

<h1>ACF</h1> <p>Administration for Children and Families</p>	DEPARTMENT OF HEALTH, EDUCATION AND WELFARE Administration for Children, Youth and Families	
	1. Log No: 45 CFR Part 95	2. Issuance Date: September 17, 1981
	3. Originating Office: Office of the Secretary, Children's Bureau	

RULES and REGULATIONS Time Limits for States To File Claims

*46134 AGENCY: Office of the Secretary, HHS.

ACTION: Final rule.

SUMMARY: This rule clarifies the circumstances under which Federal Financial participation (FFP) is available to States in otherwise allowable State expenditures in the programs established under titles I, IV-A, IV-B, IV-D, IV- E, X, XIV, XVI(AABD), XIX, and XX of the Social Security Act, i.e. financial assistance, child welfare, child support enforcement, adoption assistance, and social services programs and the Medicaid program. FFP is currently available with respect to otherwise allowable State expenditures *46135 for these programs made before September 30, 1978 only if the State filed a claim for FFP within one year of the expenditure.

DATES: This rule is effective September 17, 1981. However, see the effective date discussion below for the effective date of the statutory provisions which this rule implements.

FOR FURTHER INFORMATION CONTACT:

For financial assistance programs under Titles I, IV-A, XIV and XVI(AABD): Kent Dickson-- (202) 245-2056

For child support enforcement programs under Title IV-D: Pera P. Daniels-- (301) 443-2910

For child welfare services programs under Title IV-B and foster care and adoption assistance programs under Title IV-E: Jim Rich--(202) 755-7800

For social services programs under Titles I, IV-A, X, XIV, XVI(AABD), and XX: Bettye Mobley--(202) 472-3075

For medical assistance programs under Title XIX: Miles McDermott--(301) 594- 7345

SUPPLEMENTARY INFORMATION:

Background

On January 15, 1981, the Department issued final regulations implementing section 1132 of the Social Security Act, 46 FR 3527. Section 1132 was added to the Social Security Act by section 306 of Pub. L. 96-272, the Adoption Assistance and Child Welfare Act of 1980. The regulations apply to the financial assistance, child welfare, child support enforcement, adoption assistance, and social services programs established under titles I, IV-A, IV- B, IV-D, IV-E, X, XIV, XVI(AABD), and XX of the Social Security Act as well as to the Medicaid program established under title XIX. Under section 306 States must file claims for payment for their expenditures under these programs within the following time limits in order for the claims to be eligible for Federal financial participation (FFP):

Section 306(a) provides that claims for FFP with respect to State expenditures made after September 30, 1979 ordinarily must be filed within 2 years after the calendar quarter in which the State agency made the expenditure.

Section 306(b)(2) provides that there is no time limit for the payment of claims filed with the Department prior to June 17, 1980 for expenditures made in calendar quarters beginning before October 1, 1979.

Section 306(b)(3) provides that generally, States must have filed claims for FFP with respect to expenditures made before October 1, 1979 before January 1, 1981.

Section 306(c) provides that "[N]otwithstanding any other provision of law, there shall be no time limit for the filing and payment of such claims except as provided in [section 306], unless such other provision of law, in imposing such a time limitation, specifically exempts such filing or payment from the provisions of [section 306]." Even in light of these provisions, however, there are circumstances under which the Department may be unable to provide FFP with respect to otherwise allowable expenditures. In particular, we believe that the Department's ability to provide FFP with respect to such expenditures is subject to the availability of funds. On April 24, 1981, we proposed a regulation to this effect. We believe that any restriction on the payments of claims which is enacted by Congress after it enacted section 306 of Pub. L. 96-272 limits our ability to make FFP available with respect to otherwise allowable State expenditures. This conclusion is based primarily on the legislative history of section 306(c) of Pub. L. 96-272 and is also consistent with well established rules of statutory construction.

Section 306(c) was added on the floor of the Senate. Senator Javits, one of the co-sponsors of the provision explained its purpose as follows:

Paragraph (c) of the amendment stipulates that no other provision of law may alter the policy established in H.R. 3434 [Pub. L. 96-272] with respect to the filing or payment of Medicaid, welfare or social services claims unless such other provision of law specifically exempts such filing or payment from the provisions of this section. This paragraph is designed to address a concern which might arise if the fiscal year 1980 Labor/HEW appropriations bill [H.R. 4389] is enacted after H.R. 3434 given the general rule that the policy of the most recently enacted bill prevails. I would like to stress that the reason for including this provision is to clarify the intent

