

TITLE 42 - THE PUBLIC HEALTH AND WELFARE
CHAPTER 35 - PROGRAMS FOR OLDER AMERICANS
SUBCHAPTER III - GRANTS FOR STATE AND COMMUNITY PROGRAMS ON AGING
Part A - General Provisions

§ 3028. Cost of administration of State plans

(a) Activities constituting administration; use of excess funds to supplement cost of administration of area plans; election to pay costs from sums received for administration of area plans

(1) Amounts available to States under subsection (b)(1) of this section may be used to make grants to States for paying such percentages as each State agency determines, but not more than 75 percent, of the cost of the administration of its State plan, including the preparation of the State plan, the evaluation of activities carried out under such plan, the collection of data and the carrying out of analyses related to the need for supportive services, nutrition services, and multipurpose senior centers within the State, and dissemination of information so obtained, the provision of short-term training to personnel of public or nonprofit private agencies and organizations engaged in the operation of programs authorized by this chapter, and the carrying out of demonstration projects of statewide significance relating to the initiation, expansion, or improvement of services assisted under this subchapter.

(2) Any sums available to a State under subsection (b)(1) of this section for part of the cost of the administration of its State plan which the State determines is not needed for such purpose may be used by the State to supplement the amount available under section 3024 (d)(1)(A) of this title to cover part of the cost of the administration of area plans.

(3) Any State which has been designated a single planning and service area under section 3025 (a)(1)(E) of this title covering all, or substantially all, of the older individuals in such State, as determined by the Assistant Secretary, may elect to pay part of the costs of the administration of State and area plans either out of sums received under this section or out of sums made available for the administration of area plans under section 3024 (d)(1)(A) of this title, but shall not pay such costs out of sums received or allotted under both such sections.

(b) Formula for computation of allotment; application for additional funds; approval of application by Assistant Secretary; limitation on amount of additional funds; transfer of funds

(1) If for any fiscal year the aggregate amount appropriated under section 3023 of this title does not exceed \$800,000,000, then—

(A) except as provided in clause (ii), the greater of 5 percent of the allotment to a State under section 3024 (a)(1) of this title or \$300,000; and

(B) in the case of Guam, American Samoa, the United States Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands, the greater of 5 percent of such allotment or \$75,000;

shall be available to such State to carry out the purposes of this section.

(2) If for any fiscal year the aggregate amount appropriated under section 3023 of this title exceeds \$800,000,000, then—

(A) except as provided in clause (ii), the greater of 5 percent of the allotment to a State under section 3024 (a)(1) of this title or \$500,000; and

(B) in the case of Guam, American Samoa, the United States Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands, the greater of 5 percent of such allotment or \$100,000;

shall be available to such State to carry out the purposes of this section.

(3)

- (A)** If the aggregate amount appropriated under section 3023 of this title for a fiscal year does not exceed \$800,000,000, then any State which desires to receive amounts, in addition to amounts allotted to such State under paragraph (1), to be used in the administration of its State plan in accordance with subsection (a) of this section may transmit an application to the Assistant Secretary in accordance with this paragraph. Any such application shall be transmitted in such form, and according to such procedures, as the Assistant Secretary may require, except that such application may not be made as part of, or as an amendment to, the State plan.
- (B)** The Assistant Secretary may approve any application transmitted by a State under subparagraph (A) if the Assistant Secretary determines, based upon a particularized showing of need, that—
- (i)** the State will be unable to fully and effectively administer its State plan and to carry out programs and projects authorized by this subchapter unless such additional amounts are made available by the Assistant Secretary;
 - (ii)** the State is making full and effective use of its allotment under paragraph (1) and of the personnel of the State agency and area agencies designated under section 3025 (a)(2)(A) of this title in the administration of its State plan in accordance with subsection (a) of this section; and
 - (iii)** the State agency and area agencies on aging of such State are carrying out, on a full-time basis, programs and activities which are in furtherance of the objectives of this chapter.
- (C)** The Assistant Secretary may approve that portion of the amount requested by a State in its application under subparagraph (A) which the Assistant Secretary determines has been justified in such application.
- (D)** Amounts which any State may receive in any fiscal year under this paragraph may not exceed three-fourths of 1 percent of the sum of the amounts allotted under section 3024 (a) of this title to such State to carry out the State plan for such fiscal year.
- (E)** No application by a State under subparagraph (A) shall be approved unless it contains assurances that no amounts received by the State under this paragraph will be used to hire any individual to fill a job opening created by the action of the State in laying off or terminating the employment of any regular employee not supported under this chapter in anticipation of filling the vacancy so created by hiring an employee to be supported through use of amounts received under this paragraph.
- (4)**
- (A)** Notwithstanding any other provision of this subchapter and except as provided in subparagraph (B), with respect to funds received by a State and attributable to funds appropriated under paragraph (1) or (2) of section 3023 (b) of this title, the State may elect to transfer not more than 40 percent of the funds so received between subpart I and subpart II of part C of this subchapter, for use as the State considers appropriate to meet the needs of the area served. The Assistant Secretary shall approve any such transfer unless the Assistant Secretary determines that such transfer is not consistent with the objectives of this chapter.
 - (B)** If a State demonstrates, to the satisfaction of the Assistant Secretary, that funds received by the State and attributable to funds appropriated under paragraph (1) or (2) of section 3023 (b) of this title, including funds transferred under subparagraph (A) without regard to this subparagraph, for any fiscal year are insufficient to satisfy the need for services under subpart I or subpart II of part C of this subchapter, then the Assistant Secretary may grant a waiver that permits the State to transfer under subparagraph (A) to satisfy such need an additional 10 percent of the funds so received by a State and attributable to funds appropriated under paragraph (1) or (2) of section 3023 (b) of this title.
 - (C)** A State's request for a waiver under subparagraph (B) shall—

