

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Food and Consumer Service

#### 7 CFR Part 235

RIN 0584-AB31

#### State Administrative Expense Funds: National School Lunch Program, Special Milk Program for Children, School Breakfast Program, Child and Adult Care Food Program, Food Distribution Program

AGENCY: Food and Consumer Service, USDA.

ACTION: Final rule.

**SUMMARY:** This rulemaking incorporates in the regulations the requirements in the Child Nutrition and WIC Reauthorization Act of 1989, which concern State Administrative Expense (SAE) funds. SAE funds are Federal funds provided to State agencies to assist with the administrative costs of the National School Lunch Program (NSLP), the School Breakfast Program (SBP), the Special Milk Program for Children (SMP) and the Child and Adult Care Food Program (CACFP) and the administrative costs of the Food Distribution Program (FDP) in conjunction with these programs. The SAE provisions of the 1989 legislation included in this final rulemaking do the following: Establish limits on the level of SAE funds that may be retained by the State from one fiscal year to another and specify how SAE funds that are returned by the State are to be redistributed. Finally, the legislation provides that alternate State agencies which administer the CACFP receive the funds to which they are entitled. In practical effect, this provision concerns the "adult care component" of the CACFP since the Department already provides funds directly to the State agencies administering the CACFP. This final regulation reflects this statutory

provision. These changes to the SAE provisions are designed to ensure that adequate funds are available for the purposes specified.

**EFFECTIVE DATE:** This final regulation is effective April 24, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Eadie, Chief, Policy and Program Development Branch or Mr. Charles Heise, Child Nutrition Division, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302 or by telephone at (703) 305-2620.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

##### Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). The Administrator of the Food and Consumer Service (FCS) has certified that this final rule will not have a significant economic impact on a substantial number of small entities, since the regulation pertains entirely to the funding of State agencies, and these are not small entities.

##### Paperwork Reduction Act

The proposed rule contained information collections. However, the provisions that contained reporting and recordkeeping burdens are not included in this final rule. Therefore, this final rule does not contain information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

##### Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" section of this preamble. Prior to any judicial challenge

to the provisions of this rule or the application of the provision, all applicable administrative procedures must be exhausted. In the National School Lunch Program, the administrative procedures for State agency appeals of State Administrative Expense funds sanctions (7 CFR 235.11(b)) are set forth in 7 CFR 235.11(f).

##### Executive Order 12372

The FDP, SBP, NSLP, SMP, CACFP, and SAE are listed in the Catalog of Federal Domestic Assistance under No. 10.550, No. 10.553, No. 10.555, No. 10.556, No. 10.558, and No. 10.560, respectively. These programs are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and final rule related to notice published at 49 FR 29114, June 24, 1983.)

##### Background

Public Law 101-147, entitled the Child Nutrition and WIC Reauthorization Act of 1989 (103 Stat. 877), was enacted on November 10, 1989. Section 122 of this legislation included changes to some of the statutory provisions governing the use of State Administrative Expense (SAE) funds provided by the Federal government to assist States with meeting the administrative costs of many of the programs authorized under the National School Lunch Act (NSLA) and the Child Nutrition Act of 1966 (CNA).

On December 6, 1991, the Department published a proposed rulemaking at 56 FR 63882 to incorporate these statutory changes into the SAE regulations and to make discretionary changes to the funding of Food Distribution Programs. This proposal included the following provisions: (1) The maximum amount of SAE which a State could carry over from one fiscal year to the next was limited to 25 per cent for Fiscal Year 1991 and 20 per cent for subsequent years; (2) a minimum of \$3 million of any excess SAE funds recovered by the Department in Fiscal Year 1992 and \$4 million of SAE recovered in each of the next two years must be made available to demonstration projects authorized under section 107 of Public Law 101-147 to provide food service to homeless children under the age of 6 in

emergency shelters; (3) if a State elects to have an agency other than the agency administering the child care component of the CACFP administer the adult care component of that Program, the Department will ensure that a share of the SAE funds generated by the CACFP is made available to this other agency; (4) a portion of the nondiscretionary SAE funds made available to a State would be designated exclusively for the Food Distribution Program's administrative expenses associated with providing commodities to the NSLP, SBP, and CACFP; and (5) beginning with Fiscal Year 1993, expenditures from State sources for applicable food distribution administrative costs would have to be no less than the amount of State funds expended or obligated in Fiscal Year 1991, in order to ensure continued State support for food distribution activities. Readers are referred to the proposed rule for a more complete explanation of these provisions.

