Attachment 1

Implementation Guidance for State Agencies: 2nd Interim CACFP Management Improvement Rule

Introduction

On September 1, 2004, the Food and Nutrition Service (FNS) published an interim rule entitled, "Child and Adult Care Food Program: Improving Management and Program Integrity" (69 FR 53501). This rule put into effect discretionary provisions (i.e., provisions that were not statutorily mandated) that FNS had proposed on September 12, 2000 (65 FR 55101), as modified in response to the 548 public comments we received on that proposal. Although we are soliciting public comment on this interim rule, and are allowing a lengthy period for public comment, its provisions will be codified in the Code of Federal Regulations and will have the force of law, effective October 1, 2004. Thus, although FNS is soliciting public comments, compliance with the interim rule's provisions is required, in accordance with the implementation dates discussed in this guidance.

This guidance is intended to provide State agencies (SAs) with information for their use in implementing the provisions of this second interim management improvement rule. In addition to discussing each change in the rule, the guidance will:

- Provide an "index" of the rule, to help Program administrators more quickly locate discussions of specific provisions;
- Address implementation timeframes; and
- Discuss interactions between the provisions of the first interim rule, published on June 27, 2002 (67 FR 43447) and this second interim rule.

Part I: SA Review of Institutions' Program Applications (preamble, pp. 53504-53512; regulatory language: §§ 226.6(b) and 226.6(f) [pp. 53536-53541], 226.15(b) and 226.16(b) [pp. 53544-53545], and 226.23(a) [p. 53547]).

The first interim rule**,** published on June 27, 2002, implemented a number of new statutorily-mandated eligibility requirements that could most efficiently be captured during the initial and renewal application process. These changes added new requirements to the application process for SAs and applicant institutions.

However, this second interim rule offers SAs the opportunity to streamline the institution application process by providing them with greater flexibility in how they manage renewal applications. Specifically, this rule incorporates into the regulations the option for SAs to take renewal applications from institutions on a triennial basis, provided that

institutions submit some required information to the SA on a more frequent basis. It also permits SAs to use less lengthy renewal applications that primarily focus on collecting the information necessary for the SA to determine the renewing institution's continued viability, capability, and accountability (VCA). We believe that, by reducing the amount of time associated with the SA's review of annual reapplications submitted by small institutions, the SA will be able to perform a more detailed review of fewer applications, and to devote more time to evaluating each institution's ability to meet the VCA criteria.

You previously issued guidance on implementation of the three-year renewal option. What is the status of that guidance?

That guidance, which was issued on September 26, 1995, is rescinded and is replaced by the provisions of the interim rule and this guidance.

Are three-year and one-year renewals the only options available to SAs?

No, the rule permits SAs to take renewal applications anywhere between 12 and 36 months after the last application. It also permits SAs to make distinctions among different types of institutions in determining what the SA believes to be the appropriate length of time between applications. For example, a SA could require independent centers to reapply on a triennial basis, small sponsors to reapply biennially, and larger sponsors to reapply annually. Finally, it also permits SAs to require an institution to reapply in less than 12 months under unusual circumstances.

What circumstances might warrant a requirement that a particular institution reapply in less than 12 months?

The circumstances warranting a SA's use of a less-than-12 month reapplication on a one-time basis might involve the coincidence of pending review findings for a particular institution with that institution's normal review cycle. If, for example, an institution was in the midst of being reviewed by the SA, or was in the midst of completing corrective action to resolve a serious deficiency at the time of reapplication, the SA might choose to have the institution reapply for a short period of time (e.g., three to six months) in order to assess the results of the review or the corrective action. Depending on the length of the institution's agreement, the SA might also choose simply to extend an expiring agreement for a limited period and to defer the institution's reapplication for a short period of time, until the review or the corrective action was complete.

Why didn't FNS simply include the three-year reapplication option in the regulations? Why was all of the other language concerning the application process added to the regulations?

Although triennial reapplication has been a SA option since it was added to the National School Lunch Act (NSLA) 10 years ago, very few SAs have implemented the option or taken full advantage of it. The purpose of the new provisions in this interim rule is not only to incorporate the triennial renewal option into the CACFP regulations, but also to

encourage SAs to use the option. The interim rule does this primarily by reducing the number of items required to be included in the renewal application, and by emphasizing that SAs can choose to collect annually-required information outside of the application process.

