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(4) PROCEEDS.—The proceeds from any sale of forfeited property and any monies forfeited under this subsection shall be used—

(A) first, to reimburse the Department of Justice for the costs incurred by the Department to initiate and complete the forfeiture proceeding;

(B) second, to reimburse the Department of Agriculture Office of Inspector General for any costs the Office incurred in the law enforcement effort resulting in the forfeiture;

(C) third, to reimburse any Federal or State law enforcement agency for any costs incurred in the law enforcement effort resulting in the forfeiture; and

(D) fourth, by the Secretary to carry out the approval, reauthorization, and compliance investigations of retail stores and wholesale food concerns under section 9.

ADMINISTRATIVE COST-SHARING AND QUALITY CONTROL

SEC. 16. [7 U.S.C. 2025] (a) Subject to subsection (k), the Secretary is authorized to pay to each State agency an amount equal to 50 per centum of all administrative costs involved in each State agency's operation of the supplemental nutrition assistance program, which costs shall include, but not be limited to, the cost of (1) the certification of applicant households, (2) the acceptance, storage, protection, control, and accounting of benefits after their delivery to receiving points within the State, (3) the issuance of benefits to all eligible households, (4) informational activities relating to the supplemental nutrition assistance program, including those undertaken under section 11(e)(1)(A), but not including recruitment activities designed to persuade an individual to apply for program benefits or that promote the program through television, radio, or billboard advertisements, (5) fair hearings, (6) automated data processing and information retrieval systems subject to the conditions set forth in subsection (g), (7) supplemental nutrition assistance program investigations and prosecutions, (8) implementing and operating the immigration status verification system established under section 1137(d) of the Social Security Act (42 U.S.C. 1320b–7(d)), and (9) establishing and operating a longitudinal database in accordance with section 17(n): *Provided*, That the Secretary is authorized at the Secretary's discretion to pay any State agency administering the supplemental nutrition assistance program on all or part of an Indian reservation under section 11(d) of this Act or in a Native village within the State of Alaska identified in section 11(b) of Public Law 92–203, such amounts for administrative costs as the Secretary determines to be necessary for effective operation of the supplemental nutrition assistance program, as well as to permit each State to retain 35 percent of the value of all funds or allotments recovered or collected pursuant to sections 6(b) and 13(c) and 20 percent of the value of any other funds or allotments recovered or collected, except the value of funds or allotments recovered or collected that arise from an error of a State agency. The officials responsible for making determinations of ineligibility

under this Act shall not receive or benefit from revenues retained by the State under the provisions of this subsection.

(b) WORK SUPPLEMENTATION OR SUPPORT PROGRAM.—

(1) DEFINITION OF WORK SUPPLEMENTATION OR SUPPORT PROGRAM.—In this subsection, the term “work supplementation or support program” means a program under which, as determined by the Secretary, public assistance (including any benefits provided under a program established by the State and the supplemental nutrition assistance program) is provided to an employer to be used for hiring and employing a public assistance recipient who was not employed by the employer at the time the public assistance recipient entered the program.

(2) PROGRAM.—A State agency may elect to use an amount equal to the allotment that would otherwise be issued to a household under the supplemental nutrition assistance program, but for the operation of this subsection, for the purpose of subsidizing or supporting a job under a work supplementation or support program established by the State.

(3) PROCEDURE.—If a State agency makes an election under paragraph (2) and identifies each household that participates in the supplemental nutrition assistance program that contains an individual who is participating in the work supplementation or support program—

(A) the Secretary shall pay to the State agency an amount equal to the value of the allotment that the household would be eligible to receive but for the operation of this subsection;

(B) the State agency shall expend the amount received under subparagraph (A) in accordance with the work supplementation or support program in lieu of providing the allotment that the household would receive but for the operation of this subsection;

(C) for purposes of—

(i) sections 5 and 8(a), the amount received under this subsection shall be excluded from household income and resources; and

(ii) section 8(b), the amount received under this subsection shall be considered to be the value of an allotment provided to the household; and

(D) the household shall not receive an allotment from the State agency for the period during which the member continues to participate in the work supplementation or support program.