During the official comment period, the Department received 53 comments. Most of these were from State agencies which administer one or more of the child nutrition programs and/or the Food Distribution Program, but three comments were received from State or national associations and one comment was submitted by a State governor's office. Most of the commenters addressed the provisions relating to the transfer of funding to food distribution activities and the maintenance of State funding levels for these activities. The overwhelming majority opposed these provisions; in fact, only four commenters approved wholly of the proposed provisions on transfer of funds to the FDP. The major concerns of those opposed to the transfer/exclusive use provisions were as follow:

- The provision is inconsistent with either the statutory language or the intent of Congress;
- The total prohibition against transferring funds from the FDP to the other child nutrition programs is inconsistent with the statutory provision which permits a 10 per cent transfer of administrative funds among programs;
- The proposal would divert administrative funds away from the child nutrition programs at the same time that additional administrative requirements such as coordinated review and breakfast outreach are being imposed;
- The requirement that the food distribution portion of funds be used exclusively for these activities would interfere with States' flexibility to provide funding where it is most

needed, especially in those States in which one agency administers both the child nutrition programs and the FDP;

- Tracking and accounting for separate funds will create a burden, especially for those agencies which administer both programs and must, therefore, document the exclusive use of funds for food distribution activities;
- The FDP already has a source of funding through assessment fees, and any additional funds should be appropriated separately rather than transferred at the expense of the child nutrition programs.

Commenters opposed to the maintenance of effort provision raised the following concerns and issues:

- This provision exceeds Congressional intent;
- This provision would penalize those States which have been providing funds voluntarily for food distribution purposes;
- Since most States do not currently track food distribution funds separately, it will be difficult to establish the exact level of funding to be maintained;
- Because of cutbacks in State funding since 1991, some States will be unable to comply with the maintenance of effort requirement.

As noted in the preamble to the December 6, 1991 proposed rulemaking, section 122(a)(1)(D) of Pub. L. 101-147 added a new paragraph (8) to section 7(a) of the CNA which directs each State to ensure (in accordance with regulations issued by the Secretary) that the State agency administering the distribution of donated food (the "distributing agency") is provided an appropriate amount of SAE for the administrative costs incurred in distributing donated commodities to the NSLP, SBP and CACFP. The law further authorized the Secretary to consider the value of commodities when developing regulations to implement this provision. Currently, the Department provides SAE funds directly to the distributing agency in the State that administers the FDP for the NSLP, SBP, and CACFP. Therefore, no change to the SAE regulation was required to implement this provision.

However, in order to further improve the administration of SAE funds in connection with the FDP, the Department proposed a number of discretionary changes to the SAE regulations regarding funding of the FDP. First, the Department proposed a methodology for distributing a portion of the nondiscretionary SAE allocation for the FDP's administrative costs. Second, clarifications to the formula for determining the level of discretionary SAE funds to be used for the FDP were proposed. Third, since the Department

has always intended that SAE funds designated for food distribution purposes be so used, the proposed rule prohibited using the food distribution portion of SAE for any other purposes, even when the same agency administers the FDP and the child nutrition programs. Finally, the legislative history of section 122 makes it clear that distributing agencies were expected to reduce or eliminate current assessment fees, wherever possible, in response to their receipt of SAE funds. The "maintenance of effort" provision of the proposal was designed to promote this goal by ensuring that States would continue to provide the same level of State funds derived from sources other than assessment fees. Since the total of State and Federal funds provided for food distribution would, in many cases, increase, assessment fees could be reduced or eliminated.

Nevertheless, the Department recognizes the concerns raised by commenters and has no desire to adopt provisions that could potentially have a negative impact on operations in some States. For these reasons, the Department wishes to reconsider these discretionary issues regarding FDP funding and review available options, including possible alternatives to the proposal. Therefore, these provisions are not included in this final regulation; rather, they will be treated in a separate, future rulemaking. The Department is, however, proceeding to finalize those provisions required by Public Law 101-147. The remainder of this preamble discusses commenters' questions and concerns on these issues.

#### **Limits on Funds Retained From the Previous Fiscal Year**

The Department proposed to amend § 235.5(e) and § 235.6(a) to incorporate the mandate of section 7(a)(5)(A) of the CNA as amended by section 122(a)(1)(C) of Public Law 101-147, which limits the amount of unobligated SAE funds that may be retained and carried over into the next fiscal year to a maximum of 25 per cent for Fiscal Year 1991 and a maximum of 20 per cent for subsequent fiscal years. The proposed amendment also specified how the limit would be calculated and how the limit would be compared at the end of the first fiscal year to the amount of unobligated SAE funds. Essentially, the Department would apply the appropriate percentage to the State's initial allocation to establish the maximum amount of SAE that may be carried over. To determine the total amount of unobligated funds, the Department would subtract the amount reported by the State agency on Line k (Total Federal share of outlays

and unliquidated obligations) of the fourth quarter Standard Form (SF) 269 from the total amount of SAE funds granted for the fiscal year. The Department would then recover any of these funds in excess of the maximum amount of SAE that can be carried over. For an example of how the process would work, interested parties should refer to the discussion on page 63885 of the preamble to the proposed rule.

