

ACF Administration for Children and Families	U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES Administration for Children, Youth and Families	
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	3. Originating Office: Administration for Children, Youth and Families and Office of Program Coordination and Review	
	4. Key Words: FFP Time Limits	

PROGRAM REGULATION

TO: STATE AGENCIES ADMINISTERING SOCIAL SERVICES PROGRAMS UNDER TITLE I, IV-A, X, XIV, XVI and XX; CHILD WELFARE SERVICE UNDER TITLE IV-B, and FOSTER CARE and ADOPTION ASSISTANCE PROGRAMS UNDER TITLE IV-E

SUBJECT: Time Limits for States to File Claims

LEGAL REFERENCES: Section 1132 of the Social Security Act (Section 306 of Public Law 96-272)

ATTACHMENT: Final Regulation as Published in the Federal Register on January 15, 1981(Vol 46, No. 10 pages 3527-3530)

COMMENT PERIOD: Comments will be considered if received no later than March 16, 1981

EFFECTIVE DATE: January 1, 1981

INQUIRIES TO: HDS Regional Administrators for Programs under Titles I, IV-A, X, XIV, XVI, and XX Regional Program Directors for Children, Youth and Families for Programs under Titles IV-B and IV-E

Warren Master
Acting Assistant Secretary for Human Development Services

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Office of the Secretary

45 CFR Part 95

Time Limits for States To File Claims

Thursday, January 15, 1981

*3527 AGENCY: Office of the Secretary, HHS.

ACTION: Final rule with a comment period.

SUMMARY: HHS will pay a State the Federal share of a State expenditure, under a State plan approved under any of several titles of the Social Security Act, only if the State files a claim with HHS for that expenditure within 2 years (15 months in some cases) after the calendar quarter in which the State made the expenditure. This rule implements section 306 of the "Adoption Assistance and Child Welfare Act of 1980."

EFFECTIVE DATE: January 1, 1981.

Comment date: Your comments will be considered if we receive them no later than March 16, 1981.

ADDRESSES: Send your written comments to the Social Security Administration, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203.

Copies of all comments we receive can be seen at the Washington Inquiries Section, Office of Governmental Affairs, Social Security Administration, Department of Health and Human Services, Room 1212, Switzer Building, 330 C Street, S.W., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT:

For financial assistance programs under Titles I, IV-A, X, 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) 755-7583.

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 McDermatt--(301) 594-5726.

For general legal questions: Richard K. Wulff--(202) 245-6733.

SUPPLEMENTARY INFORMATION:

Regulatory Procedural Requirements

We have determined that under E.O. 12044 these regulations are significant but no Regulatory Analysis is required. We are publishing them as a final rule without prior Notice of Proposed Rulemaking (NPRM) and opportunity for public comment because they are necessary to implement section 306 of Pub. L. 96-272, which imposes a deadline of December 31, 1980 for States to file certain claims. Public Law 96-272 was enacted June 17, 1980, leaving insufficient time for us to publish an NPRM, allow time for public comment, consider the comments, and publish final regulations before January 1, 1981. Therefore, we find that notice and comment on these regulations before they take effect would be impracticable and contrary to the public interest.

Nonetheless, we wish to have the advantage of the information and opinions we may receive through public comments, and we will consider any comments we receive by the stated date. After we consider any comments we receive, we will make changes in these regulations as we deem appropriate.

We also find good cause for issuing these regulations with an effective date less than 30 days after issuance, because the statutory effective date is January 1, 1981. Because this regulation applies only to States and imposes no conditions and requirements on small entities, the Secretary certifies that the regulation will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96-354.

Statutory Basis

Section 306 of Pub. L. 96-272, the "Adoption Assistance and Child Welfare Act of 1980," adds a new section 1132 to the Social Security Act (the Act). Its intent is to enable HHS to know the total amounts of its obligations for each fiscal year within a reasonable time after the end of the year. The provision prohibits HHS from paying Federal financial participation (FFP) for a State expenditure made after September 30, 1979, under a State plan approved under certain titles of the Act, *3528 unless the State files a claim with HHS for that expenditure within 2 years after the calendar quarter in which the State made the expenditure. For State expenditures made before October 1, 1979, section 306(b) of Pub. L. 96-272 requires the State to file the claim before January 1, 1981. However, in accordance with the provisions of the attached regulations, we are waiving the January 1, 1981 filing date and extending it to May 15, 1981, without States having to request a waiver. We find good cause for this waiver because States will need additional time to comply with these regulations.

