

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Social Services Commission

RULE CITATION: All Rules Submitted in 10A NCAC 97B and 97C

RECOMMENDED ACTION:

- Approve, but note staff's comment
- Object, based on:
 - Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT:

Staff recommends objection to all Rules submitted in 10A NCAC 97B and 97C because the agency does not cite to any authority to promulgate these Rules. Staff notes that these are readoptions. The report was reviewed by the Social Services Commission and the Department of Health and Human Services. The RRC reviewed the report in February 2015. The APO consultation became final on April 25, 2015.

In the History Note of almost every Rule, the agency cites to four laws. The first is G.S. 143B-10, which addresses the organization of departments and does not confer rulemaking authority for this subject matter. The second and third citations are G.S. 143B-276 and 277; these statutes were repealed in 1989. Finally, the agency cites to G.S. 143-323(d). That statute, "Functions of the Department of Environmental Quality" authorizes the Department of Environmental Quality to apply for and accept grants from the federal government. The specific citation provided by the Social Services Commission states:

(d) Federal Assistance. – The Department [of Environmental Quality], with the approval of the Governor, may apply for and accept grants from the federal government and its agencies and from any foundation, corporation, association, or individual, and may comply with the terms, conditions, and limitations of the grant, in order to accomplish any of the purposes of the Department. Grant funds shall be expended pursuant to the Executive Budget Act.

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Therefore, if G.S. 143-323 has any bearing upon these Rules, that statute confers rulemaking authority upon the Secretary of the Department of Environmental Quality, not the Social Services Commission. Staff further notes that there is a bill pending, House Bill 371, that would transfer this portion of the statute to the authority of the Secretary of the Department of Cultural and Natural Resources.

In a few of the Rules, the agency cites to additional authority of Federal Regulations (see Rules 97C .0106, .0108, and .0109). Staff believes the citation in the History Note is intended to span 42 USC 9901 – 9912, codified as 42 USCA 9901 – 9912. However, none of these regulations provide authority to this agency to promulgate rules. Additionally, Rule 97C .0108 cites to G.S. 143B-227. That statute is reserved for future codification purposes. Further, this statute, if enacted, is located in an Article that governs the Property Tax Commission.

It may be that the Social Services Commission has authority to promulgate these Rules, but as submitted, the agency has not provided any statutes that support this position. Staff notes that none of these Rules have been amended since 1989. Therefore, it is possible that the agency had the authority to promulgate the Rules at that time. However, it is not clear that the agency still has this authority.

Therefore, staff recommends objection to these Rules as submitted, because the agency has not provided any statutory authority to promulgate these Rules.

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§ 143-323. Functions of Department of Environmental Quality.

(a) Recreation. – The Department of Environmental Quality shall have the following powers and duties with respect to recreation:

- (1) To study and appraise the recreation needs of the State and to assemble and disseminate information relative to recreation.
- (2) To cooperate in the promotion and organization of local recreation systems for counties, municipalities, and other political subdivisions of the State, to aid them in the administration, finance, planning, personnel, coordination and cooperation of recreation organizations and programs.
- (3) To aid in recruiting, training, and placing recreation workers, and to promote recreation institutes and conferences.
- (4) To establish and promote recreation standards.
- (5) To cooperate with appropriate State, federal, and local agencies and private membership groups and commercial recreation interests in the promotion of recreation opportunities, and to represent the State in recreation conferences, study groups, and other matters of recreation concern.
- (6) To accept gifts, devises, and endowments. The funds, if given as an endowment, shall be invested in securities designated by the donor, or if there is no such designation, in securities in which the State sinking fund may be invested. All such gifts and devises and all proceeds from such invested endowments shall be used for carrying out the purposes for which they were made.
- (7) To advise agencies, departments, organizations and groups in the planning, application and use of federal and State funds which are assigned or administered by the State for recreation programs and services on land and water recreation areas and on which the State renders advisory or other recreation services or upon which the State exercises control.
- (8) To act jointly, when advisable, with any other State, local or federal agency, institution, private individual or group in order to better carry out the Department's objectives and responsibilities.

(b) Repealed by Session Laws 1977, c. 70, s. 32.

(c) Repealed by Session Laws 1989, c. 751, s. 5.

(d) Federal Assistance. – The Department, with the approval of the Governor, may apply for and accept grants from the federal government and its agencies and from any foundation, corporation, association, or individual, and may comply with the terms, conditions, and limitations of the grant, in order to accomplish any of the purposes of the Department. Grant funds shall be expended pursuant to the Executive Budget Act.

(e) General. – The Department shall have the following general powers and duties.

- (1) To study and to sponsor research on all aspects of local government and of relationships between the federal government, the State and local governments in North Carolina.
- (2) To collect, collate, analyze, publish, and disseminate information necessary for the effective operation of the Department and useful to local government.
- (3) To maintain an inventory of data and information, and to act as a clearinghouse of information and as a referral agency with respect to State, federal, and private services and programs available to local government; and to facilitate local

participation in those programs by furnishing information, education, guidance, and technical assistance with respect to those programs.

- (4) To assist in coordinating State and federal activities relating to local government.
- (5) To assist local governments in the identification and solution of their problems.
- (6) To assist local officials in bringing specific governmental problems to the attention of the appropriate State, federal, and private agencies.
- (7) To advise and assist local governments with respect to intergovernmental contracts, joint service agreements, regional service arrangements, and other forms of intergovernmental cooperation.
- (8) To inform and advise the Governor on the affairs and problems of local government and on the need for the administrative and legislative action with respect to local government. (1969, c. 1145, s. 1; 1973, c. 1262, s. 51; 1977, c. 70, s. 32; c. 771, s. 4; 1989, c. 727, s. 218(116); c. 751, s. 5; 1997-443, s. 11A.119(a); 2011-284, s. 92; 2015-241, s. 14.30(u).)

§ 143B-10. Powers and duties of heads of principal departments.

(a) Assignment of Functions. – Except as otherwise provided by this Chapter, the head of each principal State department may assign or reassign any function vested in him or in his department to any subordinate officer or employee of his department.