We hope that these changes will give SAs more incentive to take advantage of the option to reduce paperwork related to the application process. Implementing these options will permit SAs to make better use of their administrative resources by allowing them to spend less time processing renewal applications, and to use these resources to conduct more in-depth reviews of institution applications, to provide institutions with more training and technical assistance, and to conduct additional review and oversight activities.

Nationally, we estimate that SAs administer the Program in (i.e., sign agreements with) about 18,500 institutions, and that approximately 70 percent of these institutions are independent centers. Furthermore, among the roughly 5,300 sponsoring organizations in the Program, probably no more than 800 to 1,000 are large enough to be subject to the monitor staffing standards (i.e., they sponsor 25 or more centers or 50 or more homes). Thus, although the majority of institutions are independent centers and smaller sponsors, the majority of Program reimbursements are received by less than a thousand of the largest sponsoring organizations, which represent roughly 5 percent of participating institutions.

Given this statistical distribution of applications received from institutions, a SA's reduction of resources devoted to the annual review of renewal applications submitted by independent centers and smaller sponsors will enable it to increase resources devoted to: training and technical assistance to institutions; conducting additional reviews of institutions; and conducting more in-depth onsite reviews of institutions, especially larger sponsoring organizations. Finally, moving away from annual renewals will also provide a meaningful reduction in administrative burden and paperwork for independent centers, smaller sponsors, or both. Like SAs, these institutions will benefit from less frequent reapplications, and should be able to direct their resources to other Program-related functions and concerns.

Does the interim rule permit the use of permanent agreements?

Yes. In response to public comment, the interim rule permits SAs to enter into permanent agreements with any institution participating in CACFP, while continuing to require, in accordance with section 9(i) of the NSLA, the use of permanent agreements between SAs and school food authorities (SFAs) when the SFA administers more than one child nutrition program under the auspices of that SA.

What is the purpose of reapplication if the institution already has a "permanent agreement"?

The "permanent" agreement does not guarantee an institution the right to participate in CACFP in perpetuity; it simply relieves the SA and institution from the paperwork burden of including an agreement renewal every time the institution reapplies to participate. It is also important to remember that the SA must use its best judgment in deciding whether to use the permanent agreement for all institutions. If the SA believes it would be better to have its agreement with an institution expire at the time of application renewal, it does not have to make use of the permanent agreement.

Whether or not a SA elects to use the permanent agreement option, all participating institutions are still required to reapply at intervals not to exceed three years. The reapplication process provides the SA with an opportunity to reassess the institution's continued financial viability, administrative capability, and internal controls, and the institution's continued adherence to other Program requirements. In a sense, the reapplication process allows the State to perform a "desk review" of participating institutions' operations, which supplements the required "onsite" reviews that are also performed on a cycle not exceeding three years. If, as a result of either the review of the renewal application or an onsite Program review, the SA determines that the institution is no longer operating in conformance with Program requirements and is unable to come into compliance with those requirements, the SA would then initiate the serious deficiency process in accordance with § 226.6(c), which could culminate in the termination of the permanent agreement.

If an institution has a permanent agreement and fails to reapply, what action must the SA take?

If an institution chose not to reapply and was not seriously deficient, the SA would simply terminate its permanent agreement with the institution, and no further action would be necessary. In essence, this would amount to a "termination for convenience" by the institution; it would be eligible to reapply as a new institution at any time in the future and there would be no need to offer appeal rights when the agreement was terminated. We recommend, if an institution fails to reapply, that the SA contact the institution to determine the reasons for its withdrawal from the Program.

However, if the institution that fails to reapply has been declared seriously deficient prior to the end of the reapplication period, the serious deficiency process would continue, in accordance with § 226.6(c)(3)(iii)(A)(6) of the regulations. If the institution failed to appeal its proposed termination or the SA prevailed on appeal, the SA would terminate its permanent agreement with the institution and place the institution on the National Disqualified List.

If an institution has a permanent agreement and reapplies, but is denied approval, what action must the SA take?

