

§204.3 Responsibilities of the State.

The State agency shall be responsible for assuring that the benefits and services available under titles IV-A, IV-D, and IV-F are furnished in an integrated manner.

[57 FR 30425, July 9, 1992]

§204.4 Grant appeals.

(a) *Scope.* This section applies to certain determinations (as set forth in part 16, appendix A, section C of this title), made with respect to direct, discretionary project grants awarded by the Family Support Administration, and such other grants or grant programs as the Administrator, with the approval of the Secretary, may designate. The statutory authority for current grant programs to which this section applies appears in the appendix to this section. This section is also applicable to determinations with respect to grants which were made under authority which has expired or been repealed since the grants were made, even though such authority does not appear in the appendix.

(b) *Submission.* (1) A grantee who has received notification, as described in §16.3 (b) and (c) of this title, of a determination described in part 16, appendix A, section C of this title, may request reconsideration by informing the Grants Appeals Officer as identified in the final adverse determination or otherwise designated by the Administrator, Family Support Administration, Washington, DC 20201 of the grantee's intent to contest the determination. The grantee's request for reconsideration must be postmarked no later than 30 days after the postmark date of the written notification of such determination, except when the Grant Appeals Officer grants an extension of time for good cause.

(2) Although the request need not follow any prescribed form, it shall clearly identify the question or questions in dispute and contain a full statement of the grantee's position with respect to such question or questions, and the pertinent facts and reasons in support of such position. The grantee shall attach to his submission a copy of the agency notification specified in §16.3(b) of this title.

(c) *Action by the Administration on requests for reconsideration.* (1) Upon receipt of such an application the Grant Appeals Officer will inform the grantee that:

(i) His request is under review, and
(ii) If no decision is received within 90 days of the postmark date of the grantee's request for reconsideration, the determination may be appealed to the Departmental Grant Appeals Board.

(2) The Grant Appeals Officer will reconsider the determination appealed from, considering any material submitted by the grantee and any other material necessary.

(3) If the response to the grantee is adverse to the grantee's position, the response will include notification of the grantee's right to appeal to the Departmental Grant Appeals Board.

APPENDIX

This section is issued under sections 1, 5, 6, and 7 of Reorganization Plan No. 1 of 1953, 18 FR 2053, 67 Stat. 631 and is applicable to programs carried out under the following authorities:

(1) Section 222(a) and (b) of the Social Security Amendments of 1972 (Pub. L. 92-603).

(2) Section 426 of the Social Security Act (42 U.S.C. 262).

(3) Section 707 of the Social Security Act (42 U.S.C. 907).

(4) Section 1110 of the Social Security Act (42 U.S.C. 1310).

(5) Section 1115 of the Social Security Act (42 U.S.C. 1315).

(Secs. 1, 5, 6, 7 Reorganization Plan No. 1 of 1953, 67 Stat. 631)

[40 FR 51443, Nov. 5, 1975, as amended at 53 FR 36579, Sept. 21, 1988]

PART 205—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

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AUTHORITY: 42 U.S.C. 602, 603, 606, 607, 1302, 1306(a), and 1320b-7; 42 U.S.C. 1973gg-5.

EDITORIAL NOTE: Nomenclature changes affecting this part appear at 53 FR 36579, Sept. 21, 1988.

§ 205.5 Plan amendments.

(a) *State plan requirements.* A State plan under title I, IV-A, X, XIV, or XVI (AABD) of the Social Security Act must provide that the plan will be amended whenever necessary to reflect new or revised Federal statutes or regulations, or material change in any

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phase of State law, organization, policy or State agency operation.

(b) *Federal financial participation.* Except where otherwise provided, Federal financial participation is available in the additional expenditures resulting from an amended provision of the State plan as of the first day of the calendar quarter in which an approvable amendment is submitted or the date on which the amended provision becomes effective in the State, whichever is later.

[39 FR 34542, Dec. 26, 1974, as amended at 53 FR 36579, Sept. 21, 1988]

§ 205.10 Hearings.

(a) *State plan requirements.* A State plan under title I, IV-A, X, XIV, or XVI(AABD) of the Social Security Act shall provide for a system of hearings under which:

(1) The single State agency responsible for the program shall be responsible for fulfillment of hearing provisions which shall provide for:

(i) A hearing before the State agency, or

(ii) An evidentiary hearing at the local level with a right of appeal to a State agency hearing. Where a State agency adopts a system of evidentiary hearings with an appeal to a State agency hearing, it may, in some political subdivisions, permit local evidentiary hearings, and in others, provide for a single hearing before the State agency. Under this requirement hearings shall meet the due process standards set forth in the U.S. Supreme Court decision in *Goldberg v. Kelly*, 397 U.S. 254 (1970) and the standards set forth in this section.

(2) Hearing procedures shall be issued and publicized by the State agency. Such procedures shall provide for a face-to-face hearing or, at State option, a hearing by telephone when the applicant or recipient also agrees. Under this provision, the State shall assure that the applicant or recipient is afforded all rights as specified in this section, whether the hearing is face-to-face or by telephone;

(3) Every applicant or recipient shall be informed in writing at the time of application and at the time of any action affecting his claim:

(i) Of his right to a hearing, as provided in paragraph (a)(5) of this section;

(ii) Of the method by which he may obtain a hearing;

(iii) That he may be represented by an authorized representative, such as legal counsel, relative, friend, or other spokesman, or he may represent himself.

(4) In cases of intended action to discontinue, terminate, suspend or reduce assistance or to change the manner or form of payment to a protective, vendor, or two-party payment under § 234.60:

(i) The State or local agency shall give timely and adequate notice, except as provided for in paragraphs (a)(4)(ii), (iii), or (iv) of this section. Under this requirement:

(A) *Timely* means that the notice is mailed at least 10 days before the date of action, that is, the date upon which the action would become effective;

(B) *Adequate* means a written notice that includes a statement of what action the agency intends to take, the reasons for the intended agency action, the specific regulations supporting such action, explanation of the individual's right to request an evidentiary hearing (if provided) and a State agency hearing, the circumstances under which assistance is continued if a hearing is requested, and if the agency action is upheld, that such assistance must be repaid under title IV-A, and must also be repaid under titles I, X, XIV or XVI (AABD) if the State plan provides for recovery of such payments.

(ii) The agency may dispense with timely notice but shall send adequate notice not later than the date of action when:

(A) The agency has factual information confirming the death of a recipient or of the AFDC payee when there is no relative available to serve as new payee;

(B) The agency receives a clear written statement signed by a recipient that he no longer wishes assistance, or that gives information which requires termination or reduction of assistance, and the recipient has indicated, in writing, that he understands that this

must be the consequence of supplying such information;

(C) The recipient has been admitted or committed to an institution, and further payments to that individual do not qualify for Federal financial participation under the State plan;

(D) The recipient has been placed in skilled nursing care, intermediate care or long-term hospitalization;

(E) The claimant's whereabouts are unknown and agency mail directed to him has been returned by the post office indicating no known forwarding address. The claimant's check must, however, be made available to him if his whereabouts become known during the payment period covered by a returned check;

(F) A recipient has been accepted for assistance in a new jurisdiction and that fact has been established by the jurisdiction previously providing assistance;

(G) An AFDC child is removed from the home as a result of a judicial determination, or voluntarily placed in foster care by his legal guardian;

(H) For AFDC, the agency takes action because of information the recipient furnished in a monthly report or because the recipient has failed to submit a complete or a timely monthly report without good cause. (See § 233.37);

(I) A special allowance granted for a specific period is terminated and the recipient has been informed in writing at the time of initiation that the allowance shall automatically terminate at the end of the specified period;

(J) The agency has made a presumption of mismanagement as a result of a recipient's nonpayment of rent and provides for post hearings in such circumstances;

(K) An individual's payment is suspended or reduced for failure to meet a payment after performance obligation as set forth at § 233.101(b)(2)(iv) (B) or (C) of this chapter. In addition to the contents set forth in paragraph (a)(4)(i)(B) of this section, the adequate notice must advise the individual of the right to have assistance immediately reinstated retroactive to the date of action at the previous month's level pending the hearing decision if he or she makes a request for a hearing

and reinstatement within 10 days after the date of the notice.

(iii) When changes in either State or Federal law require automatic grant adjustments for classes of recipients, timely notice of such grant adjustments shall be given which shall be “adequate” if it includes a statement of the intended action, the reasons for such intended action, a statement of the specific change in law requiring such action and a statement of the circumstances under which a hearing may be obtained and assistance continued.

(iv) When the agency obtains facts indicating that assistance should be discontinued, suspended, terminated, or reduced because of the probable fraud of the recipient, and, where possible, such facts have been verified through collateral sources, notice of such grant adjustment shall be timely if mailed at least five (5) days before action would become effective.

(5) An opportunity for a hearing shall be granted to any applicant who requests a hearing because his or her claim for financial assistance (including a request for supplemental payments under §§ 233.23 and 233.27) is denied, or is not acted upon with reasonable promptness, and to any recipient who is aggrieved by any agency action resulting in suspension, reduction, discontinuance, or termination of assistance, or determination that a protective, vendor, or two-party payment should be made or continued. A hearing need not be granted when either State or Federal law requires automatic grant adjustments for classes of recipients unless the reason for an individual appeal is incorrect grant computation.

(i) A request for a hearing is defined as a clear expression by the claimant (or his authorized representative acting for him), to the effect that he wants the opportunity to present his case to higher authority. The State may require that such request be in written form in order to be effective;

(ii) The freedom to make such a request shall not be limited or interfered with in any way. The agency may assist the claimant to submit and process his request;

(iii) The claimant shall be provided reasonable time, not to exceed 90 days, in which to appeal an agency action;

(iv) Agencies may respond to a series of individual requests for hearing by conducting a single group hearing. Agencies may consolidate only cases in which the sole issue involved is one of State or Federal law or policy or changes in State or Federal law. In all group hearings, the policies governing hearings must be followed. Thus, each individual claimant shall be permitted to present his own case or be represented by his authorized representative;

(v) The agency may deny or dismiss a request for a hearing where it has been withdrawn by the claimant in writing, where the sole issue is one of State or Federal law requiring automatic grant adjustments for classes of recipients, where a decision has been rendered after a WIN hearing before the manpower agency that a participant has, without good cause, refused to accept employment or participate in the WIN program, or has failed to request such a hearing after notice of intended action for such refusal, or where it is abandoned. Abandonment may be deemed to have occurred if the claimant, without good cause therefor, fails to appear by himself or by authorized representative at the hearing scheduled for such claimant.

(6) If the recipient requests a hearing within the timely notice period:

(i) Assistance shall not be suspended, reduced, discontinued or terminated (but is subject to recovery by the agency if its action is sustained), until a decision is rendered after a hearing, unless:

(A) A determination is made at the hearing that the sole issue is one of State or Federal law or policy, or change in State or Federal law and not one of incorrect grant computation;

(B) A change affecting the recipient’s grant occurs while the hearing decision is pending and the recipient fails to request a hearing after notice of the change;

(C) The recipient specifically requests that he or she not receive continued assistance pending a hearing decision; or

(D) The agency has made a presumption of mismanagement as a result of a recipient’s nonpayment of rent and

provides for the opportunity for a hearing after the manner or form of payment has been changed for such cases in accordance with §234.60 (a)(2) and (a)(11).

(ii) The agency shall promptly inform the claimant in writing if assistance is to be discontinued pending the hearing decision; and

(iii) In any case where the decision of an evidentiary hearing is adverse to the claimant, he shall be informed of and afforded the right to make a written request, within 15 days of the mailing of the notification of such adverse decision, for a State agency hearing and of his right to request a de novo hearing. Unless a de novo hearing is specifically requested by the appellant, the State agency hearing may consist of a review by the State agency hearing officer of the record of the evidentiary hearing to determine whether the decision of the evidentiary hearing officer was supported by substantial evidence in the record. Assistance shall not be continued after an adverse decision to the claimant at the evidentiary hearing.

(7) A State may provide that a hearing request made after the date of action (but during a period not in excess of 10 days following such date) shall result in reinstatement of assistance to be continued until the hearing decision, unless (i) the recipient specifically requests that continued assistance not be paid pending the hearing decision; or (ii) at the hearing it is determined that the sole issue is one of State or Federal law or policy. In any case where action was taken without timely notice, if the recipient requests a hearing within 10 days of the mailing of the notice of the action, and the agency determines that the action resulted from other than the application of State or Federal law or policy or a change in State or Federal law, assistance shall be reinstated and continued until a decision is rendered after the hearing, unless the recipient specifically requests that continued assistance not be paid pending the hearing decision.

(8) The hearing shall be conducted at a reasonable time, date, and place, and adequate preliminary written notice shall be given.

(9) Hearings shall be conducted by an impartial official (officials) or designee of the agency. Under this requirement, the hearing official (officials) or designee shall not have been directly involved in the initial determination of the action in question.

(10) When the hearing involves medical issues such as those concerning a diagnosis, an examining physician's report, or a medical review team's decision, a medical assessment other than that of the person or persons involved in making the original decision shall be obtained at agency expense and made part of the record if the hearing officer considers it necessary.

