscal year, on a pro rata basis for each quarter, in the case of a tribal family assistance plan approved during a fiscal year for which the plan is to be in effect," before "and shall".

Subsec. (a)(2)(A). Pub. L. 105–33, §5508(b), substituted "For each of fiscal years 1997, 1998, 1999, 2000, 2001, and 2002, the Secretary shall pay to each eligible Indian tribe that proposes to operate a program described in subparagraph (C)" for "The Secretary shall pay to each eligible Indian tribe for each of fiscal years 1997, 1998, 1999, 2000, 2001, and 2002".

Subsec. (a)(2)(C). Pub. L. 105–33, §5508(c), substituted "such population and such service area or areas as the tribe specifies" for "members of the Indian tribe".

Subsec. (a)(2)(D). Pub. L. 105–33, §5508(d), substituted "\$7,633,287" for "\$7,638,474".

Subsec. (a)(3). Pub. L. 105–33, §5001(c), added par. (3).

Subsec. (f). Pub. L. 105–33, §5508(f), added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (f)(1). Pub. L. 105–33, §5508(e), substituted "(b), and (c)" for "and (b)".

Subsecs. (g) to (i). Pub. L. 105–33, §5508(f), redesignated subsecs. (f) to (h) as (g) to (i), respectively.

Effective Date of 2003 Amendment

Amendment by Pub. L. 108–40 effective July 1, 2003, see section 8 of Pub. L. 108–40, set out as a note under section 603 of this title.

Effective Date of 2000 Amendment

Amendment by Pub. L. 106–554 effective Oct. 1, 2000, see section 1(a)(1) [title I, §107(d)] of Pub. L. 106–554, set out as a note under section 603 of this title.

Effective Date of 1999 Amendment

For effective date of amendment by Pub. L. 106–113, see section 1000(a)(4) [title VIII, §801(e)] of Pub. L. 106–113, set out as a note under section 603 of this title.

Effective Date of 1997 Amendment

Amendment by section 5508 of Pub. L. 105–33 effective as if included in section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, at the time such section 103(a) became law, see section 5518(a) of Pub. L. 105–33, set out as a note under section 602 of this title.

Amendment by section 5514(c) of Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 862a of Title 21, Food and Drugs.

Effective Date

Section 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 a note under section 601 of this title.

¹ See References in Text note below.

§613. Evaluation of temporary assistance for needy families and related programs

(a) Evaluation of the impacts of TANF

The Secretary shall conduct research on the effect of State programs funded under this part and any other State program funded with qualified State expenditures (as defined in section 609(a)(7)(B)(i) of this title) on employment, self-sufficiency, child well-being, unmarried births, marriage, poverty, economic mobility, and other factors as determined by the Secretary.

(b) Evaluation of grants to improve child well-being by promoting healthy marriage and responsible fatherhood

The Secretary shall conduct research to determine the effects of the grants made under section 603(a)(2) of this title on child well-being, marriage, family stability, economic mobility, poverty, and other factors as determined by the Secretary.

(c) Dissemination of information

The Secretary shall, in consultation with States receiving funds provided under this part, develop methods of disseminating information on any research, evaluation, or study conducted under this section, including facilitating the sharing of information and best practices among States and localities.

(d) State-initiated evaluations

A State shall be eligible to receive funding to evaluate the State program funded under this part or any other State program funded with qualified State expenditures (as defined in section 609(a)(7)(B)(i) of this title) if—

(1) the State submits to the Secretary a description of the proposed evaluation;

(2) the Secretary determines that the design and approach of the proposed evaluation is rigorous and is likely to yield information that is credible and will be useful to other States; and

(3) unless waived by the Secretary, the State contributes to the cost of the evaluation, from non-Federal sources, an amount equal to at least 25 percent of the cost of the proposed evaluation.

(e) Census Bureau research

(1) The Bureau of the Census shall implement or enhance household surveys of program participation, in consultation with the Secretary and the Bureau of Labor Statistics and made available to interested parties, to allow for the assessment of the outcomes of continued welfare reform on the

economic and child well-being of low-income families with children, including those who received assistance or services from a State program funded under this part or any other State program funded with qualified State expenditures (as defined in section 609(a)(7)(B)(i) of this title). The content of the surveys should include such information as may be necessary to examine the issues of unmarried childbearing, marriage, welfare dependency and compliance with work requirements, the beginning and ending of spells of assistance, work, earnings and employment stability, and the well-being of children.

(2) To carry out the activities specified in paragraph (1), the Bureau of the Census, the Secretary, and the Bureau of Labor Statistics shall consider ways to improve the surveys and data derived from the surveys to—

(A) address under reporting of the receipt of means-tested benefits and tax benefits for low-income individuals and families;

(B) increase understanding of poverty spells and long-term poverty, including by facilitating the matching of information to better understand intergenerational poverty;

(C) generate a better geographical understanding of poverty such as through State-based estimates and measures of neighborhood poverty;

(D) increase understanding of the effects of means-tested benefits and tax benefits on the earnings and incomes of low-income families; and

(E) improve how poverty and economic well-being are measured, including through the use of consumption measures, material deprivation measures, social exclusion measures, and economic and social mobility measures.

(f) Research and evaluation conducted under this section

Research and evaluation conducted under this section designed to determine the effects of a program or policy (other than research conducted under subsection (e)) shall use experimental designs using random assignment or other reliable, evidence-based research methodologies that allow for the strongest possible causal inferences when random assignment is not feasible.

(g) Development of What Works Clearinghouse of Proven and Promising Approaches 1 to Move Welfare Recipients into Work

(1) In general

The Secretary, in consultation with the Secretary of Labor, shall develop a database (which shall be referred to as the "What Works Clearinghouse of Proven and Promising Projects to Move Welfare Recipients into Work") of the projects that used a proven approach or a promising approach in moving welfare recipients into work, based on independent, rigorous evaluations of the projects. The database shall include a separate listing of projects that used a developmental approach in delivering services and a further separate listing of the projects with no or negative effects. The Secretary shall add to the What Works Clearinghouse of Proven and Promising Projects to Move Welfare Recipients into Work data about the projects that, based on an independent, well-conducted experimental evaluation of a program or project, using random assignment or other research methodologies that allow for the strongest possible causal inferences, have shown they are proven, promising, developmental, or ineffective approaches.

(2) Criteria for evidence of effectiveness of approach

The Secretary, in consultation with the Secretary of Labor and organizations with experience in evaluating research on the effectiveness of various approaches in delivering services to move welfare recipients into work, shall—

(A) establish criteria for evidence of effectiveness; and

(B) ensure that the process for establishing the criteria—

(i) is transparent;

(ii) is consistent across agencies;

(iii) provides opportunity for public comment; and

(iv) takes into account efforts of Federal agencies to identify and publicize effective interventions, including efforts at the Department of Health and Human Services, the Department of Education, and the Department of Justice.

(h) Appropriation

(1) In general

Of the amount appropriated by section 603(a)(1) of this title for each fiscal year, 0.33 percent shall be available for research, technical assistance, and evaluation under this section.

(2) Allocation

Of the amount made available under paragraph (1) for each fiscal year, the Secretary shall make available \$10,000,000 plus such additional amount as the Secretary deems necessary and appropriate, to carry out subsection (e).

(3) Baseline

The baseline established pursuant to section 907 of title 2 for the Temporary Assistance for Needy Families Program shall be recorded by the Office of Management and Budget and the Congressional Budget Office at the level prior to any transfers recorded pursuant to section 613(h) of this title.

(Aug. 14, 1935, ch. 531, title IV, §413, as added Pub. L. 104–193, title I, §103(a)(1), Aug. 22, 1996, 110 Stat. 2153; amended Pub. L. 105–33, title V, §§5001(f), 5509, 5514(c), Aug. 5, 1997, 111 Stat. 592, 618, 620; Pub. L. 105–200, title IV, §410(a), July 16, 1998, 112 Stat. 673; Pub. L. 106–169, title IV, §401(c), Dec. 14, 1999, 113 Stat. 1858; Pub. L. 110–234, title IV, §4002(b)(1)(D), (2)(V), May 22, 2008, 122 Stat. 1096, 1097; Pub. L. 110–246, §4(a), title IV, §4002(b)(1)(D), (2)(V), June 18, 2008, 122 Stat. 1664, 1857, 1858; Pub. L. 112–96, title IV, §4002(e), Feb. 22, 2012, 126 Stat. 195; Pub. L. 113–235, div. G, title II, §228(e), Dec. 16, 2014, 128 Stat. 2492; Pub. L. 115–31, div. M, title I, §102(c)(1), May 5, 2017, 131 Stat. 801.)

Codification

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

Prior Provisions

A prior section 613, act Aug. 14, 1935, ch. 531, title IV, §413, as added June 9, 1980, Pub. L. 96–265, title IV, §406(c), 94 Stat. 467, related to technical assistance for developing management information systems, prior to repeal by Pub. L. 104–193, §103(a)(1), as amended by Pub. L. 105–33, title V, §5514(c), Aug. 5, 1997, 111 Stat. 620.

Amendments

2017—Pub. L. 115–31 amended section generally. Prior to amendment, section related to research, evaluations, and national studies.

2014—Subsec. (h)(1). Pub. L. 113–235 substituted "Funds made available to carry out this section for a fiscal year shall be used" for "Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated \$15,000,000 for fiscal year 2012" in introductory provisions.

2012—Subsec. (h)(1). Pub. L. 112–96 substituted "fiscal year 2012" for "each of fiscal years 1997 through 2002" in introductory provisions.

2008—Subsec. (i)(5). Pub. L. 110–246, §4002(b)(1)(D), (2)(V), substituted "supplemental nutrition assistance program benefits" for "food stamp".

1999—Subsec. (g)(1). Pub. L. 106–169 made technical amendment to reference in original act which appears in text as reference to August 22, 1996.

1998—Subsec. (g)(1). Pub. L. 105–200 substituted "Education and the Workforce" for "Economic and Educational Opportunities".

1997—Pub. L. 105–33, §5514(c), made technical amendment to directory language of Pub. L. 104–193, §103(a)(1), which enacted this section.

Subsec. (a). Pub. L. 105–33, §5509(a), inserted ", directly or through grants, contracts, or interagency agreements," before "shall conduct" and substituted "section 607" for "section 609".

Subsec. (e)(1). Pub. L. 105–33, §5509(b), amended heading and text of par. (1) generally. Prior to amendment, text read as follows:

"(A) In general.—The Secretary shall annually rank States to which grants are made under section 603 of this title based on the following ranking factors:

"(i) Absolute out-of-wedlock ratios.—The ratio represented by—

"(I) the total number of out-of-wedlock births in families receiving assistance under the State program under this part in the State for the most recent fiscal year for which information is available; over

"(II) the total number of births in families receiving assistance under the State program under this part in the State for such year.

"(ii) Net changes in the out-of-wedlock ratio.—The difference between the ratio described in subparagraph (A)(i) with respect to a State for the most recent fiscal year for which such information is available and the ratio with respect to the State for the immediately preceding year."

Subsec. (h)(1)(D). Pub. L. 105–33, §5509(c), substituted "August 22, 1996" for "September 30, 1995".

Subsec. (i)(1). Pub. L. 105–33, §5509(d)(1), substituted "May 31, 1998" for "90 days after August 22, 1996".

Subsec. (i)(5). Pub. L. 105–33, §5509(d)(2), substituted ", to the extent available, county-by-county" for "the county-by-county".

Subsec. (j). Pub. L. 105–33, §5001(f), added subsec. (j).

Effective Date of 2008 Amendment

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 4002(b)(1)(D), (2)(V) of Pub. L. 110–246 effective Oct. 1, 2008, see section 4407 of Pub. L. 110–246, set out as a note under section 1161 of Title 2, The Congress.

Effective Date of 1999 Amendment

Amendment by Pub. L. 106–169 effective as if included in the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 401(q) of Pub. L. 106–169, set out as a note under section 602 of this title.

Effective Date of 1997 Amendment

Amendment by section 5509 of Pub. L. 105–33 effective as if included in section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, at the time such section 103(a) became law, see section 5518(a) of Pub. L. 105–33, set out as a note under section 602 of this title.

Amendment by section 5514(c) of Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 862a of Title 21, Food and Drugs.

Effective Date

Section effective Aug. 22, 1996, 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 a note under section 601 of this title.

Funding of Research, Evaluations, and National Studies

Pub. L. 113–235, div. G, title II, §228(c), Dec. 16, 2014, 128 Stat. 2491, provided that: "In the case of research, evaluations, and national studies funded under section 413(h)(1) of the Social Security Act [42 U.S.C. 613(h)(1)], no funds shall be appropriated under that section for fiscal year 2015 or any fiscal year thereafter."

Coordination of Substance Abuse and Child Protection Services

Pub. L. 105–89, title IV, §405, Nov. 19, 1997, 111 Stat. 2135, required the Secretary of Health and Human Services, based on information from the Substance Abuse and Mental Health Services Administration and the Administration for Children and Families in the Department of Health and Human Services, to submit to the appropriate committees of Congress a report which described the extent and scope of the problem of substance abuse in the child welfare population, the types of services provided to such population, and the outcomes resulting from the provision of such services to such population, along with appropriate recommendations for legislative changes.

GAO Study of Effect of Family Violence on Need for Public Assistance

Pub. L. 105–33, title V, §5001(i), Aug. 5, 1997, 111 Stat. 593, directed the Comptroller General to conduct a study of the effect of family violence on the use of public assistance programs, and in particular the extent to which family violence prolongs or increases the need for public assistance, and to submit a report to the appropriate committees of Congress within 1 year after Aug. 5, 1997.

Study on Alternative Outcomes Measures

Pub. L. 104–193, title I, §107, Aug. 22, 1996, 110 Stat. 2164, as amended by Pub. L. 105–33, title V, §5511, Aug. 5, 1997, 111 Stat. 619, directed the Secretary, in cooperation with the States, to study and analyze outcomes measures for evaluating the success of the States in moving individuals out of the welfare system through employment as an alternative to the minimum participation rates described in 42 U.S.C. 607, and to submit a report to the appropriate committees of Congress by Sept. 30, 1998.

1 So in original. The word "Projects" is used in text.

§614. Repealed. Pub. L. 113–235, div. G, title II, §228(f), Dec. 16, 2014, 128 Stat. 2492 Section, Aug. 14, 1935, ch. 531, title IV, §414, as added Pub. L. 104–193, title I, §103(a)(1), Aug. 22, 1996, 110 Stat. 2156; amended Pub. L. 105–33, title V, §5514(c), Aug. 5, 1997, 111 Stat. 620; Pub. L. 108–40, §3(i), June 30, 2003, 117 Stat. 837; Pub. L. 112–96, title IV, §4002(f), Feb. 22, 2012, 126 Stat. 195, related to a study by the Census Bureau.

A prior section 614, act Aug. 14, 1935, ch. 531, title IV, §414, as added Aug. 13, 1981, Pub. L. 97–35, title XXIII, §2308, 95 Stat. 848; amended July 18, 1984, Pub. L. 98–369, div. B, title VI, §§2638(a), 2663(c)(7)(A), 98 Stat. 1143, 1166, related to work supplementation program, prior to repeal by Pub. L. 100–485, title II, §§202(b)(13), 204(a), (b)(1)(A), Oct. 13, 1988, 102 Stat. 2378, 2381, effective Oct. 1, 1990, with provision for earlier effective dates in case of States making certain changes in their State plans and formally notifying the Secretary of Health and Human Services of their desire to become subject to the amendments by title II of Pub. L. 100–485, at such earlier effective dates.

§615. Waivers

(a) Continuation of waivers

(1) Waivers in effect on August 22, 1996

(A) In general

Except as provided in subparagraph (B), if any waiver granted to a State under section 1315 of this title or otherwise which relates to the provision of assistance under a State plan under this part (as in effect on September 30, 1996) is in effect as of August 22, 1996, the amendments made by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (other than by section 103(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996) shall not apply with respect to the State before the expiration (determined without regard to any extensions) of the waiver to the extent such amendments are inconsistent with the waiver.

(B) Financing limitation

Notwithstanding any other provision of law, beginning with fiscal year 1996, a State operating under a waiver described in subparagraph (A) shall be entitled to payment under section 603 of this title for the fiscal year, in lieu of any other payment provided for in the waiver.

(2) Waivers granted subsequently

(A) In general

Except as provided in subparagraph (B), if any waiver granted to a State under section 1315 of this title or otherwise which relates to the provision of assistance under a State plan under this part (as in effect on September 30, 1996) is submitted to the Secretary before August 22, 1996, and approved by the Secretary on or before July 1, 1997, and the State demonstrates to the satisfaction of the Secretary that the waiver will not result in Federal expenditures under subchapter IV of this chapter (as in effect without regard to the amendments made by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996) that are greater than would occur in the absence of the waiver, the amendments made by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (other than by section 103(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996) shall not apply with respect to the State before the expiration (determined without regard to any extensions) of the waiver to the extent the amendments made by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 are inconsistent with the waiver.