Twenty-three commenters addressed the limitation provisions of the proposed rule, with most of them believing that such a limitation would have a negative impact on Program administration, although one State agency reported that its carryover has been well below 20 per cent, so compliance was not perceived to be a problem. One commenter, however, was concerned that the carryover limit will lead to the elimination of funds for reallocation, with the result that small States in particular will have difficulty funding their activities with only the minimum grant available to them. One commenter suggested that an arbitrary percentage is inequitable to those States with allocations below the national mean, and another stated that basing the carryover amount only on the initial allocation does not conform with the language of the statute, which allows the carryover of 20 per cent of the *funds available* for the fiscal year. Two commenters were concerned about including reallocated funds as part of the year-end balance subject to the carryover limitation, since these funds are sometimes received late in the fiscal year and returning any or all of these monies due to the carryover limit would defeat the purpose of reallocation. One commenter believed the carryover limit should apply on an agency-by-agency basis rather than being calculated using the total amount of SAE allocated to the State as a whole, and another commenter suggested that States should be allowed to use excess funds for demonstration projects in lieu of returning the monies to the Federal Government. Some commenters requested clarification on whether the carryover limit applies to the funds designated for food distribution activities, and several commenters noted that the last word in § 235.5(e)(2) should be "unobligated" rather than "unexpended."

The Department recognizes commenters' concerns about the impact of the carryover limitation on their operations. However, section 7(a)(5)(B) of the CNA specifically established carryover limits of 25 per cent for Fiscal Year 1991 and 20 per cent for succeeding fiscal years, and the

Department has no authority to waive or modify this mandate. Moreover, as discussed in the preamble to the proposed rulemaking, this limitation is applied to the *initial* allocation rather than to the total administrative funds made available during the fiscal year because the Department wished to simplify the overall process of calculation and to enable State agencies to know at the beginning of the fiscal year exactly what the maximum amount of their carryover would be. To this end, the Department believes Congress' overriding intent was to reduce the amount of carryover funds available as much as possible while still allowing States flexibility in obligating and expending funds. The Department believes that the proposal to base the carryover limit on the initial allocation is consistent with this intent.

The Department does not believe this provision will adversely affect the overall reallocation process. Funds are reallocated to States on the basis of need. Consequently, States receiving reallocations should generally have few, if any, unobligated funds remaining from their initial allocations. Moreover, States will often request reallocations for specific expenses and can, therefore, obligate these funds relatively quickly. The Department recognizes that some small State agencies, particularly those receiving minimum grants, could receive reallocations which are large relative to the States' carryover limit, and in these instances a State's reallocation might be affected. These situations should not be common, however, and the Department will make every effort to provide reallocations well in advance of the end of the fiscal year in order to facilitate the States' ability to obligate a major portion of their reallocations before the funds become subject to the carryover limit.

This limitation applies to all SAE funds received by *any* State agency for the administration of any aspect of the child nutrition programs. Funding for food distribution activities, therefore, is subject to the carryover limit, regardless of whether the State education agency or another State agency performs these activities. Moreover, under the proposed regulation the limitation would be applied on an agency-by-agency basis, since the Department receives separate SF-269's from each administering agency and has no feasible means of making the necessary year-end comparison for the State as a whole. With respect to allowing States to retain excess funds for demonstration projects, the statute is specific about requiring the return of excess funds and how the recovered funds may be used, and the

Department does not have the authority to authorize alternate uses. Further discussion of this issue appears later in this preamble.

Finally, proposed § 235.5(e)(2) reads as follows:

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

Several commenters believed that the last word of this paragraph should read "unobligated" rather than "unexpended." The Department notes, however, that this provision clearly refers to the recovery made at the end of the *second* fiscal year for which SAE has been available, not the return of funds in excess of the carryover limits. Proposed § 235.5(e)(2) merely restated the requirement that has always been in effect. Previously, this requirement for the recovery of *unexpended* funds at the end of the second fiscal year was stated in § 235.5(e).