(4) OTHER WORK REQUIREMENTS.—No individual shall be excused, by reason of the fact that a State has a work supplementation or support program, from any work requirement under section 6(d), except during the periods in which the individual is employed under the work supplementation or support program.

(5) LENGTH OF PARTICIPATION.—A State agency shall provide a description of how the public assistance recipients in the program shall, within a specific period of time, be moved from supplemented or supported employment to employment that is not supplemented or supported.

(6) DISPLACEMENT.—A work supplementation or support program shall not displace the employment of individuals who are not supplemented or supported.

(c) QUALITY CONTROL SYSTEM.—

(1) IN GENERAL.—

(A) SYSTEM.—

(i) IN GENERAL.—In carrying out the supplemental nutrition assistance program, the Secretary shall carry out a system that enhances payment accuracy and improves administration by establishing fiscal incentives that require State agencies with high payment error rates to share in the cost of payment error.

(ii) TOLERANCE LEVEL FOR EXCLUDING SMALL ERRORS.—The Secretary shall set the tolerance level for excluding small errors for the purposes of this subsection—

(I) for fiscal year 2014, at an amount not greater than \$37; and

(II) for each fiscal year thereafter, the amount specified in subclause (I) adjusted by the percentage by which the thrifty food plan is adjusted under section 3(u)(4) between June 30, 2013, and June 30 of the immediately preceding fiscal year.

(B) QUALITY CONTROL SYSTEM INTEGRITY.—

(i) IN GENERAL.—Not later than 180 days after the date of enactment of the Agriculture Improvement Act of 2018, the Secretary shall issue interim final regulations that—

(I) ensure that the quality control system established under this subsection produces valid statistical results;

(II) provide for oversight of contracts entered into by a State agency for the purpose of improving payment accuracy;

(III) ensure the accuracy of data collected under the quality control system established under this subsection; and

(IV) for each fiscal year, to the maximum extent practicable, provide for the evaluation of the integrity of the quality control process of not fewer than 2 State agencies, selected in accordance with criteria determined by the Secretary.

(ii) DEBARMENT.—In accordance with the non-procurement debarment procedures under part 417 of title 2, Code of Federal Regulations, or successor regulations, the Secretary shall debar any person that, in carrying out the quality control system established under this subsection, knowingly submits, or causes to be submitted, false information to the Secretary.

(C) ESTABLISHMENT OF LIABILITY AMOUNT FOR FISCAL YEAR 2003 AND THEREAFTER.—With respect to fiscal year 2004 and any fiscal year thereafter for which the Secretary determines that, for the second or subsequent consecutive fiscal year, a 95 percent statistical probability exists that

the payment error rate of a State agency exceeds 105 percent of the national performance measure for payment error rates announced under paragraph (6), the Secretary shall establish an amount for which the State agency may be liable (referred to in this paragraph as the “liability amount”) that is equal to the product obtained by multiplying—

- (i) the value of all allotments issued by the State agency in the fiscal year;
- (ii) the difference between—
 - (I) the payment error rate of the State agency; and
 - (II) 6 percent; and
- (iii) 10 percent.

(D) **AUTHORITY OF SECRETARY WITH RESPECT TO LIABILITY AMOUNT.**—With respect to the liability amount established for a State agency under subparagraph (C) for any fiscal year, the Secretary shall—

- (i)
 - (I) require that a portion, not to exceed 50 percent, of the liability amount established for the fiscal year be used by the State agency for new investment, approved by the Secretary, to improve administration by the State agency of the supplemental nutrition assistance program (referred to in this paragraph as the “new investment amount”), which new investment amount shall not be matched by Federal funds;
 - (II) designate a portion, not to exceed 50 percent, of the amount established for the fiscal year for payment to the Secretary in accordance with subparagraph (E) (referred to in this paragraph as the “at-risk amount”); or
 - (III) take any combination of the actions described in subclauses (I) and (II); or
- (ii) make the determinations described in clause (i) and enter into a settlement with the State agency, only with respect to any new investment amount, before the end of the fiscal year in which the liability amount is determined under subparagraph (C).

