

(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 adhere to the cost principles of part 277 and appendix A, FCS shall provide State agencies with written advance notification that such action is being considered. If a State agency does not respond to such an advance notification to the satisfaction of FCS, FCS shall provide the State agency with a formal warning of the possibility of suspension or disallowance action. However, when a State agency fails to meet the objectives in a corrective action plan, FCS may omit the advance notification and immediately issue a formal warning.

(1) *Advance notification.* Immediately upon becoming aware that a deficiency or deficiencies in a State agency's administration of the Program may warrant the suspension and/or disallowance of Federal funds, FCS shall advise the State agency in writing of the deficiency and shall provide a specific period of time for correction of such deficiency or deficiencies. The time period allowed the State agency for corrective action will vary according to the nature of the deficiency.

(2) *Formal warning.* FCS shall issue a formal warning to a State agency if the State fails to correct to the satisfaction of FCS the deficiencies noted in an advance notification within the time

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specified in the advance notification. FCS may also issue a formal warning to a State agency without first issuing an advance notification if a State agency fails to comply with a corrective action plan.

(i) Formal warnings shall include the following information:

(A) Specific descriptions of the deficiencies, explaining how the State agency is out of compliance with Program requirements;

(B) A Statement as to whether Federal funds will be suspended, disallowed or both, if appropriate;

(C) The amount of Federal funds that will be suspended and/or disallowed or an estimate of the amount if actual cost are unavailable; and

(D) A statement of FCS' willingness to assist State agencies in resolving the deficiencies.

(ii) A State agency shall have 30 days from receipt of a formal warning to submit evidence that it is in compliance or to submit a corrective action proposal, including the date the State agency will be in compliance.

(iii) When the deficiency cannot be corrected within 30 days of receipt of a formal warning but the State agency submits an acceptable plan for correcting the deficiency, FCS shall hold the formal warning in abeyance pending completion of the actions contained in the plan within the time specified in the plan.

(iv) FCS shall cancel a formal warning when the State agency submits evidence that shows, to the satisfaction of FCS, that the deficiency has been eliminated.

(e) *Suspension/disallowance of funds.* The Administrator of FCS shall notify State agencies in writing by certified mail or through personal service that administrative funds are being suspended or disallowed. Such action may occur when any of the following situations arise:

(1) A State agency fails to respond to the deficiencies cited in a formal warning within 30 days of receiving the warning;

(2) The response by a State agency to the deficiencies cited in a formal warning is unsatisfactory to FCS; or

(3) A State agency fails to meet the commitments it made in its corrective

action proposal and a formal warning had been held in abeyance pending completion of that corrective action.

(f) *Appeals.* After FCS has taken action to disallow Federal funds the State agency may request an appeal in accordance with the procedures specified in § 276.7.

[Amdt. 168, 45 FR 77263, Nov. 21, 1980, as amended by Amdt. 266, 52 FR 3410, Feb. 4, 1987]

**§ 276.5 Injunctive relief.**

(a) *General.* If FCS determines that a State agency has failed to comply with the Food Stamp Act, the regulations issued pursuant to the Act, or the FCS-approved State Plan of Operations, the Secretary may seek injunctive relief against the State agency to require compliance. The Secretary may request injunctive relief concurrently with negligence billings and sanctions against State agencies affecting administrative funds.

(b) *Requesting injunctive relief.* Prior to seeking injunctive relief to require compliance, FCS shall notify the State agency of the determination of non-compliance and provide the State agency with a specific period of time to correct the deficiency. The Secretary shall have the discretion to determine the time periods State agencies will have to correct deficiencies. If the State agency does not correct the failure within the specified time period and the Department decides to seek injunctive relief, the Secretary shall refer the matter to the Attorney General with a request that injunctive relief be sought to require compliance.

[Amdt. 168, 45 FR 77263, Nov. 21, 1980]

**§ 276.6 Good cause.**

(a) When a State agency has failed to comply with provisions of the Act, the regulations issued pursuant to the Act, or the FCS-approved State Plan of Operation, and, thus, is subject to the suspension/disallowance and injunctive relief provisions in §§ 276.4 and 276.5, FCS may determine that the State had good cause for the noncompliance. FCS shall evaluate good cause in these situations on a case-by-case basis, based on any one of the following criteria: