

PART 200 [RESERVED]

PART 201—GRANTS TO STATES FOR PUBLIC ASSISTANCE PROGRAMS

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AUTHORITY: 42 U.S.C. 303, 603, 1203, 1301, 1302, 1316, 1353 and 1383 (note).

SOURCE: 35 FR 12180, July 29, 1970, unless otherwise noted.

§201.0 Scope and applicability.

Titles I, X, XIV and XVI (as in effect without regard to section 301 of the Social Security Amendments of 1972) shall continue to apply to Puerto Rico, the Virgin Islands, and Guam. The term *State* as used in such titles means Puerto Rico, the Virgin Islands, and Guam.

[39 FR 8326, Mar. 5, 1974]

§201.1 General definitions.

When used in this chapter, unless the context otherwise indicates:

(a) *Act* means the Social Security Act, and titles referred to are titles of that Act;

(b) *Department* means the Department of Health and Human Services;

(c) *Administrator* means the Administrator, Family Support Administration;

(d) *Secretary* means the Secretary of Health and Human Services;

(e) *Administration* means the Family Support Administration;

(f) *Regional Administrator* means the Regional Administrator of the Family Support Administration;

(g) *State* means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa. The term “State” with respect to American Samoa applies to the programs set forth in title IV-A and IV-F of the Act;

(h) *State agency* means the State agency administering or supervising the administration of the State plan or plans under title I, IV-A, IV-F, X, or XVI (AABD) of the Act;

(i) The terms *regional office* and *central office* refer to the regional offices and the central office of the Family Support Administration, respectively.

[35 FR 12180, July 29, 1970, as amended at 39 FR 34543, Sept. 26, 1974; 53 FR 36578, Sept. 21, 1988; 57 FR 30425, July 9, 1992]

Subpart A—Approval of State Plans and Certification of Grants

§201.2 General.

The State plan is a comprehensive statement submitted by the State agency describing the nature and scope of its program and giving assurance that it will be administered in conformity with the specific requirements stipulated in the pertinent title of the Act, the regulations in subtitle A and this chapter of this title, and other applicable official issuances of the Department. The State plan contains all information necessary for the Administration to determine whether the plan can be approved, as a basis for Federal financial participation in the State program.

[35 FR 12180, July 29, 1970, as amended at 53 FR 36578, Sept. 21, 1988]

§201.3 Approval of State plans and amendments.

The State plan consists of written documents furnished by the State to cover each of its programs under the Act: Old-age assistance (title I); aid and services to needy families with children (part A of title IV); aid to the blind (title X); aid to the permanently and totally disabled (title XIV); or aid to the aged, blind or disabled (title XVI). The State may submit the common material on more than one program as an integrated plan. However, it must identify the provisions pertinent to each title since a separate plan must be approved for each public assistance title. A plan submitted under title XVI encompasses, under a single plan, the programs otherwise covered by three separate plans under titles I, X, and XIV. After approval of the original plan by the Administration, all relevant changes, required by new statutes, rules, regulations, interpretations, and court decisions, are required to be submitted currently so that the Administration may determine whether the plan continues to meet Federal requirements and policies.

(a) *Submittal.* State plans and revisions of the plans are submitted first to the State governor or his designee for review in accordance with §204.1 of this chapter, and then to the regional office. The States are encouraged to obtain consultation of the regional staff when a plan is in process of preparation or revision.

(b) *Review.* Staff in the regional offices are responsible for review of State plans and amendments. They also initiate discussion with the State agency on clarification of significant aspects of the plan which come to their attention in the course of this review. State plan material on which the regional staff has questions concerning the application of Federal policy is referred with recommendations as required to the central office for technical assistance. Comments and suggestions, including those of consultants in specified areas, may be prepared by the central office for use by the regional staff in negotiations with the State agency.

(c) *Action.* The Regional Administrator, exercised delegated authority to take affirmative action on State

plans and amendments thereto on the basis of policy statements or precedents previously approved by the Administrator. The Administrator retains authority for determining that proposed plan material is not approvable, or that a previously approved plan no longer meets the requirements for approval, except that a final determination of disapproval may not be made without prior consultation and discussion by the Administrator with the Secretary. The Regional Administrator, or the Administrator formally notifies the State agency of the actions taken on State plans or revisions.

(d) *Basis for approval.* Determinations as to whether State plans (including plan amendments and administrative practice under the plans) originally meet or continue to meet, the requirements for approval are based on relevant Federal statutes and regulations. Guidelines are furnished to assist in the interpretation of the regulations.

(e) *Prompt approval of State plans.* Pursuant to section 1116 of the Act, the determination as to whether a State plan submitted for approval conforms to the requirements for approval under the Act and regulations issued pursuant thereto shall be made promptly and not later than the 90th day following the date on which the plan submittal is received in the regional office, unless the Regional Administrator, has secured from the State agency a written agreement to extend that period.

