

shift except that, where the State recognizes and describes two or more distinct levels of institutions as intermediate care facilities such personnel are not required in any level that serves only individuals who have been determined by their physicians not to be in need of such supervision and whose need for such supervision is reviewed as indicated, and at least quarterly;

(b) Continuing supervision by a physician who sees the resident as needed and in no case, less often than quarterly;

(c) Under direction by the resident's physician and (where applicable in accordance with (d)(4)(vii)(a) of this section), general supervision by the nurse in charge of the facility's health services, guidance, and assistance for each resident in carrying out his personal health program to assure that preventive measures, treatments, and medications prescribed by the physician are properly carried out and recorded;

(d) Arrangements for services of a physician in the event of an emergency when the resident's own physician cannot be reached;

(e) In the presence of minor illness and for temporary periods, bedside care under direction of the resident's physician including nursing service provided by, or supervised by, a registered professional nurse or a licensed practical nurse;

(f) An individual health record for each resident including;

(1) The name, address, and telephone number of his physician;

(2) A record of the physician's findings and recommendations in the preadmission evaluation of the individual's condition and in subsequent re-evaluations and all orders and recommendations of the physician for care of the resident;

(3) All symptoms and other indications of illness or injury brought to the attention of the staff by the resident, or from other sources, including the date, time, and action taken regarding each.

(viii) *Living accommodations.* Space and furnishings provide each resident clean, comfortable, and reasonably private living accommodations with no more than four residents occupying a

room, with individual storage facilities for clothing and personal articles, and with lounge, recreation and dining areas provided apart from sleeping quarters.

(ix) *Administration and management.* The direction and management of the facility are such as to assure that the services required by the residents are so organized and administered that they are, in fact, available to the residents on a regular basis and that this is accomplished efficiently and with consideration for the objective of providing necessary care within a homelike atmosphere. Staff are employed by the facility sufficient in number and competence, as determined by the appropriate State agency, to meet the requirements of the residents.

[35 FR 8990, June 10, 1970, as amended at 39 FR 2220, Jan. 17, 1974; 39 FR 8918, Mar. 7, 1974]

PART 235—ADMINISTRATION OF FINANCIAL ASSISTANCE PROGRAMS

Sec.

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AUTHORITY: 42 U.S.C. 603, 616, and 1302.

§ 235.40 [Reserved]

§ 235.50 State plan requirements for methods of personnel administration.

(a) A State plan for financial assistance programs under title I, IV-A, X,

XIV, or XVI (AABD) of the Social Security Act must provide that methods of personnel administration will be established and maintained in public agencies administering or supervising the administration of the program in conformity with the Standards for a Merit System of Personnel Administration, 5 CFR part 900, subpart F, which incorporates the Intergovernmental Personnel Act Merit Principles (Pub. L. 91-648, section 2, 84 Stat. 1909), prescribed by the Office of Personnel Management pursuant to section 208 of the Intergovernmental Personnel Act of 1970 as amended.

[45 FR 25398, Apr. 15, 1980]

§ 235.60 Federal financial participation (FFP) for State and local training.

Sections 235.61 through 235.66 contain (a) State plan requirements for training programs and (b) conditions for Federal financial participation (FFP) for training costs under the State plans. These sections apply to the State plans for the financial assistance programs in all jurisdictions under title I, IV-A, X, XIV, or XVI (AABD) of the Social Security Act.

[45 FR 29833, May 6, 1980]

§ 235.61 Definition of terms.

For purposes of §§ 235.60-235.66:

Act means the Social Security Act, as amended.

A grant to an educational institution means payments to an educational institution for services rendered under a time limited agreement between the State agency and the eligible educational institution which provides for the training of State or local agency employees or persons preparing for employment with the State or local agency.

A training program is the method through which the State agency carries out a plan of educational and training activities to improve the operation of its programs.

(a) *Initial in-service training* means a period of intensive, task-oriented training to prepare new employees to assume job responsibilities.

(b) *Continuing training* means an ongoing program of training planned to

enable employees to: (1) Reinforce their basic knowledge and develop the required skills for the performance of specific functions, and (2) acquire additional knowledge and skill to meet changes such as enactment of new legislation, development of new policies, or shifts in program emphasis.