(b) Reorganization by Department Heads. – With the approval of the Governor, each head of a principal State department may establish or abolish within his department any division. Each head of a principal State department may establish or abolish within his department any other administrative unit to achieve economy and efficiency and in accordance with sound administrative principles, practices, and procedures except as otherwise provided by law. When any such act of the head of the principal State department affects existing law the provisions of Article III, Sec. 5(10) of the Constitution of North Carolina shall be followed.

Each Department Head shall report all reorganizations under this subsection to the President of the Senate, the Speaker of the House of Representatives, the Chairmen of the Appropriations Committees in the Senate and the House of Representatives, and the Fiscal Research Division of the Legislative Services Office, within 30 days after the reorganization if the General Assembly is in session, otherwise to the Joint Legislative Committee on Governmental Operations and the Fiscal Research Division of the Legislative Services Office, within 30 days after the reorganization. The report shall include the rationale for the reorganization and any increased efficiency in operations expected from the reorganization.

(c) Department Staffs. – The head of each principal State department may establish necessary subordinate positions within his department, make appointments to those positions, and remove persons appointed to those positions, all within the limitations of appropriations and subject to the North Carolina Human Resources Act. All employees within a principal State department shall be under the supervision, direction, and control of the head of that department. The head of each principal State department may establish or abolish positions, transfer officers and employees between positions, and change the duties, titles, and compensation of existing offices and positions as he deems necessary for the efficient functioning of the department, subject to the North Carolina Human Resources Act and the limitations of available appropriations. For the purposes of the foregoing provisions, a member of a board, commission, council, committee, or other citizen group shall not be considered an "employee within a principal department."

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(d) Appointment of Committees or Councils. – The head of each principal department may create and appoint committees or councils to consult with and advise the department. The General Assembly declares its policy that insofar as feasible, such committees or councils shall consist of no more than 12 members, with not more than one from each congressional district. If any department head desires to vary this policy, he must make a request in writing to the Governor, stating the reasons for the request. The Governor may approve the request, but may only do so in writing. Copies of the request and approval shall be transmitted to the Joint Legislative Commission on Governmental Operations. The members of any committee or council created by the head of a principal department shall serve at the pleasure of the head of the principal department and may be paid per diem and necessary travel and subsistence expenses within the limits of appropriations and in accordance with the provisions of G.S. 138-5, when approved in advance by the Director of the Budget. Per diem, travel, and subsistence payments to members of the committees or councils created in connection with federal programs shall be paid from federal funds unless otherwise provided by law.

An annual report listing these committees or councils, the total membership on each, the cost in the last 12 months and the source of funding, and the title of the person who made the appointments shall be made to the Joint Legislative Commission on Governmental Operations by March 31 of each year.

(e) Departmental Management Functions. – All management functions of a principal State department shall be performed by or under the direction and supervision of the head of that principal State department. Management functions shall include planning, organizing, staffing, directing, coordinating, reporting, and budgeting.

(f) Custody of Records. – The head of a principal State department shall have legal custody of all public records as defined in G.S. 132-1.

(g) Budget Preparation. – The head of a principal State department shall be responsible for the preparation of and the presentation of the department budget request which shall include all funds requested and all receipts expected for all elements of the department.

(h) Plans and Reports. – Each principal State department shall submit to the Governor an annual plan of work for the next fiscal year prior to the beginning of that fiscal year. Each principal State department shall submit to the Governor an annual report covering programs and activities for each fiscal year. These plans of work and annual reports shall be made available to the General Assembly. These documents will serve as the base for the development of budgets for each principal State department of State government to be submitted to the Governor.

(i) Reports to Governor; Public Hearings. – Each head of a principal State department shall develop and report to the Governor legislative, budgetary, and administrative programs to accomplish comprehensive, long-range coordinated planning and policy formulation in the work of his department. To this end, the head of the department may hold public hearings, consult with and use the services of other State agencies, employ staff and consultants, and appoint advisory and technical committees to assist in the work.

(j) Departmental Rules and Policies. – The head of each principal State department and the Director of the Office of State Human Resources may adopt:

- (1) Rules consistent with law for the custody, use, and preservation of any public records, as defined in G.S. 132-1, which pertain to department business;
- (2) Rules, approved by the Governor, to govern the management of the department, which shall include the functions of planning, organizing, staffing, directing,

coordinating, reporting, budgeting, and budget preparation which affect private rights or procedures available to the public;

- (3) Policies, consistent with law and with rules established by the Governor and with rules of the State Human Resources Commission, which reflect internal management procedures within the department. These may include policies governing the conduct of employees of the department, the distribution and performance of business and internal management procedures which do not affect private rights or procedures available to the public and which are listed in (e) of this section. Policies establishing qualifications for employment shall be adopted and filed pursuant to Chapter 150B of the General Statutes; all other policies under this subdivision shall not be adopted or filed pursuant to Chapter 150B of the General Statutes.

Rules adopted under (1) and (2) of this subsection shall be subject to the provisions of Chapter 150B of the General Statutes.

This subsection shall not be construed as a legislative grant of authority to an agency to make and promulgate rules concerning any policies and procedures other than as set forth herein. (1973, c. 476, s. 10; c. 1416, ss. 1, 2; 1977, 2nd Sess., c. 1219, s. 46; 1983, c. 76, ss. 1, 2; c. 641, s. 8; c. 717, s. 78; 1985 (Reg. Sess., 1986), c. 955, ss. 97, 98; 1987, c. 738, s. 147; c. 827, s. 1; 1991 (Reg. Sess., 1992), c. 1038, s. 15; 2006-203, s. 101; 2013-382, s. 9.1(c).)

Article 7.

Department of Environment and Natural Resources.

Part 1. General Provisions.

§§ 143B-275 through 143B-279: Repealed by Session Laws 1989, c. 727, s. 2.

Article 4.

Department of Revenue.

Part 1. General Provisions.

Part 2. Property Tax Commission.

§§ 143B-222 through 143B-225: Repealed by Session Laws 1991, c. 110, s. 3.

§§ 143B-226 through 143B-245. Reserved for future codification purposes.