The law applies these time limits to State expenditures under State plans approved under the following titles of the Act: I, IV, V, X, XIV, XVI, XIX and XX. The law also applies these time limits to State expenditures under any other provision of the Act which may be enacted in the future that provides, on an entitlement basis, for FFP in expenditures made under State plans or programs. The law provides four exceptions to the time limits:

1. Adjustments to prior year costs;
2. Audit exceptions;
3. Court-ordered retroactive payments; and

4. Any claim for which the Secretary decides there was good cause for the State's not filing it within the time limit.

Lateness of a claim attributable to a State's neglect or administrative inadequacies is not considered good cause. When the Secretary decides there was good cause for not filing within the time limit, the time for filing will be extended only for the time period the State reasonably needs.

Programs Not Affected by the Regulations

The list of titles contained in section 306 of Pub. L. 96-272 includes Titles V and XVI. However, not all of the programs funded under these titles are affected by the requirements of section 306. Title XVI "Supplemental Security Income for the Aged, Blind and Disabled" (SSI) is a Federal income maintenance program and does not have a State plan requirement. Consequently, the SSI program is not affected by section 306 or the regulations contained herein. Title XVI (AABD), however, is covered by the statutory provision and our regulations. The Supplemental Security Income/Disability Children's Program and Vocational Rehabilitation Program established under SSI does contain a State plan requirement as does the Title V "Maternal and Child Health and Crippled Children's Services" program. However, these programs are formula grant programs that operate in the following manner. Once the State plan is approved, funds are made available to States in advance of expenditures on the basis of a predetermined formula. Claims are not made against the Federal program for reimbursement of expenditures. Consequently, we do not believe that the provisions of section 306 have an impact on these programs and we have not included them in our regulations.

The programs funded under Title IV are covered by section 306, i.e., Titles IV-A, IV-B, IV-C, IV-D and IV-E. These regulations apply to all except the Title IV-C program. The Work Incentive (WIN) program established under section 402(a)(19)(G) and Title IV-C of the Act involves coordination between this Department and the Department of Labor. We have decided to prepare a separate regulation under section 306 for the WIN program to allow full consideration by both Departments.

Administrative Interpretations and Rules

These regulations contain the following provisions--

1. "Claim" is a request for FFP in the manner and format required by our program regulations, and instructions or directives issued there under;
2. "Adjustment to prior year costs" is an adjustment in the amount of a particular cost item that was previously claimed under an interim rate concept and for which it is later determined that the cost is greater or less than that originally claimed;
3. "Audit exception" is a proposed adjustment by the responsible Federal agency to any expenditure claimed by a State by virtue of an audit;
4. "Court-ordered retroactive payment" is either a retroactive payment a State makes to an assistance recipient or other individual, under a Federal or State court order, or a retroactive payment we make to a State under a Federal court order. While we will accept

claims based on Court-ordered retroactive payments as timely, we do not necessarily agree to be bound by a State or Federal decision when we were not a party to the action.

An "adjustment to prior year's costs" is limited to claims for services or medical assistance based on interim rates that subsequently are determined to be higher or lower than originally claimed. It has been our experience that in these areas subsequent adjustments are unforeseen and unavoidable. Consequently, we believe they should not be subject to the time limits. We believe that a broader exception would render the statutory provision a nullity. However, we would welcome comments based upon the actual experience of the commenters as to the desirability of expanding this exception.

"Good cause" for late filing in these regulations is lateness due to circumstances beyond the control of the State. We specifically exclude from these circumstances, neglect or administrative inadequacies of the State legislature, as well as by offices of the State's executive branch and local agencies as appropriate. We have included examples of "good cause" i.e., acts of God or documented action or inaction of the Federal government. We believe that these examples constitute valid instances of "good cause" for a late claim that are beyond the State's control, but we recognize that there may be other situations that are equally valid. The regulation is sufficiently flexible to accommodate these situations. Nonetheless, we would welcome comments on the desirability of expanding examples based upon the actual experience of the commenters. The State programs under the affected titles of the Act are administered at the Federal level by four different agencies of HHS: the Health Care Financing Administration, the Office of Child Support Enforcement, the Office of Human Development Services, and the Social Security Administration. A State that wants to request waiver of the time limit for "good cause" ordinarily should file its request with the appropriate HHS agency. When a request affects the programs of more than one of these agencies, the submission should be sent to the Director, Division of Cost Allocation in the appropriate HHS Regional Office. The decision whether to grant or deny the waiver request will be made by the Secretary.