(c) *Full-time training* means training that requires employees to be relieved of all responsibility for performance of current work to participate in a training program.

(d) *Part-time training* means training that allows employees to continue full time in their jobs or requires only partial reduction of work activities to participate in a training program outside of the State or local agency.

(e) *Long-term training* means training for eight consecutive work weeks or longer.

(f) *Short-term training* means training for less than eight consecutive work weeks.

FFP or Federal financial participation means the Federal government's share of expenditures made by a State or local agency under a training program.

Fringe benefits means the employer's share of premiums for industrial compensation, employee's retirement, unemployment compensation, health insurance, and similar expenses.

Persons preparing for employment means individuals who are not yet employed by the State or local agency, but who have received financial assistance from the State agency for training, and have made a legally binding commitment with the State or local agency for future employment under the conditions of these regulations.

Stipend means the basic living allowance paid to a student.

[45 FR 29833, May 6, 1980]

§ 235.62 State plan requirements for training programs.

A State plan under title I, IV-A, X, XIV, or XVI (AABD) of the Act must provide for a training program for agency personnel. The training program must:

(a) Include initial in-service training for newly appointed staff, and continuing agency training opportunities to improve the operation of the program. The training program may also include

short-term and long-term training at educational institutions through grants to institutions or by direct financial assistance to students enrolled in institutions who are agency employees or persons preparing for employment with the State or local agency;

(b) Be related to job duties performed or to be performed by the persons trained, and be consistent with the program objectives of the agency; and

(c) Be described in an annual training plan prepared prior to the beginning of the fiscal year. Copies of the training plan shall be made available upon request to the Regional Office of Family Assistance for review by the Federal staff.

[45 FR 29833, May 6, 1980, as amended at 46 FR 29264, June 1, 1981]

§ 235.63 Conditions for FFP.

(a) *Who may be trained.* FFP is available only for training provided personnel employed in all classes of positions, volunteers, and persons preparing for employment by the State or local agency administering the program.

(b) *When FFP is available.* FFP is available for personnel employed and persons preparing for employment by the State or local agency provided the following conditions are met, and with the following limitations:

(1) Employees in full-time, long-term training make a commitment to work in the agency for a period of time equal to the period for which financial assistance is granted. A State agency may exempt an employee from fulfilling this commitment only if failure to continue in employment is due to death, disability, employment in a financial assistance program in a public assistance agency in another State, or other emergent circumstances determined by the single State agency head to be valid for exemption;

(2) An employee retains his or her rights and benefits in the agency while on full-time, long-term training leave;

(3) Persons preparing for employment are selected by the State agency and accepted by the school;

(4) Persons preparing for employment are pursuing educational programs approved by the State agency;

(5) Persons preparing for employment are committed to work for State or

local agency for a period of time at least equal to the period for which financial assistance is granted if employment is offered within 2 months after training is completed;

(6) The State or local agency offers the individual preparing for employment a job upon completion of training unless precluded by merit system requirements, legislative budget cuts, position freezes, or other circumstances beyond the agency's control; and if unable to offer employment, releases the individual from his or her commitment;

(7) The State agency keeps a record of the employment of persons trained. If the persons are not employed by the State or local agency, the record specifies the reason for non-employment;

(8) The State agency evaluates the training programs; and

(9) Any recoupment of funds by the State from trainees failing to fulfill their commitment under this section shall be treated as a refund and deducted from total training costs for the purpose of determining net costs for FFP.

(c) *Grants to educational institutions.* FFP is available in payments for services rendered under grants to educational institutions provided all of the following conditions are met:

(1) Grants are made for the purpose of developing, expanding, or improving training for personnel employed by the State or local agency or preparing for employment by the State or local agency administering the program. Grants are made for an educational program (curriculum development, classroom instruction, field instruction, or any combination of these) that is directly related to the agency's program. Grants are made for not more than 3 years, but may be renewed, subject to the conditions of this section;

