

§ 95.517

§ 95.517 Claims for Federal financial participation.

(a) A State must claim FFP for costs associated with a program only in accordance with its approved cost allocation plan. However, if a State has submitted a plan or plan amendment for a State agency, it may, at its option claim FFP based on the proposed plan or plan amendment, unless otherwise advised by the DCA. However, where a State has claimed costs based on a proposed plan or plan amendment the State, if necessary, shall retroactively adjust its claims in accordance with the plan or amendment as subsequently approved by the Director, DCA. The State may also continue to claim FFP under its existing approved cost allocation plan for all costs not affected by the proposed amendment.

§ 95.519 Cost disallowance.

If costs under a Public Assistance program are not claimed in accordance with the approved cost allocation plan (except as otherwise provided in § 95.517), or if the State failed to submit an amended cost allocation plan as required by § 95.509, the costs improperly claimed will be disallowed.

(a)(1) If the issue affects the program(s) of only one Operating Division and does not affect the programs of other Operating Divisions or Federal departments, that Operating Division will determine the amount of the disallowance and will also inform the State of its opportunity for reconsideration of the determination in accordance with the Operating Division's procedures. Prior to issuing the notification, however, the Operating Division shall consult with the DCA to ensure that the issue does not affect the programs of other Operating Divisions or Federal departments.

(2) If the State wishes to request a reconsideration of the Operating Division's determination, it must submit the request in accordance with the Operating Division's procedures.

(b) If the issue affects the programs of more than one Operating Division, or Federal department or the State, the Director, DCA, after consulting with the Operating Divisions, shall determine the amount inappropriately claimed under each program. The Di-

45 CFR Subtitle A (10-1-07 Edition)

rector, DCA will notify the State of this determination, of the dollar affect of the determination on the claims made under each program, and will inform the State of its opportunity for appeal of the determination under 45 CFR part 16. The State will subsequently be notified by the appropriate Operating Division as to the disposition of the funds in question.

[47 FR 17509, Apr. 23, 1982, as amended at 62 FR 38218, July 17, 1997]

Subpart F—Automatic Data Processing Equipment and Services—Conditions for Federal Financial Participation (FFP)

AUTHORITY: Secs. 402(a)(5), 452(a)(1), 1102 and 1902(a)(4) of the Social Security Act, 42 U.S.C. 602(a)(5), 652(a)(1), 1302, 1396a(a)(4); 5 U.S.C. 301 and 8 U.S.C. 1521.

SOURCE: 51 FR 45326, Dec. 18, 1986, unless otherwise noted.

GENERAL

§ 95.601 Scope and applicability.

This subpart prescribes part of the conditions under which the Department of Health and Human Services will approve Federal financial participation (FFP) at the applicable rates for the costs of automatic data processing incurred under an approved State plan for titles I, IV-A, IV-B, IV-D, IV-E, X, XIV, XVI(AABD), XIX, or XXI of the Social Security Act and title IV chapter 2 of the Immigration and Nationality Act. The conditions of approval of this subpart add to the statutory and regulatory requirements for acquisition of ADP equipment and services under the specified titles of the Social Security Act.

[65 FR 33633, May 24, 2000]

§ 95.605 Definitions.

As used in this part, the term:

Acceptance documents means written evidence of satisfactory completion of an approved phase of work or contract, and acceptance thereof by the State agency.

Acquisition means acquiring ADP equipment or services from commercial sources or from State or local government resources.

Advance Planning Document (APD), Initial advance automatic data processing planning document or *Initial APD* means a written plan of action to request funding approval for a project which will require the use of ADP services or equipment. The term *APD* refers to a *Planning APD*, or to a planning and/or, development and implementation action document, i.e., *Implementation APD*, or to an *Advance Planning Document Update*.

(1) *Planning APD* means a written plan of action which requests FFP to determine the need for, feasibility, and cost factors of an APD equipment or services acquisition and to perform one or more of the following: Prepare a *Functional Requirements Specification*; assess other States' systems for transfer, to the maximum extent possible, of an existing system; prepare an *Implementation APD*; prepare a request for proposal (RFP) or develop a General Systems Design (GSD).

A separate planning effort and *Planning APD* is generally applicable to large enhanced funded Statewide system developments and/or major hardware acquisitions. States with large, independent Counties requesting funding at the regular match rate for County systems are strongly encouraged to do better planning and to submit a *Planning APD* to allow for time and to provide funding for its planning activities. Therefore, states must consider the scope and complexity of a project to determine whether to submit a *Planning APD* as a separate document to HHS or whether to combine the two phases of planning and implementation into one APD covering both the *Planning APD* and the *Implementation APD* requirements.

