

TEXT EXPLANATION AND INTERPRETATION OF AMENDMENTS
MADE TO THE SOCIAL SECURITY ACT BY SECTION 904(c)
OF P.L. 100-628, THE STEWART B. MCKINNEY
HOMELESS ASSISTANCE AMENDMENTS ACT OF 1988

1. Text of Amendments to the Social Security Act Made by Section 904(c) of P.L. 100-628.

- a. Amendment to Section 303, SSA. Section 904(c)(1)(A) of P.L. 100-628 amended Section 303, SSA. by adding the following new subsection:

(i)(1) The State agency charged with the administration of the State law--

(A) shall disclose, upon request and on a reimbursable basis, only to officers and employees of the Department of Housing and Urban Development and to representatives of a public housing agency, any of the following information contained in the records of such State agency with respect to individuals applying for or participating in any housing assistance program administered by the Department who have signed an appropriate consent form approved by the Secretary of Housing and Urban Development--

(j) wage information, and

(ii) whether an individual is receiving, has received, or has made application for, unemployment compensation, and the amount of any such compensation being received (or to be received) by such individual, and

(B) shall establish such safeguards as are necessary (as determined by the Secretary of Labor in regulations) to ensure that information disclosed under subparagraph (A) is used only for purposes of determining an individual's eligibility for benefits or the amount of benefits, under a housing assistance program of the Department of Housing and Urban Development.

(2) The Secretary of Labor shall prescribe regulations governing how often and in what form information may be disclosed under paragraph (1)(A).

(3) Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that there is a failure to comply substantially with the requirements of paragraph (1), the Secretary of Labor shall notify such State agency that further payments will not be made to the State until he or she is satisfied that there is no longer any such failure. Until the Secretary of Labor is so satisfied, he or she shall make no future certification to the Secretary of the Treasury with respect to such State.

(4) For purposes of this subsection, the term 'public housing agency' means any agency described in section 3(b)(6) of the United States Housing Act of 1937.

(5) The provisions of this subsection shall cease to be effective beginning on October 1, 1994.

- b. Companion Amendment to Section 304(x)(2), SSA. Section 904(c)(1)(B) of P.L. 100-628 amended Section 304(x)(2), SSA. by striking "(e), or (h)" and inserting "(e), (h), or (i)".

2. Discussion.

- a. In General. The Department of Housing and Urban Development (HUD) administers various housing assistance programs for low income families. Section 904 of P.L. 100-628 creates requirements to assist in preventing fraud and abuse in HUD programs, including a requirement that program applicants and participants consent to permit HUD or a public housing agency to request certain information from State Employment Security Agencies (SESAs). The amendments made by Section 904(c)(1) require the SESA to provide these entities such information.

Specifically, Section 9b4(c)(1)(A) of P.L. 100-628 added new subsection (i)(1) to Section 303, SSA, to require the State agency charged with the administration of the State UC law (i.e., the SESA) to disclose, under certain conditions, to officers and employees of HUD and to representatives of a public housing agency certain information contained in the SESA's records.

"Public housing agency" is defined in new Section 303(i)(4) as "any agency described in Section 3(b)(6) of the United States Housing Act of 1937." Section 3(b)(6), 42 U.S.C., 1437a(b)(6). defines "public housing agency" as:

. . . any State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of low-income housing.

SESAs are required to disclose information to HUD and other public housing agencies only upon request and only with respect to individuals applying for or participating in any housing assistance program administered by HUD. In certain instances, private owners of residences are responsible for determining eligibility for or level of benefits.. The requirements of Section 303(i)(1) do not require disclosure to such owners. Indeed, as stated in the Conference Report (H.R. Rep. No. 1089, 100th Cong., 2d Sess. 91), "[t]he wage and UI information may not be released to private owners." In addition, before a SESA may release any information under Section 303(i) regarding an individual who is applying for or participating in a HUD housing assistance program, the individual must sign a consent form, approved by the Secretary of HUD, which permits the release of such information.

Under Section 303(i)(1)(A), the SESA is required only to disclose "information contained in the records of" the SESA. Because a SESA is required only to disclose information in its records; it is not required to obtain additional information for the use of HUD or other public housing agencies.