(2) Grants are made to educational institutions and programs that are accredited by the appropriate institutional accrediting body recognized by the U.S. Commissioner of Education. When a specialized program within the institution for which there is a specialized accrediting body is used, that program must be accredited by or have pre-accreditation status from that body. (Part 149 of this title explains the

requirements and procedures for obtaining recognition as an accrediting agency or association. Lists of currently recognized accrediting bodies are published in the FEDERAL REGISTER periodically. *See also Nationally Recognized Accrediting Agencies and Associations* published by the Office of Education);

(3) The State agency has written policies establishing conditions and procedures for such grants;

(4) Each grant describes objectives in terms of how the educational program is related to the financial assistance programs and how it is designed to meet the State or local agency's manpower needs; and

(5) An evaluation of the educational program funded by each grant is made no later than the close of the second year of the grant. The evaluation shall be conducted by representatives from the educational institution and the State agency to determine whether conditions and objectives described in the grant are being met. If the educational program does not meet these conditions and objectives, payment shall be terminated no later than the close of the second year of the grant.

[45 FR 29834, May 6, 1980]

§235.64 FFP rates, and activities and costs matchable as training expenditures.

Under title I, IV-A, X, XIV, or XVI(AABD) of the Act, FFP is available at the rate of 50 percent for the following costs:

(a) Salaries, fringe benefits, travel and per diem for:

(1) Staff development personnel (including support staff) assigned full time to training functions and;

(2) Staff development personnel assigned part time to training functions to the extent time is spent performing such functions.

(b) For agency training sessions, FFP is available for:

(1) Salaries, fringe benefits, travel and per diem for employees in initial in-service training of at least one week;

(2) Travel and per diem for employees in agency training sessions away from the employee's work site, or in institutes, seminars or workshops related

to the job and sponsored by professional organizations;

(3) Salaries, fringe benefits, travel and per diem for experts outside the agency engaged to develop or conduct special programs; and

(4) Costs of space, postage, teaching supplies, purchase or development of teaching material and equipment, and costs of maintaining and operating the agency library as an essential resource to the agency's training program.

(c) For training and education outside of the agency, FFP is available for:

(1) Salaries, fringe benefits, dependency allowance, travel, tuition, books, and educational supplies for employees in full-time, long-term training programs (with no assigned agency duties);

(2) Salaries, fringe benefits, travel, tuition, books, and educational supplies for employees in full-time, short-term training programs of four or more consecutive work weeks;

(3) Travel, per diem, tuition, books and educational supplies for employees in short-term training programs of less than four consecutive work weeks, or part-time training programs; and

(4) Stipends, travel, tuition, books and educational supplies for persons preparing for employment with the State or local agency.

(d) FFP is available for payments to educational institutions, as described in §235.63(c) for salaries, fringe benefits, and travel of instructors, clerical assistance, teaching materials and equipment.

[45 FR 29834, May 6, 1980, as amended at 47 FR 5683, Feb. 5, 1982; 59 FR 12861, Mar. 18, 1994]

§235.65 Activities and costs not matchable as training expenditures.

FFP is not available for the following expenditures as training costs; however, the expenditures described in this section may be matched as administrative costs, if conditions for such matching are met:

(a) Salaries of supervisors (day-to-day supervision of staff is not a training activity); and

§ 235.66

(b) Employment of students on a temporary basis, such as in the summertime.

[45 FR 29835, May 6, 1980]

§ 235.66 Sources of State funds.

(a) *Public funds.* Public funds may be considered as the State’s share in claiming Federal reimbursement where the funds:

(1) Are appropriated directly to the State or local agency, or transferred from another public agency (including Indian tribes) to the State or local agency and under its administrative control, or certified by the contributing public agency as representing expenditures eligible for FFP under §§ 235.60–235.66;

(2) Are not used to match other Federal funds; and

(3) Are not federal funds, or are Federal funds authorized by Federal law to be used to match other Federal funds.

(b) *Private funds.* Funds donated from private sources may be considered as the State’s share in claiming Federal reimbursement only where the funds are:

(1) Transferred to the State or local agency and under its administrative control;

(2) Donated without any restriction which would require their use for the training of a particular individual or at particular facilities or institutions; and

(3) Do not revert to the donor’s facility or use.

[45 FR 29835, May 6, 1980]

§ 235.70 Prompt notice to child support or Medicaid agency.