(B) No effect on new work requirements

Notwithstanding subparagraph (A), a waiver granted under section 1315 of this title or otherwise which relates to the provision of assistance under a State program funded under this part (as in effect on September 30, 1996) shall not affect the applicability of section 607 of this title to the State.

(b) State option to terminate waiver

(1) In general

A State may terminate a waiver described in subsection (a) before the expiration of the waiver.

(2) Report

A State which terminates a waiver under paragraph (1) shall submit a report to the Secretary summarizing the waiver and any available information concerning the result or effect of the waiver.

(3) Hold harmless provision

(A) In general

Notwithstanding any other provision of law, a State that, not later than the date described in subparagraph (B) of this paragraph, submits a written request to terminate a waiver described in subsection (a) shall be held harmless for accrued cost neutrality liabilities incurred under the waiver.

(B) Date described

The date described in this subparagraph is 90 days following the adjournment of the first regular session of the State legislature that begins after August 22, 1996.

(c) Secretarial encouragement of current waivers

The Secretary shall encourage any State operating a waiver described in subsection (a) to continue the waiver and to evaluate, using random sampling and other characteristics of accepted scientific evaluations, the result or effect of the waiver.

(d) Continuation of individual waivers

A State may elect to continue 1 or more individual waivers described in subsection (a).

(Aug. 14, 1935, ch. 531, title IV, §415, as added Pub. L. 104–193, title I, §103(a)(1), Aug. 22, 1996, 110 Stat. 2157; amended Pub. L. 105–33, title V, §5514(c), Aug. 5, 1997, 111 Stat. 620.)

References in Text

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, referred to in subsec. (a)(1)(A), (2)(A), is Pub. L. 104–193, Aug. 22, 1996, 110 Stat. 2105. Section 103(c) of the Act amended sections 602 and 603 of this title. For complete classification of this Act to the Code, see Short Title of 1996 Amendment note set out under section 1305 of this title and Tables.

Prior Provisions

A prior section 615, act Aug. 14, 1935, ch. 531, title IV, §415, as added Aug. 13, 1981, Pub. L. 97–35, title XXIII, §2320(b)(2), 95 Stat. 857; amended July 18, 1984, Pub. L. 98–369, div. B, title VI, §§2635, 2663(c)(7)(B), 98 Stat. 1142, 1166, related to attribution of income and resources of sponsor and spouse to alien, prior to repeal by Pub. L. 104–193, §103(a)(1), as amended by Pub. L. 105–33, title V, §5514(c), Aug. 5, 1997, 111 Stat. 620.

Amendments

1997—Pub. L. 105–33 made technical amendment to directory language of Pub. L. 104–193, §103(a)(1), which enacted this section.

Effective Date of 1997 Amendment

Amendment by Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 862a of Title 21, Food and Drugs.

Effective Date

Section 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 a note under section 601 of this title.

§616. Administration

The programs under this part and part D shall be administered by an Assistant Secretary for Family Support within the Department of Health and Human Services, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be in addition to any other Assistant Secretary of Health and Human Services provided for by law, and the Secretary shall reduce the Federal workforce within the Department of Health and Human Services by an amount equal to the sum of 75 percent of the full-time equivalent positions at such Department that relate to any direct spending program, or any program funded through discretionary spending, that has been converted into a block grant program under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and the amendments made by such Act, and by an amount equal to 75 percent of that

portion of the total full-time equivalent departmental management positions at such Department that bears the same relationship to the amount appropriated for any direct spending program, or any program funded through discretionary spending, that has been converted into a block grant program under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and the amendments made by such Act, as such amount relates to the total amount appropriated for use by such Department, and, notwithstanding any other provision of law, the Secretary shall take such actions as may be necessary, including reductions in force actions, consistent with sections 3502 and 3595 of title 5, to reduce the full-time equivalent positions within the Department of Health and Human Services by 245 full-time equivalent positions related to the program converted into a block grant under the amendments made by section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and by 60 full-time equivalent managerial positions in the Department.

(Aug. 14, 1935, ch. 531, title IV, §416, as added Pub. L. 104–193, title I, §103(a)(1), Aug. 22, 1996, 110 Stat. 2158; amended Pub. L. 105–33, title V, §5514(c), (d), Aug. 5, 1997, 111 Stat. 620; Pub. L. 106–169, title IV, §401(d), Dec. 14, 1999, 113 Stat. 1858.)

References in Text

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, referred to in text, is Pub. L. 104–193, Aug. 22, 1996, 110 Stat. 2105. For complete classification of this Act to the Code, see Short Title of 1996 Amendment note set out under section 1305 of this title and Tables.

Section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, referred to in text, is section 103 of Pub. L. 104–193, which enacted this part, amended sections 602, 603, and 1308 of this title, and repealed provisions formerly set out as this part. For complete classification of section 103 to the Code, see Tables.

Prior Provisions

A prior section 616, act Aug. 14, 1935, ch. 531, title IV, §416, as added Dec. 22, 1987, Pub. L. 100–203, title IX, §9102(a), 101 Stat. 1330–299, related to fraud control, prior to repeal by Pub. L. 104–193, §103(a)(1), as amended by Pub. L. 105–33, title V, §5514(c), Aug. 5, 1997, 111 Stat. 620.

Amendments

1999—Pub. L. 106–169 substituted "Opportunity Reconciliation Act" for "Opportunity Act" the first two places appearing.

1997—Pub. L. 105–33, §5514(c), made technical amendment to directory language of Pub. L. 104–193, §103(a)(1), which enacted this section.

Pub. L. 105–33, §5514(d), substituted "amendments made by section 103 of the Personal Responsibility and Work Opportunity Reconciliation" for "amendment made by section 2103 of the Personal Responsibility and Work Opportunity".

Effective Date of 1999 Amendment

Amendment by Pub. L. 106–169 effective as if included in the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 401(q) of Pub. L. 106–169, set out as a note under section 602 of this title.

Effective Date of 1997 Amendment

Amendment by section 5514(c) of Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 862a of Title 21, Food and Drugs.

Amendment by section 5514(d) of Pub. L. 105–33 effective as if included in section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, at the time such section 103(a) became law, see section 5518(a) of Pub. L. 105–33, set out as a note under section 602 of this title.

Effective Date

Section 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 a note under section 601 of this title.

§617. Limitation on Federal authority

No officer or employee of the Federal Government may regulate the conduct of States under this part or enforce any provision of this part, except to the extent expressly provided in this part.

(Aug. 14, 1935, ch. 531, title IV, §417, as added Pub. L. 104–193, title I, §103(a)(1), Aug. 22, 1996, 110 Stat. 2159; amended Pub. L. 105–33, title V, §5514(c), Aug. 5, 1997, 111 Stat. 620.)

Prior Provisions

A prior section 617, act Aug. 14, 1935, ch. 531, title IV, §417, formerly §418, as added Oct. 13, 1988, Pub. L. 100–485, title VI, §603(a), 102 Stat. 2408; renumbered §417, Nov. 10, 1988, Pub. L. 100–647, title VIII, §8105(7), 102 Stat. 3798, related to Assistant Secretary for Family Support, prior to repeal by Pub. L. 104–193, §103(a)(1), as amended by Pub. L. 105–33, title V, §5514(c), Aug. 5, 1997, 111 Stat. 620.

Amendments

1997—Pub. L. 105–33 made technical amendment to directory language of Pub. L. 104–193, §103(a)(1), which enacted this section.

Effective Date of 1997 Amendment

Amendment by Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 862a of Title 21, Food and Drugs.

Effective Date

Section 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 a note under section 601 of this title.

§618. Funding for child care

(a) General child care entitlement

(1) General entitlement

Subject to the amount appropriated under paragraph (3), each State shall, for the purpose of providing child care assistance, be entitled to payments under a grant under this subsection for a fiscal year in an amount equal to the greater of—

(A) the total amount required to be paid to the State under section 603 of this title for fiscal year 1994 or 1995 (whichever is greater) with respect to expenditures for child care under subsections (g) and (i) of section 602 of this title (as in effect before October 1, 1995); or

(B) the average of the total amounts required to be paid to the State for fiscal years 1992 through 1994 under the subsections referred to in subparagraph (A).

(2) Remainder

(A) Grants

The Secretary shall use any amounts appropriated for a fiscal year under paragraph (3), and remaining after the reservation described in paragraph (4) and after grants are awarded under paragraph (1), to make grants to States under this paragraph.

(B) Allotments to States

The total amount available for payments to States under this paragraph, as determined under subparagraph (A), shall be allotted among the States based on the formula used for determining the amount of Federal payments to each State under section 603(n) of this title (as in effect before October 1, 1995).

(C) Federal matching of State expenditures exceeding historical expenditures

The Secretary shall pay to each eligible State for a fiscal year an amount equal to the lesser of the State's allotment under subparagraph (B) or the Federal medical assistance percentage for the State for the fiscal year (as defined in section 1396d(b) of this title, as such section was in effect on September 30, 1995) of so much of the State's expenditures for child care in that fiscal year as exceed the total amount of expenditures by the State (including expenditures from amounts made available from Federal funds) in fiscal year 1994 or 1995 (whichever is greater) for the programs described in paragraph (1)(A).

(D) Redistribution

(i) In general

With respect to any fiscal year, if the Secretary determines (in accordance with clause (ii)) that any amounts allotted to a State under this paragraph for such fiscal year will not be used by such State during such fiscal year for carrying out the purpose for which such amounts are allotted, the Secretary shall make such amounts available in the subsequent fiscal year for carrying out such purpose to one or more States which apply for such funds to the extent the Secretary determines that such States will be able to use such additional amounts for carrying out such purpose. Such available amounts shall be redistributed to a State pursuant to section 603(n) of this title (as such section was in effect before October 1, 1995) by substituting "the number of children residing in all States applying for such funds" for "the number of children residing in the United States in the second preceding fiscal year".

(ii) Time of determination and distribution

The determination of the Secretary under clause (i) for a fiscal year shall be made not later than the end of the first quarter of the subsequent fiscal year. The redistribution of amounts under clause (i) shall be made as close as practicable to the date on which such determination is made. Any amount made available to a State from an appropriation for a fiscal year in accordance with this subparagraph shall, for purposes of this part, be regarded as part of such State's payment (as determined under this subsection) for the fiscal year in which the redistribution is made.

(3) Appropriation

For grants under this section, there are appropriated \$2,917,000,000 for each of fiscal years 2017 and 2018.

(4) Indian tribes

The Secretary shall reserve not less than 1 percent, and not more than 2 percent, of the aggregate amount appropriated to carry out this section in each fiscal year for payments to Indian tribes and tribal organizations.

(5) Data used to determine State and Federal shares of expenditures

In making the determinations concerning expenditures required under paragraphs (1) and (2)(C), the Secretary shall use information that was reported by the State on ACF Form 231 and available as of the applicable dates specified in clauses (i)(I), (ii), and (iii)(III) of section 603(a)(1)(D) 1 of this title.

(b) Use of funds

(1) In general

Amounts received by a State under this section shall only be used to provide child care assistance. Amounts received by a State under a grant under subsection (a)(1) shall be available for use by the State without fiscal year limitation.

(2) Use for certain populations

A State shall ensure that not less than 70 percent of the total amount of funds received by the State in a fiscal year under this section are used to provide child care assistance to families who are receiving assistance under a State program under this part, families who are attempting through work activities to transition off of such assistance program, and families who are at risk of becoming dependent on such assistance program.

(c) Application of Child Care and Development Block Grant Act of 1990

Notwithstanding any other provision of law, amounts provided to a State under this section shall be transferred to the lead agency under the Child Care and Development Block Grant Act of 1990 [42 U.S.C. 9857 et seq.], integrated by the State into the programs established by the State under such Act, and be subject to requirements and limitations of such Act.

(d) "State" defined

As used in this section, the term "State" means each of the 50 States and the District of Columbia.

(Aug. 14, 1935, ch. 531, title IV, §418, as added Pub. L. 104–193, title VI, §603(b), Aug. 22, 1996, 110 Stat. 2279; amended Pub. L. 105–33, title V, §5601, Aug. 5, 1997, 111 Stat. 644; Pub. L. 108–40, §4, June 30, 2003, 117 Stat. 837; Pub. L. 109–171, title VII, §7201, Feb. 8, 2006, 120 Stat. 141; Pub. L. 112–96, title IV, §4002(g), Feb. 22, 2012, 126 Stat. 195; Pub. L. 115–31, div. M, title I, §102(a)(4), May 5, 2017, 131 Stat. 800.)

References in Text

Section 603(a)(1)(D) of this title, referred to in subsec. (a)(5), was repealed by Pub. L. 108–40, §3(a)(2), June 30, 2003, 117 Stat. 836.

The Child Care and Development Block Grant Act of 1990, referred to in subsec. (c), is 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, which is classified generally to subchapter II–B

(§9857 et seq.) of chapter 105 of this title. For complete classification of this Act to the Code, see section 9857(a) of this title and Tables.

Amendments

2017—Subsec. (a)(3). Pub. L. 115–31 substituted "each of fiscal years 2017 and 2018" for "fiscal year 2012".

2012—Subsec. (a)(3). Pub. L. 112–96 substituted "appropriated \$2,917,000,000 for fiscal year 2012." for "appropriated—" and struck out subpars. (A) to (G) which appropriated amounts for fiscal years 1997 to 2010.

2006—Subsec. (a)(3)(G). Pub. L. 109–171 added subpar. (G).

2003—Subsec. (a)(3)(F). Pub. L. 108–40 substituted "each of fiscal years 2002 and 2003" for "fiscal year 2002".

1997—Subsec. (a)(1). Pub. L. 105–33, §5601(a)(1)(A), (D), inserted "the greater of" after "equal to" in introductory provisions and struck out concluding provisions which read "whichever is greater."

Subsec. (a)(1)(A). Pub. L. 105–33, §5601(a)(1)(B), struck out "the sum of" before "the total amount", substituted "expenditures" for "amounts expended" and "subsections (g) and (i) of section 602 of this title (as in effect before October 1, 1995); or" for "section—", and struck out cls. (i) and (ii) which read as follows:

"(i) 602(g) of this title (as such section was in effect before October 1, 1995); and

"(ii) 602(i) of this title (as so in effect); or".

Subsec. (a)(1)(B). Pub. L. 105–33, §5601(a)(1)(C), substituted "subsections" for "sections" and a period for the semicolon at end.

Subsec. (a)(2)(B). Pub. L. 105–33, §5601(a)(2)(A), added subpar. (B) and struck out heading and text of former subpar. (B). Text read as follows: "Subject to subparagraph (C), the amount of a grant awarded to a State for a fiscal year under this paragraph shall be based on the formula used for

determining the amount of Federal payments to the State under section 603(n) of this title (as such section was in effect before October 1, 1995)."

Subsec. (a)(2)(C). Pub. L. 105–33, §5601(a)(2)(B), added subpar. (C) and struck out heading and text of former subpar. (C). Text read as follows: "The Secretary shall pay to each eligible State in a fiscal year an amount, under a grant under subparagraph (A), equal to the Federal medical assistance percentage for such State for fiscal year 1995 (as defined in section 1396d(b) of this title) of so much of the expenditures by the State for child care in such year as exceed the State set-aside for such State under paragraph (1)(A) for such year and the amount of State expenditures in fiscal year 1994 or 1995 (whichever is greater) that equal the non-Federal share for the programs described in subparagraph (A) of paragraph (1)."

Subsec. (a)(2)(D)(i). Pub. L. 105–33, §5601(a)(2)(C), substituted "any amounts allotted" for "amounts under any grant awarded" and "such amounts are allotted" for "the grant is made".

Subsec. (a)(5). Pub. L. 105–33, §5601(b), added par. (5).

Subsec. (d). Pub. L. 105–33, §5601(c), substituted "and" for "or" before "the District".

Effective Date of 2006 Amendment

Amendment by Pub. L. 109–171 effective as if enacted on Oct. 1, 2005, except as otherwise provided, see section 7701 of Pub. L. 109–171, set out as a note under section 603 of this title.

Effective Date of 2003 Amendment

Amendment by Pub. L. 108–40 effective July 1, 2003, see section 8 of Pub. L. 108–40, set out as a note under section 603 of this title.

Effective Date of 1997 Amendment

Pub. L. 105–33, title V, §5603, Aug. 5, 1997, 111 Stat. 646, provided that:

"(a) In General.—Except as provided in subsection (b), this chapter [chapter 6 (§§5601–5603) of subtitle F of title V of Pub. L. 105–33, amending this section and sections 9858c, 9858i, 9858j, 9858m, and 9858n of this title] and the amendments made by this chapter shall take effect as if

included in the enactment of title VI of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193; 110 Stat. 2278).

"(b) Exceptions.—The amendment made by section 5601(a)(2)(B) [amending this section] shall take effect on October 1, 1997."