(f) *Prompt approval of plan amendments.* Any amendment of an approved State plan may, at the option of the State, be considered as a submission of a new State plan. If the State requests that such amendment be so considered the determination as to its conformity with the requirements for approval shall be made promptly and not later than the 90th day following the date on which such a request is received in the regional office with respect to an amendment that has been received in such office, unless the Regional Administrator, has secured from the State agency a written agreement to extend that period. In absence of request by a State that an amendment of an approved State plan shall be considered as a submission of a new State plan,

the procedures under § 201.6 (a) and (b) shall be applicable.

(g) *Effective date.* The effective date of a new plan may not be earlier than the first day of the calendar quarter in which an approvable plan is submitted, and with respect to expenditures for assistance under such plan, may not be earlier than the first day on which the plan is in operation on a statewide basis. The same applies with respect to plan amendments that provide additional assistance or services to persons eligible under the approved plan or that make new groups eligible for assistance or services provided under the approved plan. For other plan amendments the effective date shall be as specified in other sections of this chapter.

[35 FR 12180, July 29, 1970, as amended at 39 FR 34542, Sept. 26, 1974; 42 FR 43977, Sept. 1, 1977; 53 FR 36579, Sept. 21, 1988]

§ 201.4 Administrative review of certain administrative decisions.

Pursuant to section 1116 of the Act, any State dissatisfied with a determination of the Administrator pursuant to § 201.3 (e) or (f) with respect to any plan or amendment may, within 60 days after the date of receipt of notification of such determination, file a petition with the Regional Administrator, asking the Administrator for reconsideration of the issue of whether such plan or amendment conforms to the requirements for approval under the Act and pertinent Federal requirements. Within 30 days after receipt of such a petition, the Administrator shall notify the State of the time and place at which the hearing for the purpose of reconsidering such issue will be held. Such hearing shall be held not less than 30 days nor more than 60 days after the date notice of such hearing is furnished to the State, unless the Administrator and the State agree in writing on another time. For hearing procedures, see part 213 of this chapter. A determination affirming, modifying, or reversing the Administrator's original decision will be made within 60 days of the conclusion of the hearing. Action pursuant to an initial determination by the Administrator described in such § 201.3 (e) or (f) that a plan or amendment is not approvable

shall not be stayed pending the reconsideration, but in the event that the Administrator subsequently determines that his original decision was incorrect he shall certify restitution forthwith in a lump sum of any funds incorrectly withheld or otherwise denied.

[35 FR 12180, July 29, 1970, as amended at 42 FR 43977, Sept. 1, 1977; 53 FR 36579, Sept. 21, 1988]

§ 201.5 Grants.

To States with approved plans, grants are made each quarter for expenditures under the plan for assistance, services, training and administration. The determination as to the amount of a grant to be made to a State is based upon documents submitted by the State agency containing information required under the Act and such other pertinent facts, including title IV-A the appropriate Federal share of child support collections made by the State, as may be found necessary.

(a) *Form and manner of submittal.* (1) Time and place: The estimates for public assistance grants for each quarterly period must be forwarded to the regional office 45 days prior to the period of the estimate. They include a certification of State funds available and a justification statement in support of the estimates. A statement of quarterly expenditures and any necessary supporting schedules must be forwarded to the Department of Health and Human Services, Family Support Administration, not later than 30 days after the end of the quarter.

(2) Description of forms: "State Agency Expenditure Projection—Quarterly Projection by Program" represents the State agency's estimate of the total amount and the Federal share of expenditures for assistance, services, training, and administration to be made during the quarter for each of the public assistance programs under the Act. From these estimates the State and Federal shares of the total expenditures are computed. The State's computed share of total estimated expenditures is the amount of State and local funds necessary for the quarter. The Federal share is the basis for the funds to be advanced for the quarter. The

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State agency must also certify, on this form or otherwise, the amount of State funds (exclusive of any balance of advances received from the Federal Government) actually on hand and available for expenditure; this certification must be signed by the executive officer of the State agency submitting the estimate or a person officially designated by him, or by a fiscal officer of the State if required by State law or regulation. (A form "Certificate of Availability of State Funds for Assistance and Administration during Quarter" is available for submitting this information, but its use is optional.) If the amount of State funds (or State and local funds if localities participate in the program), shown as available for expenditures is not sufficient to cover the State's proportionate share of the amount estimated to be expended, the certification must contain a statement showing the source from which the amount of the deficiency is expected to be derived and the time when this amount is expected to be made available.

