

Supplemental Security Income in the previous year. FNS reserves the right to use data from the American Community Survey (ACS) in lieu of the CPS, and to use the count of people below 130 percent of poverty, should these data become available in a timely fashion and prove more accurate. Such a substitution would apply to all States.

(4) *Application processing timeliness.* FNS will divide \$6 million among the 6 States with the highest percentage of timely processed applications.

(i) *Data.* FNS will use quality control data to determine each State's rate of application processing timeliness.

(ii) *Timely processed applications.* A timely processed application is one that provides an eligible applicant the "opportunity to participate" as defined in § 274.2 of this chapter, within thirty days for normal processing or 7 days for expedited processing. New applications that are processed outside of this standard are untimely for this measure, except for applications that are properly pending in accordance with § 273.2(h)(2) of this chapter because verification is incomplete and the State agency has taken all the actions described in § 273.2(h)(1)(i)(C) of this chapter. Such applications will not be included in this measure. Applications that are denied will not be included in this measure.

(iii) *Evaluation of applications.* Only applications that were filed on or after the beginning of the performance measurement (fiscal) year will be evaluated under this measure.

[70 FR 6322, Feb. 7, 2005]

PART 276—STATE AGENCY LIABILITIES AND FEDERAL SANCTIONS

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EDITORIAL NOTE: OMB control numbers relating to this part 276 are contained in § 271.8.

§ 276.1 Responsibilities and rights.

(a) *Responsibilities.* (1) State agencies shall be responsible for establishing and maintaining secure control over coupons and cash for which the regulations designate them accountable. Except as otherwise provided in these regulations, any shortages or losses of coupons and cash shall strictly be a State agency liability and the State agency shall pay to FNS, upon demand, the amount of the lost or stolen coupons or cash, regardless of the circumstances.

(2) State agencies shall be responsible for preventing losses or shortages of Federal funds in the issuance of benefits to households participating in the Program. FNS shall strictly hold State agencies liable for all losses, thefts and unaccounted shortages that occur during issuance, unless otherwise specified. Issuance functions begin with the State agency's creation of a record-for-issuance to generate each month's issuances from the master issuance file. Shortages or losses which result from any functions that occur prior to the creation of the record-for-issuance are subject to either paragraph (a)(3) of this section or subpart C—Quality Control (QC) Reviews, of part 275—Performance Reporting System.

(3) State agencies shall be responsible for preventing losses of Federal funds in the certification of households for participation in the Program. If FNS makes a determination that there has been negligence or fraud on the part of a State agency in the certification of households for participation in the Program, FNS is authorized to bill the State agency for an amount equal to the amount of coupons issued as a result of the negligence or fraud.

(4) State agencies shall be responsible for efficiently and effectively administering the Program by complying with the provisions of the Act, the regulations issued pursuant to the Act, and the FNS-approved State Plan of Operation. A determination by FNS that a State agency has failed to comply with any of these provisions may result in FNS seeking injunctive relief to compel compliance and/or a suspension or disallowance of the Federal share of the State agency's administrative funds. FNS has the discretion to

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determine in each instance of non-compliance, whether to seek injunctive relief or to suspend or disallow administrative funds. FNS may seek injunctive relief *and* suspend or disallow funds simultaneously or in sequence.

(b) *Rights.* State agencies may appeal all claims brought against them by FNS and shall be afforded an administrative review by a designee of the Secretary as provided in §276.7. State agencies may seek judicial review of any final administrative determination made by the Secretary's designee, as provided in §276.7(j).

[54 FR 7016, Feb. 15, 1989]

§276.2 State agency liabilities.

(a) *General provisions.* Notwithstanding any other provision of this subchapter, State agencies shall be responsible to FNS for any financial losses involved in the acceptance, storage and issuance of coupons. All coupon issuance shall be documented, and the State agency shall make available to the Department all primary documentation (or secondary, if the primary has been inadvertently destroyed) when required to do so. State agencies shall pay to FNS, upon demand, the amount of any such losses.

(b) *Coupon shortages, losses, unauthorized issuances, overissuances and undocumented issuances.* (1) State agencies shall be strictly liable for:

(i) Coupon shortages and losses that occur any time after coupons have been accepted by receiving points within the State and that occur during storage or the movement of coupons between bulk storage point issuers and claims collection points within the State;

(ii) Losses resulting from authorization documents lost in transit from a manufacturer to the State agency and untransacted authorization documents lost in transit from an issuer to the State agency; and

(iii) The value of coupons overissued and coupons issued without authorization, except for those duplicate issuances in the correct amount that are the result of replacement issuances made in accordance with §274.6. Overissuances and unauthorized issuances for which State agencies are liable include, but are not limited to: Single unmatched issuances, duplicates

made that are not in accordance with §274.6, and transacted authorization documents that are altered, counterfeit, from out-of-State or expired (including those unsigned by the designated household member and/or not date stamped by the issuer).

(2) Coupon shortages and/or losses for which State agencies shall be held strictly liable include, but are not limited to, the following:

(i) Thefts;

(ii) Embezzlements;

(iii) Cashier errors (e.g., errors by the personnel of issuance offices in the counting of coupon books);

(iv) Coupons lost in natural disasters if a State agency cannot provide reasonable evidence that the coupons were destroyed and not redeemed;

(v) Issuances which cannot be supported by the required documentation;

(vi) Issuances made to households not currently certified;

(vii) Issuance loss during an official investigation, unless the investigation was reported *directly* to FNS prior to the loss; and

(viii) Unexplained causes.

(3) State agencies shall submit written reports on significant losses unless those losses were investigated by the Office of the Inspector General, USDA.

(4) A State agency shall be held strictly liable for mail issuance losses that are in excess of the tolerance level that corresponds to the preselected reporting unit. Each State agency shall select one of the three following units annually and report the selection as provided in §§272.2(a)(2) and 272.2(d)(1)(iii). Where reporting units issue less than \$300,000 in mail issuance in a quarter, the State agency shall be liable for all losses in excess of \$1,500 for the quarter.

(i) If a State agency elects to report and have liabilities based on an existing county or project area level of mail issuance, then the State agency shall be strictly liable to FNS for the value of all mail issuance losses in excess of five-tenths (.5) percent of the dollar value of each reporting unit's quarterly mail issuance. This level shall be used if the State agency does not designate one of the three levels herein by May 15, 1989, and by August 15 in years thereafter.