Department of Health and Human Services
DEPARTMENTAL APPEALS BOARD
Appellate Division

U.S. Virgin Islands
Docket No. A-17-117
Decision No. 2943
May 23, 2019

DECISION

U.S. Virgin Islands (USVI) appeals a determination by the Administration for Children & Families (ACF) that USVI is subject to a financial penalty that would reduce its funds under title IV-A of the Social Security Act (Act) by $28,466, which is equal to one percent (1%) of USVI's adjusted State Family Assistance Grant (SFAG), for failing to achieve an appropriate paternity establishment percentage (PEP) for federal fiscal year (FFY) 2015. For the reasons discussed below, the Board upholds ACF's determination to impose the penalty of $28,466.

Authorities

Title IV-A of the Act,[1] "Block Grants to States for Temporary Assistance for Needy Families" (TANF), provides grants to eligible states that have approved programs for providing assistance to needy families with children, and for providing their parents with job preparation, work and support services to enable them to leave the program and become self-sufficient. Act §§ 401-419. To receive TANF funds, a state must operate a child support enforcement program in accordance with title IV-D of the Act. Act § 402(a)(2). Title IV-D is a cooperative federal-state program that aims at increasing the effectiveness of child support collection by such measures as locating absent parents, establishing paternity, obtaining child and spousal support, and assuring that assistance in obtaining support is available to all children for whom such assistance is requested. Act §§ 451-469B. States operate their child support enforcement programs subject to oversight by ACF's Office of Child Support Enforcement (OCSE).[2]

[1] The current version of the Act can be found at http://www.socialsecurity.gov/OP_Home/ssact/ssact-toc.htm. Each section of the Act on that website contains a reference to the corresponding United States Code chapter and section. Cross-reference tables for the Act and the United States Code can be found at http://uscode.house.gov/table3/1935_531.htm and https://www.ssa.gov/OP_Home/comp2/G-APP-H.html.

[2] The title IV-D regulations refer to the Office of Child Support Enforcement, but we refer to ACF herein since it is the respondent federal agency. We note, moreover, that, for purposes of the title IV-A TANF and the title IV-D child support enforcement programs, the term "state" includes the U.S. Virgin Islands. *See* Act § 1101(a)(1); 45 C.F.R. §§ 260.30, 301.1; *The Virgin Islands Dep't of Justice*, DAB No. 2003, at 2-3 (2005).

Titles IV-A and IV-D of the Act and the regulations in 45 C.F.R. Part 305 create a system of incentives and penalties under which TANF grant funds are awarded to or withheld from states based on the scores they achieve on IV-D performance measures, which are determined each federal fiscal year based on data submitted by the states. ACF conducts data reliability audits pursuant to section 452(a)(4)(C) of the Act to determine if the submitted data are complete and reliable. The data must meet a 95% standard of reliability. 45 C.F.R. § 305.1(i). "[R]eliable data" are "the most recent data available which are found by the Secretary [of Health and Human Services] to be reliable." *Id.* "Reliable data" "exist[] when data are sufficiently complete and error free to be convincing for their purpose and context." *Id.* A state's data "must meet a 95 percent standard of reliability." *Id.* "[C]omplete data" is defined as "all reporting elements from OCSE reporting forms, necessary to compute a State's performance levels . . . ." *Id.* § 305.1(j). The requirement to meet a 95% standard of reliability "is with the recognition that data may contain errors as long as they are not of a magnitude that would cause a reasonable person, aware of the errors, to doubt a finding or conclusion based on the data." *Id.* § 305.1(i).

Section 409(a)(8)(A) of the Act authorizes the imposition of a penalty if the Secretary finds a state's IV-D child support enforcement program noncompliant with one of the following requirements in each of two consecutive years:

(1) the state failed to achieve the "paternity establishment percentage" performance measure as defined in section 452(g)(2) of the Act or to meet other performance measures that may be established by the Secretary;
(2) the state's data submitted pursuant to section 454(15)(B) of the Act are incomplete or unreliable; or
(3) the state failed to substantially comply with one or more IV-D requirements (with certain exceptions as specified in section 409(a)(8)(A)).