(3) The State agency must also submit a quarterly statement of expenditures for each of the public assistance programs under the Act. This is an accounting statement of the disposition of the Federal funds granted for past periods and provides the basis for making the adjustments necessary when the State's estimate for any prior quarter was greater or less than the amount the State actually expended in that quarter. The statement of expenditures also shows the share of the Federal Government in any recoupment, from whatever source, including for title IV-A the appropriate share of child support collections made by the State, of expenditures claimed in a prior period, and also in expenditures not properly subject to Federal financial participation which are acknowledged by the State agency, including the share of the Federal Government for uncashed and cancelled checks as described at 45 CFR 201.67 and replacement checks as described at 45 CFR 201.70 in this part, or which have been revealed in the course of an audit.

(b) *Review.* The State's estimates are analyzed by the regional office staff and are forwarded with recommenda-

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tions as required to the central office. The central office reviews the State's estimate, other relevant information, and any adjustments to be made for prior periods, and computes the grant.

(c) *Grant award.* The grant award computation form shows, by program, the amount of the estimate for the ensuing quarter, and the amounts by which the estimate is reduced or increased because of over- or under-estimate for the prior quarter and for other adjustments. This form is transmitted to the State agency to draw the amount of the grant award, as needed, to meet the Federal share of disbursements. The draw is through a commercial bank and the Federal Reserve system against a continuing letter of credit certified to the Secretary of the Treasury in favor of the State payee. A copy of the grant award notice is sent to the State Central Information Reception Agency in accord with section 201 of the Intergovernmental Cooperation Act of 1968.

(d) *Letter of credit payment system.* The letter of credit system for payment of advances of Federal funds was established pursuant to Treasury Department regulations (Circular No. 1075), published in the FEDERAL REGISTER on July 11, 1967 (32 FR 10201). The HEW "Instructions to Recipient Organizations for Use of Letter of Credit" was transmitted to all grantees by memorandum from the Assistant Secretary-Comptroller on January 15, 1968.

(e) *General administrative requirements.* With the following exceptions, the provisions of part 74 of this title, establishing uniform administrative requirements and cost principles, shall apply to all grants made to States under this part:

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Subpart G—Matching and Cost Sharing.

Subpart I—Financial Reporting Requirements.

[35 FR 12180, July 29, 1970, as amended at 38 FR 26320, Sept. 19, 1973; 46 FR 48003, Sept. 30, 1981; 53 FR 24269, June 28, 1988; 53 FR 36579, Sept. 21, 1988]

§ 201.6 Withholding of payment; reduction of Federal financial participation in the costs of social services and training.

(a) *When withheld.* Further payments to a State are withheld in whole or in part if the Administrator, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of an approved plan, finds:

(1) That the plan no longer complies with the provisions of section 2, 402, 1002, 1402, or 1602 of the Act; or

(2) That in the administration of the plan there is failure to comply substantially with any such provision.

A question of noncompliance of a State plan may arise from an unapprovable change in the approved State plan, the failure of the State to change its approved plan to conform to a new Federal requirement for approval of State plans, or the failure of the State in practice to comply with a Federal requirement, whether or not its State plan has been amended to conform to such requirement.

(b) *When the rate of Federal financial participation is reduced.* Under title I, X, XIV, or XVI (AABD) of the Act, Federal financial participation in the costs of social services and training approved at the rate of 75 per centum is reduced to 50 per centum if the Administrator, after reasonable notice and opportunity for a hearing to the State agency, finds:

(1) That the plan provision under such title for prescribed services no longer complies with the Federal requirements with respect to such prescribed services; or

(2) That in the administration of the plan there is a failure to comply substantially with such plan provision.

(c) *Information discussions.* Hearings with respect to matters under paragraph (a) or (b) of this section are generally not called, however, until after reasonable effort has been made by the Administration to resolve the questions involved by conference and discussion with State officials. Formal notification of the date and place of hearing does not foreclose further negotiations with State officials.

(d) *Conduct of hearings.* For hearing procedures, see part 213 of this chapter.

(e) *Notification of withholding.* If the Administrator makes a finding of non-compliance with respect to a matter under paragraph (a) of this section, the State agency is notified that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the plan not affected by such failure), until the Administrator is satisfied that there will no longer be any such failure to comply. Until he is so satisfied, no further payments will be made to the State (or will be limited to categories under or parts of the plan not affected by such failure).

(f) *Notification of reduction in the rate of Federal financial participation.* If the Administrator makes a finding of non-compliance with respect to a matter under paragraph (b) of this section, the State agency is notified that further payments will be made to the State at the rate of 50 per centum of the costs of services and training, until the Administrator is satisfied that there will no longer be any failure to comply.

[35 FR 12180, July 29, 1970, as amended at 39 FR 34542, Sept. 26, 1974; 53 FR 36579, Sept. 21, 1988]

§ 201.7 Judicial review.

