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DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

[Reimbursement Rate for Payment]

FILE: A-51604

DATE: February 19, 1980

MATTER OF: Reimbursement to States of Food Stamp Program
Administrative Costs

DIGEST: Food Stamp Act authorizes Secretary of Agriculture to issue implementing regulations. 7 U.S.C. § 2013(c). Regulations implementing 1974 amendment to Act, which increased percentage of Federal reimbursement to States for administrative costs, provide for reimbursement on a "cost incurred" basis. Department's interpretation is that administrative costs of States which account for costs on cash, rather than accrual, basis, incurred before but paid after October 1, 1974, effective date of new reimbursement rate, may be reimbursed on basis of lower reimbursement rate in effect before that date. Department's view is not arbitrary or capricious.

This responds to the request of the Honorable ^SBob Bergland, Secretary of Agriculture, for a decision on whether Food Stamp Program administrative costs, which were incurred by States before, but paid after, October 1, 1974, the effective date of a new, higher, statutory reimbursement rate, should be paid on the basis of the new or the old rate.

For reasons set forth below, we conclude that State administrative costs for which the liability for payment arose before the effective date of the new rate should be paid on the basis of the rate in effect when the liability arose, regardless of when they were paid.

Under the Food Stamp Program (Program) certain administrative responsibilities are assigned to the States. Before the 1974 amendment (Pub. L. No. 93-347, 88 Stat. 340, 341) to the Food Stamp Act, 1964, the law required the Department of Agriculture (Department) to reimburse the States at a rate of 62.5 percent for a portion of their direct administrative costs. Section 15, Pub. L. No. 88-525, 78 Stat. 708, as amended. This reimbursement of 62.5 percent for certain functions and nothing for all others resulted in an average reimbursement of 28 percent of all State administrative costs. S. Rep. No. 93-829, 13 (1974).

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The 1974 amendment increased the reimbursement rate to 50 percent for all State Program administrative costs. 7 U.S.C. § 2024(b) (1976).

Neither the amendment nor its legislative history defines the word "costs". However, under section 4 of the Food Stamp Act of 1964, as amended, 7 U.S.C. § 2013(c), the Secretary of Agriculture (Secretary) is authorized to --

"* * * issue such regulations, not inconsistent with this chapter, as he deems necessary or appropriate for the effective and efficient administration of the food stamp program."

Pursuant to this authority, the Secretary issued regulations implementing the Program. Under the regulations, reimbursement of State Program administrative costs under the 1974 amendment is authorized to be made as follows:

"(a) FNS [Food and Nutrition Service] is authorized to pay to each State agency an amount equal to 50 percentum of administrative costs incurred pursuant to § 270.3(b) of this subchapter on or after October 1, 1974." 7 C.F.R. § 271.2 (1977).

The Department has taken the position that under this regulation, administrative costs for which a legal liability to pay arose before October 1, 1974, should be reimbursed under the matching formula in effect before that date, regardless of whether the State maintained its accounts on a cash or accrual basis. A number of States, on the other hand, have taken the position that since their accounts are maintained on a cash basis, administrative costs paid after October 1, 1974, should be reimbursed under the matching formula which became effective on that date, without regard to the fact that the liability for such costs may have been incurred before October 1, 1974.

While the wording of the statute and regulations is not without ambiguity, we agree that the Department's position is not inconsistent with either the statute or regulations. The Secretary was granted broad authority to issue regulations implementing the Act as he deemed necessary and appropriate. In problems involving statutory construction, great deference is shown to the interpretation given the statute by the agency charged with its administration. Udall v. Tallman, 380 U.S. 1, 16 (1964). Additionally, under the well-recognized rule,

"the practical construction given to an act of Congress, fairly susceptible of different constructions, by those charged with the duty of executing it is entitled to great respect and, if acted upon for a number of years, will not be disturbed except for cogent reasons." McLaren v. Fleischer, 256 U.S. 477, 481 (1921). Given these rules, we see no basis upon which to disturb the Department's interpretation.

The Department evidently feels that its interpretation is preferable because it will apply the same date to all the States. We cannot find that the Department has been arbitrary or capricious in determining that State Food Stamp Program administrative costs for which the liability for payment arose prior to October 1, 1974, should be reimbursed on the basis of the rate in effect prior to that date, regardless of whether the States's accounting system is or was on an accrual or cash basis.

R. A. Keller
Deputy Comptroller General
of the United States