



**United States  
Department of  
Agriculture**

Food and  
Nutrition  
Service

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SUBJECT: Questions Relevant to Additional Administrative Reviews and State Retention of Improperly-Paid Funds

TO: Regional Directors  
Special Nutrition Programs  
All Regions

State Directors  
Special Nutrition Programs  
All States

Recently, we have received a number of questions regarding the guidance provided to Regional and State Directors on July 7, 2008 in SP 28-2008. This guidance addressed amendments created by Section 126 of the Child Nutrition and WIC Reauthorization Act of 2004 (Pub. L. 108-265). The amendments to Section 22 of the Richard B. Russell National School Lunch Act and Section 7 of the Child Nutrition Act of 1966 were designed to reduce administrative error and erroneous payments among participating institutions. Attached are the most recently received questions and answers. Please note, the Question and Answer guidance regarding the process for State retention of funds supersedes guidance provided in Attachment A in SP 28-2008. As in the past, please share these questions and answers with your State agencies and request that they provide this information to their school food authorities. If you have any questions, please contact your regional office.

**Original Signed**

CYNTHIA LONG  
Director  
Child Nutrition Division

Attachment

## Questions and Answers for SP 28-2008

### Questions Relevant to Additional Administrative Reviews and State Retention of Improperly-Paid Funds

1. Question: What does an additional administrative review mean in the National School Lunch Program (NSLP)?

Answer: As defined by the statute, an additional administrative review in the NSLP includes a review of applications, certification, verification, meal counting and meal claiming procedures. These areas are those covered by CRE Performance Standard 1 (PS1) 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.

2. Question: One of the suggested criteria for determining “high risk” in the selection of SFAs for additional administrative reviews is those SFAs with verification data that indicate a high level of non-response or response-based terminations. In small districts, one non-response can cause the SFA to have a very high non-response rate. Should these small SFAs always be selected?

Answer: No, not necessarily. For example, if the SA uses verification errors to select their SFAs for additional administrative reviews, it does not have to choose all SFAs in the top 25%.

Flexibility for SA discretion was purposely built into the risk criteria selection procedures. A State does not have to use any one particular risk criterion to select the additional SFAs to be reviewed, but may pick and choose among the recommended criteria or use their own.

3. Question: Another suggested criterion for determining “high risk” in the selection of SFAs for additional administrative reviews is those SFAs consistently claiming over 90% free eligibles or 80% reduced price eligibles. Does this apply to the entire SFA or to sites within the SFA?

Answer: This suggested criterion refers to the SFA as a whole.

4. Question: What are examples of alternate risk-based criteria that must be reported to FNS?

Answer: SP 28-2008 provides three suggestions of criteria SAs may use for selecting an SFA to review. If an SA chooses to use any other criteria, then the SA must report it to FNS.

5. Question: Does the SA report the alternate criteria to the Regional Office or Headquarters?

Answer: The SA should report the alternate criteria to the Regional Office. However, Headquarters may collect information from the Regional Offices to examine national trends in alternate criteria.

6. Question: How does an SA select the number of SFAs for additional review?

Answer: There are two requirements for selecting the number of SFAs to be reviewed. First, SAs must conduct additional administrative reviews on no less than 1% of the SFAs in the state. Although SP 28-2008 states the minimum is determined by the “percent of SFAs undergoing CRE Reviews,” the intention is that 1% of all of the SFAs in the State will be subject to these additional administrative reviews annually. If the calculation does not yield a whole number, the SA should round up to the next highest whole number to determine the minimum number of required additional administrative reviews.

Second, SAs must select enough SFAs for additional administrative reviews to ensure that the reviews cover at least 3% of the statewide reimbursement. SAs do not have to choose their largest school districts; rather, they must select the SFAs such that their combined reimbursements comprise at least 3% of the State total.

These requirements provide the minimum number of additional required reviews; States may choose to conduct more reviews.

The following example demonstrates how to determine the minimum number of additional administrative reviews that must be conducted.

By the first requirement, the minimum number of additional reviews is no less than 1% of all SFAs in the state.

Number of SFAs in State X during SY 2008-2009	200
Minimum Percentage = 1%	x1%
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<b>Minimum Number of Additional Administrative Reviews</b>	<b>2</b>

By the second requirement, the total reimbursements for the SFAs selected for additional administrative reviews must cover at least 3% of total statewide reimbursements.

- 1) Determine the minimum amount of reimbursements that must be covered by the SFAs.