Any State dissatisfied with a final determination of the Secretary pursuant to § 201.4 or § 201.6(a) may, within 60 days after it has been notified of such determination, file with the U.S. Court of Appeals for the circuit in which such State is located a petition for review of such determination. After a copy of the petition is transmitted by the clerk of the court to the Secretary, the Secretary thereupon shall file in the court the record of proceedings upon which such determination was based as provided in section 2112 of title 28, United States Code. The court is bound by the Secretary's findings of fact, if supported by substantial evidence. The court has jurisdiction to affirm the Secretary's decision, or set it aside in whole or in part, or, for good cause, to remand the case for additional evidence. If the case is remanded, the Secretary may thereupon make new or modified findings of fact, and may modify his previous determination. The Secretary shall certify to the court the transcript and record of the further

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proceedings. The judgment of the court is subject to review by the Supreme Court of the United States upon certiorari or certification as provided in 28 U.S.C. 1254.

Subpart B—Review and Audits

§ 201.10 Review of State and local administration.

(a) In order to provide a basis for determining that State agencies are adhering to Federal requirements and to the substantive legal and administrative provisions of their approved plans, the Administration conducts a review of State and local public assistance administration. This review includes analysis of procedures and policies of State and local agencies and examination of case records of individual recipients.

(b) Each State agency is required to carry out a continuing quality control program primarily covering determination of eligibility in statistically selected samples of individual cases. The Service conducts a continuing observation of these State systems.

(c) Adherence to other Federal requirements set forth in the pertinent titles of the Act and the regulations in this title is evaluated through review of selected case records and aspects of agency operations.

[35 FR 12180, July 29, 1970, as amended at 53 FR 36579, Sept. 21, 1988]

§ 201.11 Personnel merit system review.

A personnel merit system review is carried out by the Office of State Merit Systems of the Office of the Assistant Secretary for Administration of the Department. The purpose of the review is to evaluate the effectiveness of the State merit system relating to the public assistance programs and to determine whether there is compliance with Federal requirements in the administration of the merit system plan. See part 70 of this title.

§ 201.12 Public assistance audits.

(a) Annually, or at such frequencies as are considered necessary and appropriate, the operations of the State agency are audited by representatives of the Audit Agency of the Depart-

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ment. Such audits are made to determine whether the State agency is being operated in a manner that:

(1) Encourages prudent use of program funds, and

(2) Provides a reasonable degree of assurance that funds are being properly expended, and for the purposes for which appropriated and provided for under the related Act and State plan, including State laws and regulations.

(b) Reports of these audits are released by the Audit Agency simultaneously to program officials of the Department, and to the cognizant State officials. These audit reports relate the opinion of the Audit Agency on the practices reviewed and the allowability of costs audited at the State agency. Final determinations as to actions required on all matters reported are made by cognizant officials of the Department.

§ 201.13 Action on audit and review findings.

(a) If the audit results in no exceptions, the State agency is advised by letter of this result. The general course for the disposition of proposed exceptions resulting from audits involves the submittal of details of these exceptions to the State agency which then has an opportunity to concur in the proposed exceptions or to assemble and submit additional facts for purposes of clearance. Provision is made for the State agency to appeal proposed audit exceptions in which it has not concurred and which have not been deleted on the basis of clearance material. After consideration of a State agency's appeal by the Administrator, the Administration advises the State agency of any expenditures in which the Federal Government may not participate and requests it to include the amount as adjustments in a subsequent statement of expenditures. Expenditures in which it is found the Federal Government may not participate and which are not properly adjusted through the State's claim will be deducted from subsequent grants made to the State agency.

(b) If the Federal or State reviews reveal serious problems with respect to compliance with any Federal requirement, the State agency is required to

correct its practice so that there will be no recurrence of the problem in the future.

[35 FR 12180, July 29, 1970, as amended at 53 FR 36579, Sept. 21, 1988]

§ 201.14 Reconsideration under section 1116(d) of the Act.

(a) *Applicability.* This section applies to any disallowance of any item or class of items for which FFP is claimed under title I, IV, X, XIV, XVI(AABD), or XX of the Act, with respect to which reconsideration was requested prior to March 6, 1978, unless the State by filing a written notice to that effect with the Executive Secretary, Departmental Grant Appeals Board (with proof of service on the head of the constituent agency), within 30 days after mailing of the confirmation of the disallowance by the agency head, elects to have the reconsideration governed by 45 CFR part 16.

(1) Reduction of the Federal share of assistance payments under title IV-A, for failure to certify WIN registrants (section 402(e) of the Act);

(2) Reduction by one per centum of the quarterly amount payable to a State for all expenditures under title IV-A for failure, in certain cases, to carry out the provisions of section 402(a)(15) of the Act which require the offering of and arrangement for the provision of family planning services (section 402(f) of the Act);

(3)—(5) [Reserved]

(6) Any other decision pursuant to sections 3, 403, 422, 455, 1003, 1403, 1603, or 2003, of the Act.

