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program requirements, identify and resolve emerging problems, and assess the effectiveness of actions that have been taken to correct existing problems. States' reports enable FNS to assess the nationwide status of eligibility and basis of issuance determinations, to ensure State compliance with Federal requirements, to assist States in improving and strengthening their programs, and to develop Federal policies. Reports must be submitted in duplicate to the appropriate FNS Regional Office according to the time frames established in §§275.20, 275.21, and 275.22 of this part.

[Amdt. 160, 45 FR 15911, Mar. 11, 1980. Redesignated at 52 FR 3410, Feb. 4, 1987]

Subpart G—Program Performance

§ 275.23 Determination of State agency program performance.

(a) *Determination of efficiency and effectiveness.* FNS shall determine the efficiency and effectiveness of a State's administration of the Supplemental Nutrition Assistance Program by measuring State compliance with the standards contained in the Food and Nutrition Act, regulations, and the State Plan of Operation and State efforts to improve program operations through corrective action. This determination shall be made based on:

- (1) Reports submitted to FNS by the State;
- (2) FNS reviews of State agency operations;
- (3) State performance reporting systems and corrective action efforts; and
- (4) Other available information such as Federal audits and investigations, civil rights reviews, administrative cost data, complaints, and any pending litigation.

(b) *State agency error rates.* FNS shall estimate each State agency's active case, payment, and negative case error rate based on the results of quality control review reports submitted in accordance with the requirements outlined in §275.21. The determination of the correctness of the case shall be based on certification policy as set forth in part 273 of this chapter.

(1) *Demonstration projects.* FNS shall make a determination for each individual project whether the reported re-

sults of reviews of active and negative demonstration project cases shall be included or excluded from the estimate of the active case error rate, payment error rate, and negative case error rate.

(2) *Determination of payment error rates.* As specified in §275.3(c), FNS will validate each State agency's estimated payment error rate by rereviewing the State agency's active case sample and ensuring that its sampling, estimation, and data management procedures are correct.

(i) Once the Federal case reviews have been completed and all differences with the State agency have been identified, FNS shall calculate regressed error rates using the following linear regression equations.

(A) $y_1' = y_1 + b_1(X_1 - x_1)$, where y_1' is the average value of allotments overissued to eligible and ineligible households; y_1 is the average value of allotments overissued to eligible and ineligible households in the rereview sample according to the Federal finding, b_1 is the estimate of the regression coefficient regressing the Federal findings of allotments overissued to eligible and ineligible households on the corresponding State agency findings, x_1 is the average value of allotments overissued to eligible and ineligible households in the rereview sample according to State agency findings, and X_1 is the average value of allotments overissued to eligible and ineligible households in the full quality control sample according to State agency's findings. In stratified sample designs Y_1 , X_1 , and x_1 are weighted averages and b_1 is a combined regression coefficient in which stratum weights sum to 1.0 and are proportional to the estimated stratum caseloads subject to review.

(B) $y_2' = y_2 + b_2(X_2 - x_2)$, where y_2' is the average value of allotments underissued to households included in the active error rate, y_2 is the average value of allotments underissued to participating households in the rereview sample according to the Federal finding, b_2 is the estimate of the regression coefficient regressing the Federal findings of allotments underissued to participating households on the corresponding State agency findings, x_2 is

the average value of allotments underissued to participating households in the rereview sample according to State agency findings, and X_2 is the average value of allotments underissued to participating households in the full quality control sample according to the State agency's findings. In stratified sample designs y_2 , X_2 , and x_2 are weighted averages and b_2 is a combined regression coefficient in which stratum weights sum to 1.0 and are proportional to the estimated stratum caseloads subject to review.

(C) The regressed error rates are given by $r_1' = y_1'/u$, yielding the regressed overpayment error rate, and $r_2' = y_2'/u$, yielding the regressed underpayment error rate, where u is the average value of allotments issued to participating households in the State agency sample.

(D) After application of the adjustment provisions of paragraph (b)(2)(iii) of this section, the adjusted regressed payment error rate shall be calculated to yield the State agency's payment error rate. The adjusted regressed payment error rate is given by $r_1'' = r_1' + r_2''$.

