

## Food and Nutrition Service, USDA

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of the plans through management evaluations, State agency reports submitted under this part, audits, and through other available means.

(6) FNS may expand plan requirements for individual State agencies in order to address specific administrative deficiencies which affect compliance with program requirements and which have been identified by FNS through its monitoring activities.

(c) *Amendments to the administrative plan.* A State agency may amend its plan at any time to reflect changes in funding or activities, except that, if such changes are substantive as defined in the June 5, 1997 guidance, and any amendments or updates to this guidance, the State agency shall amend its plan in accordance with guidance provided by FNS. Plan amendments shall provide information in a format consistent with that provided in the State agency's plan, but shall only require FNS approval if it results in a substantive change as defined by FNS.

(d) *Reallocation of funds.* Annually, between March 1 and May 1 on a date specified by FNS, of each year, each State agency shall submit to FNS a State Administrative Expense Funds Reallocation Report (FNS-525) on the use of SAE funds. At such time, a State agency may release to FNS any funds that have been allocated, reallocated or transferred to it under this part or may request additional funds in excess of its current grant level. Based on this information or on other available information, FNS shall reallocate, as it determines appropriate, any funds allocated to State agencies in the current fiscal year which will not be expended in the following fiscal year and any funds carried over from the prior fiscal year which will not be expended in the current fiscal year. Reallocated funds shall be made available for payment to a State agency upon approval by FNS of the State agency's amendment to the base year plan which covers the reallocated funds, if applicable. Notwithstanding any other provision of this part, a State agency may, at any time, release to FNS for reallocation any funds that have been allocated, reallocated or transferred to it under this part and are not needed to implement its approved plan under this section.

(e) *Return of funds.* (1) In Fiscal Year 1991, up to 25 per cent of the SAE funds allocated to each State agency under § 235.4 may remain available for obligation and expenditure in the second fiscal year of the grant. In subsequent fiscal years, up to 20 percent may remain available for obligation and expenditure in the second fiscal year. The maximum amount to remain available will be calculated at the time of the formula allocation by multiplying the appropriate percentage by each State agency's formula allocation as provided under § 235.4(a) through (c). At the end of the first fiscal year, the amount subject to the retention limit is determined by subtracting the amount reported by the State agency as Total Federal share of outlays and unliquidated obligations on the fourth quarter Standard Form (SF) 269, Financial Status Report, from the total amount of SAE funds made available for that fiscal year (i.e., the formula allocation adjusted for any transfers or reallocations). However, funds provided under § 235.4(d) are not subject to the retention limit. Any funds in excess of the amount that remains available to each State agency shall be returned to FNS.

(2) At the end of the fiscal year following the fiscal year for which funds were allocated, each State agency shall return any funds made available which are unexpended.

(3) Return of funds by the State agency shall be made as soon as practicable, but in any event, not later than 30 days following demand by FNS.

[Amdt. 14, 51 FR 27151, July 30, 1986, as amended by Amdt. 17, 55 FR 1378, Jan. 16, 1990; 60 FR 15462, Mar. 24, 1995; 64 FR 50743, Sept. 20, 1999]

### § 235.6 Use of funds.

(a) Funds allocated under this part and 7 CFR part 225 shall be used for State agency administrative costs incurred in connection with the programs governed by 7 CFR parts 210, 215, 220, 225, 226, and 250 of this title. Except as provided under § 235.6(c), funds allocated under § 235.4, paragraphs (a) and (b) and 7 CFR part 225 shall be used for

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the program(s) for which allocated, except that the State agency may transfer funds allocated for any such program(s) to other such program(s). Subject to the provisions of this paragraph, a State agency may also transfer SAE funds that are not needed to implement its approved plan § 235.5(b) to another State agency within the State that is eligible to receive SAE funds under this part. Up to 25 per cent of funds allocated under § 235.4(a) through (c) for Fiscal Year 1991 and up to 20 per cent of funds allocated in subsequent fiscal years to a State agency may, subject to the provisions of § 235.5 of this part, remain available for obligation and expenditure by such State agency during the following fiscal year.

(a-1) State administrative expense funds paid to any State may be used by State agencies to pay salaries, including employee benefits and travel expenses for administrative and supervisory personnel, for support services, for office equipment, and for staff development, particularly for monitoring and training of food service personnel at the local level in areas such as food purchasing and merchandizing. Such funds shall be used to employ additional personnel, as approved in the applicable State plan to supervise, improve management, and give technical assistance to school food authorities and to institutions in their initiation, expansion, and conduct of any programs for which the funds are made available. State agencies may also use these funds for their general administrative expenses in connection with any such programs, including travel and related expenses. Additional personnel or part-time personnel hired are expected to meet professional qualifications and to be paid at salary scales of positions of comparable difficulty and responsibility under the State agency. Personnel may be used on a staff year equivalent basis, thus permitting new personnel and existing staff to be cross-utilized for most effective and economical operation under existing and new programs.

(a-2) State Administrative Expense Funds paid to any State agency under § 235.4(b)(3) shall be available for reviews conducted under § 210.18 activities associated with carrying out ac-

tions to ensure adherence to the program performance standards.

(b) State administrative expense funds shall be used consistent with the cost principles and constraints on allowable and unallowable costs and indirect cost rates as prescribed in Office of Management and Budget Circular A-87.