of Congress should this unusual circumstance occur; consequently, I would recommend to the Finance Committee that this particular paragraph be dropped in the conference on H.R. 3434 if the fiscal year 1980 Labor/HEW appropriations bill is enacted first. 125 Cong. Rec. S 15128 (daily ed., Oct. 25, 1979). The legislative history of section 306(c) makes clear, therefore, that this provision was only intended to address the unusual circumstance of two bills in the same Congress (H.R. 3434 and H.R. 4389) having conflicting provisions concerning time limits for filing and payment of claims. However, H.R. 4389 was never enacted into law. Accordingly, we believe that the provisions of section 306(c) are inapplicable to laws subsequently enacted by Congress and that such laws must be considered in determining whether the Department may pay these claims. Federal funding for these programs for fiscal year 81 is governed by the provisions of the first and second joint resolutions providing continuing appropriations for fiscal year 81 (Pub. L. 96-369 and Pub. L. 96-536) and the Supplemental Appropriations and Rescission Act, 1981 (Pub. L. 97-12). Funds available under these laws are subject to the authority and conditions provided in the applicable appropriation Acts for fiscal year 1980. The fiscal year 1980 Acts applicable to the Department prohibit the use of funds appropriated for fiscal year 1980 for the Aid to Families with Dependent Children (AFDC), Medicaid and various social services and assistance programs under Titles I, IV-A, IV-B, IV-D, IV-E, X, XIV(AABD), XVI, XIX, and XX of the Social Security Act, to reimburse a State for any expenditure incurred in those programs before September 30, 1978, unless the claim for reimbursement was filed within one year of the expenditure. (See Pub. L. 96-86 and Pub. L. 96-123.) These Acts incorporate provisions of H.R. 4389 (96th Congress, 1st Session), as passed by the House of Representatives on August 2, 1979. These restrictions on the use of fiscal year 81 appropriations for payment of prior year claims were enacted into law after section 306(c) of Pub. L. 96-272. Moreover, they are not inconsistent with the purpose of that provision. Accordingly, we believe that they must be given effect. This regulation thus sets out the payment restrictions which apply to our use of fiscal year 81 funds. (Since this regulation was proposed, Congress enacted Pub. L. 97-12 which continues these restrictions for the balance of fiscal year 81. We have added a reference to this law in the final rule.)

Discussion of Public Comments:

1. Comment: One comment suggested that the Department's interpretation of section 306 is erroneous. The commenter believes that section 306 was intended to prescribe prospective rules for the filing of claims and that the intent of section 306 was to require that claims for expenditures made before October 1979 must be treated in accordance with the provisions of section 306(b) and (c).

Response: We believe that, as a general rule of statutory construction, a later enacted statute must be given effect over an earlier enacted law. There are of course some exceptions to this *46136 general rule, such as where Congress expresses a contrary intention. The provisions of section 306(c) of Pub. L. 96-272 represent such an exception, but only to a very limited extent. Specifically, Congress intended that section to apply exclusively to the unusual circumstance of conflicting time limit provisions appearing in the FY 80 appropriations bill and the bill enacted as Pub. L. 96-272. Therefore, since the section 306(c) exception was narrowly addressed to circumstances which do not exist with respect to FY 81 funds, and since the statutes making these funds available were

enacted after Pub. L. 96-272, we believe that the restrictions found in these later enacted statutes are controlling, and must be given effect. Any other construction would require us to conclude that restrictions on payment of prior year claims found in these later enacted statutes are simply nullities.

2. **Comment:** One comment asserted that the enactment of section 306(c) of Pub. L. 96-272 was intended to overrule the prior year claims limitations found in H.R. 4389 (96th Cong., 1st Sess.). According to the commenter, Congress did not therefore intend to include those limitations when it incorporated in the FY 81 appropriations Acts the references to H.R. 4389 found in FY 80 appropriations Acts (which also control FY 81 funds).

Response: As discussed above, we believe that section 306(c) was intended narrowly to address a potential conflict that would arise if H.R. 4389 were enacted into law after the enactment of H.R. 3434 (Pub. L. 96-272). H.R. 4389, however, was not enacted into law, even though relevant provisions thereof were incorporated by reference into later appropriations Acts and are applicable to funds available for FY 81. Because the statutes making FY 81 funds available were enacted after Pub. L. 96-272 and because they refer to the FY 80 appropriations Acts (which in turn refer to the provisions of H.R. 4389 as enacted by the House of Representatives on August 2, 1979), we believe that the limitations on payments for prior year claims found in the FY 80 appropriations Acts govern our use of FY 81 funds.

3. **Comment:** Two comments noted that the January 15, 1981 regulations provided for exceptions from the time limits for filing prior year claims. 45 CFR 95.19. (46 FR 3529.) These exceptions pertained to
 1. claims for adjustments to prior year costs,
 2. claims resulting from audit exceptions,
 3. claims resulting from court-ordered retroactive payments, and
 4. claims as to which the Secretary decides there was good cause for late filing. The comments suggested that similar exceptions should be included in this rule.

Response: The exceptions found in 45 CFR 95.19 reflect the statutory provisions of section 306 of Pub. L. 96-272. As discussed above, we have concluded that the later enacted provisions of the FY 81 funding statutes must be given effect and therefore payment may only be made in accordance with the limitations of those statutes.

EFFECTIVE DATE: These final rules are effective upon publication. However, the Acts placing limitations on the use of FY 81 funds have been in effect since October 1, 1980, and have been observed by the Department since that date.

PART 95--GENERAL ADMINISTRATION--GRANT PROGRAMS (PUBLIC ASSISTANCE AND MEDICAL ASSISTANCE)

1. Subpart A of 45 CFR Part 95 is amended by adding a new s 95.11, to read as follows:

s 95.11 Payment of claims subject to appropriations restrictions. Notwithstanding any other provision of this Subpart, we will pay States' otherwise allowable claims for Federal financial participation under the programs covered by this Subpart, subject to the availability of funds (as provided in Acts appropriating funds to the Department in effect at the time in which such claims are being considered for payment), and subject to conditions or restrictions applicable to payments out of such funds, including provisions of the first and second continuing resolutions for FY 1981 (Pub. L. 96-369 and Pub. L. 96-536) and the Supplemental Appropriations and Rescission Act, 1981 (Pub. L. 97-12) that make funds under those Acts available to pay for a State agency expenditure made before September 30, 1978, only if the State had filed a claim for that expenditure with us within one year of the expenditure.

(Pub. L. 96-369, 94 Stat. 1351; Pub. L. 96-536, 94 Stat. 3166; and Pub. L. 97-12, 95 Stat. 14)

Dated: September 14, 1981.

Richard S. Schweiker,
Secretary of Health and Human Services

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