The *Planning APD* is a relatively brief document, usually not more than 6-10 pages, which must contain:

(i) A statement of the problem/need in terms of deficiencies in existing capabilities, new or changed program requirements or opportunities for economies and efficiencies;

(ii) A project management plan which addresses the planning project organization, planning activities/deliverables, State and contractor resource needs, planning project procurement activities and schedule;

(iii) A specific budget for the planning of the project;

(iv) An estimated total project cost and a prospective State and Federal cost distribution, including planning and implementation;

(v) A commitment to conduct/prepare the needs assessment, feasibility study, alternatives analysis, cost benefit analysis, and to develop a Functional Requirements Specification and/or a General Systems Design (GSD); and,

(vi) A commitment to define the State's functional requirements for the purpose of evaluating the transfer of an existing system, including the transfer of another State's General System Design, which the State may adapt to meet State specific requirements.

Additional *Planning APD* content requirements, for enhanced funding projects are contained in 45 CFR 205.37(a)(1)-(8) and CFR 307.15.

(2) *Implementation APD* means a written plan of action to acquire the proposed APD services or equipment.

The *Implementation APD* shall include:

(i) The results of the activities conducted under a Planning APD, if any;

(ii) A statement of needs and objectives;

(iii) A requirements analysis, feasibility study and a statement of alternative considerations including, where appropriate, a transfer of an existing system and an explanation of why such a transfer is not feasible if another alternative is identified;

(iv) A cost benefit analysis;

(v) A personnel resource statement indicating availability of qualified and adequate staff, including a project director to accomplish the project objectives;

(vi) A detailed description of the nature and scope of the activities to be undertaken and the methods to be used to accomplish the project;

(vii) The proposed activity schedule for the project;

(viii) A proposed budget (including a consideration of all possible *Implementation APD* activity costs, e.g., system conversion, computer capacity planning, supplies, training, and miscellaneous ADP expenses) for the project;

§ 95.605

45 CFR Subtitle A (10-1-07 Edition)

(ix) A statement indicating the period of time the State expects to use the equipment or system;

(x) An estimate of prospective cost distribution to the various State and Federal funding sources and the proposed procedures for distributing costs; and

(xi) A statement setting forth the security and interface requirements to be employed and the system failure and disaster recovery procedures available. Additional requirements, for acquisitions for which the State is requesting enhanced funding, are contained at 45 CFR 205.37(a)(1)-(8), 45 CFR 307.15 and 42 CFR part 433 subpart C.

(3) *Advance Planning Document Update* (APDU) means a document submitted *annually* (Annual APDU) to report project status and/or post implementation cost-savings, or on an *as needed* (As Needed APDU) basis to request funding approval for project continuation when significant project changes are anticipated; for incremental funding authority and project continuation when approval is being granted by phase; or to provide detailed information on project and/or budget activities.

(a) The *Annual APDU* is due 60 days from the *Planning APD* or *Implementation APD* approved anniversary and includes:

(i) A reference to the approved APD and all approved changes;

(ii) A project activity status which reports the status of the past year's major project tasks and milestones, addressing the degree of completion and tasks/milestones remaining to be completed and discusses past and anticipated problems or delays in meeting target dates in the approved APD and approved changes to it;

(iii) A report of all project deliverables completed in the past year and degree of completion for unfinished products;

(iv) A project activity schedule for the remainder of the project;

(v) A project expenditures status which consists of a detailed accounting of all expenditures for project development over the past year and an explanation of the differences between projected expenses in the approved APD

and actual expenditures for the past year;

(vi) A report of any approved or anticipated changes to the allocation basis in the APD's approved cost methodology;

(vii) A report which compares the estimated cost-savings from the State's approved APD to actual cost-benefits to date (in the development phase of a project, this may be reported as non-applicable). The proportion of costs to savings must remain as projected in the APD. Once the State begins operation, either on a pilot basis or under a phased approval, the cost-savings shall be submitted 2-5 years after statewide operation until the Department determines projected cost savings have been achieved.

(b) The *As Needed APDU* is defined as a document which requests approval for additional funding and/or authority for project continuation when significant changes are anticipated; when the project is being funded on a phased implementation basis; to clarify project information requested as an approval condition of the *Planning APD* or *Implementation APD*. The *As Needed APDU* may be submitted anytime as a stand-alone funding or project continuation request, or may be submitted with the *Annual APDU*:

(i) When the State anticipates incremental project expenditures (exceeding specified thresholds);

(ii) When the State anticipates a schedule extension of more than 60 days for major milestones. For Aid to Families with Dependent Children (AFDC) Family Assistance Management Information System (FAMIS)-type projects, in accordance with section 402(e)(2)(C) of the Social Security Act, any schedule change which affects the State's implementation date as specified in the approved APD requires that the Department recover 40 percent of the amount expended. The Secretary may extend the implementation date, if the implementation date is not met because of circumstances beyond the State's control. Examples of circumstances beyond the State's control are:

(1) Equipment failure due to physical damage or destruction; or,

(2) Change imposed by Federal judicial decisions, or by Federal legislation or regulations;

(iii) When the State anticipates major changes in the scope of its project, e.g., a change in its procurement plan, procurement activities, system concept or development approach;

(iv) When the State anticipates significant changes to its cost distribution methodology or distribution of costs among Federal programs; and/or,

(v) When the State anticipates significant changes to its cost-benefit projections.