(11) In respect to title IV-C, when the appeal has been taken on the basis of a disputed WIN registration requirement, exemption determination or finding of failure to appear for an appraisal interview, a representative of the local WIN manpower agency shall, where appropriate, participate in the conduct of the hearing.

(12) The hearing shall include consideration of:

(i) An agency action, or failure to act with reasonable promptness, on a claim for financial assistance, which includes undue delay in reaching a decision on eligibility or in making a payment, refusal to consider a request for or undue delay in making an adjustment in payment, and discontinuance, termination or reduction of such assistance;

(ii) Agency decision regarding:

(A) Eligibility for financial assistance in both initial and subsequent determinations,

(B) Amount of financial assistance or change in payments,

(C) The manner or form of payment, including restricted or protective payments, even though no Federal financial participation is claimed.

(13) The claimant, or his representative, shall have adequate opportunity:

(i) To examine the contents of his case file and all documents and records to be used by the agency at the hearing at a reasonable time before the date of the hearing as well as during the hearing;

(ii) At his option, to present his case himself or with the aid of an authorized representative;

(iii) To bring witnesses;

(iv) To establish all pertinent facts and circumstances;

(v) To advance any arguments without undue interference;

(vi) To question or refute any testimony or evidence, including opportunity to confront and cross-examine adverse witnesses.

(14) Recommendations or decisions of the hearing officer or panel shall be based exclusively on evidence and other material introduced at the hearing. The transcript or recording of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, and the recommendation or decision of the hearing officer or panel shall constitute the exclusive record and shall be available to the claimant at a place accessible to him or his representative at a reasonable time.

(15) Decisions by the hearing authority shall:

(i) In the event of an evidentiary hearing, consist of a memorandum decision summarizing the facts and identifying the regulations supporting the decision;

(ii) In the event of a State agency *de novo* hearing, specify the reasons for the decision and identify the supporting evidence and regulations.

Under this requirement no persons who participated in the local decision being appealed shall participate in a final administrative decision on such a case.

(16) Prompt, definitive, and final administrative action shall be taken within 90 days from the date of the request for a hearing.

(17) The claimant shall be notified of the decision in writing and, to the extent it is available to him, of his right to appeal to State agency hearing or judicial review.

(18) When the hearing decision is favorable to the claimant, or when the agency decides in favor of the claimant prior to the hearing, the agency shall promptly make corrective payments retroactively to the date the incorrect action was taken.

(19) All State agency hearing decisions shall be accessible to the public (subject to provisions of safeguarding public assistance information).

(b) *Federal financial participation.* Federal financial participation is available for the following items:

(1) Payments of assistance continued pending a hearing decision.

(2) Payments of assistance made to carry out hearing decisions, or to take corrective action after an appeal but prior to hearing, or to extend the benefit of a hearing decision or court order to others in the same situation as those directly affected by the decision or order. Such payments may be retroactive in accordance with applicable Federal policies on corrective payments.

(3) Payments of assistance within the scope of Federally aided public assistance programs made in accordance with a court order.

(4) Administrative costs incurred by the agency for:

(i) Providing transportation for the claimant, his representative and witnesses to and from the place of the hearing;

(ii) Meeting other expenditures incurred by the claimant in connection with the hearing;

(iii) Carrying out the hearing procedures, including expenses of obtaining an additional medical assessment.

[38 FR 22007, Aug. 15, 1973, as amended at 44 FR 17941, Mar. 23, 1979; 45 FR 20480, Mar. 28, 1980; 47 FR 5673, Feb. 5, 1982; 47 FR 47827, Oct. 28, 1982; 51 FR 9202, Mar. 18, 1986; 53 FR 36579, Sept. 21, 1988; 57 FR 30425, July 9, 1992]

§ 205.25 Eligibility of supplemental security income beneficiaries for food stamps or surplus commodities.

(a) In respect to any individual who is receiving supplemental security income benefits under title XVI of the Social Security Act, the State agency shall make the following determinations:

(1) The amount of assistance such individual would have been entitled to receive for any month under the appropriate State plan in effect for December 1973, under title I, X, XIV, or XVI, and for such purpose such individual shall be deemed to be aged, blind, or permanently and totally disabled, as the case may be, under the provisions of such plan.

(2) The bonus value of the food stamps (according to the Food Stamp

Schedule effective for July 1973) such individual would have been entitled to receive for such month, assuming the individual were receiving the assistance determined under paragraph (a)(1) of this section.

(3) The amount of benefits such individual is receiving for such month under Title XVI, plus supplementary payments as defined in section 1616(a) of the Social Security Act and payments pursuant to section 212 of Pub. L. 93-66, if any.

(b) If the amount determined in paragraph (a)(1) of this section plus the amount determined in paragraph (a)(2) of this section exceeds the amount determined in paragraph (a)(3) of this section, such individual shall be eligible to participate in the food stamp program established by the Food Stamp Act of 1964 or surplus commodities distribution programs established by the Secretary of Agriculture pursuant to section 416 of the Agricultural Act of 1949, section 32 of Pub. L. 74-320, or any other law, in accordance with regulations and procedures established by the Secretary of Agriculture.

(c) For purposes of paragraph (a)(3) of this section, the State agency shall obtain the amount of the title XVI payment and the amount of any Federally administered State supplementary payment from the Social Security Administration.

(d) The State agency shall redetermine the eligibility of individuals to participate in the food stamp or surplus commodities distribution programs hereunder at such times as the Secretary of Agriculture requires recertification for such stamps or commodities.

[38 FR 34324, Dec. 13, 1973]

§ 205.30 Methods of administration.

State plan requirements: A State plan for financial assistance under title I, IV-A, X, XIV or XVI (AABD) of the Social Security Act must provide for such methods of administration as are found by the Secretary to be necessary for the proper and efficient operation of the plan.

[45 FR 56684, Aug. 25, 1980]

§ 205.32 Procedures for issuance of replacement checks.

(a) *State plan requirements.* A State plan under title IV-A of the Social Security Act shall provide that (1) procedures are in effect to ensure that no undue delays occur in issuing a replacement check; and (2) when applicable, prior to the issuance of a replacement check, the State agency must:

(i) Issue a stop payment order on the original AFDC check through appropriate banking procedures; and

(ii) Require recipients to execute a signed statement attesting to the non-receipt, loss, or theft of the original FDC check. However, if obtaining such a statement from the recipient will cause the issuance of the check to be unduly delayed, the statement may be obtained within a reasonable time after the check is issued.

(b) *State option.* A State plan may provide that as a condition for issuance of a replacement check, a recipient is required to report a lost or stolen AFDC check to the police or other appropriate authorities. Under this provision, the State agency may require that the recipient verify that a report was made to the police or other appropriate authorities and, if so, the agency will establish procedures for such verification.

[51 FR 9203, Mar. 18, 1986]

§ 205.35 Mechanized claims processing and information retrieval systems; definitions.

Section 205.35 through 205.38 contain State plan requirements for an automated statewide management information system, conditions for FFP and responsibilities of the Administration for Children and Families (ACF). For purposes of §§ 205.35 through 205.38:

(a) *A mechanized claims processing and information retrieval system*, hereafter referred to as an automated *application processing and information retrieval system* (APIRS), or the *system*, means a system of software and hardware used:

(1) To introduce, control and account for data items in providing public assistance under the Aid to Families with Dependent Children (AFDC) State plan; and

(2) To retrieve and produce utilization and management information

about such aid and services as required by the single State agency and Federal government for program administration and audit purposes.

(b) *Planning* means:

(1) The preliminary project activity to determine the requirements necessitating the project, the activities to be undertaken, and the resources required to complete the project;

(2) The preparation of an APD;

(3) The preparation of a detailed project plan describing when and how the computer system will be designed and developed; and

(4) The preparation of a detailed implementation plan describing specific training, testing, and conversion plans to install the computer system.

(c) The following terms are defined at 45 CFR part 95, subpart F, § 95.605:

Annually updated advance automatic data processing planning document;
Design or System Design;
Development;
Initial advance automatic data processing planning document;
Installation;
Operation; and
Software.

[51 FR 45330, Dec. 18, 1986, as amended at 53 FR 36579, Sept. 21, 1988; 55 FR 4379, Feb. 7, 1990; 59 FR 30708, June 15, 1994]

§ 205.36 State plan requirements.

A State plan under title IV-A of the Social Security Act shall, at the option of the State, provide for the establishment and operation, in accordance with an (initial and annually updated) advance automated data processing planning document approved by SSA, of an automated statewide management information system designed effectively and efficiently, to assist management in the administration of an approved AFDC State plan. The submission process to amend the State plan is explained in § 201.3. This system must be designed:

(a) To automatically control and account for—

(1) All the factors in the total eligibility determination process under the plan for aid, including but not limited to:

(i) Identifiable correlation factors (such as social security numbers, names, dates of birth, home addresses, and mailing addresses (including postal

ZIP codes), of all applicants and recipients of AFDC and the relative with whom any child who is an applicant or recipient is living)).

(A) To assure sufficient compatibility among the systems of different jurisdictions, and

(B) To permit periodic screening to determine whether an individual is or has been receiving benefits from more than one jurisdiction.

(ii) Checking records of applicants and recipients of such aid on a periodic basis with other agencies, both intra and inter-state, for eligibility determination, verification and payment as required by other provisions of the Social Security Act.

(2) The costs, quality, and delivery of funds and services furnished to applicants for and recipients of such aid.

(b) To notify the appropriate State officials of child support, food stamp, social service, and medical assistance programs approved under title XIX whenever a case/recipient for aid and services becomes ineligible or the amount of aid or services is changed.

(c) To electronically refer and exchange information with programs under titles IV-D and IV-F for purposes of assuring that benefits and services are provided in an integrated manner.

(d) To provide for security against unauthorized access to, or use of, the data in the system.

[51 FR 13006, Apr. 17, 1986, as amended at 57 FR 47002, Oct. 14, 1992]

§ 205.37 Responsibilities of the Administration for Children and Families (ACF).

(a) ACF shall not approve the initial and annually updated advance automatic data processing planning document unless the document, when implemented, will carry out the requirements of the law and the objectives of title IV-A (AFDC) Automated Application Processing and Information Retrieval System Guide. The initial advance automatic data processing planning document must include:

(1) A requirements analysis, including consideration of the program mission, functions, organization, services, constraints and current support relating to such system;

(2) A description of the proposed statewide management system, including the description of information flows, input data formats, output reports and uses;

(3) The security and interface requirements to be employed in such statewide management system;

(4) A description of the projected resource requirements including staff and other needs; and the resources available or expected to be available to meet these requirements;

(5) A cost benefit analysis of alternative systems designs, data processing services and equipment in terms of qualitative and quantitative measures. The alternative systems considered should include the advantages of the proposed system over the alternatives and should indicate the period of time the system will be operated to justify the funds invested. ACF certified systems that are already in place in other States must be included in the alternatives to be considered and evaluated;

(6) A plan for distribution of costs, containing the basis for rates, both direct and indirect, to be in effect under such a statewide management system;

(7) An implementation plan with charts of development events, testing description, proposed acceptance criteria, and backup and fallback procedures to handle possible failure of a system; and

(8) Evidence that the State's system will be compatible with those of the FSA to facilitate the exchange of data between the State and Federal system.

(b) ACF shall on a continuing basis, review, assess, and inspect the planning, design, and operation of, statewide management information systems, with a view to determining whether, and to what extent, these systems meet and continue to meet the requirements under these regulations.

(c) If ACF finds that any statewide management information system referred to in §205.38 fails to comply substantially with criteria, requirements, and other undertakings prescribed by the approved advance automatic data processing planning document, approval of such document shall be suspended. The State will be given written notice of the suspension. The notice of suspension will state the reason for the

suspension, whether the suspended system complies with the criteria for 50 percent FFP under 45 CFR part 95, the actions required for future Federal funding, and the effective date of the suspension. The suspension shall be effective as of the date that the system failed to comply substantially with the approved APD. The suspension shall remain in effect until ACF makes a determination that such system complies with prescribed criteria, requirements, and other undertakings for future Federal funding. Should a State cease development of their approved system, either by voluntary withdrawal or as a result of Federal suspension, all Federal incentive funds invested to date that exceed the normal administrative FFP rate (50 percent) will be subject to recoupment.

(d) ACF shall provide technical assistance to States as is deemed necessary to assist States to plan, design, develop, or install and provide for the security of the management information systems.

(e) Approvals of the systems by ACF under the provisions of this section will be undertaken only as a result of State applications for increased matching. The requirements of 45 CFR part 95, subpart E and subpart F apply.

[51 FR 13006, Apr. 17, 1986, as amended at 53 FR 36579, Sept. 21, 1988; 55 FR 4379, Feb. 7, 1990; 56 FR 1493, Jan. 15, 1991; 59 FR 30709, June 15, 1994]

§205.38 Federal financial participation (FFP) for establishing a statewide mechanized system.

(a) Effective July 1, 1981 through March 31, 1994, FFP is available at 90 percent of expenditures incurred for planning, design, development or installation of a statewide automated application processing and information retrieval system which are consistent with an approved ADP. (Beginning April 1, 1994 the match rate available for development of title IV-A automated systems is 50 percent.) The 90 percent FFP includes the purchase or rental of computer equipment and software directly required for and used in the operation of this system.