If a participating institution reapplies but its renewal application is denied, and the application denial is not due to a serious deficiency (e.g., the institution has submitted an incomplete application), the SA would simply inform the institution of the denial, provide

the institution with an opportunity to appeal (in accordance with § 226.6(k)(2)(i)) and, if the institution failed to appeal or the SA prevailed on appeal, terminate the permanent agreement.

If the denial of the participating institution's renewal application was due to one or more serious deficiencies in its application (e.g., the institution's proposed budget demonstrated that the institution was not financially viable), the procedures of § 226.6(c)(2) must be followed and, if the SA prevails on appeal, the SA would terminate its permanent agreement with the institution and place the institution on the National Disqualified List.

Can you summarize the minimum content requirements for initial and renewal applications submitted by different types of institutions?

Yes. Attachment 2 includes charts summarizing the minimum Federal requirements for the content of new and renewal applications submitted by independent centers and sponsoring organizations. It also includes, in the middle columns of each chart, a description of other information that each type of institution is required to submit to the SA, and the frequency of such required submissions, regardless of the length of time between applications.

In addition, to assist SAs in making the transition to the triennial reapplication, we will include prototype applications for new independent centers, new sponsors, reapplying independent centers, and reapplying sponsors in materials distributed at our regulatory training in 2005.

How can a SA ensure that an institution periodically submits information when that information is not required to be included in a renewal application?

In accordance with the CACFP regulations, institutions must submit various types of information to the SA at times other than the time of reapplication. For example, all institutions must submit claims for reimbursement in accordance with § 226.10, and proprietary centers must document each month that they continue to meet the minimum requirements for Title XX or free and reduced price participation set forth in law. If an institution fails to submit information that is not part of a renewal application, the SA would have a variety of possible responses, depending on the nature of the missing information and the information's impact on the SA's ability to discern the institution's continuing viability, capability, and accountability.

For example, even if a SA elected to require that sponsoring organizations of centers reapply on a triennial basis, such sponsors are still required by § 226.6(b)(2)(i) to submit budgets annually, and to demonstrate in the budget that they will not retain more than 15 percent of their sponsored centers' meal reimbursements for administrative costs. A center sponsor that failed to submit this information could not be considered financially viable, and would be declared seriously deficient on that basis. In cases involving other types of information, and other types of institutions, the SA might elect to utilize other

approaches to encourage the institution to submit the missing information, before declaring the institution seriously deficient.

Part II: SA and Institution Review and Oversight Requirements (preamble, pp. 53512-53526)

Household Contacts (preamble, pp. 53512-53513; regulatory language : § 226.6(m)(3)(x) and 226.6(m)(5) [p. 53542], and § 226.16(d)(5) [p.53546]).

The September 12, 2000, rulemaking proposed very specific requirements for when and how household contacts (often referred to as "parental contacts" or "parent audits") were to be conducted. In response to public comment that these proposed requirements were too complex and would prohibit the use of effective household contact systems that were already in place, the interim rule requires that SAs establish household contact systems for use by sponsors in their review of facilities, and by the SA in its review of independent centers or in its review of facilities as part of a sponsor review.

In the interim rule, what are the minimum content requirements for household contacts?

There are no specific minimum requirements. The specific events that would trigger the required conduct of a household contact would be left to the SA to determine, as would the specific procedures that sponsors or the SA would use in conducting a household contact. However, in conducting management evaluations in Fiscal Year (FY) 2006, FNS will evaluate SAs' household contact systems to determine that they will result in the conduct of household contacts, where appropriate, to verify the accuracy of claims and supporting records. We believe that household contacts might be an especially effective tool when investigating instances of block claiming, systematic irregularities in a center's income eligibility forms, or a provider's repeated absence at the time of unannounced reviews.

When must SAs implement their household contact systems?

The interim rule requires that these systems be implemented by April 1, 2005, and that SAs send a copy of their household contact systems to their FNS Regional office by that date. This will enable the regional office to be aware of the full range of household contact systems in their region, prior to conducting CACFP management evaluations in FY 2006.