(b) *Notice of disallowance determination.* (1) When the Regional Administrator, determines that a State claim for FFP in expenditures for a particular item or class of items is not allowable, he shall promptly issue a disallowance letter to the State.

(2) This disallowance letter shall include where appropriate:

(i) The date or dates on which the State's claim for FFP was made;

(ii) The time period during which the expenditures in question were made or claimed to have been made;

(iii) The date and amount of any payment or notice of deferral;

(iv) A statement of the amount of FFP claimed, allowed, and disallowed

and the manner in which these amounts were calculated;

(v) Findings of fact on which the disallowance determination is based or a reference to other documents previously or contemporaneously furnished to the State (such as a report of a financial review or audit) which contain the findings of fact on which the disallowance determination is based;

(vi) Pertinent citations to the law, regulations, guides and instructions supporting the action taken; and

(vii) Notice of the State's right to request reconsideration of the disallowance under this section and the time within such request must be made.

(c) *Request for reconsideration.* (1) To obtain reconsideration of a disallowance of an item or class of items for FFP, a State shall, within 30 days of the date of the disallowance letter, request reconsideration by the Administrator, with copy to the Regional Administrator, and enclose a copy of the disallowance letter.

(2) The request for reconsideration must be accompanied by a brief statement of the issues in dispute, including an explanation of the State's position with respect to each issue.

(d) *Reconsideration procedures.* (1) The Administrator will promptly acknowledge receipt of a State's request for reconsideration.

(2) Upon receipt of a copy of the request for reconsideration, the Regional Administrator, shall, within 30 days of the request, provide to the Administrator a complete record of all material which he believes to have a bearing on the reconsideration, including any reports of audit or review which were the basis for his decision.

(3) The Administrator shall promptly forward to the State a list of all items currently in the record, including those received from the Regional Administrator, or with respect to the medical assistance program under title XIX, Regional Medicaid Director and make available for examination, inspection and copying any such items not previously received by the State.

(4) Within 60 days from the date of the Administrator's transmittal to the State under paragraph (d)(3) of this

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section, the State shall submit in writing to the Administrator any new relevant evidence, documentation, or argument and shall simultaneously submit a copy thereof to the Regional Administrator, or with respect to the medical assistance program under title XIX, Regional Medicaid Director.

(5) The Regional Administrator, or with respect to the medical assistance program under title XIX, Regional Medicaid Director shall, within 60 days of submittal by the State, submit to the Administrator (with a copy to the State) an analysis of the issues relevant to the disallowance including:

- (i) A restatement of the findings on which the disallowance was based;
- (ii) A response to each issue raised by the State with respect to such findings;
- (iii) A response to any other issues raised by the State, providing additional documentation when necessary; and
- (iv) Any additional documentation which he deems relevant.

(6) The State may respond to the material submitted by the Regional Administrator, or with respect to the medical assistance program under title XIX, Regional Medicaid Director by submitting to the Administrator within 15 days any supplemental material the State wishes to have entered into the record.

(7) At the time of submitting any additional material pursuant to paragraph (d)(4), the State may obtain, upon request to him, a conference with the Administrator, during which it may discuss with the Administrator its position on the issues. The State may, at its own expense, have such conference transcribed; the transcript shall become part of the administrative record.

(8) In reconsidering the disallowance, the Administrator may request any additional information or documents necessary to his decision.

(9) New relevant evidence received into the record by the Administrator pursuant to paragraph (d)(8) of this section which is not received from, or previously otherwise made available to, the State shall promptly be made available to the State for examination, inspection, and copying and the State

will be given appropriate additional time for comment.

(10) All documents, reports, correspondence, and other materials considered by the Administrator in reaching his decision shall constitute the record of the reconsideration proceedings.

(11) After consideration of such record and the laws and regulations pertinent to the issues in question, the Administrator shall issue a written decision, based on the administrative record, which summarizes the facts and cites the regulations or statutes that support the decision. The decision shall constitute final administrative action on the matter and shall be promptly mailed to the head of the State agency.

(12) Either the state or the Regional Administrator, or with respect to the medical assistance program under title XIX, Regional Medicaid Director may request from the Administrator, for good cause, an extension of any of the time limits specified in this section.

(13) No section of this regulation shall be interpreted as waiving the Department's right to assert any provision or exemption in the Freedom of Information Act.

(e) *Implementation of the decision.* If the decision requires an adjustment in the Federal share, either upward or downward, this will be reflected in subsequent grant awards.

(f) For purposes of this section, the Administrator includes the Deputy Administrator, except that whichever official conducts the conference requested pursuant to paragraph (d)(7) of this section will also issue the final administrative decision pursuant to paragraph (d)(11) of this section.