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017**

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HOUSE BILL 371

Committee Substitute Favorable 4/19/17

Short Title: Agency Powers and Duties/Technical Changes.-AB (Public)

Sponsors:

Referred to:

March 16, 2017

A BILL TO BE ENTITLED

AN ACT to clarify certain powers of the Department of Natural and Cultural Resources with respect to recreation and federal Recreation-related funding and with respect to the North CAROLINA ZOOLOGICAL PARK, TO ADD SWORN LAW ENFORCEMENT OFFICERS OF THE DEPARTMENT OF NATURAL AND CULTURAL RESOURCES TO THE LIST OF OFFICERS ELIGIBLE FOR SALARY CONTINUATION FOR WORKERS' COMPENSATION, AND TO CHANGE THE NAME OF THE CLEAN water management trust fund to the north carolina land and water preservation trust fund, as recommended by the Department.

The General Assembly of North Carolina enacts:

Statutory authority regarding recreation AND CERTAIN LAW ENFORCEMENT OFFICER BENEFITS

SECTION 1.(a) Subdivision (3) of G.S. 143-320 is recodified as subdivision (3a) of G.S. 143B-135.44.

SECTION 1.(b) Subsections (a) and (d) of G.S. 143-323 are recodified as subsections (a) and (b) of G.S. 143B-135.58, to be entitled "Additional powers and duties of the Department regarding recreation."

SECTION 1.(c) G.S. 143B-135.58, as enacted by Section 1(b) of this act, reads as rewritten:

"§ 143B-135.58. Additional powers and duties of the Department regarding recreation.

(a) Recreation. – The Department of ~~Environmental Quality~~ shall have the following powers and duties with respect to recreation:

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Commission Counsel

- (1) To study and appraise the recreation needs of the State and to assemble and disseminate information relative to recreation.
 - (2) To cooperate in the promotion and organization of local recreation systems for counties, municipalities, and other political subdivisions of the State, to aid them in the administration, finance, planning, personnel, coordination and cooperation of recreation organizations and programs.
 - (3) To aid in recruiting, training, and placing recreation workers, and to promote recreation institutes and conferences.
 - (4) To establish and promote recreation standards.
 - (5) To cooperate with appropriate State, federal, and local agencies and private membership groups and commercial recreation interests in the promotion of recreation opportunities, and to represent the State in recreation conferences, study groups, and other matters of recreation concern.
 - (6) To accept gifts, devises, and endowments. The funds, if given as an endowment, shall be invested in securities designated by the donor, or if there is no such designation, in securities in which the State sinking fund may be invested. All such gifts and devises and all proceeds from such invested endowments shall be used for carrying out the purposes for which they were made.
 - (7) To advise agencies, departments, organizations and groups in the planning, application and use of federal and State funds which are assigned or administered by the State for recreation programs and services on land and water recreation areas and on which the State renders advisory or other recreation services or upon which the State exercises control.
 - (8) To act jointly, when advisable, with any other State, local or federal agency, institution, private individual or group in order to better carry out the Department's objectives and responsibilities.
- (b) Federal Assistance. – The Department, with the approval of the Governor, may apply for and accept grants from the federal government and its agencies and from any foundation, corporation, association, or individual, and may comply with the terms, conditions, and limitations of the grant, in order to accomplish any of the purposes of the Department. Grant funds shall be expended pursuant to the ~~Executive Budget Act~~ State Budget Act. The Director of the Department's Division of Parks and Recreation shall be designated as having the authority and responsibility to accept and administer funding through the federal Land and Water Conservation Fund or any successor fund established for similar purposes, and the Secretary may designate additional personnel to assist the Director in the responsibilities imposed by this subsection."

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42 U.S.C.A. § 9901

§ 9901. Purposes and goals

Effective: October 27, 1998

The purposes of this chapter are--

(1) to provide assistance to States and local communities, working through a network of community action agencies and other neighborhood-based organizations, for the reduction of poverty, the revitalization of low-income communities, and the empowerment of low-income families and individuals in rural and urban areas to become fully self-sufficient (particularly families who are attempting to transition off a State program carried out under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.)); and

(2) to accomplish the goals described in paragraph (1) through--

(A) the strengthening of community capabilities for planning and coordinating the use of a broad range of Federal, State, local, and other assistance (including private resources) related to the elimination of poverty, so that this assistance can be used in a manner responsive to local needs and conditions;

(B) the organization of a range of services related to the needs of low-income families and individuals, so that these services may have a measurable and potentially major impact on the causes of poverty in the community and may help the families and individuals to achieve self-sufficiency;

(C) the greater use of innovative and effective community-based approaches to attacking the causes and effects of poverty and of community breakdown;

(D) the maximum participation of residents of the low-income communities and members of the groups served by programs assisted through the block grants made under this chapter to empower such residents and members to respond to the unique problems and needs within their communities; and

(E) the broadening of the resource base of programs directed to the elimination of poverty so as to secure a more active role in the provision of services for--

(i) private, religious, charitable, and neighborhood-based organizations; and

(ii) individual citizens, and business, labor, and professional groups, who are able to influence the quantity and quality of opportunities and services for the poor.

CREDIT(S)

(Pub.L. 97-35, Title VI, § 672, Aug. 13, 1981, as added Pub.L. 105-285, Title II, § 201, Oct. 27, 1998, 112 Stat. 2728.)

42 U.S.C.A. § 9902

§ 9902. Definitions

Effective: October 27, 1998

In this chapter:

(1) Eligible entity; family literacy services

(A) Eligible entity

The term “eligible entity” means an entity--

(i) that is an eligible entity described in paragraph (1) of this section (as in effect on the day before October 27, 1998) as of the day before October 27, 1998, or is designated by the process described in [section 9909](#) of this title (including an organization serving migrant or seasonal farmworkers that is so described or designated); and

(ii) that has a tripartite board or other mechanism described in subsection (a) or (b), as appropriate, of [section 9910](#) of this title.

(B) Family literacy services

The term “family literacy services” has the meaning given the term in [section 9832](#) of this title.

(2) Poverty line

The term “poverty line” means the official poverty line defined by the Office of Management and Budget based on the most recent data available from the Bureau of the Census. The Secretary shall revise annually (or at any shorter interval the Secretary determines to be feasible and desirable) the poverty line, which shall be used as a criterion of eligibility in the community services block grant program established under this chapter. The required revision shall be accomplished by multiplying the official poverty line by the percentage change in the Consumer Price Index for All

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Urban Consumers during the annual or other interval immediately preceding the time at which the revision is made. Whenever a State determines that it serves the objectives of the block grant program established under this chapter, the State may revise the poverty line to not to exceed 125 percent of the official poverty line otherwise applicable under this paragraph.

