



**United States
Department of
Agriculture**

Food and
Nutrition
Service

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SUBJECT: Additional Administrative Reviews and State Retention of Improperly-Paid Funds in SY 2008-09

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

The recently-published Access, Participation, Eligibility and Certification (APEC) Study has made available to local, State, and Federal administrators, troubling information on erroneous payments in the school meal programs. Specifically, the APEC data indicates that erroneous payments (including both under- and over-payments) totaled \$935 million in certification errors, and \$860 million in non-certification errors nationwide in SY 2005-06, alone. These findings underscore the need for FNS and State agencies to utilize available program oversight authority as effectively as possible toward the goal of reducing these errors.

Section 126 of the Child Nutrition and WIC Reauthorization Act of 2004 (Pub. L. 108-265) amended section 22 of the Richard B. Russell National School Lunch Act, and section 7 of the Child Nutrition Act of 1966, to:

- establish a requirement that State educational agencies (SAs) conduct additional administrative reviews of selected local educational agencies; and
- outline conditions under which SAs retain a portion of improperly paid funds recovered as a result of the Coordinated Review Effort (CRE) process and the additional administrative review requirement.

This memorandum provides intermediate guidance to SAs on these two provisions, which were designed to reduce administrative error and erroneous payments among participating institutions. This guidance is intended to provide direction to SAs for the 2008-2009 school year. For future years, additional guidance will be provided based upon the experiences of the initial implementation year, as well as supplementary in-depth analysis of APEC data.

Selection of SFAs for Additional Administrative Reviews

The statute requires that SAs conduct additional reviews of selected SFAs that have a demonstrated level of, or are at high risk for, administrative error. Based on currently-available evidence, FNS has determined that the following three factors indicate a high risk for administrative error. Therefore, in SY 2008-09, SAs may use any of the following criteria for selecting an SFA:

- **Establishment of a new Provision 2/3 base year since the previous CRE was conducted.** The APEC study found that schools in Provision 2/3 base years, on average, experience higher erroneous payment rates than other schools (1.75 times higher for NSLP).
- **Verification data indicating a high-level (e.g. top 25% among SFAs within a State) of non-response or response-based terminations.** CFR 245.11 (i) requires annual collection and aggregation of verification data; this verification data serves as the primary source of information on the accuracy of the eligibility determination process.
- **Consistently claiming over 90% free eligibles or 80% reduced price eligibles.** These figures are considerably above the national averages; consistent claims in this range may signal reporting errors.

SAs may utilize other risk-based criteria for selecting an SFA; however, any criteria outside of the those noted above must be reported to FNS.

The Child Nutrition and WIC Reauthorization Act of 2004 explicitly requires additional administrative reviews to be conducted above and beyond the normal CRE process. Using the criteria above, or alternate criteria, each SA must therefore perform a certain minimum number of additional administrative reviews each year; this minimum is determined by the following requirements:

1. *Percent of SFAs undergoing CRE reviews:* SAs must conduct additional administrative reviews on a minimum number of SFAs, which is equivalent to no less than 1% of the SFAs in the State; and
2. *Percent of total annual reimbursement:* SAs must conduct additional administrative reviews on a total number of SFAs comprising no less than 3% of the total statewide reimbursement for FY 2007.

The selection factors above determine the minimum number of required reviews; SAs may conduct additional reviews if warranted based on the risk profile of SFAs in their state. If the minimum number established through this process would lead to an exceptional undue burden on an SA, the SA should contact the RO to discuss alternate means for fulfilling the requirements of the law. Note that any administrative reviews conducted by an SA in addition to the minimum CRE cycle may be applied to the minimum total of additional administrative reviews, as long as the SFAs reviewed meet the criteria for being at high risk for error, as described above.

Scope of the Review

The scope of the review is established by the statute to include application, certification, verification, meal counting, and meal claiming procedures. These are the areas covered by CRE Performance Standard 1 (PS 1) and the verification component of the general areas of review. The CRE procedures for these areas, as specified in 7 CFR 210.18, should be used to conduct the additional review(s) unless alternate procedures are approved by FNS. If an additional administrative review results in significant findings, the SA must conduct a follow-up review to confirm that required corrective actions have been taken. Note: Follow-up as part of the regular CRE process does not fulfill the expanded statutory requirements establishing the additional administrative review.

Reporting Requirements

State agencies must notify their FNS Regional Office of the anticipated schedule of CRE reviews, along with the required notification under 7 CFR 210.18(d)(1) and (2). SAs are strongly encouraged to maintain records related to these additional administrative reviews, consistent with CRE procedures. SAs may be required to provide FNS with records documenting their management of the program, including the conduct of the required additional administrative reviews.

State Retention of Improperly-Paid Funds

Failure of an SFA to meet administrative performance criterion during any administrative review (i.e. usual CREs and additional administrative reviews) must be addressed by the SA according to the procedures already in place for CREs (both initial and follow-up). When overpayments to SFAs are discovered, SAs shall establish an overclaim according to the following:

- Collect the full value of any overpayment to the SFA, based on erroneous claims, within the specified time period; and
- The specified time period begins on the date the erroneous claim was made and ends when the claim was corrected *or* 60 days after the beginning of the period in the case of a first follow-up review, *or* 90 days after the beginning of the period in the case of any subsequent follow-up reviews (whichever is earliest).

Pursuant to the statutory changes noted above, SAs may retain 25% of recovered funds to use in carrying out integrity initiatives. This provision applies to funds retained both through the regular CRE process and through the additional administrative reviews. While conducting the additional administrative reviews is mandatory, retaining up to 25% of recovered funds is optional.

If an SA elects to retain a portion of the recovered funds, expenditure of those funds must be consistent with statutory provisions. Therefore, an SA choosing to retain up to 25% of recovered funds must:

- Submit a plan (see Attachment A for details) to FNS describing how the funds will be used to improve program integrity, including measures giving priority assistance to the SFA from which funds were retained; and
- Obtain FNS approval for the plan.

Recovered funds not kept by the SA (75% of the total) for use in program integrity initiatives shall be returned to FNS. In accordance with this statute, FNS will use these funds to support improved program integrity and administrative accuracy.

In addition to the funds available through recoveries, annual Administrative Review and Training (ART) grants are available to support review activity. To support the additional administrative review activity outlined in this memorandum, FNS will offer a streamlined process for ART grant funding specifically for this purpose in FY 09.

State agencies with questions regarding this guidance should contact their regional offices. Regions should contact Rachel Hayes of the Child Nutrition Division.

Original Signed

CYNTHIA LONG
Director
Child Nutrition Division

Attachment

Attachment A

Plan Requirements for State Retention of Funds

For accounting purposes, the retained funds can be used for the purposes specified in the approved plan (e.g. additional reviews, training). These funds will be available for State agency use during the year in which the funds were recovered. These funds may also be used in the following year, subject to funds management procedures.

The plan for State agency retention of funds must include:

- The approximate amount of funds expected to be recovered, as well as retained (estimates based on prior years are acceptable);
- A general discussion of how recovered funds will be used to improve program integrity within the SA; and
- An explanation of selection criteria to determine which SFAs will receive assistance, including measures to give priority assistance to SFAs from which funds were retained.

The plan must be submitted to FNS HQ by October 1st of each year.