APPENDIX—RECONSIDERATION OF DISALLOWANCES UNDER SECTION 1116 (D) OF THE SOCIAL SECURITY ACT

TRANSFER OF FUNCTIONS

Under the authority of Reorganization Plan No. 1 of 1953, and pursuant to the authorities vested in me as Secretary of Health and Human Services, I hereby order that, with respect to reconsiderations of disallowances imposed under titles I, IV, VI, X, XIV, XVI (AABD), XIX and XX of the Social Security Act, 42 U.S.C. 301 *et seq.*, 601 *et seq.*, 801 *et seq.*, 1201 *et seq.*, 1351 *et seq.*, 1381 *et seq.* (AABD), 1396 *et seq.* and 1397 *et seq.*, all references to "Administrator" appearing in 45

CFR 201.14 shall be deemed to read “Chairman, Departmental Grant Appeals Board” and all references to “Deputy Administrator” appearing therein shall be deemed to refer to one or more members of the Departmental Grant Appeals Board, designated by the Chairman to decide a reconsideration. States which have previously had or requested a conference pursuant to 45 CFR 201.14(d)(7) will be entitled to a conference with the Chairman of the Departmental Grant Appeals Board acting (as provided above) as successor to the Administrator of the Social and Rehabilitation Service (SRS), or with a member or members of the Board designated by the Chairman to decide the matter, acting as successor to the Deputy Administrator of SRS. The Chairman may, at his option, utilize a Grant Appeals Panel, designated pursuant to 45 CFR 516.4(b), to decide the matter, and may supplement the § 201.14 procedures by utilizing the procedures of 45 CFR part 16 including the authority provided in 45 CFR 16.51 to waive or modify any procedural provision upon a determination that no party will be prejudiced and that the ends of justice will be served.

[40 FR 34592, Aug. 18, 1975; 40 FR 44326, Sept. 26, 1975, as amended at 41 FR 42205, Sept. 27, 1976; 42 FR 43977, Sept. 1, 1977; 42 FR 51583, Sept. 29, 1977; 43 FR 9266, Mar. 6, 1978; 51 FR 9202, Mar. 18, 1986; 53 FR 36579, Sept. 21, 1988]

§ 201.15 Deferral of claims for Federal financial participation.

(a) *Scope.* Except as otherwise provided, this section applies to all claims for Federal financial participation submitted by States pursuant to titles I, IV, X, XIV, XVI (AABD), of the Social Security Act.

(b) *Definitions.* (1) *Deferral Action* means the process of suspending payment with respect to a claim within the scope of paragraph (a) of this section, pending the receipt and analysis of further information relating to the allowability of the claim, under the procedures specified in this section.

(2) *Deferred claim* means a claim within the scope of paragraph (a) of this section upon which a deferral action has been taken.

(c) *Procedures.* (1) A claim or any portion of a claim for reimbursement for expenditures reported on the Quarterly Statement of Expenditures shall be deferred only when the Regional Administrator believes the claim or a specific portion of the claim is of questionable allowability. The deferral action will be taken within 60 days after receipt of

a Quarterly Statement of Expenditures prepared in accordance with instructions issued by the Administration.

(2) When deferral action is taken on a claim, the Regional Administrator or the Administrator will within 15 days send written notice to the State identifying the type and amount of the claim and the reason for deferral. In the written notice of the deferral action, the Regional Administrator or the Administrator will request the State to make available for inspection all documents and materials which the Regional office then believes necessary to determine the allowability of the claim.

(3) Within 60 days of receipt of the notice of deferral action described in paragraph (c)(2) of this section the State shall make available to the Regional office, in readily reviewable form, all requested documents and materials, or when necessary, shall identify those documents and items of information which are not available. If the State requires additional time to make the documents and material available, it shall upon request be given an additional 60 days.

(4) The Regional office will normally initiate the review within 30 days of the date that materials become available for review.

(5) If the Regional Administrator finds that the documents and materials are not in readily reviewable form or that supplemental information is required, he will promptly notify the State. The State will have 15 days from the date of notification to complete the action requested. If the Regional Commissioner or the Administrator finds that the documents necessary to determine the allowability of the claim are not made available within the allowed time limits, or that the documents are not made available in readily reviewable form, he shall promptly disallow the claim.

(6) The Regional Administrator or the Administrator will have 90 days after all documentation is available in readily reviewable form to determine the allowability of the deferred claim. If he is unable to complete the review within the time period the claim will be paid subject to a later determination of allowability.

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(7) It is the responsibility of the State agency to establish the allowability of a deferred claim.

(8) The Regional Office or the Administrator will notify the State in writing of the decision on the allowability of the deferred claim.

(9) If a deferred claim is disallowed, the Regional Administrator or the Administrator shall advise the State of its right to reconsideration pursuant to § 201.14.