(3) Private, nonprofit organization

The term “private, nonprofit organization” includes a religious organization, to which the provisions of [section 9920](#) of this title shall apply.

(4) Secretary

The term “Secretary” means the Secretary of Health and Human Services.

(5) State

The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

CREDIT(S)

([Pub.L. 97-35, Title VI, § 673](#), Aug. 13, 1981, as added [Pub.L. 105-285, Title II, § 201](#), Oct. 27, 1998, 112 Stat. 2729.)

42 U.S.C.A. § 9903

§ 9903. Authorization of appropriations

Effective: October 27, 1998

(a) In general

There are authorized to be appropriated such sums as may be necessary for each of fiscal years 1999 through 2003 to carry out the provisions of this chapter (other than [sections 9922](#) and [9923](#) of this title).

(b) Reservations

Of the amounts appropriated under subsection (a) of this section for each fiscal year, the Secretary shall reserve--

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(1) ½ of 1 percent for carrying out [section 9905](#) of this title (relating to payments for territories);

(2) 1 ½ percent for activities authorized in [sections 9913](#) through [9918](#) of this title, of which--

(A) not less than ½ of the amount reserved by the Secretary under this paragraph shall be distributed directly to eligible entities, organizations, or associations described in [section 9913\(c\)\(2\)](#) of this title for the purpose of carrying out activities described in [section 9913\(c\)](#) of this title; and

(B) ½ of the remainder of the amount reserved by the Secretary under this paragraph shall be used by the Secretary to carry out evaluation and to assist States in carrying out corrective action activities and monitoring (to correct programmatic deficiencies of eligible entities), as described in [sections 9914\(c\)](#) and [9913](#) of this title; and

(3) 9 percent for carrying out [section 9921](#) of this title (relating to discretionary activities) and [section 9917\(b\)\(2\)](#) of this title.

CREDIT(S)

(Pub.L. 97-35, Title VI, § 674, Aug. 13, 1981, as added Pub.L. 105-285, Title II, § 201, Oct. 27, 1998, 112 Stat. 2730.)

42 U.S.C.A. § 9904

§ 9904. Establishment of block grant program

Effective: October 27, 1998

The Secretary is authorized to establish a community services block grant program and make grants through the program to States to ameliorate the causes of poverty in communities within the States.

CREDIT(S)

(Pub.L. 97-35, Title VI, § 675, Aug. 13, 1981, as added Pub.L. 105-285, Title II, § 201, Oct. 27, 1998, 112 Stat. 2730.)

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42 U.S.C.A. § 9905

§ 9905. Distribution to territories

Effective: October 27, 1998

(a) Apportionment

The Secretary shall apportion the amount reserved under [section 9903\(b\)\(1\)](#) of this title for each fiscal year on the basis of need among Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(b) Application

Each jurisdiction to which subsection (a) of this section applies may receive a grant under this section for the amount apportioned under subsection (a) of this section on submitting to the Secretary, and obtaining approval of, an application, containing provisions that describe the programs for which assistance is sought under this section, that is prepared in accordance with, and contains the information described in, [section 9908](#) of this title.

CREDIT(S)

([Pub.L. 97-35, Title VI, § 675A](#), Aug. 13, 1981, as added [Pub.L. 105-285, Title II, § 201](#), Oct. 27, 1998, 112 Stat. 2730.)

42 U.S.C.A. § 9906

§ 9906. Allotments and payments to States

Effective: October 27, 1998

(a) Allotments in general

The Secretary shall, from the amount appropriated under [section 9903\(a\)](#) of this title for each fiscal year that remains after the Secretary makes the reservations required in [section 9903\(b\)](#) of this title, allot to each State (subject to [section 9911](#) of this title) an amount that bears the same ratio to such remaining amount as the amount received by the State for fiscal year 1981 under [section 2808](#) of this title bore to the total amount received by all States for fiscal year 1981 under such section, except--

(1) that no State shall receive less than $\frac{1}{4}$ of 1 percent of the amount appropriated under [section 9903\(a\)](#) of this title for such fiscal year; and

(2) as provided in subsection (b) of this section.

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(b) Allotments in years with greater available funds

(1) Minimum allotments

Subject to paragraphs (2) and (3), if the amount appropriated under [section 9903\(a\)](#) of this title for a fiscal year that remains after the Secretary makes the reservations required in [section 9903\(b\)](#) of this title exceeds \$345,000,000, the Secretary shall allot to each State not less than ½ of 1 percent of the amount appropriated under [section 9903\(a\)](#) of this title for such fiscal year.

(2) Maintenance of fiscal year 1990 levels

Paragraph (1) shall not apply with respect to a fiscal year if the amount allotted under subsection (a) of this section to any State for that year is less than the amount allotted under [section 9903\(a\)\(1\)](#) of this title (as in effect on September 30, 1989) to such State for fiscal year 1990.

(3) Maximum allotments

The amount allotted under paragraph (1) to a State for a fiscal year shall be reduced, if necessary, so that the aggregate amount allotted to such State under such paragraph and subsection (a) of this section does not exceed 140 percent of the aggregate amount allotted to such State under the corresponding provisions of this chapter [[42 U.S.C.A. § 9901 et seq.](#)] for the preceding fiscal year.

(c) Payments

The Secretary shall make grants to eligible States for the allotments described in subsections (a) and (b) of this section. The Secretary shall make payments for the grants in accordance with [section 6503\(a\) of Title 31](#).

(d) Definition

In this section, the term “State” does not include Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

CREDIT(S)

([Pub.L. 97-35, Title VI, § 675B](#), Aug. 13, 1981, as added [Pub.L. 105-285, Title II, § 201](#), Oct. 27, 1998, 112 Stat. 2730.)

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42 U.S.C.A. § 9907

§ 9907. Uses of funds

Effective: October 27, 1998

(a) Grants to eligible entities and other organizations

(1) In general

Not less than 90 percent of the funds made available to a State under [section 9905](#) or [9906](#) of this title shall be used by the State to make grants for the purposes described in [section 9901](#) of this title to eligible entities.