The performance measure at issue here is the "paternity establishment percentage" or PEP. The PEP essentially looks at how effectively the state has worked to establish paternity for children in the caseload born out of wedlock (with some exceptions not at issue here). 45 C.F.R. § 305.2(a)(1). Section 452(g)(2) of the Act sets out the IV-D PEP[3] and the statewide PEP. More specifically, the statewide PEP (which USVI elected to use, as is permitted by 45 C.F.R. § 305.40(a)(1)), is the following ratio, expressed as a percentage:

[3] We need not address the alternative measurement (IV-D PEP) since it is not at issue in this case. *See* 45 C.F.R. § 305.2(a)(1)(i); Act § 452(g)(2)(A).

$$\frac{\text{Total \# of Minor Children who have been Born Out-of-Wedlock and for Whom Paternity has been Established or Acknowledged During the Fiscal Year}}{\text{Total \# of Children Born Out-of-Wedlock During the Preceding Fiscal Year}}$$

45 C.F.R. § 305.2(a)(1)(ii); *see also* Act § 452(g)(2)(B).

A state must achieve a PEP of 90% for each fiscal year to avoid a penalty against, or reduction of, its annual title IV-A TANF grant (SFAG). Act § 452(g)(1)(A). A PEP below 90% could be a basis for imposing a penalty unless the state has increased its PEP over the previous year by the following percentages:

PEP	Increase required over previous year's PEP	Penalty FOR FIRST FAILURE if increase not met
90% or more	None	No Penalty.
75% to 89%	2%	1-2% TANF Funds.
50% to 74%	3%	1-2% TANF Funds.
45% to 49%	4%	1-2% TANF Funds.
40% to 44%	5%	1-2% TANF Funds.
39% or less	6%	1-2% TANF Funds.

45 C.F.R. § 305.40(a)(1), Table 4; *see also* Act § 452(g)(1)(A)-(F).

ACF imposes funding reduction penalties, which range from one to two percent of the SFAG if the state is found in noncompliance for two consecutive years, and increase in subsequent years if ACF finds that the noncompliance still is not corrected. Act § 409(a)(8)(B); 45 C.F.R. § 305.61(c); *see also* 45 C.F.R. §§ 262.1(b)-(e), 305.66. The first of two consecutive years is the performance year; the second year is the corrective action year. 65 Fed. Reg. 82,178, 82,186, 82,189 (Dec. 27, 2000); *Wyoming Dep't of Family Servs.*, DAB No. 2074, at 4 (2007); 45 C.F.R. § 305.66(b)(2) (The "automatic corrective action year" is the "succeeding fiscal year following the year with respect to which the deficiency occurred."). A penalty must be assessed if the state failed to correct the cited noncompliance by the end of the corrective action year. 45 C.F.R. § 305.66(c). A state must expend additional state funds to replace any reduction in the SFAG resulting from the penalties. Act § 409(a)(12); 45 C.F.R. § 262.1(e)(1).

In accordance with section 409(a)(8)(C) of the Act and 45 C.F.R. § 305.62 (which we will address in more detail below), the Secretary may "disregard" certain noncompliance findings of a technical nature (thereby allowing waiver of the penalties discussed above for such findings).

ACF's Determination

USVI underwent an annual financial data reliability audit for FFY 2015, after which ACF's OCSE issued its findings. Based on those audit findings, ACF issued, on July 6, 2017, a determination, which states in part:

> On April 18, 2017, OCSE issued the final data reliability audit (DRA) report. The DRA report indicates that [USVI's] FFY 2015 data was found to be complete and reliable. However, [USVI] attained a PEP level of 72 percent for FFY 2015, which is a 6 percent decrease from the FFY 2014 PEP level of 78 percent.[4] The minimum acceptable level of performance for the PEP is 90 percent or an improvement of 2 to 6 percentage points over the previous year's level of performance. As a result of this consecutive finding after the automatic corrective action year, [USVI] will receive a financial penalty of $28,466 equal to 1 percent of [USVI's] adjusted SFAG for the TANF program for FFY 2014, which will be assessed against [USVI's] FFY 2016 TANF grant in accordance with 45 CFR 305.61 and 305.66.
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> If [USVI] does not correct the issue cited above, the penalty will continue to be assessed in accordance with section 409(a)(8) of the Act and 45 CFR 305.61, 305.66, 262.1(b) through (e) and 262.7 until [USVI] is determined to have submitted complete and reliable data and achieve the required performance levels for the corresponding performance measures. The penalty for a second consecutive finding is not less than 2 percent and not more than 3 percent of [USVI's] adjusted SFAG for the TANF program for FFY 2014.