Total Statewide Reimbursements	\$1,000,000
Minimum Percentage = 3%	x3%
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<b>Minimum Total Reimbursement Covered by SFAs</b>	<b>\$30,000</b>

- 2) Determine if the total reimbursements of the SFAs chosen by the first requirement meet the minimum amount of total reimbursement specified by the second requirement.

*Scenario 1*

SFA #1 Reimbursement	\$25,000
SFA #2 Reimbursement	+\$20,000
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<b>Total Reimbursement Amount of Additional SFAs to Review</b>	<b>\$45,000</b>

Since the sum of the reimbursements for SFA #1 and SFA #2 is *greater than* \$30,000, no additional SFAs need to be chosen for review.

*Scenario 2*

SFA #1 Reimbursement	\$10,000
SFA #2 Reimbursement	\$15,000
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<b>Total Reimbursement Amount of Additional SFAs to Review</b>	<b>\$25,000</b>

Since the sum of the reimbursements for SFA #1 and SFA #2 is *less than* \$30,000, additional SFAs need to be chosen for review until the sum of their reimbursements is at least \$30,000.

7. Question: For calculation purposes, does “total reimbursement” include School Breakfast Program (SBP) and Fresh Fruit and Vegetable Program (FFVP) funds, or just NSLP funds?

Answer: For the purpose of this calculation, the total reimbursement to an SFA includes only the NSLP funding because NSLP is the primary focus of the CRE. Review of other programs, i.e. SBP, FFVP, etc., is optional during the initial CRE.

8. Question: Due to several States being comprised of many very small SFAs, can SAs be granted waivers/exceptions due to the “undue burden” of our minimum requirements on the number of additional administrative reviews that must be conducted?

Answer: States are expected to fulfill the requirements. With significant flexibility in selection criteria, SAs should be able to choose SFAs for additional reviews such that the reviews are manageable and meet the requirements. Moreover, the availability of ART grants and retained funds should facilitate this process. States with limited resources should contact their Regional Office; however, States in such a situation this year are encouraged to focus their efforts on their larger SFAs if these SFAs receive a large portion of the reimbursements.

- 9.** Question: Can an SA count any technical review towards the minimum number of required additional administrative reviews? What are other examples of types of reviews that could count?

Answer: Additional CREs (those above and beyond the minimum cycle) and/or additional administrative reviews that cover all CRE components except Performance Standard 2 could be counted toward the minimum required additional administrative reviews, as long as the SFAs reviewed meet the criteria for being at high risk for error.

- 10.** Question: Since the additional administrative reviews are separate from the CRE, is it necessary to conduct another School Meal Initiative (SMI) review in these schools/SFAs as part of the additional administrative reviews?

Answer: No, an additional SMI is not required.

- 11.** Question: To limit burden on SAs, would they have the option to focus only on administrative issues where problems have been demonstrated in a particular SFA, or does each additional administrative review require them to look at all CRE aspects, with the exception of Performance Standard 2?

Answer: Yes, SAs do have flexibility to focus their additional administrative reviews on problem areas, especially when it promotes efficiency. Such alternate plans must be submitted to the Regional Office for approval.

- 12.** Question: Are SAs able to do desk reviews in lieu of following the CRE Performance Standard 1 and the verification component of the general areas of the view?

Answer: Maybe. Desk reviews, like other alternate review procedures, need approval from FNS and should be submitted to the Regional Office for approval.

- 13.** Question: When selecting schools to review within a selected SFA, is the State required to use the normal CRE selection procedures or can they target particular schools where problems have been demonstrated?

Answer: SAs should use CRE procedures for selecting the number of schools to review as outlined in the instructions for Optional Form O-2. For example, if there are 50 schools, then 6 need to be reviewed. However, an SA may target particular schools as long as the schools that meet the mandatory criteria are reviewed; no prior approval is required.

- 14.** Question: Are the additional administrative reviews reported on the FNS-640?

Answer: No, but SAs need to maintain the appropriate documentation showing that they have met the requirements.

- 15.** Question: Can you clarify the time periods to be used by SAs to establish an overclaim?

Answer: During an initial CRE or an initial additional administrative review, if performance standard 1 (PS1) is violated or another error is found, the overclaim is assessed from the start date of the error to the date of corrective action (there is no time limit). The statute limits the overclaim time periods for follow-up reviews to 60 days for a first follow-up or 90 days for

any subsequent follow-up. Follow-up reviews must be conducted in all large SFAs and in 25% of small SFAs where a PS 1 threshold was exceeded. The 60-day and 90-day limits are defined as operating days. The following explanation varies slightly depending on whether the follow-up review is conducted in the school with the PS 1 violation (I) or in a school within the same SFA as the school with the PS 1 violation (II).