- (i) be not more than one page in length;
 - (ii) include a request that the waiver be granted;
 - (iii) specify the amount of the funds received by a State and attributable to funds appropriated under paragraph (1) or (2) of section 3023 (b) of this title, over the permissible 40 percent referred to in subparagraph (A), that the State requires to satisfy the need for services under subpart I or II of part C of this subchapter; and
 - (iv) not include a request for a waiver with respect to an amount if the transfer of the amount would jeopardize the appropriate provision of services under subpart I or II of part C of this subchapter.
- (5) (A) Notwithstanding any other provision of this subchapter, of the funds received by a State attributable to funds appropriated under subsection (a)(1), and paragraphs (1) and (2) of subsection (b), of section 3023 of this title, the State may elect to transfer not more than 30 percent for any fiscal year between programs under part B of this subchapter and part C of this subchapter, for use as the State considers appropriate. The State shall notify the Assistant Secretary of any such election.
- (B) At a minimum, the notification described in subparagraph (A) shall include a description of the amount to be transferred, the purposes of the transfer, the need for the transfer, and the impact of the transfer on the provision of services from which the funding will be transferred.
- (6) A State agency may not delegate to an area agency on aging or any other entity the authority to make a transfer under paragraph (4)(A) or (5)(A).
- (7) The Assistant Secretary shall annually collect, and include in the report required by section 3018 (a) of this title, data regarding the transfers described in paragraphs (4)(A) and (5)(A), including—
- (A) the amount of funds involved in the transfers, analyzed by State;
 - (B) the rationales for the transfers;
 - (C) in the case of transfers described in paragraphs (4)(A) and (5)(A), the effect of the transfers of the provision of services, including the effect on the number of meals served, under—
 - (i) subpart I of part C of this subchapter; and
 - (ii) subpart II of part C of this subchapter; and
 - (D) in the case of transfers described in paragraph (5)(A)—
 - (i) in the case of transfers to part B of this subchapter, information on the supportive services, or services provided through senior centers, for which the transfers were used; and
 - (ii) the effect of the transfers on the provision of services provided under—
 - (I) part B of this subchapter; and
 - (II) part C of this subchapter, including the effect on the number of meals served.

(c) Availability of funds under this section to provide services under parts B and C

The amounts of any State's allotment under subsection (b) of this section for any fiscal year which the Assistant Secretary determines will not be required for that year for the purposes described in subsection (a)(1) of this section shall be available to provide services under part B of this subchapter or part C of this subchapter, or both, in the State.

(Pub. L. 89–73, title III, § 308, as added Pub. L. 95–478, title I, § 103(b), Oct. 18, 1978, 92 Stat. 1530; amended Pub. L. 97–115, §§ 3(d), 8, Dec. 29, 1981, 95 Stat. 1597, 1600; Pub. L. 98–459, title III, § 308, Oct. 9, 1984, 98 Stat. 1777; Pub. L. 100–175, title I, §§ 129(c)(2), 182 (l), Nov. 29, 1987, 101 Stat. 935, 966; Pub. L. 102–375, title I, § 102(b)(9)(C), (10)(A), title III, § 308, title IX, § 904(a)(14), Sept. 30,

1992, 106 Stat. 1202, 1234, 1308; Pub. L. 103–171, § 3(a)(13), Dec. 2, 1993, 107 Stat. 1990; Pub. L. 106–501, title III, § 307, Nov. 13, 2000, 114 Stat. 2245.)