Part 95 of Subtitle A of 45 CFR is amended as follows:

1. The authority citation for Part 95 is revised to read as follows:

Authority: Sec. 452(a), 83 Stat. 2351, 42 U.S.C. 652(a); sec. 1102, 49 Stat. 647, 42 U.S.C. 1302; sec. 7(b), 68 Stat. 658, 29 U.S.C. 37(b);

sec. 139, 84 Stat. 1323, 42 U.S.C. 2577b; sec. 144, 81 Stat. 529, 42

U.S.C. 2678; sec. 1132, 94 Stat. 530, 42 U.S.C. 1320b-2; sec. 306(b), 94

Stat. 530, 42 U.S.C. 1320b-2 note.

2. A new Subpart A is added to read as follows:

***3529 PART 95--GENERAL ADMINISTRATION--GRANT PROGRAMS (PUBLIC ASSISTANCE AND MEDICAL ASSISTANCE)**

Subpart A--Time Limits for States To File Claims 95.1 Scope.

95.4 Definitions.

95.7 Time limit for claiming payment for expenditures made after September 30, 1979.

95.10 Time limit for claiming payment for expenditures made before October 1, 1979.

95.13 In which quarter we consider an expenditure made.

95.19 Exceptions to time limits.

95.22 Meaning of good cause.

95.25 When to request a waiver for good cause.

95.28 What a waiver request for good cause must include.

95.31 Where to send a waiver request for good cause.

95.34 The decision to waive the time limit for good cause.

* * * * * Subpart A--Time Limits for States To File Claims

s 95.1 Scope.

- a. This subpart establishes a two year time limit (15 months in some cases) for a State to claim Federal financial participation in expenditures under State plans approved under the following titles of the Social Security Act:

Title I--Grants to States for Old-Age Assistance and Medical Assistance for the Aged.

Title IV-A--Grants to States for Aid and Services to Needy Families with Dependent Children (except for Section 402(a)(19)(G) of the Act).

Title IV-B--Child Welfare Services.

Title IV-D--Child Support and Establishment of Paternity.

Title IV-E--Foster Care and Adoption Assistance.

Title X--Grants to States for Aid to the Blind.

Title XIV--Grants to States for Aid to the Permanently and Totally Disabled.

Title XVI--Grants to States for Aid to the Aged, Blind, or Disabled (AABD), or for Such Aid and Medical Assistance for the Aged.

Title XIX--Grants to States for Medical Assistance Programs.

Title XX--Grants to States for Services.

- b. This subpart also applies to claims for Federal financial participation by any State which are based on any provision of the Act that is enacted after issuance of these regulations and that provides, on an entitlement basis, for Federal financial participation in expenditures made under State plans or programs.
- c. This subpart explains under what conditions the Secretary may decide to extend the time limit for filing claims when a State believes it has good cause for not meeting the time limit.

s 95.4 Definitions.

In this subpart-- Adjustment to prior year costs means an adjustment in the amount of a particular cost item that was previously claimed under an interim rate concept and for which it is later determined that the cost is greater or less than that originally claimed. Audit exception means a proposed adjustment by the responsible Federal agency to any expenditure claimed by a State by virtue of an audit. Claim means a request for Federal financial participation in the manner and format required by our program regulations, and instructions or directives issued there under.

Court-ordered retroactive payment means either a retroactive payment the State makes to an assistance recipient or an individual, under a Federal or State court order or a retroactive payment we make to a State under a Federal court order. Although we may accept these claims as timely, this provision does not mean that we necessarily agree to be bound by a State or Federal decision when we were not a party to the action. Federal financial participation means the Federal government's share of an expenditure made by a State agency under any of the programs listed in s 95.1. State agency for the purposes of expenditures for financial assistance under title IV-A and for support enforcement services under title IV-D means any agency or organization of the State or local government which is authorized to incur matchable expenses; for purposes of expenditures under title XIX, means any agency of the State, including the State Medicaid agency, its fiscal agents, a State health agency, or any other State or local organization which incurs matchable expenses; for purposes of expenditures under all other titles, see the definitions in the appropriate program's regulations. State means the 50 States, the District of Columbia, Guam, Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa and the Trust Territories of the Pacific.

The Act means the Social Security Act, as amended. We, our, and us refer to HHS's Health Care Financing Administration, Office of Child Support Enforcement, Office of Human Development Services, or the Social Security Administration, depending on the program involved.

s 95.7 Time limit for claiming payment for expenditures made after September 30, 1979.