Effective Date

Section 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.

¹ See References in Text note below.

§619. Definitions

As used in this part:

(1) Adult

The term "adult" means an individual who is not a minor child.

(2) Minor child

The term "minor child" means an individual who—

(A) has not attained 18 years of age; or

(B) has not attained 19 years of age and is a full-time student in a secondary school (or in the equivalent level of vocational or technical training).

(3) Fiscal year

The term "fiscal year" means any 12-month period ending on September 30 of a calendar year.

(4) Indian, Indian tribe, and tribal organization

(A) In general

Except as provided in subparagraph (B), the terms "Indian", "Indian tribe", and "tribal organization" have the meaning given such terms by section 5304 of title 25.

(B) Special rule for Indian tribes in Alaska

The term "Indian tribe" means, with respect to the State of Alaska, only the Metlakatla Indian Community of the Annette Islands Reserve and the following Alaska Native regional nonprofit corporations:

(i) Arctic Slope Native Association.

(ii) Kawerak, Inc.

(iii) Maniilaq Association.

(iv) Association of Village Council Presidents.

(v) Tanana Chiefs Conference.

(vi) Cook Inlet Tribal Council.

(vii) Bristol Bay Native Association.

(viii) Aleutian and Pribilof Island Association.

(ix) Chugachmuit.

(x) Tlingit Haida Central Council.

(xi) Kodiak Area Native Association.

(xii) Copper River Native Association.

(5) State

Except as otherwise specifically provided, the term "State" means the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa.

(Aug. 14, 1935, ch. 531, title IV, §419, as added Pub. L. 104–193, title I, §103(a)(2), Aug. 22, 1996, 110 Stat. 2159.)

Effective Date

Par. (4) of this section effective Oct. 1, 1996, with remainder of section 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 a note under section 601 of this title.

Specific Statutory Authority:

A.R.S. § 46-101

46-101. Definitions

In this title, unless the context otherwise requires:

1. "Aid to families with dependent children" means assistance granted under section 403 of title IV of the social security act as it existed before August 22, 1996.
2. "Applicant" means a person who has applied for assistance or services under this title, or a person who has applied for assistance or services under this title and who has custody of a dependent child.
3. "Assistance" means payments in cash or kind to or on behalf of a person or persons in need as provided for in this title.
4. "Assistance unit" means those members of a needy family, as prescribed by the department in rule, or a child only case, that meets the nonfinancial eligibility criteria for cash assistance and whose needs and other circumstances are considered as a whole to determine a cash assistance benefit amount.
5. "Cash assistance" means temporary assistance for needy families paid to a recipient for the purpose of meeting basic living expenses as defined by the department.
6. "Child care personnel" means any person who supervises children in a day care home or center that receives child care food program monies under this article.
7. "Child only case" means a case in which the eligible dependent child is in the legal custody of the department of child safety, a tribal court or a tribal child welfare agency located in this state and placed in foster care with an unrelated adult or with a nonparent relative who is not receiving cash assistance.
8. "Dependent child" means a needy child who has been deprived of parental support or care by reason of the death, unemployment of the supporting parent as defined and prescribed by the rules of

the department, continued absence from the home, or physical or mental incapacity of a parent, and whose relatives who are responsible under the law for the child's support are not able to provide adequate care and support of the child without public assistance, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, niece, nephew or cousin in a place of residence maintained by one or more of such relatives as his or their own home or who is in the legal custody of the department of child safety and placed in a foster home or with an unrelated adult as a recipient of temporary assistance for needy families. Such dependent child must be under eighteen years of age or, if eighteen, must be a full-time student in a high school, or in the equivalent level of vocational or technical training, and shall be reasonably expected to complete the program before reaching age nineteen.

9. "Director" means the director of the department of economic security.

10. "Domestic violence" means battered or subject to extreme cruelty as defined in section 408(a)(7)(C)(iii) of the social security act.

11. "Employment plan" means an agreement between the department and the cash assistance recipient regarding the participant's work activities and services provided by the department.

12. "Federal poverty level" means the poverty guidelines that are issued by the United States department of health and human services pursuant to section 673(2) of the omnibus budget reconciliation act of 1981 and that are reported annually in the federal register.

13. "Head of household" means a dependent child's parent or the spouse of the parent, or the dependent child's nonparent relative or spouse of the nonparent relative, who receives cash assistance for himself and on behalf of the dependent child or only on behalf of the dependent child.

14. "Homestead property" means a home owned and occupied by the applicant or recipient, or his spouse.

15. "Jobs program" means services established by the department to ensure that participants comply with work requirements as prescribed in Public Law 104-193.

16. "Needy family":

(a) Means a family that resides in the same home and includes a dependent child, one or more of the dependent child's parents and nonparent relatives of the dependent child and their spouses who meet financial cash assistance eligibility criteria established by this title and by department rule.

(b) Does not include a child only case.

17. "Nonparent relative" means a dependent child's grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, niece, nephew or cousin and includes a permanent guardian who is appointed pursuant to section 8-872.

18. "Participant" means a recipient of cash assistance engaged in work activities through the JOBS program.

19. "Personal responsibility declaration" means a document that is prescribed by the department and in which the applicant acknowledges understanding of the applicant's personal responsibility.

20. "Recipient" means a person who receives assistance or services under the provisions of this title.

21. "Services" includes social casework, rehabilitation counseling and similar services rendered to a person or persons in need as provided for in this title.

22. "Sponsor" means any political subdivision of this state, any federally recognized Indian tribe, any military base or any other person, partnership, corporation or association contracting with this state to provide assistance in the distribution of child care food program monies pursuant to this article.

23. "State department" or "department" means the department of economic security.

24. "Temporarily deferred" means the postponement of work activities.

25. "Temporary assistance for needy families" means assistance granted under section 403 of title IV of the social security act as it exists after August 21, 1996.

26. "Vendor payment" means any payment to a person other than the recipient on his behalf.

27. "Work activities" means the following activities that are countable toward the federal work participation rate as prescribed in Public Law 104-193, section 407 (1996):

- (a) Unsubsidized employment.
- (b) Subsidized private or public employment.
- (c) Work experience.
- (d) On-the-job training.
- (e) Job search and job readiness assistance.
- (f) Community service programs.
- (g) Vocational educational training.
- (h) Job skills training directly related to employment.
- (i) Education directly related to employment in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency.
- (j) Satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalency, in the case of a recipient who has not completed secondary school or received such a certificate.

A.R.S. § 46-299

46-299. Jobs program; definition

A. As a condition of eligibility or continuing eligibility for cash assistance, all recipients shall engage in work activities that are established in this article and determined appropriate by the department. An individual with a disability shall engage in work activities as required by this subsection unless the individual with a disability provides the department verification of a condition that meets disability or

temporary disability criteria established by the department. The following individuals are temporarily deferred from the requirement to engage in work activities:

1. A parent in a single parent family or a nonparent relative personally caring for a child who is under twelve months of age for a period of not more than twelve months in the recipient's lifetime. This deferral does not apply to teenaged custodial parents who do not have a high school diploma or its equivalent.
2. An unmarried custodial parent who is under eighteen years of age and who is personally caring for a child who is under twelve weeks of age.
3. An individual who provides verification acceptable to the department that the individual is personally caring for the individual's dependent who is a person with a disability and who is unable to care for himself.
4. Victims of domestic violence whose participation in work activities causes an immediate threat to their own safety or the safety of their children.
5. Dependent children as defined in this article.

B. To the extent that the state meets the federally required work participation rates, unmarried custodial parents may attend education directly related to employment full time in lieu of standard work participation requirements. The department may require additional work activities. For the purposes of this subsection, "education directly related to employment" includes a general education development program, a career and technical education program, an associate degree program or a postsecondary education program.

C. Teenaged heads of household who are under twenty years of age and who have not attained their high school diploma or its equivalent are required to either:

1. Maintain satisfactory attendance at a secondary school or the equivalent.
2. Satisfactorily participate in education directly related to employment at the level of participation established by the department.

D. The department may establish the minimum work participation level required to meet the work requirements established in Public Law 104-193, section 407 (1996).

E. All cash assistance recipients, excluding dependent children, shall complete a personal responsibility declaration.

F. All cash assistance recipients, excluding dependent children complying with compulsory school requirements as prescribed in section 15-803, shall also participate in the development of an employment plan and shall receive services in support of and as specified in that plan.

G. Participants who fail or refuse to engage in work activities as required by the department are subject to the graduated sanctions prescribed in section 46-300.

H. The department shall adopt rules that establish good cause reasons that excuse the participant from engaging in work activities.

I. The department may allow a course in financial literacy and personal finance to qualify as a work activity for the purposes of this article. A course in financial literacy and personal finance includes instruction on household cash management techniques, career advice to obtain well-paying and secure employment, using checking and savings accounts, obtaining and using short-term and long-term credit or securing a loan or other long-term financing arrangements for high-cost items.

J. The department shall provide the Jobs program to eligible families transitioning off cash assistance due to the time limit if needed to obtain employment, to maintain employment or to receive a higher level of employment. The Jobs program shall be provided for up to twelve months after a cash assistance case closure.

K. For a participant to qualify for Jobs program services after a cash assistance case closure, all of the following must apply:

1. The cash assistance case was closed due to the time limit.
2. The participant was enrolled in the Jobs program at the time of case closure.

3. The case was not in a Jobs sanction at the time of closure.

4. The department has sufficient monies to pay for activities or services.

L. This state shall provide workers' compensation coverage for cash assistance recipients who are engaged in unpaid work experience or community service programs as established in this article. The cost shall be paid from the temporary assistance for needy families monies.

M. The department may operate on a statewide basis a wage subsidy program. Employers may hire recipients of cash assistance and supplemental nutrition assistance for subsidized job slots that are full time and that offer a reasonable possibility of unsubsidized employment after the subsidy period. This program shall provide that:

1. Employers who operate an approved wage subsidy program shall receive a subsidy for up to six months. The department may grant an extension of three months to employers operating in areas identified as having a higher unemployment rate than the state average, as defined by the department, if the extension increases the likelihood of ongoing unsubsidized employment for the subsidized employee.

2. The department shall ensure that subsidized jobs made available to subsidized employees:

(a) Do not require work in excess of forty hours per week.

(b) Pay a wage that is substantially like the wage paid for similar jobs with the employer with appropriate adjustments for experience and training but not less than the federal minimum hourly wage.

(c) Do not impair an existing contract or collective bargaining agreement.

(d) Do not displace currently employed workers or fill positions that are vacant due to a layoff.

3. Wage subsidy employers shall:

(a) Maintain health, safety and working conditions at or above levels generally acceptable in the industry and not less than those of comparable jobs offered by the employer.

(b) Provide on-the-job training necessary for subsidized employees to perform their duties.

(c) Sign an agreement for each placement outlining the specific job offered to a subsidized employee and agree to abide by all of the requirements of the program. All agreements shall contain a provision that sets forth the employer's responsibility to repay subsidies paid under this article if the employer violates program requirements.

(d) Provide workers' compensation coverage for each subsidized employee they employ.

(e) Provide the subsidized employee with benefits equal to those for new employees or as required by state and federal law, whichever is greater. For the purposes of this subdivision, "benefits" includes health care coverage, paid sick leave and holiday and vacation pay.

4. Eligible subsidized employees are those who:

(a) Do not have sufficient work experience to obtain unsubsidized employment.

(b) Have completed an employment preparation program.

(c) Are deemed able to benefit from this employment strategy by the department.

5. The department shall:

(a) Disregard income earned by the subsidized employee in the subsidized job when determining the household's eligibility for cash assistance and the supplemental nutrition assistance program.

(b) Suspend regular payments of cash assistance and supplemental nutrition assistance to the household at the end of the calendar month in which an employer makes the first subsidized wage payment to a subsidized employee who is otherwise eligible to receive the cash assistance and supplemental nutrition assistance.

(c) Reimburse employers each month, from cash assistance and the supplemental nutrition assistance program, the lesser of a fixed subsidy amount determined by the department or the gross wages paid to the subsidized employee.

(d) Determine eligibility for supplemental payments as follows:

(i) If the net monthly full-time wage paid to a subsidized employee is less than the combined monthly total of the cash assistance and supplemental nutrition assistance the participant is eligible to receive, the department shall authorize issuance of a supplemental cash payment to compensate for the deficit. To determine if a deficit exists, the department shall adopt, through rules, an equivalency scale that is adjustable to household size and other factors. For the purposes of this item, "net monthly full-time wage" means a participant's wages after required payroll deductions.

(ii) The department shall monthly determine and pay in advance supplemental payments to eligible subsidized employees. In calculating the payment, the department shall assume that the participant will work forty hours per week during the month unless an employer provides information that the number of hours to be worked by a subsidized employee will be reduced.

N. For the purposes of this section, "subsidized employee" means an individual who is engaged in this subsidized employment activity.

A.R.S. § 46-300

46-300. Sanctions

A. The department shall impose a series of graduated sanctions as described in subsection D of this section for any noncompliance with:

1. The child support enforcement efforts required by section 46-292, subsection D unless good cause is established as provided in section 46-292, subsections F and G.

2. The work activities requirements described in section 46-299, unless good cause is established as provided in section 46-299, subsection H and department rules. A recipient who does not comply with the work activities requirements shall demonstrate compliance with the work activities requirements in order to continue benefit eligibility and to avoid sanctions.

3. The school enrollment and attendance requirements of section 46-292, subsection S.

4. The immunization requirements of section 46-292, subsection T.

B. In addition to subsection A of this section, the department shall impose a series of graduated sanctions as described in subsection D of this section if either of the following occurs:

1. The recipient voluntarily terminates paid employment without good cause as specified in rules adopted by the director.

2. An adult recipient uses, sells or possesses a controlled substance in violation of title 13 as specified in rules adopted by the director.

C. Noncompliance with one or more of the requirements listed in subsection A of this section during any calendar month is deemed to be a month of noncompliance and shall result in the sanctions prescribed in subsection D of this section. The department shall impose these graduated sanctions even if the instances of noncompliance do not occur in consecutive months.

D. The department shall impose the following sanctions:

1. For the first instance of noncompliance, the department shall reduce the household's cash assistance grant by fifty percent for one month.

2. For a second instance of noncompliance that occurs in a month other than the month in which the first noncompliance occurred and any instance of noncompliance thereafter, the department shall terminate the household's cash assistance grant for at least one month or until the household complies.

45 CFR Part 261

PART 261—ENSURING THAT RECIPIENTS WORK

Authority: 42 U.S.C. 601, 602, 607, and 609; Pub. L. 109-171.

Source: 64 FR 17884, Apr. 12, 1999, unless otherwise noted.

§261.1 What does this part cover?

This part includes the regulatory provisions relating to the mandatory work requirements of TANF and State work participation data verification requirements.

[71 FR 37475, June 29, 2006]

§261.2 What definitions apply to this part?

(a) The general TANF definitions at §§260.30 through 260.33 of this chapter apply to this part.

(b) Unsubsidized employment means full-or part-time employment in the public or private sector that is not subsidized by TANF or any other public program.

(c) Subsidized private sector employment means employment in the private sector for which the employer receives a subsidy from TANF or other public funds to offset some or all of the wages and costs of employing an individual.

(d) Subsidized public sector employment means employment in the public sector for which the employer receives a subsidy from TANF or other public funds to offset some or all of the wages and costs of employing an individual.

(e) Work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available means a work activity, performed in return for welfare, that provides an individual with an opportunity to acquire the general skills, knowledge, and work habits necessary to obtain employment. The purpose of work experience is to improve the employability of those who cannot find unsubsidized full-time employment. This activity must be supervised by an employer, work site sponsor, or other responsible party on an ongoing basis no less frequently than once in each day in which the individual is scheduled to participate.

(f) On-the-job training means training in the public or private sector that is given to a paid employee while he or she is engaged in productive work and that provides knowledge and skills essential to the full and adequate performance of the job.

(g) Job search and job readiness assistance means the act of seeking or obtaining employment, preparation to seek or obtain employment, including life skills training, and substance abuse treatment, mental health treatment, or rehabilitation activities. Such treatment or therapy must be determined to be necessary and documented by a qualified medical, substance abuse, or mental health professional. Job search and job readiness assistance activities must be supervised by the TANF agency or other responsible party on an ongoing basis no less frequently than once each day in which the individual is scheduled to participate.

(h) Community service programs mean structured programs and embedded activities in which individuals perform work for the direct benefit of the community under the auspices of public or nonprofit organizations. Community service programs must be limited to projects that serve a useful community purpose in fields such as health, social service, environmental protection, education, urban and rural redevelopment, welfare, recreation, public facilities, public safety, and child care. Community service programs are designed to improve the employability of individuals not otherwise able to obtain unsubsidized full-time employment, and must be supervised on an ongoing basis no less frequently than once each day in which the individual is scheduled to participate. A State agency shall take into account, to the extent possible, the prior training, experience, and skills of a recipient in making appropriate community service assignments.

