

activities. Such overissuances shall include but not be limited to: Overissuances to household accounts that are accessed and used by households, replacement benefits to a household's account due to unauthorized use of the benefits in a household's account, benefits drawn from an EBT account after the household has reported that the EBT card is lost or stolen to the State or its agent, overdraft situations due to the use of manual back-up procedures approved by the State agency, overcredits to a retailer account and transfer of funds to an illegitimate account.

(c) *Cash Losses.* State agencies are liable to FCS for cash losses when money collected by State agencies from recipient claims has been lost, stolen or otherwise not remitted to FCS in accordance with the provision of §273.18(h). The amount of such losses shall be determined from the sources outlined in paragraph (6) of this section.

(d) *State agency payment to FCS.* State agencies shall be billed for the exact amount of losses specified in this section. If a State agency fails to pay the billing, FCS shall offset the amount of loss from the State agency's Letter of Credit in accordance with §277.16(c).

(e) *Title IV reimbursements.* (1) State agencies shall be liable to FCS for the increased dollar value of coupon allotments resulting from providing households with an income exclusion for child support payments as described in §273.9(c)(12) based on one of the following methods:

(i) For each month the State agency grants the income exclusion to a household, the State agency shall reimburse FCS for the monthly difference between the household's benefit level which includes the exclusion and the benefit level the household would have received without the exclusion.

(ii) On a monthly basis, State agencies shall total the actual amount of income exclusion granted to affected households and shall reimburse FCS 30 percent of such total.

(2) The State agency shall utilize only one reimbursement method and that method shall be applied for determining a reimbursement amount for

all affected cases in the caseload. State agencies may switch from one method to the other on an annual basis, but not on a case-by-case basis.

(3) The State agency shall reimburse FCS through an adjustment to the Letter of Credit (LOC) unless it requests or has requested that it be allowed to pay by check. The reimbursement amount shall be reported quarterly on the Form FCS-209, Status of Claims Against Households, to be offset against LOC credit adjustments reported on that form. The State agency may request that FCS accept checks from the State for the amount due FCS. If a State agency fails to pay FCS the amount due as reported on the FCS-209, FCS shall offset the amount due from the State agency's Letter of Credit. The State agency shall maintain monthly records which detail the computation of reimbursement amounts reported on the Form FCS-209 for audit purposes.

[54 FR 7016, Feb. 15, 1989, as amended at 54 FR 51351, Dec. 15, 1989; 57 FR 11259, Apr. 1, 1992; 57 FR 44791, Sept. 29, 1992; Amdt. 342, 59 FR 2733, Jan. 19, 1994]

§276.3 Negligence or fraud.

(a) *General.* If FCS determines that there has been negligence or fraud on the part of the State agency in the certification of applicant households, the State agency shall, upon demand, pay to FCS a sum equal to the amount of coupons issued as a result of such negligence or fraud.

(b) *Negligence provisions.* (1) FCS may determine that a State agency has been negligent in the certification of applicant households if a State agency disregards Food Stamp Program requirements contained in the Food Stamp Act, the regulations issued pursuant to the Act, the FCS-approved State Plan of Operation and a loss of Federal funds results or a State agency implements procedures which deviate from food stamp requirements contained in the Food Stamp Act, the food stamp regulations, the FCS-approved State Plan of Operation without first obtaining FCS approval, and the implementation of the procedures results in a loss of Federal funds.

(2) In computing amounts of losses of Federal funds due to negligence, FCS

may use actual, documented amounts or amounts which have been determined through the use of statistically valid projections. When a statistically valid projection is used, the methodology will include a 95 percent, one-sided confidence level.

(3) FCS will base its determinations of negligence on information drawn from any of a number of sources. These information sources include, but are not limited to, State and Federal Performance Reporting reviews, State and Federal audits and investigations, State corrective action plans and any required reports.

(4) Failure by the State agency to remit payment upon demand, within the specified time period, may result in FCS recovering the lost funds through offsets to the State agency's Letter of Credit, in accordance with §277.16(c).

(c) *Fraud provisions.* For purposes of this subsection, the term fraud shall mean the wrongful acquisition or issuance of food coupons by the State agency or its officers, employees or agents, including issuance agents, through false representation or concealment of material facts. State agencies shall be liable to FCS for the amount of loss of Federal funds as a result of fraud. Failure by the State agency to remit payment on demand by FCS, within the time period specified, may result in offsets to the Letter of Credit in accordance with §277.16(c).

[Amdt. 168, 45 FR 77263, Nov. 21, 1980, as amended by Amdt. 262, 49 FR 50598, Dec. 31, 1984; Amdt. 356, 59 FR 29713, June 9, 1994]

§276.4 Suspension/disallowance of administrative funds.

(a) *General provisions.* (1) FCS shall make determinations of the efficiency and effectiveness of State agencies' administration of the Food Stamp Program in accordance with the provisions of §275.25. When making such determinations, FCS shall use all information that is available relating to State agencies' administration of the Program. This information includes, but is not limited to, information received from Performance Reporting System reviews, Federal reviews, audits, investigations, corrective action plans, financial management reviews, and the public.

(2) FCS may determine a State agency's administration of the Program to be inefficient or ineffective if the State agency fails to comply with the food stamp requirements established by the Food Stamp Act, the regulations issued pursuant to the Act, or the FCS-approved State Plan of Operation.

(3) If FCS determines that a State agency's administration of the Program is inefficient or ineffective, FCS may warn the State agency that a suspension and/or disallowance of administrative funds is being considered. After a State agency receives a warning, FCS may either suspend or disallow administrative funds or take both actions in sequence, depending on the statement in the warning.

(b) *Suspension.* A suspension of funds is an action by FCS to temporarily withhold all or a portion of the Federal share of one or more of the cost categories of a State agency's budget for administration of the Food Stamp Program. Suspensions of funds shall remain in effect until FCS determines that a State agency has taken adequate corrective action to correct the problem causing the suspension, in which event the suspension will be rescinded, or until FCS decides to disallow the suspended funds. FCS shall suspend funds in accordance with §277.16.

(c) *Disallowance.* (1) A disallowance of funds is an action by FCS in which reimbursement is denied for otherwise reimbursable administrative costs claimed by a State agency in one or more of the cost categories of a State agency's budget for Program administration.

(2) In accordance with §277.16, FCS has the option of disallowing funds in another cost category, or all or a portion of the entire Letter of Credit if the disallowance is based on a finding that the State agency failed to take a required action. FCS may disallow funds after previously suspending such funds or may disallow funds immediately following the expiration of the formal warning under the conditions specified in paragraph (e) of this section.

(d) *Warning process.* Prior to taking action to suspend or disallow Federal funds, except those funds which are disallowed when a State agency fails to