(b) ACF will approve the system provided the following conditions are met—

(1) ACF determines that the system is likely to provide more efficient, economical, and effective administration of the AFDC program.

(2) The system is compatible with the claims processing and information retrieval systems used in the administration of State plans approved under title XIX, and State programs where there is FFP under title XX.

(3) The system meets the requirements referred to in §205.36.

(4) The system meets criteria established in the title IV-A (AFDC) Automated Application Processing and Information Retrieval System Guide issued by ACF and which provides specific standard requirements for major functions, such as automated eligibility determination, grant computation, verification, referral, management control, compability, and data security.

(5) The State agency certifies that—

(i) The State will have all ownership rights in software or modifications thereof and associated documentation designed or developed with 90 percent FFP under this section, except that the Department of Health and Human Services reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for Federal government purposes, such software, modifications, and documentation;

(ii) Methods and procedures for properly charging the cost of all systems whether acquired from public or private sources shall be in accordance with Federal regulations in part 74 of this title and the applicable ACF title IV-A (AFDC) Automated Application Processing and Information Retrieval System Guide;

(iii) The complete system planned, designed, developed, installed, and hardware acquired, with FFP under these regulations will be used for a period of time which is consistent with the advance planning document as approved, or which ACF determines is sufficient to justify the Federal funds invested;

(iv) Information in the system will be safeguarded in accordance with applicable Federal law; and

(v) Access to the system in all of its aspects, including design, development,

and operation, including work performed by any source, and including cost records of contractors and subcontractors, shall be made available to the Federal Government by the State at intervals deemed necessary by ACF to determine whether the conditions for approval are being met and to determine its efficiency, economy and effectiveness.

(c) If ACF suspends approval, as described in §205.37, of the advance automated data processing planning document and/or system, FFP at the higher matching rate shall not be allowed for any costs incurred, until such time as the conditions for approval are met. Should the State fail to correct the deficiencies which led to the suspension within 90 days of the date of notification of suspension or within a longer period of time agreed to by both the State and ACF, all Federal incentive funds invested to date that exceed the normal administrative FFP rate (50 percent) will be disallowed.

(d) Should a State voluntarily withdraw its approved APD and cease development of the approved system, all Federal incentive funds invested to date that exceed the normal administrative FFP rate (50 percent) will be disallowed.

(e) Once a State is certified as having met the requirements referred to in §205.36 incentive funding will not be allowable for enhancements or other modifications unless these modifications are authorized by the Administration for Children and Families as a result of Federal legislative or regulatory change.

[51 FR 13007, Apr. 17, 1986, as amended at 53 FR 36579, Sept. 21, 1988; 59 FR 30709, June 15, 1994]

§205.40 Quality control system.

(a) *Scope.* Sections 205.40 through 205.43 of this part set forth requirements—

(1) For a quality control (QC) system for the Aid to Families With Dependent Children (AFDC) program (and for the Adult assistance programs in Guam, Puerto Rico, and the Virgin Islands) designed to reduce incorrect expenditures by identifying the nature, magnitude and causes of all errors and to improve the accuracy of payments to

recipients of the AFDC and Adult assistance programs;

(2) For obtaining data on the correctness of negative case actions and reducing the incidence of incorrect denials for and terminations of assistance; and

(3) For determining the amount of any disallowance required to be repaid to the Department due to excess erroneous assistance payments made by the State under the AFDC program.

(b) *Definitions.* For purposes of §§ 205.40 through 205.43 of this part:

(1) *Assistance unit, or case,* means all individuals whose needs, income, and resources are considered in determining eligibility for, and the amount of, a payment for which Federal financial participation is claimed under this chapter.

(2) *Department* means the U.S. Department of Health and Human Services.

(3) *Disallowance* means the amount of reduction in Federal financial participation.

(4) *Disposed of case* means that a decision was made on the eligibility and payment status of a case under review, or that the case was dropped or listed in error.

(5) *Erroneous payments* means the sum of overpayments made to eligible assistance units and payments to ineligible assistance units.

(6) *Fiscal year, or annual sample period,* means the 12-month period, October 1 through September 30.

(7) *Negative case action* means an action to deny an application for assistance or to otherwise dispose of that application without a determination of eligibility (for instance, because the application was withdrawn or abandoned), or to terminate or suspend assistance.

(8) *Negative case action error* means an action to deny, terminate or suspend a case when the agency's reason for the action was determined to be incorrect or the notice and hearing requirement for the action was not met.

(9) *Overpayment* means a financial assistance payment received by or for an assistance unit for the review month, which exceeds by at least \$5.00 the amount for which that unit was eligible under permissible State practice in

effect on the first day of the review month.

(10) *Payment* means a single payment or multiple payments received for a specific calendar or fiscal month.

(11) *Payment to ineligibles* means a financial assistance payment received by or for an assistance unit for the review month, when that assistance unit was not eligible for any part of the payment under permissible State practice in effect on the first day of the review month, even though the State agency had not made a finding of ineligibility under § 206.10(a)(5) of this chapter.

(12) *Permissible State practice* means written rules and policies relating to eligibility and payment that are in accordance with existing, approved State plan provisions or with proposed plan amendments submitted to, but not acted upon, by the Department. In situations where written rules and policies are not consistent with the existing, approved State plan or proposed plan amendments, permissible State practice means the provisions of the State plan or proposed plan amendments. Where the plan provisions or proposed amendments do not conform to Federal law and regulations, permissible State practice means the Federal law and regulations (see also § 205.42(b)).

(13) *Quality Control Manuals* means the active or negative AFDC/Adult Quality Control Manuals that are issued by the Administration for Children and Families of the Department.

(14) *Review month, or sample month,* means the specific calendar or fiscal month for which the assistance payment under review is authorized or received.

(15) *Secretary* means the Secretary of Health and Human Services.

(16) *State* means the several States, the District of Columbia, Guam, Puerto Rico, the Virgin Islands and American Samoa.

(17) *Suspended case* means a formalized agency action which results in no check generated for one or more months.

(18) *Underpayment* means a financial assistance payment received by or for an assistance unit for the review month which is at least \$5.00 less than the amount for which that assistance

unit was eligible under permissible State practice in effect on the first day of the review month.

(c) *State plan requirements.* A State plan under title IV-A, and in Guam, Puerto Rico, and the Virgin Islands under title I, X, XIV or XVI (AABD), shall provide a continuing QC system for assuring that assistance is furnished in accordance with permissible State practice as defined in paragraph (b)(12) of this section.

(d) *Basic elements of the quality control system—*

(1) *General requirements.* The State shall operate the QC system in accordance with §§ 205.40 through 205.43 of this part, other applicable regulations of this chapter, and the implementing procedures in the active and negative QC Manuals.

(2) *Sampling requirements.* The State shall carry out sampling in accordance with the requirements specified in § 205.41 of this part, and with the implementing procedures in the active QC Manual, section 2, and in the negative QC Manual.

(3) *Review requirements.* The State shall conduct QC reviews in accordance with the requirements specified in § 205.42 of this part, and with the implementing procedures in the active QC Manual, section 3, and in the negative QC Manual.

(4) *Data management requirements.* The State shall provide the resources and methods necessary to analyze the findings of the system and shall take appropriate corrective action on the causes of improperly authorized or denied assistance. The State shall submit the following corrective action material:

(i) A corrective action plan to reduce payment errors when the State's AFDC overpayment rate, as defined at § 205.43(b)(8) of this part, exceeds the national overpayment rate, as defined at § 205.43(b)(3) of this part, by one percentage point or more for any fiscal year, or when such State rate exceeds the national overpayment rate for two consecutive fiscal years;

(ii) A corrective action plan to reduce the number of incorrect denials, terminations and suspensions when the State's AFDC negative case action error rate, as defined at § 205.43(b)(7) of

this part, exceeds the national negative case action error rate, as defined at § 205.43(b)(4) of this part, for any fiscal year;

(iii) The State shall submit to the Department corrective action plan material within 30 calendar days after the official release of the appropriate State and national AFDC error rates for the fiscal year; and

(iv) Corrective action information and statistical data on reducing the incidence of improperly authorized or denied assistance in the Adult assistance programs under titles I, X, XIV, and XVI shall be submitted to the Department upon request.

[57 FR 46804, Oct. 13, 1992; 57 FR 52826, Nov. 5, 1992]

§ 205.41 Sampling plan and procedures.

(a) *Purpose.* This section provides the sampling plan, sample size requirements, and procedures for the AFDC and Adult assistance programs.

(b) *Definitions.* In addition to the definitions in § 205.40(b), the following definitions apply to this section.

(1) *Completed active case review* means a case has been subject to QC review and for which a finding of correctly paid, overpaid, underpaid or ineligible has been made.

(2) *Completed negative case action review* means a negative case action that has been subject to QC review and for which a finding that the action to deny, terminate or suspend assistance is correct or incorrect has been made.

(c) *Plan approval and submittal dates.*

(1) The State shall submit to the Department for approval a QC sampling plan (or revisions to a current plan) that meets the requirements of this section at least 60 calendar days before the beginning of the annual sample period in which it is to be implemented. The State is not required to resubmit a plan which is unchanged from a previous sample period.

(2) Universe estimates (i.e., average monthly caseload and total number of negative case actions) and sample intervals for the annual period are required 30 calendar days prior to the selection of the October sample.

(3) The reliability waiver statement for AFDC active cases, as described in

paragraph (d)(3)(ii) of this section, is required by the first day of the annual sample period.

(4) The monthly list of selected sample cases, computer-generated random start and seed numbers, and reserve pool cases (if applicable) are to be submitted within 10 calendar days after the date of sample selection specified in the State sampling plan.

(d) *Plan requirements.* The State shall have an approved sampling plan in effect for the full annual sample period that includes the following:

- (1) *Population to be sampled;*
- (2) *List(s) from which the sample is selected,* describing the following characteristics:

- (i) Sources;
- (ii) Components;
- (iii) Accuracy and completeness of the list(s) in relation to the population of interest. The list of active cases shall be an unduplicated list of all assistance units for which either a full or partial payment was made or authorized for the review month by the end of that month. The list of negative case actions shall be a list of all completed actions taken by the State to deny, terminate or suspend financial assistance for the review month, except for those assistance units that are on the active case list for the same review month;

(iv) Form and structure of the list (e.g., all or part is automated; supplemental lists are added; code definitions are used);

(v) Frequency of updating the list or its sources;

(vi) Estimated proportion of cases for which a review may not be completed; and

(vii) Methods of deleting listed-in-error cases from the list.

(3) *Sample size* (the number to be completed). The AFDC and the Adult assistance sample sizes for the annual sample period shall be determined in accordance with the requirements in this section. The active case samples shall be based on the estimated average monthly caseload for the annual sample period. The negative case action samples shall be based on the estimated total number of negative case actions for the annual sample period.

(i) *AFDC active cases—standard sample size.* The required standard sample sizes for AFDC completed active case reviews for specified estimated average monthly caseloads shall be as follows:

Average monthly caseload (N)	Completed annual sample size (n)
60,000 and over	2,400
10,000–59,999	(1)
Under 10,000	300

¹ n=300+0.042 (N – 10,000)

(ii) *AFDC active cases—minimum sample size.* A State may choose to reduce its sample size for AFDC completed active case reviews below the standard size only before the beginning of the annual sample period. For each annual period where the State chooses to reduce its standard sample size, the State shall provide the Department with a statement (see Appendix to this section) as an addendum to the sampling plan, accepting the precision of the payment error rate produced by the reduced sample size and waiving the right to challenge the precision of the resulting AFDC (and Medicaid) error rates based on this reduction. The required minimum sample sizes for AFDC completed active case reviews for specified estimated average monthly caseloads shall be as follows:

Average monthly caseload (N)	Completed annual sample size (n)
60,000 and over	1,200
10,000–59,999	(1)
Under 10,000	300

¹ n=300+0.018 (N – 10,000)

(iii) *AFDC negative case action sample size.* The required negative case action sample sizes for AFDC completed negative case action reviews for specified estimated total number of negative case actions shall be as follows:

Total number of negative case actions (N)	Completed annual sample size (n)
180,000 and over	800
14,000–179,999	(1)
700–13,999	175
Under 700	100 or ½ (N), whichever is less

¹ n=175+0.00376 (N – 14,000)

(iv) *Adult active cases—standard sample size.* The standard annual sample sizes required for completed active Adult assistance case reviews shall be as follows:

§ 205.41

Guam and the Virgin Islands	150
Puerto Rico	(1)

¹300+0.02625 (N–10,000), where N is the estimated average monthly caseload.

(v) *Adult active cases—minimum sample size.* The minimum annual sample sizes required for completed active Adult assistance case reviews shall be as follows:

Guam and the Virgin Islands	75
Puerto Rico	(1)

¹300+0.01125 (N–10,000), where N is the estimated average monthly caseload.

(vi) *Adult negative case action sample size.* The required annual sample size for completed Adult assistance negative case action reviews shall be the same as specified for AFDC negative case action cases in paragraph (d)(3)(iii) of this section.