Under Section 303(i)(1)(A)(i), the information to be disclosed from SESA records includes "wage information." "Wage information" is not defined in Section 303(h). For purposes of the income and eligibility verification system required under Section 303(f), SSA, the Department has defined "wage information" contained in SESA records at 20 CFR 603.2(b):

"Wage information" means information about wages as defined in the State's unemployment compensation law and includes the Social Security Number (or number, if more than one) and quarterly wages of an employee, and the name, address, State, and (when known) Federal employer identification number of an employer reporting wages under a State unemployment compensation law¹

The Department adopts this definition of "wage information" for purposes of Section 303(i)(1). However, if HUD or any public housing agency does not require any of this wage information to verify entitlement for HUD-assisted housing programs. then the SESA should limit disclosure to the information required. In addition, a SESA is required under Section 303(i)(1)(A)(ii) to provide information in its records as to whether an individual is receiving, has received, or has made application for, unemployment compensation, and the amount of any compensation being received, or to be received, by the individual.

Granted funds under Title III may not be used to pay any costs of administration of Section 303 (i). Section 303(i)(1)(A) specifically requires that SESAs shall disclose information upon "a reimbursable basis." Because granted funds may not be used for this purpose, the Department interprets Section 303(i), SSA, as requiring the SESAs to collect from HUD and any other requesting public housing agency all costs incurred in administering Section 303(i). These costs include start-up and continuing costs.

A written agreement between the SESA and HUD and any other requesting public housing agency is needed and should include specific terms regarding the information supplied by the SESA. The costs covered and charges to be made for all information, billing and payment arrangements (including advance payment), handling of errors, and adjustment of prices. SESAs may undertake activities under Section 303(i)(1) only after agreements for reimbursement of all costs have been made.

Section 904(c)(1)(A) also added new Section 303(i)(2) requiring the secretary of Labor to prescribe regulations governing how often and in what form information may be disclosed under Section 303(i)(1)(A). Further information on the required agreements and the proposed regulations will be issued at a later date.

Section 904(c)(1)(A) also added new Section 303(i)(3), SSA, requiring the denial of administrative grants to any State upon the finding of the Secretary, after reasonable notice and opportunity for hearing, that the State agency failed to comply substantially with the requirements of new section 303(i)(1). New Section 303(i)(5) specifies that the provisions of Section 303(i) cease to be effective beginning on October 1, 1994. Section 904(c)(1)(B) of P.L. 100-628 amended Section 304(a)(2), SSA, to provide for judicial review whenever the Secretary makes an adverse finding under Section 303(i)(3).

Finally, section 904(c)(2) created new provisions, not amending any existing law, which provide protections for the subjects of the disclosed information by limiting the use of this information by requiring verification before action is taken against these individuals and by imposing penalties for improperly requesting, obtaining, or disclosing this information. (See Section 2.b of this attachment and Attachment III.)

- b. Safeguards on Disclosing Information. New Section 303(i)(1)(B). SSA, requires the SESA to establish necessary safeguards to ensure that information disclosed is used only for purposes of determining the individual's eligibility for benefits, or the amount of benefits, under a HUD housing assistance program. The Secretary of Labor is to prescribe regulations on such safeguards as are necessary. Until such regulations are issued, SESAs will assure compliance with Section 303(i)(1)(H) by following the confidentiality protection provisions of 20 CFR 603.7 pertaining to the income eligibility and verification program. In addition, until such regulations are issued, as a condition of disclosure, HUD and other requesting public housing agencies must agree to comply with provisions of 20 CFR 603.7 (with a more stringent requirement noted below pertaining to requesting agencies).

Section 904(c)(2) of P.L. 100-628 provides for limitations on the use of data obtained by the requesting agencies. Section 904(c)(3) provides for penalties for improper use of information. Although SESAs will not be actively involved in the administration of these sections, SESAs should be aware of the limitations on use of wage and UC information. These limitations should be included in any agreement between the SESA and HUD or other requesting public housing agencies.

Information received under Section 303(i)(1)(A) from SESAs may be redisclosed under the limited conditions associated with administration of Section 303(i)(1)(a) and Section 904(c) of P.L. 100-628. Under 20 CFR 603.7(b)(3), agencies requesting information under the income and eligibility verification system may redisclose information to other requesting agencies as defined in 20 CFR 603.2(d). However, HUD and other public housing agencies may only redisclose information to public officials whose duties fall within the scope of Section 904(c). In this regard, SESAs should be aware that, under Section 904(c)(2)(A)(ii), the private owners responsible for verifying the individual's eligibility for or level of benefits under a HUD housing assistance program may only be informed by the recipient of the disclosed information that the individual's eligibility for or level of benefits is uncertain and that the owner should independently

verify the individual's income information.