(ii) If FNS determines that a State agency has sampled incorrectly, estimated improperly, or has deficiencies in its QC data management system, FNS will correct the State agency's payment and negative case error rates based upon a correction to that aspect of the State agency's QC system which is deficient. If FNS cannot accurately correct the State agency's deficiency, FNS will assign the State agency a payment error rate or negative case error rate based upon the best information available. After consultation with the State agency, the assigned payment error rate will then be used in the liability determination. After consultation with the State agency, the assigned negative case error rate will be the official State negative case error rate for any purpose. State agencies shall have the right to appeal assessment of an error rate in this situation in accordance with the procedures of Part 283 of this chapter.

(iii) Should a State agency fail to complete 98 percent of its required sample size, FNS shall adjust the State agency's regressed error rates using the following equations:

(A) $r_1'' = r_1' + 2(1-C)S_1$, where r_1'' is the adjusted regressed overpayment error rate, r_1' is the regressed overpayment error rate computed from the formula in paragraph (b)(2)(i)(C) of this section, C is the State agency's rate of completion of its required sample size expressed as a decimal value, and S_1 is the standard error of the State agency sample overpayment error rate. If a State agency completes all of its required sample size, then $r_1'' = r_1'$.

(B) $r_2'' = r_2' + 2(1-C)S_2$, where r_2'' is the adjusted regressed underpayment error rate, r_2' is the regressed underpayment error rate computed from the formula in paragraph (b)(2)(i)(C) of this section, C is the State agency's rate of completion of its required sample size expressed as a decimal value, and S_2 is the standard error of the State agency sample underpayment error rate. If a State agency completes all of its required sample size, then $r_2'' = r_2'$.

(c) *FNS Time frames for completing case review process, arbitration, and issuing error rates.* The case review process and the arbitration of all difference cases shall be completed by May 31 following the end of the fiscal year. FNS shall determine and announce the national average payment and negative case error rates for the fiscal year by June 30 following the end of the fiscal year. At the same time FNS shall notify all State agencies of their individual payment and negative case error rates and payment error rate liabilities, if any. FNS shall provide a copy of each State agency's notice of potential liability to its respective chief executive officer and legislature. FNS shall initiate collection action on each claim for such liabilities before the end of the fiscal year following the reporting period in which the claim arose unless an appeal relating to the claim is pending. Such appeals include administrative and judicial appeals pursuant to Section 14 of the Food and Nutrition Act. While the amount of a State's liability may be recovered through offsets to their letter of credit as identified in § 277.16(c) of this chapter, FNS shall also have the option of billing a State directly or using other claims collection mechanisms authorized under the Debt Collection Improvement Act of 1996 (Pub.

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L. 104-134) and the Federal Claims Collection Standards (31 CFR Parts 900-904), depending upon the amount of the State's liability. FNS is not bound by the time frames referenced in paragraph (c) of this section in cases where a State fails to submit QC data expeditiously to FNS and FNS determines that, as a result, it is unable to calculate the State's payment error rate and payment error rate liability within the prescribed time frame.

(d) *State agencies' liabilities for payment error rates.* At the end of each fiscal year, each State agency's payment error rate over the entire fiscal year will be computed and evaluated to determine whether the payment error rate goal (national performance measure) established in paragraph (d)(1) of this section has been met. Each State agency that fails to achieve its payment error rate goal during a fiscal year shall be liable as specified in the paragraph (d)(2) of this section.

(1) *National performance measure.* FNS shall announce a national performance measure not later than June 30 after the end of the fiscal year. The national performance measure is the sum of the products of each State agency's error rate multiplied by that State agency's proportion of the total value of national allotments issued for the fiscal year using the most recent issuance data available at the time the State agency is notified of its payment error rate. Once announced, the national performance measure for a given fiscal year will not be subject to administrative or judicial appeal.

(2) *Liability.* For fiscal year 2003 and subsequent years, liability for payment shall be established whenever there is a 95 percent statistical probability that, for the second or subsequent consecutive fiscal year, a State agency's payment error rate exceeds 105 percent of the national performance measure. The amount of the liability shall be equal to the product of the value of all allotments issued by the State agency in the second (or subsequent consecutive) fiscal year; multiplied by the difference between the State agency's payment error rate and 6 percent; multiplied by 10 percent.