(4) *Sample selection procedure.* The procedure for sample selection shall conform to principles of probability sampling. Approximately one-twelfth of the annual sample shall be selected each month. A separate sample shall be selected for active cases and negative case actions.

(i) The active case sample shall be selected from a list of all active cases with payments made or authorized for the review month by the end of that month.

(ii) The negative case action sample shall be selected from a combined list of denied applications and terminated and suspended cases. The list of denied applications shall consist of all actions taken to deny, or otherwise dispose of, applications during the review month. The list of terminations and suspensions shall consist of all actions in which the case first failed to appear on the regular payroll listing for the review month. Multiple actions (by the same applicant) denied in the same month are separate actions, and each shall be subject to sample selection.

(iii) States shall select their samples using the systematic random sampling method or an alternative sampling method with equivalent precision. The alternative sampling method shall be approved by the appropriate Federal regional office before implementation, contingent on a full description of the method and documentation of an acceptable audit trail and “proof of sampling”.

(5) *Option to drop or compete certain active cases.* The State shall specify in its sampling plan whether it chooses to drop or complete an active sample case for which less than six months have elapsed since it was last selected and reviewed, regardless of annual sample period. If the State chooses to drop these duplicate cases, the sampling plan shall specify the exact method by which these cases are identified and dropped.

(6) *Procedure to correct for over- or undersampling.* States shall evaluate their caseload estimates during the annual sample period to ensure that the required number of case reviews is completed. A change in the caseload estimate may require an adjustment to the sample size. Undersampling shall be corrected during the annual sampling period. Oversampling may be corrected at the State’s option and, if exercised, shall be coordinated with the Federal regional office. When correcting for over- or undersampling, the State shall follow the procedures described in QC Manual, section 2.

(e) *Review of State sampling procedures.* In order for the Department to carry out its responsibilities under §201.10 of this chapter, the State shall fully document and make available for review by the Department all sampling procedures, including construction and content of the universe and sample lists.

APPENDIX TO §205.41

STATE RELIABILITY WAIVER STATEMENT

I (We), _____
State Official Name(s)

the _____
Position(s)

certify that I/we have the authority to enter into binding agreements on behalf of the _____ AFDC and State

Medicaid programs. Pursuant to 45 CFR 205.41(d)(3)(ii), I/we, acting in my/our official capacity(ies), elect on behalf of the State to exercise the option to reduce the standard AFDC-QC active sample size of _____ completed case reviews to _____ completed case reviews based on an estimated average monthly caseload of _____ for the annual sample period, October 1, 19__ through September 30, 19__. If the reduced sample size specified herein does not meet the required minimum sample size as determined by the actual average monthly caseload for this annual sample period pursuant to the formula specified in QC Manual, section 2, the State agrees to increase this reduced sample size to the required minimum. In so doing, I/we recognize that by electing this option the AFDC and Medicaid payment error rates based on this reduced sample size may have less precision than the error rates produced by the standard sample size. Because of this possible effect, the State waives the right to challenge the precision of the resulting AFDC error rate based on the reduced sample size. The State also waives the right to challenge the precision of the Medicaid error rate based on this reduced AFDC sample size.

Signature

Signature

Title

Title

Date

Date

[57 FR 46805, Oct. 13, 1992; 57 FR 52826, Nov. 5, 1992]

§ 205.42 Case review and management requirements.

(a) *Purpose.* Except for paragraphs (g), (h) and (i) of this section, which apply only to AFDC, this section establishes the rules and procedures for the conduct of QC case reviews, completion of QC sample cases and the determination of whether an error exists in a sample case in the AFDC and Adult assistance programs.

(b) *Review basis.* The review shall be conducted against permissible State practice, except as follows:

(1)(i) Where a State plan provision(s) is approved incorrectly and is inconsistent with Federal law or regulations, the review shall be conducted against the approved State plan until either an amendment to remove the inconsistency is submitted or six months have elapsed since receipt by the State of a dated written notification from the Assistant Secretary for Children and Families, the Regional Administrator, or either's designee, of the inconsistency(ies), whichever occurs earlier. If the plan amendment is submitted within six months, the review shall be conducted against the submitted plan amendment. If the plan amendment is not approved by the Department or is not submitted within six months, sample cases selected for the review month immediately following the date that disapproval becomes final or the six-month period, whichever occurs earlier, shall be reviewed against applicable Federal law and regulations until the State has an amendment approved.

(ii) Where a State implements a pending plan amendment which is subsequently disapproved by the Department, the review shall be conducted against the pending plan amendment until disapproval becomes final. Sample cases selected for the review month immediately following the date that disapproval becomes final shall be reviewed against the prior approved plan if it is consistent with Federal law and regulations. If the prior approved plan is inconsistent with Federal law and regulations, the review shall be conducted against applicable Federal law and regulations until the State has submitted and had approved a plan amendment. A final disapproval here,

and at paragraph (b)(1)(i) of this section, means the decision issued by the Assistant Secretary for Children and Families if the State requests a hearing pursuant to part 201; otherwise a final disapproval means the decision issued by the Regional Administrator.

(iii) If it is necessary for a State to enact a law in order to remove an inconsistency, the State must submit the proposed law change for enactment no later than the next scheduled legislative session immediately following written notification, pursuant to paragraph (b)(1)(i) of this section, and shall notify the Department. The Department shall establish in writing a reasonable period of time, on a case-by-case basis, for the State to enact the law and amend its State plan. The review shall continue to be conducted against the State's current plan during this time period.

(2) Where the State makes payment in compliance with a court order, the review shall be conducted against the provisions of the court order.

(c) *Case review requirements.* (1) The State shall review all cases selected in the active and negative case samples as prescribed in § 205.41 of this part and reach a review finding as required on each case.

(2) The review shall include: an examination and analysis of the case record; the conduct of a field investigation with a face-to-face interview in all cases in the active case sample (unless paragraph (c)(3) of this section applies) and, as necessary, in the negative case action sample; the verification and documentation of all required review elements through contacts with appropriate collateral sources of information; the securing of specified primary or secondary evidence; a determination of the correctness of the eligibility and payment decisions; and, where required, transmission of the coded findings to a designated host computer.

(3) A face-to-face interview with a recipient shall not be required if the recipient lives in an isolated area not reachable by regularly scheduled commercial air service, other public transportation, or automobile. For these cases, the State shall document why the interview cannot be held in another location convenient to both parties.

The State shall also make at least one attempt to contact the recipient to obtain statements regarding factors of eligibility and payment. If a case is exempted from a face-to-face interview under this section, the QC review shall be completed through the case file information and collateral contacts as provided by QC policy and procedures. Exceptions to the face-to-face interview requirements shall be determined on a case-by-case basis.

(4) The State shall use the forms and schedules set forth in the QC Manuals and otherwise prescribed by the department to document all review findings. The State may substitute their own forms and review schedules if approved by the Department in advance.

(d) *Special provisions applicable to error determination.* The following provisions modify what constitutes a payment error under permissible State practice.

(1) *Changes in circumstances.* For purposes of this paragraph (d), a change in circumstances means a change occurring after the date of authorization of the initial payment which may affect the assistance unit's eligibility or payment amount. Multiple changes in circumstances shall be evaluated individually to assess their impact on the final payment error determination. A change in policy or the issuance of a hearing decision shall be considered a change in circumstances.

(i) A change in circumstances shall not be counted as a payment error if the change occurred in the review month or the month immediately preceding the review month, or if the review month's payment continues unadjusted because a hearing was requested.

(ii) A change in circumstances shall be counted as a payment error if the change was incorrectly reflected in the review month's payment, or if the change occurred in or before the second prior month to the review month and was not reflected in the review month's payment.

(2) *Other types of payment error not to be counted. The following types of payment error shall not be counted as errors.*

(i) Payment errors which result solely from failure on the part of the State to properly implement changes in Federal law or regulation for a period of

six months after the effective date of the Federal legislation or implementing regulations, whichever is later;

(ii) Payment errors which result solely from a State's reliance on, and correct use of, incorrect written factual information provided by the Department about matters of fact or from incorrect written statements of Federal policy by Department officials. "Written factual information" means hard copy documentation, such as a signed statement, a computer printout or data tape, and reports of specific data provided by the Department about a given individual (e.g., social security data). "Departmental officials" means the Assistant Secretary for Children and Families (ACF), the ACF Regional Administrator, the ACF Assistant Regional Administrator for AFDC programs, or the Director of the Office of Family Assistance.

(iii) Payment errors which result from a declaration by the President or the State Governor of a state of emergency or major disaster and which directly affects the State's ability to make correct payments, if adequate documentation of the event and its impact are provided. The information shall include: a copy of the declaration; a detailed explanation of the circumstances; identification of the affected jurisdictions; and the reason(s) why the State's ability to make correct payments has been or will be impaired;

(iv) Payment errors which result solely from failure of the assistance unit to submit a monthly report;

(v) Payment errors which result when a recipient—

(A) Does not have a social security number, but has filed an application (as defined by the Social Security Administration) for a number within 30 calendar days after the date of application for assistance, or

(B) Does not furnish a social security number upon receipt but has furnished a social security number through the Enumeration at Birth (EAB) project by the next redetermination of eligibility or within six months after the receipt of the social security number, whichever occurs earlier; and

(vi) Payment errors which are inconsistent with fair hearing decisions

under §205.10 of this part when the hearing decision meets the following criteria:

(A) The decision is based only on the case circumstances that existed as of the QC review month;

(B) The State defended the adverse action during the hearing process; and

(C) The request for adjustment is made within eleven months after the end of the annual sample period to which the adjustment would apply, or the date of the last appeal decision by the Quality Control Review Panel, whichever occurs later.

(e) *Sample disposition and data submission time frames.* (1) The State shall input review findings for disposed of active sample cases into the computer terminal provided by the Federal government and transmit the edited data to a designated host computer. For States that cannot transmit the data due to lack of equipment or a telecommunication linkage, the State shall submit the review findings in a format specified by the Department. The State shall submit the review findings for disposed of negative sample cases also in a format specified by the Department.

(i) Review findings of both active and negative case samples shall be disposed of and submitted in accordance with the following time frames:

(A) Seventy-five percent or all but 5 cases of the cases selected in both the active and negative case samples each month, within 75 calendar days after the end of each sample month;

(B) Ninety-five percent or all but five cases of the cases selected in both the active and negative case samples each month, within 95 calendar days after the end of each sample month; and

(C) One hundred percent of the cases selected in both the active and negative case samples each month, within 120 calendar days after the end of each sample month;

(ii) If the State does not submit 100 percent of the review findings of the cases selected in the active case sample each month within 120 calendar days after the end of the sample month, and the Department finds there is insufficient justification for the delay, the Department may initiate action to establish the State's error rate under the

procedures specified in paragraph (h) of this section.

(2) The State shall submit the review findings for disposed of sample cases promptly (i.e., at least on a monthly basis).

(f) *Alternate disposition plan.* (1) The State may submit an alternate disposition plan for the Department's approval if the State is unable to meet the requirements of paragraph (e)(1)(i) of this section, either as a result of circumstances of a permanent or recurring nature, or as a result of the occurrence of an unforeseen event during the annual sample period. Until the Department approves the alternate disposition plan, the State shall continue to comply with the requirements in paragraph (e)(1)(i) of this section. The alternate disposition plan may be approved when:

(i)(A) The State's sample population is dispersed over such great distances that conducting the number of field interviews needed to meet the requirements of paragraph (e)(1)(i) is cost prohibitive; or

(B) The State's usual weather conditions or geography make significant numbers of the sample population inaccessible or difficult to contact during certain times of the year, making it a hardship for the State to comply with the requirements of paragraph (e)(1)(i);

(ii) The State's request contains evidence and data to justify the need for an alternate disposition plan, including a description of the State's population dispersal or inaccessibility, and the reason(s) why the State cannot comply with the requirements in paragraph (e)(1)(i) of this section;

(iii) The request contains detail on the State's proposed disposition schedule for sample cases, including the annual sample period(s) to be covered, the revised disposition dates and percentages, and the revised schedule for the transmission of the edited review findings of the sample cases; and

(iv) The request is submitted at least 60 calendar days before the beginning of the first annual sample period covered by the alternate disposition plan.

(2) The Department may approve a temporary alternate disposition plan for a particular annual sample period based on unforeseen events and allow

the State to submit the edited review findings of its sample cases at later dates than those specified in paragraph (e)(1) of this section, when:

(i) Unforeseen events (e.g., floods, earthquakes, computer breakdowns, snow-storms and labor disputes) occur which prevent the State temporarily from meeting the requirements in paragraph (e) of this section; and

(ii) The request contains a description of the circumstances of the unforeseen event, the period to be covered by the alternate disposition plan, the revised disposition dates and percentages, and the revised schedule for the transmission of the edited review findings of the sample cases.

(g) *Federal re-review of State sample cases.* As part of the Federal monitoring of State QC programs, the Department conducts a re-review of a subsample of each State's AFDC active case sample.

(1) The State shall provide the original or legible copies of the case record and State QC file for each subsample case, by mail or delivery service, within 10 calendar days after the State's receipt of a request for such information.

