

- (13) Accuracy and Completeness
- C. Content Validity Studies
 - (1) User(s), Location(s), and Date(s) of Study
 - (2) Problem and Setting
 - (3) Job Analysis—Content of the Job
 - (4) Selection Procedure and Its Content
 - (5) Relationship Between Selection Procedure and the Job
 - (6) Alternative Procedures Investigated
 - (7) Uses and Applications
 - (8) Contact Person
 - (9) Accuracy and Completeness
- D. Construct Validity Studies
 - (1) User(s), Location(s), and Date(s) of Study
 - (2) Problem and Setting
 - (3) Construct Definition

- (4) Job Analysis
- (5) Job Titles and Codes
- (6) Selection Procedure
- (7) Relationship to Job Performance
- (8) Alternative Procedures Investigated
- (9) Uses and Applications
- (10) Accuracy and Completeness
- (11) Source Data
- (12) Contact Person
- E. Evidence of Validity From Other Studies
 - (1) Evidence From Criterion-Related Validity Studies
 - (a) Job Information
 - (b) Relevance of Criteria
 - (c) Other Variables
 - (d) Use of the Selection Procedure
 - (e) Bibliography

- (2) Evidence From Content Validity Studies
- (3) Evidence From Construct Validity Studies
- F. Evidence of Validity From Cooperative Studies
- G. Selection for Higher Level Jobs
- H. Interim Use of Selection Procedures

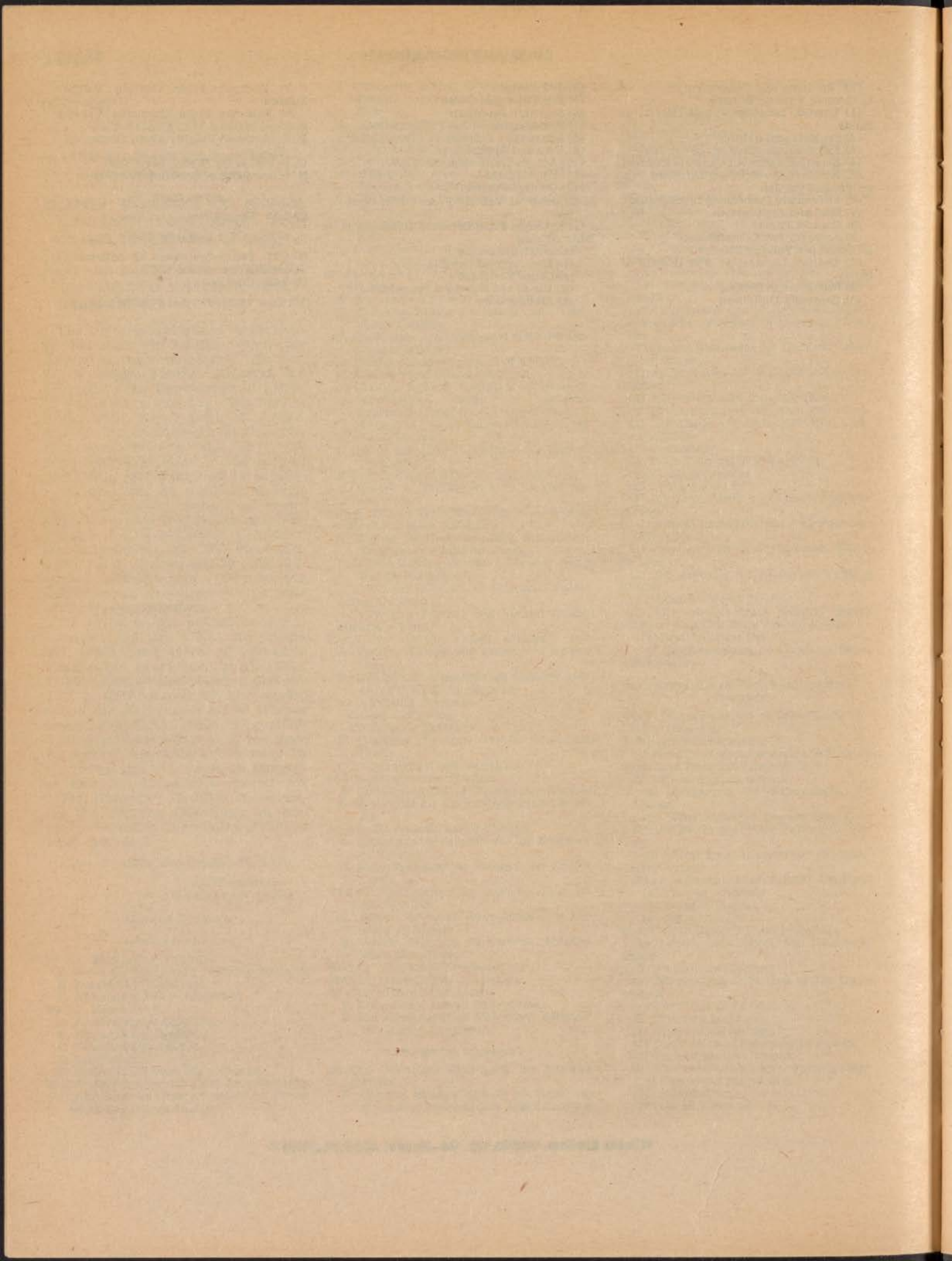
DEFINITIONS

60-3.16 Definitions

APPENDIX

- 60-3.17 Policy Statement on Affirmative Action (see section 13B)
- 60-3.18 Citations

[FR Doc. 78-23997 Filed 8-22-78; 4:48 pm]



FRIDAY, AUGUST 25, 1978

PART V



**DEPARTMENT OF
HEALTH,
EDUCATION, AND
WELFARE**

**Social Security Administration
Office of Human Development
Services**

**Office of Child Support
Enforcement**

**Health Care Financing
Administration**



**GRANTS TO STATES FOR
FINANCIAL ASSISTANCE
PROGRAMS: SOCIAL SERVICES
PROGRAMS; CHILD SUPPORT
ENFORCEMENT PROGRAMING,
AND FOR MEDICAL ASSISTANCE
General Policies and Procedures**

Registered for

[4110-07]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

[45 CFR Parts 200, 201, 205, and 213]

GENERAL POLICIES AND PROCEDURES ON GRANTS TO STATES FOR FINANCIAL AS- SISTANCE PROGRAMS

AGENCY: Social Security Administration, HEW.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed regulations clarify, simplify, and reorganize into a single part of the Code of Federal Regulations (CFR) existing procedural rules on administration of grants to States for financial assistance programs. They also fill some gaps in existing policies on appeal procedures for State agencies. Comparable revisions, appearing in part V of this issue, are proposed for programs of child support enforcement, social services, and medical assistance. The revisions reflect the 1977 HEW reorganization, and they separate the financial assistance rules from those for other types of programs.

DATES: Comments must be received by October 24, 1978.

ADDRESSES: Please submit any comments regarding these changes in writing to the Commissioner of Social Security, Department of Health, Education, and Welfare, P.O. Box 1585, Baltimore, Md. 21203. Copies of all comments received in response to this notice will be available for public inspection during regular business hours at the Washington Inquiries Section, Office of Information, Social Security Administration, Department of Health, Education, and Welfare, North Building, Room 5131, 330 Independence Avenue, Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT:

Ms. Jacqueline Porter, Office of Policy and Regulations, 6401 Security Boulevard, Baltimore, Md. 21235, telephone 301-594-6639.

SUPPLEMENTARY INFORMATION:

GENERAL PROGRAM DESCRIPTION

The Social Security Act provides formulas for Federal/State sharing in the costs of financial assistance programs under titles I, IV-A, X, XIV, and XVI (AABD). States and territories are entitled to Federal grants-in-aid for these programs when they are operated under plans approved by HEW. The proposed regulations contain policies and procedures for processing new State plans and plan amendments, for

deferring, allowing, and disallowing payment of grants, for program and financial reviews by Federal officials, and for appeal of adverse decisions.

REASONS FOR REVISING REGULATIONS

The HEW reorganization order of March 8, 1977, disbanded the Social and Rehabilitation Service (SRS), which had previously administered the financial assistance grants, and Federal responsibility for the programs was transferred to the Social Security Administration.

On September 12, 1977, the Secretary of Health, Education, and Welfare (HEW) announced two major efforts at improving Departmental regulations. The first, "Operation Common Sense," is a 5-year effort to review and revise existing regulations to make them clearer and more useful. The second effort changed Departmental procedures for developing new regulations.

The Department's reorganization, coupled with the Secretary's directives on improving regulations, prompted this proposal. The amendments reflect the HEW organizational changes and use clearer, simpler, language. Additional content and format changes are outlined below.

PROPOSED REGULATIONS FORMAT

Under this proposal, general provisions and procedures for administering grants-in-aid are combined into a single part 200 which applies only to financial assistance programs. A similar reorganization is being proposed for regulations, which are presently intermingled with those for financial assistance, on programs of medical assistance, social services, and child support.

PROPOSED CONTENT CHANGES

1. *Definitions.* The definitions section has been expanded.

2. *State cost allocation plans.* Responsibility for State cost allocation plans has been assigned to the Assistant Secretary for Management and Budget in HEW. Rules applicable to cost allocation plans appear in part 205 and not in part 200.

3. *Authority to approve or disapprove a State plan or amendment.* Redesignations of Secretarial authority to approve and disapprove State plans and amendments result in both functions being performed by the Regional Commissioner. He or she will, however, consult with the Associate Commissioner for family assistance before issuing a disapproval notice. Under prior regulations, the Regional Commissioner could approve but disapproval was reserved to the Administrator of SRS after consultation with the Secretary. The proposed regulation makes the Regional Commissioner responsible

for both positive and negative actions. By retaining a requirement for consultation at the national level, it also assures uniformity and objectivity in such decisions.

4. *Partial approval of plans and amendments.* A new provision reflects the existing practice of approving certain parts of a new plan or plan amendment even though other parts are disapproved. We believe this procedure can expedite incorporation of approvable provisions into State plans and, in some cases, result in earlier availability of Federal funds.

5. *Decisions on plan amendments not treated as new plans.* These regulations clarify and modify procedures for approval of plan amendments not treated as new plans. A decision to approve or disapprove will be made within 90 days of receipt in the Regional Office just as if the amendment were treated like a new plan. In cases of disapproval, a new provision assures the State of the right to a reconsideration by the Commissioner or his designee. There is now no specific regulatory provision for appeals on disapproved plan amendments of this type although the procedure applicable to disallowances (45 CFR 201.14) has been used. The new reconsideration process for these amendments is simpler and can produce decisions more promptly. It assures the State of a thorough review and a carefully considered decision.

6. *Establishing the submittal date of a plan or amendment.* A new section explains how to determine the submittal date of a proposed State plan or amendment. This is important to States for purposes of claiming Federal funds once the plan or amendment has been approved. Existing regulations are silent on this point.

7. *Authority to allow or disallow a State claim for payment.* These amendments reflect redelegations of Secretarial authority to permit the Regional commissioner to allow and disallow State claims for Federal reimbursement. However, the Regional Commissioner will consult with the Associate Commissioner for family assistance as directed before issuing a disallowance notice. Paralleling the strengthening of the regional role under item 3 above, this gives States a single focus for fiscal decisions. Previously the regional office could allow a claim but disallowances were made by the central office. The Regional Commissioner continues to have the authority to defer payment decisions in certain situations.

8. *Reconsideration of disallowances.* These regulations incorporate by reference new procedures for reconsideration of disallowances of State claims for Federal reimbursement. The new procedures contained in 45 CFR Part

16. Subpart C, and published on March 6, 1978, give final decision authority to the Departmental Grant Appeals Board rather than to the program administrators as provided in earlier regulations. These regulations allow 45 days, rather than the present 30, for a State to request reconsideration of a disallowance. They also give States the option of requesting the Commissioner to review a disallowance before seeking reconsideration by the Appeals Board. Any time devoted to such a review will not count toward the 45-day period for filing a formal reconsideration request.

9. *Format of a State plan.* 45 CFR 204.2 now requires that State plans be submitted in a certain format and within prescribed time limits. This is being incorporated into part 200 as a requirement related to the submission of a plan or amendment.

10. *Effective date for claiming Federal funds.* 45 CFR 205.5(b) now tells when Federal funding becomes available under an amended plan provision. That paragraph is being incorporated into part 200 and revised to distinguish more clearly between the period for which Federal funds can be claimed and the time at which they can be claimed (i.e., not until the new provision has been approved.)

11. *Formal hearing procedures.* The act requires that States be given an opportunity for formal hearings on new plan material which is disapproved and on intended compliance or conformity actions. These formal procedures, now at 45 CFR part 213, are being edited and incorporated into part 200. The result is that the proposed part covers the full sequence of possible processing events.

In addition, the amendments would revise existing regulations to show that a hearing must, as required by law, be set at least 20 (not 30) days from receipt of the hearing notice.

12. *Internal processing requirements.* A number of internal processing requirements do not appear in the proposed regulations. This type of information will be issued in the form of instructions and other issuances rather than in regulations.

REQUEST FOR PUBLIC COMMENT

On March 29, 1978, several State agencies and special interest groups participated in a meeting to discuss how these regulations should be designed. In addition, internal Departmental discussions have been held to analyze alternatives for format and content of the regulations. To assist further in the decisionmaking process, we invite comments on these regulations, particularly in the following areas:

1. Usefulness of having regulations for a specific program in a single Chapter of the CFR;

2. Usefulness of regulations versus other methods of disseminating procedures; and

3. Effectiveness of concurrent revision of regulations affecting several programs when those rules have previously been intermingled. (See proposals from the Health Care Financing Administration, the Office of Child Support Enforcement, and the Office of Human Development Services.)

The proposed regulations are to be issued under the authority of section 1102 of the Social Security Act; 49 Stat. 647; 42 U.S.C. 1302.

(Catalog of Federal Domestic Assistance Program No. 13.761—Social and Rehabilitation Service programs.)

Dated: July 5, 1978.

DON WORTMAN,
Acting Commissioner of Social Security.

Approved: August 19, 1978.

HALE CHAMPION,
Acting Secretary of Health,
Education, and Welfare.