(3) *Right to appeal payment error rate liability.* Determination of a State

agency's payment error rate or whether that payment error rate exceeds 105 percent of the national performance measure shall be subject to administrative or judicial review only if a liability amount is established for that fiscal year. Procedures for good cause appeals of excessive payment error rates are addressed in paragraph (f) of this section. The established national performance measure is not subject to administrative or judicial appeal, nor is any prior fiscal year payment error rate subject to appeal as part of the appeal of a later fiscal year's liability amount. However, State agencies may address matters related to good cause in an immediately prior fiscal year that impacted the fiscal year for which a liability amount has been established. The State agency will need to address how year 2 was impacted by the event(s) in the prior year.

(4) *Relationship to warning process and negligence.* (i) States' liability for payment error rates as determined above in paragraphs (d)(1) through (d)(3) of this section are not subject to the warning process of §276.4(d) of this chapter.

(ii) FNS shall not determine negligence (as described in §276.3 of this chapter) based on the overall payment error rate for issuances to ineligible households and overissuances to eligible households in a State or political subdivision thereof. FNS may only establish a claim under §276.3 of this chapter for dollar losses from failure to comply, due to negligence on the part of the State agency (as defined in §276.3 of this chapter), with specific certification requirements. Thus, FNS will not use the result of States' QC reviews to determine negligence.

(iii) Whenever a State is assessed a liability amount for an excessive payment error rate, the State shall have the right to request an appeal in accordance with procedures set forth in part 283 of this chapter. While FNS may determine a State to be liable for dollar loss under the provisions of this section and the negligence provisions of §276.3 of this chapter for the same period of time, FNS shall not bill a State for the same dollar loss under both provisions. If FNS finds a State liable for dollar loss under both the QC

liability system and the negligence provisions, FNS shall adjust the billings to ensure that two claims are not made against the State for the same dollar loss.

(e) *Liability amount determinations.* (1) FNS shall provide for each State agency whose payment error rate subjects it to a liability amount the following determinations, each expressed as a percentage of the total liability amount. FNS shall:

(i) Require the State agency to invest up to 50 percent of the liability in activities to improve program administration (new investment money shall not be matched by Federal funds) and

(ii) Designate up to 50 percent of the liability as “at-risk” for repayment if a liability is established based on the State agency’s payment error rate for the subsequent fiscal year, or

(iii) Choose any combination of these options.

(2) Once FNS determines the percentages in accordance with paragraphs (e)(1)(i) through (e)(1)(iv) of this section, the amount assigned as at-risk is not subject to settlement negotiation between FNS and the State agency and may not be reduced unless an appeal decision revises the total dollar liability. FNS and the State agency shall settle any waiver percentage amount or new investment percentage amount before the end of the fiscal year in which the liability amount is determined. The determination of percentages for waiver, new investment, and/or at-risk amounts by the Department is not appealable. Likewise, a settlement of the waiver and new investment amounts cannot be appealed.

(f) *Good cause.* When a State agency with otherwise effective administration exceeds the tolerance level for payment errors as described in this section, the State agency may seek relief from liability claims that would otherwise be levied under this section on the basis that the State agency had good cause for not achieving the payment error rate tolerance. State agencies desiring such relief must file an appeal with the Department’s Administrative Law Judge (ALJ) in accordance with the procedures established under part 283 of this chapter. Paragraphs (f)(1) through (f)(5) of this section describe

the unusual events that are considered to have a potential for disrupting program operations and increasing error rates to an extent that relief from a resulting liability amount or increased liability amount is appropriate. The occurrence of an event(s) does not automatically result in a determination of good cause for an error rate in excess of the national performance measure. The State agency must demonstrate that the event had an adverse and uncontrollable impact on program operations during the relevant period, and the event caused an uncontrollable increase in the error rate. Good cause relief will only be considered for that portion of the error rate/liability amount attributable to the unusual event. The following are unusual events which State agencies may use as a basis for requesting good cause relief and specific information that must be submitted to justify such requests for relief:

(1) *Natural disasters and civil disorders.* Natural disasters such as those under the authority of The Disaster Relief and Emergency Assistance Amendments of 1988 (Pub. L. 100–707), which amended The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Pub. L. 93–288), or civil disorders that adversely affect program operations.

(i) When submitting a request for good cause relief based on this example, the State agency shall provide the following information:

(A) The nature of the disaster(s) (*e.g.*, a tornado, hurricane, earthquake, flood, etc.) or civil disorder(s) and evidence that the President has declared a disaster;

(B) The date(s) of the occurrence;

(C) The date(s) after the occurrence when program operations were affected;

(D) The geographic extent of the occurrence (*i.e.*, the county or counties where the disaster occurred);

(E) The proportion of the Supplemental Nutrition Assistance Program caseload whose management was affected;

(F) The reason(s) why the State agency was unable to control the effects of the disaster on program administration and errors.