(2) Obligational authority

Funds distributed to eligible entities through grants made in accordance with paragraph (1) for a fiscal year shall be available for obligation during that fiscal year and the succeeding fiscal year, subject to paragraph (3).

(3) Recapture and redistribution of unobligated funds

(A) Amount

Beginning on October 1, 2000, a State may recapture and redistribute funds distributed to an eligible entity through a grant made under paragraph (1) that are unobligated at the end of a fiscal year if such unobligated funds exceed 20 percent of the amount so distributed to such eligible entity for such fiscal year.

(B) Redistribution

In redistributing funds recaptured in accordance with this paragraph, States shall redistribute such funds to an eligible entity, or require the original recipient of the funds to redistribute the funds to a private, nonprofit organization, located within the community served by the original recipient of the funds, for activities consistent with the purposes of this chapter.

(b) Statewide activities

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(1) Use of remainder

If a State uses less than 100 percent of the grant or allotment received under [section 9905](#) or [9906](#) of this title to make grants under subsection (a) of this section, the State shall use the remainder of the grant or allotment under [section 9905](#) or [9906](#) of this title (subject to paragraph (2)) for activities that may include--

- (A) providing training and technical assistance to those entities in need of such training and assistance;

- (B) coordinating State-operated programs and services, and at the option of the State, locally-operated programs and services, targeted to low-income children and families with services provided by eligible entities and other organizations funded under this chapter, including detailing appropriate employees of State or local agencies to entities funded under this chapter, to ensure increased access to services provided by such State or local agencies;

- (C) supporting statewide coordination and communication among eligible entities;

- (D) analyzing the distribution of funds made available under this chapter within the State to determine if such funds have been targeted to the areas of greatest need;

- (E) supporting asset-building programs for low-income individuals, such as programs supporting individual development accounts;

- (F) supporting innovative programs and activities conducted by community action agencies or other neighborhood-based organizations to eliminate poverty, promote self-sufficiency, and promote community revitalization;

- (G) supporting State charity tax credits as described in subsection (c) of this section; and

- (H) supporting other activities, consistent with the purposes of this chapter.

(2) Administrative cap

No State may spend more than the greater of \$55,000, or 5 percent, of the grant received under [section 9905](#) of this title or State allotment received under [section 9906](#) of this title for administrative expenses, including monitoring activities. Funds to be spent for such expenses shall be taken from the portion of the grant under [section 9905](#) of this title or State allotment that remains after the State makes grants to eligible entities under subsection (a) of this section. The cost of activities conducted under paragraph (1)(A) shall not be considered to be administrative expenses. The startup cost and cost of administrative activities conducted under subsection (c) of this section shall be considered to

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be administrative expenses.

(c) Charity tax credit

(1) In general

Subject to paragraph (2), if there is in effect under State law a charity tax credit, the State may use for any purpose the amount of the allotment that is available for expenditure under subsection (b) of this section.

(2) Limit

The aggregate amount a State may use under paragraph (1) during a fiscal year shall not exceed 100 percent of the revenue loss of the State during the fiscal year that is attributable to the charity tax credit, as determined by the Secretary of the Treasury without regard to any such revenue loss occurring before January 1, 1999.

(3) Definitions and rules

In this subsection:

(A) Charity tax credit

The term “charity tax credit” means a nonrefundable credit against State income tax (or, in the case of a State that does not impose an income tax, a comparable benefit) that is allowable for contributions, in cash or in kind, to qualified charities.

(B) Qualified charity

(i) In general

The term “qualified charity” means any organization--

(I) that is--

(aa) described in [section 501\(c\)\(3\) of Title 26](#) and exempt from tax under section 501(a) of such title;

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(bb) an eligible entity; or

(cc) a public housing agency as defined in [section 1437a\(b\)\(6\)](#) of this title;

(II) that is certified by the appropriate State authority as meeting the requirements of clauses (iii) and (iv); and

(III) if such organization is otherwise required to file a return under section 6033 of such title, that elects to treat the information required to be furnished by clause (v) as being specified in section 6033(b) of such title.

(ii) Certain contributions to collection organizations treated as contributions to qualified charity

(I) In general

A contribution to a collection organization shall be treated as a contribution to a qualified charity if the donor designates in writing that the contribution is for the qualified charity.

(II) Collection organization

The term “collection organization” means an organization described in section 501(c)(3) of such title and exempt from tax under section 501(a) of such title--

(aa) that solicits and collects gifts and grants that, by agreement, are distributed to qualified charities;

(bb) that distributes to qualified charities at least 90 percent of the gifts and grants the organization receives that are designated for such qualified charities; and

(cc) that meets the requirements of clause (vi).

(iii) Charity must primarily assist poor individuals

(I) In general

An organization meets the requirements of this clause only if the appropriate State authority reasonably expects that the predominant activity of such organization will be the provision of direct services within the United States to individuals and families whose annual incomes generally do not exceed 185 percent of the poverty line in order to prevent or alleviate poverty among such individuals and families.

(II) No recordkeeping in certain cases

An organization shall not be required to establish or maintain records with respect to the incomes of individuals and families for purposes of subclause (I) if such individuals or families are members of groups that are generally recognized as including substantially only individuals and families described in subclause (I).

(III) Food aid and homeless shelters

Except as otherwise provided by the appropriate State authority, for purposes of subclause (I), services to individuals in the form of--

(aa) donations of food or meals; or

(bb) temporary shelter to homeless individuals;

shall be treated as provided to individuals described in subclause (I) if the location and provision of such services are such that the service provider may reasonably conclude that the beneficiaries of such services are predominantly individuals described in subclause (I).

(iv) Minimum expense requirement

(I) In general

An organization meets the requirements of this clause only if the appropriate State authority reasonably expects that the annual poverty program expenses of such organization will not be less than 75 percent of the annual aggregate expenses of such organization.

(II) Poverty program expense

For purposes of subclause (I)--

(aa) In general

The term “poverty program expense” means any expense in providing direct services referred to in clause (iii).