(i) Vocational educational training (not to exceed 12 months with respect to any individual) means organized educational programs that are directly related to the preparation of individuals for employment in current or emerging occupations. Vocational educational training must be supervised on an ongoing basis no less frequently than once each day in which the individual is scheduled to participate.

(j) Job skills training directly related to employment means training or education for job skills required by an employer to provide an individual with the ability to obtain employment or to advance or adapt to the changing demands of the workplace. Job skills training directly related to employment must be supervised on an ongoing basis no less frequently than once each day in which the individual is scheduled to participate.

(k) Education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency means education related to a specific occupation, job, or job offer. Education directly related to employment must be supervised on an

ongoing basis no less frequently than once each day in which the work-eligible individual is scheduled to participate.

(l) Satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate means regular attendance, in accordance with the requirements of the secondary school or course of study, at a secondary school or in a course of study leading to a certificate of general equivalence, in the case of a work-eligible individual who has not completed secondary school or received such a certificate. This activity must be supervised on an ongoing basis no less frequently than once each day in which the individual is scheduled to participate.

(m) Providing child care services to an individual who is participating in a community service program means providing child care to enable another TANF or SSP recipient to participate in a community service program. This is an unpaid activity and must be a structured program designed to improve the employability of individuals who participate in this activity. This activity must be supervised on an ongoing basis no less frequently than once each day in which the individual is scheduled to participate.

(n)(1) Work-eligible individual means an adult (or minor child head-of-household) receiving assistance under TANF or a separate State program or a non-recipient parent living with a child receiving such assistance unless the parent is:

(i) A minor parent and not the head-of-household;

(ii) A non-citizen who is ineligible to receive assistance due to his or her immigration status; or

(iii) At State option on a case-by-case basis, a recipient of Supplemental Security Income (SSI) benefits or Aid to the Aged, Blind or Disabled in the Territories.

(2) The term also excludes:

(i) A parent providing care for a disabled family member living in the home, provided that there is medical documentation to support the need for the parent to remain in the home to care for the disabled family member;

(ii) At State option on a case-by-case basis, a parent who is a recipient of Social Security Disability Insurance (SSDI) benefits; and

(iii) An individual in a family receiving MOE-funded assistance under an approved Tribal TANF program, unless the State includes the Tribal family in calculating work participation rates, as permitted under §261.25.

[73 FR 6821, Feb. 5, 2008]

Subpart A—What Are the Provisions Addressing Individual Responsibility?

§261.10 What work requirements must an individual meet?

(a)(1) A parent or caretaker receiving assistance must engage in work activities when the State has determined that the individual is ready to engage in work or when he or she has received assistance for a total of 24 months, whichever is earlier, consistent with section 407(e)(2) of the Act.

(2) The State must define what it means to engage in work for this requirement; its definition may include participation in work activities in accordance with section 407 of the Act.

(b) If a parent or caretaker has received assistance for two months, he or she must participate in community service employment, consistent with section 407(e)(2) of the Act, unless the State has exempted the individual from work requirements or he or she is already engaged in work activities as described at §261.30. The State will determine the minimum hours per week and the tasks the individual must perform as part of the community service employment.

§261.11 Which recipients must have an assessment under TANF?

(a) The State must make an initial assessment of the skills, prior work experience, and employability of each recipient who is at least age 18 or who has not completed high school (or equivalent) and is not attending secondary school.

(b) The State may make any required assessments within 30 days (90 days, at State option) of the date an individual becomes eligible for assistance.

§261.12 What is an individual responsibility plan?

An individual responsibility plan is a plan developed at State option, in consultation with the individual, on the basis of the assessment made under §261.11. The plan:

- (a) Should set an employment goal and a plan for moving immediately into private-sector employment;
- (b) Should describe the obligations of the individual. These could include going to school, maintaining certain grades, keeping school-aged children in school, immunizing children, going to classes, or doing other things that will help the individual become or remain employed in the private sector;
- (c) Should be designed to move the individual into whatever private-sector employment he or she is capable of handling as quickly as possible and to increase over time the responsibility and the amount of work the individual handles;
- (d) Should describe the services the State will provide the individual to enable the individual to obtain and keep private sector employment, including job counseling services; and
- (e) May require the individual to undergo appropriate substance abuse treatment.

§261.13 May an individual be penalized for not following an individual responsibility plan?

Yes. If an individual fails without good cause to comply with an individual responsibility plan that he or she has signed, the State may reduce the amount of assistance otherwise payable to the family, by whatever amount it considers appropriate. This penalty is in addition to any other penalties under the State's TANF program.

§261.14 What is the penalty if an individual refuses to engage in work?

(a) If an individual refuses to engage in work required under section 407 of the Act, the State must reduce or terminate the amount of assistance payable to the family, subject to any good cause or other exceptions the State may establish. Such a reduction is governed by the provisions of §261.16.

(b)(1) The State must, at a minimum, reduce the amount of assistance otherwise payable to the family pro rata with respect to any period during the month in which the individual refuses to work.

(2) The State may impose a greater reduction, including terminating assistance.

(c) A State that fails to impose penalties on individuals in accordance with the provisions of section 407(e) of the Act may be subject to the State penalty specified at §261.54.

§261.15 Can a family be penalized if a parent refuses to work because he or she cannot find child care?

(a) No, the State may not reduce or terminate assistance based on an individual's refusal to engage in required work if the individual is a single custodial parent caring for a child under age six who has a demonstrated inability to obtain needed child care, as specified at §261.56.

(b) A State that fails to comply with the penalty exception at section 407(e)(2) of the Act and the requirements at §261.56 may be subject to the State penalty specified at §261.57.

§261.16 Does the imposition of a penalty affect an individual's work requirement?

A penalty imposed by a State against the family of an individual by reason of the failure of the individual to comply with a requirement under TANF shall not be construed to be a reduction in any wage paid to the individual.

Subpart B—What Are the Provisions Addressing State Accountability?

Source: 73 FR 6822, Feb. 5, 2008, unless otherwise noted.

§261.20 How will we hold a State accountable for achieving the work objectives of TANF?

(a) Each State must meet two separate work participation rates in FY 2006 and thereafter, one—the two-parent rate based on how well it succeeds in helping work-eligible individuals in two-parent families find work activities described at §261.30, the other—the overall rate based on how well it succeeds in finding those activities for work-eligible individuals in all the families that it serves.

(b) Each State must submit data, as specified at §265.3 of this chapter, that allows us to measure its success in requiring work-eligible individuals to participate in work activities.

(c) If the data show that a State met both participation rates in a fiscal year, then the percentage of historic State expenditures that it must expend under TANF, pursuant to §263.1 of this chapter,

decreases from 80 percent to 75 percent for that fiscal year. This is also known as the State's TANF “maintenance-of-effort” (MOE) requirement.

(d) If the data show that a State did not meet a minimum work participation rate for a fiscal year, a State could be subject to a financial penalty.

(e) Before we impose a penalty, a State will have the opportunity to claim reasonable cause or enter into a corrective compliance plan, pursuant to §§262.5 and 262.6 of this chapter.

§261.21 What overall work rate must a State meet?

Each State must achieve a 50 percent minimum overall participation rate in FY 2006 and thereafter, minus any caseload reduction credit to which it is entitled as provided in subpart D of this part.

§261.22 How will we determine a State's overall work rate?

(a)(1) The overall participation rate for a fiscal year is the average of the State's overall participation rates for each month in the fiscal year.

(2) The rate applies to families with a work-eligible individual.

(b) We determine a State's overall participation rate for a month as follows:

(1) The number of TANF and SSP-MOE families that include a work-eligible individual who meets the requirements set forth in §261.31 for the month (i.e., the numerator), divided by,

(2) The number of TANF and SSP-MOE families that include a work-eligible individual, minus the number of such families that are subject to a penalty for refusing to work in that month (i.e., the denominator). However, if a family with a work-eligible individual has been penalized for refusal to participate in work activities for more than three of the last 12 months, we will not exclude it from the participation rate calculation.

(3) At State option, we will include in the participation rate calculation families with a work-eligible individual that have been penalized for refusing to work no more than three of the last 12 months.

(c)(1) A State has the option of not requiring a single custodial parent caring for a child under age one to engage in work.

(2) At State option, we will disregard a family with such a parent from the participation rate calculation for a maximum of 12 months.

(d)(1) If a family receives assistance for only part of a month, we will count it as a month of participation if a work-eligible individual is engaged in work for the minimum average number of hours in each full week that the family receives assistance in that month.

(2) If a State pays benefits retroactively (i.e., for the period between application and approval of benefits), it has the option to consider the family to be receiving assistance during the period of retroactivity.

§261.23 What two-parent work rate must a State meet?

Each State must achieve a 90 percent minimum two-parent participation rate in FY 2006 and thereafter, minus any caseload reduction credit to which it is entitled as provided in subpart D of this part.

§261.24 How will we determine a State's two-parent work rate?

(a)(1) The two-parent participation rate for a fiscal year is the average of the State's two-parent participation rates for each month in the fiscal year.

(2) The rate applies to two-parent families with two work-eligible individuals. However, if one of the parents is a work-eligible individual with a disability, we will not consider the family to be a two-parent family; i.e., we will not include such a family in either the numerator or denominator of the two-parent rate.

(b) We determine a State's two-parent participation rate for the month as follows:

(1) The number of two-parent TANF and SSP-MOE families in which both parents are work-eligible individuals and together they meet the requirements set forth in §261.32 for the month (i.e., the numerator), divided by,

(2) The number of two-parent TANF and SSP-MOE families in which both parents are work-eligible individuals during the month, minus the number of such two-parent families that are subject to a penalty for refusing to work in that month (the denominator). However, if a family with a work-eligible individual has been penalized for more than three months of the last 12 months, we will not exclude it from the participation rate calculation.

(3) At State option, we will include in the participation rate calculation families with a work-eligible individual that have been penalized for refusing to work no more than three of the last 12 months.

(c) For purposes of the calculation in paragraph (b) of this section, a two-parent family includes, at a minimum, all families with two natural or adoptive parents (of the same minor child) who are work-eligible individuals and living in the home, unless both are minors and neither is a head-of-household.

(d)(1) If the family receives assistance for only part of a month, we will count it as a month of participation if a work-eligible individual in the family (or both work-eligible individuals, if they are both required to work) is engaged in work for the minimum average number of hours in each full week that the family receives assistance in that month.

(2) If a State pays benefits retroactively (i.e., for the period between application and approval of benefits), it has the option to consider the family to be receiving assistance during the period of retroactivity.

§261.25 Do we count Tribal families in calculating the work participation rate?

At State option, we will include families with a work-eligible individual that are receiving assistance under an approved Tribal family assistance plan or under a Tribal work program in calculating the State's participation rates under §§261.22 and 261.24.

Subpart C—What Are the Work Activities and How Do They Count?

§261.30 What are the work activities?

The work activities are:

(a) Unsubsidized employment;

(b) Subsidized private-sector employment;

- (c) Subsidized public-sector employment;
- (d) Work experience if sufficient private-sector employment is not available;
- (e) On-the-job training (OJT);
- (f) Job search and job readiness assistance;
- (g) Community service programs;
- (h) Vocational educational training;
- (i) Job skills training directly related to employment;
- (j) Education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency;
- (k) Satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, if a recipient has not completed secondary school or received such a certificate;
and
- (l) Providing child care services to an individual who is participating in a community service program.

§261.31 How many hours must a work-eligible individual participate for the family to count in the numerator of the overall rate?

(a) Subject to paragraph (d) of this section, a family with a work-eligible individual counts as engaged in work for a month for the overall rate if:

(1) He or she participates in work activities during the month for at least a minimum average of 30 hours per week; and

(2) At least 20 of the above hours per week come from participation in the activities listed in paragraph (b) of this section.

(b) The following nine activities count toward the first 20 hours of participation: unsubsidized employment; subsidized private-sector employment; subsidized public-sector employment; work experience; on-the-job training; job search and job readiness assistance; community service programs; vocational educational training; and providing child care services to an individual who is participating in a community service program.

(c) Above 20 hours per week, the following three activities may also count as participation: job skills training directly related to employment; education directly related to employment; and satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence.

(d)(1) We will deem a work-eligible individual who participates in a work experience or community service program for the maximum number of hours per month that a State may require by dividing the combined monthly TANF or SSP-MOE grant and food stamp allotment by the higher of the Federal or State minimum wage to have participated for an average of 20 hours per week for the month in that activity.

(2) This policy is limited to States that have adopted a Simplified Food Stamp Program option that permits a State to count the value of food stamps in determining the maximum core hours of participation permitted by the FLSA.

(3) In order for Puerto Rico, which does not have a traditional Food Stamp Program, to deem core hours, it must include the value of food assistance benefits provided through the Nutrition Assistance Program in the same manner as a State must include food stamp benefits under subsection (d)(1).

[73 FR 6823, Feb. 5, 2008]

§261.32 How many hours must work-eligible individuals participate for the family to count in the numerator of the two-parent rate?

(a) Subject to paragraph (d) of this section, a family with two work-eligible parents counts as engaged in work for the month for the two-parent rate if:

(1) Work-eligible parents in the family are participating in work activities for a combined average of at least 35 hours per week during the month, and

(2) At least 30 of the 35 hours per week come from participation in the activities listed in paragraph (b) of this section.

(b) The following nine activities count for the first 30 hours of participation: unsubsidized employment; subsidized private-sector employment; subsidized public-sector employment; work experience; on-the-job training; job search and job readiness assistance; community service programs; vocational educational training; and providing child care services to an individual who is participating in a community service program.

(c) Above 30 hours per week, the following three activities may also count for participation: job skills training directly related to employment; education directly related to employment; and satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence.

(d)(1) We will deem a family with two work-eligible parents in which one or both participates in a work experience or community service program for the maximum number of hours per month that a State may require by dividing the combined monthly TANF or SSP-MOE grant and food stamp allotment by the higher of the Federal or State minimum wage to have participated for an average of 30 hours per week for the month in that activity.

(2) This policy is limited to States that have adopted a Simplified Food Stamp Program option that permits a State to count the value of food stamps in determining the maximum core hours of participation permitted by the FLSA.

(3) In order for Puerto Rico, which does not have a traditional Food Stamp Program, to deem core hours, it must include the value of food assistance benefits provided through the Nutrition Assistance Program in the same manner as a State must include food stamp benefits under paragraph (d)(1) of this section.

(e)(1) Subject to paragraph (f) of this section, if the family receives federally funded child care assistance and an adult in the family does not have a disability or is not caring for a child with a

disability, then the work-eligible individuals must be participating in work activities for an average of at least 55 hours per week to count as a two-parent family engaged in work for the month.

(2) At least 50 of the 55 hours per week must come from participation in the activities listed in paragraph (b) of this section.

(3) Above 50 hours per week, the three activities listed in paragraph (c) of this section may also count as participation.

(f)(1) We will deem a family with two work-eligible parents in which one or both participates in a work experience or community service program for the maximum number of hours per month that a State may require by dividing the combined monthly TANF or SSP-MOE grant and food stamp allotment by the higher of the Federal or State minimum wage to have participated for an average of 50 hours per week for the month in that activity.

(2) This policy is limited to States that have adopted a Simplified Food Stamp Program option that permits a State to count the value of food stamps in determining the maximum core hours of participation permitted by the FLSA.

(3) In order for Puerto Rico, which does not have a traditional Food Stamp Program, to deem core hours, it must include the value of food assistance benefits provided through the Nutrition Assistance Program in the same manner as a State must include food stamp benefits under paragraph (d)(1) of this section.

[73 FR 6823, Feb. 5, 2008]

§261.33 What are the special requirements concerning educational activities in determining monthly participation rates?

(a) Vocational educational training may only count for a total of 12 months for any individual.

(b)(1) A recipient who is married or a single head-of-household under 20 years old counts as engaged in work in a month if he or she:

(i) Maintains satisfactory attendance at a secondary school or the equivalent during the month; or

(ii) Participates in education directly related to employment for an average of at least 20 hours per week during the month.

(2)(i) For a married recipient, such participation counts as the greater of 20 hours or the actual hours of participation.

(ii) If both parents in the family are under 20 years old, the requirements at §261.32(d) are met if both meet the conditions of paragraphs (b)(1)(i) or (b)(1)(ii) of this section.

(c) In counting individuals for each participation rate, not more than 30 percent of individuals engaged in work in a month may be included in the numerator because they are:

(1) Participating in vocational educational training; and

(2) In fiscal year 2000 or thereafter, individuals deemed to be engaged in work by participating in educational activities described in paragraph (b) of this section.

§261.34 Are there any limitations in counting job search and job readiness assistance toward the participation rates?

Yes. There are four limitations concerning job search and job readiness assistance.