(a) A State plan under title IV-A of the Social Security Act must provide for prompt notice to the State or local child support agency designated pursuant to section 454(3) of the Social Security Act and to the State title XIX agency, as appropriate, whenever:

(1) Aid is furnished to a child who has been deserted or abandoned by a parent, to the parent(s) with whom the child lives, or to a pregnant woman under § 233.90(c)(2)(iv), or

(2) Any of the persons in paragraph (a)(1) of this section is deemed to be a

recipient of aid under § 233.20(a)(3)(viii)(D).

(b) In this section:

(1) *Aid* means Aid to Families with Dependent Children, or AFDC Foster Care.

(2) *Prompt notice* means written notice including a copy of the AFDC case record, or all relevant information as prescribed by the child support agency. Prompt notice must also include all relevant information as prescribed by the State Medicaid agency for the pursuit of liable third parties. The prompt notice shall be provided within two working days of the furnishing of aid or the determination that an individual is a recipient under § 233.20(a)(3)(viii)(D). The title IV-A, IV-D and XIX agencies may agree to provide notice immediately upon the filing of an application for assistance.

(3) *Furnish* means the date on which cash is given to the family, a check or warrant is mailed to the family, a deposit is made in a bank for the family, or other similar circumstances in which an assistance payment is made to the family, or the date on which individuals are determined to be recipients under § 233.20(a)(3)(viii)(D).

(4) *A child who has been deserted or abandoned by a parent* means any child whose eligibility for AFDC is based on continued absence of a parent from the home, and includes a child born out of wedlock without regard to whether the paternity of such child has been established.

[47 FR 5683, Feb. 5, 1982, as amended at 56 FR 8933, Mar. 4, 1991]

§ 235.110 Fraud.

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

(a) That the State agency will establish and maintain:

(1) Methods and criteria for identifying situations in which a question of fraud in the program may exist, and

(2) Procedures developed in cooperation with the State’s legal authorities for referring to law enforcement officials situations in which there is valid reason to suspect that fraud has been practiced.

The definition of fraud for purposes of this section will be determined in accordance with State law.

(b) For methods of investigation of situations which there is a question of fraud, that do not infringe on the legal rights of persons involved and are consistent with the principles recognized as affording due process of law.

(c) For the designation of official position(s) responsible for referral of situations involving suspected fraud to the proper authorities.

[36 FR 3869, Feb. 27, 1971]

§235.111 Pre-eligibility fraud detection measures.

(a) *State plan requirement.* A State plan under title IV, part A of the Social Security Act must contain a description of the verification measures to detect fraudulent applications for AFDC prior to the establishment of eligibility for such aid.

(b) *Definition.* For purposes of this section, *verification measures* are actions taken by a State agency (including actions taken by fraud personnel assigned to the initial application unit to investigate applicants suspected of committing fraud):

(1) To confirm information provided by an applicant to support his or her eligibility for AFDC; and

(2) To confirm information provided by an applicant that is relevant in determining the amount of the assistance payment.

Such actions involve the examination of supporting documentation in the applicant's possession and obtaining additional information, when necessary, from appropriate third party sources; also included are any periodic support activities taken by the State agency to enhance these actions. Examples of such measures include but are not limited to: Automated data matches to establish the accuracy of statements on the application; use of error prone profiles; home visits or collateral contacts; credit bureau inquiries; training on investigative interviewing techniques.

(c) *Annual evaluation.* A State agency shall make a written evaluation for each Federal fiscal year of the effectiveness of its verification measures,

submit a copy of the evaluation to the FSA Regional Office by February 15 of the following Federal fiscal year, and submit any appropriate amendments to its title IV-A State plan. The evaluation must include an assessment of verification measures such as home visits, credit bureau inquiries, data matches with entitlement programs, in addition to those included in the State's Income and Eligibility Verification System (IEVS), or other similar measures implemented by States. Information and data gathered in connection with a corrective action plan prepared pursuant to 45 CFR 205.40 may be utilized in preparing this evaluation.

(d) *Federal financial participation.* Verification measures to detect fraudulent applications will be matched as administrative costs at a 50 percent rate.

[55 FR 18728, May 4, 1990; 55 FR 43343, Nov. 16, 1990]

§235.112 Optional AFDC Fraud Control Program.