ACF Response, Exh. B at 2.[5]

USVI timely appealed ACF's determination to the Board. 45 C.F.R. § 262.7.

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[4] As ACF states, a state may be determined to have submitted complete and reliable data for audit purposes and yet submit an inaccurate count of the numbers used to calculate the PEP, because an inaccurate count does not automatically mean that data is unreliable. ACF's response brief (ACF Response) at 6 n.4. ACF writes, "Identifying errors of omission or overages in the state's sample data for audit, coupled with analysis, may result in errors that are immaterial to reliability of the data." *Id*.; *see* 45 C.F.R. § 305.1(i), (j).

[5] By letter dated March 18, 2016, ACF notified USVI that its PEP for FFY 2014, 78%, reflected an 8% decrease from its FFY 2013 PEP of 86%. In that letter ACF also notified USVI that it could be subject to a financial penalty in FFY 2016 if it fails to achieve the appropriate PEP for FFY 2015 and that it will be assessed a penalty for a consecutive failure to achieve a 90% PEP level or a failure to achieve a 2% improvement in its FFY 2015 PEP over its FFY 2014 PEP. ACF also informed USVI that a penalty will not be assessed if USVI takes sufficient corrective action by the end of the corrective action year, that is, FFY 2015. ACF Response, Exh. A at 1, 2.

Discussion

As set out above, section 409(a)(8)(A) of the Act authorizes a financial penalty where the Secretary makes, among other things, findings of noncompliance with the PEP performance measure, for two consecutive years. Based on OCSE's audit results for FFY 2015, ACF determined that USVI achieved in FFY 2015 a PEP of 72%, a 6% **decrease** from its FFY 2014 PEP of 78%. Since the PEP level for both years was below 90%, USVI was obliged to, but did not, improve its PEP in FFY 2015 (corrective action year) over its PEP in FY 2014. *See* 45 C.F.R. § 305.40(a)(1), Table 4. Because USVI failed to achieve the applicable PEP performance measure, ACF imposed a penalty of $28,466.

USVI does not raise any dispute concerning the amount of the penalty. Nor does USVI dispute the accuracy of the audit findings based on data that it submitted to OCSE and which were the basis for ACF's July 6, 2017 determination – that USVI's PEP for FFY 2014 was 78% and its PEP for FFY 2015 was 72%.

Mainly, USVI seeks to rely on authorities that permit disregarding certain violations of a technical nature. Thus, it asks that the penalty be waived or reduced in accordance with the "disregard" provision of section 409(a)(8)(C) of the Act because its noncompliance is or should be considered of a "technical nature," caused by budget problems affecting data collection. USVI's brief in support of Notice of Appeal (Brief) at 3; Reply at 3, 5. ACF replies that the "disregard" provision does not apply to the kind of penalty at issue here; and that, even if it were applicable, USVI has not met the prerequisites to qualify for such a penalty reduction. USVI also denies that it concedes that it actually failed to meet the PEP performance measure or correction requirements, asserting that the numbers on which that conclusion was based reflected problems with its ability to obtain correct birth information, not its actual performance. Reply at 3, 5. Below we discuss USVI's arguments in more detail, and explain why we reject those arguments and determine that ACF properly assessed the penalty.

I. *The "disregard" provision in the statute and regulations does not apply to a failure to meet a performance measure and thus may not be invoked to relieve USVI from the requirement to achieve the required PEP level.*

USVI states that, in 2014 and 2015, it experienced an economic downturn, which led to a hiring freeze. Brief at 3. Also, in or around mid-2017, USVI's Department of Health, Office of Vital Records, which is responsible for maintaining the records of live births, children born out of wedlock, and establishment of paternity, was in the process of transitioning to an automated, computerized record-keeping system. *Id.* at 1-2. Because a hiring freeze was in place, Vital Records could not hire staff to conduct an "official manual count" of children born out of wedlock, and existing Vital Records staff were devoted to the records conversion project. *Id.* at 2. Therefore, USVI maintains, Vital

Records was unable to provide USVI's Department of Justice, Office of Paternity & Child Support Division, an official count of children born out of wedlock. *Id.* As a result, the Paternity & Child Support Division had to report an "unofficial count" of out-of-wedlock births.[6] *Id.* USVI asks that the penalty be waived or reduced in consideration of these circumstances, which USVI says resulted in an "alleged noncompliance . . . of a technical nature that holds no negative impact" on the performance of its child support enforcement program. Reply at 3 (citing Act § 409(a)(8)(C)).