(a) Except as provided in paragraph (b) of this section, an individual's participation in job search and job readiness assistance counts for a maximum of six weeks in the preceding 12-month period.

(b) If the State's total unemployment rate is at least 50 percent greater than the United States' total unemployment rate or if the State meets the definition of a "needy State", specified at §260.30 of this chapter, then an individual's participation in job search and job readiness assistance counts for a maximum of 12 weeks in that 12-month period.

(c) For purposes of paragraphs (a) and (b) of this section, a week equals 20 hours for a work-eligible individual who is a single custodial parent with a child under six years of age and equals 30 hours for all other work-eligible individuals.

(d) An individual's participation in job search and job readiness assistance does not count for a week that immediately follows four consecutive weeks in which the State reports any hours of such participation in the preceding 12-month period. For purposes of this paragraph a week means seven consecutive days.

(e) Not more than once for any individual in the preceding 12-month period, a State may count three or four days of job search and job readiness assistance during a week as a full week of participation. We calculate a full week of participation based on the average daily hours of participation for three or four days and will prorate participation at that level for the remaining one or two days to determine the total hours for a five-day week. Any prorated hours of participation must be included in the calculation of total hours permitted under the limitation in this section.

[73 FR 6824, Feb. 5, 2008]

§261.35 Are there any special work provisions for single custodial parents?

Yes. A single custodial parent or caretaker relative with a child under age six will count as engaged in work if he or she participates for at least an average of 20 hours per week.

§261.36 Do welfare reform waivers affect the calculation of a State's participation rates?

A welfare reform waiver could affect the calculation of a State's participation rate, pursuant to subpart C of part 260 and section 415 of the Act.

Subpart D—How Will We Determine Caseload Reduction Credit for Minimum Participation Rates?

Source: 73 FR 6824, Feb. 5, 2008, unless otherwise noted.

§261.40 Is there a way for a State to reduce the work participation rates?

(a)(1) If the average monthly number of cases receiving assistance, including assistance under a separate State program (as provided at §261.42(b)), in a State in the preceding fiscal year was lower than the average monthly number of cases that received assistance, including assistance under a separate State program in that State in FY 2005, the minimum overall participation rate the State must meet for the fiscal year (as provided at §261.21) decreases by the number of percentage points the prior-year caseload fell in comparison to the FY 2005 caseload.

(2) The minimum two-parent participation rate the State must meet for the fiscal year (as provided at §261.23) decreases, at State option, by either:

(i) The number of percentage points the prior-year two-parent caseload, including two-parent cases receiving assistance under a separate State program (as provided at §261.42(b)), fell in comparison to the FY 2005 two-parent caseload, including two-parent cases receiving assistance under a separate State program; or

(ii) The number of percentage points the prior-year overall caseload, including assistance under a separate State program (as provided at §261.42(b)), fell in comparison to the FY 2005 overall caseload, including cases receiving assistance under a separate State program.

(3) For the credit calculation, we will refer to the fiscal year that precedes the fiscal year to which the credit applies as the “comparison year.”

(b)(1) The calculations in paragraph (a) of this section must disregard caseload reductions due to requirements of Federal law and to changes that a State has made in its eligibility criteria in comparison to its criteria in effect in FY 2005.

(2) At State option, the calculation may offset the disregard of caseload reductions in paragraph (b)(1) of this section by changes in eligibility criteria that increase caseloads.

(c)(1) To establish the caseload base for FY 2005 and to determine the comparison-year caseload, we will use the combined TANF and Separate State Program caseload figures reported on the Form ACF-199, TANF Data Report, and Form ACF-209, SSP-MOE Data Report, respectively.

(2) To qualify for a caseload reduction, a State must have reported monthly caseload information, including cases in separate State programs, for FY 2005 and the comparison year for cases receiving assistance as defined at §261.43.

(d)(1) A State may correct erroneous data or submit accurate data to adjust program data or to include unduplicated cases within the fiscal year.

(2) We will adjust both the FY 2005 baseline and the comparison-year caseload information, as appropriate, based on these State submissions.

(e) We refer to the number of percentage points by which a caseload falls, disregarding the cases described in paragraph (b) of this section, as a caseload reduction credit.

§261.41 How will we determine the caseload reduction credit?

(a)(1) We will determine the overall and two-parent caseload reduction credits that apply to each State based on the information and estimates reported to us by the State on eligibility policy changes using application denials, case closures, or other administrative data sources and analyses.

(2) We will accept the information and estimates provided by a State, unless they are implausible based on the criteria listed in paragraph (d) of this section.

(3) We may conduct on-site reviews and inspect administrative records on applications, case closures, or other administrative data sources to validate the accuracy of the State estimates.

(b) In order to receive a caseload reduction credit, a State must submit a Caseload Reduction Report to us containing the following information:

(1) A listing of, and implementation dates for, all State and Federal eligibility changes, as defined at §261.42, made by the State since the beginning of FY 2006;

(2) A numerical estimate of the positive or negative average monthly impact on the comparison-year caseload of each eligibility change (based, as appropriate, on application denials, case closures or other analyses);

(3) An overall estimate of the total net positive or negative impact on the applicable caseload as a result of all such eligibility changes;

(4) An estimate of the State's caseload reduction credit;

(5) A description of the methodology and the supporting data that a State used to calculate its caseload reduction estimates; and

(6) A certification that it has provided the public an appropriate opportunity to comment on the estimates and methodology, considered their comments, and incorporated all net reductions resulting from Federal and State eligibility changes.

(c)(1) A State requesting a caseload reduction credit for the overall participation rate must base its estimates of the impact of eligibility changes on decreases in its comparison-year overall caseload compared to the FY 2005 overall caseload baseline established in accordance with §261.40(d).

(2) A State requesting a caseload reduction credit for its two-parent rate must base its estimates of the impact of eligibility changes on decreases in either:

(i) Its two-parent caseload compared to the FY 2005 base-year two-parent caseload baseline established in accordance with §261.40(d); or

(ii) Its overall caseload compared to the FY 2005 base-year overall caseload baseline established in accordance with §261.40(d).

(d)(1) For each State, we will assess the adequacy of information and estimates using the following criteria: Its methodology; Its estimates of impact compared to other States; the quality of its data; and the completeness and adequacy of its documentation.

(2) If we request additional information to develop or validate estimates, the State may negotiate an appropriate deadline or provide the information within 30 days of the date of our request.

(3) The State must provide sufficient data to document the information submitted under paragraph (b) of this section.

(e) We will not calculate a caseload reduction credit unless the State reports case-record data on individuals and families served by any separate State program, as required under §265.3(d) of this chapter.

(f) A State may only apply to the participation rate a caseload reduction credit that we have calculated. If a State disagrees with the caseload reduction credit, it may appeal the decision as an adverse action in accordance with §262.7 of this chapter.

§261.42 Which reductions count in determining the caseload reduction credit?

(a)(1) A State's caseload reduction credit must not include caseload decreases due to Federal requirements or State changes in eligibility rules since FY 2005 that directly affect a family's eligibility for assistance. These include, but are not limited to, more stringent income and resource limitations, time limits, full family sanctions, and other new requirements that deny families assistance when an individual does not comply with work requirements, cooperate with child support, or fulfill other behavioral requirements.

(2) At State option, a State's caseload reduction credit may include caseload increases due to Federal requirements or State changes in eligibility rules since FY 2005 if used to offset caseload decreases in paragraph (a)(1) of this section.

(3) A State may not receive a caseload reduction credit that exceeds the actual caseload decline between FY 2005 and the comparison year.

(4) A State may count the reductions attributable to enforcement mechanisms or procedural requirements that are used to enforce existing eligibility criteria (e.g., fingerprinting or other verification techniques) to the extent that such mechanisms or requirements identify or deter families otherwise ineligible under existing rules.

(b) A State must include cases receiving assistance in separate State programs as part of its FY 2005 caseload and comparison-year caseload. However, if a State provides documentation that separate State program cases overlap with or duplicate cases in the TANF caseload, we will exclude them from the caseload count.

§261.43 What is the definition of a “case receiving assistance” in calculating the caseload reduction credit?

(a) The caseload reduction credit is based on decreases in caseloads receiving TANF- or SSP-MOE-funded assistance (other than those excluded pursuant to §261.42).

(b)(1) A State that is investing State MOE funds in excess of the required 80 percent or 75 percent basic MOE amount need only include the pro rata share of caseloads receiving assistance that is required to meet basic MOE requirements.

(2) For purposes of paragraph (b)(1) of this section, a State may exclude from the overall caseload reduction credit calculation the number of cases funded with excess MOE. This number is calculated by dividing annual excess MOE expenditures on assistance by the average monthly expenditures on assistance per case for the fiscal year,

(i) Where annual excess MOE expenditures on assistance equal total annual MOE expenditures minus the percentage of historic State expenditures specified in paragraph (v) of this section, multiplied by the percentage that annual expenditures on assistance (both Federal and State) represent of all annual expenditures, and

(ii) Where the average monthly assistance expenditures per case for the fiscal year equal the sum of annual TANF and SSP-MOE assistance expenditures (both Federal and State) divided by the average monthly sum of TANF and SSP-MOE caseloads for the fiscal year.

(iii) If the excess MOE calculation is for a separate two-parent caseload reduction credit, we multiply the number of cases funded with excess MOE by the average monthly percentage of two-parent cases in the State's total (TANF plus SSP-MOE) average monthly caseload.

(iv) All financial data must agree with data reported on the TANF Financial Report (form ACF-196) and all caseload data must agree with data reported on the TANF Data and SSP-MOE Data Reports (forms ACF-199 and ACF-209).

(v) The State must use 80 percent of historic expenditures when calculating excess MOE; however if it has met the work participation requirements for the year, it may use 75 percent of historic expenditures.

§261.44 When must a State report the required data on the caseload reduction credit?

A State must report the necessary documentation on caseload reductions for the preceding fiscal year by December 31.

Subpart E—What Penalties Apply to States Related to Work Requirements?

§261.50 What happens if a State fails to meet the participation rates?

(a) If we determine that a State did not achieve one of the required minimum work participation rates, we must reduce the SFAG payable to the State.

(b)(1) If there was no penalty for the preceding fiscal year, the base penalty for the current fiscal year is five percent of the adjusted SFAG.

(2) For each consecutive year that the State is subject to a penalty under this part, we will increase the amount of the base penalty by two percentage points over the previous year's penalty. However, the penalty can never exceed 21 percent of the State's adjusted SFAG.

(c) We impose a penalty by reducing the SFAG payable for the fiscal year that immediately follows our final determination that a State is subject to a penalty and our final determination of the penalty amount.

(d) In accordance with the procedures specified at §262.4 of this chapter, a State may dispute our determination that it is subject to a penalty.

§261.51 Under what circumstances will we reduce the amount of the penalty below the maximum?

(a) We will reduce the amount of the penalty based on the degree of the State's noncompliance.

(1) If the State fails only the two-parent participation rate specified at §261.23, reduced by any applicable caseload reduction credit, its maximum penalty will be a percentage of the penalty specified at §261.50. This percentage will equal the percentage of two-parent cases in the State's total caseload.

(2) If the State fails the overall participation rate specified at §261.21, reduced by any applicable caseload reduction credit, or both rates, its maximum penalty will be the penalty specified at §261.50.

(b)(1) In order to receive a reduction of the penalty amounts determined under paragraphs (a)(1) or (a)(2) of this section:

(i) The State must achieve participation rates equal to a threshold level defined as 50 percent of the applicable minimum participation rate at §261.21 or §261.23, minus any caseload reduction credit determined pursuant to subpart D of this part; and

(ii) The adjustment factor for changes in the number of individuals engaged in work, described in paragraph (b)(4) of this section, must be greater than zero.

(2) If the State meets the requirements of paragraph (b)(1) of this section, we will base its reduction on the severity of the failure. For this purpose, we will calculate the severity of the State's failure based on:

(i) The degree to which it missed the target rate;

(ii) An adjustment factor that accounts for changes in the number of individuals who are engaged in work in the State since the prior year; and

(iii) The number of consecutive years in which the State failed to meet the participation rates and the number of rates missed.

(3) We will determine the degree to which the State missed the target rate using the ratio of the following two factors:

(i) The difference between the participation rate achieved by the State and the 50-percent threshold level (adjusted for any caseload reduction credit determined pursuant to subpart D of this part); and

(ii) The difference between the minimum applicable participation rate and the threshold level (both adjusted for any caseload reduction credit determined pursuant to subpart D of this part).

(4) We will calculate the adjustment factor for changes in the number of individuals engaged in work using the following formula:

(i) The average monthly number of individuals engaged in work in the penalty year minus the average monthly number of individuals engaged in work in the prior year, divided by,

(ii) The product of 0.15 and the average monthly number of individuals engaged in work in the prior year.

(5) Subject to paragraph (c) of this section, if the State fails only the two-parent participation rate specified at §261.23, and qualifies for a penalty reduction under paragraph (b)(1) of this section, its penalty reduction will be the product of:

(i) The amount determined in paragraph (a)(1) of this section;

(ii) The ratio described in paragraph (b)(3) of this section computed with respect to two-parent families; and

(iii) The adjustment factor described in paragraph (b)(4) of this section computed with respect to two-parent families.

(6) Subject to paragraph (c) of this section, if the State fails the overall participation rate specified at §261.21, or both rates, and qualifies for a penalty reduction under paragraph (b)(1) of this section, its penalty reduction will be the product of:

(i) The amount determined in paragraph (a)(2) of this section;

(ii) The ratio described in paragraph (b)(3) of this section computed with respect to all families; and

(iii) The adjustment factor described in paragraph (b)(4) of this section.

(7) Pursuant to §260.58 of this chapter, we will adjust the calculations in this section to exclude cases for which a State has granted federally recognized good cause domestic violence waivers.

(c)(1) If the State was not subject to a penalty the prior year, the State will receive:

(i) The full applicable penalty reduction described in paragraph (b)(5) or (b)(6) of this section if it failed only one participation rate; or

(ii) 50 percent of the penalty reduction described in paragraph (b)(6) of this section if it failed both participation rates.

(2) If the penalty year is the second successive year in which the State is subject to a penalty, the State will receive:

(i) 50 percent of the applicable penalty reduction described in paragraph (b)(5) or (b)(6) of this section if it failed only one participation rate; or

(ii) 25 percent of the penalty reduction described in paragraph (b)(6) of this section if it failed both participation rates.

(3) If the penalty year is the third or greater successive year in which the State is subject to a penalty, the State will not receive a penalty reduction described in paragraph (b)(5) or (b)(6) of this section.

(d)(1) We may reduce the penalty if the State failed to achieve a participation rate because:

(i) It meets the definition of a needy State, specified at §260.30 of this chapter; or,

(ii) Noncompliance is due to extraordinary circumstances such as a natural disaster, regional recession, or substantial caseload increase.

(2) In determining noncompliance under paragraph (d)(1)(ii) of this section, we will consider such objective evidence of extraordinary circumstances as the State chooses to submit.

§261.52 Is there a way to waive the State's penalty for failing to achieve either of the participation rates?

(a) We will not impose a penalty under this part if we determine that the State has reasonable cause for its failure.

(b) In addition to the general reasonable cause criteria specified at §262.5 of this chapter, a State may also submit a request for a reasonable cause exemption from the requirement to meet the minimum participation rate in two specific case situations.

(1) We will determine that a State has reasonable cause if it demonstrates that failure to meet the work participation rates is attributable to its provision of federally recognized good cause domestic violence waivers (i.e., it provides evidence that it achieved the applicable work rates when individuals receiving federally recognized good cause domestic violence waivers of work requirements, in accordance with the provisions at §§260.54(b) and 260.55 of this chapter, are removed from the calculations in §§261.22(b) and 261.24(b)).

(2) We will determine that a State has reasonable cause if it demonstrates that its failure to meet the work participation rates is attributable to its provision of assistance to refugees in federally approved alternative projects under section 412(e)(7) of the Immigration and Nationality Act (8 U.S.C. 1522(e)(7)).

(c) In accordance with the procedures specified at §262.4 of this chapter, a State may dispute our determination that it is subject to a penalty.

§261.53 May a State correct the problem before incurring a penalty?

(a) Yes. A State may enter into a corrective compliance plan to remedy a problem that caused its failure to meet a participation rate, as specified at §262.6 of this chapter.

(b) To qualify for a penalty reduction under §262.6(j)(1) of this chapter, based on significant progress towards correcting a violation, a State must reduce the difference between the participation rate it achieved in the year for which it is subject to a penalty and the rate applicable during the penalty year (adjusted for any caseload reduction credit determined pursuant to subpart D of this part) by at least 50 percent.

§261.54 Is a State subject to any other penalty relating to its work program?

(a) If we determine that, during a fiscal year, a State has violated section 407(e) of the Act, relating to imposing penalties against individuals, we must reduce the SFAG payable to the State.