Chapter II of 45 CFR is amended as follows:

1. 45 CFR Parts 201 and 213, and § 205.5(b) of part 205, as they apply to financial assistance programs under titles I, X, XIV, XVI (AABD), and part A of title IV of the Social Security Act, are partially redesignated as part 200 and are revised to read as follows:

PART 200—GENERAL POLICIES AND PROCEDURES ON GRANTS TO STATES FOR FINANCIAL ASSISTANCE PROGRAMS

Subpart A—Introduction

Sec.
200.0 Scope.
200.1 Definitions.

Subpart B—State Plans and Amendments

STATE PLANS AND AMENDMENTS IN GENERAL

200.100 What a State plan is.
200.101 When to amend a State plan.

SUBMISSION OF PROPOSED STATE PLANS AND PLAN AMENDMENTS

200.110 How to submit a proposed State plan or plan amendment.
200.111 How submittal date is determined.

APPROVAL AND DISAPPROVAL OF PROPOSED STATE PLANS AND PLAN AMENDMENTS

200.120 Who can approve or disapprove.
200.121 Partial or total approval.
200.122 What the decision deadline is.
200.123 Effective dates and FFP under approved State plans or amendments.
200.124 How State is notified.

RECONSIDERATIONS OF DISAPPROVALS OF STATE PLANS AND PLAN AMENDMENTS

200.130 What reconsideration procedures apply.

200.131 What happens to FFP pending outcome of reconsideration.
200.132 Procedures for reconsideration of disapproved new plan material.
200.133 Procedures for reconsideration of a disapproved plan amendment not treated as a new plan.

Subpart C—Awards and Payments to States

AWARDS AND PAYMENTS IN GENERAL

200.200 When FFP can be claimed.
200.201 What the State agency is responsible for.
200.202 Administration of grants.

SUBMISSION OF CLAIMS

200.210 How grant awards are issued.
200.211 How estimates are made.
200.212 How expenditures are claimed.

ALLOWANCE AND DISALLOWANCE OF CLAIMS

200.220 Who can allow or disallow.
200.221 How a decision is made on a claim.
200.222 What happens when a claim is disallowed.
200.223 How to appeal disallowance of a claim.

DEFERRAL OF CLAIMS PAYMENT

200.230 What deferral is.
200.231 How deferral occurs.
200.232 How decision is made on a deferred claim.

INSTALLMENT REPAYMENT OF FEDERAL FUNDS

200.240 General.
200.241 How to set the repayment schedule.
200.242 How to determine a State agency's share of expenditures.
200.243 How to make repayment.

Subpart D—Federal Program and Financial Reviews and Audits

FEDERAL REVIEWS AND AUDITS IN GENERAL

200.300 What Federal reviews and audits are.
200.301 Types and effects of reviews and audits.

PROGRAM AND FINANCIAL REVIEWS

200.305 Program and financial reviews in general.
200.306 Issues of compliance or conformity after review.

HEW AUDIT AGENCY REVIEWS AND AUDITS

200.310 What the HEW Audit Agency does.
200.311 Audit Agency reports.
200.312 Action on Audit Agency reports.

Subpart E—Hearing Procedures for State Agencies

GENERAL

200.400 Scope.
200.401 General rules.

ARRANGEMENTS FOR HEARING

200.405 How to request hearing.
200.406 How request is acknowledged.
200.407 What the hearing issues are.
200.408 What the purpose of a hearing is.
200.409 Who presides.
200.410 How to be a party or an amicus curiae to a hearing.

CONDUCT OF HEARING

200.415 Authority of presiding officer.

- 200.416 Discovery.
 200.417 How evidence is handled.
 200.418 What happens to unsponsored written material.
 200.419 What the record is.

AFTER THE HEARING

- 200.420 Posthearing briefs.
 200.421 Decisions.
 200.422 When a decision involving nonconformity or noncompliance becomes effective.

AUTHORITY: Sec. 1102, 49 Stat. 647; 42 U.S.C. 1302, unless otherwise indicated.

Subpart A—Introduction

§ 200.0 Scope.

Part 200 contains rules on grants to States under titles I, IV-A, X, XIV, and XVI (AABD) of the Social Security Act. (As used here, "AABD" refers to a program of grants to States for assistance to needy aged, blind, and disabled.) These titles authorize Federal/State sharing of the costs of providing assistance to needy families with dependent children in the 50 States, the District of Columbia, Guam, Puerto Rico, the Virgin Islands, and the Northern Mariana Islands (90 Stat. 277); and assistance to needy aged, blind, and disabled persons in Guam, Puerto Rico, and the Virgin Islands. This part is divided into 5 subparts as follows:

(a) Subpart A contains descriptions of the financial assistance programs under titles I, X, XIV, XVI (AABD), and part A of title IV of the Act. It includes general definitions related to those programs.

(b) Subpart B describes State plans for financial assistance programs. It tells when a plan must be amended and how a new State plan or plan amendment is submitted, processed, and appealed when it is disapproved.

(c) Subpart C contains rules for computing and authorizing payment of Federal grants. This includes rules on when State claims for Federal funds may be deferred or disallowed and how disallowances may be appealed.

(d) Subpart D describes the types and effects of reviews conducted by Federal officials.

(e) Subpart E describes hearing procedures available to State agencies.

§ 200.1 Definitions.

As used in this part:

"Act" means the Social Security Act and titles referred to are titles of that act.

"AFDC" means a program of aid to families with dependent children under part A of title IV.

"Approvable State plan or plan amendment" means a proposed plan or amendment which meets all applicable Federal requirements.

"Associate Commissioner" means the Associate Commissioner for

Family Assistance in the Social Security Administration.

"Central office" means the national headquarters of the Social Security Administration.

"Commissioner" means the Commissioner of Social Security.

"Compliance" means that a State agency is carrying out in practice what is required by Federal statutes, regulations, and pertinent court decisions and contained in the approved State plan.

"Conformity" means that a State plan meets the requirements of Federal statutes, regulations, and pertinent court decisions.

"Department" or "HEW" means the Department of Health, Education, and Welfare.

"FFP" or "Federal financial participation" means the Federal Government's share of expenditures made by a State under a financial assistance program.

"Federal requirements" means Federal statutes, regulations, and instructions.

"Financial assistance program" means a State's program of assistance under title I, IV-A, X, XIV, or XVI (AABD).

"Medicaid" means medical assistance provided under a State plan approved under title XIX.

"Plan" or "State plan" means a comprehensive written commitment by a State agency to administer, or supervise the administration of, a financial assistance program in accordance with all Federal requirements. This does not include a cost allocation plan as described in 45 CFR 205.150.

"Plan amendment" or "amendment" means an amendment to an approved State plan under one of the financial assistance programs.

"Regional Commissioner" means a Regional Commissioner of the Social Security Administration.

"Regional Office" means one of the regional offices of the Social Security Administration.

"Secretary" means the Secretary of Health, Education, and Welfare.

"SSA" means the Social Security Administration.

"State" means a political jurisdiction which is eligible to submit a financial assistance program plan to HEW for approval.

"State agency" means the single State agency administering, or supervising the administration of, a State financial assistance plan.

Subpart B—State Plans and Plan Amendments

STATE PLANS AND AMENDMENTS IN GENERAL

§ 200.100 What a State plan is.

A State plan is a detailed description of the nature and scope of a State's fi-

ancial assistance program. It commits a State agency to administering the program in accordance with Federal requirements. Only proper program expenditures which are made under an approved plan are eligible for Federal financial participation. The State agency must keep its approved plan current. SSA will not consider material as State plan material unless it is submitted as part of a State plan or amendment and approved by the regional Commissioner.

§ 200.101 When to amend a State plan.

(a) *When a State agency must change its plan.* A State agency must amend its plan whenever:

(1) A new or amended Federal law or regulation requires a new provision or conflicts with an existing plan provision; or

(2) A U.S. Supreme Court decision changes the interpretation of a law or regulation; or

(3) State law, organization, policy, or agency operation undergoes a significant change.

(b) *Automatic nullification of plan provisions.* When a Federal statute or a U.S. Supreme Court decision invalidates a plan provision, it also, on its effective date, automatically nullifies any conflicting provisions of an approved State plan.

SUBMISSION OF PROPOSED STATE PLANS AND PLAN AMENDMENTS

§ 200.110 How to submit a proposed State plan or plan amendment.

(a) *General.* A State agency must submit a proposed State plan or plan amendment to the Regional Commissioner in accordance with SSA instructions concerning format, content, time limits, transmittal forms, and procedures.

(b) *How plan amendments may be treated.* At the time of submittal, a State agency may ask to have a plan amendment treated as a new State plan.

(1) If such a request is made and the amendment is disapproved, the State agency has a right to a hearing under section 1116 of the Act and to judicial review. (See § 200.132.)

(2) If a plan amendment is not treated as a new State plan and the amendment is disapproved, the State agency may appeal as described in § 200.133.

(c) *Review by Governor.* When submitting a proposed State plan or plan amendment to the Regional Commissioner, the State agency shall specify that the Governor or the Governor's designee:

(1) Was given 45 days to review the material and that resulting comments, if any, are included in the submittal; or

(2) Did not wish to review the material. (See § 204.1 for State plan requirements regarding Governor's review.)

§ 200.111 How submittal date is determined.

(a) *General.* The submittal date of a proposed State plan or plan amendment is the date it is mailed to the Regional Office as established by the State agency (for example, in the form of a postmark, registered mail date, or affidavit of mailing). If the material is delivered by hand, the submittal date is that shown by the Regional Office date stamp.

(b) *When submittal date changes.* If a proposed State plan, amendment, or portion of an amendment is not approvable because it does not meet a Federal requirement, the date on which the required change is mailed or delivered to the Regional Office becomes the submittal date.

(c) *When submittal date remains unchanged.* If a new State plan, amendment, or portion of an amendment is approvable but requires clearer wording, the clarifying revision retains the date of the original submittal.

APPROVAL AND DISAPPROVAL OF PROPOSED STATE PLANS AND PLAN AMENDMENTS

§ 200.120 Who can approve or disapprove.

The Regional Commissioner has the authority to approve or disapprove a proposed State plan or plan amendment. Before disapproving, the Regional Commissioner consults with the Associate Commissioner. (See § 200.306 for rules on deciding that a previously approved plan provision no longer meets Federal requirements.)

§ 200.121 Partial or total approval.

(a) *State plan.* SSA approves a State plan only if it meets all Federal requirements. If any required provision is unapprovable or is omitted, SSA will disapprove the entire plan. However, SSA may disapprove sections of a State plan which relate to optional Federal provisions without affecting approval of the rest of the plan.

(b) *Plan amendment.* SSA need not approve or disapprove a proposed plan amendment in its entirety, regardless of whether the State agency asks to have it treated as a new State plan. SSA may approve amendments to specific parts of a State plan and disapprove amendments to other parts.

§ 200.122 What the decision deadline is.

(a) *General.* The Regional Commissioner has 90 days from receipt of a State agency's submittal to issue a decision approving or disapproving a proposed State plan or plan amendment.

(b) *Extension.* The Regional Commissioner and the State agency may

agree in writing to an extension of the 90-day period.

§ 200.123 Effective dates and FFP under approved State plans or amendments.

(a) *When a plan or amendment affecting FFP becomes effective.* An approved State plan or plan amendment which affects FFP becomes effective on the later of the following dates:

(1) The first day of the calendar quarter in which an approvable plan or amendment was submitted (see § 200.111 for submittal date); or

(2) The first date on which the plan or amendment is in operation statewide.

(b) *When an amendment not affecting FFP becomes effective.* When an amendment does not affect FFP, it becomes effective on the date set by the State agency.

(c) *When claim for FFP can be submitted.* A State agency shall not submit claims for new or additional expenditures made under a plan or amendment until it has been approved.

§ 200.124 How State is notified

(a) *Approval.* When the Regional Commissioner approves a proposed State plan or plan amendment, he or she notifies the State agency in writing.

(b) *Disapproval.* When the Regional Commissioner, after consulting with the Associate Commissioner, disapproves part or all of a proposed State plan or plan amendment, he or she notifies the State agency in writing. That notice gives the reason for disapproval and informs the State agency that it has 60 days to request reconsideration by the Commissioner (see § 200.130).

RECONSIDERATIONS OF DISAPPROVALS OF STATE PLANS AND PLAN AMENDMENTS

§ 200.130 What reconsideration procedures apply.

(a) *For new plans and plan amendments treated as new plans.* Section 1116 of the Act requires the Secretary to provide a reconsideration to the State of disapproval of a State plan or a plan amendment which is treated as a new State plan. (See § 200.132 for procedures.) For purposes of this subpart, the term "new plan material" includes both categories.

(b) *For plan amendments not treated as new plans.* A State agency also may request reconsideration of disapproval of a plan amendment which is not treated as a new plan. (See § 200.133 for procedures.)

§ 200.131 What happens to FFP pending outcome of reconsideration.

When a State agency requests reconsideration of disapproval of a State

plan or plan amendment, FFP in any new or increased expenditures under the disapproved plan or amendment is not available until a final decision is made. If the decision is favorable to the State agency, the Commissioner will certify lump-sum payment of any amount due.

§ 200.132 Procedures for reconsideration of disapproved new plan material.

(a) *How to request.* A State agency has 60 days from receipt of SSA's written notice of disapproval of new plan material to request reconsideration. The State agency shall make the request in writing to the Commissioner with a copy to the Regional Commissioner.

(b) *Acknowledgment of request.* Within 30 days of receiving the reconsideration request, the Commissioner notifies the State agency in writing of the date, time, and place of a hearing and of the issues to be considered. (See subpart E for hearing procedures.)

(c) *Judicial review.* If a State agency is not satisfied with a hearing decision, it may seek judicial review in the U.S. Court of Appeals for the circuit in which the State is located.

(d) *Commissioner determines related issues exist.* If a State agency requests a hearing on the disapproval of a new plan or plan amendment, the commissioner will also determine whether a related compliance issue exists. If it does, that issue will be included in the hearing as described in § 200.407(b).

§ 200.133 Procedures for reconsideration of a disapproved plan amendment not treated as a new plan.

(a) *How to request.* A State agency has 60 days from receipt of SSA's written notice of disapproval to request reconsideration of a plan amendment not treated as a new State plan. The State agency shall make the request in writing to the Commissioner with a copy to the Regional Commissioner.

(b) *Acknowledgment of request.* The Commissioner acknowledges a State agency's request for reconsideration promptly and in writing.

(c) *Submittal of information.* (1) SSA will promptly send the State agency a list of all material that is part of the record. SSA will also make this material available for the State agency's inspection and copying.