(a) *Scope.* A State agency under title IV-A may elect to establish and operate a fraud control program pursuant to section 416 of the Act. A State agency electing this optional program is required to proceed against any individual member of a family regardless of AFDC payment status who it believes to have committed an intentional program violation as described in paragraph (b) of this section through a State administrative hearing or by referring the matter to the appropriate authorities for civil or criminal action in a State or Federal court. In proceeding against such an individual, the State agency must coordinate its actions with any corresponding actions being taken under the Food Stamp program where the factual issue arise from the same or related circumstances.

(b) *Definition of intentional program violation.* An intentional program violation is an action by an individual, for the purpose of establishing or maintaining the family's eligibility for AFDC or for increasing or preventing a reduction in the amount of the grant, which is intentionally:

(1) A false or misleading statement or misrepresentation, concealment, or withholding of facts, or

(2) Any act intended to mislead, misrepresent, conceal, or withhold facts or propound a falsity.

(c) *Disqualification penalties.* (1) An individual who, on the basis of a plea of guilty or nolo contendere or otherwise, is found to have committed an intentional program violation by a State administrative disqualification hearing pursuant to this section or by a State or Federal court will be treated in the following manner. The State agency shall not take the individual's needs into account when determining the assistance unit's need and amount of the assistance. Any resources and income of the disqualified individual will be considered available to the assistance unit. The individual's needs will not be taken into account for 6 months upon the first occasion of any such offense; 12 months upon the second occasion of any such offense; and permanently upon the third or a subsequent occasion of any such offense.

(2) *Duration of the penalty.* Any period for which a disqualification penalty is imposed shall remain in effect, without possibility of an administrative stay, unless and until the finding upon which the penalty was based is subsequently reversed by a court of appropriate jurisdiction but in no event shall the duration of the period for which such penalty is imposed be subject to review.

(3) *Applicability of the penalty.* A disqualification penalty imposed on an individual by one IV-A State agency may be used determining the appropriate disqualification penalty for the individual by another IV-A State agency. Where an individual with a prior violation(s) moves from one State to another and has been found to have committed an intentional program violation(s), the State agency may impose the penalty based on the number of such violations committed in other States. A State may establish interstate agreements with other States to share appropriate information.

In cases where a disqualification penalty and other sanctions or penalties apply:

(i) The disqualification penalties in this section shall be in addition to, and cannot be substituted for, any other sanctions or penalties which may be

imposed by law for the same offenses; and

(ii) The disqualification penalties imposed under this optional program only affect the individual concerned and cannot substitute for other sanctions under the AFDC program (e.g., failure to participate in JOBS or to cooperate in obtaining child support).

(d) *Notice requirements.* The State agency must provide all applicants with a written notice of the disqualification penalties for fraud under this section at the time of application. Individuals who are recipients on the date of approval of the State plan amendment implementing this optional program must be provided a written notice no later than the next redetermination for AFDC.

(e) *State plan requirements and budget information.* A State agency electing this optional program must operate such program in full compliance with section 416 of the Social Security Act and submit to the Department (with such revisions as may from time to time be necessary):

(1) A description of its fraud control program, and

(2) An initial budget estimate for the program.

(f) *Federal financial participation—(1) Allowable costs.* Federal financial participation (FFP) is authorized at the 50 percent reimbursement rate to a State agency with an approved plan to establish and operate a fraud control program pursuant to section 416 of the Social Security Act. All costs must adhere to cost principles found at OMB Circular No. A-87 (available from the Executive Office of the President, Publications Unit, room 2200, New Executive Office Building, 725 17th Street NW., Washington, DC 20503) and to cost allocation provisions found at §205.150 of this chapter.

(2) *Cost allocation.* Where common activities or efforts are undertaken in support of both the AFDC and Food Stamp programs, the cost allocation plan pursuant to §205.150 of this chapter must provide for a distribution of these costs to both programs.

[56 FR 64204, Dec. 9, 1991; 57 FR 1204, Jan. 10, 1992, as amended at 59 FR 12861, Mar. 18, 1994]

§ 235.113 Disqualification hearing procedures under optional AFDC fraud control.