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(G) The identification and explanation of the uncontrollable nature of errors caused by the event (types of errors, geographic location of the errors, time period during which the errors occurred, etc.).

(H) The percentage of the payment error rate that resulted from the occurrence and how this figure was derived; and

(I) The degree to which the payment error rate exceeded the national performance measure in the subject fiscal year.

(ii) (A) The following criteria and methodology will be used to assess and evaluate good cause in conjunction with the appeals process, and to determine that portion of the error rate/liability amount attributable to the uncontrollable effects of a disaster or civil disorder:

(1) Geographical impact of the disaster;

(2) State efforts to control impact on program operations;

(3) The proportion of Supplemental Nutrition Assistance Program caseload affected; and/or

(4) The duration of the disaster and its impact on program operations.

(B) Adjustments for these factors may result in a waiver of all, part, or none of the liability amount for the applicable period. As appropriate, the waiver amount will be adjusted to reflect States' otherwise effective administration of the program based upon the degree to which the error rate exceeds the national performance measure. For example, a reduction in the waiver amount may be made when a State agency's recent error rate history indicates that even absent the events described the State agency would have exceeded the national performance measure in the review period.

(iii) If a State agency has provided insufficient information to determine a waiver amount for the uncontrollable effects of a natural disaster or civil disorder using factual analysis, the waiver amount shall be evaluated using the following formula and methodology which measures both the duration and intensity of the event. Duration will be measured by the number of months the event had an adverse impact on program operations. Intensity will be a

proportional measurement of the issuances for the counties affected to the State's total issuance. This ratio will be determined using issuance figures for the first full month immediately preceding the disaster. This figure will not include issuances made to households participating under disaster certification authorized by FNS and already excluded from the error rate calculations under § 275.12(g)(2)(vi). The counties considered affected will include counties where the disaster/civil disorder occurred, and any other county that the State agency can demonstrate had program operations adversely impacted due to the event (such as a county that diverted significant numbers of Supplemental Nutrition Assistance Program certification or administrative staff). The amount of the waiver of liability will be determined using the linear equation $W = Ia/Ib \times [M/12 \text{ or } Mp/18] \times L$, where Ia is the issuance for the first full month immediately preceding the unusual event for the county affected; Ib is the State's total issuance for the first full month immediately preceding the unusual event; M/12 is the number of months in the subject fiscal year that the unusual event had an adverse impact on program operations; Mp/18 is the number of months in the last half (April through September) of the prior fiscal year that the unusual event had an adverse impact on program operations; L is the total amount of the liability for the fiscal year. Mathematically this formula could result in a waiver of more than 100 percent of the liability amount; however, no more than 100 percent of a State's liability amount will be waived for any one fiscal year. Under this approach, unless the State agency can demonstrate a direct uncontrollable impact on the error rate, the effects of disasters or civil disorders that ended prior to the second half of the prior fiscal year will not be considered.

(2) *Strikes*. Strikes by State agency staff necessary to determine Supplemental Nutrition Assistance Program eligibility and process case changes.

(i) When submitting a request for good cause relief based on this example, the State agency shall provide the following information:

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(A) Which workers (*i.e.*, eligibility workers, clerks, data input staff, etc.) and how many (number and percentage of total staff) were on strike or refused to cross picket lines;

(B) The date(s) and nature of the strike (*i.e.*, the issues surrounding the strike);

(C) The date(s) after the occurrence when program operations were affected;

(D) The geographic extent of the strike (*i.e.*, the county or counties where the strike occurred);

(E) The proportion of the Supplemental Nutrition Assistance Program caseload whose management was affected;

(F) The reason(s) why the State agency was unable to control the effects of the strike on program administration and errors;

(G) Identification and explanation of the uncontrollable nature of errors caused by the event (types of errors, geographic location of the errors, time period during which the errors occurred, etc.);

(H) The percentage of the payment error rate that resulted from the strike and how this figure was derived; and

(I) The degree to which the payment error rate exceeded the national performance measure in the subject fiscal year.