(2) The Regional Commissioner and the State agency have 30 days from the transmittal date of SSA's list to submit any additional material to the commissioner and to each other. If the Regional Commissioner or the State agency submits additional material the other party has 20 days from the transmittal date to respond in writing to the Commissioner.

(d) *Right to conference.* (1) At any time during the period allowed under paragraph (c) of this section, the State agency may request a conference with the Commissioner to discuss the issues.

(2) The State agency may have the conference transcribed at its own expense. Upon its request, the transcript becomes part of the record.

(e) *What the record is.* All materials considered in reaching a decision constitute the record of a reconsideration. The record closes on the later of the following dates:

(1) Expiration of the period allowed under paragraph (c) of this section; or

(2) If there is a conference and the transcript becomes part of the record, when the Commissioner receives the transcript; or

(3) If there is a conference and the transcript does not become part of the record, 30 days after the conference.

(f) *How the decision is issued.* Within 60 days after the record is closed, the Commissioner or the person designated to preside at the conference will issue a written decision. He or she will send that decision to the head of the State agency.

(g) *Extension of time limits.* Either the State agency or the Regional Commissioner may, for good cause, request an extension of the time limits in this section.

Subpart C—Awards and Payments to States

AWARDS AND PAYMENTS IN GENERAL

§ 200.200 When FFP can be claimed.

A State agency may claim Federal funds for expenditures for financial assistance, training, and related administration under an approval State plan and other Federal requirements, including prior approval of certain classes of expenditures as required by, and in conformity with, an approved cost allocation plan. (See § 200.123 for the effective date of a new plan or amendment.)

§ 200.201 What the State agency is responsible for.

The State agency is responsible for submitting (or, at the option of SSA, making available) all documentation required by SSA in the format specified to establish the allowability of its claims for FFP. (See §§ 200.230–200.232 on deferrals and § 200.222 on disallowances.)

§ 200.202 Administration of grants.

(a) *General.* Unless otherwise indicated, all grants made to State under this part are subject to the provisions of part 74 of this title, Administration of Grants.

(b) *Exception.* Subpart G, Matching and Cost Sharing, and Subpart I, Financial Reporting Requirements, of

part 74 of this title do not apply to these grants.

SUBMISSION OF CLAIMS

§ 200.210 How grant awards are issued.

(a) *Amount of grant.* Subject to the availability of Federal funds, the Commissioner or the Commissioner's designee issues a grant award for each quarter. The grant award is based on the Regional Commissioner's estimate for that quarter, reduced or increased to the extent of any prior quarter's overpayment or underpayment for which adjustment has not already been made. Examples of adjustments which reduce or increase grant awards include:

(1) The difference between the estimates for a quarter and the amount claimed by the State agency on its statement of expenditures for the quarter;

(2) Amounts (including penalties) which the Regional Commissioner disallows;

(3) Amounts which the Regional Commissioner defers;

(4) Amounts which the Regional Commissioner has deferred and later finds allowable;

(5) Amounts of recoveries, refunds, and collections as determined by the Regional Commissioner;

(6) Amounts which exceed statutory limitations on funds.

(b) *How State is notified.* Each quarter the Commissioner or the Commissioner's designee issues to the State agency a grant award showing the amounts awarded for each program. Accompanying the grant award is a form showing the basis on which the grant was computed. The Commissioner also notifies the State Central Information Reception Agency of the grant award in accordance with section 201 of the Intergovernmental Cooperation Act of 1968.

(c) *How the grant is paid.* The Departmental Federal Assistance Financing System (DFAFS) pays the grant. Subpart K of 45 CFR Part 74, Treasury Circular No. 1075, and the DFAFS Recipient Users Manual govern payment procedures.

200.211 How estimates are made.

(a) *State agency's estimate.* At least 45 days before the beginning of each quarter for which it is estimating funds, the State agency shall submit to the regional office estimates of the total amount, and the Federal share, of expenditures for each program.

(b) *SSA's estimate.* The State agency's quarterly estimate of expenditures and any investigations which the Regional Commissioner may find necessary form the basis for SSA's estimate of expenditures. SSA's estimate

is the basis for making a grant award for that quarter.

§ 200.212 How expenditures are claimed.

(a) *What the quarterly statement of expenditures is.* The quarterly statement of expenditures is an accounting by a State agency for expenditures made during a quarter under a financial assistance program and the State agency's claim for Federal reimbursement.

(b) *How to submit the statement.* Within 30 days after the end of each calendar quarter, the State agency shall submit to the regional office a quarterly statement of expenditures for that quarter along with the necessary supporting schedules.

(c) *Rejection of statement.* If the quarterly statement of expenditures is based on estimates, it will be rejected. For this purpose, indirect costs calculated in conformance with approved cost allocation plans are acceptable. (See 45 CFR 205.150 for indirect costs.)

ALLOWANCE AND DISALLOWANCE OF CLAIMS

§ 200.220 Who can allow or disallow.

(a) *General.* The Regional Commissioner has the authority to allow or disallow a claim, paid or unpaid, for FFP. Before disallowing, the Regional Commissioner consults with the Associate Commissioner as directed. As used in this subpart, the term "disallowance" does not include implementation of a decision to reduce or withhold FFP for lack of compliance or conformity (see §§ 200.305–200.306).

(b) *Exception.* The Commissioner retains authority to allow FFP in expenditures which have been questioned by the General Accounting Office, the HEW Audit Agency, or SSA officials.

§ 200.221 How a decision is made on a claim.

The Regional Commissioner allows or disallows a State's claim for FFP based on review and analysis of the quarterly statement of expenditures. In determining whether expenditures are allowable, regional or central office officials may conduct onsite reviews involving examination of State agency accounting and operational records and discussions with State officials and third parties. (See Subpart D on Federal Reviews.)

§ 200.222 What happens when a claim is disallowed.

(a) *General.* A disallowance is a finding by the Regional Commissioner, after consulting with the Associate Commissioner, that a State agency's claim for FFP is not properly chargeable to the program. Because of statu-

tory penalties and limitations, the Regional Commissioner may also disallow amounts which are otherwise properly chargeable to the program.

(b) *How State agency is notified.* If any portion of the amount claimed on a quarterly statement of expenditures is disallowed, the Regional Commissioner's notice to the State agency includes pertinent information on amounts, dates, and reasons for the disallowance. The notice also indicates that the State agency may request reconsideration of the disallowance as described in § 200.223.

§ 200.223 How to appeal disallowance of a claim.

(a) *How to request.* A State agency has 45 days from the date of SSA's disallowance notice to request reconsideration under 45 CFR Part 16. The request shall be addressed to the Executive Secretary, Departmental Grant Appeals Board, with copies to the Commissioner and the Regional Commissioner.

(b) *What happens to a claim pending reconsideration decision.* (1) If reconsideration is requested on the disallowance of an amount already paid to a State, no action will be taken to recover the Federal funds pending the reconsideration decision.

(2) If reconsideration is requested on the disallowance of an amount not already paid to a State, that amount will not be paid pending the reconsideration decision.

(c) *Commissioner's review before reconsideration.* A State agency may, as specified by SSA, request the Commissioner to review a disallowance before seeking reconsideration by the Grant Appeals Board. The Commissioner may decline. The State agency may also withdraw its review request at any time. If the Commissioner reviews a disallowance, his or her decision is SSA's final action on the matter, and time devoted to that review does not count toward the 45-day period for requesting reconsideration under paragraph (a) of this section.

DEFERRAL OF CLAIMS PAYMENT

§ 200.230 What deferral is.

As used in this subpart C, "deferral" refers to suspension of the decision on the allowability of a claim for FFP pending the inspection and analysis of further information. The Regional Commissioner can defer the inclusion of a claim in the computation of a grant award (see 200.210) if it is of questionable allowability.

§ 200.231 How deferral occurs.

(a) *Notice to State agency.* The Regional Commissioner takes deferral action within 60 days after receiving an acceptable quarterly statement of

expenditures. Within 15 days after the deferral action, the Regional Commissioner sends the State agency written notification identifying the type and amount of the claim and the reason for deferral. The notice will also request the State agency to make available for inspection all materials which the Regional Commissioner considers necessary to determine the allowability of the claim.

(b) *How State agency responds.* Within 60 days of the date of the Regional Commissioner's deferral notice, the State agency shall make any requested materials available to the regional office in readily reviewable form. If the State agency requires additional time to make materials available, the Regional Commissioner, upon request, will give it an additional period of no more than 60 days.

§ 200.232 How decision is made on a deferred claim.

(a) *Review of State agency materials.* The Regional Commissioner will review all materials furnished under § 200.231 and, within 30 days of their receipt, notify the State agency if they are not readily reviewable or need supporting information. The State agency has 15 days from the date of this notification to make available revised or additional materials. If the state agency does not make the required materials available, the Regional Commissioner will promptly disallow the claim.

(b) *How action is taken on deferred claim.* After the State agency has made all required materials available in acceptable form, the Regional Commissioner will allow or disallow a deferred claim and notify the State agency in writing of the decision. If the Regional Commissioner does not notify the State agency within 90 days after the required materials become available, SSA will include the claim in the computation of a grant award, subject to a possible disallowance later.

INSTALLMENT REPAYMENT OF FEDERAL FUNDS

§ 200.240 General.

(a) *When Federal funds must be repaid.* When a claim has been paid and is later determined to be unallowable, the State must repay the unallowable amount.

(b) *When the State may repay in installments.* A State may repay in installments if:

(1) The total amount to be repaid exceeds 2½ percent of the State's share of annual expenditures under the program in which the unallowable expenditures occurred; and

(2) Before repayment is otherwise due, the State notifies the Regional

Commissioner in writing of its intention to repay in installments.

(c) *Exclusion of other installment repayments.* For purposes of §§ 200.240-200.243, the amount of a repayment does not include any amount previously approved for installment repayment.

§ 200.241 How to set the repayment schedule.

(a) *How many quarters the repayment may cover.* In order to determine the number of quarters over which repayment may be spread, the State computes this repayment as a percentage of the State agency's share of annual expenditures under the program in which the unallowable expenditures occurred. Using that percentage, the maximum number of calendar quarters over which a State may spread repayment is:

Total repayment amount as percentage of state agency share of annual expenditures for the specific program	Number of quarters to make repayment
2.5 or less.....	1
Greater than 2.5, but no 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
Greater than 100.....	13 plus

(b) *How much must be repaid in an installment.* (1) Except for the final repayment, the amount due for each quarter in a repayment schedule shall not be less than the following percentages of the State agency's share of annual expenditures for the program in which the unallowable expenditures occurred:

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

(2) If the State pays higher percentages during the early quarters of its repayment schedule, it applies any corresponding reduction in the minimum percentages first to the last repayment scheduled, then to the next to last, and so on.

§ 200.242 How to determine a State agency's share of expenditures.

(a) *General.* A State agency's share of annual expenditures under a program in which unallowable expenditures occurred is based on its most recent estimate as shown in the quarterly statement of financial plan for that program. The State agency's share is the sum of its shares for four quarters, beginning with the quarter in which the first repayment is due.

(b) *Exception.* If the program in which the unallowable expenditures occurred has been terminated, the State agency's share is based on its quarterly statements of expenditures for that program. The State agency's share is the sum of its shares of allowable actual expenditures for the last four quarters preceding the date on which the program was terminated.

§ 200.243 How to make repayment.

(a) *General.* SSA will deduct the appropriate repayment amount from each quarterly grant in accordance with the repayment schedule.

(b) *Retroactive claims.* If SSA has allowed a State's retroactive claim for FFP, SSA will offset the amount of that claim against any amounts to be repaid by the State in installments under the same financial assistance program. (For purposes of this section, a retroactive claim is one applicable to any period ending 12 months or more prior to the beginning of the quarter in which Federal funds are to be paid.) Under this provision, a State may:

(1) Suspend repayments until the retroactive claim has been offset; or

(2) Continue repayments until the reduced amount of its debt (remaining after the offset) has been paid in full.

(c) *When interest is charged on repayments.* SSA will not charge interest on repayments unless required by court order.

Subpart D—Federal Program and Financial Reviews and Audits

FEDERAL REVIEWS AND AUDITS IN GENERAL

§ 200.300 What Federal reviews and audits are.

As used in this Subpart D, a Federal review or audit is any examination necessary to determine whether a State plan continues to be approvable and whether State agency operations and claims for FFP are proper under Federal requirements and the approved State plan. A review or audit may cover any aspect of a financial assistance program and may be performed by SSA or by another Federal agency. Audits are not limited to those performed by the General Accounting Office and the HEW Audit Agency.

§ 200.301 Types and effects of reviews and audits.

(a) *Types.* The types of Federal reviews and audits most often conducted are:

(1) Program and financial reviews as described in §§ 200.305-200.306; and

(2) HEW Audit Agency audits as described in § 200.310.

(b) *Effects.* Any review or audit may result in a disallowance or in formal compliance or conformity action.

PROGRAM AND FINANCIAL REVIEWS

§ 200.305 Program and financial reviews in general.

(a) *Responsibility for review.* The Regional Commissioner will conduct program and financial reviews at whatever times he or she considers appropriate. In doing so, the Regional Commissioner may make use of any procedures (including onsite review) or specialized assistance needed.

(b) *Purpose of review.* The purpose of a program or financial review is to determine the nature and scope of a State's financial assistance program in relation to Federal requirements and the State plan. Program and financial reviews include:

(1) Determining the allowability of claims;

(2) Evaluating a program's quality and the State agency's need for technical assistance;

(3) Determining whether a State plan conforms with Federal requirements. (A question of conformity may arise when a State agency fails to submit an approvable plan amendment to implement a new Federal requirement; when previously approved plan material no longer meets Federal requirements; or when plan material has been approved in error.)

(4) Determining whether the State's operating practices are in substantial compliance with the approved State plan and with Federal requirements.

(c) *Review findings.* SSA will make all review findings available in writing to the State agency so that it can correct any unacceptable policy or practice. If a review results in disallowance of a claim, the procedures in §§ 200.222-200.223 will apply.

§ 200.306 Issues of compliance or conformity after review.

(a) *Regional Commissioner tries to resolve.* If the Regional Commissioner believes there is a compliance or conformity issue, he or she will try to obtain needed changes in the State agency's operating practice or the State plan.