Section 409(a)(8)(C) of the Act provides:

> (C) DISREGARD OF NONCOMPLIANCE WHICH IS OF A TECHNICAL NATURE.—For purposes of this section and section 452(a)(4), a State determined as a result of an audit—
> (i) to have failed to have substantially complied with 1 or more of the requirements of part D shall be determined to have achieved substantial compliance only if the Secretary determines that the extent of the noncompliance is of a technical nature which does not adversely affect the performance of the State's program under part D; or
> (ii) to have submitted incomplete or unreliable data pursuant to section 454(15)(B) shall be determined to have submitted adequate data only if the Secretary determines that the extent of the incompleteness or unreliability of the data is of a technical nature which does not adversely affect the determination of the level of the State's paternity establishment percentages (as defined under section 452(g)(2)) or other performance measures that may be established by the Secretary.

The implementing regulation at 45 C.F.R. § 305.62, captioned "Disregard of a failure which is of a technical nature," states:

> A State subject to a penalty under § 305.61(a)(1)(ii) or (iii) of this part may be determined, as appropriate, to have submitted adequate data or to have achieved substantial compliance with one or more IV-D requirements, as defined in § 305.63 of this part, if the Secretary determines that the incompleteness or unreliability of the data, or the noncompliance with one

[6] USVI does not clearly explain what it means by references to "official" and "unofficial" counts, or why it considers a "manual" count "official."

> or more of the IV-D requirements, is of a technical nature which does not adversely affect the performance of the State's IV-D program or does not adversely affect the determination of the level of the State's paternity establishment or other performance measures percentages.

The Board has stated that the above regulatory "disregard" provision does *not* refer to a state subject to a penalty under section 305.61(a)(1)**(i)** for failure to achieve the specified PEP. *Wyoming*, DAB No. 2074, at 10. The "disregard" provision expressly refers to a state subject to a penalty under either section 305.61(a)(1)**(ii)** (failure to submit complete and reliable data) or section 305.61(a)(1)**(iii)** (failure to substantially comply with one or more IV-D requirements, as defined in section 305.63). *Id.* Thus, the regulations, by which we are bound (45 C.F.R. § 16.14), preclude our applying the "disregard" provision to USVI's penalty for failing to achieve the required PEP performance level.

The Board also rejected the argument that such failure could also be considered a failure to substantially comply with a IV-D requirement for purposes of bringing it under the "disregard" provision. The Board explained that "the regulations appear to reflect ACF's interpretation that the disregard provision does not apply to a failure to meet PEP performance levels," and opined that such an interpretation was reasonable, for two reasons. *Wyoming* at 11. First, section 409(a)(8)(A) distinguishes a failure to "substantially comply with 1 or more of the requirements in part D" from a data failure or a failure to meet performance measures. The disregard provision at section 409(a)(8)(C) lists only "failures to substantially comply with 1 or more of the requirements in part D" when identifying bases for disregarding noncompliance of a technical nature, and data failures, with no reference to performance measures. *Id.* Second, the Board noted, the lead-in language of section 409(a)(8)(C) refers only to a determination "as a result of an audit," but a penalty for failure to meet a PEP level may be the result of either an audit or a state's own report of its PEP level on the OCSE-157 form so the limitation to audit result determinations would make no sense if PEP performance measures were all intended to be included in the "disregard" option. *Id.* Thus, the statutory language can reasonably be read as not encompassing performance measure failures.

ACF determined that USVI failed to achieve either a PEP of 90% in FFY 2015 or the required minimum percentage improvement in its FFY 2015 PEP over its FFY 2014 PEP. ACF Response, Exh. B at 2; 45 C.F.R. § 305.61(a)(1)(i). ACF's determination notice did not cite failure to submit complete and reliable data, which could implicate the applicability of the "disregard" provision. To the contrary, ACF expressly stated that, based on the OCSE's audit report, USVI's FFY 2015 data were found to be "complete and reliable." ACF Response, Exh. B at 2. Moreover, section 305.62's "disregard" provision limits its application to either data failure (not the case here with respect to FFY 2015) or a failure to comply substantially with IV-D requirements as set out in section 305.63, which, in turn, does not treat failure to meet a specified PEP level as a

failure to substantially comply with one or more IV-D requirements.[7] In any case, USVI makes no argument as to why its failure to meet the PEP performance measure in FFY 2015 nevertheless is or should be treated as a failure to comply substantially with IV-D requirements so as to implicate the applicability of the "disregard" provision in section 409(a)(8)(C) of the Act or 45 C.F.R. § 305.62.