Prior Provisions

A prior section 3028, Pub. L. 89–73, title III, § 308, as added Pub. L. 93–29, title III, § 301, May 3, 1973, 87 Stat. 44; Pub. L. 94–135, title I, §§ 108, 112 (c), Nov. 28, 1975, 89 Stat. 717, 719, related to model projects, prior to the general amendment of this subchapter by Pub. L. 95–478.

Provisions similar to those comprising this section were contained in Pub. L. 89–73, title III, § 306, as added Pub. L. 93–29, title III, § 301, May 3, 1973, 87 Stat. 43; Pub. L. 94–135, title I, § 107, Nov. 28, 1975, 89 Stat. 716, which was classified to section 3026 of this title prior to repeal by Pub. L. 95–478.

Amendments

2000—Subsec. (b)(4)(A). Pub. L. 106–501, § 307(1)(A)(ii), substituted “40 percent” for “30 percent”.

Pub. L. 106–501, § 307(1)(A)(i), which directed amendment of subpar. (A) by striking “in its plan under section 3027 (a)(13) of this title regarding Part C of this subchapter,” was executed by striking “in its plan under section 3027 (a)(13) regarding part C of this subchapter,” after “the State may elect” to reflect the probable intent of Congress.

Subsec. (b)(4)(B). Pub. L. 106–501, § 307(1)(B), substituted “for any fiscal year” for “for fiscal year 1993, 1994, 1995, or 1996” and “to satisfy such need an additional 10 percent of the funds so received by a State and attributable to funds appropriated under paragraph (1) or (2) of section 3023 (b) of this title.” for “to satisfy such need—

“(i) an additional 18 percent of the funds so received for fiscal year 1993;

“(ii) an additional 15 percent of the funds so received for each of the fiscal years 1994 and 1995; and

“(iii) an additional 10 percent of the funds so received for fiscal year 1996.”

Subsec. (b)(4)(C). Pub. L. 106–501, § 307(1)(C), added subpar. (C).

Subsec. (b)(5). Pub. L. 106–501, § 307(2), added par. (5) and struck out former par. (5) which authorized election by a State to transfer funds for fiscal years 1993 through 1996 between programs under parts B and C of this subchapter, provided for a State to obtain a need-based waiver to transfer additional funds, and related to required contents and approval of the application for such transfer of funds.

1993—Pub. L. 103–171 substituted “Assistant Secretary” for “Commissioner” wherever appearing.

1992—Subsec. (a)(3). Pub. L. 102–375, § 308(1), inserted “been” after “Any State which has”.

Subsec. (b)(1)(B), (2)(B). Pub. L. 102–375, § 904(a)(14)(A), inserted “United States” before “Virgin Islands”.

Subsec. (b)(3)(B)(iii). Pub. L. 102–375, §§ 102(b)(9)(C), (10)(A), 904 (a)(14)(B), inserted “on aging” after “area agencies”, struck out “designated under section 3025 of this title” after “such State”, and substituted “objectives” for “purposes”.

Subsec. (b)(4). Pub. L. 102–375, §§ 308(2)(A), 904 (a)(14)(B), designated existing provisions as subpar. (A), inserted “and except as provided in subparagraph (B)” after “provision of this subchapter”, substituted “received by a State and attributable to funds appropriated under paragraph (1) or (2) of section 3023 (b) of this title, the” for “received under section 3023 (b)(1) and (2) of this title, a”, “not more than 30 percent of the funds so received” for “a portion of the funds appropriated”, and “objectives” for “purposes”, and added subpar. (B).

Subsec. (b)(5) to (7). Pub. L. 102–375, § 308(2)(B), added pars. (5) to (7) and struck out former par. (5) which read as follows:

“(A) Notwithstanding any other provisions of this subchapter and except as provided in subparagraph (B), with respect to funds received under subsection (a)(1) and subsection (b) of section 3023 of this title, a State may elect to transfer not more than 20 per centum of the funds allotted for any fiscal year between programs under part B and part C of this subchapter, for use as the State considers appropriate. The State shall notify the Commissioner of any such election.