(2) The information provided shall include records relating to public assistance, recipients and third parties, including information available under § 205.55 of this part.

(3) The Department may grant exceptions to these requirements in unusual circumstances.

(4) The Department shall conduct reviews of a subsample of the State's completed active AFDC sample cases and, as necessary, of the State's negative case actions and shall dispose of and report subsample findings in accordance with the following time frames:

(i) Seventy-five percent of the subsampled cases selected each month within 75 calendar days after the end of the month in which they are selected;

(ii) Ninety-five percent of the subsampled cases selected each month within 95 calendar days after the end of the month in which they are selected; and

(iii) One hundred percent of the subsampled cases selected each month within 120 calendar days after the end

of the month in which they are selected.

(h) *Effects of failure to complete the sample.* This paragraph provides the procedures that the Department shall follow if a State fails to complete a valid and reliable AFDC active case sample in accordance with prescribed QC procedures and deadlines which include obtaining and using information available under § 205.55 of this part.

(1) The Department shall notify the State of its failure to complete its sample and provide the State the opportunity to negotiate a solution for the completion of the sample.

(2) When a State is unable to negotiate a solution or fails to carry out a negotiated solution, the Department shall, directly or through contractual or other such arrangement as appropriate, conduct the review and establish the fiscal year error rate for the State on the basis of the best data reasonably available to the Department, in accordance with statistical methods that would apply if the reviews were completed by the State.

(3) Notwithstanding any other provision of this chapter, total payments to a State under section 403(a)(3)(D) of the Act for the proper and efficient administration of the State plan shall be reduced by the costs incurred by the Federal government to complete the State's sample.

(i) *Difference resolution process.* A "difference" is a disagreement between State and Federal review findings that affect the State's official AFDC payment error rate (i.e., a difference between a State review and a Federal re-review finding of a correct payment, overpayment, underpayment, or a payment to an ineligible case, or a Federal finding that the sample case should be dropped from the QC review). The process for resolving the difference shall be as follows:

(1) The State shall be notified in writing of the disagreement and afforded an opportunity to request a review of the difference by the ACF Regional Administrator.

(2) The State shall respond to the difference notification within 30 calendar days after receipt of such notification

agreeing, or indicating reasons for disagreeing, with the Federal finding. Responses postmarked, otherwise officially dated, or delivered by the 30th calendar day after the date of the receipt of the difference letter shall have met the deadline. If the deadline is a Saturday, Sunday, legal holiday, or an office closing, the deadline shall be extended to the next business day. If the State fails to respond within the 30-day deadline, the Federal finding shall be the final decision of the Department.

(3) The Regional Administrator shall respond to the State within 21 calendar days of receipt of the review request. The response shall either be a decision on the State's request, or an indication that the decision will be delayed pending further review of applicable laws, regulations, or policies.

(4) If the State disagrees with the Regional Administrator's decision, it may seek review with the Quality Control Review Panel. The appeal request shall be postmarked, otherwise officially dated, or delivered to the Panel by the 30th calendar day after the receipt of the Regional Administrator's decision; otherwise the Regional Administrator's decision shall be the final decision of the Department. If the deadline is a Saturday, Sunday, legal holiday, or an office closing, the deadline shall be extended to the next business day. The State shall forward an informational copy of its appeal request to the Department's regional office concurrent with submittal of its request to the Review Panel. The State may submit to the Panel any documentation appropriate to substantiate its position as part of its appeal request. Extensions may be granted by the Panel for a State to submit documentation in support of its appeal where good cause is shown.

(5) The Panel shall evaluate all of the pertinent evidence submitted and shall notify the State of its decision (within a target date of 45 calendar days following the completion of the record as determined by the Panel). Unless the Secretary chooses to review an individual difference case, the decision of the Panel with respect to that case shall constitute the decision of the Sec-

retary for establishing a State's payment error rate for the fiscal year.

[57 FR 46807, Oct. 13, 1992; 57 FR 52826, Nov. 5, 1992]

§205.43 Determination of payment error rates and disallowances of Federal financial participation for erroneous payments.

(a) *Purpose.* This section sets forth the rules and procedures for calculating State AFDC error rates and for disallowing Federal financial participation (FFP) to the States with erroneous payments in excess of the national standard for a fiscal year.

(b) *Definitions.* In addition to the definitions in §§205.40(b) and 205.41(b) of this part, the following definitions apply to this section.

(1) *Child support collection rate* means the ratio of—

(i) The sum of the number of AFDC cases reported by the State IV-D agency for each quarter in the fiscal year for which an assignment under section 402(a)(26) of the Act and a collection were made, to

(ii) The sum of the number of AFDC cases with such assignments reported by the State IV-D agency for each quarter in the fiscal year.

(2) *National child support collection rate* for a fiscal year means the ratio of the sum of the number of cases (excluding AFDC "arrears-only" cases) described in paragraph (b)(1)(i) of this section reported by all States for quarters in the fiscal year, to the sum of the number of cases described in paragraph (b)(1)(ii) of this section reported by all States for quarters in the fiscal year.

(3) *National overpayment rate* means the ratio of the total amount of erroneous assistance payments made by all States to the total amount of assistance paid by all States for the fiscal year. (This figure is equivalent to the ratio of the average monthly erroneous assistance payment per case for all States to the average monthly assistance payment per case for all States.) The rate shall be computed as the sum, over all States, of the product of each State's regressed overpayment rate and total amount of assistance payments divided by the sum of the total amount of assistance payments of all States for

the fiscal year. The rate shall not be changed after disallowance notification to all States.

(4) *National negative case action error rate* means the ratio of the total number of incorrect negative case actions taken.

(5) *National standard* means the national overpayment rate for the fiscal year or four percent, whichever is larger.

(6) *National underpayment rate* means the ratio of the total amount of assistance that should have been but was erroneously not paid for the fiscal year, to the total amount of assistance paid by all States. (This figure is equivalent to the ratio of the average monthly amount of assistance payment per case for all states that should have been but erroneously was not made, to the average monthly assistance payment per case for all States.) The rate shall be computed as the sum, over all States, of the product of each State's regressed underpayment rate and total amount of assistance payments divided by the sum of the total amount of assistance payments of all States for the fiscal year. The rate shall not be changed after disallowance notification to all States.

(7) *Negative case action error rate* means the ratio of the total number of incorrect negative case actions taken by a State for the fiscal year, to the total number of negative case actions taken.

(8) *Overpayment rate* means the ratio of the total amount of erroneous assistance payments made by a State for the fiscal year, to the total amount of assistance payments made. (This figure is equivalent to the ratio of the average monthly erroneous assistance payment per case to the average monthly assistance payment per case in a State for the fiscal year.) The rate shall be computed as the ratio of the State's regressed average monthly erroneous assistance payment per case to the State's average monthly assistance payment per case for the fiscal year. (For States that use disproportionate stratified sampling, the procedure shall be the same as the procedure in paragraph (b)(3) of this section, except "stratum" shall be substituted for "State".)

(9) *Underpayment rate* means the ratio of the total amount of assistance payments that should have been but erroneously was not made by a State for the fiscal year, to the total amount of assistance payments made. (This figure is equivalent to the ratio of the average monthly assistance payment per case that should have been but erroneously was not made by a State to the State's average monthly assistance payment per case for the fiscal year.) The rate shall be computed as the ratio of the regressed average monthly assistance payment per case that should have been but erroneously was not made by a State to the State's average monthly assistance payment per case for the fiscal year. (For States that use disproportionate stratified sampling, the procedure shall be the same as the procedure in paragraph (b)(5) of this section, except "stratum" shall be substituted for "State".)

(c) *General.* All error rates for a State shall be based on a double sampling methodology which includes a statistically valid State sample of cases selected each month during the fiscal year, followed by a statistically valid Federal subsample of cases selected from the State completed samples. The State error rate shall be the point estimate of the regression estimator as set forth in the QC Manual, section 2.

(d) *Error rate notification.* The target date for the Department to notify each State of its overpayment and underpayment rates and the national overpayment and underpayment rates shall be one year after the end of the annual sample period or within 30 calendar days of the resolution by the Quality Control Review Panel of all differences, pursuant to §205.42(i)(5) of this part, whichever is later.

(e) *Determination of disallowances in Federal matching funds.* If a State's overpayment rate for a fiscal year exceeds the national standard, Federal matching funds to the State shall be reduced. The procedure for determining the disallowance for a fiscal year shall be as follows:

(1) *State adjusted overpayment rate.* A State with an underpayment rate below the national underpayment rate in a fiscal year shall have its overpayment rate reduced by the amount by

which the national underpayment rate exceeds the State's underpayment rate.

(i) A State shall use the underpayment reduction earned in a fiscal year one time only, either in the year in which it was earned, or in one of the following two years. Only one underpayment reduction shall be applied in any one year. A reduction earned in one year shall not be used to reduce an overpayment rate of a prior year.

Example: The State was disallowance-liable in 1992 and 1993 and had earned reductions for low underpayments in 1991, 1992 and 1993. The State can apply either the 1991 or 1992 reduction to the 1992 overpayment rate. If the 1991 reduction is applied to the 1992 error rate, the State can then apply either the 1992 or 1993 reduction to the 1993 error rate. If, in 1992, the State applied the 1992 reduction, then either the 1991 or the 1993 reduction can be applied to the 1993 error rate. If, in 1993, however, the State applied the 1993 reduction, then the 1991 reduction can no longer be used since it was not used in the year it was earned or one of the following two years.

(ii) At the request of a State, the Department shall apply the reduction, described in paragraph (e)(1)(i), in determining the State's overpayment rate for either of the two following years instead of in determining the State's error rate for the fiscal year to which the reduction would otherwise apply. The request shall be made in writing within 30 calendar days from the date of receipt of the notification described in paragraph (d) of this section.

(2) *Basic disallowance amount.* If a State's overpayment rate for a fiscal year, adjusted as described in paragraph (e)(1) of this section, exceeds the national standard for the fiscal year, the amount of the basic disallowance shall be the product of—

(i) The Federal share of the State's total AFDC payments for the fiscal year;

(ii) The difference between the State's adjusted overpayment rate and the national standard for the fiscal year; and

(iii) The ratio of the amount obtained in paragraph (e)(2)(ii) of this section to the national standard, or "1", whichever is smaller.

(3) *Reduction of the basic disallowance amount for overpayment recoveries.* A State's basic disallowance amount for a fiscal year shall be reduced to reflect

AFDC overpayment recoveries by the State. The amount of the reduction shall be the product of—

(i) The Federal share of payments recovered in the fiscal year; and

(ii) The ratio of the amount obtained in paragraph (e)(2)(ii) of this section, to the State's adjusted overpayment rate.

(4) *Reduction for improvement in child support collections.* If a State's child support collection rate is greater than the national child support collection rate for the fiscal year, or is greater than the average of the State's child support collection rates for the three preceding fiscal years, the State's disallowance amount shall be further reduced. The amount of the reduction shall be the product of—

(i) The amount of the basic disallowance calculated in paragraph (e)(2) minus the amount of the reduction calculated in paragraph (e)(3) of this section, and

(ii) The larger of—

(A) The ratio of the difference between the State and the national child support collection rate, to the national child support collection rate for the fiscal year; or

(B) The ratio of the difference between the State's child support collection rate for the fiscal year and the State's average child support collection rate for the preceding three fiscal years, to the State's average child support collection rate for the preceding three fiscal years.

(5) *Final disallowance amount.* The amount of disallowance imposed on the State by the Secretary shall be the amount of the disallowance calculated in paragraph (e)(2) of this section minus the sum of the amounts of reductions calculated in paragraphs (e)(3) and (e)(4) of this section.

Example: All references are to paragraph (e) of this section.

Fiscal year	State	National
Overpayment rate	8.0%	6.0%.
Underpayment rate	2.8%	3.0%.
Federal share of—		
Total AFDC payments.	\$5,000,000	Not applicable.
Total AFDC overpayment recoveries.	\$5,000	Do.
AFDC child support collection rate.	16.0%	12.0%.

Fiscal year	State	National
Average AFDC child support collection rate for preceding 3 years.	14.0%	Not applicable.

Calculation

1. State adjusted overpayment rate, paragraph—
 - (e)(1)— $8.0 - (3.0 - 2.8) = 7.8\%$
2. Basic disallowance amount, paragraph—
 - (e)(2)(i)—\$5,000,000
 - (e)(2)(ii)— $7.8 - 6.0 = 1.8\%$
 - (e)(2)(iii)— $1.8/6.0 = 0.30$
 Amount = $\$5,000,000 \times 1.8\% \times 0.30 = \$27,000$
3. Reduction for overpayment recoveries, paragraph—
 - (e)(3)(i)—\$5,000
 - (e)(3)(ii)— $1.8/7.8 = 0.231$
 Amount = $\$5,000 \times 0.231 = \$1,155$
4. Reduction for improvement in child support collections, paragraph—
 - (e)(4)(i)— $\$27,000 - \$1,155 = \$25,845$
 - (e)(4)(ii)(A)— $(16.0 - 12.0)/12.0 = 0.333$
 - (e)(4)(ii)(B)— $(16.0 - 14.0)/14.0 = 0.143$
 Since 0.333 is larger than 0.143, then the —
 Amount = $\$25,845 \times 0.333 = \$8,606$
5. Final disallowance, paragraph—
 - (e)(5)— $\$27,000 - (\$1,155 + \$8,606) = \$17,239$

(f) *Disallowance notification and payment schedule.* The Department shall notify the States with overpayment rates about the national standard of their imposed disallowances, with a target date of 60 calendar days after the release of the error rates for the fiscal year.