(10) A decision to pay a deferred claim shall not preclude a subsequent disallowance as a result of an audit exception or financial management review. If a subsequent disallowance should occur, the State, upon request shall be granted reconsideration pursuant to § 201.14.

[41 FR 7104, Feb. 17, 1976, as amended at 42 FR 51583, Sept. 29, 1977; 47 FR 7669, Feb. 22, 1982; 53 FR 36579, Sept. 21, 1988]

§ 201.66 Repayment of Federal funds by installments.

(a) *Basic Conditions.* When a State has been reimbursed Federal funds for expenditures claimed under titles I, IV-A, X, XIV, XVI (AABD) which are later determined to be unallowable for Federal financial participation, the State may make repayment of such Federal funds in installments provided:

(1) The amount of the repayment exceeds 2½ percent of the estimated annual State share for the program in which the unallowable expenditure occurred as set forth in paragraph (b) of this section; and

(2) The State has notified the Regional Administrator in writing of its intent to make installment repayments. Such notice must be given prior to the time repayment of the total was otherwise due.

(b) *Criteria governing installment repayments.* (1) The number of quarters over which the repayment of the total unallowable expenditures will be made will be determined by the percentage the total of such repayment is of the estimated State share of the annual expenditures for the specific program against which the recovery is made, as follows:

Total repayment amount as percentage of State share of annual expenditures for the specific program	Number of quarters to make repayment
2.5 pct. or less	1
Greater than 2.5, but not greater than 5	2
Greater than 5, but not greater than 7.5	3
Greater than 7.5, but not greater than 10	4
Greater than 10, but not greater than 15	5
Greater than 15, but not greater than 20	6
Greater than 20 but not greater than 25	7
Greater than 25, but not greater than 30	8
Greater than 30, but not greater than 47.5	9
Greater than 47.5, but not greater than 65	10
Greater than 65, but not greater than 82.5	11
Greater than 82.5, but not greater than 100	12

The quarterly repayment amounts for each of the quarters in the repayment schedule shall not be less than the following percentages of the estimated State share of the annual expenditures for the program against which the recovery is made.

For each of the following quarters	Repayment installment may not be less than these percentages
1 to 4	2.5
5 to 8	5.0
9 to 12	17.5

If the State chooses to repay amounts representing higher percentages during the early quarters, any corresponding reduction in required minimum percentages would be applied first to the last scheduled payment, then to the next to the last payment, and so forth as necessary.

(2) The latest State Agency Statement of Financial Plan for AFDC submitted by the State shall be used to estimate the State's share of annual expenditures for the specific program in which the unallowable expenditures occurred. That estimated share shall be the sum of the State's share of the estimates (as shown on the latest State Agency Statement of Financial Plan for AFDC) for four quarters, beginning with the quarter in which the first installment is to be paid.

(3) In the case of a program terminated by law or by the State, the actual State share—rather than the estimate—shall be used for determining whether the amount of the repayment exceeds 2½% of the annual State share for the program. The annual State

share in these cases will be determined using payments computable for Federal funding as reported for the program by the State on its Quarterly Statement of Expenditures reports submitted for the last four quarters preceding the date on which the program was terminated.

(4) Repayment shall be accomplished through adjustment in the quarterly grants over the period covered by the repayment schedule.

(5) The amount of the repayment for purpose of paragraphs (a) and (b) of this section may not include any amount previously approved for installment repayment.

(6) The repayment schedule may be extended beyond 12 quarterly installments if the total repayment amount exceeds 100% of the estimated State share of annual expenditures. In these circumstances, the criteria in paragraphs (b) (1) and (2) or (3) of this section, as appropriate, shall be followed for repayment of the amount equal to 100% of the annual State share. The remaining amount of the repayment shall be in quarterly amounts not less than those for the 9th through 12th quarters.

(7) The amount of a retroactive claim to be paid a State will be offset against any amounts to be, or already being, repaid by the State in installments, under the same title of the Social Security Act. Under this provision the State may choose to:

(i) Suspend payments until the retroactive claim due the State has, in fact, been offset; or

(ii) Continue payments until the reduced amount of its debt (remaining after the offset), has been paid in full. This second option would result in a shorter payment period. A retroactive claim for the purpose of this regulation is a claim applicable to any period ending 12 months or more prior to the beginning of the quarter in which the payment is to be made by the Administration.

[42 FR 28884, June 6, 1977, as amended at 47 FR 7669, Feb. 22, 1982; 52 FR 273, Jan. 5, 1987; 53 FR 36579, Sept. 21, 1988]

§ 201.67 Treatment of uncashed or cancelled checks.

(a) *Purpose.* This section provides the rules to ensure that States refund the Federal portion of uncashed or cancelled (voided) checks under titles I, IV-A, X, XIV, and XVI (AABD).