For these reasons, this final rulemaking adopts the provisions limiting the amount of SAE that may be carried over from one fiscal year to the next as proposed. The Department emphasizes, however, that this carryover limit does not apply to funds made available to State agencies which agree to assume responsibility for programs previously administered directly by FCS, as authorized under the newly redesignated § 235.4(d). These funds are intended to assist States with costs associated with start-up operations when assuming responsibility for a program formerly administered by FCS.

As such, they are made infrequently and are intended for a specific purpose. Consequently, the Department does not consider that this funding is subject to the carryover limit and is amending § 235.5(e)(1) to specify that start-up funds are excluded from the amount subject to the retention limit. In addition, the reference in § 235.5(e) to § 235.4 (a) through (e) is revised from the proposal to § 235.4 (a) through (c) to reflect the deletion of the proposed new § 235.4 (d) and (e). These latter paragraphs provided for pro rata shares of SAE funds for FDP administrative purposes which are not included in this final regulation. This same change is made to the references in § 235.6(a).

#### Use of Returned SAE Funds

The Department proposed to add a new paragraph—§ 235.6(h) to incorporate the mandate of Public Law 101-147 regarding how any excess carryover funds recovered by the Department were to be used. Section 7(a)(5)(B) as amended by section

122(a)(1)(C) of Public Law 101-147 stipulated that in Fiscal Year 1992, a minimum of \$3 million of recovered monies be made available for the purpose of providing grants to private nonprofit organizations participating in demonstration projects to provide food service to homeless children under the age of 6 in emergency shelters. The law also mandated that a minimum of \$4 million be made available for this purpose in each of the next two fiscal years. Any funds in excess of the amount made available to these demonstration projects would be reallocated to States which need SAE funds. The Department emphasized, however, that any disbursement of funds to homeless shelters or the States would be subject to availability of recovered monies.

Commenters did not generally discuss this provision except to recognize that the use of recovered funds for this purpose is mandated by the statute. One commenter, however, expressed concern that SAE plans might be disapproved or significantly modified to ensure that sufficient funding is available to fund these projects. The Department wishes to emphasize that there will be no change in the procedures currently in place to review and approve SAE plans. The Department acknowledges that the disallowance of outlays stated in the plan could result in additional funds being carried over and, hence, subject to the limitation and possible recovery. The Department considers, however, that the primary purpose of SAE is to ensure that States have adequate funds available to administer the child nutrition programs effectively. To this end, the Department will continue to negotiate these plans with the States to ensure that outlays are appropriate but has no intention of artificially reducing the funding available to States in order to provide funds for the homeless demonstration projects.

Since publication of the proposed rule, additional legislation was passed which impacts upon the use of recovered SAE funds. On September 30, 1992, Public Law 102-512, the Children's Nutrition Assistance Act of 1992, was enacted which further amended the provision on the use of excess carryover funds for demonstration projects for the homeless. Public Law 102-512 amended section 7(a)(5)(B)(i) of the CNA to require that a minimum of \$1,000,000 in Fiscal Years 1993 and 1994 be available at the beginning of the fiscal year, based on Departmental estimates of the funds expected to be recovered as a result of the limit on funds that can be carried

over. The Department is, therefore, incorporating the language of Public Law 102-512 on the use of returned funds into § 235.6(h) to comply with this most recent statutory requirement.

#### **Alternate State Agencies for the CACFP**

Section 7(a)(3) of the CNA as amended by section 122(a)(1)(A) of Public Law 101-147 requires that if an agency other than the State educational agency administers the CACFP, the State must ensure that such State agency which administers the CACFP is provided an amount equal to no less than the SAE funds due to the State for the CACFP. Since the Department already provides funds directly to State agencies administering the CACFP, the practical effect of the applicability of this provision concerns the "adult care component" of the CACFP. Accordingly, the Department proposed to add a new paragraph, to be designated as § 235.4(c), to allow a prorated portion of the State's SAE allocation for the CACFP to be made available directly to another agency in the State when that agency administers the adult care component of the CACFP. The Department further proposed to calculate the prorated share by determining what percentage of total CACFP monies expended by that State in the second preceding fiscal year was generated by the adult care component of the CACFP and applying that percentage to the State's total SAE allocation for the CACFP. To accommodate this change, the Department also proposed a number of technical amendments and proposed to delete the word "agency" where it appears in § 235.4 (b)(1) and (4) to clarify that it is the *State* which earns the total CACFP grant.