(1) A State subject to a disallowance shall pay the amount of its disallowance within 45 calendar days after the date of receipt of the notification, or negotiate an agreement with the Department to repay the disallowance with interest in calendar quarterly installments over a period not to exceed 30 months beginning not later than the first calendar quarter after the date of the receipt of the notification.

(2) If a State fails to pay the amount of the imposed disallowance as specified in paragraph (f)(1) of this section, the Department shall reduce the Federal matching funds otherwise payable to the State under the Social Security Act by amounts sufficient to recover the amount of disallowance with interest.

(3) Interest on the unpaid amount of the State's disallowance shall accrue at the overpayment rate pursuant to section 408(i)(3)(A) of the Act beginning 45 calendar days after the date the

State receives notice of the disallowance. If a subsequent appeal by the State is decided in the State's favor, the Department shall repay to the State all payments made, with interest from the date payment is received at the same accrued rate applicable to unpaid disallowances.

(g) *Administrative review of disallowances.* A State may appeal the imposition of the disallowance to the Departmental Appeals Board in writing within 60 calendar days after the receipt of the notification described in paragraph (f) of this section. The Board shall consider the State's appeal in accordance with 45 CFR part 16.

(1) The Board shall not review the decisions on difference cases made by the Panel or the Secretary but shall incorporate them by reference in its disallowance determination.

(2) If the Board does not decide an appeal within 90 calendar days after the date on the State's notice of appeal, interest on the unpaid disallowance amount shall be suspended beginning with the 90th calendar day and ending on the date of the Board's final decision, except to the extent that the Board finds that the State caused or requested the delay.

(h) *Judicial review of disallowances.* A State may appeal a decision by the Department Appeals Board, including a decision incorporated by the Board on a difference case, to the Federal district court within 90 calendar days after the date of the decision by the Board. Court review shall be on the record established in the Departmental Appeals Board review and shall be in accordance with the standards of review prescribed by title 5 U.S.C. 706(2), subparagraphs (A) through (E).

[57 FR 46807, Oct. 13, 1992; 57 FR 52827, Nov. 5, 1992]

§ 205.44 [Reserved]**§ 205.45 Federal financial participation in relation to State emergency welfare preparedness.**

(a) Under title IV-A, Federal financial participation is available at the rate of 50 percent in expenditures for development and planning activities for emergency welfare preparedness.

Such activities must relate to emergency welfare situations resulting from natural disasters, civil disorders, and enemy caused disasters, as prescribed in “Guidelines for the Preparation of State Emergency Welfare Services Plan” issued by Social and Rehabilitation Service, DHHS publication No. (SRS) 72-23004. These activities include:

- (1) Safekeeping essential documents and records;
- (2) Planning and developing emergency operating capability for providing food, lodging, clothing, and welfare registration and inquiry;
- (3) Assuring that qualified individuals are responsible for the planning and operation of each welfare function essential under emergency conditions for care and services for public assistance recipients and potential recipients;
- (4) Coordinating with other government and voluntary welfare agencies, and welfare-related business and professional organizations and associations, in developing emergency operating plans and attaining operational readiness;
- (5) Preparing and maintaining data on kinds, numbers, and locations of essential welfare resources, including manpower;
- (6) Developing ability to assess emergency welfare resources and determining requirements necessary to care for public assistance cases in the event of disaster or attack;
- (7) Preparing plans for claiming and distributing the above resources;
- (8) Developing mutual aid agreements at State and local levels with neighboring welfare organizations;
- (9) Preparing and distributing written emergency operations plans for public assistance agencies and operating units;
- (10) Participating in preparedness exercises for the purpose of testing plans and determining the role of public assistance programs in relation to the overall preparedness program; and
- (11) Travel incidental to any of the above activities.

(b) Federal financial participation is available at 50 percent under title IV-A for providing training in emergency

welfare preparedness for all staff and for volunteers.

(c) In Guam, Puerto Rico, and the Virgin Islands, Federal financial participation is available at the rate of 75 percent in expenditures for emergency welfare preparedness under titles I, X, XIV, XVI (AABD) of the Social Security Act.

(d) The cost of these activities must be allocated to all programs benefited in accordance with part 74, subtitle A of title 45 of the Code of Federal Regulations.

[41 FR 23387, June 10, 1976, as amended at 51 FR 9203, Mar. 18, 1986]

§ 205.50 Safeguarding information for the financial assistance programs.

(a) *State plan requirements.* A State plan for financial assistance under title IV-A of the Social Security Act, must provide that:

(1) Pursuant to State statute which imposes legal sanctions:

(i) The use or disclosure of information concerning applicants and recipients will be limited to purposes directly connected with:

(A) The administration of the plan of the State approved under title IV-A, the plan or program of the State under title IV-B, IV-D, IV-E, or IV-F or under title I, X, XIV, XVI(AABD), XIX, XX, or the Supplemental Security Income (SSI) program established by title XVI. Such purposes include establishing eligibility, determining the amount of assistance, and providing services for applicants and recipients.

(B) Any investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of any such plans or programs.

(C) The administration of any other Federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need.

(D) The verification to the Employment Security Agency, or other certifying agency that an individual has been an AFDC recipient for at least 90 days or is a WIN or WIN Demonstration participant pursuant to Pub. L. 97-34, the Economic Recovery Tax Act of 1981.

(E) Any audit or similar activity, e.g., review of expenditure reports or financial review, conducted in connection with the administration of any such plan or program by any governmental entity which is authorized by law to conduct such audit or activity.

(F) The administration of a State unemployment compensation program.

(G) The reporting to the appropriate agency or official of information on known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child receiving aid under circumstances which indicate that the child's health or welfare is threatened.

(ii) The State agency has authority to implement and enforce the provisions for safeguarding information about applicants and recipients:

(iii) Disclosure of any information that identifies by name or address any applicant or recipient to any Federal, State, or local committee or legislative body other than in connection with any activity under paragraph (a)(1)(i)(E) of this section is prohibited.

(iv) Publication of lists or names of applicants and recipients will be prohibited. *Exception.* In respect to a State plan for financial assistance under title I, IVA, X, XIV, or XVI (AABD) of the Social Security Act, an exception to this restriction may be made by reason of the enactment or enforcement of State legislation, prescribing any conditions under which public access may be had to records of the disbursement of funds or payments under such titles within the State, if such legislation prohibits the use of any list or names obtained through such access to such records for commercial or political purposes.

(v) The State or local agency responsible for the administration of the State plan has authority to disclose the current address of a recipient to a State or local law enforcement officer at his or her request. Such information is disclosed only to law enforcement officers who provide the name and Social Security number of the recipient and satisfactorily demonstrate that:

(A) The recipient is a fugitive felon (as defined by the State);

(B) The location or apprehension of such felon is within the law officer's official duties; and

(C) The request is made in the proper exercise of those duties.

(2) The agency will have clearly defined criteria which govern the types of information that are safeguarded and the conditions under which such information may be released or used. Under this requirement:

(i) Types of information to be safeguarded include but are not limited to:

(A) The names and addresses of applicants and recipients and amounts of assistance provided (unless excepted under paragraph (a)(1)(iv) of this section);

(B) Information related to the social and economic conditions or circumstances of a particular individual including information obtained from any agency pursuant to §205.55; information obtained from the Internal Revenue Service (IRS) and the Social Security Administration (SSA) must be safeguarded in accordance with procedures set forth by those agencies;

(C) Agency evaluation of information about a particular individual;

(D) Medical data, including diagnosis and past history of disease or disability, concerning a particular individual.

(ii) The release or use of information concerning individuals applying for or receiving financial assistance is restricted to persons or agency representatives who are subject to standards of confidentiality which are comparable to those of the agency administering the financial assistance programs.

(iii) Except in the case of information requested pursuant to §§205.55 and 205.56, or in the case of an emergency situation when the individual's prior consent for the release of information cannot be obtained, the family or individual is informed whenever possible of a request for information from an outside source, and permission is obtained to meet the request. In an emergency situation when the individual's consent for the release of information cannot be obtained, the individual will be notified immediately.

(iv) In the event of the issuance of a subpoena for the case record or for any

agency representative to testify concerning an applicant or recipient, the court's attention is called, through proper channels to the statutory provisions and the policies or rules and regulations against disclosure of information.

(v) The same policies are applied to requests for information from a governmental authority, the courts, or a law enforcement officer (except as provided for under paragraph (a)(1)(v) with respect to fugitive felons) as from any other outside source.

(3)(i) The agency will publicize provisions governing the confidential nature of information about applicants and recipients, including the legal sanctions imposed for improper disclosure and use, and will make these provisions available to applicants and recipients and to other persons and agencies to whom information is disclosed.

(ii) All information obtained pursuant to the income and eligibility verification requirements at §§ 205.55 and 205.56 will be stored and processed so that no unauthorized personnel can acquire or retrieve the information by any means.

(iii) All persons with access to information obtained pursuant to the income and eligibility verification requirements under §§ 205.55 and 205.56 will be advised of the circumstances under which access is permitted and the sanctions imposed for illegal use or disclosure of the information.

(4) All materials sent or distributed to applicants, recipients, or medical vendors, including material enclosed in envelopes containing checks, will be limited to those which are directly related to the administration of the program and will not have political implications except to the extent required to implement the National Voter Registration Act of 1993 (NVRA), Pub. L. 103–31. Under this requirement:

(i) Specifically excluded from mailing or distribution are materials such as “holiday” greetings, general public announcements, alien registration notices, and partisan voting information.

(ii) Not prohibited from such mailing or distribution are materials in the immediate interest of the health and welfare of applicants and recipients, such as announcements of free medical ex-

aminations, availability of surplus food, and consumer protection information;

(iii) Only the names of persons directly connected with the administration of the program are contained in material sent or distributed to applicants, recipients, and vendors, and such persons are identified only in their official capacity with the State or local agency.

(iv) Under NVRA, the agency must distribute voter information and registration materials as specified in NVRA.

(b) *Voluntary voter registration activities.* For States that are exempt from the requirements of NVRA, voter registration may be a voluntary activity so long as the provisions of section 7(a)(5) of NVRA are observed.

(c) *State plan requirements for programs of financial assistance in Puerto Rico, the Virgin Islands, and Guam.* A State plan under title I, X, XIV, or XVI (AABD) of the Social Security Act must meet all the requirements of paragraph (a) of this section, with the exception of paragraphs (a)(1)(i) (D) and (E), of this section, and also provide for disclosure of information concerning applicants and recipients for use by public officials who require such information in connection with their official duties. Under this requirement, such information shall be available only to public officials who certify in writing that:

(1) They are public officials as defined by State or Federal law of general applicability; and

(2) The information to be disclosed and used is required in connection with their official duties.

[45 FR 56684, Aug. 25, 1980, as amended at 47 FR 46506, Oct. 19, 1982; 49 FR 35599, Sept. 10, 1984; 51 FR 7214, Feb. 28, 1986; 51 FR 9203, Mar. 18, 1986; 54 FR 42243, Oct. 13, 1989; 57 FR 30157, July 8, 1992; 58 FR 49220, Sept. 22, 1993; 59 FR 26142, May 19, 1994; 61 FR 58143, Nov. 13, 1996]

§ 205.51 Income and eligibility verification requirements.

(a) A State plan under title I, IV–A, X, XIV or XVI (AABD) of the Social Security Act must provide that there be an Income and Eligibility Verification System in the State. Income and Eligibility Verification System (IEVS)

means a system through which the State agency:

(1) Co-ordinates data exchanges with other Federally-assisted benefit programs covered by section 1137(b) of the Act;

(2) Requests and uses income and benefit information as specified in section 1137(a)(2) of the Act and §§205.55 and 205.56; and

(3) Adheres to standardized formats and procedures in exchanging information with the other programs and agencies and in providing such information as may be useful to assist Federal, State and local agencies in the administration of the child support program and the Social Security Administration in the administration of the title II and title XVI (SSI) programs. The State agency (UC) information from the State Wage Information Collection Agency, described in paragraph (b) of this section; from the agency administering the State's unemployment compensation program (UC) under section 3304 of the Internal Revenue Code; from agencies in other States cited in §205.55(a)(5), as set forth by the Secretary; from SSA, as set forth by the Commissioner of Social Security; and from IRS, as set forth by the Commissioner of Internal Revenue.

(b) A State plan under title I, IV-A, X, XIV or XVI (AABD) of the Social Security Act must provide that, as part of its Income and Eligibility Verification System, there be a State Wage Information Collection Agency in the State. State Wage Information Collection Agency (SWICA) means the State agency receiving quarterly wage reports from employers in the State (which may be the agency administering the State's unemployment compensation program), or an alternative system which has been determined by the Secretary of Labor, in consultation with the Secretary of Agriculture and the Secretary of Health and Human Services, to be as effective and timely in providing employment related income and eligibility information.