(c) In addition to State Administrative Expense funds made available specifically for food distribution purposes under § 235.4 (b)(2) and (b)(4), State Administrative Expense funds allocated under § 235.4 (a)(1), (a)(2), (b)(1), (b)(3), and (d), and under (b)(4) for the Child and Adult Care Food Program may be used to assist in the administration of the Food Distribution Program (7 CFR part 250) in schools and institutions which participate in programs governed by parts 210, 220, and 226 of this title when such Food Distribution Program is administered within the State agency and may also be used to pay administrative expenses of a distributing agency, when such agency is other than the State agency and is responsible for administering all or part of such Food Distribution Program.

(d) FNS shall allocate, for the purpose of providing grants on an annual basis to public entities and private nonprofit organizations participating in projects under section 18(c) of the National School Lunch Act, not more than \$4,000,000 in each of Fiscal Years 1993 and 1994. Subject to the maximum allocation for such projects for each fiscal year, at the beginning of each of Fiscal Years 1993 and 1994, FNS shall allocate, from funds available under § 235.5(d) that have not otherwise been allocated to States, an amount equal to the estimates by FNS of the funds to be returned under paragraph (a) of this section, but not less than \$1,000,000 in each fiscal year. To the extent that amounts returned to FNS are less than estimated or are insufficient to meet the needs of the projects, FNS may allocate amounts to meet the needs of the projects from funds available under this section that have not been otherwise allocated to States. FNS shall reallocate any of the excess funds above the minimum level in accordance with § 235.5(d).

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(e) Where State Administrative Expense Funds are used to acquire personal property or services the provisions of §§ 235.9 and 235.10 must be observed.

(f) Each State agency shall adequately safeguard all assets and assure that they are used solely for authorized purposes.

(g) Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property provided under this part, whether received directly or indirectly from the Department, shall:

(1) If such funds, assets, or property are of a value of \$100 or more, be fined not more than \$25,000 or imprisoned not more than five years or both; or

(2) If such funds, assets, or property are of a value of less than \$100, be fined not more than \$1,000 or imprisoned not more than one year or both.

(h) Whoever receives, conceals, or retains to his use or gain funds, assets, or property provided under this part, whether received directly or indirectly from the Department, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud, shall be subject to the same penalties provided in paragraph (h) of this section.

(i) *Full use of Federal funds.* States and State agencies must support the full use of Federal funds provided to State agencies for the administration of Child Nutrition Programs, and exclude such funds from State budget restrictions or limitations including hiring freezes, work furloughs, and travel restrictions.

(Sec. 14, Pub. L. 95-166, 91 Stat. 1338, 1339, 1340 (42 U.S.C. 1751, 1753, 1759a, 1761, 1766, 1772-1775, 1776, 1786); sec. 7(a), Pub. L. 95-627, 92 Stat. 3621, 3622 (42 U.S.C. 1751, 1776))

[41 FR 32405, Aug. 3, 1976, as amended at 43 FR 37172, Aug. 22, 1978; 44 FR 37901, June 29, 1979; 44 FR 48958, Aug. 21, 1979; 44 FR 51185, Aug. 31, 1979; 45 FR 3566, Jan. 18, 1980; Amdt. 11, 48 FR 27892, June 17, 1983; Amdt. 14, 51 FR 27152, July 30, 1986; 56 FR 32949, July 17, 1991; 60 FR 15462, Mar. 24, 1995; 60 FR 57148, Nov. 14, 1995; 64 FR 50744, Sept. 20, 1999; 76 FR 37983, June 29, 2011]

### § 235.7 Records and reports.

(a) Each State agency shall keep records on the expenditure of State administrative expense funds provided

under this part and part 225 of this title. Such records shall conform with the applicable State plan for use of State administrative expense funds. The State agency shall make such records available, upon a reasonable request, to FNS, OIG, or the U.S. Comptroller General and shall maintain current accounting records of State administrative expense funds which shall adequately identify fund authorizations, obligations, unobligated balances, assets, liabilities, outlays and income. The records may be kept in their original form or on microfilm, and shall be retained for a period of three years after the date of the submission of the final Financial Status Report, subject to the exceptions noted below:

(1) If audit findings have not been resolved, the records shall be retained beyond the three-year period as long as required for the resolution of the issues raised by the audit.

(2) Records for nonexpendable property acquired with State Administrative Expense Funds shall be retained for three years after its final disposition.

(b) Each State agency shall submit to FNS a quarterly Financial Status Report (SF-269) on the use of State administrative expense funds provided for each fiscal year under this part. Reports shall be postmarked and/or submitted to FNS no later than 30 days after the end of each quarter of the fiscal year and, in case of funds carried over under § 235.6(a), each quarter of the following fiscal year until all such funds have been obligated and expended. Obligations shall be reported for the fiscal year in which they occur. Each State agency shall submit a final Financial Status Report for each fiscal year's State administrative expense funds. This report shall be postmarked and/or submitted to FNS no later than 30 days after the end of the fiscal year following the fiscal year for which the funds were initially made available. Based on guidance provided by FNS, each State agency shall also use the quarterly SF-269 to report on the use of State funds provided during the fiscal year. Each State agency shall also submit an annual report containing information on School Food Authorities