The Department received eight comments on this proposal. Three of the commenters argued that the \$30,000 discretionary grant made available to assist in administering the CACFP should be redirected to help fund the monitoring requirements of the NSLP. Three commenters from one State (which has designated an alternate agency to administer the adult care component of the CACFP) maintained that the prorated share is insufficient and recommended a minimum level of \$50,000 per year, while another State suggested that the provision be eliminated entirely, since redirecting of finite SAE funds would weaken overall Program administration. Finally, one commenter recommended adjusting the SAE nondiscretionary allocation for the CACFP based on growth in the Program between the second preceding year and the current year.

As noted in the preamble to the proposed rule, the Department believes this amendment to section 7(a)(3) of the CNA must be read in the context of section 17(p)(6) of the National School Lunch Act as amended by section 105(b)(3)(B) of Public Law 101-147, which authorizes governors to designate alternate agencies to administer the adult care component of the CACFP. In those instances in which a governor decides that an agency other than the CACFP agency is better able to serve the adult community, the Department believes it is consistent with the alternate State agency legislation to ensure that a portion of SAE funds is provided to that agency. However, the Department continues to stress that the total SAE allocation is earned by the CACFP as a whole. Moreover, the total amount of SAE available for all of the child nutrition programs is limited. Consequently, if the Department were to guarantee a minimum level of funding for the adult care component of the CACFP, the amount of funds available to administer the other child nutrition programs would be diminished. Finally, the Department notes that nationally, the adult care component accounts for only slightly more than 1 per cent of the total funding for the CACFP, and designating a large pool of administrative funding strictly for this purpose would not be justified. Therefore, it would not be reasonable to provide a minimum grant of \$50,000 to an alternate agency solely to administer the adult care component of the CACFP. The Department does wish to emphasize, however, that in those States which do elect to administer the adult care component through an alternate agency, the agency administering the child care component of the CACFP may elect to transfer a portion of its SAE funds to the alternate agency in accordance with established FCS procedures. This would be in addition to the amount required by the regulations to be provided the agency administering the adult care component of the CACFP.

Secondly, the Department does not agree with those commenters who wish to redirect the CACFP discretionary grant to cover the costs of monitoring the school nutrition programs. The Department makes these grants available to CACFP agencies in recognition of the fact that this Program has heavy monitoring responsibilities, which actually exceed the requirements for monitoring of schools, as well as other administrative requirements, such as the oversight of approval when licensing or approval is not otherwise available,

which are unique to the CACFP. If States could redirect the entire discretionary money from the CACFP to school programs, the overall management of the CACFP could be weakened. The Department also provides States with \$4 million for the specific purpose of conducting reviews of the NSLP. For these reasons, the Department could not justify redirecting monies from the CACFP to NSLP.

The Department recognizes the concern about possible fragmentation of the SAE grant for the CACFP if funding is made available to an alternate agency to administer the adult care component. As the above discussion makes clear, the Department is anxious to maintain sufficient funding to ensure proper management of the Program. Under the proposal, a portion of the SAE grant is designated for an alternate agency *only* when the State, itself, has decided to split the administration of the CACFP. Since this action would be voluntary on the part of the State, the Department assumes that the State has determined that the advantages, both financial and administrative, of shifting the adult care component outweigh any reduction the agency administering the CACFP may experience in its SAE grant. For these reasons, the Department is adopting as proposed the provision to designate a pro rata share of the CACFP's SAE grant for an alternate agency administering the adult care component.

The final comment to address on this provision is the recommendation that the SAE nondiscretionary allocation for the CACFP be adjusted based on growth in the Program between the second preceding year and the current year. The Department is unable to adopt this recommendation because the time frame for determining the level of nondiscretionary funds for the CACFP is statutory.

#### Miscellaneous Provisions

In addition to the changes described above, the Department proposed a number of amendments intended to remove obsolete references, provide clarification and incorporate the provision in Public Law 101-147 mandating cooperation with studies authorized by the Secretary. In § 235.1 and § 235.2(s), the references to the Food Service Equipment Assistance Program were deleted, as were references to Fiscal Year 1986 in § 235.5(b) and Fiscal Year 1980 in § 235.7(c). Also, the definition of "State" in § 235.2(r) was revised by deleting references to the Trust Territories and American Samoa and replacing them with references to the Commonwealth of the Northern

Marianas Islands and the Republic of Palau, respectively. The Department notes that separate SAE funds are no longer made available to the Commonwealth of the Northern Marianas Islands; it is not necessary, therefore, to include that entity in the definition at all. Consequently, in this final regulation, the old references are replaced by the single reference to the Republic of Palau.