The *As needed APDU* shall provide supporting documentation to justify the need for a change to the approved budget.

Approving component means an organization within the Department that is authorized to approve requests for the acquisition of ADP equipment or ADP services. Family Support Administration (FSA) for cash assistance for titles I, IV-A, X, XIV, and XVI(AABD); Office of Human Development Services (OHDS) for social services for titles IV-B (child welfare services) and IV-E (foster care and adoption assistance); Family Support Administration (FSA) for title IV-D; and Centers for Medicare & Medicaid Services (CMS) for titles XIX and XXI of the Social Security Act.

Automatic data processing or ADP means data processing performed by a system of electronic or electrical machines so interconnected and interacting as to minimize the need for human assistance or intervention.

Automatic data processing equipment or ADP equipment or Hardware means automatic equipment that accepts and stores data, performs calculations and other processing steps, and produces information. This includes:

- (a) Electronic digital computers;
- (b) Peripheral or auxiliary equipment used in support of electronic computers;
- (c) Data transmission or communications equipment, and
- (d) Data input equipment.

Automatic Data Processing Services or ADP Services means:

- (a) Services to operate ADP equipment, either by agency, or by State or local organizations other than the State agency; and/or

(b) Services provided by private sources or by employees of the State agency or by State and local organizations other than the State agency to perform such tasks as feasibility studies, system studies, system design efforts, development of system specifications, system analysis, programming, system conversion and system implementation and include, for example, the following:

- (1) Systems Training,
- (2) Systems Development,
- (3) Site Preparation,
- (4) Data Entry, and
- (5) Personal services related to automated systems development and operations that are specifically identified as part of a *Planning ADP* or *Implementation ADP*. As an example, a personal service would be the service of an *expert individual* to provide advice on the use of ADP software or hardware in developing a State automated management information system.

Data processing means the preparation of source media containing data or basic elements of information and the use of such source media according to precise rules or procedures to accomplish such operations as classifying, sorting, calculating, summarizing, recording and transmitting.

Department means the Department of Health and Human Service.

Design or system design means a combination of narrative and diagrams describing the structure of a new or more efficient automatic data processing system. This includes the use of hardware to the extent necessary for the design phase.

Development means the definition of system requirements, detailing of system and program specifications, programming and testing. This includes the use of hardware to the extent necessary for the development phase.

Emergency situation is defined as a situation where:

- (a) A State can demonstrate to the Department an immediate need to acquire ADP equipment or services in order to continue the operation of one or more of the Social Security Act programs covered by Subpart F, and
- (b) The State can clearly document that the need could not have been anticipated or planned for and the State

was prevented from following the prior approval requirements of §95.611.

Enhanced matching rate means the higher than regular rate of FFP authorized by Title IV-D, IV-E, and XIX of the Social Security Act for acquisition of services and equipment that conform to specific requirements designed to improve administration of the Child Support Enforcement, Foster Care and Adoption Assistance, and Medicaid programs.

Enhancement means modifications which change the functions of software and hardware beyond their original purposes, not just to correct errors or deficiencies which may have been present in the software or hardware, or to improve the operational performance of the software or hardware.

Feasibility study means a preliminary study to determine whether it is sufficiently probable that effective and efficient use of ADP equipment or systems can be made to warrant a substantial investment of staff, time, and money being requested and whether the plan is capable of being accomplished successfully.

FFP means Federal financial participation.

Functional Requirements Specification is defined as an initial definition of the proposed system, which documents the goals, objectives, user or programmatic requirements, management requirements, the operating environment, and the proposed design methodology, e.g., centralized or distributed. This document details what the new system and or hardware should do, not how it is to do it. The Specifications document shall be based upon a clear and accurate description of the functional requirements for the project, and shall not, in competitive procurements, lead to requirements which unduly restrict competition. The Specification document is the user's definition of the requirements the system must meet.

General Systems Design means a combination of narrative and graphic description of the generic architecture of a system as opposed to the detailed architecture of the system. A general systems design would include a systems diagram and narrative identifying overall logic flow and systems functions; a description of equipment need-

ed (including processing data transmission and storage requirements); a description of other resource requirements which will be necessary to operate the system; a description of system performance requirements; and a description of the physical and organizational environment in which the system will operate including how the system will function within that environment (e.g. how workers will interface with the system).