Accordingly, we conclude that the "disregard" provision does not apply to USVI's failure to achieve the PEP performance measure in FFY 2015.

II. *In any event, USVI has not shown that its failure to meet the required PEP level, even after a corrective action period, was noncompliance of a technical nature within the meaning of the "disregard" provision that does not adversely affect the performance of its child support program.*

Even were we to assume that USVI's failure to meet the PEP performance measure could be viewed as a failure to substantially comply with a IV-D requirement, we would conclude that USVI's failure was *not* noncompliance of a technical nature that does not adversely affect the performance of its child support program. Act § 409(a)(8)(C)(i); 45 C.F.R. § 305.62. "Neither the disregard provision in the statute [Act § 409(a)(8)(C)] nor [that] in the regulations [section 305.62] authorizes disregard of all failures of a technical nature. When read together, they authorize a disregard of a failure to substantially comply with a program requirement only if the noncompliance is of a technical nature which does not adversely affect the performance of a state's IV-D program." *Wyoming*, DAB No. 2074, at 12.

[7] The Board noted that, for some purposes, the failure to achieve a specified PEP level may be treated as a failure to substantially comply with IV-D requirements. For instance, section 452(g)(1) of the Act provides that, to be substantially compliant with IV-D requirements, a state must meet specified PEP levels. The Board also noted, however, that the disregard provision "limits application of the disregard to either a data failure or a failure to comply substantially 'as defined in section 305.63,'" which, "in turn, does not treat failure to meet the required PEP performance level as a failure to substantially comply with one or more IV-D requirements." *Wyoming*, DAB No. 2074, at 10 (emphasis in the word "not" removed here). Section 305.63, the Board further noted, includes a standard for provision of required IV-D services such as establishment of paternity, but the substantial compliance standard is different from the performance levels established for the PEP and uses a measure different from the PEP and, specifically, that section 305.63(c) contains a standard that requires provision of numerous types of IV-D services (including establishment of paternity) in 75% of the cases reviewed in an audit. In contrast, the PEP measures only the program's success during the year in having paternity established or acknowledged for either all children born out of wedlock in the state (statewide PEP) or all title IV-D children born out of wedlock (IV-D PEP). Moreover, the required PEP level is either 90% or a specified percentage increase, and a state's success in achieving the level may be determined on the basis of either a state's report or an audit. *Id.* at 10-11 n.3.

USVI maintains that it was unable to provide an "official manual count" of children born out of wedlock and instead was able to provide only an "unofficial count" of such children because Vital Records, which was short-staffed due to a hiring freeze, was occupied with the transition to an electronic record-keeping system. Whatever its reasons for being unable to report an "official manual count," as we said earlier, USVI does not now dispute the accuracy of the FFY 2015 PEP level the audit found based on the data USVI did submit and, which, along with the previously determined FFY 2014 PEP, were the basis for ACF's July 6, 2017 determination that USVI did not meet the 90% PEP for either FFY 2014 or FFY 2015 and that it did not achieve the minimum improvement in PEP in FFY 2015 over that in FFY 2014. USVI cannot reasonably assert that its failure to meet the PEP performance measure is or should be considered a noncompliance of a technical nature that does not adversely affect the performance of its child support program within the meaning of the "disregard" provision of section 409(a)(8)(C) of the Act. A state's failure to meet a PEP performance measure no doubt affects the performance of its child support program because the ostensible purpose of such a performance measure is to ensure the state effectively determines the paternity of children born out of wedlock for whom child support could be collected for the benefit of those children. *See Wyoming* at 12-13 (rejecting Wyoming's argument that its computer system's programming problems led to inaccurate PEP calculations, which in turn affected its contractors' performance in establishing paternity to meet the PEP level and stating that, had Wyoming performed better to establish paternity for more children born out of wedlock, that would have increased the likelihood of obtaining child support for those children, which is "the ultimate program goal," whereas Wyoming's performance at a lower PEP level "adversely affected achievement of that goal").