(a) *Pre-hearing investigation requirement.* The State IV-A agency that had elected to establish and operate a fraud control program pursuant to section 416 of the Act must conduct an investigation of an allegation that an individual committed an intentional program violation.

(b) *Disqualification hearings.* (1) The State agency may consolidate an individual's fair hearing governed by § 205.10 with a disqualification hearing based on the same or related circumstances provided that the individual receives prior notice of the consolidation. Additionally, the State agency may designate the same hearing officer to preside at a consolidated hearing.

(2) The State agency may provide administration disqualification hearings at the local level in some or all of its subdivisions with a right to appeal to a State agency level de novo hearing.

(3)(i) The State agency shall provide a written notice to the individual alleged to have committed the program violation at least 30 days prior to the date of the disqualification hearing.

(ii) The advance written notice to the individual shall include the following items:

(A) The date, time and location of the hearing;

(B) The charge(s) against the individual;

(C) A summary of the evidence, and how and where the evidence can be examined;

(D) A warning that the individual's failure to appear without good cause will result in a decision by the hearing officer based solely on the information provided by the State agency at the hearing;

(E) A statement that the individual may request a postponement of the hearing provided that such request is made to the State agency at least 10 days in advance of the scheduled hearing;

(F) A statement that the individual will have 10 days from the date of the scheduled hearing to present to the State agency good cause for failure to appear in order to receive a new hearing;

(G) A description of the penalties that can result from a determination that the individual has committed an intentional program violation and a statement of which penalty is applicable to the individual;

(H) A statement that the hearing does not preclude the State government from prosecuting the individual for an intentional program violation in a civil or criminal court action, or from collecting and overpayment;

(I) A listing of individuals or organizations that provide free legal representation to individuals alleged to have committed intentional program violations;

(J) An explanation that the individual may waive his or her right to appear at an administrative disqualification hearing as provided in paragraph (c) below; and

(K) A statement of the accused individual's right to remain silent concerning the charge(s) and that anything said or signed by the individual concerning the charge(s) may be used against him or her in a court of law.

(4) The State agency will require the hearing officer to postpone the scheduled hearing at the individual's request provided that the request for postponement is made at least 10 days in advance of the date of the scheduled disqualification hearing. However, the hearing shall not be postponed for more than a total of 30 days, and the State agency may limit the number of postponements to one.

(5) A hearing shall be conducted by an impartial official of the agency who has not had previous involvement in the case.

(6) Medical assessments shall be obtained at agency expense and made part of the record if the hearing officer considers it necessary.

(7) The individual, or his representative, shall have adequate opportunity to:

(i) 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, and during the hearing;

(ii) Present his case himself or with the aid of an authorized representative;

(iii) Bring witnesses;

(iv) Establish all pertinent facts and circumstances;

(v) Advance any arguments without undue influence; and

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

(8) Decisions made by the hearing officer shall be based exclusively on evidence and other material introduced at the hearing. The transcript or recording of testimony, exhibits, or official reports introduced at the hearing, together with all papers and requests filed in the proceeding, and the decision of the hearing officer shall be made available to the individual or to his or her representative at a reasonable time and place.

(9) Decisions by the hearing officer shall:

(i) In the event of an evidentiary hearing, consist of a decision memorandum 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; and

(iii) Be made within 90 days of the date of the notice.

(10) The State agency may not disqualify an individual until the hearing officer finds that the individual has committed an intentional program violation. This does not mean, however, that the State agency is precluded from discontinuing, terminating, suspending, or reducing assistance, or changing the manner or form of payment to a protective, vendor, or two-party payment for other reasons. For example, in a State that requires monthly reporting, the State agency may have facts which substantiate that the unit failed to report a change in circumstances even though the State agency has not yet demonstrated that the failure to report was an intentional program violation.

(11) If the hearing officer finds that the individual committed an intentional program violation, the State agency shall provide a written notice to the individual prior to disqualification. The notice shall inform the individual of the decision and the reason

for the decision. In addition, the notice shall inform the individual of the period of disqualification (which shall begin no later than the first day of the second month which follows the date of notice), and the amount of payment the unit will receive during the disqualification period, and in cases of an individual's disqualification resulting from a prior receipt of assistance, the disqualification will be postponed until after a reapplication for AFDC assistance is approved.