(b) *Issues not resolved.* If the State agency does not make the changes necessary to bring about compliance or conformity:

(1) The Regional Commissioner will recommend that the Commissioner begin formal action; and

(2) If the Commissioner agrees that there is an issue of compliance or conformity, he or she will notify the State agency and give it an opportunity for a hearing under Subpart E.

HEW AUDIT AGENCY REVIEWS AND AUDITS

§ 200.310 What the HEW Audit Agency does.

The HEW Audit Agency (Audit Agency) in the HEW Inspector General's Office conducts both routine and special reviews and audits. These are to assure that Federal funds are being spent properly and prudently.

§ 200.311 Audit Agency reports.

Upon completion of an audit or review, the Audit Agency releases its final report. The report contains the Audit Agency's findings and recommendations on the practices reviewed and the allowability of expenditures audited.

§ 200.312 Action on Audit Agency reports.

When the Audit Agency questions a claim, the Regional Commissioner may disallow FFP and notify the State agency accordingly. (See § 200.220(b) for exception.) When the Audit Agency finds problems of compliance, the Commissioner decides whether to take formal compliance action and notifies the State agency accordingly.

Subpart E—Hearing Procedures for State Agencies

GENERAL

§ 200.400 Scope.

(a) *General.* The act requires that a State agency be given an opportunity for hearings on certain matters. Hearing procedures described in this Subpart E apply to:

(1) Reconsideration of a disapproved State plan or plan amendment which is treated as a new plan; and

(2) Notification of formal compliance or conformity action.

(b) *Negotiations.* Nothing in this Subpart limits negotiations between the Department and the State. Negotiations on hearing issues are not part of the hearing and are not subject to the rules in this Subpart unless there is a specific indication to the contrary.

§ 200.401 General rules.

(a) *How to get records.* All papers filed in connection with a hearing are available for inspection and copying in the Office of the SSA Hearing Clerk. Individuals should direct inquiries to the Central Information Center, Department of Health, Education, and

Welfare, 200 Independence Avenue SW., Washington, D.C. 20201.

(b) *How to file and serve papers.* (1) Anyone who wishes to submit papers for the docket shall file with the SSA Hearing Clerk an original and two copies, but only originals of exhibits and testimony transcripts.

(2) Anyone who wishes papers to be part of the record shall also serve copies on all parties by personal delivery or by mail. Service on a party's designated attorney is the same as service on the party.

(c) *When rules are suspended.* The Commissioner or the presiding officer may, after notifying all parties, modify or waive any rule in §§ 200.401–200.421 if he or she decides the action is equitable and will not unduly prejudice the rights of any party.

ARRANGEMENTS FOR HEARING

§ 200.405 How to request hearing.

A State agency has 60 days, from receipt of SSA's written notice of plan disapproval or intended compliance or conformity action, to request a formal hearing. The State agency makes its request in writing to the Commissioner with a copy to the Regional Commissioner.

§ 200.406 How request is acknowledged.

(a) *Notice of hearing.* Within 30 days of receiving a hearing request, the Commissioner will notify the State agency in writing of the date, time, and place of the hearing and of the issues to be considered. The Commissioner will publish the hearing notice in the *FEDERAL REGISTER*.

(b) *When the hearing must be set.* The date set for a hearing will be at least 20, but no more than 60, days from the date the State agency receives the hearing notice. However, the State agency and the Commissioner may agree in writing to a different date.

§ 200.407 What the hearing issues are.

(a) *General.* The issues at a hearing are those included in the notice to the State agency described in § 200.406.

(b) *How the Commissioner may add issues.* At least 20 days before a scheduled hearing, the Commissioner will notify the State agency in writing of any additional issues to be considered. The Commissioner will also publish this notice in the *FEDERAL REGISTER*. If the State agency does not receive its notice in the required time, any party may request the Commissioner to postpone the hearing. If a request is made, the Commissioner will set a new hearing date which is at least 20, but not more than 60, days from the date the State agency receives the hearing notice.

(c) *How actions by the State may cause the Commissioner to add, modify, or remove issues.* The Commissioner may add, modify, or remove issues if, for example, the State agency:

(1) Changes its practices to comply with Federal requirements and its State plan; or

(2) Conforms its State plan to Federal requirements and pertinent court decisions.

(d) *What happens when State action causes the Commissioner to add, modify, or remove issues.*

(1) If the Commissioner specifies new or modified issues, the hearing will proceed on these issues.

(2)(i) If the Commissioner removes an issue, the hearing will proceed on the remaining issues. If the Commissioner removes all the issues, he or she will terminate the hearing proceedings. The Commissioner may terminate hearing proceedings or remove issues before, during, or after the hearing.

(ii) Before removing any issue, the Commissioner will notify all parties other than the Department and the State. This notice contains the reasons for removing the issue. Within 20 days of the date of this notice, the parties may submit comments in writing on the merits of the proposed removal. The Commissioner will consider these comments and they become a part of the record.

§ 200.408 What the purpose of a hearing is.

The purpose of the hearing is to receive factual evidence and testimony, including expert opinion testimony, related to the issues. The presiding officer will not allow argument as evidence.

§ 200.409 Who presides.

The presiding officer at a hearing is the Commissioner or a person he or she appoints. If the Commissioner appoints a presiding officer, the Commissioner will send copies of the appointment notice to all parties.

§ 200.410 How to be a party or an amicus curiae to a hearing.

(a) *HEW and State agency.* HEW and the State agency are parties to a hearing without having to request participation.

(b) *Other parties of amici curiae.* Any individual or group wishing to be a party or amicus curiae to a hearing must file a petition with the SSA Hearing Clerk no more than 15 days following publication of the hearing notice in the *FEDERAL REGISTER*. A petitioner who wishes to be a party must also provide a copy of the petition to each party of record at that time.

(c) *What must be in a petition.* A petition must state concisely:

(1) The petitioner's interest in the proceedings;

(2) Who will appear for the petitioner;

(3) The issue on which the petitioner wishes to participate; and

(4) Whether the petitioner intends to present witnesses, if the petitioner wishes to be a party.

(d) *What happens to a petition.* (1) The presiding officer will determine promptly whether each petitioner has the necessary interest in the proceedings and permit or deny the petition accordingly and in writing. Before making this determination, the presiding officer will allow any party to file comments on the petition to be a party. Any party who wishes to file comments must do so within 5 days of receiving the petition. If the presiding officer denies the petition, he or she will state the reasons.

(2) The presiding officer may decide that individuals or groups who have become parties on petition have common interests. He or she may then request that they designate a single representative or may recognize two or more of those parties to represent all of them.

(e) *What rights parties have.* Any party may:

(1) Appear by counsel or other authorized representative in all hearing proceedings;

(2) Participate in any prehearing conference held by the presiding officer;

(3) Stipulate facts which, if uncontested, will become part of the record;

(4) Make opening statements;

(5) Present relevant evidence;

(6) Present witnesses who must be available for cross-examination;

(7) Present oral arguments at the hearing; and

(8) Submit written briefs, proposed findings of fact, and proposed conclusions of law, after the hearing.

(f) *What rights amici curiae have.* Any amicus curiae may:

(1) Present an oral statement at the hearing at the point in the proceedings specified by the presiding officer;

(2) Submit a written statement of position to the presiding officer before the hearing begins; and

(3) Submit a brief or written statement at the same time as the parties submit briefs.

If an amicus curiae submits a written statement or brief, he or she shall serve a copy on each party.

CONDUCT OF HEARING

§ 200.415 Authority of presiding officer.

(a) *General.* It is the duty of the presiding officer to conduct a fair hearing, avoid delay, maintain order, and make a record of the proceedings. He

or she has authority to carry out these duties. This includes the authority to:

(1) Regulate the course of the hearing;

(2) Regulate the participation and conduct of parties, amici curiae, and others at the hearing;

(3) Rule on procedural matters and, if necessary, issue protective orders or other relief to a party against whom discovery is sought;

(4) Take any action authorized by the rules in this Subpart;

(5) Make a final decision if the Commissioner is the presiding officer;

(6) Administer oaths and affirmations;

(7) Examine witnesses; and

(8) Receive or exclude evidence or rule on or limit evidence or discovery.

(b) *What the presiding officer cannot do.* The presiding officer does not have the authority to compel by subpoena the production of witnesses, papers, or other evidence.

(c) *When the presiding officer's authority is limited.* If the presiding officer is not the Commissioner, he or she does not have authority to:

(1) Make a final decision but shall certify the entire record to the Commissioner, including recommended findings and proposed decisions;

(2) Recommend reduction or withholding of FFP in matters of compliance or conformity.

§ 200.416 Discovery.

Any party has the right to conduct discovery against other parties. These discovery proceedings are subject to rules 26-37, Federal Rules of Civil Procedure. The presiding officer shall promptly rule on any written objection to discovery and may restrict or control discovery so as to prevent undue delay in the hearing. If any party fails to respond to discovery procedures, the presiding officer may issue any order and impose any sanction (other than contempt orders) authorized by rule 37 of the Federal Rules of Civil Procedure.

§ 200.417 How evidence is handled.

(a) *Testimony.* Witnesses, under oath or affirmation, give oral testimony at a hearing. All witnesses must be available at the hearing for cross-examination by all parties.

(b) *Rules of evidence.* Technical rules of evidence do not apply to hearings described in this subpart E. The presiding officer applies whatever rules or principles are necessary to assure disclosure of the most credible evidence available and to subject testimony to cross-examination. Cross-examination may be on any material matter regardless of the scope of direct examination.

§ 200.418 What happens to unsponsored written material.

Letters and other written material regarding matters at issue, when not submitted specifically on behalf of one of the parties, will become part of the correspondence section of the docket. This material is not part of the evidence or the record.

§ 200.419 What the record is.

(a) *Official transcript.* HEW designates the official reporter for a hearing. The SSA Hearing Clerk has the official transcript of testimony, as well as any other materials submitted with the official transcript. The parties and the public may obtain transcripts of testimony from the official reporter at rates which do not exceed the maximum fixed by contract between the official reporter and HEW. Upon notice to all parties, the presiding officer may authorize corrections to the transcript which involve matters of substance.

(b) *Record.* The record for the hearing decision consists of the transcript of testimony, exhibits, and all papers and requests filed in the proceedings except for the correspondence section of the docket. The record includes rulings and any decisions.

AFTER THE HEARING

§ 200.420 Posthearing briefs.

The presiding officer shall fix the time for filing posthearing briefs. These may contain proposed findings of fact and conclusions of law. The presiding officer may permit filing of reply briefs.

§ 200.421 Decisions.

(a) *When the Commissioner is presiding officer.* If the Commissioner is the presiding officer, he or she will issue a final decision within 60 days after expiration of the time allowed for filing of posthearing or reply briefs.

(b) *When the Commissioner appoints a presiding officer.* If the Commissioner appoints a presiding officer:

(1) After the time for filing posthearing or reply briefs has expired, the presiding officer shall certify the entire record, including his or her recommended findings and proposed decision, to the Commissioner.

(2) The Commissioner will provide a copy of the recommended findings and proposed decision to all parties and any amici curiae. Within 20 days, a party may file with the Commissioner exceptions to the recommended findings and proposed decision. The party must file a supporting brief or statement with the exceptions.

(3) The Commissioner will review the presiding officer's recommended findings and proposed decision and,

within 60 days of receiving them, issue a final decision. The Commissioner will provide copies of that decision to all parties and any amici curiae.

(c) *When the decision involves nonconformity or noncompliance.* When the Commissioner decides, after a formal hearing, that nonconformity or substantial noncompliance exists, the final decision will state whether payments to the State will be withheld for the entire program or for specified portions of it.

§ 200.422 When a decision involving nonconformity or noncompliance becomes effective.

The Commissioner's decision will specify the effective date for any withholding of Federal payments because of nonconformity or substantial noncompliance. This effective date cannot be earlier than the date of the Commissioner's decision or later than the first day of the next calendar quarter.

PART 201—[REMOVED]

2. Part 201 is deleted.

PART 205—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

3. 45 CFR Part 205 is further amended by deleting paragraph (b) of § 205.5 redesignating paragraph (a) § 205.5, and revising it to read as follows:

§ 205.5 State plan requirements on when to amend.

A State plan under title I, IV-A, X, XIV, XVI, or XIX of the Social Security Act must provide that the plan will be amended whenever necessary to reflect new or revised Federal statutes or regulations, U.S. Supreme Court decisions, or significant changes in State law, organization, policy, or agency operations.

PART 213—[REMOVED]

4. Part 213 is deleted.

[FR Doc. 78-23945 Filed 8-24-78; 8:45 am]

[4110-92]

Office of Human Development Services

[45 CFR Parts 201, 204, 213, and 228a]

POLICIES AND PROCEDURES ON GRANTS TO STATES FOR SOCIAL SERVICE PROGRAMS

Titles I, IV-A, X, XIV, XVI (AABD) and XX

AGENCY: Administration for Public Services (APS), Office of Human Development Services (HDS), Department of Health, Education, and Welfare.

ACTION: Proposed rule.

SUMMARY: This proposed regulation would clarify, simplify, modify, and reorganize into a single part 228a, existing procedural rules, located in several parts of this Code, on administration of grants to States for social services programs under six titles of the Social Security Act. The rules also fill some gaps in existing policies on appeal procedures for State agencies. Comparable revisions, appearing in part V of this issue are proposed for programs of child support enforcement and medical and financial assistance. The revisions reflect the 1977 HEW reorganization and separate social services program rules from those covering the same subject matter for other types of programs.

DATES: Consideration will be given to written comments or suggestions received on or before October 24, 1978. Agencies or organizations are requested to submit their comments in duplicate.

ADDRESS: Address comments to: Commissioner, Administration for Public Services, Department of Health, Education, and Welfare, P.O. Box 1923, Washington, D.C. 20013. Comments will be available for public inspection in room 2225 of the Department's offices at 330 C Street SW., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5 p.m., area code 202-245-9415.

FOR FURTHER INFORMATION CONTACT:

Mrs. Jonnie Brooks, 202-245-9415.