(c) Wage information maintained by a SWICA which receives quarterly wage reports from employers but does not use these reports for computation of employment compensation shall:

(1) Contain the social security number, first and last name and middle initial, wages earned for the period of the report, and an identifier of the employer (such as name and address) for each employee;

(2) Include all employers covered by the State's UC law and require such employers to report wage information (as specified above) for each employee within 30 days from the end of each calendar quarter;

(3) Accumulate earnings reported by employers for periods no longer than calendar quarters;

(4) Be machine readable; i.e., maintained in a fashion that permits automated processing; and

(5) Be available to other agencies in the State, to agencies in other States, and to Social Security Administration for establishing or verifying eligibility and benefit amounts under titles II and XVI of the Social Security Act, pursuant to agreements as required in §205.58.

(d) A State shall obtain prior written approval from the Department, where appropriate, in accordance with 45 CFR 95.611, for any new developmental costs for automatic data processing equipment and services incurred in meeting IEVS requirements.

[51 FR 7214, Feb. 28, 1986]

§205.52 Furnishing of social security numbers.

The State plan under title I, IV-A, X, XIV, or XVI (AABD) of the Social Security Act must provide that:

(a) As a condition of eligibility, each applicant for or recipient of aid will be required:

(1) To furnish to the State or local agency a social security account number, hereinafter referred to as the SSN (or numbers, if more than one has been issued); and

(2) If he cannot furnish a SSN (either because such SSN has not been issued or is not known), to apply for such number through procedures adopted by the State or local agency with the Social Security Administration. If such procedures are not in effect, the applicant or recipient shall apply directly for such number, submit verification of such application, and provide the number upon its receipt.

(b) The State or local agency will assist the applicant or recipient in making applications for SSNs and will comply with the procedures and requirements established by the Social Security Administration for application, issuance, and verification of social security account numbers.

(c) The State or local agency will not deny, delay, or discontinue assistance pending the issuance or verification of such numbers if the applicant or recipient has complied with the requirements of paragraph (a) of this section.

(d) The State or local agency will use such account numbers, in addition to any other means of identification it may determine to employ, in the administration of the plan.

(e) "Applicant" and "recipient" include for the purposes of this section the individuals seeking or receiving assistance and any other individual whose needs are considered in determining the amount of assistance.

(f) The State or local agency shall notify the applicant or recipient that the furnishing of the SSN is a condition of eligibility for assistance required by section 1137 of the Social Security Act and that the SSN will be utilized in the administration of the program.

(g) The State agency will submit all unverified social security numbers to the Social Security Administration (SSA) for verification. The State agency may accept as verified a social security number provided directly to the State agency by SSA or by another Federal or federally-assisted benefit program which has received the number from SSA or has submitted it to SSA for verification.

[51 FR 7217, Feb. 28, 1986]

§ 205.55 Requirements for requesting and furnishing eligibility and income information.

A State plan under title I, IV-A, X, XIV, or XVI (AABD) of the Social Security Act must provide that:

(a) Except as provided in paragraph (b), the State agency will request through the IEVS:

(1) Wage information from the SWICA for all applicants at the first opportunity following receipt of the ap-

plication and for all recipients on a quarterly basis.

(2) Unemployment compensation information from the agency administering the State's unemployment compensation program under section 3304 of the Internal Revenue Code of 1954 and section 303 of the Act as follows:

(i) For applicants at the first opportunity following receipt of the application and in each of the first three months in which the individual is receiving aid, unless the individual is found to be receiving unemployment compensation, in which case the information will be requested until benefits are exhausted; and

(ii) In each of the first three months following any recipient-reported loss of employment, unless the individual is found to be receiving unemployment compensation, in which case the information will be requested until the benefits are exhausted.

(3) All available information maintained by the Social Security Administration for all applicants at the first opportunity following receipt of the application in the manner set forth by the Commissioner of Social Security. The State agency will also request such information for all recipients as of the effective date of this provision for whom such information has not previously been requested.

(4) Unearned income information from the Internal Revenue Service available under section 6103 (l)(7)(B) of the Internal Revenue Code of 1954, for all applicants at the first opportunity following receipt of the application for all recipients on a yearly basis. The request shall be made at the time and in the manner set forth by the Commissioner of Internal Revenue.

(5) As necessary, any income or other information affecting eligibility available from agencies in the State or other States administering:

(i) An AFDC program (in another State) under title IV-A of the Social Security Act;

(ii) A Medicaid program under title XIX of the Social Security Act;

(iii) An unemployment compensation program (in another State) under section 3304 of the Internal Revenue Code of 1954;

(iv) A Food Stamp program under the Food Stamp Act of 1977, as amended;

(v) Any State program administered under plan approved under title I, X, XIV, or XVI (AABD) of the Social Security Act; and

(vi) A SWICA (in another State).

(b)(1) With respect to individuals who cannot furnish an SSN at application, information specified in paragraph (a) will be requested at the first opportunity provided by each source after the State agency is provided with the SSN.

(2) For the purposes of this section, applicants and recipients shall also include any other individuals whose income or resources are considered in determining the amount of assistance, if the State agency has obtained the SSN of such individuals.

(c) The State agency must furnish, when requested, income, eligibility and benefit information to:

(1) Agencies in the State or other States administering the programs cited in paragraph (a)(5) of this section, in accordance with specific agreements as described in § 205.58;

(2) The agency in the State or other States administering a program under title IV-D of the Social Security Act; and

(3) The Social Security Administration for purposes of establishing or verifying eligibility or benefit amounts under title II and XVI (SSI) of the Social Security Act.

(d) The Secretary may, based upon application from a State, permit a State to obtain and use income and eligibility information from an alternate source or sources in order to meet any requirement of paragraph (a) of this section. The State agency must demonstrate to the Secretary that the alternate source or sources is as timely, complete and useful for verifying eligibility and benefit amounts. The Secretary will consult with the Secretary of Agriculture and the Secretary of Labor prior to approval of a request. The State must continue to meet the requirements of this section unless the Secretary has approved the request.

(e) The State agency must, upon request, reimburse another agency for reasonable costs incurred in furnishing income and eligibility information as

prescribed in this section, including new developmental costs associated with furnishing such information, in accordance with specific agreements as described in § 205.58.

[51 FR 7215, Feb. 28, 1986]

§ 205.56 Requirements governing the use of income and eligibility information.

A State plan under title I, IV-A, X, XIV, or XVI (AABD) of the Social Security Act must provide that:

(a) The State agency will use the information obtained under § 205.55, in conjunction with other information, for:

(1) Determining individuals' eligibility for assistance under the State plan and determining the amount of assistance. States wishing to exclude categories of information items from follow-up must submit for the Secretary's approval a follow-up plan describing the categories of information items which it proposes to exclude. For each category, the State must provide a reasonable justification that follow-up is not cost-effective. A formal cost-benefit analysis is not required. A State may exclude information items from the following data sources without written justification if followed up previously from another source: Unemployment compensation information received from the Internal Revenue Service, and earnings information received from the Social Security Administration. Information items in these categories which are not duplicative, but provide new leads, may not be excluded without written justification. A State may submit a follow-up plan or alter its plan at any time by notifying the Secretary and submitting the necessary justification. The Secretary will approve or disapprove categories of information items to be excluded under the plan within 60 days of its submission. Those categories approved by the Secretary will constitute an approved State follow-up plan for IEVS. For those information items not excluded from follow-up,

(i) The State agency shall review and compare the information obtained from each data exchange against information contained in the case record to

determine whether it affects the applicant's or the recipient's eligibility or the amount of assistance.

(ii) The State agency shall verify that the information is accurate and applicable to case circumstances either through the applicant or recipient or through a third party, if such verification is determined appropriate based on agency experience or is required under paragraph (b) of this section.

(iii) For applicants, if the information is received during the application period, the State agency shall use such information, to the extent possible, in making the eligibility determination.

(iv) For individuals who are recipients when the information is received or for whom a decision could not be made prior to authorization of benefits, the State agency shall within forty-five (45) days of its receipt, initiate a notice of case action or an entry in the case record that no case action is necessary, except that: Completion of action may be delayed beyond forty-five (45) days on no more than twenty (20) percent of the information items targeted for follow-up, if:

(A) The reason that the action cannot be completed within forty-five (45) days is the nonreceipt of requested third-party verification; and

(B) Action is completed promptly, when third party verification is received or at the next time eligibility is redetermined, whichever is earlier. If action is completed when eligibility is redetermined and third party verification has not been received, the State agency shall make its decision based on information provided by the recipient and any other information in its possession.

(v) The State agency shall use appropriate procedures to monitor the timeliness requirements specified in this subparagraph;

(2) Investigations to determine whether recipients received assistance under the State plan to which they were not entitled; and

(3) Criminal or civil prosecutions based on receipt of assistance under the State plan to which recipients were not entitled.

(b)(1) State agencies shall not take any adverse action to terminate, deny, suspend or reduce benefits to an appli-

cant or recipient, based on information produced by a Federal computer matching program that is subject to the requirements in the Computer Matching and Privacy Protection Act (CMPPA) unless (i) The information has been independently verified in accordance with the independent verification requirements set out in the State agency's written agreement as required by §205.58 or (ii) The independent verification requirement has been waived by the Department's Data Integrity Board.

(2) The CMPPA defines a matching program as any computerized comparison of (i) Two or more automated systems of records or a system of records with non-Federal records for the purpose of (A) Establishing or verifying the eligibility of, or continuing compliance with statutory and regulatory requirements by, applicants for, recipients or beneficiaries of, participants in, or providers of services with respect to, cash or in-kind assistance or payments under Federal benefit programs, or (B) Recouping payments or delinquent debts under such Federal benefit programs, or (ii) Two or more automated Federal personnel or payroll system of records or a system of Federal personnel or payroll record with non-Federal records.

(c) If the agency intends to reduce, suspend, terminate or deny benefits as a result of the actions taken pursuant to this section, the agency must provide notice and the opportunity for a fair hearing in accordance with §205.10(a).

[51 FR 7215, Feb. 28, 1986, as amended at 53 FR 52712, Dec. 29, 1988; 57 FR 53859, Nov. 13, 1992]

§205.57 Maintenance of a machine readable file; requests for income and eligibility information.

A State plan under title I, IV—A, X, XIV, or XVI (AABD) of the Social Security Act must provide that:

(a) The State agency will maintain a file which is machine readable, i.e., which is maintained in a fashion that permits automated processing, and which contains the first and last name and verified social security number of each person applying for or receiving assistance under the plan.

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(b) The State agency will use this file to exchange data with other agencies pursuant to § 205.55.

[51 FR 7216, Feb. 28, 1986]

§ 205.58 Income and eligibility information; specific agreements required between the State agency and the agency supplying the information.

(a) A State plan under title I, IV-A, X, XIV, or XVI (AABD) of the Social Security Act must provide that, in carrying out the requirements of §§ 205.55 and 205.56, the State agency will enter into specific written agreements as described in paragraph (b) of this section with those agencies providing income and eligibility information. Agreements with Federal agencies are subject to the approval by the appropriate Federal Data Integrity Boards. The agreements will contain the procedure to be used in requesting and providing information.

(b) These agreements will include, but need not be limited to, the following:

- (1) Purpose of the request;
- (2) Identification of all agency officials, by position with authority to request information;
- (3) Methods and timing of the requests for information, including the machine readable format to be used, the period of time needed to furnish the requested information and the basis for establishing this period. Agreements with the SWICA and the agency administering the Unemployment Compensation program in the State must provide that the State agency shall obtain information no less frequently than twice monthly;
- (4) The type of information and reporting periods for which information will be provided and the verification methodologies to be used;
- (5) Safeguards limiting release or disclosure as required by Federal or State law or regulation, including the requirements of § 205.50 and as may be required by guidelines issued by the Secretary; and
- (6) Reimbursement, if any, for the costs of furnishing the information requested by the State agency, including

new developmental costs associated with furnishing such information.

[51 FR 7216, Feb. 28, 1986, as amended at 57 FR 53860, Nov. 13, 1992]

§ 205.60 Reports and maintenance of records.

A State plan under title I, IV-A, X, XIV, or XVI (AABD) of the Social Security Act must provide that:

(a) The State agency will maintain or supervise the maintenance of records necessary for the proper and efficient operation of the plan, including records regarding applications, determination of eligibility, the provision of financial assistance, and the use of any information obtained under § 205.55, with respect to individual applications denied, recipients whose benefits have been terminated, recipients whose benefits have been modified, and the dollar value of these denials, terminations and modifications. Under this requirement, the agency will keep individual records which contain pertinent facts about each applicant and recipient. The records will include information concerning the date of application and the date and basis of its disposition; facts essential to the determination of initial and continuing eligibility (including the individual's social security number, need for, and provision of financial assistance); and the basis for discontinuing assistance.

(b) The agency shall report as the Secretary prescribes for the purpose of determining compliance with the requirements of §§ 205.55 and 205.56 and for evaluating the effectiveness of the Income and Eligibility Verification System.