(bb) Exceptions

Such term shall not include any management or general expense, any expense for the purpose of influencing legislation (as defined in [section 4911\(d\) of Title 26](#)), any expense for the purpose of fundraising, any expense for a legal service provided on behalf of any individual referred to in clause (iii), any expense for providing tuition assistance relating to compulsory school attendance, and any expense that consists of a payment to an affiliate of the organization.

(v) Reporting requirement

The information required to be furnished under this clause about an organization is--

(I) the percentages determined by dividing the following categories of the organization’s expenses for the year by the total expenses of the organization for the year: expenses for direct services, management expenses, general expenses, fundraising expenses, and payments to affiliates; and

(II) the category or categories (including food, shelter, education, substance abuse prevention or treatment, job training, or other) of services that constitute predominant activities of the organization.

(vi) Additional requirements for collection organizations

The requirements of this clause are met if the organization--

(I) maintains separate accounting for revenues and expenses; and

(II) makes available to the public information on the administrative and fundraising costs of the organization, and information as to the organizations receiving funds from the organization and the amount of such funds.

(vii) Special rule for States requiring tax uniformity

In the case of a State--

(I) that has a constitutional requirement of tax uniformity; and

(II) that, as of December 31, 1997, imposed a tax on personal income with--

(aa) a single flat rate applicable to all earned and unearned income (except insofar as any amount is not taxed pursuant to tax forgiveness provisions); and

(bb) no generally available exemptions or deductions to individuals;

the requirement of paragraph (2) shall be treated as met if the amount of the credit described in paragraph (2) is limited to a uniform percentage (but not greater than 25 percent) of State personal income tax liability (determined without regard to credits).

(4) Limitation on use of funds for startup and administrative activities

Except to the extent provided in subsection (b)(2) of this section, no part of the aggregate amount a State uses under paragraph (1) may be used to pay for the cost of the startup and administrative activities conducted under this subsection.

(5) Prohibition on use of funds for legal services or tuition assistance

No part of the aggregate amount a State uses under paragraph (1) may be used to provide legal services or to provide tuition assistance related to compulsory education requirements (not including tuition assistance for tutoring, camps, skills development, or other supplemental services or training).

(6) Prohibition on supplanting funds

No part of the aggregate amount a State uses under paragraph (1) may be used to supplant non-Federal funds that would be available, in the absence of Federal funds, to offset a revenue loss of the State attributable to a charity tax credit.

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(Pub.L. 97-35, Title VI, § 675C, Aug. 13, 1981, as added Pub.L. 105-285, Title II, § 201, Oct. 27, 1998, 112 Stat. 2731.)

42 U.S.C.A. § 9908

§ 9908. Application and plan

Effective: July 1, 2015

(a) Designation of lead agency

(1) Designation

The chief executive officer of a State desiring to receive a grant or allotment under [section 9905](#) or [9906](#) of this title shall designate, in an application submitted to the Secretary under subsection (b) of this section, an appropriate State agency that complies with the requirements of paragraph (2) to act as a lead agency for purposes of carrying out State activities under this chapter.

(2) Duties

The lead agency shall--

(A) develop the State plan to be submitted to the Secretary under subsection (b) of this section;

(B) in conjunction with the development of the State plan as required under subsection (b) of this section, hold at least one hearing in the State with sufficient time and statewide distribution of notice of such hearing, to provide to the public an opportunity to comment on the proposed use and distribution of funds to be provided through the grant or allotment under [section 9905](#) or [9906](#) of this title for the period covered by the State plan; and

(C) conduct reviews of eligible entities under [section 9914](#) of this title.

(3) Legislative hearing

In order to be eligible to receive a grant or allotment under [section 9905](#) or [9906](#) of this title, the State shall hold at least one legislative hearing every 3 years in conjunction with the development of the State plan.

(b) State application and plan

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Beginning with fiscal year 2000, to be eligible to receive a grant or allotment under [section 9905](#) or [9906](#) of this title, a State shall prepare and submit to the Secretary an application and State plan covering a period of not less than 1 fiscal year and not more than 2 fiscal years. The plan shall be submitted not later than 30 days prior to the beginning of the first fiscal year covered by the plan, and shall contain such information as the Secretary shall require, including--

(I) an assurance that funds made available through the grant or allotment will be used--

(A) to support activities that are designed to assist low-income families and individuals, including families and individuals receiving assistance under part A of title IV of the Social Security Act ([42 U.S.C. 601 et seq.](#)), homeless families and individuals, migrant or seasonal farmworkers, and elderly low-income individuals and families, and a description of how such activities will enable the families and individuals--

(i) to remove obstacles and solve problems that block the achievement of self-sufficiency (including self-sufficiency for families and individuals who are attempting to transition off a State program carried out under part A of title IV of the Social Security Act);

(ii) to secure and retain meaningful employment;

(iii) to attain an adequate education, with particular attention toward improving literacy skills of the low-income families in the communities involved, which may include carrying out family literacy initiatives;

(iv) to make better use of available income;

(v) to obtain and maintain adequate housing and a suitable living environment;

(vi) to obtain emergency assistance through loans, grants, or other means to meet immediate and urgent family and individual needs; and

(vii) to achieve greater participation in the affairs of the communities involved, including the development of public and private grassroots partnerships with local law enforcement agencies, local housing authorities, private foundations, and other public and private partners to--

(I) document best practices based on successful grassroots intervention in urban areas, to develop methodologies for widespread replication; and

(II) strengthen and improve relationships with local law enforcement agencies, which may include participation in activities such as neighborhood or community policing efforts;

(B) to address the needs of youth in low-income communities through youth development programs that support the primary role of the family, give priority to the prevention of youth problems and crime, and promote increased community coordination and collaboration in meeting the needs of youth, and support development and expansion of innovative community-based youth development programs that have demonstrated success in preventing or reducing youth crime, such as--

(i) programs for the establishment of violence-free zones that would involve youth development and intervention models (such as models involving youth mediation, youth mentoring, life skills training, job creation, and entrepreneurship programs); and

(ii) after-school child care programs; and

(C) to make more effective use of, and to coordinate with, other programs related to the purposes of this chapter (including State welfare reform efforts);