Project means an automated systems effort undertaken by the State to improve the administration and/or operation of one or more of its public assistance programs. For example, a State may undertake a comprehensive, integrated initiative in support of its AFDC and Medicaid programs' intake, eligibility and case management functions. A project may also be a less comprehensive activity such as, office automation, enhancements to an existing system or an upgrade of computer hardware.

Implementation means design, development and installation and does not include operation.

Medicaid Management Information System (MMIS) is a commonly accepted term for *Mechanized Claim Processing and Information Retrieval System* as provided by Section 1903(a)(3) and 1903(r) of the Social Security Act and at 42 CFR 433.110 et seq.

Total Acquisition Cost means all anticipated expenditures (including State staff costs) for planning and implementation for the project. For purposes of this regulation total acquisition cost and project cost are synonymous.

Installation means the integrated testing of programs and subsystems, system conversion, and turnover to operation status. This includes the use of hardware to the extent necessary for the installation phase.

Operation means the automated processing of data used in the administration of State plans for titles I, IV-A, IV-B, IV-D, IV-E, X, XIV, XVI(AABD), XIX, and XXI of the Social Security Act. Operation includes the use of supplies, software, hardware, and personnel directly associated with the functioning of the mechanized system. See 45 CFR 205.38 and 307.10 for specific requirements for titles IV-A and IV-D,

and 42 CFR 433.112 and 42 CFR 433.113 for specific requirements for title XIX.

Regular matching rate means the normal rate of FFP authorized by titles IV-A, IV-B, IV-D, IV-E, X, XIV, XVI(AABD), XIX, and XXI of the Social Security Act for State and local agency administration of programs authorized by those titles.

Requirements Analysis means determining and documenting the information needs and the functional and technical requirements the proposed computerized system must meet.

Service agreement means the document signed by the State or local agency and the State or local Central Data Processing facility whenever the latter provides data processing services to the former and:

(a) Identifies those ADP services the Central Data Processing facility will provide;

(b) Includes, preferably as an amendable attachment, a schedule of charges for each identified ADP service, and a certification that these charges apply equally to all users;

(c) Includes a description of the method(s) of accounting for the services rendered under the agreement and computing services charges;

(d) Includes assurances that services provided will be timely and satisfactory;

(e) Includes assurances that information in the computer system as well as access, use and disposal of ADP data will be safeguarded in accordance with provisions of 45 CFR 205.50 and 303.21;

(f) Requires the provider to obtain prior approval pursuant to 45 CFR 95.611(a) from the Department for ADP equipment and ADP services that are acquired from commercial sources primarily to support the titles covered by this subpart and requires the provider to comply with 45 CFR Part 74, Subpart P for procurements related to the service agreement. ADP equipment and services are considered to be primarily acquired to support the titles covered by this subpart when these titles may reasonably be expected to either: Be billed for more than 50 percent of the total charges made to all users of the ADP equipment and services during the time period covered by the service agreement, or directly charged for the

total cost of the purchase or lease of ADP equipment or services;

(g) Includes the beginning and ending dates of the period of time covered by the service agreement; and

(h) Includes a schedule of expected total charges to the title covered by this subpart for the period of the service agreement.

Software means a set of computer programs, procedures, and associated documentation used to operate the hardware.

State agency means the State agency administering or supervising the administration of the State plan under titles I, IV, X, XIV, XVI(AABD), XIX or XXI of the Social Security Act.

System specifications means information about the new ADP system—such as workload descriptions, input data, information to be maintained and processed, data processing techniques, and output data—which is required to determine the ADP equipment and software necessary to implement the system design.

System study means the examination of existing information flow and operational procedures within an organization. The study essentially consists of three basic phases: Data gathering investigation of the present system and new information requirements; analysis of the data gathered in the investigation; and synthesis, or refitting of the parts and relationships uncovered through the analysis into an efficient system.

[51 FR 45326, Dec. 18, 1986, as amended at 55 FR 4375, Feb. 7, 1990, 59 FR 30708, June 15, 1994; 65 FR 33633, May 24, 2000]

SPECIFIC CONDITIONS FOR FFP

§ 95.611 Prior approval conditions.

(a) *General acquisition requirements.* (1) A State shall obtain prior written approval from the Department as specified in paragraph (b) of this section, when the State plans to acquire ADP equipment or services with proposed FFP at the regular matching rate that it anticipates will have total acquisition costs of \$5,000,000 or more in Federal and State funds.

(2) A State shall obtain prior written approval from the Department as specified in paragraph (b) of this section,