SUPPLEMENTARY INFORMATION:

BACKGROUND

This proposed regulation deals with certain portions of 45 CFR Parts 201, 204, 205, and 213 which directly govern policies and procedures for social services programs under titles I, IV-A, X, XIV, and XVI (AABD), and with those portions of part 201 and all of part 213 which apply to the title XX program because of reference to them in the title XX regulation, 45 CFR Part 228. The Administration for Public Services (APS) administers social services programs in the 50 States and the District of Columbia under title XX of the Act. APS also administers social services programs in Puerto Rico, Guam, and the Virgin Islands, and, potentially, in the Northern Marianas, under titles I, IV-A, X, XIV, and XVI (AABD) of the Act. Prior to March 8, 1977, APS was a bureau of the Social and Rehabilitation Service (SRS). An HEW reorganization order of that date disbanded (SRS). Its bureaus were dispersed to other major Administrations of the Department of Health, Education, and Welfare. The order transferred APS to

the Office of Human Development Services (HDS).

On September 12, 1977, the Secretary of HEW announced two major efforts at improving Departmental regulations. The first, "Operation Common Sense," is a 5-year effort to review and revise existing regulations to make them clearer and more useful. The second effort changed Departmental procedures for developing new regulations.

The Department's organization, coupled with the Secretary's directives prompted this proposal which is the result of a joint effort by the bureaus formerly in SRS and their current parent Administrations.

This proposal combines provisions and procedures for administering grants-in-aid for social services programs into a single part. Other proposals combine similar provisions and procedures for financial assistance, medical assistance, and child support. As revisions of other parts of the regulations occur, this separation by program will continue so that eventually each program will have a complete body of regulations in a single location in the Code of Federal Regulations.

Titles I, IV-A, X, XIV, and XVI (AABD) govern social services programs in Puerto Rico, Guam, the Virgin Islands, and the Northern Marianas (the territories). Under these titles, a State plan is a comprehensive written commitment by the State agency to administer, or supervise the administration of, its social services program in conformity with all applicable Federal laws and regulations. This commitment covers all aspects of operation of the program including administrative, programmatic, and fiscal requirements. This State plan is subject to approval by the Office of Human Development (HDS), the arm of the Department that administers federally-funded social services programs.

Title XX governs social services programs in the 50 States and the District of Columbia (the States) and requires two State plans. One is the Comprehensive Annual Services Plan (CASP) which covers all programmatic and fiscal aspects of a State's program for the coming year. Included are such important programmatic items as coverage—i.e., those who are eligible, and program content—i.e., what services will be provided to which families and individuals in which areas of the State. HDS does not have the power to approve or disapprove the CASP. The CASP is published and made available to the public for review and comment. Changes in the CASP may result from this process. The regulations this rule proposes to revise do not control the CASP in any way.

The other title XX plan, the State plan, is subject to HDS approval but it is very narrow in scope. It deals only with administrative aspects of the title XX program. When the title XX regulations (45 CFR Part 228) were issued, the Department recognized that the board requirements of part 201 relating to State plans and amendments were not really appropriate for the narrow-gauge title XX State plan. However, because of the urgency to issue regulations governing the new social services program, it was expedient to apply the provisions of part 201 insofar as submittal of State plans and amendments was concerned. This proposed rewrite of part 201 presents an opportunity to provide regulations precisely suited to the distinctive nature of the title XX administrative State plan.

PROPOSED MODIFICATION OF THE REGULATIONS

This proposed rule contains several modifications of present requirements, as follows:

1. *Deletion of title VI.* Prior to the enactment of title XX, social services programs in the States were governed by titles IV-A (assistance payments and services for families and children) and VI (social services for the aged, blind, and disabled). Pub. L. 93-647 enacted title XX, effective October 1, 1975, and repealed title VI. Although title VI no longer exists, references to it had not been deleted from the portions of parts 201, 204, and 205 dealing with State plans and plan amendments.

The proposed rule deletes all references to title VI which was repealed when title XX became effective.

2. *Definitions.* We propose to add several definitions. Because of the distinct differences between the State plans for titles I, IV-A, X, XIV, and XVI (AABD) and the State plan for title XX, we believe it advisable to divide the definitions into three groups: those that apply to all the social services titles—i.e., titles I, IV-A, X, XIV, XVI (AABD), and XX (§ 228a.1); those that apply only to titles I, IV-A, X, XIV, and XVI (AABD) (§ 228a.2); and a definition that applies only to title XX (§ 228a.3).

3. *Partial approval of State plans and plan amendments.* Part 201 does not now deal with this subject. It is possible that a territory may wish to replace its present State plan with an entirely new one; or that the Northern Marianas will decide to submit a State plan for the initiation of a social services program. In either case, we propose to allow partial approval or disapproval of all optional provisions of State plans under titles I, IV-A, X, XIV or XVI (AABD). At the same time, we believe that the law requires

that if all mandatory provisions of the State plan are not approvable, we must disapprove the plan in its entirety. The proposed rule spells out this concept for the first time, but it is not a truly new requirement because it merely articulates, in regulations, a policy position that has always prevailed.

All title XX plan requirements are mandatory. This precludes partial approval or disapproval of title XX plan materials.

4. *Disapproval of State plans and plan amendments.* Part 201 provides that the Administrator, Social and Rehabilitation Service (SRS), will disapprove State plans and plan amendments after prior consultation and discussion with the Secretary. The proposed rule would authorize the Regional Administrator, HDS, to disapprove State plan materials, with concurrence of the Commissioner, Administration for Public Services. The title XX State plan, as previously pointed out, is so narrow in scope that the decision to disapprove should prove to be clearcut. The possibility of complicated problems in connection with disapproval of titles I, IV-A, X, XIV, and XVI (AABD) State plans still exists but now these plans apply only to the territories. In the past, the approval of these plans has presented no serious difficulties. The proposed rule also clarifies procedures which the State agency may take in appealing decisions made by the Regional Administrator to disallow State claims.

5. *Governor's review of State plan.* 45 CFR 204.1 now requires that a State plan provide for review of certain amendments and of certain reports by the Governor. This is being incorporated as a new section 228a.110(c).

6. *Format of a State plan.* 45 CFR 204.2 now requires that State plans be submitted in a certain format and within prescribed time limits. This is being incorporated as a new section 228a.110(a).

7. *Decisions on plan amendments not treated as new plans.* Procedures for approval of plan amendments not treated as new plans are clarified and modified in these regulations. A decision to approve or disapprove will be made within 90 days of receipt in the regional office just as if the amendment were treated like a new plan. In cases of disapproval, a new provision assures the State agency of the right to a reconsideration by the Assistant Secretary or designee.

There is now no specific regulatory provision for appeals on disapproved plan amendments of this type although the procedure applicable to disallowances (45 CFR 201.14) has been used. The new reconsideration process for these amendments is sim-

pler and can produce decisions more promptly. We believe that it assures the State agency of a thorough review and a carefully considered decision.

8. *Establishing the submittal date of a plan or amendment.* A new section has been added explaining how the submittal date is officially determined. This is important to States for purposes of claiming Federal funds once the plan or amendment has been approved. Existing regulations are silent on this point.

9. *Effective date for claiming Federal funds.* 45 CFR 205.5(b) now tells when Federal funding becomes available under an amended plan provision. This is incorporated into part 228a and clarified to distinguish between the period for which Federal funds can be claimed and the time at which they can be claimed (i.e., not until the new provision has been approved).

10. *State cost allocation plans.* Responsibility for State cost allocation plans has been assumed directly by HEW rather than have it spread among several HEW agencies. Therefore, these regulations make it clear that rules applicable to cost allocation plans appear in part 205 and that part 228a does not include such plans.

11. *Authority to allow or disallow a State claim for payment.* These amendments reflect redelegations of secretarial authority to permit both allowance and disallowance decisions to be made by the Regional Administrator, HDS, this gives States a single focus for fiscal decisions. Previously the regional office could allow a claim but disallowances were the prerogative of the central office. The Regional Administrator, HDS, also continues to have the authority to defer payment decisions in certain situations.

12. *Changes in the reconsideration procedure.* When a State agency's claim for reimbursement of expenditures for any of the social services programs covered by this proposed regulation is denied, the State agency may request a reconsideration of the disallowance. The changes in subpart C have been made to accommodate the new HEW system of processing reconsiderations under the provisions of 45 CFR Part 16 which now completely replaces 45 CFR 201.14. The changes in the proposed regulations follow:

a. Under § 201.14, the Administrator of the now-defunct Social and Rehabilitation Service was the official who provided the final administrative action upon reconsiderations. Now the final arbiter is the Departmental Grant Appeals Board.

b. A new step in the reconsideration process is that the State agency may request a discussion with the Assistant Secretary, HDS, prior to requesting reconsideration by the Departmental Grant Appeals Board.

c. The period of time a State has to request a discussion with the Assistant Secretary or a reconsideration has been extended to 45 days from the 30 days set forth in 45 CFR 16.6(a). (45 CFR 16.6(a) authorizes the head of a program bureau to extend this time period, if desired.) This gives the State agency more time to assemble the needed information and decide whether or not it wants to appeal and in what way.

13. *Changes in the deferral of claims procedure.* Deferral of a claim for reimbursement of expenditures occurs when there is question about the allowability of a claim. A procedure is available to enable a State agency to make a case for allowability of the claim and for the Department to determine its validity. Subpart C deals with the procedure. Three changes from the procedure in the current § 201.15 are made in the proposed regulation:

a. The proposed regulation decreases from 60 days to 30 days the time extension period allowed for the State to prepare the requested materials to make its case (see § 228a.231(c)). The Department considers a 60-day extension period an excessive length of time and detrimental to the expeditious processing of deferral actions.

b. 45 CFR 201.15 does not speak to the time period within which the regional office has to communicate with the State agency about inadequate materials submitted by the State. Clarification was considered necessary on this point and so § 228.232 sets a limitation of 60 days on the Regional Administrator to notify the State agency if the materials have not been provided in the manner prescribed or if supplemental information is required.

c. The amount of time in which the Regional Administrator is required to make a decision on a deferral has been increased from 90 to 120 days. This is to permit a more thorough examination of the issues in a deferral.

14. *Calling of noncompliance and nonconformity.* Part 201 calls for procedures that may drag on for years before a State ever receives notification that its State plan is out of conformity, or that its operations do not comply with the approved State plan or Federal requirements. If the regional office believed that an issue of noncompliance or nonconformity existed, and it proved to be impossible to resolve the issue by negotiations, the regional office recommended that the Administrator, SRS, make a finding of noncompliance or nonconformity. The Administrator notified the State that a potential issue existed and that the State was entitled to a full due process hearing under 45 CFR Part 213 (now rewritten and recoded, for social ser-

vices programs, as subpart E). Only after conclusion of the hearing was the notice issued. This procedure has proved to be somewhat awkward and the proposed rule suggests a different approach.

The Regional Administrator, HDS, still must exhaust all possibilities of resolving the difficulties but, if resolution proves impossible, he would have the authority, with concurrence of the Commissioner, APS, to notify the State agency that there is an issue of compliance or conformity. The proposed rule envisions this notice not as a final decision, but as an action that, at the option of the State, merely starts the formal decisionmaking process. If the State believes that its position is valid, it may request a full-scale due process hearing under new subpart E. Only after such a hearing may the Assistant Secretary, HDS, make a final finding as to noncompliance or nonconformity. If the State agency does not request a formal hearing within 60 days of the Regional Administrator's notice, the Assistant Secretary will notify the State agency, in writing, what the sanctions will be.

15. *Substitution of Assistant Secretary, HDS, for Administrator, SRS.* The present rule designates the Administrator, SRS, or designee, as the individual responsible for providing hearings and for making final determinations upon completion of the hearings. This proposed rule substitutes the Assistant Secretary, HDS, for the Administrator, SRS.

(Secs. 2, 3, 402, 403, 1002, 1003, 1102, 1116, 1402, 1403, 1602 (AABD), 1603 (AABD), and 2002 of the Social Security Act; 42 U.S.C. 302, 303, 602, 603, 1202, 1203, 1352, 1353, footnote to 1381, 1397 and 1397(a).)

(Catalog of Federal Domestic Assistance Programs No. 13.642, Public Assistance—Social Services, No. 13.642, Social Services for Low Income and Public Assistance Recipients, and No. 13.644, Public Assistance Training Grants—Title XX.)

NOTE.—It has been determined that this document does not require preparation of an inflationary impact statement under Executive Order 11821 and OMB Circular A-107.

Dated: July 6, 1978.

T. M. PARHAM,
*Acting Assistant Secretary
for Human Development Services.*

Approved: August 19, 1978.

HALE CHAMPION,
Acting Secretary.

Chapter II of 45 CFR is amended as follows:

1. 45 CFR parts 201, 204, and 213, as they apply to social services programs under titles I, IV-A, X, XIV, XVI (AABD), and XX of the Social Security Act, are redesignated as part 228a and are revised to read as follows:

PART 228a—POLICIES AND PROCEDURES ON GRANTS TO STATES FOR SOCIAL SERVICES PROGRAMS—TITLES I, IV-A, X, XIV, XVI (AABD) AND XX OF THE SOCIAL SECURITY ACT

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Sec.

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Authority: Secs. 2, 3, 402, 403, 1002, 1003, 1102, 1116, 1402, 1403, 1602 (AABD), 1603 (AABD), and 2002 of the Social Security Act; 42 U.S.C. 302, 303, 602, 603, 1202, 1203, 1352, 1353, footnote to 1381, 1397 and 1397(a).

Subpart A—Scope and Definitions

§ 228a.0 Scope.

Part 228a contains rules on grants for social services programs under six titles of the Social Security Act: Titles I, IV-A, X, XIV, XVI, (AABD), and XX. Title XX authorizes Federal/State sharing of the costs of providing social services to needy families and individuals in the 50 States and the District of Columbia. Titles I, IV-A, X, XIV, and XVI (AABD) authorize Federal/State sharing of the costs of providing social services to needy families with dependent children and needy

aged, blind, and disabled persons in the territories (Guam, Puerto Rico, the Virgin Islands, and the Northern Marianas (90 Stat. 277)). This part is divided into five Subparts as follows:

(a) Subpart A sets forth the scope of the regulation. It includes definitions applicable to all the social services programs under these titles; a definition applicable to title XX alone; and a set of definitions that applies to titles I, IV-A, X, XIV, and XVI (AABD).

(b) Subpart B describes State plans for social services programs. It tells when to amend a plan, how to submit and process a proposed State plan or plan amendment, and how to appeal disapprovals.

(c) Subpart C contains rules for computing and authorizing payment of Federal grants. This includes rules on when to defer or disallow State claims for Federal funds, and how to appeal disallowances.

(d) Subpart D describes the types and effects of reviews conducted by Federal officials.