Repeated violations of the statutory, regulatory or other reasonable safeguards required under Section 303(i) and Section 904(c) will constitute cause for the SESA to terminate any agreements. SESAs should report suspected violations of Section 904(c) to the appropriate authorities.

The text of Sections 904(c)(2) and (3) is contained in Attachment III.

- c. Amendments to State Law. Most State laws now permit information in the SESA's records to be disclosed to public officials in the performance of their duties. In addition, Section 303(f), SSA, requires SESAs to provide information, for purposes of the income and eligibility verification system created by Section 1137, SSA. SESAs will need to review State laws to determine whether existing provisions provide sufficient authority to disclose information to HUD or other public housing agencies, or whether an amendment to State law is needed. If an amendment is necessary, State law should be amended by the effective date discussed in Section 3 of this attachment.
3. Effective Date. New Section. 303(i)(3), SSA, requires that SESAs must comply substantially with the requirements of Section 303(i)(1) as a condition for receiving administrative grants under Section 302(a), SSA. Section 904(d)(1) of P.L. 100-628 specifies that the provisions of Section 904, including new Section 303(i), "shall take effect on September 30, 1989." States are, therefore, expected to have provisions of State law permitting the disclosure required by Section 303(i)(1), SSA, by September 30, 1989. However, Section 904(d)(3) provides for a grace period for certain States:

(3) REQUIREMENTS FOR STATE AGENCIES.--In the case of, any State the legislature of which has not been in session for at least 30 calendar days (whether or not consecutive) between the date of the enactment of this Act and September 30, 1989; the amendments made. by subsection (c)(1) shall take effect 30 calendar days after the first day on which such legislature is in session on or after September 30, 1989.

If the "State . . . legislature . . . has not been in session for at least 30 calendar days (whether or not consecutive)" between the date of enactment which is November 7, 1988, and September 30, 1989, then the State qualifies for a grace period. "Session" is not defined; however, the language "whether or not consecutive" indicates that the term means legislative days on which the legislative body assembles for the purpose of transacting business. Therefore, for purposes of Section 904(d)(3), "session" is interpreted as meaning a legislative day as recorded in the legislative record of the State legislature. These "sessions" include legislative days in regular, budgetary, special and any other sessions of the State legislature. If the State legislature has not met in such a "session" 30 times between the effective date of P.L. 100-628, which is November 7, 1988, and September 30, 1989, then the State qualifies for a grace period.

This grace period expires 30 calendar days "after the first day on which the legislature is in session on or after September 30, 1989." The same definition of "session" applies for determining the first day on which the legislature is in session after September 30, 1989. Therefore, the grace period will expire 30 calendar days after the first legislative day the legislature assembles after September 30, 1989.

For example, if the legislature does not meet in 30 sessions, between the date of enactment of P.L. 100-628, which is November 7, 1988, and September 30, 1989, then the requirements of Section 303(i)(1) are effective 30 days after the first day the legislature meets in session after September 30, 1989. In another example, if a State legislature has not met, in 30 sessions between November 7, 1988, and September 30, 1989, but does meet in a "session" October 1, 1989, then the grace period expires 30 days after this date, or October 31, 1989.

Based on information available to the Department, it is anticipated that only the Commonwealth of Kentucky will qualify for this grace period. This is because all other States will likely have legislatures which meet in session for at least 30 calendar days (whether or not consecutive) between the date of enactment of P.L. 100-628, which is November 7, 1988, and September 30, 1989.

Under certain circumstances, States may, at their option, implement the disclosure requirements of Section 303(i)(1) prior to September 30, 1989. Section 904(d)(2) provides for this optional early implementation:

(2) OPTIONAL EARLY IMPLEMENTATION.--At the initiative of a State or an agency of the State, and with the approval of the Secretary of Labor, the amendments made by subsection (c)(1) may be made effective in such State on any date before September 30, 1989, which is more than 90 days after the date of the enactment of this section.

Under Section 904(d)(2), early implementation is permitted only on a date which is "more than 90 days after the date of the enactment" of P.L. 100-628. As the date of enactment of P.L. 100-628 is November 7, 1988, States may implement the requirements of Section 303(i)(1) no earlier than February 6, 1989. Early implementation may, be made only with the approval of the Secretary of Labor.

¹ The remainder of 20 CFR 6D3.2(b) addresses States where wage information is not required to be reported to the SESA. It is not applicable to Section 303(i)(1)(A) which only requires disclosure of information contained in the SESA's records .