(b) *Definitions.* As used in this section—*Check* means a check or warrant that the State or local agency uses to make a payment.

Cancelled (voided) check means a check issued by the State agency or local agency which prior to its being cashed is cancelled (voided) by State or local agency action, thus preventing disbursement of funds.

Uncashed check means a check issued by the State agency or local agency which has not been cashed by the payee.

(c) *Refund of Federal financial participation (FFP) for uncashed checks—(1) General provisions.* If a check remains uncashed beyond a period of 180 days from the date it was issued, i.e., the date of the check, it will no longer be regarded as an amount expended because no funds have actually been disbursed. If the State agency has claimed and received FFP for the amount of the uncashed check, it must refund the amount of FFP received.

(2) *Report of refund.* At the end of each calendar quarter, the State agency must identify those checks which remain uncashed beyond a period of 180 days after issuance. The State agency must report on the Quarterly Statement of Expenditures for that quarter all FFP that it received for uncashed checks. Once reported on the Quarterly Statement of Expenditures for a quarter, an uncashed check is not to be reported on a subsequent Quarterly Statement of Expenditures. If an uncashed check is cashed after the refund is made, the State agency may submit a new claim for FFP.

(d) *Refund of FFP for cancelled (voided) checks—(1) General provisions.* If the State agency has claimed and received FFP for the amount of a cancelled (voided) check, it must refund the amount of FFP received.

(2) *Report of refund.* At the end of each calendar quarter, the State agency must identify those checks which were cancelled (voided). The State

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agency must report on the Quarterly Statement of Expenditures for that quarter all FFP received by the State agency for these checks. Once reported on the Quarterly Statement of Expenditures for a quarter, a cancelled (voided) check is not to be reported on a subsequent Quarterly Statement of Expenditures.

[50 FR 37661, Sept. 17, 1985]

§ 201.70 Treatment of replacement checks.

(a) *Purpose.* This section provides the rules to ensure States do not claim Federal financial participation (FFP) for replacement checks under titles I, VI-A, X, XIV XVI (AABD) except under the circumstances specified in paragraph (c) of this section.

(b) *Definitions.* As used in this section—

Check means a check or warrant that the State or local agency uses to make a payment.

Replacement check means a check issued by the State or local agency to replace an earlier check.

(c) *Claiming of FFP for replacement checks.* The State agency may not claim FFP for the amount of a replacement check unless:

(1) It makes no claim for FFP for the earlier check;

(2) The earlier check has been cancelled (voided) and FFP refunded, where claimed, pursuant to 45 CFR 201.67(d); or

(3) The earlier check has been cashed and FFP has been refunded.

The State agency shall report the amount of the refund of FFP for the earlier check on the Quarterly Statement of Expenditures for the quarter no later than the quarter in which the replacement check is issued.

[53 FR 24269, June 28, 1988]

PART 204—GENERAL ADMINISTRATION—STATE PLANS AND GRANT APPEALS

Sec.

204.1 Submittal of State plans for Governor's review.

204.2 State plans—format.

204.3 Responsibilities of the State.

204.4 Grant appeals.

45 CFR Ch. II (10–1–00 Edition)

AUTHORITY: 42 U.S.C. 602(a)(44) and 1302 and sections 1, 5, 6, and 7 of Reorganization Plan No. 1 of 1953, 67 Stat. 631.

§ 204.1 Submittal of State plans for Governor's review.

A State plan under title I, IV-A, IV-B, X, XIV, XVI(AABD) of the Social Security Act, section 101 of the Rehabilitation Act of 1973, or title I of the Mental Retardation Facilities and Community Mental Health Centers Construction Act, must be submitted to the State Governor for his review and comments, and the State plan must provide that the Governor will be given opportunity to review State plan amendments and long-range program planning projections or other periodic reports thereon. This requirement does not apply to periodic statistical or budget and other fiscal reports. Under this requirement, the Office of the Governor will be afforded a specified period in which to review the material. Any comments made will be transmitted to the Family Support Administration with the documents.

(Sec. 1102, 49 Stat. 647 (42 U.S.C. 1302))

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

§ 204.2 State plans—format.

State plans for Federally-assisted programs for which the Family Support Administration has responsibility must be submitted to the Administration in the format and containing the information prescribed by the Administration, and within time limits set in implementing instructions issued by the Administration. Such time limits will be adequate for proper preparation of plans and submittal in accordance with the requirements for State Governors' review (see § 204.1 of this chapter).

(Sec. 1102, 49 Stat. 647, 42 U.S.C. 1302; sec. 7(b), 68 Stat. 658, 29 U.S.C. 37(b); sec. 139, 84 Stat. 1323, 42 U.S.C. 2677(b))

[38 FR 16872, June 27, 1973, as amended at 53 FR 36579, Sept. 21, 1988]

§ 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,