(E) **PAYMENT OF AT-RISK AMOUNT FOR CERTAIN STATES.**—

- (i) **IN GENERAL.**—A State agency shall pay to the Secretary the at-risk amount designated under subparagraph (D)(i)(II) for any fiscal year in accordance with clause (ii), if, with respect to the immediately following fiscal year, a liability amount has been established for the State agency under subparagraph (C).

(ii) **METHOD OF PAYMENT OF AT-RISK AMOUNT.**—

- (I) **REMISSION TO THE SECRETARY.**—In the case of a State agency required to pay an at-risk amount under clause (i), as soon as practicable after completion of all administrative and judicial reviews with respect to that requirement to pay, the chief executive officer of the State shall remit

to the Secretary the at-risk amount required to be paid.

(II) ALTERNATIVE METHOD OF COLLECTION.—

(aa) IN GENERAL.—If the chief executive officer of the State fails to make the payment under subclause (I) within a reasonable period of time determined by the Secretary, the Secretary may reduce any amount due to the State agency under any other provision of this section by the amount required to be paid under clause (i).

(bb) ACCRUAL OF INTEREST.—During any period of time determined by the Secretary under item (aa), interest on the payment under subclause (I) shall not accrue under section 13(a)(2).

(F) USE OF PORTION OF LIABILITY AMOUNT FOR NEW INVESTMENT.—

(i) REDUCTION OF OTHER AMOUNTS DUE TO STATE AGENCY.—In the case of a State agency that fails to comply with a requirement for new investment under subparagraph (D)(i)(I) or clause (iii)(I), the Secretary may reduce any amount due to the State agency under any other provision of this section by the portion of the liability amount that has not been used in accordance with that requirement.

(ii) EFFECT OF STATE AGENCY'S WHOLLY PREVAILING ON APPEAL.—If a State agency begins required new investment under subparagraph (D)(i)(I), the State agency appeals the liability amount of the State agency, and the determination by the Secretary of the liability amount is reduced to \$0 on administrative or judicial review, the Secretary shall pay to the State agency an amount equal to 50 percent of the new investment amount that was included in the liability amount subject to the appeal.

(iii) EFFECT OF SECRETARY'S WHOLLY PREVAILING ON APPEAL.—If a State agency does not begin required new investment under subparagraph (D)(i)(I), the State agency appeals the liability amount of the State agency, and the determination by the Secretary of the liability amount is wholly upheld on administrative or judicial review, the Secretary shall—

(I) require all or any portion of the new investment amount to be used by the State agency for new investment, approved by the Secretary, to improve administration by the State agency of the supplemental nutrition assistance program, which amount shall not be matched by Federal funds; and

(II) require payment of any remaining portion of the new investment amount in accordance with subparagraph (E)(ii).

(iv) EFFECT OF NEITHER PARTY'S WHOLLY PREVAILING ON APPEAL.—The Secretary shall promulgate regulations regarding obligations of the Secretary and the State agency in a case in which the State agency appeals the liability amount of the State agency and neither the Secretary nor the State agency wholly prevails.

(G) CORRECTIVE ACTION PLANS.—The Secretary shall foster management improvements by the States by requiring State agencies, other than State agencies with payment error rates of less than 6 percent, to develop and implement corrective action plans to reduce payment errors.

(2) As used in this section—

(A) the term “payment error rate” means the sum of the point estimates of an overpayment error rate and an underpayment error rate determined by the Secretary from data collected in a probability sample of participating households;

(B) the term “overpayment error rate” means the percentage of the value of all allotments issued in a fiscal year by a State agency that are either—

(i) issued to households that fail to meet basic program eligibility requirements; or

(ii) overissued to eligible households; and

(C) the term “underpayment error rate” means the ratio of the value of allotments underissued to recipient households to the total value of allotments issued in a fiscal year by a State agency.