(ii) (A) The following criteria shall be used to assess, evaluate and respond to claims by the State agency for a good cause waiver of a liability amount in conjunction with the appeals process, and to determine that portion of the error rate/liability amount attributable to the uncontrollable effects of the strike:

(1) Geographical impact of the strike;

(2) State efforts to control impact on program operations;

(3) The proportion of Supplemental Nutrition Assistance Program caseload affected; and/or

(4) The duration of the strike and its impact on program operations.

(B) Adjustments for these factors may result in a waiver of all, part, or none of the liability amount for the applicable period. For example, the amount of the waiver might be reduced for a strike that was limited to a small area of the State. As appropriate, the

waiver amount will be adjusted to reflect States' otherwise effective administration of the program based upon the degree to which the error rate exceeded the national performance measure.

(iii) If a State agency has provided insufficient information to determine a waiver amount for the uncontrollable effects of a strike using factual analysis, a waiver amount shall be evaluated by using the formula described in paragraph (f)(1) of this section. Under this approach, unless the State agency can demonstrate a direct uncontrollable impact on the error rate, the effects of strikes that ended prior to the second half of the prior fiscal year will not be considered.

(3) *Caseload growth.* A significant growth in Supplemental Nutrition Assistance Program caseload in a State prior to or during a fiscal year, such as a 15 percent growth in caseload. Caseload growth which historically increases during certain periods of the year will not be considered unusual or beyond the State agency's control.

(i) When submitting a request for good cause relief based on this example, the State agency shall provide the following information:

(A) The amount of growth (both actual and percentage);

(B) The time the growth occurred (what month(s)/year);

(C) The date(s) after the occurrence when program operations were affected;

(D) The geographic extent of the caseload growth (*i.e.* Statewide or in which particular counties);

(E) The impact of caseload growth;

(F) The reason(s) why the State agency was unable to control the effects of caseload growth on program administration and errors;

(G) The percentage of the payment error rate that resulted from the caseload growth and how this figure was derived; and

(H) The degree to which the error rate exceeded the national performance measure in the subject fiscal year.

(ii) (A) The following criteria and methodology shall be used to assess and evaluate good cause in conjunction

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with the appeals process, and to determine that portion of the error rate/liability amount attributable to the uncontrollable effects of unusual caseload growth:

(1) Geographical impact of the caseload growth;

(2) State efforts to control impact on program operations;

(3) The proportion of Supplemental Nutrition Assistance Program caseload affected; and/or

(4) The duration of the caseload growth and its impact on program operations.

(B) Adjustments for these factors may result in a waiver of all, part, or none of the liability amount for the applicable period. As appropriate, the waiver amount will be adjusted to reflect States' otherwise effective administration of the program based upon the degree to which the error rate exceeded the national performance measure. For example, a reduction in the waiver amount may be made when a State agency's recent error rate history indicates that even absent the events described the State agency would have exceeded the national performance measure in the review period. Under this approach, unless the State agency can demonstrate a direct uncontrollable impact on the error rate, the effects of caseload growth that ended prior to the second half of the prior fiscal year will not be considered.

(iii) If the State agency has provided insufficient information to determine a waiver amount for the uncontrollable effects of caseload growth using factual analysis, the waiver amount shall be evaluated using the following five-step calculation:

(A) Step 1—determine the average number of households certified to participate Statewide in the Supplemental Nutrition Assistance Program for the base period consisting of twelve consecutive months ending with March of the prior fiscal year;

(B) Step 2—determine the percentage of increase in caseload growth from the base period (Step 1) using the average number of households certified to participate Statewide in the Supplemental Nutrition Assistance Program for any twelve consecutive months in the period beginning with April of the prior

fiscal year and ending with June of the current year;

(C) Step 3—determine the percentage the error rate for the subject fiscal year, as calculated under paragraph (b)(2) of this section, exceeds the national performance measure determined in accordance with paragraph (d)(1) of this section;

(D) Step 4—divide the percentage of caseload growth increase arrived at in step 2 by the percentage the error rate for the subject fiscal year exceeds the national performance measure as determined in step 3; and

(E) Step 5—multiply the quotient arrived at in step 4 by the liability amount for the current fiscal year to determine the amount of waiver of liability.

(iv) Under this methodology, caseload growth of less than 15% and/or occurring in the last three months of the subject fiscal year will not be considered. Mathematically this formula could result in a waiver of more than 100 percent of the liability amount; however, no more than 100 percent of a State's liability amount will be waived for any one fiscal year.