[51 FR 7216, Feb. 28, 1986]

§ 205.70 Availability of agency program manuals.

State plan requirements. A State plan for financial assistance under title I, IV-A, IV-B, X, XIV, or XVI (AABD) of the Social Security Act must provide that:

(a) Program manuals and other policy issuances which affect the public, including the State agency's rules and regulations governing eligibility, need and amount of assistance, and recipient rights and responsibilities will be

maintained in the State office and in each local and district office for examination on regular workdays during regular office hours by individuals, upon request for review, study, or reproduction by the individual.

(b)(1) A current copy of such material will be made available without charge or at a charge related to the cost of reproduction for access by the public through custodians who (i) request the material for this purpose, (ii) are centrally located and publicly accessible to a substantial number of the recipient population they serve, and (iii) agree to accept responsibility for filing all amendments and changes forwarded by the agency.

(2) Under this requirement the material, if requested, must be made available without charge or at a charge related to the cost of reproduction to public or university libraries, the local or district offices of the Bureau of Indian Affairs, and welfare or legal services offices or organizations. The material may also be made available, with or without charge, to other groups and to individuals. Wide availability of agency policy materials is recommended.

(c) Upon request, the agency will reproduce without charge or at a charge related to the cost of reproduction the specific policy materials necessary for an applicant or recipient, or his representative, to determine whether a fair hearing should be requested or to prepare for a fair hearing; and will establish policies for reproducing policy materials without charge, or at a charge related to cost, for any individual who requests such material for other purposes.

[38 FR 26378, Sept. 20, 1973, as amended at 44 FR 17941, Mar. 23, 1979; 45 FR 56685, Aug. 25, 1980]

§ 205.100 Single State agency.

(a)(1) *State plan requirements.* A State plan for financial assistance under title I, IV-A, X, XIV, or XVI (AABD) of the Social Security Act must:

(i) Provide for the establishment or designation of a single State agency with authority to administer or supervise the administration of the plan.

(ii) Include a certification by the attorney general of the State identifying

the single State agency and citing the legal authority under which such agency administers, or supervises the administration of, the plan on a statewide basis including the authority to make rules and regulations governing the administration of the plan by such agency or rules and regulations that are binding on the political subdivisions, if the plan is administered by them.

(2) [Reserved]

(b) *Conditions for implementing the requirements of paragraph (a) of this section.* (1) The State agency will not delegate to other than its own officials its authority for exercising administrative discretion in the administration or supervision of the plan including the issuance of policies, rules, and regulations on program matters.

(2) In the event that any rules and regulations or decisions of the single State agency are subject to review, clearance, or other action by other offices or agencies of the State government, the requisite authority of the single State agency will not be impaired.

(3) In the event that any services are performed for the single State agency by other State or local agencies or offices, such agencies and offices must not have authority to review, change, or disapprove any administrative decision of the single State agency, or otherwise substitute their judgment for that of the agency as to the application of policies, rules, and regulations promulgated by the State agency.

[45 FR 56685, Aug. 25, 1980]

§ 205.101 Organization for administration.

(a) A State plan for financial assistance under title I, IV-A, X, XIV, or XVI (AABD) of the Social Security Act shall include a description of the organization and functions of the single State agency and an organizational chart of the agency.

(b) Where applicable, a State plan for financial assistance under title I, IV-A, X, XIV, or XVI (AABD) of the act shall identify the organizational unit within the State agency which is responsible for operation of the plan and shall include a description of its organization

and functions and an organizational chart of the unit.

[45 FR 56685, Aug. 25, 1980]

§ 205.120 Statewide operation.

(a) *State plan requirements.* A State plan for financial assistance under title I, IV-A, X, XIV, or XVI (AABD) of the Social Security Act must provide that:

(1) It shall be in operation, through a system of local offices, on a statewide basis in accordance with equitable standards for assistance and administration that are mandatory throughout the State;

(2) If administered by political subdivisions of the State, the plan will be mandatory on such political subdivisions;

(3) The State agency will assure that the plan is continuously in operation in all local offices or agencies through:

(i) Methods for informing staff of State policies, standards, procedures and instructions; and

(ii) Regular planned examination and evaluation of operations in local offices by regularly assigned State staff, including regular visits by such staff; and through reports, controls, or other necessary methods.

(b) [Reserved]

[39 FR 16971, May 10, 1974, as amended at 44 FR 17942, Mar. 23, 1979; 45 FR 56686, Aug. 25, 1980]

§ 205.130 State financial participation.

State plan requirements:

(a) A State plan for financial assistance under title I, IV-A, X, XIV, or XVI (AABD) of the Social Security Act must provide that:

(1) State (as distinguished from local) funds will be used in both assistance and administration; and

(2) State and Federal funds will be apportioned among the political subdivisions of the State on a basis consistent with equitable treatment of individuals in similar circumstances throughout the State.

(b) A State plan under title I, IV-A, X, XIV, or XVI (AABD) of the Act must provide further that State funds will be used to pay a substantial part of the total costs of the assistance programs.

[45 FR 56686, Aug. 25, 1980]

§ 205.146 Specific limitations on Federal financial participation under title IV-A.

(a) [Reserved]

(b) *Penalty for failure to offer and arrange for provision of family planning services under title IV-A of the Act.* Pursuant to section 403(f) of the act, notwithstanding any other provision of this chapter, total payments to a State under title IV-A of the Act, for any fiscal year beginning on or after July 1, 1973, shall be reduced by 1 percent (calculated without regard to any other reduction under this section) if such State:

(1) In the immediately preceding fiscal year failed to carry out the provisions of section 402(a)(15) of the act, which require the offering and arrangement for provision of family planning services, or

(2) In the immediately preceding fiscal year (but in the case of the fiscal year beginning July 1, 1972, considering only the third and fourth quarters thereof), failed to carry out the provisions of section 402(a)(15) of the act with respect to any individual who within 3 months had been an applicant for or a recipient of AFDC under the State's approved title IV-A plan.

This penalty will be applied in accordance with instructions to be issued by SRS.

(c) [Reserved]

(d) *Penalty for failure to have an effective child support enforcement program—*
(1) *General.* Pursuant to section 403(h) of the Act, notwithstanding any other provision of this chapter, total payments to a State under title IV-A of the Act for any quarters in any fiscal year, shall be reduced if a State is found by the Secretary to have failed to have an effective child support enforcement program in substantial compliance with the requirements of section 402(a)(27), as implemented by parts 302 and 305 of this title. The reduction for any quarter (calculated without regard to any other reduction under this section) shall be:

(i) Not less than one nor more than two percent of such payments for a period beginning in accordance with § 305.100 (c) or (d) of this title not to exceed the one-year period following the end of the suspension period specified

in the notice required by §305.99 of this title;

(ii) Not less than two nor more than three percent of such payments if the finding is the second consecutive finding made as a result of an audit for a period beginning as of the second one-year period following the suspension period specified in the notice required by §305.99 of this title not to exceed one year; or

(iii) Not less than three nor more than five percent of such payments if the finding is the third or subsequent consecutive finding as a result of an audit for a period beginning as of the third one-year period following the suspension period specified in the notice required by §305.99 of this title.

(2) *Application of penalty.* (i) The penalty will be imposed for any quarter beginning after September 30, 1983.

(ii) The penalty will be imposed on the basis of the results of the audit conducted pursuant to part 305 of this title.

(3) *Notice, suspension, corrective action period.* Notice, suspension and corrective action provisions are set forth at 45 CFR 305.99.

(e) *Reconsideration of penalty imposition.* Whenever a penalty is imposed under the provisions of this section, the State shall be entitled to and upon request shall receive a reconsideration of the imposition of the penalty in accordance with section 1116(d) of the Social Security Act, and regulations issued thereunder.

[38 FR 26379, Sept. 20, 1973, as amended at 41 FR 55346, Dec. 20, 1976; 50 FR 40139, Oct. 1, 1985; 51 FR 9203, Mar. 18, 1986; 60 FR 26374, May 17, 1995]

§205.150 Cost allocation.

A State plan under title I, IV-A, X, XIV, or XVI (AABD) of the Social Security Act must provide that the State agency will have an approved cost allocation plan on file with the Department in accordance with the requirements contained in subpart E of 45 CFR part 95. Subpart E also sets forth the effect on FFP if the requirements contained in that subpart are not met.

[47 FR 17508, Apr. 23, 1982]

§205.160 Equipment—Federal financial participation.

Claims for Federal financial participation in the cost of equipment for the cash assistance programs under titles I, IV-A, X, XIV, XVI [AABD] and for the separate administrative unit established under section 402(a)(19)(G) of the Social Security Act are to be determined in accordance with subpart G or 45 CFR part 95. Requirements concerning the management and disposition of equipment under these titles are also prescribed in subpart G of 45 CFR part 95.

[47 FR 41576, Sept. 21, 1982]

§205.170 State standards for office space, equipment, and facilities.

State plan requirements: A State plan for financial assistance under title I, IV-A, X, XIV, or XVI(AABD) of the Social Security Act must provide that:

(a) The State agency will establish and maintain standards for office space, equipment, and facilities that will adequately and effectively meet program and staff needs. Under this requirement, offices must be well marked and clearly identifiable in the community as a public service.

(b) The State agency will assure that the standards are continuously in effect in all State and local offices or agencies, including agency suboffices, and special centers through:

(1) Making information about the standards available to State and local staff and other appropriate persons;

(2) Regular planned evaluation of housing and facilities by regularly assigned staff through visits, reports, controls and other necessary methods;

(3) Methods for enforcement when necessary to secure compliance with State standards.

[36 FR 3862, Feb. 27, 1971, as amended at 45 FR 56686, Aug. 25, 1980]

§205.190 Standard-setting authority for institutions.

(a) *State plan requirements.* If a State plan for financial assistance under title I, X, XIV, or XVI(AABD) of the Social Security Act includes aid or assistance to individuals in institutions as defined in §233.60(b) (1) and (2) of this chapter the plan must:

(1) Provide for the designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for such institutions;

(2) Provide that the State agency will keep on file and make available to FSA, OFA upon request:

(i) A listing of the types or kinds of institutions in which an individual may receive financial assistance;

(ii) A record naming the State authority(ies) responsible for establishing and maintaining standards for such types of institutions;

(iii) The standards to be utilized by such State authority(ies) for approval or licensing of institutions including, to the extent applicable, standards related to the following factors:

(a) Health (dietary standards and accident prevention);

(b) Humane treatment;

(c) Sanitation;

(d) Types of construction;

(e) Physical facilities, including space and accommodations per person;

(f) Fire and safety;

(g) Staffing, in number and qualifications, related to the purposes and scope of services of the institution;

(h) Resident records;

(i) Admission procedures;

(j) Administrative and fiscal records;

(k) The control by the individual, or his guardian or protective payee, of the individual's personal affairs.

(3) Provide for cooperative arrangements with the standard-setting authority(ies) in the development of standards directed toward assuring adequate quality of care; in upgrading of institutional programs and practice; in actions necessary to close institutions that mistreat or are hazardous to the safety of the patients; and in planning so that institutions may be geographically located in accordance with need.

(b) *Federal financial participation.* (1) Federal financial participation is available in staff and related costs of the State or local agency that are necessary to discharge the responsibilities of the State agency under this section, including such costs for staff:

(i) Participating with other agencies and community groups in activities to set up the authority(ies) and to advise

on the formulation of policy for the establishment and maintenance of standards;

(ii) On loan for a time limited period to work with the standard-setting authority(ies) in upgrading institutional care;

(iii) Engaged in the function of coordination in States where there is more than one authority; and

(iv) Engaged in adjusting complaints and making reports and recommendations to the standard-setting authority(ies) on conditions which appear to be in violation of such standards.

(2) Federal financial participation is not available in the costs incurred by the standard-setting authority(ies) in establishing and maintaining standards for institutions.

[36 FR 3862, Feb. 27, 1971, as amended at 45 FR 56686, Aug. 25, 1980; 53 FR 36580, Sept. 21, 1988]

PART 206—APPLICATION, DETERMINATION OF ELIGIBILITY AND FURNISHING ASSISTANCE—PUBLIC ASSISTANCE PROGRAMS

AUTHORITY: Sections 402 and 1102 of the Social Security Act (42 U.S.C. 602 and 1302) and Pub. L. No. 97-248, 96 Stat. 324, and Pub. L. No. 99-603, 100 Stat. 3359.

§ 206.10 Application, determination of eligibility and furnishing of assistance.

(a) *State plan requirements.* A State plan under title I, IV-A, X, XIV, or XVI(AABD), of that Social Security Act shall provide that:

(1) Each individual wishing to do so shall have the opportunity to apply for assistance under the plan without delay. Under this requirement:

(i) Each individual may apply under whichever of the State plan plans he chooses;

(ii) The agency shall require a written application, signed under a penalty of perjury, on a form prescribed by the State agency, from the applicant himself, or his authorized representative, or, where the applicant is incompetent or incapacitated, someone acting responsibly for him. When an individual is required to be included in an existing assistance unit pursuant to paragraph