(2) a description of how the State intends to use discretionary funds made available from the remainder of the grant or allotment described in [section 9907\(b\)](#) of this title in accordance with this chapter, including a description of how the State will support innovative community and neighborhood-based initiatives related to the purposes of this chapter;

(3) information provided by eligible entities in the State, containing--

(A) a description of the service delivery system, for services provided or coordinated with funds made available through grants made under [section 9907\(a\)](#) of this title, targeted to low-income individuals and families in communities within the State;

(B) a description of how linkages will be developed to fill identified gaps in the services, through the provision of information, referrals, case management, and followup consultations;

(C) a description of how funds made available through grants made under [section 9907\(a\)](#) of this title will be coordinated with other public and private resources; and

(D) a description of how the local entity will use the funds to support innovative community and neighborhood-

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based initiatives related to the purposes of this chapter, which may include fatherhood initiatives and other initiatives with the goal of strengthening families and encouraging effective parenting;

(4) an assurance that eligible entities in the State will provide, on an emergency basis, for the provision of such supplies and services, nutritious foods, and related services, as may be necessary to counteract conditions of starvation and malnutrition among low-income individuals;

(5) an assurance that the State and the eligible entities in the State will coordinate, and establish linkages between, governmental and other social services programs to assure the effective delivery of such services to low-income individuals and to avoid duplication of such services, and a description of how the State and the eligible entities will coordinate the provision of employment and training activities, as defined in section 3 of the Workforce Innovation and Opportunity Act, in the State and in communities with entities providing activities through statewide and local workforce development systems under such Act;

(6) an assurance that the State will ensure coordination between antipoverty programs in each community in the State, and ensure, where appropriate, that emergency energy crisis intervention programs under title XXVI [42 U.S.C.A. § 8621 et seq.] (relating to low-income home energy assistance) are conducted in such community;

(7) an assurance that the State will permit and cooperate with Federal investigations undertaken in accordance with section 9916 of this title;

(8) an assurance that any eligible entity in the State that received funding in the previous fiscal year through a community services block grant made under this chapter will not have its funding terminated under this chapter, or reduced below the proportional share of funding the entity received in the previous fiscal year unless, after providing notice and an opportunity for a hearing on the record, the State determines that cause exists for such termination or such reduction, subject to review by the Secretary as provided in section 9915(b) of this title;

(9) an assurance that the State and eligible entities in the State will, to the maximum extent possible, coordinate programs with and form partnerships with other organizations serving low-income residents of the communities and members of the groups served by the State, including religious organizations, charitable groups, and community organizations;

(10) an assurance that the State will require each eligible entity in the State to establish procedures under which a low-income individual, community organization, or religious organization, or representative of low-income individuals that considers its organization, or low-income individuals, to be inadequately represented on the board (or other mechanism) of the eligible entity to petition for adequate representation;

(11) an assurance that the State will secure from each eligible entity in the State, as a condition to receipt of funding by the entity through a community services block grant made under this chapter for a program, a community action plan (which shall be submitted to the Secretary, at the request of the Secretary, with the State plan) that includes a

community-needs assessment for the community served, which may be coordinated with community-needs assessments conducted for other programs;

(12) an assurance that the State and all eligible entities in the State will, not later than fiscal year 2001, participate in the Results Oriented Management and Accountability System, another performance measure system for which the Secretary facilitated development pursuant to [section 9917\(b\)](#) of this title, or an alternative system for measuring performance and results that meets the requirements of that section, and a description of outcome measures to be used to measure eligible entity performance in promoting self-sufficiency, family stability, and community revitalization; and

(13) information describing how the State will carry out the assurances described in this subsection.

(c) Funding termination or reductions

For purposes of making a determination in accordance with subsection (b)(8) of this section with respect to--

(1) a funding reduction, the term “cause” includes--

(A) a statewide redistribution of funds provided through a community services block grant under this chapter to respond to--

(i) the results of the most recently available census or other appropriate data;

(ii) the designation of a new eligible entity; or

(iii) severe economic dislocation; or

(B) the failure of an eligible entity to comply with the terms of an agreement or a State plan, or to meet a State requirement, as described in [section 9915\(a\)](#) of this title; and

(2) a termination, the term “cause” includes the failure of an eligible entity to comply with the terms of an agreement or a State plan, or to meet a State requirement, as described in [section 9915\(a\)](#) of this title.

(d) Procedures and information

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The Secretary may prescribe procedures for the purpose of assessing the effectiveness of eligible entities in carrying out the purposes of this chapter.

(e) Revisions and inspection

(1) Revisions

The chief executive officer of each State may revise any plan prepared under this section and shall submit the revised plan to the Secretary.

(2) Public inspection

Each plan or revised plan prepared under this section shall be made available for public inspection within the State in such a manner as will facilitate review of, and comment on, the plan.

(f) Transition

For fiscal year 2000, to be eligible to receive a grant or allotment under [section 9905](#) or [9906](#) of this title, a State shall prepare and submit to the Secretary an application and State plan in accordance with the provisions of this chapter (as in effect on the day before October 27, 1998), rather than the provisions of subsections (a) through (c) of this section relating to applications and plans.

CREDIT(S)

([Pub.L. 97-35, Title VI, § 676](#), Aug. 13, 1981, as added [Pub.L. 105-285, Title II, § 201](#), Oct. 27, 1998, 112 Stat. 2735; amended [Pub.L. 113-128, Title V, § 512\(f\)](#), July 22, 2014, 128 Stat. 1707.)

42 U.S.C.A. § 9909

§ 9909. Designation and redesignation of eligible entities in unserved areas

Effective: October 27, 1998

(a) Qualified organization in or near area

(1) In general

If any geographic area of a State is not, or ceases to be, served by an eligible entity under this chapter, and if the chief executive officer of the State decides to serve such area, the chief executive officer may solicit applications from, and

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designate as an eligible entity--

(A) a private nonprofit organization (which may include an eligible entity) that is geographically located in the unserved area, that is capable of providing a broad range of services designed to eliminate poverty and foster self-sufficiency, and that meets the requirements of this chapter; and

(B) a private nonprofit eligible entity that is geographically located in an area contiguous to or within reasonable proximity of the unserved area and that is already providing related services in the unserved area.