(e) Subpart E sets forth hearing procedures on appeals of compliance and conformity issues. It also sets forth procedures on appeals of disapprovals of proposed State plans and amendments which are treated as new plans.

§ 228a.1 Definitions applicable to titles I, IV-A, X, XIV, XVI (AABD), and XX.

APS means the Administration for Public Services.

Assistant Secretary means the Assistant Secretary for Human Development Services.

Act means the Social Security Act, and titles referred to are titles of that Act.

Compliance means that the State agency is carrying out in practice the requirements of Federal statutes, regulations, and pertinent court decisions, and the commitments in the approved State plan.

Conformity means that a State plan meets the requirements of Federal and State statutes, Federal regulations, and pertinent court decisions.

Department or HEW means the Department of Health, Education, and Welfare.

FFP means Federal financial participation—the Federal Government's share of expenditures made by a State under a social services program.

Federal requirements means Federal statutes, regulations and instructions.

HDS means the Office of Human Development Services.

Plan amendment means an amendment to the approved social services State plan under the six titles of the Act.

Regional Administrator or RA means the Regional Administrator of the Office of Human Development

Services (HDS) of which the Administration for Public Services is a program bureau.

State means the 50 States and the District of Columbia.

State agency means the State agency administering or supervising the administration of the State social services plan under titles I, IV-A, X, XIV, or XVI (AABD) in Puerto Rico, Guam, the Virgin Islands and the Northern Marianas; and under title XX in the 50 States and the District of Columbia.

Title XVI means grants to States for social services for the Aged, Blind, or Disabled (AABD), the combined program the territories may conduct instead of a separate program under titles I, X, and XIV.

§ 228a.2 Definitions applicable only to titles I, IV-A, X, XIV, and XVI (AABD).

Approvable State plan or plan amendment means one that requires no substantive changes to meet all applicable Federal requirements.

State plan means a comprehensive written statement describing the nature and scope of the program and a commitment by the State agency to administer, or supervise the administration of, a social services program in conformity with the relevant requirements of part 205 and the specific requirements of 45 CFR 220 for title IV-A, of 45 CFR 222 for titles I, X, XIV, or title XVI (AABD), and of part 226 for all five titles, and other applicable issuances of the Department. The commitment covers all aspects of operation of the program including administrative, programmatic, and fiscal requirements. This kind of State plan for social services programs applies only to Puerto Rico, Guam, the Virgin Islands, and the Northern Marianas. This State plan does not include a cost allocation plan as described in 45 CFR 205.150.

Substantive change means a change which is necessary in order to bring a proposed State plan or plan amendment into conformity with applicable Federal requirements.

Territory means Guam, Puerto Rico, the Virgin Islands, or the Northern Marianas.

§ 228a.3 Definition applicable only to title XX.

State plan means a written commitment by the State agency to administer, or supervise the administration of, a social services program in conformity with the specific requirements of § 228.6 through § 228.16 of part 228. The commitment is limited to requirements of an administrative nature and does not include cost allocation as described in 45 CFR 205.150. This kind of State plan applies only to title XX

social services programs in the 50 States and the District of Columbia.

Subpart B—State Plans and Plan Amendments

STATE PLANS AND AMENDMENTS IN GENERAL

§ 228a.100 What a State plan is.

(a) A title IV-A State plan and a title I, X, XIV, or XVI (AABD) State plan, as defined in § 228a.2, is a detailed description of the nature and scope of a territory's social services program. It commits the State agency to administer or supervise the administration of the program in accordance with Federal requirements. Only proper program expenditures which the State agency makes under an approved plan are eligible for FFP. The State agency must keep an approved plan current by amending it.

(b) A title XX State plan, as defined in § 228a.3, contains specific written commitments by the State agency to comply with the requirements of § 228.6 through § 228.16. The State agency must keep an approved plan current by amending it.

(c) Each State which establishes a comprehensive annual services program plan (service plan) under title XX, and each territory which wishes to administer a services program under title IV-A, or title I, X, XIV, or XVI (AABD) shall operate in accordance with a State plan or plans as defined in § 228a.2 or § 228a.3.

(d) HDS will not consider material as State plan material unless the State agency submits it as part of a State plan or plan amendment and the Regional Administrator, HDS, approves it. The State agency shall submit copies of current State operating manuals and other program materials to the Regional Administrator, as requested.

§ 228a.101 Amendment of a State plan.

(a) *When to amend a State plan.* A State agency must amend its plan whenever.

(1) A new or amended Federal law or regulation requires a new provision, or conflicts with an existing plan provision;

(2) A U.S. Supreme Court decision changes the interpretation of a law or regulation or conflicts with an existing plan provision; or

(3) State law, organization, policy, or agency operation undergoes a significant change. (See section 45 CFR 205.5(a) for requirements on amending State plans for the territories.)

(b) *Automatic changes in plans.* When a Federal statute or a U.S. Supreme Court decision invalidates, modifies, or changes the interpretation of a plan provision, the statute or decision, on its effective date, automatically nullifies or modifies any con-

flitting provisions of any approved State plans.

SUBMISSION OF PROPOSED STATE PLANS AND PLAN AMENDMENTS

§ 228a.110 How to submit a proposed State plan or plan amendment.

(a) *General.* A State agency must submit a proposed State plan or plan amendment to the Regional Administrator in accordance with HDS instructions concerning format, content, time limits, transmittal forms, and procedures.

(b) *How to treat plan amendments.* In its transmittal, the State agency may request treatment of the plan amendments as a new State plan:

(1) If the State agency makes this request and the amendment is disapproved, the State agency has a right to a hearing under section 1116 of the Act and to judicial review. (See § 228a.132.)

(2) If the State does not make this request and the amendment is disapproved, the State agency may appeal as described in § 228a.133.

(c) *Review by Governor.* When submitting a proposed State plan or plan amendment to the Regional Administrator, the State agency specifies that the Governor or designee:

(1) Was given 45 days to review the material and that resulting comments, if any, are included in the submittal; or

(2) Did not wish to review the material. (See section 45 CFR 204.1 for State plan requirements on Governor's review of State plans for the territories.)

§ 228a.111 How to determine submittal dates.

(a) *Submittal date.* The submittal date of a proposed State plan or plan amendment is the date the State agency mails it to the regional office as established by a postmark, registered mail date, or affidavit of mailing. If the State agency delivered the material by hand, the regional office date stamps it on receipt and that date is the submittal date.

(b) *When submittal date changes.* If a proposed State plan or amendment is not approvable because it does not meet a Federal requirement, the date on which the required change is mailed or delivered to the regional office becomes the submittal date.

(c) *When submittal date remains unchanged.* If a proposed State plan or plan amendment submitted by the State agency of a territory is approvable but requires clearer wording, the clarifying revision retains the date of the original submittal.

APPROVAL AND DISAPPROVAL OF PROPOSED STATE PLANS AND PLAN AMENDMENTS

§ 228a.120 Who can approve or disapprove.

The Regional Administrator has the authority to approve or disapprove a proposed State plan or plan amendment. Before disapproving it, the Regional Administrator obtains the concurrence of the Commissioner, APS. (See § 228a.306 for rules on deciding that a previously approved plan provision no longer meets Federal requirements.)

§ 228a.121 Partial or total approval or disapproval.

(a) *State plan.* (1) The Regional Administrator approves a title XX State plan only if it totally meets the requirements of 45 CFR § 228.6 through § 228.16.

(2) The Regional Administrator approves a State plan submitted by a territory only when it meets all mandatory Federal requirements. If any section pertinent to any of these requirements is unapprovable or is omitted, the Regional Administrator, with concurrence of the Commissioner, APS, disapproves the entire plan. The Regional Administrator may disapprove, after concurrence of the Commissioner, APS, sections or parts of sections of a State plan which relate to optional Federal provisions without affecting approval of the rest of the plan.

(b) *Plan amendments.* (1) The Regional Administrator approves a title XX State plan amendment only if it totally meets all appropriate requirements. However, if a State agency submits amendments to more than one section of the plan at one time, the Regional Administrator may approve an amendment to one section while he or she disapproves amendments to other sections.

(2) The Regional Administrator need not approve or disapprove a proposed plan amendment submitted by a territory in its entirety, regardless of whether the State agency has asked to have it treated as a new State plan.

§ 228a.122 What the decision deadline is.

(a) *General.* The Regional Administrator has 90 days following receipt of the State agency's submittal to issue a decision approving or disapproving a proposed State plan or plan amendment.

(b) *Extension.* The Regional Administrator and the State agency may agree in writing to an extension of the 90-day period.

§ 228a.123 Effective dates and FFP under approved State plans or plan amendments.

(a) *When a plan or plan amendment becomes effective.* An approved State plan or plan amendment which affects FFP becomes effective on the later of the following dates:

(1) The first day of the calendar quarter in which an approvable plan or amendment was submitted (see § 228a.111 for submittal date); or

(2) The first date on which the plan or amendment is in operation Statewide.

(b) *When an amendment not affecting FFP becomes effective.* When an amendment does not affect FFP, it becomes effective on the date set by the State agency.

(c) *When State may submit claims for FFP.* A State may not submit claims for new or additional expenditures made under a plan or amendment until the Regional Administrator approves it.

§ 228a.124 How State is notified.

(a) *Approval.* When the Regional Administrator approves a proposed State plan or plan amendment, he or she notifies the State agency in writing.

(b) *Disapproval.* When the Regional Administrator after concurrence of the Commissioner, APS, disapproves part or all of a proposed State plan or plan amendment, he or she notifies the State agency in writing. That notice gives the reason for disapproval and informs the State Agency that it has 60 days to request reconsideration by the Assistant Secretary (see § 228a.130).

RECONSIDERATION OF DISAPPROVALS OF STATE PLANS AND PLAN AMENDMENTS

§ 228a.130 What reconsideration procedures apply.

(a) *For new plans and plan amendments treated as new plans.* A State may request reconsideration of disapproval of a proposed State plan or a plan amendment which is treated as a new State plan under § 228a.132. For purposes of this subpart, the term "new plan material" includes both categories.

(b) *For plan amendments not treated as new plans.* A State agency also may request reconsideration of disapproval of a plan amendment which is not treated as a new plan under § 228a.133.

§ 228a.131 What happens to FFP pending outcome of reconsideration.

When a State agency requests consideration of disapproval of a State plan or plan amendment, FFP in any new or increased expenditures under the disapproved plan or amendment is not available until a final decision is

made. If the decision is favorable to the State agency, the Assistant Secretary will certify lump-sum payment of any amount due.

§ 228a.132 Prehearing procedures of disapproval of new plan material.

(a) *How to request.* A State agency has 60 days from receipt of the Regional Administrator's written notice of disapproval of new plan material to request a reconsideration. The State agency shall make the request in writing to the Assistant Secretary, HDS, with a copy to the Regional Administrator.

(b) *Acknowledgement of request.* Within 30 days of receiving a reconsideration request, the Assistant Secretary notifies the State agency in writing of the date, time, and place of the hearing. That date will be at least 20, but not more than 60, days from the date the State agency receives the hearing notice. However, the State agency and the Assistant Secretary may agree in writing to a different date. (See subpart E for hearing procedures.)

(c) *The hearing decision.* Within 60 days of the conclusion of a hearing, the Assistant Secretary will issue a decision. That decision is final administrative action on the matter.

(d) *Judicial review.* If a State agency is not satisfied with a hearing decision, it may seek judicial review in the U.S. Court of Appeals for the circuit in which the State is located.

§ 228a.133 Procedures for reconsideration of a proposed plan amendment not treated as a new plan.

(a) *How to request.* A State agency has 60 days from receipt of the Regional Administrator's written notice of disapproval to request a reconsideration of a disapproved plan amendment as a new State plan. The State agency shall make the request in writing to the Assistant Secretary, HDS, with a copy to the Regional Administrator.

(b) *Acknowledgement of request.* The Assistant Secretary acknowledges a State agency's request for reconsideration promptly and in writing.

(c) *Submittal of information:*

(1) The Regional Administrator and the State agency have 30 days from receipt of the Assistant Secretary's acknowledgement to provide the Assistant Secretary with all material they consider relevant to the reconsideration issues. If either submits new information, the other shall have and additional 15 days to respond.

(2) The Assistant Secretary will promptly send the State agency a list of all the material that is part of the record. The Assistant Secretary also makes this material available for the State agency's inspection and copying.

(3) The Regional Administrator and the State agency have 30 days from the date of this list to submit any additional supporting materials to the Assistant Secretary and to each other.

(4) If the Regional Administrator or the State agency submits additional material, the other party has 20 days from transmittal date to respond in writing to the Assistant Secretary.

(d) *Right to a conference.* (1) At any time during the period allowed under paragraph (c) of this section, the State agency may request a conference with the Assistant Secretary to discuss the issues.

(2) The State agency may have the conference transcribed at its own expense. Upon its request, the transcript becomes part of the record.

(e) *What the record is.* All materials considered in reaching the decision constitute the record of a reconsideration. The record closes on the later of the following dates:

(1) Expiration of the period(s) allowed under paragraph (c) of this section;

(2) If there is a conference and the transcript becomes part of the record, when the Assistant Secretary receives the transcript; or

(3) If there is a conference and the transcript does not become part of the record, 30 days after the conference.

(f) *How the decision is issued.* Within 90 days after the record is closed, the Assistant Secretary or the person designated to preside at the conference will issue a written decision. The Assistant Secretary will send that decision to the head of the State agency.

(g) *Extension of time limits.* Either the State agency or the Regional Administrator may, for good cause, request an extension of any of the time limits in this section.

Subpart C—Awards and Payments to States

AWARDS AND PAYMENTS IN GENERAL

§ 228a.200 When FFP may be claimed.

(a) For title XX, a State agency which establishes a comprehensive annual services program plan (services plan) and operates it under an approved State plan, and other Federal requirements, including prior approval of certain classes of expenditures as required, and in conformity with an approved cost allocation plan, may claim Federal funds for expenditures for social services, training, and related administration for each.

(b) For titles I, IV-A, X, XIV, and XVI (AABD), a State agency may claim Federal funds for expenditures for social services, training, and related administration under an approved State plan and other Federal requirements, including prior approval of certain classes of expenditures as re-

quired, and in conformity with an approved cost allocation plan. (See § 228a.123 for effective date of a new plan amendment.)

§ 228a.201 What the State agency is responsible for.

The State agency is responsible for submitting (or at the option of APS, making available) all documentation required by APS in the format specified to establish the allowability of its claim for FFP. (See § 228a.230-228a.232 on deferrals and § 228a.223 on disallowances.)