To distinguish more clearly between nondiscretionary and discretionary SAE funding, the proposed rule amended § 235.4 by redesignating paragraph (a) as paragraph (a)(1), adding new introductory text to paragraph (a), redesignating paragraph (b) as paragraph (a)(2) and adding new introductory text to paragraph (b) to indicate the additional discretionary SAE funding designations. The Department also proposed to delete the second sentence of § 235.4(b)(3)(iv) and add a new paragraph (i) to § 235.4 to clarify that funds allotted to State agencies under § 235.4 are subject to the reallocation provisions in § 235.5(d).

Finally, the Department proposed changes to § 235.7(c) to comply with section 122(a)(2) of Public Law 101-147, which amended section 7(g) of CNA to require that SAE funds cannot be distributed unless the State agrees to participate fully in any studies authorized by the Secretary. The proposal deleted the phrase "studies directed by Congress and requested" (by the Secretary) and replaced it with the word "authorized" as well as deleted the reference to Fiscal Year 1980.

The Department received only one comment on these provisions, and that commenter observed that the requirement to participate in studies authorized by the Secretary should not be imposed unless there is specific authorizing legislation. As noted in the preamble to the proposed rule and in this preamble above, the change was in response to the specific mandate of Public Law 101-147. Therefore, the Department is adopting this provision and the other miscellaneous amendments as proposed. However, because of changes in the final rule in § 235.4, the proposed new § 235.4(i) is now designated as § 235.4(g).

The Department is also taking this opportunity to correct an erroneous reference which was discovered subsequent to the publication of the proposed rule. Section 235.7(b) contains a reference to § 235.4(c). In the proposed rule, § 235.4(c) was redesignated § 235.4(f) because three new paragraphs were being inserted after § 235.4(b), and the reference was changed in § 235.7(b) to accommodate this redesignation. The

Department notes, however, that the original reference was incorrect, since § 235.4(c) did not address carryover. The correct reference should have been § 235.6(a), and this reference is being incorporated into § 235.7(b) of this final rule.

Changes are also made to § 235.4(b)(4) to revise references to reflect other changes made by this regulation and to correct an obsolete reference to § 235.4(f) which was renamed § 235.4(c) by an earlier regulation. This paragraph is also changed to clarify that funds provided under this paragraph are allocated on a State basis for the CACFP and the FDP, not for *each* State agency that administers these programs.

#### Implementation

The provisions of section 122 affecting SAE funds were effective October 1, 1989. Accordingly, the Department has already implemented these requirements, and this rule is made effective *30 days* after publication.

#### List of Subjects in 7 CFR Part 235

Administrative practice and procedure, Child and Adult Care Food Program, Food assistance programs, Grant administration, Intergovernmental relations, National School Lunch Program, Reporting and recordkeeping requirements, School Breakfast Program, Special Milk Program.

Accordingly, 7 CFR part 235 is amended as follows:

#### PART 235—STATE ADMINISTRATIVE EXPENSE FUNDS

1. The authority citation for part 235 continues to read as follows:

**Authority:** Secs. 7 and 10 of the Child Nutrition Act of 1966, 80 Stat. 888, 889, as amended (42 U.S.C. 1776, 1779).

##### § 235.1 [Amended]

2. In § 235.1, the second sentence is amended by removing the words "the Food Service Equipment Assistance Program (7 CFR Part 230)".

##### § 235.2 [Amended]

3. In § 235.2:

a. Paragraph (r) is amended by removing the words "American Samoa, or the Trust Territory of the Pacific Islands" and adding in their place the words "or the Republic of Palau".

b. Paragraph (s)(2) is amended by removing the reference to part 230 in the first sentence.

4. In § 235.4:

a. Paragraph (a) is redesignated as paragraph (a)(1), and new paragraph (a) introductory text is added, the introductory text of paragraph (b) is redesignated as paragraph (a)(2); and

new paragraph (b) introductory text is added.

b. The first sentence of newly redesignated paragraph (a)(1) is amended by removing the words "For each fiscal year, FNS shall allocate" and the word "agency" the first time it occurs; the first sentence is further amended by removing the words "by such agency" and adding in their place the words "by such State".

c. The first sentence of newly redesignated paragraph (a)(2) is amended by removing the words "For each fiscal year, FCS shall allocate" and by removing the words "to each State agency" and adding in their place the words "to each State".

d. Paragraph (b)(1) is amended by removing the words "For each fiscal year, FCS shall allocate" and the word "agency".

e. Paragraph (b)(2) is revised in its entirety.

f. The introductory text of paragraph (b)(3) is revised in its entirety.

g. Paragraph (b)(3)(iv) is amended by removing the second sentence.

h. Paragraph (b)(4) is revised in its entirety.

i. Paragraphs (c) through (e) are redesignated as paragraphs (d) through (f), respectively; and a new paragraph (c) is added.

j. Newly redesignated paragraphs (d) through (f) are amended by adding paragraph headings.

k. In newly redesignated paragraph (f), the references to paragraphs "(a)" and "(b)" are removed and references to paragraphs "(a)(1)" and "(a)(2)" are added in their place.

l. A new paragraph (g) is added.