(4) *Program changes.* A change in the Supplemental Nutrition Assistance Program or other Federal or State program that has a substantial adverse impact on the management of the Supplemental Nutrition Assistance Program of a State. Requests for relief from errors caused by the uncontrollable effects of unusual program changes other than those variances already excluded by § 275.12(d)(2)(vii) will be considered to the extent the program change is not common to all States.

(i) When submitting a request for good cause relief based on unusual changes in the Supplemental Nutrition Assistance Program or other Federal or State programs, the State agency shall provide the following information:

(A) The type of changes(s) that occurred;

(B) When the change(s) occurred;

(C) The nature of the adverse effect of the changes on program operations and the State agency's efforts to mitigate these effects;

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(D) Reason(s) the State agency was unable to adequately handle the change(s);

(E) Identification and explanation of the uncontrollable errors caused by the changes (types of errors, geographic location of the errors, time period during which the errors occurred, etc.);

(F) The percentage of the payment error rate that resulted from the adverse impact of the change(s) and how this figure was derived; and

(G) The degree to which the payment error rate exceeded the national performance measure in the subject fiscal year.

(ii) (A) The following criteria will be used to assess and evaluate good cause in conjunction with the appeals process and to determine that portion of the error rate/liability amount attributable to the uncontrollable effects of unusual changes in the Supplemental Nutrition Assistance Program or other Federal and State programs:

(1) State efforts to control impact on program operations;

(2) The proportion of Supplemental Nutrition Assistance Program caseload affected; and/or

(3) The duration of the unusual changes in the Supplemental Nutrition Assistance Program or other Federal and State programs and the impact on program operations.

(B) Adjustments for these factors may result in a waiver of all, part, or none of the liability amount for the applicable period. As appropriate, the waiver amount will be adjusted to reflect States' otherwise effective administration of the program based upon the degree to which the error rate exceeded the national performance measure.

(5) *Significant circumstances beyond the control of a State agency.* Requests for relief from errors caused by the uncontrollable effect of a significant circumstance other than those specifically set forth in paragraphs (f)(1) through (f)(4) of this section will be considered to the extent that the circumstance is not common to all States, such as a fire in a certification office.

(i) The State agency shall provide the following information when submitting a request for good cause relief based on

significant circumstances, the State agency shall provide the following information:

(A) The significant circumstances that the State agency believes uncontrollably and adversely affected the payment error rate for the fiscal year in question;

(B) Why the State agency had no control over the significant circumstances;

(C) How the significant circumstances had an uncontrollable and adverse impact on the State agency's error rate;

(D) Where the significant circumstances existed (*i.e.* Statewide or in particular counties);

(E) When the significant circumstances existed (provide specific dates whenever possible);

(F) The proportion of the Supplemental Nutrition Assistance Program caseload whose management was affected;

(G) Identification and explanation of the uncontrollable errors caused by the event (types of errors, geographic location of the errors, time period during which the errors occurred, etc.);

(H) The percentage of the payment error rate that was caused by the significant circumstances and how this figure was derived; and

(I) The degree to which the payment error rate exceeded the national performance measure in the subject fiscal year.

(ii) (A) The following criteria shall be used to assess and evaluate good cause in conjunction with the appeals process, and to determine that portion of the error rate/liability amount attributable to the uncontrollable effects of a significant circumstance beyond the control of the State agency, other than those set forth in paragraph (f)(5) of this section:

(1) Geographical impact of the significant circumstances;

(2) State efforts to control impact on program operations;

(3) The proportion of Supplemental Nutrition Assistance Program caseload affected; and/or

(4) The duration of the significant circumstances and the impact on program operations.

(B) Adjustments for these factors may result in a waiver of all, part, or none of the liability amount for the applicable period. As appropriate, the waiver amount will be adjusted to reflect States' otherwise effective administration of the program based upon the degree to which the error rate exceeded the national performance measure.

(6) *Adjustments.* When good cause is found under the criteria in paragraphs (f)(1) through (f)(5) of this section, the waiver amount may be adjusted to reflect States' otherwise effective administration of the program based upon the degree to which the error rate exceeds the national performance measure.

(7) *Evidence.* When submitting a request to the ALJ for good cause relief, the State agency shall include such data and documentation as is necessary to support and verify the information submitted in accordance with the requirements of paragraph (f) of this section so as to fully explain how a particular significant circumstance(s) uncontrollably affected its payment error rate.