(3) The following errors may be measured for management purposes but shall not be included in the payment error rate:

(A) Any errors resulting in the application of new regulations promulgated under this Act during the first 120 days from the required implementation date for such regulations.

(B) Errors resulting from the use by a State agency of correctly processed information concerning households or individuals received from Federal agencies or from actions based on policy information approved or disseminated, in writing, by the Secretary or the Secretary's designee.

(4) REPORTING REQUIREMENTS.—The Secretary may require a State agency to report any factors that the Secretary considers necessary, including providing access to applicable State records and the entire information systems in which the records are contained, to determine a State agency's payment error rate, liability amount or new investment amount under paragraph (1), or performance under the performance measures under subsection (d). If a State agency fails to meet the reporting requirements established by the Secretary, the Secretary shall base the determination on all pertinent information available to the Secretary.

(5) PROCEDURES.—To facilitate the implementation of this subsection, each State agency shall expeditiously submit to the Secretary data concerning the operations of the State agency in each fiscal year sufficient for the Secretary to establish the State agency's payment error rate, liability amount or new investment amount under paragraph (1), or performance under

the performance measures under subsection (d). The Secretary shall initiate efforts to collect the amount owed by the State agency as a claim established under paragraph (1) for a fiscal year, subject to the conclusion of any formal or informal appeal procedure and administrative or judicial review under section 14 (as provided for in paragraph (7)), before the end of the fiscal year following such fiscal year.

(6) NATIONAL PERFORMANCE MEASURE FOR PAYMENT ERROR RATES.—

(A) ANNOUNCEMENT.—At the time the Secretary makes the notification to State agencies of their error rates, the Secretary shall also announce a national performance measure that shall be the sum of the products of each State agency's error rate as developed for the notifications under paragraph (8) times that State agency's proportion of the total value of national allotments issued for the fiscal year using the most recent issuance data available at the time of the notifications issued pursuant to paragraph (8).

(B) USE OF ALTERNATIVE MEASURE OF STATE ERROR.—Where a State fails to meet reporting requirements pursuant to paragraph (4), the Secretary may use another measure of a State's error developed pursuant to paragraph (8), to develop the national performance measure.

(C) USE OF NATIONAL PERFORMANCE MEASURE.—The announced national performance measure shall be used in determining the liability amount of a State under paragraph (1)(C) for the fiscal year whose error rates are being announced under paragraph (8).

(D) NO ADMINISTRATIVE OR JUDICIAL REVIEW.—The national performance measure announced under this paragraph shall not be subject to administrative or judicial review.

(7) ADMINISTRATIVE AND JUDICIAL REVIEW.—

(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), if the Secretary asserts a financial claim against or establishes a liability amount with respect to a State agency under paragraph (1), the State may seek administrative and judicial review of the action pursuant to section 14.

(B) DETERMINATION OF PAYMENT ERROR RATE.—With respect to any fiscal year, a determination of the payment error rate of a State agency or a determination whether the payment error rate exceeds 105 percent of the national performance measure for payment error rates shall be subject to administrative or judicial review only if the Secretary establishes a liability amount with respect to the fiscal year under paragraph (1)(C).

(C) AUTHORITY OF SECRETARY WITH RESPECT TO LIABILITY AMOUNT.—An action by the Secretary under subparagraph (D) or (F)(iii) of paragraph (1) shall not be subject to administrative or judicial review.

(8)(A) This paragraph applies to the determination of whether a payment is due by a State agency for a fiscal year under paragraph (1).

(B) Not later than the first May 31 after the end of the fiscal year referred to in subparagraph (A), the case review and all arbitrations of State-Federal difference cases shall be completed.