(b) The penalty amount for a fiscal year will equal between one and five percent of the adjusted SFAG.

(c) We impose a penalty by reducing the SFAG payable for the fiscal year that immediately follows our final determination that a State is subject to a penalty and our final determination of the penalty amount.

§261.55 Under what circumstances will we reduce the amount of the penalty for not properly imposing penalties on individuals?

(a) We will reduce the amount of the penalty based on the degree of the State's noncompliance.

(b) In determining the size of any reduction, we will consider objective evidence of:

(1) Whether the State has established a control mechanism to ensure that the grants of individuals are appropriately reduced for refusing to engage in required work; and

(2) The percentage of cases for which the grants have not been appropriately reduced.

§261.56 What happens if a parent cannot obtain needed child care?

(a)(1) If the individual is a single custodial parent caring for a child under age six, the State may not reduce or terminate assistance based on the parent's refusal to engage in required work if he or she demonstrates an inability to obtain needed child care for one or more of the following reasons:

(i) Appropriate child care within a reasonable distance from the home or work site is unavailable;

(ii) Informal child care by a relative or under other arrangements is unavailable or unsuitable; or

(iii) Appropriate and affordable formal child care arrangements are unavailable.

(2) Refusal to work when an acceptable form of child care is available is not protected from sanctioning.

(b)(1) The State will determine when the individual has demonstrated that he or she cannot find child care, in accordance with criteria established by the State.

(2) These criteria must:

(i) Address the procedures that the State uses to determine if the parent has a demonstrated inability to obtain needed child care;

(ii) Include definitions of the terms “appropriate child care,” “reasonable distance,” “unsuitability of informal care,” and “affordable child care arrangements”; and

(iii) Be submitted to us.

(c) The TANF agency must inform parents about:

(1) The penalty exception to the TANF work requirement, including the criteria and applicable definitions for determining whether an individual has demonstrated an inability to obtain needed child care;

(2) The State's process or procedures (including definitions) for determining a family's inability to obtain needed child care, and any other requirements or procedures, such as fair hearings, associated with this provision; and

(3) The fact that the exception does not extend the time limit for receiving Federal assistance.

[64 FR 17884, Apr. 12, 1999; 64 FR 40291, July 26, 1999]

§261.57 What happens if a State sanctions a single parent of a child under six who cannot get needed child care?

(a) If we determine that a State has not complied with the requirements of §261.56, we will reduce the SFAG payable to the State by no more than five percent for the immediately succeeding fiscal year unless the State demonstrates to our satisfaction that it had reasonable cause or it achieves compliance under a corrective compliance plan pursuant to §§262.5 and 262.6 of this chapter.

(b) We will impose the maximum penalty if:

(1) The State does not have a statewide process in place to inform parents about the exception to the work requirement and enable them to demonstrate that they have been unable to obtain child care; or

(2) There is a pattern of substantiated complaints from parents or organizations verifying that a State has reduced or terminated assistance in violation of this requirement.

(c) We may impose a reduced penalty if the State demonstrates that the violations were isolated or that they affected a minimal number of families.

Subpart F—How Do We Ensure the Accuracy of Work Participation Information?

Source: 73 FR 6826, Feb. 5, 2008, unless otherwise noted.

§261.60 What hours of participation may a State report for a work-eligible individual?

(a) A State must report the actual hours that an individual participates in an activity, subject to the qualifications in paragraphs (b) and (c) of this section and §261.61(c). It is not sufficient to report the hours an individual is scheduled to participate in an activity.

(b) For the purposes of calculating the work participation rates for a month, actual hours may include the hours for which an individual was paid, including paid holidays and sick leave. For participation in unpaid work activities, it may include excused absences for hours missed due to a maximum of 10 holidays in the preceding 12-month period and up to 80 hours of additional excused absences in the preceding 12-month period, no more than 16 of which may occur in a month, for each work-eligible individual. Each State must designate the days that it wishes to count as holidays for those in unpaid activities in its Work Verification Plan. It may designate no more than 10 such days. In order to count an excused absence as actual hours of participation, the individual must have been scheduled to participate in a countable work activity for the period of the absence that the State reports as participation. A State must describe its excused absence policies and definitions as part of its Work Verification Plan, specified at §261.62.

(c) For unsubsidized employment, subsidized employment, and OJT, a State may report projected actual hours of employment participation for up to six months based on current, documented actual hours of work. Any time a State receives information that the client's actual hours of work have changed, or no later than the end of any six-month period, the State must re-verify the client's current actual average hours of work, and may report these projected actual hours of participation for another six-month period.

(d) A State may not count more hours toward the participation rate for a self-employed individual than the number derived by dividing the individual's self-employment income (gross income less business expenses) by the Federal minimum wage. A State may propose an alternative method of determining self-employment hours as part of its Work Verification Plan.

(e) A State may count supervised homework time and up to one hour of unsupervised homework time for each hour of class time. Total homework time counted for participation cannot exceed the hours required or advised by a particular educational program.

§261.61 How must a State document a work-eligible individual's hours of participation?

(a) A State must support each individual's hours of participation through documentation in the case file. In accordance with §261.62, a State must describe in its Work Verification Plan the documentation it uses to verify hours of participation in each activity.

(b) For an employed individual, the documentation may consist of, but is not limited to pay stubs, employer reports, or time and attendance records substantiating hours of participation. A State may presume that an employed individual participated for the total number of hours for which that individual was paid.

(c) The State must document all hours of participation in an activity; however, if a State is reporting projected hours of actual employment in accordance with §261.60(c), it need only document the hours on which it bases the projection.

(d) For an individual who is self-employed, the documentation must comport with standards set forth in the State's approved Work Verification Plan. Self-reporting by a participant without additional verification is not sufficient documentation.

(e) For an individual who is not employed, the documentation for substantiating hours of participation may consist of, but is not limited to, time sheets, service provider attendance records, or school attendance records. For homework time, the State must also document the homework or study expectations of the educational program.

§261.62 What must a State do to verify the accuracy of its work participation information?

(a) To ensure accuracy in the reporting of work activities by work-eligible individuals on the TANF Data Report and, if applicable, the SSP-MOE Data Report, each State must:

- (1) Establish and employ procedures for determining whether its work activities may count for participation rate purposes;
- (2) Establish and employ procedures for determining how to count and verify reported hours of work;
- (3) Establish and employ procedures for identifying who is a work-eligible individual;
- (4) Establish and employ internal controls to ensure compliance with the procedures; and
- (5) Submit to the Secretary for approval the State's Work Verification Plan in accordance with paragraph (b) of this section.

(b) A State's Work Verification Plan must include the following:

(1) For each countable work activity:

- (i) A description demonstrating how the activity meets the relevant definition at §261.2;
- (ii) A description of how the State determines the number of countable hours of participation; and
- (iii) A description of the documentation it uses to monitor participation and ensure that the actual hours of participation are reported;

(2) A description of the State's procedures for identifying all work-eligible individuals, as defined at §261.2;

(3) A description of how the State ensures that, for each work-eligible individual, it:

- (i) Accurately inputs data into the State's automated data processing system;
- (ii) Properly tracks the hours through the automated data processing system; and

(iii) Accurately reports the hours to the Department;

(4) A description of the procedures for ensuring it does not transmit to the Department a work-eligible individual's hours of participation in an activity that does not meet a Federal definition of a countable work activity; and

(5) A description of the internal controls that the State has implemented to ensure a consistent measurement of the work participation rates, including the quality assurance processes and sampling specifications it uses to monitor adherence to the established work verification procedures by State staff, local staff, and contractors.

(c) We will review a State's Work Verification Plan for completeness and approve it if we believe that it will result in accurate reporting of work participation information.

§261.63 When is a State's Work Verification Plan due?

(a) Each State must submit its interim Work Verification Plan for validating work activities reported in the TANF Data Report and, if applicable, the SSP-MOE Data Report no later than September 30, 2006.

(b) If HHS requires changes, a State must submit them within 60 days of receipt of our notice and include all necessary changes as part of a final approved Work Verification Plan no later than September 30, 2007.

(c) If a State modifies its verification procedures for TANF or SSP-MOE work activities or its internal controls for ensuring a consistent measurement of the work participation rate, the State must submit for approval an amended Work Verification Plan by the end of the quarter in which the State modifies the procedures or internal controls.

§261.64 How will we determine whether a State's work verification procedures ensure an accurate work participation measurement?

(a) We will determine that a State has met the requirement to establish work verification procedures if it submitted an interim Work Verification Plan by September 30, 2006 and a complete Work Verification Plan that we approved by September 30, 2007.

(b) A “complete” Work Verification Plan means that:

(1) The plan includes all the information required by §261.62(b); and

(2) The State certifies that the plan includes all the information required by §261.62(b) and that it accurately reflects the procedures under which the State is operating.

(c) For conduct occurring after October 1, 2007, we will use 45 CFR part 75, subpart F in conjunction with other reviews, audits, and data sources, as appropriate, to assess the accuracy of the data filed by States for use in calculating the work participation rates.

[73 FR 6826, Feb. 5, 2008, as amended at 81 FR 3020, Jan. 20, 2016]

§261.65 Under what circumstances will we impose a work verification penalty?

(a) We will take action to impose a penalty under §262.1(a)(15) of this chapter if:

(1) The requirements under §261.64(a) and (b) have not been met; or

(2) We determine that the State has not maintained adequate documentation, verification, or internal control procedures to ensure the accuracy of the data used in calculating the work participation rates.

(b) If a State fails to submit an interim or complete Work Verification Plan by the due dates in §261.64(a), we will reduce the SFAG payable for the immediately succeeding fiscal year by five percent of the adjusted SFAG.

(c) If a State fails to maintain adequate internal controls to ensure a consistent measurement of work participation, we will reduce the adjusted SFAG by the following percentages for a fiscal year:

(1) One percent for the first year;

(2) Two percent for second year;

(3) Three percent for the third year;

(4) Four percent for the fourth year; and,

(5) Five percent for the fifth and subsequent years.

(d) If a State complies with the requirements in this subpart for two consecutive years, then any penalty imposed for subsequent failures will begin anew, as described in paragraph (c) of this section.

(e) If we take action to impose a penalty under §261.64(b) or (c), we will reduce the SFAG payable for the immediately succeeding fiscal year.

Subpart G—What Nondisplacement Rules Apply in TANF?

§261.70 What safeguards are there to ensure that participants in work activities do not displace other workers?

(a) An adult taking part in a work activity outlined in §261.30 may not fill a vacant employment position if:

(1) Another individual is on layoff from the same or any substantially equivalent job; or

(2) The employer has terminated the employment of any regular employee or caused an involuntary reduction in its work force in order to fill the vacancy with an adult taking part in a work activity.

(b) A State must establish and maintain a grievance procedure to resolve complaints of alleged violations of the displacement rule in this section.

(c) This section does not preempt or supersede State or local laws providing greater protection for employees from displacement.

Subpart H—How Do Welfare Reform Waivers Affect State Penalties?

§261.80 How do existing welfare reform waivers affect a State's penalty liability under this part?

A welfare reform waiver could affect a State's penalty liability under this part, subject to subpart C of part 260 of this chapter and section 415 of the Act.

[64 FR 17884, Apr. 12, 1999. Redesignated at 71 FR 37479, June 29, 2006]

F

CONSIDERATION AND DISCUSSION OF REQUEST FROM THE DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS FOR THE COUNCIL TO CLARIFY ITS POSITION ON THE ACCEPTANCE OF CERTAIN METHODS OF PAYMENT FOR FEES



Simon Larscheidt <simon.larscheidt@azdoa.gov>

Question for the Council

Mary Kosinski <Mary.Kosinski@difi.az.gov>
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>
Cc: Lynette Evans <lynette.evans@azag.gov>

Tue, Feb 2, 2021 at 11:00 AM

Dear Simon,

I would like to receive some clarification from the Council at the next Council meeting (either the Study Session or the Council meeting) about its position on requiring a fee with a credit card payment. We have a rule we are working on and a statute that state:
Rule:

C. A person shall pay fees by cash or credit or debit card, or by certified or cashier's check, or money order payable to the ~~Department of Financial Institutions~~. Department of Insurance and Financial Institutions.

Statute:

32-3607. Fees; use of credit cards; appraisal subcommittee fund

C. Pursuant to section 35-142, subsection J, the superintendent may accept a credit card or debit card for the payment of fees established by this section. The superintendent may impose a convenience fee for payment made pursuant to this subsection in an amount to be determined by the superintendent.

I just want to clarify that the Council will have no objection to levying the additional convenience fee for the use of a credit card as long as it is statutorily authorized.

Thanks,

Mary Kosinski

Mary E. Kosinski
100 N. 15th Ave., Suite 261
Phoenix, AZ 85007
602-364-3100
mary.kosinski@difi.az.gov

PLEASE NOTE that the Department of Insurance, the Department of Financial Institutions, and the Arizona Automobile Theft Authority merged on July 1, 2020. We are now the Department of Insurance and Financial Institutions ("DIFI"). IMPORTANTLY, we now have new email addresses and we have a new mailing address.

CONFIDENTIALITY NOTICE: This email may contain information that is privileged, confidential, or otherwise exempt from disclosure under applicable federal or state law. It is solely for use by intended recipients. Unauthorized interception, review, use, copy or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act. If the reader of this message is not the intended recipient, or if it appears you may have received this email in error, please advise me by reply email and immediately delete the message and any attachments from your system.

G.

CONSIDERATION AND DISCUSSION OF A.R.S. § 41-1033(G) PETITION FROM THE AMERICAN
PROPERTY CASUALTY INSURANCE ASSOCIATION



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM

MEETING DATE: March 2, 2021

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: February 1, 2021

SUBJECT: A.R.S. 41-1033(G) Petition - Department of Insurance and Financial Institutions

Summary

On January 19, 2021, GRRC staff received a petition from Ellen Poole on behalf of the American Property Casualty Insurance Association (APCIA). Ms. Poole raises several issues with the Department of Insurance and Financial Institutions (DIFI) related to the application of the prohibitions in A.R.S. § 20-263(A) (Vehicle insurance; prohibited act by insurer; hearing; penalty) and related documentation issued by DIFI providing guidance and establishing additional requirements regarding motor vehicle insurance premium increases.

Specifically, A.R.S. § 20-263(A) states, “[n]o insurer shall increase the motor vehicle insurance premium of an insured as a result of an accident not caused or significantly contributed to by the actions of the insured. Any insurer which increases the premium as a result of accident involvement shall notify the insured of the reason for such increase.” On December 4, 2020, DIFI issued Regulatory Bulletin No. 2020-06 (Exhibit 2 to the petition) setting forth DIFI's interpretation of, and guidance on, A.R.S. § 20-263(A). According to the petitioner, the Bulletin contains several key provisions relevant to this petition:

- “The Department interprets ARS § 20-263(A) to require a particular limitation on insurers regarding the automobile insurance underwriting process, and the Department therefore concludes that ARS § 20-263(A) prohibits premium increases for ‘an accident

not caused or significantly contributed to by the actions of both currently insured drivers and those seeking new coverage.”

- “[T]he Department considers using data that does not demonstrably exclude not-at-fault accidents as being contrary to ARS § 20-263(A), which prohibits raising automobile insurance premiums for accidents not caused or significantly contributed to by insureds.”

The petitioner alleges the guidance outlined above from Regulatory Bulletin No. 2020-06 is unduly burdensome and is not demonstrated to be necessary to fulfill a public health, safety, or welfare concern for two reasons including: (1) that it effectively prevents the use of prior vehicle damage rating factors [vehicle history scoring] even though the statute applies to driver fault for an accident and not to the rating of vehicle characteristics; and (2) that it determines the statute applies both to insureds and applicants although the statute references only insureds.

Relevant Statutes

A.R.S. § 41-1033(G) allows a person to “petition the council to request a review of an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement that is not specifically authorized by statute pursuant to title 32 based on the person’s belief that the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern. If the council determines that the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement applies to a profession for which the average wage in that profession in this state does not exceed two hundred percent of the federal poverty guidelines for a family of four, the council shall review the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement as prescribed by this section.”

If the Council receives information pursuant to A.R.S. § 41-1033(G), and at least four Council members request of the Chairperson that the matter be heard in a public meeting:

1. Within ninety days after receipt of the fourth council member’s request, the council shall determine whether the agency practice or substantive policy statement constitutes a rule, whether the final rule meets the requirements prescribed in section 41-1030 or whether an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement meets the guidelines prescribed in subsection G of this Section.
2. Within ten days after receipt of the fourth council member’s request, the council shall notify the agency that the matter has been or will be placed on an agenda.
3. Not later than thirty days after receiving notice from the council, the agency shall submit a statement to the council that addresses whether the

existing agency practice, substantive policy statement constitutes a rule or whether the final rule meets the requirements prescribed in section 41-1030 or whether an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement meets the guidelines prescribed in subsection G of this section.

See A.R.S. § 41-1033(H).