The additions read as follows:

**§ 235.4 Allocation of funds to States.**

(a) *Nondiscretionary SAE Funds.* For each fiscal year, FCS shall allocate the following:

\* \* \* \* \*

(b) *Discretionary SAE Funds.* For each fiscal year, FCS shall provide the following additional allocations:

\* \* \* \* \*

(2) \$30,000 to each State which administers the Food Distribution Program (part 250 of this chapter) in schools and/or institutions which participate in programs under parts 210, 220, 226 of this chapter.

(3) Amounts derived by application of the following four-part formula to each State agency which is allocated funds under paragraph (a) of this section:

\* \* \* \* \*

(4) Funds which remain after the allocations required in paragraphs (a)(1), (a)(2), (b)(1), (b)(2) and (b)(3) of this

section, and after any payments provided for under paragraph (c) of this section, as determined by the Secretary, to those States which administer the Food Distribution Program (part 250 of this chapter) in schools and/or institutions which participate in programs under parts 210, 220, or 226 of this chapter and to those States which administer part 226 of this chapter. The amount of funds to be allocated to each State for the Food Distribution Program for any fiscal year shall bear the same ratio to the total amount of funds made available for allocation to the State for the Food Distribution Program under this paragraph as the value of USDA donated foods delivered to the State for schools and institutions participating in programs under parts 210, 220 and 226 of this chapter during the second preceding fiscal year bears to the value of USDA donated foods delivered to all the States for such schools and institutions during the second preceding fiscal year. The amount of funds to be allocated to each State which administers the Child and Adult Care Food Program for any fiscal year shall bear the same ratio to the total amount of funds made available for allocation to all such States under this paragraph as the amount of funds allocated to each State under paragraph (a)(2) of this section bears to the amount allocated to all States under that paragraph.

(c) *SAE Funds for the Child and Adult Care Food Program.* If a State elects to have a separate State agency administer the adult care component of the Child and Adult Care Food Program, such separate State agency shall receive a pro rata share of the SAE funds allocated to the State under paragraphs (a)(2), (b)(1), and (b)(4) of this section which is equal to the ratio of funds expended by the State for the adult care component of the Child and Adult Care Food Program during the second preceding fiscal year to the funds expended by the State for the entire Child and Adult Care Food Program during the second preceding fiscal year. The remaining funds shall be allocated to the State agency administering the child care component of the Child and Adult Care Food Program.

(d) *SAE Start-up Cost Assistance for State Administration of Former ROAPs.*

\* \* \*

(e) *SAE Funding Reduction Upon State Agency Termination of a Food Service Program.* \* \* \*

(f) *SAE Funds for ROAPs.* \* \* \*

(g) *Reallocation.* Funds allotted to State agencies under this section shall be subject to the reallocation provisions of § 235.5(d).

5. In § 235.5:

a. The first sentence of paragraph (b)(1) is amended by removing the semicolon following the words "upcoming fiscal year" and adding in its place a period, and by removing the remainder of the sentence.

b. Paragraph (e) is revised in its entirety.

The revision reads as follows:

**§ 235.5 Payments to States.**

\* \* \* \* \*

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

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

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

6. In § 235.6:

a. Paragraph (a) is amended by revising the last sentence.

b. Paragraph (c) is revised in its entirety.

c. Paragraphs (d) and (f), previously reserved, are removed; paragraphs (e), (g), and (h) are redesignated as (d), (e), and (f), respectively, and a new paragraph (g) is added.

The revisions and addition read as follows:

**§ 235.6 Use of funds.**

(a) \* \* \* Up to 25 per cent of funds allocated under § 235.4(a) through (c)

for Fiscal Year 1991 and up to 20 per cent of funds allocated in subsequent fiscal years to a State agency may, subject to the provisions of § 235.5 of this part, remain available for obligation and expenditure by such State agency during the following fiscal year.