“(B) Of the funds received under subsections (a)(1) and (b) of section 3023 of this title, a State may elect to transfer under subparagraph (A) not more than 30 percent of the funds allotted for any fiscal year.”

1987—Subsec. (b)(1). Pub. L. 100–175, § 182(l)(1), (2), struck designation “(A)” after “(1)” and redesignated former cls. (i) and (ii) as subpars. (A) and (B), respectively.

Subsec. (b)(2). Pub. L. 100–175, § 182(l)(3), struck designation “(A)” after “(1)” and redesignated former cls. (i) and (ii) as subpars. (A) and (B), respectively.

NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscprint.html>).

Subsec. (b)(3)(C). Pub. L. 100–175, § 182(l)(4), substituted “the Commissioner” for “he”.

Subsec. (b)(5)(A). Pub. L. 100–175, § 182(l)(5), substituted “allotted” for “appropriated”.

Pub. L. 100–175, § 129(c)(2)(A), substituted “received under subsection (a)(1)” for “received under subsection (a)”.

Subsec. (b)(5)(B). Pub. L. 100–175, § 182(l)(6), substituted provision that State may elect to transfer not more than 30 percent of funds allotted for any fiscal year for provision that State may elect to transfer not more than 27 percent of funds allotted for fiscal year 1985, not more than 29 percent of funds allotted for fiscal year 1986, and not more than 30 percent of funds allotted for fiscal year 1987.

Pub. L. 100–175, § 182(l)(5), substituted “allotted” for “appropriated”.

Pub. L. 100–175, § 129(c)(2)(B), inserted “subsections (a)(1) and (b) of” after first reference to “under”.

1984—Subsec. (a)(1). Pub. L. 98–459, § 308(a)(1), substituted “Amounts available to States under subsection (b)(1) of this section” for “Amounts appropriated under section 3023 of this title”.

Subsec. (a)(2). Pub. L. 98–459, § 308(a)(2), substituted “available to a State under subsection (b)(1) of this section” for “received by a State under this section”.

Subsec. (b)(1). Pub. L. 98–459, § 308(b)(6), added par. (1). Former par. (1), which contained provisions, with respect to allotments to States for State planning, coordination, evaluation, and administration of State plans, that each State had to be allotted funds on the basis of its population aged 60 or older as compared to all States, and specifying minimum amounts for each State of no less than one-half of 1 percent of appropriations or \$300,000, whichever was greater, and for territories of no less than one-fourth of 1 percent of appropriations or \$75,000, whichever was greater, was struck out.

Subsec. (b)(2). Pub. L. 98–459, § 308(b)(6), added par. (2). Former par. (2) redesignated (3).

Subsec. (b)(3). Pub. L. 98–459, § 308(b)(4), (5), redesignated former par. (2) as (3) and struck out former par. (3) which had provided that each State would be entitled to an allotment under this section for any fiscal year in an amount which is not less than the amount of the allotment to which such State was entitled under former par. (1) for the fiscal year ending June 30, 1975.

Subsec. (b)(3)(A). Pub. L. 98–459, § 308(b)(1), substituted “If the aggregate amount appropriated under section 3023 of this title for a fiscal year does not exceed \$800,000,000, then any” for “Any”.

Subsec. (b)(4). Pub. L. 98–459, § 308(b)(2), (4), (5), redesignated par. (5) as (4), and substituted “unless the Commissioner determines” for “unless he determines”, and struck out former par. (4) which had provided that the number of individuals aged 60 or older in any State and in all States had to be determined by the Commissioner on the basis of the most recent satisfactory data available to him.

Subsec. (b)(5), (6). Pub. L. 98–459, § 308(b)(3), (5), redesignated par. (6) as (5), inserted “(A)” after paragraph designation and “and except as provided in subparagraph (B)”, and added subpar. (B). Former par. (5) redesignated (4).

1981—Subsec. (a)(1). Pub. L. 97–115, § 3(d), substituted “supportive services” for “social services”.

Subsec. (b)(6). Pub. L. 97–115, § 8, added par. (6).

Effective Date of 1987 Amendment

Amendment by Pub. L. 100–175 effective Oct. 1, 1987, except not applicable with respect to any area plan submitted under section 3026 (a) of this title or any State plan submitted under section 3027 (a) of this title and approved for any fiscal year beginning before Nov. 29, 1987, see section 701(a), (b) of Pub. L. 100–175, set out as a note under section 3001 of this title.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98–459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98–459, set out as a note under section 3001 of this title.

Termination of Trust Territory of the Pacific Islands

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