Analysis and Conclusion

A.R.S. § 41-1033 does not provide requirements or standards to guide the Council in determining whether this petition should be given a hearing. Therefore, Council members should make their own assessments as to what information is relevant in determining whether this petition may be heard.

In Council staff's view, the petition raises legitimate concerns about whether DIFI's Regulatory Bulletin 2020-06 is unduly burdensome on insurers under A.R.S. § 41-1033(G). Therefore, it is Council staff's recommendation that the Council request of the Chair that this petition be heard at a future Council Meeting.

January 19, 2021

VIA ELECTRONIC MAIL

Ms. Nicole Sornsin, Chairwoman
Governor's Regulatory Review Council
100 N. 15th Ave., #305
Phoenix, AZ 85007

Re: GRRC Review of Arizona Department of Insurance and Financial Institutions' New Bulletin on Rate Filings

Dear Ms. Sornsin and Members of the Governor's Regulatory Review Council ("GRRC"):

The American Property Casualty Insurance Association ("APCIA") is the primary national trade association for home, auto, and business insurers. APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years. APCIA members write 55.7 percent of the property casualty insurance market in Arizona. APCIA members include insurers that issue private passenger automobile ("PPA") insurance in Arizona, including 51.7 of the personal automobile insurance market and 73.3 percent of the commercial automobile insurance market. The members must file their rates and forms with the Arizona Department of Insurance and Financial Institutions ("DIFI"). The filings govern nearly every aspect of the members' businesses – what risks they cover, how policies may be issued, and how much they are permitted to charge in premiums.

PPA insurers are required to file their proposed rates with DIFI. A.R.S. §§ 20-383, 20-385, 20-388. An insurer may not charge rates which have been disapproved by DIFI. Generally, DIFI may only disapprove rates which are excessive, inadequate, or unfairly discriminatory. Arizona law permits insurers to consider nearly any potential factor in classifying risks and setting rates. *Id.*; A.R.S. § 20-384(C). So long as the rates are actuarially justified and the insurer does not use one of the impermissible factors – race, color, creed, or national origin – the insurer may use the classification system. PPA insurers consider factors such as age, driving experience, zip code, vehicle characteristics, and loss history in setting premium. One limited exception to Arizona's broad practice permitting the use of any driver's experience factors in setting ratings is A.R.S. § 20-263(A), which provides:

A. No insurer **shall increase** the motor vehicle insurance premium of **an insured** as a result of **an accident** not caused or significantly contributed to by the actions of the insured. Any insurer which increases the premium as a result of accident involvement shall notify the insured of the reason for such increase. [Emphasis added].

The purpose of the statute is to prohibit premium increases on existing policies based on car accidents the insured did not cause. APCIA's members comply with the statute, and have done so since the statute's enactment in 1987.

Beginning in 2019, APCIA became aware that DIFI had begun enforcing a new requirement on PPA rate filings by objecting to filings which used vehicle history scoring in setting rates or used claims other than accidents to set rates. “Vehicle history scoring” is the process of tracking vehicle-specific information, including prior damage to the vehicle, to predict future loss involving the vehicle, regardless of the driver’s actions. DIFI did not announce its new position in any formal bulletin; APCIA’s members simply received objections to individual rate filings with DIFI’s cited reason being that the filing violated § 20-263(A).

In March 2020, without notice, DIFI amended a checklist posted on its website to reflect this new interpretation. Until this time the checklist merely contained procedural guidance for insurers on how to submit filings within statutory compliance; this inclusion of a new statutory interpretation seemed far beyond the checklist’s purpose and function. As relevant here, the amended checklist included the following interpretation of § 20-263(A):

Insurers may not implement rating rules that allow for the increase of premiums or tier placement based on accidents **or claims** that are not caused or significantly contributed to by the actions of the insured. **This includes the use of vehicle history scoring.** [Emphasis added]

See DIFI Checklist (March 2020), attached. APCIA expressed concerns to DIFI over the checklist on the basis that the checklist impermissibly expanded the text of the statute and did not reflect the actual practice within the auto insurance market of how fault determinations are made and disseminated. In October 2020, DIFI issued a notice stating that it was considering issuing a bulletin related to § 20-263(A) and soliciting comments from the public. At the same time, it suddenly removed this version of the checklist from its website. A number of insurers and industry trade groups, including APCIA, provided comments on the proposed bulletin.

On December 4, 2020, DIFI issued Regulatory Bulletin No. 2020-06 (attached) setting forth DIFI’s interpretation of and guidance on § 20-263(A). The Bulletin contains several key provisions, including, as relevant to this Petition:

- “The Department interprets ARS § 20-263(A) to require a particular limitation on insurers regarding the automobile insurance underwriting process, and the Department therefore concludes that ARS § 20-263(A) prohibits premium increases for ‘an accident not caused or significantly contributed to by the actions of’ both currently insured drivers and those seeking new coverage.”
- “[T]he Department considers using data that does not demonstrably exclude not-at-fault accidents as being contrary to ARS § 20-263(A), which prohibits raising automobile insurance premiums for accidents not caused or significantly contributed to by insureds.”

The additional requirements imposed by DIFI are not supported by the text, but are instead purely extrastatutory. DIFI has premised the new requirements on an expansive and incorrect interpretation of A.R.S. § 20-263, as detailed below. In addition, DIFI’s new position is unduly burdensome and is not demonstrated to be necessary to fulfill a

public health, safety, or welfare concern, because it prohibits insurers from setting rates that are actuarially justified for riskier vehicles, even though that is not prohibited by § 20-263(A). APCIA's members have had their rate filings objected to and held up by DIFI based on the same principles set forth in the Bulletin. Review of the Bulletin by GRRC is appropriate.

Section 41-1033(G) authorizes GRRC review of a substantive policy statement "based on the [petitioner's] belief that the ... substantive policy statement ... is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern." APCIA submits this Petition pursuant to § 41-1033(G) seeking a declaration from GRRC that the Bulletin does not fulfill a public welfare concern, and unduly burdens auto insurers and insureds. As noted above, the statute prohibits the "**increase** [of] the motor vehicle insurance premium of **an insured** as a result of **an accident** not caused or significantly contributed to by the actions of the insured. Any insurer which increases the premium as a result of accident involvement shall notify the insured of the reason for such increase." A.R.S. § 20-263(A) (emphasis added). Through the Bulletin, DIFI has adopted unduly burdensome interpretations of the statute, including (1) effectively preventing the use of prior vehicle damage rating factors even though the statute applies to driver fault for an accident and not to the rating of vehicle characteristics; and (2) determining that the statute applies both to insureds and applicants although the statute references only insureds.

With respect to the first item, the Bulletin effectively prohibits insurers' use of vehicle history scoring if the insurer cannot show NAF accidents are excluded. Vendors providing vehicle damage information to insurers cannot discern the cause or fault of the damage. Thus, as a practical matter, the Bulletin prohibits scoring altogether and ties the hands of insurers in evaluating vehicle risk. That prohibition is not found in § 20-263, or elsewhere in the Insurance Code. DIFI's prohibition cannot be squared with Arizona's broad policy providing that "[r]isks may be classified in any reasonable way." A.R.S. § 20-384(C). Use of any relevant factor is the default; a prohibition on using a factor is the exception. A driver can have a clean driving history but, if the vehicle being driven is less safe, there is still increased risk, and the Insurance Code allows insurers to adjust for these two different types of risk. Vehicle history scoring, commonly used by PPA insurers since at least 2016, allows insurers to evaluate not just general risk, but risk involving *that specific vehicle*. A vehicle's condition has obvious relevance to the risk, and actuarial data supports using vehicle history. A vehicle that has previously been damaged is inherently less safe – and thus riskier to insure – than an undamaged vehicle. It is more likely to break down or be involved in a collision, and in either case the expected loss on a claim is higher. Classifying damaged vehicles as riskier is certainly reasonable

under § 20-384(C). To compensate for additional risk, PPA insurers, like all insurers, charge additional premium. But the Bulletin forbids this practice. It is up to the Legislature, not DIFI, to expand the statute from rating based on accidents to also cover rating based on vehicle condition. It has not done so.

The Bulletin's broad prohibition on the use of vehicle history scoring also reaches categories of damage that are not considered accidents. Although the Bulletin appears to permit vehicle history scoring where damage to the vehicle did not result from a collision-type accident, this is a distinction without a difference. The insurer has no way of knowing whether a vehicle's condition resulted from an accident, NAF or otherwise, or other type of claim (fire, flood, theft, etc.) within the vehicle history report. Without the ability to prove the negative - that a vehicle's condition did not result from a NAF accident - the insurer may not use vehicle conditions arising from non-accidents, even though the Bulletin purports to allow it. In practice, the Bulletin does the opposite. When insurers cannot determine the cause of damage from a vehicle history report, they are effectively barred from considering that damage in determining rates. If insurers cannot charge higher rates for riskier vehicles, they will instead be forced to require all policyholders to cover the costs. Higher rates for everyone benefit no one.

As to the second item, the Bulletin applies the statute to both existing insureds and applicants for insurance. (“[A]ny offered rate to an applicant via a premium quote must comply with ARS § 20-263(A) in the same way that the statute applies to any premium offered to a currently insured policyholder.”). DIFI conflates “insured” with “applicant.” “Insured” means an existing insured; someone who is covered or protected by an insurance policy. An applicant is a person who applies for insurance. An applicant may become an insured, but is not an insured until the application is accepted and the policy is issued. The statute's prohibition on increasing rates is much narrower than DIFI's interpretation – it applies only to “insured[s].”

The statute prohibits an insurer from increasing the premium “of an insured” for a NAF accident; the statute does not expressly apply to “applicants.” The second sentence of the statute requires insurers to notify insureds as to the reason for premium increases because of an accident. Logically, an insurer cannot “increase the premium,” much less notify a person of the reason for an increase, of someone who does not have an established premium from which to increase. The Legislature's intent was to prevent existing insureds from receiving premium increases related to NAF accidents. Moreover, DIFI's interpretation is in conflict with A.R.S. § 20-383(A) which requires insurers to charge adequate rates that equitably address differences in expected losses and expenses without being excessive. DIFI's expansion of A.R.S. § 20-263(A) to applicants prevents charging a higher rate to new higher risk policies (and

consequentially also prevents a lower rate to lower risk policies) and in doing so creates a subsidy in conflict with the Arizona public policy. If the Legislature intended for the statute to reach both existing insureds and future insureds, it could have included the term “applicant” within the statute, as it has in other provisions of the Insurance Code. *Compare with* A.R.S. § 20-259.01 (insurer must offer uninsured motorist coverage “to a named insured or applicant”). It did not.

Lastly, DIFI’s general practices in the administration of A.R.S. § 20-263(A) can be observed to be inconsistent with the interpretations expressed in its Bulletin relating to discounts and tier assignments. The statute prohibits an insurer from increasing the premium “of an insured” for a NAF accident; the statute does not, for example, require insureds with NAFs or other claims be granted access to discounts that would lower their rate. A review of the objections to insurers’ filed program rates and rules over the past several years show occurrences where DIFI has required insurers to provide access to discounts to policyholders with NAFs or other claims. This goes beyond the plain meaning of the phrase “increase the premium” in the statute.

The Bulletin’s prohibitions impose undue burdens on both auto insurers and insureds. The Bulletin unduly burdens insurers because as a practical matter, the only insurer who can make a fault determination for an accident is the insurer on the claim at the time. The Bulletin forces subsequent insurers to treat all prior accidents as NAF accidents, and prohibits the setting of rates based on those accidents. In addition, the prohibition on the use of vehicle history means insurers cannot collect sufficient premium for insureds who drive damaged vehicles. Insureds are unduly burdened as well because those with clean driving records and undamaged vehicles will be forced to pay higher premiums to compensate for the prohibition.

Section 20-263 applies to a narrow subset of claims – premium increases for accidents not caused by an insured. The statute provides that when an insured is involved in a NAF accident, an insurer may not increase the insured’s premium. It does not apply to persons who are applicants rather than existing insureds or mandate discount eligibility. DIFI has sought to rewrite and expand the language of the statute.

APCIA requests GRRC review the Bulletin, the use of the Checklist and DIFI’s general practices related to this issue. APCIA respectfully requests that GRRC grant the Petition, compel DIFI to stop enforcing these practices, and specifically clarify that § 20-263(A) only applies to an insured’s not at-fault accidents and does not apply to other claims, vehicle history rating on other claims, applicants or discount eligibility.

Sincerely,

/s/ Ellen Poole

Ellen Poole, on behalf of
The American Property Casualty Insurance Association

ARIZONA PROPERTY AND CASUALTY RATE AND RULE FILINGS

PERSONAL AUTOMOBILE INSURANCE

The Property and Casualty Section within the Arizona Department of Insurance (“AZDOI”) has developed the following checklist to help you submit a complete and correct rate and rule filing.

NOTE: This checklist is not intended to serve as an all-inclusive list of requirements. Insurance policies must meet all requirements of Arizona law, regardless of whether the law is summarized in this checklist.

This checklist applies to the following types of insurance (TOI’s) and sub-types:

19.0: Personal Auto

- 19.0001 - Private Passenger Auto;
- 19.0002 – Motorcycle;
- 19.0003 - Recreational Vehicle;
- 19.0004 - Other.

This checklist is in addition to the [General Filing Checklist](#)

FILING REQUIREMENTS

NOTE – Use and file. All rate filings must be made within 30 days after the effective date of the rate. Arizona law provides that if the rate or rule does not comply, the AZDOI may issue an order at any time specifying in what respect the filing is in conflict and stating that, within 30 days after the order is issued, the rate is no longer effective. The order will not affect any contract made or issued prior to the effective date of the order. The insurer or rate service organization making the filing may request a hearing pursuant to Arizona Revised Statutes, Title 41, Chapter 6, Article 10. Please ensure that all of the applicable issues below are addressed in your rate filing. [ARS § 20-385](#).

Topic	References*	Requirements
* “§” = Arizona Revised Statutes Section		
At Fault Accidents	<u>§ 20-263 (A)</u>	Insurers may not implement rating rules that allow for the increase of premiums or tier placement based on accidents or claims that are not caused or significantly contributed to by the actions of the insured. This includes the use of vehicle history scoring.
Automobile Theft Authority Fee	<u>§ 41-3451(J)</u>	The Arizona Automobile Theft Authority (AATA) per vehicle semiannual fee is \$0.50 or a maximum of \$1.00 per year.
Minimum Limits of Coverage	<u>§ 20-266</u>	Insurers must make the mandatory minimum liability limits available on all personal auto policies. These limits are defined under ARS §28-4009 as bodily injury limits of \$25,000 per person, \$50,000 per accident, and property damage liability limits of \$15,000 per accident or a combined policy limit (CSL of \$65,000..

Topic	References*	Requirements
* "§" = Arizona Revised Statutes Section		
Monthly Payment Plans	§20-267	Insurers must <u>offer</u> a monthly payment plan, and may charge an installment fee. Insurers may not charge more than "an amount equal to one and one-half times the monthly premium in addition to the first month's premium."
Motor Vehicle ID Cards	§ 28-4133	Insurers must issue at least two motor vehicle insurance identification cards for a motor vehicle or automobile liability policy that include the Insurers name and the MVD ID Number assigned to the insurer.
Rating Seat Belt Usage	§28-909 (E)	Insurers may not implement rating or underwriting rules that surcharge an applicant, or cancel or non-renew an existing insured, based on vehicle restraint (lap and shoulder belt) violation.
Rating Speed Violations	§28-702.01	Insurers may not implement rating or underwriting rules that surcharge an applicant, or cancel or non-renew an existing insured, based on a moving violation for driving sixty-five miles per hour or less if the maximum speed limit was fifty-five miles per hour.
Safety Equipment	§ 20-264	When offering comprehensive coverage, insurers must also <u>offer</u> a separate rate for safety equipment coverage including glass in windows and doors and plastic material used in the lights for a vehicle, without a deductible.
Credit Score Models	§ 20-2110	The Department requires that provision statements pertaining to § 20-2110(F)1-6 are included in the company UW manual or credit scoring model filed.
Discounts/Surcharges	§ 20-375	The Department requires actuarial support for discounts. This support may be in the form of relativity tables displaying comparisons of profits and losses between policyholders receiving the discount and those that are not. While data specific to Arizona is preferred, national data to support a discount is acceptable.
Confidential Documentation	§ 44-401 § 20-386	Supporting documents provided in a filing, may be recognized as Trade Secret. However, the insurer or filer shall have the burden of asserting to the director that the information is a trade secret.
GLM Models	§ 20-381	All supplementary rate information may be requested by the Department in order to further support the rate filing made. This information may be acknowledged as Trade Secret upon request. Please see the GLM Checklist provided by the Department.
Fees	§ 20-385	Any fees charged by the insured must be included in a filing and actuarially supported via an expense breakdown.
Privacy Notices	§ 20-2104	Privacy notices must be issued to insureds in accordance with statute. Please review the following: § 20-2104 and § 20-2101
Adverse Action Notices	§ 20-2110	Adverse underwriting decisions must be provided to the insured in accordance with § 20-2110(A-E).
subTOIs		Any Rate or Rate/Rule filing shall use the applicable subTOI when filing rate changes. Do not use "TOI XX Sub-OI Combinations" for filing types Rate or Rate/Rule for Homeowners, Personal Auto, Med Mal, Other Liabilities,

Topic	References*	Requirements
* "§" = Arizona Revised Statutes Section		
		Crop Hail, Commercial Auto, Commercial Multi-Perl, Inland Marine or Mortgage Guarantee filings when the rate change(s) apply to specific subTOI(s). This ensures that any rate change is assigned to the applicable subTOI.