\* \* \* \* \*

(c) The SAE funds allocated under § 235.4(b)(2), (b)(4), and (d) shall be used exclusively for Food Distribution Program administrative expenses for the programs under Parts 210, 220, and 226 of this chapter by any distributing agency which receives such funds. SAE funds allocated under § 235.4(a)(1), (a)(2), (b)(1), (b)(3) and (f), and those funds for the Child and Adult Care Food Program under (b)(4) which are not otherwise redirected for the Food Distribution Program under § 235.4(d) may be used to assist in the administration of the Food Distribution Program for such purposes. However, no funds designated for the exclusive use of the Food Distribution Program may be transferred by any State agency for other purposes. Furthermore, for each fiscal year beginning with Fiscal Year 1993, expenditures of funds from State sources for administrative costs incurred in the distribution of USDA donated foods to schools and institutions which participate in programs governed by parts 210, 220, and/or 226 of this chapter shall not be less than the amount of such funds expended in Fiscal Year 1991.

\* \* \* \* \*

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

#### § 235.7 [Amended]

7. In § 235.7,

a. The second sentence of paragraph (b) is amended by removing the reference to “§ 235.4(c) of this part” and adding in its place the reference to “§ 235.6(a)”.

b. The first sentence of paragraph (c) is amended by removing the words “directed by Congress and requested” and adding in their place the word “authorized”. Paragraph (c) is further amended by removing the words “FY ‘80” from the last sentence.

#### § 235.11 [Amended]

8. In § 235.11:

a. Paragraph (b)(2) is amended by removing the reference to “§ 235.4(a)” and adding in its place the reference to “§ 235.4 (a)(1)”.

b. Paragraph (b)(3) is amended by removing the reference to “§ 235.4(b)” and adding in its place the reference to “§ 235.4(a)(2)”.

c. Paragraph (b)(4) is amended by removing the reference to “§ 235.4(a)” and adding in its place the reference to “§ 235.4(a)(1)”.

d. Paragraph (b)(7) is amended by removing the reference to “§ 235.4(e)” and adding in its place the reference to “§ 235.5(d)”.

Dated: March 16, 1995.

**William E. Ludwig,**  
Administrator.

[FR Doc. 95-7310 Filed 3-23-95; 8:45 am]

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## FEDERAL RESERVE SYSTEM

### 12 CFR Part 226

[Regulation Z; Docket No. R-0858]

#### Truth in Lending

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule.

**SUMMARY:** The Board is publishing amendments to Regulation Z (Truth in Lending). The amendments implement changes made to the Truth in Lending Act by the Riegle Community Development and Regulatory Improvement Act of 1994. The law imposes new disclosure requirements and substantive limitations on closed-end home equity mortgage loans bearing rates or fees above a certain percentage or amount. The amendments provide protection to consumers entering into these mortgages. The law also imposes new disclosure requirements to assist consumers in comparing the cost of reverse mortgage transactions, which

provide periodic advances primarily to elderly homeowners and rely principally on the home's value for repayment.

**DATES:** This rule is effective March 22, 1995. Compliance is optional until October 1, 1995.

**FOR FURTHER INFORMATION CONTACT:** Jane Ahrens, Senior Attorney, or Kyung Cho-Miller, Sheilah Goodman, or Kurt Schumacher, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452-3667 or 452-2412; for the hearing impaired only, Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452-3544.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The purpose of the Truth in Lending Act (15 U.S.C. 1601-1666j) is to promote the informed use of consumer credit. The act requires creditors to disclose credit terms and the cost of credit as an annual percentage rate (APR). The act requires additional disclosures for loans secured by a consumer's home, and permits consumers to cancel certain transactions that involve their principal dwelling. The act is implemented by the Board's Regulation Z (12 CFR part 226).

The Home Ownership and Equity Protection Act of 1994 (HOEPA), contained in the Riegle Community Development and Regulatory Improvement Act of 1994 (Community Development Act), Pub. L. 103-325, 108 Stat. 2160, amends the Truth in Lending Act (TILA). Section 152 of the HOEPA adds a new section 129 dealing with certain mortgages bearing rates or fees above a certain percentage or amount. Section 154 adds a new section 138 dealing with reverse mortgage transactions.

The HOEPA was enacted in September 1994, and directs the Board to issue final regulations within 180 days. Section 155 provides that the statutory provisions and the Board's rules shall apply on the October 1 following six months after the final regulation is issued. It also states that the final rule governs all mortgage transactions having rates or fees above a certain percentage or amount (“Section 32 mortgages,” as found in § 226.32 of the regulation) consummated after the mandatory effective date. The Board has determined that the same compliance rule applies to reverse mortgage transactions consummated after October 1, 1995.