(2) Requirement

In order to serve as the eligible entity for the area, an entity described in paragraph (1)(B) shall agree to add additional members to the board of the entity to ensure adequate representation--

(A) in each of the three required categories described in [subparagraphs \(A\), \(B\), and \(C\) of section 9910\(a\)\(2\)](#) of this title, by members that reside in the community comprised by the unserved area; and

(B) in the category described in [section 9910\(a\)\(2\)\(B\)](#) of this title, by members that reside in the neighborhood to be served.

(b) Special consideration

In designating an eligible entity under subsection (a) of this section, the chief executive officer shall grant the designation to an organization of demonstrated effectiveness in meeting the goals and purposes of this chapter and may give priority, in granting the designation, to eligible entities that are providing related services in the unserved area, consistent with the needs identified by a community-needs assessment.

(c) No qualified organization in or near area

If no private, nonprofit organization is identified or determined to be qualified under subsection (a) of this section to serve the unserved area as an eligible entity the chief executive officer may designate an appropriate political subdivision of the State to serve as an eligible entity for the area. In order to serve as the eligible entity for that area, the political subdivision shall have a board or other mechanism as required in [section 9910\(b\)](#) of this title.

CREDIT(S)

([Pub.L. 97-35, Title VI, § 676A](#), Aug. 13, 1981, as added [Pub.L. 105-285, Title II, § 201](#), Oct. 27, 1998, 112 Stat. 2739.)

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42 U.S.C.A. § 9910

§ 9910. Tripartite boards

Effective: October 27, 1998

(a) Private nonprofit entities

(1) Board

In order for a private, nonprofit entity to be considered to be an eligible entity for purposes of [section 9902\(1\)](#) of this title, the entity shall administer the community services block grant program through a tripartite board described in paragraph (2) that fully participates in the development, planning, implementation, and evaluation of the program to serve low-income communities.

(2) Selection and composition of board

The members of the board referred to in paragraph (1) shall be selected by the entity and the board shall be composed so as to assure that--

(A) $\frac{1}{3}$ of the members of the board are elected public officials, holding office on the date of selection, or their representatives, except that if the number of such elected officials reasonably available and willing to serve on the board is less than $\frac{1}{3}$ of the membership of the board, membership on the board of appointive public officials or their representatives may be counted in meeting such $\frac{1}{3}$ requirement;

(B)(i) not fewer than $\frac{1}{3}$ of the members are persons chosen in accordance with democratic selection procedures adequate to assure that these members are representative of low-income individuals and families in the neighborhood served; and

(ii) each representative of low-income individuals and families selected to represent a specific neighborhood within a community under clause (i) resides in the neighborhood represented by the member; and

(C) the remainder of the members are officials or members of business, industry, labor, religious, law enforcement, education, or other major groups and interests in the community served.

(b) Public organizations

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In order for a public organization to be considered to be an eligible entity for purposes of [section 9902\(1\)](#) of this title, the entity shall administer the community services block grant program through--

(1) a tripartite board, which shall have members selected by the organization and shall be composed so as to assure that not fewer than $\frac{1}{3}$ of the members are persons chosen in accordance with democratic selection procedures adequate to assure that these members--

(A) are representative of low-income individuals and families in the neighborhood served;

(B) reside in the neighborhood served; and

(C) are able to participate actively in the development, planning, implementation, and evaluation of programs funded under this chapter; or

(2) another mechanism specified by the State to assure decisionmaking and participation by low-income individuals in the development, planning, implementation, and evaluation of programs funded under this chapter.

CREDIT(S)

([Pub.L. 97-35, Title VI, § 676B](#), Aug. 13, 1981, as added [Pub.L. 105-285, Title II, § 201](#), Oct. 27, 1998, 112 Stat. 2740.)

42 U.S.C.A. § 9911

§ 9911. Payments to Indian tribes

Effective: October 27, 1998

(a) Reservation

If, with respect to any State, the Secretary--

(1) receives a request from the governing body of an Indian tribe or tribal organization within the State that assistance under this chapter be made directly to such tribe or organization; and

(2) determines that the members of such tribe or tribal organization would be better served by means of grants made directly to provide benefits under this chapter,

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the Secretary shall reserve from amounts that would otherwise be allotted to such State under [section 9906](#) of this title for the fiscal year the amount determined under subsection (b) of this section.

(b) Determination of reserved amount

The Secretary shall reserve for the purpose of subsection (a) of this section from amounts that would otherwise be allotted to such State, not less than 100 percent of an amount that bears the same ratio to the State allotment for the fiscal year involved as the population of all eligible Indians for whom a determination has been made under subsection (a) of this section bears to the population of all individuals eligible for assistance through a community services block grant made under this chapter [[42 U.S.C.A. § 9901 et seq.](#)] in such State.

(c) Awards

The sums reserved by the Secretary on the basis of a determination made under subsection (a) of this section shall be made available by grant to the Indian tribe or tribal organization serving the individuals for whom such a determination has been made.

(d) Plan

In order for an Indian tribe or tribal organization to be eligible for a grant award for a fiscal year under this section, the tribe or organization shall submit to the Secretary a plan for such fiscal year that meets such criteria as the Secretary may prescribe by regulation.

(e) Definitions

In this section:

(1) Indian tribe; tribal organization

The terms “Indian tribe” and “tribal organization” mean a tribe, band, or other organized group recognized in the State in which the tribe, band, or group resides, or considered by the Secretary of the Interior, to be an Indian tribe or an Indian organization for any purpose.

(2) Indian

The term “Indian” means a member of an Indian tribe or of a tribal organization.

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42 U.S.C.A. § 9912

§ 9912. Office of Community Services

Effective: October 27, 1998

(a) Office

The Secretary shall carry out the functions of this chapter through an Office of Community Services, which shall be established in the Department of Health and Human Services. The Office shall be headed by a Director.

(b) Grants, contracts, and cooperative agreements

The Secretary shall carry out functions of this chapter through grants, contracts, or cooperative agreements.

CREDIT(S)

(Pub.L. 97-35, Title VI, § 678, Aug. 13, 1981, as added Pub.L. 105-285, Title II, § 201, Oct. 27, 1998, 112 Stat. 2742.)