(8) *Finality.* The initial decision of the ALJ concerning good cause shall constitute the final determination for purposes of judicial review as established under the provisions of § 283.17 and § 283.20 of this chapter.

(g) *Results of appeals on liability amount determinations.* (1) If a State agency wholly prevails on appeal and, consequently, its liability amount is reduced to \$0 through the appeal, and if the State agency began new investment activities prior to the appeal determination, FNS shall pay to the State agency an amount equal to 50 percent of the new investment amount that was expended by the State agency.

(2) If FNS wholly prevails on a State agency's appeal, FNS will require the State agency to invest all or a portion of the amount designated for new investment to be invested or to be paid to the Federal government.

(3) If neither the State agency nor FNS wholly prevails on a State agency's appeal, FNS shall apply the original waiver, new investment, and at-risk percentage determinations to the liability amount established through

the appeal. If the State agency began new investment prior to the appeal decision and has already expended more than the amount produced for new investment as a result of the appeal decision, the Department will match the amount of funds expended in excess of the amount now required by the Department for new investment.

(h) *New investment requirements.* Once FNS has determined the percentage of a liability amount to be invested or following an appeal and recalculation by FNS of an amount to be invested, a State agency shall submit a plan of offsetting investments in program administration activities intended to reduce error rates.

(1) The State agency's investment plan activity or activities must meet the following conditions to be accepted by the Department:

(i) The activity or activities must be directly related to error reduction in the ongoing program, with specific objectives regarding the amount of error reduction, and type of errors that will be reduced. The costs of demonstration, research, or evaluation projects under sections 17(a) through (c) of the Act will not be accepted. The State agency may direct the investment plan to a specific project area or implement the plan on a Statewide basis. In addition, the Department will allow an investment plan to be tested in a limited area, as a pilot project, if the Department determines it to be appropriate. A request by the State agency for a waiver of existing rules will not be acceptable as a component of the investment plan. The State agency must submit any waiver request through the normal channels for approval and receive approval of the request prior to including the waiver in the investment plan. Waivers that have been approved for the State agency's use in the ongoing operation of the program may continue to be used.

(ii) The program administration activity must represent a new or increased expenditure. The proposed activity must also represent an addition to the minimum program administration required by law for State agency

administration including corrective action. Therefore, basic training of eligibility workers or a continuing correction action from a Corrective Action Plan shall not be acceptable. The State agency may include a previous initiative in its plan; however, the State agency would have to demonstrate that the initiative is entirely funded by State money, represents an increase in spending and there are no remaining Federal funds earmarked for the activity.

(iii) Investment activities must be funded in full by the State agency, without any matching Federal funds until the entire amount agreed to is spent. Amounts spent in excess of the settlement amount included in the plan may be subject to Federal matching funds.

(2) The request shall include:

(i) A statement of the amount of money that is a quality control liability claim that is to be offset by investment in program improvements;

(ii) A detailed description of the planned program administration activity;

(iii) Planned expenditures, including time schedule and anticipated cost breakdown;

(iv) Anticipated impact of the activity, identifying the types of error expected to be affected;

(v) Documentation that the funds would not replace expenditures already earmarked for an ongoing effort; and

(vi) A statement that the expenditures are not simply a reallocation of resources.

(3) A State agency may choose to begin expending State funds for any amount of the liability designated as “new investment” in the liability amount determination prior to any appeal. FNS reserves the right to approve whether the expenditure meets the requirements for new investment. Expenditures made prior to approval by the Department will be subject to approval before they are accepted. Once a new investment plan is approved, the State agency shall submit plan modifications to the Department for approval, prior to implementation.

(4) Each State agency which has part of a liability designated for new investment shall submit periodic documented

reports according to a schedule in its approved investment plan. At a minimum, these reports shall contain:

(i) A detailed description of the expenditure of funds, including the source of funds and the actual goods and services purchased or rented with the funds;

(ii) A detailed description of the actual activity; and

(iii) An explanation of the activity’s effect on errors, including an explanation of any discrepancy between the planned effect and the actual effect.

(5) Any funds that the State agency’s reports do not document as spent as specified in the new investment plan may be recovered by the Department. Before the funds are withdrawn, the State agency will be provided an opportunity to provide the missing documentation.