USVI does state for the first time in its reply brief (though rather vaguely) that "the relied upon hand counts were not inclusive of all the required data" (Reply at 3), but that it later submitted to "HHS" (presumably meaning ACF) "corrected" data that USVI says support a PEP of 75% for FFY 2015 (3% higher than the 72% as found in the audit and as stated in the July 6, 2017 determination) and a PEP of 71% for FFY 2014 (7% lower than the 78% as stated in the same determination). *Id.* at 3-4. We understand USVI's statements as an argument that, based on corrected data, USVI actually improved its PEP level by 4% between FFY 2014 and FFY 2015 and, accordingly, the penalty is not warranted even though it did not meet the 90% PEP level in either year. But if USVI had submitted the "corrected" data to the respondent federal agency before it filed its reply in this appeal, that data should have been available for submission to the Board for consideration in this appeal. However, at no time during the pendency of this appeal did USVI avail itself of the opportunity to offer the Board for its examination any evidence of data that

purportedly support such PEP levels.[8] Nor does the Board have before it anything indicating that ACF considered the "corrected" data, let alone what if anything ACF determined based on such data. In fact, USVI admits that it submitted corrected data to "HHS" "outside of the prescribed time period" (Reply at 3), which, in the absence of further explanation or proof otherwise, suggests to us that there was no ACF resolution based on the "corrected" data that is materially different from the discussion of USVI's PEP performance in the July 6, 2017 determination.[9]

The Act and the regulations authorize the imposition of a penalty on a state that, for two consecutive years, fails to demonstrate with reliable data that it achieved the required level of performance on any performance measure. Thus, a state is subject to a penalty if, for two consecutive years, it fails either to achieve the required level of performance, or to submit reliable data needed to calculate it performance, or both with respect to the same performance measure. *Virgin Islands*, DAB No. 2003, at 4 (citing *Ala. Dep't of Human Res., et al.*, DAB No. 1989 (2005), *aff'd, Ala. Dep't of Human Res., et al. v. U.S. Dep't of Health & Human Servs.*, 478 F. Supp. 2d 85 (D.D.C. 2007)); *see also* 65 Fed. Reg. at 82,192 ("Two consecutive years of failure (either poor data or poor performance) in the same performance measure criterion will trigger a penalty imposition."). USVI has failed to meet the PEP performance measure for two consecutive years and, accordingly, ACF properly imposed a penalty on USVI in accordance with the applicable authorities.

Lastly, to the extent USVI's arguments may be construed as an appeal for equitable relief, the Board, being "bound by applicable laws and regulations," 45 C.F.R. § 16.14, is not authorized to grant equitable remedies. Accordingly, we may not order ACF to waive or reduce the penalty for failure to meet the required PEP level for equity reasons where the applicable law and regulations authorize the penalty. *See Camden Cnty. Council on Econ. Opportunity*, DAB No. 881, at 7-8 (1987) ("The Board is bound by all applicable laws, and cannot invent equitable remedies without a basis in law.").

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[8] The parties requested, and the Board granted, extensions of time to file their briefs to the Board in order for USVI to obtain additional documents for review by ACF and to facilitate possible resolution of the dispute between themselves. The parties were not able to resolve their dispute and, on October 31, 2018, USVI filed its reply brief. On November 8, 2018, the Board issued its Notice of Proposed Closing of Record in which it noted that the parties had not informed the Board about the outcome of ACF's review of any additional documents from USVI or the parties' subsequent discussions, and had not informed the Board that there remained any dispute or issue for Board resolution related to the parties' discussions. In that Notice the Board also informed the parties that, unless the Board heard from the parties within ten days, the Board would close the record and proceed to decision based on the materials in the record, which would be the Board's only source of information about the parties' dispute in this appeal. In the absence of any return communication from the parties, the Board closed the record in this appeal and bases this decision on the record before it.

[9] States must submit data necessary to determine their performance as it relates to penalties for a particular fiscal year by December 31, the end of the first quarter after the end of the fiscal year. 45 C.F.R. § 305.32(f). Thus, USVI's PEP data for FFY 2015 were due December 31, 2015 and, presumably, whatever "corrected" data USVI submitted to ACF were submitted after that date.

Conclusion

The Board sustains the penalty of $28,466.

/s/
Leslie A. Sussan

/s/
Constance B. Tobias

/s/
Susan S. Yim
Presiding Board Member