I. Follow-up if the PS 1 threshold was exceeded at the SFA level or in a school that contributed to the PS 1 threshold being exceeded during an initial CRE or an initial additional administrative review

During the first follow-up review:

- If the PS 1 violation identified during the initial review has not been corrected, the original claim continues until the date of corrective action.
- If the PS 1 violation has been corrected and no other problem has been identified, the original claim is from the start date of the error until the date of corrective action.
- If additional errors are identified during the follow-up review, the claim on the new problems is limited to 60 days. This claim begins at the start date of the error and ends at the date of corrective action *or* after 60-days, whichever is earlier.

During the second follow-up review:

- If the PS 1 violation identified during the initial review still has not been corrected, the original claim continues until the date of corrective action.
- If a new problem was found during the first follow-up review and has not been corrected, the claim for that error would be extended for a period up to 90 days. This claim begins on the 61<sup>st</sup> day after the start date of the error and ends at the date of corrective action *or* after 90-days, whichever is earlier.
- If a new problem is found during the second follow-up review, this claim is limited to 90 days. This claim begins at the start date of the error and ends at the date of corrective action *or* after 90-days, whichever is earlier.

II. Follow-up in schools in the same SFA as the school with PS 1 violation during an initial CRE or an initial additional administrative review

During the first follow-up review:

- If any error is found, the claim is limited to 60 days. This claim begins at the start date of the error and ends at the date of corrective action *or* after 60-days, whichever is earlier.

During the second follow-up review:

- If the error found during the first follow-up review has not been corrected, the claim would be extended for a period up to 90 days. This claim begins on the 61<sup>st</sup> day after the start date of the error and ends at the date of corrective action *or* after 90-days, whichever is earlier.
- If a new problem is found during the second follow-up review, this claim is limited to 90 days. This claim begins at the start date of the error and ends at the date of corrective action *or* after 90-days, whichever is earlier.

We recognize that these procedures vary from the procedures associated with the CRE described at 7 CFR 210.18 (i)(5)(i). The information provided in this question and answer guidance reflects the most recent statutory requirements and supersedes previously cited regulations. Our intention is to publish updates to these regulations to incorporate the newest statutory requirements.

**16. Question:** What percentage of what types of funds can be retained?

Answer: SAs may retain up to 25% of recovered funds, which includes funds recovered through both the regular CRE process and the additional administrative reviews. Fund retention is optional but encouraged.

**17. Question:** Can you clarify the process by which States retain funds?

Answer: States retaining recovered funds must use the funds only for the purposes specified in the statute, and in accordance with an approved plan. States must be able to identify the retained funds and track them separately; a possible method would involve using a new accounting code in the State system to track obligations made with retained funds.

States cannot make new obligations against retained funds beyond the end of the federal fiscal year in which they are retained; any unobligated funds will be recovered as part of the close out process. Given the potential for a short time period between when SAs retain the funds and the end of the fiscal year, States are encouraged to submit their fund retention plans for pre-approval. Plans should be submitted to the Regional Offices for approval. This guidance regarding the process for State retention of funds supersedes guidance provided in Attachment A in SP 28-2008.

**18. Question:** If we are required to submit an annual fund retention plan what should it include?

Answer: The plan for SA retention of funds must include:

- The estimated amount of funds expected to be recovered, and the estimated amount to be retained by the SA, not to exceed 25% of the total recovered. In future years, States will also be required to specify the actual amount of funds retained in the prior year;
- A clear discussion of how the funds will be used to improve program integrity within the SA, including descriptions of specific activities and estimated timelines; 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.

**19. Question:** Collecting the full value of any overpayment to the SFA seems to conflict with the \$600 disregard allowed in CREs. Does the disregard that is used in CRE apply to these administrative reviews?

Answer: Yes, as with CRE, the same optional disregard still applies. However, the amount of any claims that are disregarded cannot be included when calculating the 25% limitation on the amount the State is able to retain.

**20.** Question: Can the retained funds be used for State staff vacancies or other program expenses?

Answer: The purpose of the retained funds is to improve the integrity of the program, specifically in schools identified as high-risk. The State plan will be evaluated against these criteria. Provided that the use of funds is consistent with the required plan, the funds may be used to cover the portion of staff salaries, benefits, and travel required to conduct additional reviews, technical assistance and trainings to identified schools.