(6) If the funds are recovered, the Department shall charge interest on the funds not spent according to the plan in accordance with paragraph (j) of this section.

(i) *At-risk money.* If appropriate, FNS shall initiate collection action on each claim for such liabilities before the end of the fiscal year following the reporting period in which the claim arose unless an administrative appeal relating to the claim is pending. Such appeals include administrative and judicial appeals pursuant to Section 14 of the Food and Nutrition Act. If a State agency, in the subsequent year, is again subject to a liability amount based on the national performance measure and the error rate issued to the State agency, the State agency will be required to remit to FNS any money designated as at-risk for the prior fiscal year in accordance with either the original liability amount or a revised liability amount arising from an appeal, as appropriate, within 30 days of the date of the final billing. The requirement that the State agency pay the at-risk amount for the prior year will be held in abeyance pending the outcome of any pending appeal for the subsequent liability. If the subsequent year’s liability is reduced to \$0, the at-risk money from for the prior fiscal year will not be required to be paid. If the subsequent year’s liability is not reduced to \$0, the State agency will be

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required to pay the at-risk money within 30 days of the date of the appeal decision. The amount of a State's at-risk money may be recovered through offsets to the State agency's letter of credit as identified in § 277.16(c) of this chapter. FNS shall also have the option of billing a State directly or using other claims collection mechanisms authorized under the Debt Collection Improvement Act of 1996 (Pub. L. 104-134) and the Federal Claims Collection Standards (31 CFR Parts 900-904), depending upon the amount of the State's liability.

(j) *Interest charges.* (1) To the extent that a State agency does not pay an at-risk amount within 30 days from the date on which the bill for collection is received by the State agency, the State agency shall be liable for interest on any unpaid portion of such claim accruing from the date on which the bill for collection was received by the State agency. If the State agency is notified that it failed to invest funds in accordance with an approved new investment plan, the State agency has 30 days from the date of receipt of notification of non-expenditure of new investment funds to pay the Department the amount of funds not so invested. If the State agency does not pay the Department the amount of funds not invested within 30 days from the date of receipt of the notification of non-expenditure, the State agency shall be liable for interest on the non-expended funds from the date on which the notification was received by the State agency. If the State agency agrees to pay the claim through reduction in Federal financial participation for administrative costs, this agreement shall be considered to be paying the claim. If the State agency appeals such claim (in whole or in part), the interest on any unpaid portion of the claim shall accrue from the date of the decision on the administrative appeal, or from a date that is one year after the date the bill is received, whichever is earlier, until the date the unpaid portion of the payment is received.

(2) A State agency may choose to pay the amount designated as at-risk prior to resolution of any appeals. If the State agency pays such claim (in whole or in part) and the claim is subse-

quently overturned or adjusted through administrative or judicial appeal, any amounts paid by the State agency above what is actually due shall be promptly returned with interest, accruing from the date the payment was received until the date the payment is returned.

(3) Any interest assessed under paragraph (j)(1) of this section shall be computed at a rate determined by the Secretary based on the average of the bond equivalent of the weekly 90-day Treasury bill auction rates during the period such interest accrues. The bond equivalent is the discount rate (*i.e.*, the price the bond is actually sold for as opposed to its face value) determined by the weekly auction (*i.e.*, the difference between the discount rate and face value) converted to an annualized figure. The Secretary shall use the investment rate (*i.e.*, the rate for 365 days) compounded in simple interest for the period for which the claim is not paid. Interest billings shall be made quarterly with the initial billing accruing from the date the interest is first due. Because the discount rate for Treasury bills is issued weekly, the interest rate for State agency claims shall be averaged for the appropriate weeks.

[75 FR 33438, June 11, 2010, as amended at 80 FR 53243, Sept. 3, 2015; 86 FR 44587, Aug. 13, 2021]

§ 275.24 High performance bonuses.

(a) *General rule.* (1) FNS will award bonuses totaling \$48 million for each fiscal year to State agencies that show high or improved performance in accordance with the performance measures under paragraph (b) of this section.

(2) FNS will award the bonuses no later than September 30th of the fiscal year following the performance measurement year.

(3) A State agency is not eligible for a bonus payment in any fiscal year for which it has a liability amount established as a result of an excessive payment error rate in the same year. If a State is disqualified from receiving a bonus payment under this paragraph (a)(3), and the State is not tied for a bonus, the State with the next best