§ 228a.202 Administration of grants.

(a) *General.* All grants made to jurisdictions under titles I, IV-A, X, XIV, or XVI (AABD), and XX are subject to the provisions of 45 CFR part 74, Administration of Grants.

(b) *Exception.* Subparts G, Matching and Cost Sharing, and I, Financial Reporting Requirements, of part 74 of this title do not apply to these grants.

SUBMISSION OF CLAIMS

§ 228a.210 How grant awards are issued.

(a) *Amount of grant.* Subject to the availability of Federal funds, the Commissioner, APS, or designee issues a grant award for each quarter. The grant award is based upon the Regional Administrator's estimate for that quarter reduced or increased to the extent of any overpayment or underpayment made for any prior quarter, and with respect to which adjustment has not already been made. Examples of adjustments which reduce or increase a grant award include:

(1) The difference between the estimate for a quarter and the amount claimed by the State on the expenditure statement for that quarter;

(2) Amounts, including penalties and audit exceptions, which the Regional Administrator disallows;

(3) Amounts which the Regional Administrator defers;

(4) Amounts which the Regional Administrator has deferred and later finds allowable;

(5) Amounts of recoveries, refunds and collections as determined by the Regional Administrator; and

(6) Amounts which exceed statutory limitations on funds.

(b) *How the State is notified.* The Commissioner, APS, issues to the State agency a grant award which shows the amount awarded for each quarter for each program. Accompanying the grant award is a form showing the basis on which the grant was computed. The Commissioner also notifies the State central information reception agency of the grant award, in accordance with section 201 of the Intergovernmental Cooperation Act of 1968.

(c) *How the grant is paid.* The Departmental Federal Assistance Financing System (DFAFS) pays the grant. Subpart K of 45 CFR Part 74, Treasury Circular No. 1075, and the DFAFS Recipient Users Manual govern payment procedures.

§ 228a.211 How estimates are made.

(a) At least 45 days before the beginning of each quarter for which it is estimating funds, the State agency shall submit estimates to the Regional Administrator of the total amount and Federal share of expenditures for social services, training, and their related administrative costs.

(b) This quarterly estimate of expenditures and any investigations which the Regional Administrator may find necessary form the basis for APS's estimate of expenditures. The Regional Administrator's estimate is the basis for making a grant award for that quarter.

§ 228a.212 How expenditures are claimed.

(a) *What the quarterly statement of expenditures is.* This statement is an accounting for expenditures by the State agency under the social services program made during the quarter, and the State agency's claim for Federal reimbursement.

(b) *How to submit the statement.* The State agency shall submit the expenditure statement and necessary supporting schedules and documentation to the Commissioner, APS, and the Regional Administrator no later than 30 days after the end of each quarter. APS will postpone any steps leading to the issuance of a grant award until a proper expenditure statement is received.

(c) *Rejection of statement.* Expenditure statements based on estimated expenditures will be rejected. However, indirect costs calculated under approved rates or cost allocation plans may be included in the statement.

ALLOWANCE AND DISALLOWANCE OF CLAIMS

§ 228a.220 Who can allow or disallow.

The Regional Administrator has the authority to allow or disallow a claim, paid or unpaid, for FFP.

§ 228a.221 How a decision is made on a claim.

A State's claim for FFP is allowed or disallowed based on review and analysis of its quarterly statement of expenditures. In determining whether expenditures are allowable, the Regional Administrator may conduct onsite reviews involving examination of State agency accounting and operational records and discussions with State officials. (See Subpart D on Federal reviews and audits.)

§ 228a.222 What happens when a claim is disallowed.

(a) *General.* A disallowance is a finding by the Regional Administrator that a claim by the State agency for FFP in expenditures is not properly chargeable to the program. Because of statutory penalties and limitations, the Regional Administrator may also disallow expenditures for claims which are otherwise properly chargeable to the program.

(b) *How State agency is notified.* If any portion of the amount claimed on a quarterly statement of expenditures is disallowed, the Regional Administrator sends a letter to the State agency which will:

(1) Includes pertinent information on the amounts, dates, and reasons for the disallowance;

(2) Indicate that the State agency may request reconsideration of the disallowance by the Departmental Grant Appeals Board under 45 CFR 16; and

(3) Indicate that the State agency may request a discussion of the disallowance with the Assistant Secretary, HDS, prior to its request for reconsideration by the Departmental Grant Appeals Board.

§ 228a.223 How to appeal disallowance of a claim.

(a) A State agency shall, within 45 days from the date of the Regional Administrator's notice of disallowance, send either a request for discussion of this disallowance to the Assistant Secretary, HDS, or a request for reconsideration to the Executive Secretary, Departmental Grant Appeals Board. (As authorized at 45 CFR 16.6(a), HDS is extending the 30-day time period to 45 days for the initial request for discussion or reconsideration.)

(b) If the State agency wishes to request a reconsideration by the Departmental Grant Appeals Board following the discussion with the Assistant Secretary, it shall file the request within 30 days of the date of a letter from the Assistant Secretary to the State agency confirming the understandings reached in the discussion.

DEFERRAL OF CLAIMS PAYMENT

§ 228a.230 What deferral is.

As used in this subpart C, "deferral" refers to the suspension of the decision on the allowability of a claim for FFP pending the inspection of and analysis of further information.

§ 228a.231 How deferral occurs.

(a) *Basis for deferral.* The Regional Administrator may defer inclusion of a claim in the computation of a grant award (see § 228a.210) if the claim is of questionable allowability.

(b) *Notice to State agency.* The Regional Administrator takes deferral action within 60 days after receiving an acceptable quarterly statement of expenditures. Within 15 days of the deferral action, the Regional Administrator sends the State agency written notification identifying the type and amount of the claim and the reason for deferral. The notice will also request the State agency to make available for inspection in a prescribed manner all materials which the Regional Administrator considers necessary to determine the allowability of the claim.

(c) *How State agency responds.* Within 60 days of the RPD's notice of deferral, the State agency shall make any requested materials available to the regional office in readily reviewable form. If the State agency requires additional time to make materials available, the Regional Administrator will give, upon request, an additional period of no more than 60 days.

§ 228a.232 How decision is made on a deferred claim.

(a) *Review of State agency materials.* The Regional Administrator will review all materials furnished under § 228a.231 and, within 30 days of their receipt, notify the State agency if they are not readily reviewable or need supporting information. The State agency has 15 days from date of this notification to make available revised or additional materials. If the State agency does not make the required materials available, the Regional Administrator will promptly disallow the claim.

(b) *How action is taken on a deferred claim.* After the State agency has made all required material available in acceptable form, the Regional Administrator will allow or disallow a deferred claim and notify the State agency in writing of the decision. If the Regional Administrator does not notify the State agency within 120 days of the time the required materials became available, APS will include the claim in a grant award, subject to a later determination of allowability.

(c) If the deferred claim is disallowed, the Regional Administrator advises the State agency of its right to a reconsideration.

(d) A decision to pay a deferred claim shall not preclude a subsequent disallowance resulting from an audit exception or financial management review. If a subsequent disallowance occurs, the State agency may request a reconsideration under 45 CFR Part 16.

INSTALLMENT REPAYMENT OF FEDERAL FUNDS

§ 228a.240 General.

(a) *When Federal funds must be repaid.* When a claim has been reim-

bursed and is later determined to be unallowable, the State must repay the unallowable amount.

(b) *When the State may repay in installments.* A State may repay in installments if:

(1) The total amount to be repaid exceeds 2½ percent of the State's share of annual social services expenditures under the program in which the unallowable expenditures occurred; and

(2) Before repayment is otherwise due, the State notifies the regional program director in writing of its intention to repay in installments.

(c) *Exclusion of other installment repayments.* For purposes of § 228a.240-§ 228a.243, the amount of a repayment does not include any amount previously approved for installment repayment.

§ 228a.241 How to set the repayment schedule.

(a) *How many quarters the repayment may cover.* In order to determine the number of quarters over which repayment may be spread, the State computes this repayment as a percentage of the State agency's share of annual expenditures under the program in which the unallowable expenditures occurred. Using that percentage, the maximum number of calendar quarters over which a State may spread repayment is:

Total repayment amount as percentage of State agency's share of annual expenditures for the specific program	Number of quarters to make repayment
2.5 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
Greater than 100.....	13+

(b) How much must be repaid in an installment.

(1) Except for the final repayment, the amount due for each quarter in a repayment schedule shall not be less than the following percentages of the State agency's share of annual expenditures for the program in which the unallowable expenditures occurred:

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

(2) If the State pays higher percentages during the early quarters of its repayment schedule, it applies any corresponding reduction in the minimum percentages first to the last repayment scheduled, then to the next to last, and so on.

§ 228a.242 How to determine the State agency's share of expenditures.

(a) *General.* A State agency's share of annual expenditures under a program in which unallowable expenditures occurred is based on its most recent State agency quarterly statement of financial plan. The State agency's share is the sum of its shares for four quarters, beginning with the quarter in which the first repayment is due.

(b) *Exception.* If the program in which the unallowable expenditures occurred has been terminated, the State agency's share is based on its quarterly statements of expenditures for that program. The State agency's share is the sum of its shares of allowable actual expenditures for the last four quarters preceding the date on which the program was terminated.

§ 228a.243 How to make payments.

(a) *General.* APS deducts the repayment amount from each quarterly grant award, in accordance with the repayment schedule.

(b) *Retroactive claims.* If APS has allowed a State's retroactive claim for FFP, APS affects the amount of that claim against any amounts to be repaid by the State in installments under the same social services program of the act. (For purposes of this section, a retroactive claim is one applicable to any period ending 12 months or more prior to the beginning of the quarter in which Federal funds are to be paid.) Under this provision, a State may:

(1) Suspend repayments until the retroactive claim has been offset; or

(2) Continue repayments until the reduced amount of its debt (remaining after the offset) has been paid in full.

(c) *When interest is charged on repayments.* APS will not charge interest on repayments unless required by court order.

Subpart D—Federal Program and Financial Review and Audits

FEDERAL REVIEWS AND AUDITS IN GENERAL

§ 228a.300 What Federal reviews and audits are.

(a) *Reviews.* As used in this subpart D, a Federal review is any type of review necessary to determine whether a State plan is still approvable, and whether State agency operations and claims for FFP are proper under Federal requirements, the approved State plan, and additionally for title XX, the final services plan. A review may cover any aspect of a social services program.

(b) *Audits.* As used in this subpart D, an audit is any type of audit necessary to determine whether State agency operations and claims for FFP are proper under Federal requirements, the approved State plan, and additionally for title XX, the final services plan. An audit may cover any aspect of a social services program. The term "audit" includes, but is not limited to, audits by the General Accounting Office and the HEW Audit Agency.

§ 228a.301 Types and effects of reviews and audits.

(a) *Types.* The types of Federal reviews and audits most often conducted are:

(1) Program and financial reviews as described in § 228a.305-§ 228a.306; and
(2) HEW Audit Agency audits as described in § 228a.310.

(b) *Effects.* Any review or audit may result in a disallowance or in formal compliance or conformity action.

PROGRAM AND FINANCIAL REVIEWS

§ 228a.305 Program and financial reviews in general.

(a) *Responsibility for review.* The Regional Administrator will conduct program and financial reviews at whatever times he or she considers appropriate. In doing so, the Regional Administrator may make use of any procedures (including onsite review) or specialized assistance needed.

(b) *Purpose of review.* The purpose of a program or financial review is to determine the nature and scope of a State's social services programs in relation to Federal and State plan requirements, and additionally for title XX, the final services plan. Program and financial reviews include:

(1) Determining the allowability of claims;

(2) Evaluating a program's quality and the State agency's need for technical assistance;

(3) Determining whether a State plan conforms with Federal requirements. (A question of conformity may arise when a State agency fails to

submit an approvable plan amendment to implement a new Federal requirement; when previously approved plan material no longer meets Federal requirements; or when plan material has been approved in error; and

(4) Determining whether the State's operating practices are in substantial compliance with the approved State plan and with Federal requirements.

(c) *Review findings.* APS will make all review findings available in writing to the State agency so that it can correct any unacceptable policy or practice. If a review results in disallowance of a claim, the procedures in § 228a.222-§ 228a.224 will apply.

§ 228a.306 *Issues of compliance or conformity after review.*

(a) *Regional Administrator tries to resolve.* If the Regional Administrator believes there is a compliance or conformity issue, he or she will try to obtain needed changes in the State agency's operating practice or the State plan.

(b) *Issues not resolved.* If the State agency does not make the changes necessary to bring about compliance or conformity:

(1) The Regional Administrator, with concurrence of the Commissioner, APS, will notify the State agency in writing that there is an issue of compliance or conformity and advise it of its opportunity for a hearing under Subpart E.

(2) If the State agency does not avail itself of the opportunity for a hearing within the time allowed by § 228a.405, the Assistant Secretary will notify the State agency by letter whether APS will withhold further Federal payments for all of the program, for specified portions of it, or reduce the rate of FFP (See subparagraph (c) for details).

(c) *Consequences of noncompliance or nonconformity.* (1) Noncompliance or nonconformity by a State under title XX. The provisions of 45 CFR 228.19 set forth the consequences of a final decision that a State with an approved title XX State plan is in noncompliance or nonconformity.

(2) Noncompliance or nonconformity by a Territory. After a final decision that a Territory is in noncompliance or nonconformity, the following provisions apply:

(i) The Assistant Secretary may withhold further payments for expenditures for social services until satisfied that the State agency has corrected the deficiency that was the subject of the finding.

(ii) The Assistant Secretary may limit payments to the State agency to parts of the plan not affected by the deficiency.

(iii) Under titles I, X, XIV, or XVI of the Act, the Assistant Secretary may

reduce FFP in approved costs of social services, administration, and training from 75 percent to 50 percent if he or she finds that a plan provision for self-care services does not comply with Federal requirements (under 45 CFR 222, subparts A and B) for such services, or that in the administration of the plan, there is a failure to comply substantially with the plan provisions for those services.

HEW AUDIT AGENCY REVIEWS AND AUDITS

§ 228a.310 *What an HEW Audit Agency review is.*

The HEW Audit Agency (Audit Agency) in the HEW Inspector General's Office conducts both routine and special reviews and audits. These are to assure that Federal funds are being spent properly and prudently.