Under the programs listed in s 95.1, we will pay a State for a State agency expenditure made after September 30, 1979, only if the State files a claim with us for that expenditure within 2 years after the calendar quarter in which the State agency made the expenditure. Section 95.19 lists the exceptions to this rule.

s 95.10 Time limit for claiming payment for expenditures made before October 1, 1979.

Under the programs listed in s 95.1, we will pay a State for a State agency expenditure made before October 1, 1979, only if the State filed or files a claim with us for that expenditure before January 1, 1981.

Section 95.19 lists the exceptions to this rule.

s 95.13 In which quarter we consider an expenditure made.

In this subpart--

- a. We consider a State agency's expenditure for assistance payments under title I, IV-A, IV-E, X, XIV, or XVI (AABD) to have been made in the quarter in which a payment was made to the assistance recipient, his or her protective payee, or a vendor payee, even if the payment was for a month in a previous quarter.
- b. We consider a State agency's expenditure for services under title I, IV-A, IV-B, IV-D, IV-E, X, XIV, XVI (AABD) or XIX to have been made in the quarter in which any State agency made a payment to the service provider.
- c. For purposes of title XX, the date of expenditure is governed by 45 CFR s 1396.52(d).
- d. We consider a State agency's expenditure for administration or training under title I, IV-A, IV-B, IV-D, IV-E, X, XIV, XVI (AABD), or XIX to have been made in the quarter payment was made by a State agency to a private agency or individual; or in the quarter to which the costs were allocated in accordance with the regulations for each program. We consider a State agency's expenditure under these titles for non-cash expenditures such as depreciation to have been made in the quarter the expenditure was recorded in the accounting records of any State agency in accordance with generally accepted accounting principles.

s 95.19 Exceptions to time limits.

The time limits in ss 95.7 and 95.10 do not apply to any of the following--

- a. Any claim for an adjustment to prior year costs.
- b. *3530 Any claim resulting from an audit exception.
- c. Any claim resulting from a court-ordered retroactive payment.
- d. Any claim for which the Secretary decides there was good cause for the State's not filing it within the time limit.

s 95.22 Meaning of good cause.

- a. Good cause for the late filing of a claim is lateness due to circumstances beyond the State's control.
- b. Examples of circumstances beyond the State's control include:
 - 1. Acts of God;
 - 2. Documented action or inaction of the Federal government.
- c. Circumstances beyond the State's control do not include neglect or administrative inadequacy on the part of the State, State agencies, the State legislature or any of their offices, officers, or employees.

s 95.25 When to request a waiver for good cause.

The State should request a waiver in writing as soon as the State recognizes that it will be unable to submit a claim within the appropriate time limit.

s 95.28 What a waiver request for a good cause must include.

The State's request for waiver must include a specific explanation, justification or documentation of why the claim is or will be late. This request must establish that the lateness in filing the claim is for good cause as defined in s 95.22 and not due to neglect or administrative inadequacy. If the claim has not been filed, the State must also tell us when the claim will be filed.

s 95.31 Where to send a waiver request for good cause.

- a. A request which affects the program(s) of only one HHS agency (the Health Care Financing Administration, or the Office of Child Support Enforcement, or the Office of Human Development Services, or the Social Security Administration) and does not affect the programs of any other agency or Federal Department should be sent to the appropriate HHS agency.
- b. A request which affects programs of more than one HHS agency or Federal Department should be sent to the Director, Division of Cost Allocation in the appropriate HHS Regional Office.

s 95.34 The decision to waive the time limit for good cause.

The Secretary will make a decision after reviewing the State's request for waiver. If the Secretary decides that good cause exists, the State will be notified of the extended due date. If the Secretary decides that good cause does not exist or that the request for waiver does not provide enough information to make a decision, the State will be so advised.

(Catalog of Federal Domestic Assistance Program Nos. 13.642, Social Services for Low Income and Public Assistance Recipients; 13.644, Social Services Training Grants--Title XX; 13.645, Child Welfare Services--State Grants; 13.679, Child Support Enforcement; 13.714, Medical Assistance Program; 13.775, State Medicaid Fraud Control Units; 13.777, State Health Care Providers Survey Certification; 13.808, Assistance Payments--Maintenance Assistance (State Aid); and 13.810, Assistance Payments--State and Local Training)

Dated: January 2, 1981.

Joan Z. Bernstein,
General Counsel.

Approved: January 9, 1981.

Patricia Roberts Harris,
Secretary of Health and Human Services.

46 FR 3527-01