CERTIFICATION OF COMPANY OFFICER

NOTE: Filer certification must be completed and signed by an officer of the company.

I, _____, certify on behalf of the company that is submitting this filing that I am responsible for the validity, accuracy and completeness of the enclosures in this filing. To the best of my knowledge and belief each form or rate filing included in this filing: 1) conforms to all of the applicable requirements outlined above; 2) contains no provision(s) previously disapproved or required to be corrected and/or revised by the Arizona Department of Insurance; 3) does not exceed this company's powers, the authority granted by its state of domicile or its Arizona certificate of authority; and 4) complies with all applicable provisions of state or federal law and orders of the Director of Insurance.

Title: _____

Email: _____

Phone: _____

Date: _____

Company Officer Signature: _____

Important Note: Pursuant to ARS § 28-4148, each insurer who cancels or becomes aware of the cancellation or nonrenewal of or failure to renew or issuance of a motor vehicle liability insurance policy issued on a vehicle in this state shall provide to the Department of Transportation all cancellations, non-renewals or new issues for any reason after seven or fewer days have elapsed from the time of processing the cancellation, nonrenewal or new issue of a policy.

The insurer shall provide the information by electronic data interchange in a format schedule specified by and in a manner prescribed by the Director of the Department of Transportation. ARS § 20-237 provides that if an insurer has failed to comply with the provisions of ARS § 28-4148, the Director of Insurance shall impose a civil penalty for each violation of not more than two hundred fifty dollars (\$250) per day for each day the insurer is in violation of ARS § 28-4148. The Director of Insurance also may suspend the insurer's certificate of authority until the insurer complies with the provisions of section ARS § 28-4148. For further information on reporting the required information, please contact the Arizona Department of Transportation.



Douglas A. Ducey, Governor
Evan G. Daniels, Director

Regulatory Bulletin 2020-06¹

ARS § 20-263(A) and Premium Increases for Not-At-Fault Accidents

Pursuant to Arizona Revised Statutes (ARS) §§ 41-1001(22) and -1091, the Arizona Department of Insurance and Financial Institutions (Department) occasionally issues Substantive Policy Statements to provide guidance regarding common compliance matters or recurring questions identified through the Department's review of market analysis, consumer complaints and product filings. Department Substantive Policy Statements are intended to promote a level playing field and uniform application of statutory or regulatory provisions.

I. Purpose

The purpose of this Substantive Policy Statement is to address how ARS § 20-263(A) applies to an insurer's use of historical accident data when determining the premium for an automobile insurance policy.

II. Scope

This Substantive Policy Statement is intended to provide guidance to all property and casualty insurers that sell automobile insurance to Arizona consumers and is directed to all property and casualty insurers, insurance rating organizations and agencies, insurance underwriters, producers, and interested parties.

III. Background

The Department has observed a number of rate/rule filings and consumer complaints that include or reference the practice of applying rating factors to policy premiums based on historical vehicle data, including prior property damage and salvaged vehicle title status. This practice raises the question of whether such data may be used in establishing automobile insurance premiums under ARS § 20-263(A). Pursuant to ARS §§ 41-1001(22) and -1091, on October 9, 2020, the Department issued a Notice of Opportunity to Comment in which it stated its intent to

¹ This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona administrative procedure act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under section 41-1033, Arizona Revised Statutes, for a review of the statement.

address ARS § 20-263(A) in a Substantive Policy Statement that would set forth the Department's interpretation of the statute and provide guidance as to when insurers may use historical vehicle data consistent with the statute. The Department solicited comments from interested parties regarding ARS § 20-263(A) and how vehicle history data is used to establish automobile insurance premiums. The Department received, reviewed, and considered numerous comments in the course of crafting this Substantive Policy Statement.

IV. Department Position

As relevant to this Substantive Policy Statement, ARS § 20-263(A) provides:

No insurer shall increase the motor vehicle insurance premium of an insured as a result of an accident not caused or significantly contributed to by the actions of the insured. Any insurer which increases the premium as a result of accident involvement shall notify the insured of the reason for such increase.

A. Scope of ARS § 20-263(A)

The Department interprets ARS § 20-263(A) to require a particular limitation on insurers regarding the automobile insurance underwriting process, and the Department therefore concludes that ARS § 20-263(A) prohibits premium increases for "an accident not caused or significantly contributed to by the actions of" both currently insured drivers and those seeking new coverage. Broadly construing the term "insured" is consistent with the statute's evident purpose of establishing a limitation on the underwriting process, which is to protect insurance consumers from motor vehicle premium increases due to accidents not caused or significantly contributed to by the insured.

Although the term "insured" as used in ARS § 20-263(A) is not defined, the Department concludes that distinguishing between drivers who are "insured" and "applicants" seeking a new policy is not warranted. Because the statute's main effect is to place a limitation on the insurance underwriting process, applying a distinction between "insured" and "applicants" here would create inequitable and absurd results. Ultimately, the Department is aware of no significant difference in underwriting premiums for drivers that currently possess insurance versus those seeking insurance. Industry's comments submitted to the Department did not identify any significant difference in underwriting premiums for their insureds and new applicants. In addition, broadly construing the term "insured" to include applicants to whom an insurance company has quoted a premium allows for effectuating the plain meaning of the term "premium." Only insureds pay premium, and, of course, once an applicant pays a quoted premium, an applicant becomes insured. At renewal, the same historical data regarding a vehicle ostensibly would be used to calculate a renewal premium.² Therefore, any offered rate to an

² Among the absurd results that would occur in concluding § 20-263(A) applies to "insured" drivers but not "applicants" is that a not-at-fault accident could be considered in establishing an initial premium for an applicant, but upon renewal, the insurance company would need to revise

applicant via a premium quote must comply with ARS § 20-263(A) in the same way that the statute applies to any premium offered to a currently insured policyholder. In other words, both new and renewal rates must comply with ARS § 20-263(A).

In addition, the Department concludes that ARS § 20-263(A) prohibits an insurer from increasing premium on an automobile policy, including surcharges, eliminating discounts, placing the insured in a higher rating tier, or charging a higher base rate, unless the insurer determines and can demonstrate that the insured caused or significantly contributed to the historical damage contained in a vehicle history report. Section 20-263(A) does not distinguish between the vehicle and the driver when it comes to raising premiums; the statute prohibits any increases to the total premium charged for the policy.

B. The Department's interpretation of "accident" in ARS § 20-263(A)

Section 20-263(A) confines the underwriting limitation on insurers to "accident[s] not caused or significantly contributed to by the actions of the insured." The term "accident" is not defined in ARS § 20-263(A). The Department narrowly construes the term "accident" as a loss involving a vehicle's upset/overtake or impact, or what the industry appears to commonly categorize as "collision." Therefore, the Department will apply the term "accident" as consistent with incidents involving a "collision," regardless of the policy coverages under which an associated claim arose, including uninsured/underinsured motorist, comprehensive, and MedPay coverages. In any analysis, the Department considers the key inquiry to be whether the circumstances demonstrate an accident occurred, not what policy coverage shouldered the claim.

C. Vehicle History Scoring Data

As previously described, the Department interprets ARS § 20-263(A) to prevent an insurer's underwriting process from relying on a not-at-fault accident to cause an increase in automobile insurance premium rates. The Department is aware that some insurers use vehicle history scoring data as part of automobile insurance underwriting. At least one major vendor of such data produces reports that include information showing a vehicle's prior accident history, repair and maintenance history, as well as other vehicle-related information. However, this particular vendor's reports do not include information showing the insured's contribution to or fault (or lack thereof) for an accident that affected the vehicle's condition. Without specific information regarding fault or contribution, an insurer using such data as part of its underwriting process could not demonstrate that any premium increase excludes not-at-fault accidents, thus imputing a vehicle's condition and its assumed risks onto individual drivers who may not have caused or contributed to an accident. Accordingly, the Department considers using data that does not demonstrably exclude not-at-fault accidents as being contrary to ARS § 20-263(A), which prohibits raising automobile insurance premiums for accidents not caused or significantly contributed to by insureds.

its underwriting criteria for the same driver to ensure that the accident was not considered in providing the renewal quote.

D. Additional Considerations

The Department's reading of ARS § 20-263(A) has two other notable considerations regarding permissive drivers and salvage titles. First, as noted previously, the Department considers ARS § 20-263(A) to broadly limit underwriting considerations that would result in a premium increase to a policy for "an accident not caused or significantly contributed to by the actions of the insured," which would include any surcharge to the insured for not-at-fault accidents incurred by a permissive driver. Because permissive drivers generally are considered insured under an automobile policy, a policy premium may not be increased because of a not-at-fault accident involving a permissive driver. Second, ARS § 20-263(A) would prevent insurers from increasing the policy premiums for a vehicle with a salvage certificate unless the insurer can demonstrate either that (1) the insured caused or significantly contributed to the accident that led to the salvage title or (2) the salvage title did not result from an "accident."

V. Conclusion

Since ARS § 20-263's enactment, rating methodologies used by insurers have evolved significantly and the data available to insurers for calculating premiums are becoming much more specific to the individual risks being insured. The Department recognizes that as new types of data become available, industry may want to incorporate relevant, actuarially meaningful data into its underwriting and pricing. Vehicle history reports are a prime example of such a burgeoning data source. However, in using this data, insurers still must comply with current Arizona law and ensure that underwriting decisions are not affected by accidents not caused or significantly contributed to by an insured.

By April 1, 2021, insurers must file necessary corrections to applicable rates and rules and adhere to ARS § 20-263.

Any questions regarding the contents of this memo should be addressed to: PropCas@difi.az.gov

Issued December 4th, 2020

January 20, 2021

VIA ELECTRONIC MAIL

Ms. Nicole Sornsin
Chairman – Governor’s Regulatory Review Council
Governor’s Regulatory Review Council
100 N. 15th Avenue, #305
Phoenix, AZ 85007

Re: Vehicle Scoring

Dear Ms. Sornsin:

On behalf of RELX, I am writing in support of the American Property Casualty Insurance Association’s (APCIA) petition to the Governor’s Regulatory Review Council (GRRC) to request a review of the unlawful Department of Insurance and Financial Institution’s *Regulatory Bulletin 2020-06 (ARS 20-263 (A) and Premium Increases for Not-At-Fault-Accidents*.

For approximately ten years, I served as a member of GRRC and I am familiar with your responsibilities and authorities. One of your responsibilities is to ensure that state agencies create regulatory requirements that are consistent with their authorizing statutes and regulatory requirements are formalized in rules. Regulations need to be cost-effective and reflective of community input. The rules and requirements should be narrowly tailored to achieve the desired objective. Unfortunately, the fore mentioned Bulletin creates sweeping new requirements which are not reflected in a rule nor supported by statute. This Bulletin effectively prohibits the use of Vehicle Score Reports by insurers setting auto insurance premiums. The practice of Vehicle Scoring has been extensively utilized by insurers in Arizona to properly adjust premiums for drivers and vehicles. This recent change in policy is not a result of any statutory change and it is based on only limited input from industry stakeholders, with no formal stakeholder meetings. The result of the change will be dramatic on Arizona’s auto insurance industry and many of the largest carriers will be required to make significant changes to their underwriting practices, impacting the rates of hundreds of thousands of Arizonans.

Background on Vehicle Scoring

RELX provides the data analytics to auto insurers to evaluate both the attributes of the drivers they insure and their vehicles through a series of tools that separately and independently evaluate the individualized risks of vehicles and the unique attributes of drivers. RELX utilizes driving records, accident reports, public records and commercially available information to track

vehicles and drivers throughout the U.S. RELX provides information support services for auto-insurers that separately assesses an individual driver's risk (Driver Scoring) and the risk posed by a specific vehicle (Vehicle Scoring). The LexisNexis Vehicle History returns important vehicle-related attributes that can integrate into the carriers quoting and underwriting workflow. The solution includes the following categories of damage and accident information as well as other information. It returns an indicator representing an event's existence, along with a code, description, and date corresponding to each instance of an event for which the vehicle was involved.

- Branded Title
- Salvage Title
- Damage Event – Severity Unknown
- Damage Event – Minor damage
- Damage Event – Major damage
- Damage Event – Severe Accident

Vehicle and Driver Scores are independent measures designed to assess two different attributes, the vehicle and the driver. As a result of the RELX system, two drivers with identical driver scores will have different scores depending on the vehicles they insure. An obvious example of this concept is a driver insuring a sports car will be evaluated differently than someone insuring a low-cost mid-size car. The cars have different and independent risk profiles than their drivers and the vehicles will be rated differently even under the same driver. The Vehicle Scoring measure adds information about the accident history of the vehicle as well as other factors to better assess the specific risk of that vehicle. In addition, Vehicle Scoring systems commonly assess the upkeep, damage and mileage. RELX has completed studies that demonstrate that vehicles with prior damage, regardless of the owner, perform worse than vehicles with no damage.

Unfortunately, DIFI's Bulletin takes an extreme position related to the use of not-at-fault accidents by requiring any vehicle scoring tool to demonstrate that the current driver of the vehicle was at fault for any damage to be considered in a Vehicle Score. As a result of the Department's interpretation, an insured who purchased a heavily damaged vehicle would not have the increased risk of the vehicle utilized in the calculation of his/her premium because of the prior owner was at fault for the earlier damage. While we appreciate that any impact on a Driver Score should not consider non-at-fault accidents, an outright prohibition of any vehicle collision data far exceeds the protections of ARS 20-263 (A). ARS-20-263 (A) was designed to protect the insured Drivers Score from being negatively impacted by not-at-fault damage when the insured was driving. Thus, a Drivers Score should not be impacted by a not-at-fault accident. It was never designed to prohibit any underwriting of a vehicles condition unless it was caused by the insured. It is important to note according to Statista in 2019, there were over nearly 41 million used car sales.¹ It seems absurd to think that only damage that was created by the current insured could be utilized to

¹ Graph of New and Used Car Sales can be found at www.statista.com

KUTAKROCK

Ms. Nicole Sornsin
January 20, 2021
Page 3

determine a Vehicle Score for underwriting purposes given the dynamic flow of vehicles across the U.S. That is exactly what the current Bulletin does.

Take the more extreme limitation on the use of accident data as the bulletin restricts the use of salvage titles to adjust a Vehicle Score. A salvage vehicle title is a vehicle that had been stolen, wrecked, destroyed by water or otherwise damaged to the extent that the insurance company considered it so damaged it was issued a certificate of title branded/marked as salvage. In many cases, salvage title vehicles have key safety systems like airbags that have been removed or are not operable as the repairs are commonly not completed to industry standards. These vehicles' lack of road worthiness which makes them riskier than traditionally titled vehicles. Unfortunately, under the DIFI's bulletin, unless the collision damage was generated by the insured, the risks posed by these highly damaged vehicles cannot not be reflected in Vehicle Score or related rates. By limiting the insurers' ability to underwrite for these higher risk vehicles, insurers are now forced to either non-renew coverage for these vehicles or require the drivers with clean titles to subsidize these vehicles premiums. Neither option is good for the consumer.

By effectively banning the use of Vehicle Scoring reports, except in very limited circumstances, the Department has widely overreacted in this bulletin to a smaller discrete problem. If they are concerned that an insured, who has had a no-fault accident, not have that specific accident reflected on the Vehicle Score, that is a change that the industry would likely embrace. All that would take would be for the timing of accident to be linked to the insured driving record and that damage would be excluded from the Vehicle Score while the insured was driving the vehicle. The goal the Vehicle Score is not to punish non-at-fault drivers, it is to gather enough information about vehicles to more effectively underwrite premiums so accommodations to the current Vehicle Scoring model can be made. If the Department would have conducted stakeholder meetings other than general requests for written comments, a more discrete solution could have emerged. On behalf of my client RELX, I request that GRRC determine that the DIFI's Bulletin is operating as an unpromulgated rule and GRRC require DIFI to rescind the bulletin and halt any regulatory activity associated with it. My client stands ready to work with DIFI and the carriers on solutions that will work for all stakeholders. Thank you for your consideration.

Sincerely,



Dr. Marcus B. Osborn

MBO/rjs