§ 228a.311 *Audit Agency's reports.*

Upon completion of an audit, the Audit Agency releases its final report. The report contains the Audit Agency's findings on the practices reviewed and the allowability of expenditures audited.

§ 228a.312 *Action after Audit Agency report.*

When the Audit Agency questions a claim, the Regional Administrator decides whether to disallow or allow FFP and notifies the State agency accordingly. When the Audit Agency finds problems of compliance, the Regional Administrator, with the concurrence of the Commissioner, APS, decides whether to take formal compliance action and notifies the State agency accordingly.

Subpart E—Hearing Procedures for State Agencies

GENERAL

§ 228a.400 *Scope.*

(a) *General.* The Act requires that a State agency be given an opportunity for hearings on certain matters. Hearing procedures described in this subpart E apply to:

(1) Reconsideration of a disapproved State plan or plan amendment which is treated as a new plan; and

(2) Notification of formal compliance or conformity action.

(b) *Negotiations.* Nothing in this subpart E limits negotiations between the Department and the State. The rules in this subpart do not apply to negotiations.

§ 228a.401 *Preliminary matters.*

(a) *How to get records.* All papers filed in connection with a hearing are available for inspection and copying in the office of the HDS hearing clerk. Individuals should direct inquiries to

the Central Information Center, Department of Health, Education, and Welfare, 200 Independence Avenue SW., Washington, D.C. 20201.

(b) *How to file and serve papers.* (1) Anyone who wishes to submit papers for the docket shall file with the HDS hearing clerk an original and two copies (but only originals of exhibits and testimony transcripts).

(2) Anyone who wishes papers to be part of the record shall also serve copies on all parties by personal delivery or by mail. Service on a party's designated attorney is the same as service on the party.

(c) *When rules are suspended.* The Assistant Secretary or the presiding officer, after notifying all parties, may modify or waive any rule in sections 228a.401-421 if he or she decides that the action is equitable and will not unduly prejudice the rights of any part.

ARRANGEMENTS FOR HEARING

§ 228a.405 *How to request hearing.*

A State agency has 60 days from receipt of written notice of plan disapproval or intended compliance or conformity action to request a formal hearing. The State agency makes its request in writing to the Assistant Secretary, with a copy to the regional program director.

§ 228a.406 *How request is acknowledged.*

(a) *Notice of hearing.* Within 30 days of receiving a hearing request, the Assistant Secretary will notify the State agency in writing of the date, time, and place of the hearing and of the issues to be considered. The Assistant Secretary will also publish the hearing notice in the FEDERAL REGISTER.

(b) *When the hearing must be set.* The date set for a hearing will be at least 20, but no more than 60 days from the date the State agency receives the hearing notice. However, the State agency and the Assistant Secretary may agree in writing to a different date.

§ 228a.407 *What the hearing issues are.*

(a) *General.* The issues at a hearing are those included in the notice to the State agency described in § 228a.406.

(b) *How the Assistant Secretary may add issues.* At least 20 days before a scheduled hearing, the Assistant Secretary will notify the State agency by letter of any additional issues to be considered. The Assistant Secretary will also publish this notice in the FEDERAL REGISTER. If the State agency does not receive its notice in the required time, any party may request the Assistant Secretary to postpone the hearing. If a request is made, the Assistant Secretary will set a new hearing date which is at least 20, but

CONDUCT OF HEARING

not more than 60 days from the date the State agency receives the hearing notice.

(c) *How actions by the State may cause the Assistant Secretary to add, modify, or remove issues.* The Assistant Secretary may add, modify or remove issues if, for example, the State agency:

(1) Changes its practices to comply with Federal requirements and its State plan; or

(2) Conforms its State plan to Federal requirements and pertinent court decisions.

(d) What happens when State action causes the Assistant Secretary to add, modify, or remove issues:

(1) If the Assistant Secretary specifies new or modified issues, the hearing will proceed on these issues.

(2) (i) If the Assistant Secretary removes an issue, the hearing will proceed on the remaining issues. If the Assistant Secretary removes all the issues, he or she will terminate the hearing proceedings. The Assistant Secretary may terminate hearing proceedings or remove issues before, during, or after the hearing.

(ii) Before removing any issue, the Assistant Secretary will notify all parties other than the Department and the State. This notice contains the reasons for removing the issue. Within 20 days of the date of this notice, the parties may submit comments in writing on the merits of the proposed removal. (The Assistant Secretary will consider these comments and they become a part of the record.)

§ 228a.408 What the purpose of a hearing is.

The purpose of the hearing is to receive factual evidence and testimony, including expert opinion testimony, related to the issues. The presiding officer will not allow argument as evidence. However, he or she may allow argument in statements, memoranda, or briefs.

§ 228a.409 Who presides.

The presiding office at a hearing is the Assistant Secretary or a person he or she appoints. If the Assistant Secretary appoints a presiding officer, the Assistant Secretary will send copies of the appointment notice to all parties.

§ 228a.410 How to be a party or amicus curiae to a hearing.

(a) *HEW and State agency.* HEW and the State agency are parties to a hearing without having to request participation.

(b) *Other parties or amici curiae.* Any individual or group wishing to be a party or amicus curiae to a hearing shall file a petition with the HDS hearing clerk no more than 15 days following publication of the hearing

notice in the FEDERAL REGISTER. A petitioner who wishes to be a party shall also provide a copy of the petition to each party of record at that time.

(c) *What must be in a petition.* The petition must state concisely: (1) The petitioner's interest in the proceedings; (2) Who will appear for the petitioner; (3) The issue on which the petitioner wishes to participate; and (4) Whether the petitioner intends to present witnesses if the petitioner wishes to be a party.

(d) *What happens to a petition:* (1) The presiding officer will determine promptly whether each petitioner has the necessary interest in the proceedings and permit or deny the petition accordingly and in writing. Before making this determination, the presiding officer will allow any party to file comments on the petition to be a party. If the presiding officer denies the petition, he or she will state the reasons. Any party wishing to file comments must do so within 5 days of receiving the petition.

(2) The presiding officer may decide that individuals or groups who have become parties on petition have common interests. The presiding officer may then request that they designate a single representative, or may recognize one or more of these parties to represent them all.

(e) *What rights parties have.* Any party may: (1) Appear by counsel or other authorized representative in all hearing proceedings;

(2) Participate in any prehearing conference held by the presiding officer;

(3) Stipulate facts which, if uncontested by other parties, will become part of the record;

(4) Making opening statements;

(5) Present relevant evidence;

(6) Present witnesses who must be available for cross-examination by all other parties;

(7) Present oral arguments at the hearing; and

(8) Submit written briefs, proposed findings of fact, and proposed conclusions of law, after the hearing.

(f) *What rights amici curiae have.* Any amicus curiae may: (1) Present an oral statement at the hearing at the point in the proceedings specified by the presiding officer;

(2) Submit a written statement of position to the presiding officer before the hearing begins; and

(3) Submit a brief or written statement at the same time as the parties submit briefs.

If an amicus curiae submits a written statement or brief, he or she shall serve a copy on each party.

§ 228a.415 Authority of presiding officer.

(a) *General.* It is the duty of the presiding officer to conduct a fair hearing, avoid delay, maintain order, and make a record of the proceedings. He or she has authority to carry out these duties. This includes: (1) Regulate the course of the hearing;

(2) Regulate the participation and conduct of parties, amici curiae, and others at the hearings;

(3) Rule on procedural matters and, if necessary, issue protective orders or other relief to a party against whom discovery is sought;

(4) Take any action authorized by the rules in this subpart or in conformance with 5 U.S.C. 551-559;

(5) Make a final decision, if the Assistant Secretary is the presiding officer;

(6) Administer oaths and affirmations;

(7) Examine witnesses; and

(8) Receive or exclude evidence or rule on or limit evidence or discovery.

(b) *What the presiding officer cannot do.* The presiding officer does not have the authority to compel by subpoena the production of witnesses, papers, or other evidence.

(c) *When the presiding officer's authority is limited.* If the presiding officer is not the Assistant Secretary, he or she does not have the authority to: (1) Make a final decision but shall certify the entire record to the Assistant Secretary including recommended findings and decisions; or

(2) Recommend reduction or withholding of FFP in matters of compliance or conformity.

§ 228a.416 Discovery.

Any party has the right to conduct discovery against other parties. These discovery proceedings are subject to Rules 26-37, Federal Rules of Civil Procedure. The presiding officer shall promptly rule on any written objection to discovery and may restrict or control discovery so as to prevent undue delay in the hearing. If any party fails to respond to discovery procedures, the presiding officer may issue any order and impose any sanctions (other than contempt orders) authorized by rule 37 of the Federal Rules of Civil Procedure.

§ 228a.417 How evidence is handled.

(a) *Testimony.* Witnesses, under oath or affirmation, give oral testimony at a hearing. All witnesses must be available at the hearing for cross-examination.

(b) *Rules of evidence.* Technical rules of evidence do not apply to hearings described in this subpart E. The presiding officer applies whatever rules or principles are necessary to

assure disclosure of the most credible evidence available and to subject testimony to cross-examination. Cross-examination may be on any material matter regardless of the scope of direct examination.

§ 228a.418 What happens to unsponsored written material.

Letters and other written material regarding matters at issue, when not submitted specifically on behalf of one of the parties, become part of the correspondence section of the docket. This material is not part of the evidence or the record.

§ 228a.419 What the record is.

(a) *Official transcript.* HEW designates the official reporter for a hearing. The HDS hearing clerk has the official transcript of testimony, as well as any other materials submitted with the official transcript. The parties and the public may obtain transcripts of testimony from the official reporter at rates which do not exceed the maximum fixed by contract between the reporter and HEW. Upon notice to all parties, the presiding officer may authorize corrections to the transcript which involve matters of substance.

(b) *Record.* The record for the hearing decision consists of the transcript of testimony, exhibits, and all papers and requests filed in the proceedings except for the correspondence section of the docket. The record includes rulings and any decisions.

AFTER THE HEARING

§ 228a.420 Posthearing briefs.

The presiding officer shall fix the time for filing posthearing briefs. These may contain proposed findings of fact and conclusions of law. The presiding officer may permit filing of reply briefs.

§ 228a.421 Decisions.

(a) *When the Assistant Secretary is presiding officer.* If the Assistant Secretary is the presiding officer, he or she will issue a final decision within 60 days after expiration of the time allowed for filing of posthearing or reply briefs.

(b) *When the Assistant Secretary appoints a presiding officer.* If the Assistant Secretary appoints a presiding officer: (1) After the time for filing posthearing or reply briefs has expired, the presiding officer shall certify the entire record, including his or her recommended findings and proposed decision, to the Assistant Secretary.

(2) The Assistant Secretary shall provide a copy of the recommended findings and proposed decision to all parties and any amici curiae. Within 20 days, a party may file with the As-

sistant Secretary, exceptions to the recommended findings and proposed decision. The party must file a supporting brief or statement with the exceptions.

(3) The Assistant Secretary will review the presiding officer's recommended findings and proposed decision and, within 60 days of receiving them, issue a decision. The Assistant Secretary will provide copies of that decision to all parties and any amici curiae.

(c) *When the decision involves nonconformity or noncompliance.* When the Assistant Secretary decides, after a formal hearing, the nonconformity or substantial noncompliance exists, the final decision will state whether further payments to the State will be withheld entirely, will be limited to categories not affected by the decision, or whether the rate of FFP will be reduced. (See § 228a.306 for details.)

§ 228a.422 When decision involving nonconformity or noncompliance becomes effective.

The Assistant Secretary's decision will specify the effective date for any withholding of Federal payments or reduction of the rate of FFP because of nonconformity or substantial noncompliance. This effective date cannot be earlier than the date of the Assistant Secretary's decision, or later than the first day of the next calendar quarter.

[FR Doc. 78-23943 Filed 8-24-78; 8:45 am]

[4410-07]

Office of Child Support Enforcement

[45 CFR Parts 300, 301, and 304]

GENERAL POLICIES AND PROCEDURES ON GRANTS TO STATES FOR THE CHILD SUPPORT ENFORCEMENT PROGRAM

AGENCY: Office of Child Support Enforcement (OCSE), HEW.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed regulations clarify and reorganize into a single part existing procedural rules on administration of grants to States for the child support enforcement program. They also further define existing policies on appeal procedures for State agencies. Comparable regulations, appearing in part V of this issue are proposed for the medical assistance, social services, and financial assistance programs.

DATE: Comments must be received by October 24, 1978.

ADDRESSES: Address comments to Director, Office of Child Support Enforcement, Department of Health, Education, and Welfare, P.O. Box

23526, Washington, D.C. 20024. Comments will be available for public inspection in Room 2323 of the Department's offices at 330 C Street SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT:

Mr. John M. Sacchetti, Policy Branch, OCSE, telephone 202-472-4510.

SUPPLEMENTARY INFORMATION: General program description title IV-D of the Social Security Act authorizes Federal/State sharing of the costs of providing child support enforcement services to families eligible for the aid to families with dependent children program and to any other individuals who apply for these services. Federal reimbursement is available for child support enforcement services provided under a State's approved title IV-D State plan. These proposed regulations contain policies and procedures for the approval and disapproval of State plans and plan amendments, for deferring, allowing and disallowing State expenditures, for program and financial reviews by Federal officials, and for appeal of adverse decisions.

REASONS FOR REVISING REGULATIONS

When the original child support enforcement regulations were adopted on June 26, 1975, they included separate provisions (part 301) for State plan approval and grant procedures. Subsequently, on February 17, 1976, in an amendment to the regulations (§ 304.29) OCSE incorporated by reference the disallowance, deferral, and reconsideration of claims provisions contained in 45 CFR Chapter II (§§ 201.14 and 201.15) which were applicable to the programs administered by the Social and Rehabilitation Service (SRS). Under the HEW reorganization order of March 8, 1977, SRS was disbanded and responsibility for its various programs was divided among several HEW agencies. This reorganization necessitates OCSE adopting its own complete set of administrative regulations. In addition, this proposal is in furtherance of the Secretary's "Operation Common Sense" directive on writing HEW regulations in clear, simple language. This proposed rule combines procedures now contained in parts 301, 302, and by reference 201 into a single part 300 which would apply only to the child support enforcement program. Additional content and format changes are described below.

PROPOSED REGULATION FORMAT

Under this proposal, procedures for administering grants to States for child support enforcement programs will all be in a new part 300. Regulations or procedures for administering