(12) If a hearing officer at a local level disqualification hearing determines that an individual committed an intentional program violation, the notice of the local level hearing decision shall, in addition to the items described in paragraph (b)(11) of this section, inform the individual of the right to appeal the decision to the State agency within 15 days of the date of the notice.

(c) *Waiver of the administrative disqualification hearing.* (1) Each State agency may establish procedures to allow an accused individual to waive his or her right to appear at an administrative disqualification hearing.

(2) For State agencies that elect the option of allowing individuals to waive their rights to appear at an administrative disqualification hearing, the following procedures are required:

(i) The advance notice in paragraph (b)(3) of this section must include a statement that the individual may waive the right to appear at an administrative disqualification hearing.

(ii) This statement shall include, at a minimum:

(A) The date that the signed waiver must be received by the State agency and a signature block for the accused individual, along with a statement that the caretaker relative must also sign the waiver if the accused individual is not the caretaker relative, with an appropriately designated signature block;

(B) A statement of the accused individual's right to remain silent concerning the charge(s) and that anything said or signed by the individual concerning the charge(s) may be used against him or her in a court of law;

(C) The fact that waiver of the individual's right to appear at a disqualification hearing may result in a disqualification penalty and a reduction in the assistance payment for the appropriate period even if the accused individual does not admit to the facts as presented by the State agency; and

(D) An opportunity for the accused individual to specify whether or not he or she admits to the facts as presented by the State agency.

(3) When the individual waives his or her right to appear at a disqualification hearing, the disqualification and appropriate reduction of assistance shall result regardless of whether the individual admits or denies the charges. The State agency shall send a written notice informing the individual of the period of disqualification (which shall begin no later than the first day of the second month which follows the date of notice), and the amount of payment the unit will receive during the disqualification period. If an individual whose case has been terminated waives his disqualification hearing rights, the disqualification period shall be postponed until after a reapplication for AFDC assistance is approved.

(d) *Court actions on consent agreements.* (1) Each State agency may establish procedures to allow an accused individual to sign an agreement confirmed by a court in which he or she admits committing an intentional program violation.

(2) State agencies that allow an individual to sign such an agreement shall follow these procedures:

(i) The State agency shall enter into an agreement with its Attorney General's Office or, where necessary, with county prosecutors which provides for advance written notification to the accused individual of the consequences of signing such an agreement. The written notification shall include, at a minimum:

(A) A statement for the accused individual to sign that he or she understands the consequences of signing the agreement, along with a statement that the caretaker relative must also sign the agreement if the accused individual is not the caretaker relative;

(B) A statement that signing the agreement will result in a reduction in

payment for the appropriate period; and

(C) A statement of which disqualification period will be imposed as a result of the accused individual signing the agreement.

(ii) After the court confirms the agreement, the State agency shall provide a written notice to the individual which specifies the period of disqualification (which shall begin no later than the first day of the second month which follows the date of notice), and the amount of payment the unit will receive during the disqualification period. However, if the court specifies the date for initiating the disqualification period, the State agency shall disqualify the accused individual in accordance with the court order. If an individual whose case has been terminated signs a consent agreement, the disqualification period shall be postponed until after a reapplication for AFDC assistance is approved.

[56 FR 64205, Dec. 9, 1991; 57 FR 5048, Feb. 11, 1992]

PART 237—FISCAL ADMINISTRATION OF FINANCIAL ASSISTANCE PROGRAMS

AUTHORITY: Section 1102 of the Social Security Act (42 U.S.C. 1302); 49 Stat. 647, as amended.

§ 237.50 Recipient count, Federal financial participation.

Pursuant to the formulas in sections 3, 403, 1003, 1118, 1121, 1403, and 1603 of the Social Security Act, it is necessary to identify expenditures that may be included in claims for Federal financial participation. The quarterly statement of expenditures and recoveries which is required for OAA, AFDC, AB, APTD, and AABD must include, as a part of the basis for computing the amount of Federal participation in such expenditures, the number of eligible recipients each month. However, where the State is making claims under section 1118 of the Act or under optional provisions for Federal sharing specified in such paragraphs no recipient count is involved. Vendor payments for medical care may not be considered if the State has a plan approved under title XIX of