(C) Not later than the first June 30 after the end of the fiscal year referred to in subparagraph (A), the Secretary shall—

(i) determine final error rates, the national average payment error rate, and the amounts of payment claimed against State agencies or liability amount established with respect to State agencies;

(ii) notify State agencies of the payment claims or liability amounts; and

(iii) provide a copy of the document providing notification under clause (ii) to the chief executive officer and the legislature of the State.

(D) A State agency desiring to appeal a payment claim or liability amount determined under subparagraph (C) shall submit to an administrative law judge—

(i) a notice of appeal, not later than 10 days after receiving a notice of the claim or liability amount; and

(ii) evidence in support of the appeal of the State agency, not later than 60 days after receiving a notice of the claim or liability amount.

(E) Not later than 60 days after a State agency submits evidence in support of the appeal, the Secretary shall submit responsive evidence to the administrative law judge to the extent such evidence exists.

(F) Not later than 30 days after the Secretary submits responsive evidence, the State agency shall submit rebuttal evidence to the administrative law judge to the extent such evidence exists.

(G) The administrative law judge, after an evidentiary hearing, shall decide the appeal—

(i) not later than 60 days after receipt of rebuttal evidence submitted by the State agency; or

(ii) if the State agency does not submit rebuttal evidence, not later than 90 days after the State agency submits the notice of appeal and evidence in support of the appeal.

(H) In considering a claim or liability amount under this paragraph, the administrative law judge shall consider all grounds for denying the claim or liability amount, in whole or in part, including the contention of a State agency that the claim or liability amount should be waived, in whole or in part, for good cause.

(I) The deadlines in subparagraphs (D), (E), (F), and (G) shall be extended by the administrative law judge for cause shown.

(9) As used in this subsection, the term “good cause” includes—

(A) a natural disaster or civil disorder that adversely affects supplemental nutrition assistance program operations;

(B) a strike by employees of a State agency who are necessary for the determination of eligibility and processing of case changes under the supplemental nutrition assistance program;

(C) a significant growth in the caseload under the supplemental nutrition assistance program in a State prior to or during a fiscal year, such as a 15 percent growth in caseload;

(D) a change in the supplemental nutrition assistance program or other Federal or State program that has a substantial adverse impact on the management of the supplemental nutrition assistance program of a State; and

(E) a significant circumstance beyond the control of the State agency.

(d) STATE PERFORMANCE INDICATORS.—

(1) FISCAL YEARS 2003 AND 2004.—

(A) GUIDANCE.—With respect to fiscal years 2003 and 2004, the Secretary shall establish, in guidance issued to State agencies not later than October 1, 2002—

(i) performance criteria relating to—

(I) actions taken to correct errors, reduce rates of error, and improve eligibility determinations; and

(II) other indicators of effective administration determined by the Secretary; and

(ii) standards for high and most improved performance to be used in awarding performance bonus payments under subparagraph (B)(ii).

(B) PERFORMANCE BONUS PAYMENTS.—With respect to each of fiscal years 2003 and 2004, the Secretary shall—

(i) measure the performance of each State agency with respect to the criteria established under subparagraph (A)(i); and

(ii) subject to paragraph (3), award performance bonus payments in the following fiscal year, in a total amount of \$48,000,000 for each fiscal year, to State agencies that meet standards for high or most improved performance established by the Secretary under subparagraph (A)(ii).

(2) FISCAL YEARS 2005 THROUGH 2017.—

(A) REGULATIONS.—With respect to fiscal year 2005 through fiscal year 2017, the Secretary shall—

(i) establish, by regulation, performance criteria relating to—

(I) actions taken to correct errors, reduce rates of error, and improve eligibility determinations; and

(II) other indicators of effective administration determined by the Secretary;

(ii) establish, by regulation, standards for high and most improved performance to be used in awarding performance bonus payments under subparagraph (B)(ii); and

(iii) before issuing proposed regulations to carry out clauses (i) and (ii), solicit ideas for performance criteria and standards for high and most improved performance from State agencies and organizations that represent State interests.