

determine the allowability of the claim.

(6) If the Regional Administrator cannot complete review of the material within 90 days, CMS pays the claim, subject to a later determination of allowability.

(d) *Effect of decision to pay a deferred claim.* Payment of a deferred claim under paragraph (c)(6) of this section does not preclude a subsequent disallowance based on the results of an audit or financial review. (If there is a subsequent disallowance, the State may request reconsideration as provided in paragraph (e)(2) of this section.)

(e) *Notice and effect of decision on allowability.* (1) The Regional Administrator or the Administrator gives the State written notice of his or her decision to pay or disallow a deferred claim.

(2) If the decision is to disallow, the notice informs the State of its right to reconsideration in accordance with 45 CFR part 16.

**§ 457.212 Disallowance of claims for FFP.**

(a) *Notice of disallowance and of right to reconsideration.* When the Regional Administrator or the Administrator determines that a claim or portion of claim is not allowable, he or she promptly sends the State a disallowance letter that includes the following, as appropriate:

(1) The date or dates on which the State's claim for FFP was made.

(2) The time period during which the expenditures in question were made or claimed to have been made.

(3) The date and amount of any payment or notice of deferral.

(4) A statement of the amount of FFP claimed, allowed, and disallowed and the manner in which these amounts were computed.

(5) Findings of fact on which the disallowance determination is based or a reference to other documents previously furnished to the State or included with the notice (such as a report of a financial review or audit) that contain the findings of fact on which the disallowance determination is based.

(6) Pertinent citations to the law, regulations, guides and instructions supporting the action taken.

(7) A request that the State make appropriate adjustment in a subsequent expenditure report.

(8) Notice of the State's right to request reconsideration of the disallowance and the time allowed to make the request.

(9) A statement indicating that the disallowance letter is the Department's final decision unless the State requests reconsideration under paragraph (b)(2) of this section.

(b) *Reconsideration of FFP disallowance.* (1) The Departmental Appeals Board reviews disallowances of FFP under title XXI.

(2) A State may request reconsideration with a request to the Chair, Departmental Appeals Board, within 30 days after receipt of the disallowance letter, which must include—

(i) A copy of the disallowance letter;

(ii) A statement of the amount in dispute; and

(iii) A brief statement of why the disallowance is wrong.

(c) *Reconsideration procedures.* The reconsideration procedures are those set forth in 45 CFR part 16.

(d) *Implementation of decisions.* If the reconsideration decision requires an adjustment of FFP, either upward or downward, a subsequent grant award promptly reflects the amount of increase or decrease.

**§ 457.216 Treatment of uncashed or canceled (voided) SCHIP checks.**

(a) *Purpose.* This section provides rules to ensure that States refund the Federal portion of uncashed or canceled (voided) checks under title XXI.

(b) *Definitions.* As used in this section—

*Canceled (voided) check* means an SCHIP check issued by a State or fiscal agent that prior to its being cashed is canceled (voided) by the State or fiscal agent, thus preventing disbursement of funds.

*Fiscal agent* means an entity that processes or pays vendor claims for the SCHIP agency.

*Uncashed check* means an SCHIP check issued by a State or fiscal agent that has not been cashed by the payee.

*Warrant* means an order by which the SCHIP agency or local agency without the authority to issue checks recognizes a claim. Presentation of a warrant by the payee to a State officer with authority to issue checks will result in release of funds due.

(c) *Refund of Federal financial participation (FFP) for uncashed checks*—(1) *General provisions.* If a check remains uncashed beyond a period of 180 days from the date it was issued; that is, the date of the check, it is no longer regarded as an allowable program expenditure. If the State has claimed and received FFP for the amount of the uncashed check, it must refund the amount of FFP received.

(2) *Report of refund.* At the end of each calendar quarter, the State agency must identify those checks that remain uncashed beyond a period of 180 days after issuance. The SCHIP agency must refund all FFP that it received for uncashed checks by adjusting the Quarterly Statement of Expenditures for that quarter. If an uncashed check is cashed after the refund is made, the State may file a claim. The claim will be considered to be an adjustment to the costs for the quarter in which the check was originally claimed. This claim will be paid if otherwise allowed by the Act and the regulations issued in accordance with the Act.

(3) If the State does not refund the appropriate amount as specified in paragraph (c)(2) of this section, the amount will be disallowed.

(d) *Refund of FFP for canceled (voided) checks*—(1) *General provisions.* If the State has claimed and received FFP for the amount of a canceled (voided) check, it must refund the amount of FFP received.

(2) *Report of refund.* At the end of each calendar quarter, the SCHIP agency must identify those checks that were canceled (voided). The State must refund all FFP that it received for canceled (voided) checks by adjusting the Quarterly Statement of Expenditures for that quarter.

(3) If the State does not refund the appropriate amount as specified in paragraph (d)(2) of this section, the amount will be disallowed.

**§ 457.218 Repayment of Federal funds by installments.**

(a) *Basic conditions.* When Federal payments have been made for claims that are later found to be unallowable, the State may repay the Federal Funds by installments if the following conditions are met:

(1) The amount to be repaid exceeds 2½ percent of the estimated or actual annual State share for the State SCHIP program; and

(2) The State has given the Regional Administrator written notice, before total repayment was due, of its intent to repay by installments.

(b) *Annual State share determination.* CMS determines whether the amount to be repaid exceeds 2½ percent of the annual State share as follows:

(1) If the State SCHIP program is ongoing, CMS uses the annual estimated State share of State SCHIP expenditures. This is the sum of the estimated State shares for four consecutive quarters, beginning with the quarter in which the first installment is to be paid, as shown on the State's latest CMS-21B form.

(2) If the State SCHIP program has been terminated by Federal law or by the State, CMS uses the actual State share. The actual State share is that shown on the State's Quarterly Statement of Expenditures reports for the last four quarters before the program was terminated.

(c) *Repayment amounts, schedules, and procedures*—(1) *Repayment amount.* The repayment amount may not include any amount previously approved for installment repayment.

(2) *Repayment schedule.* The number of quarters allowed for repayment is determined on the basis of the ratio of the repayment amount to the annual State share of State SCHIP expenditures. The higher the ratio of the total repayment amount is to the annual State share, the greater the number of quarters allowed, as follows:

Total repayment amount as percentage of State share of annual expenditures for State SCHIP	Number of quarters to make repayment
2.5 pct. or less .....	1
Greater than 2.5, but not greater than 5 .....	2
Greater than 5, but not greater than 7.5 .....	3
Greater than 7.5, but not greater than 10 .....	4
Greater than 10, but not greater than 15 .....	5