Enrollment forms (preamble, pp.53513-53515; regulatory language: §§ 226.2, "Outside-school-hours care center" [p. 53535], 226.15(e)(2) and (e)(3) [p. 53544], 226.16(b)(1) [pp. 53544-53545], and 226.19(b) [p.53546]).

Does the interim rule modify the requirements for enrollment forms proposed on September 12, 2000?

For the most part, no. As we proposed, the interim rule requires that enrollment forms be updated annually and signed by a parent or guardian, and that the enrollment forms indicate the "normal" days in care and meals to be received by each enrolled child.

The only significant change was the elimination of the requirement for enrollment forms in outside-school-hours care centers. When the at-risk snack program was added to the CACFP, Congress recognized that many outside-school-hours centers operated on a drop-in basis, just like at-risk programs, and conformed the licensing requirements at section 17(a)(5)(C) of the NSLA for at-risk programs and outside-school-hours centers. The guidance implementing the CACFP at-risk program eliminated enrollment requirements for at-risk snack programs and, given the similarity in the drop-in nature of many outside-school-hours programs, it is appropriate to further conform the at-risk and outside-school-hours requirements by eliminating enrollment requirements for outside-school-hours programs. Of course, some State licensing regulations may still require outside-school-hours centers to have enrollment forms on file, so SAs will have to check State licensing requirements prior to informing outside-school-hours centers in their State of this change.

Does the interim rule require annual enrollment updates for children in sponsored and independent centers as well as homes?

Yes.

Due to liability and other concerns, State licensing staff or the center's attorneys may have dictated the content of the enrollment forms used by a child care center. How can independent or sponsored centers comply with this requirement?

We are aware of this potential issue. We wish to stress that the intent of the regulations is to ensure that the child's presence in the home or center, and the child's normal schedule, is annually verified by a parent or guardian and is available to reviewers during an onsite visit. We believe that the easiest way to capture this information in most Program settings (that is, in family day care homes and in most child care centers, except for at-risk and outside-school-hours centers) would be on the enrollment form.

However, for a variety of reasons, it may be more effective for some centers to capture this information in other ways. One alternative would be for the SA to amend the income eligibility form (IEF), which must already be distributed annually to the parents of children in care, so that it also captures the children's normal days in care and meals they received. However, if this method is used, a center would need to have a means of capturing the required information from parents who elect not to submit income information on the IEF, and whose children are therefore considered to be in the "paid" category by default. In these instances, a center would have to ensure that parents annually updated the portions of the IEF that verifies the children in care and their schedules, even if the parent's did not provide income information on the IEF.

When must these provisions be implemented?

Annual updates to the enrollment form (or such other form, as discussed above), signed by a parent or guardian and indicating the child's normal schedule, must be implemented by April 1, 2005. This means that any new IEF or enrollment form, collected on or after that date, will need to comply with the new requirements. For enrollment forms that are already collected annually, the changes must be in place the next time on or after April 1, 2005, that the forms are collected. For all other enrollment forms, the changes must be in place by September 30, 2005. This delay in implementation will provide State agencies and sponsors time to make the necessary modifications to their current enrollment systems. Management evaluations conducted in FY 2006 and thereafter will evaluate the enrollment forms in use as at the time of the review and the enrollment form updates completed between April 1, 2005 and September 30, 2005.

Review Elements for Sponsor Reviews of Facilities (preamble, pp. 53516-53518; regulatory language: §§ 226.15(e)(4) and 226.16(d)(4) [pp. 53544, 53545]).

What changes are made by the interim rule?

Although the CACFP regulations have always specified the frequency of sponsor reviews, they have not specified the minimum content of those reviews. The interim rule requires that, as part of each review of a facility, the sponsor must assess the facility's compliance with the regulatory requirements pertaining to:

- The Program meal pattern;
- Licensing or approval;
- Participation in, or attendance at, sponsor training;
- Meal counts;
- Menu and meal records; and
- The new requirements pertaining to annually updated enrollment forms.

In addition, each facility review is required to:

- Assess whether the facility has corrected problems noted on previous reviews; and
- Include a five-day reconciliation of meal counts with enrollment and attendance records.

These, of course, are minimum requirements. SAs may require sponsors in their State to include additional elements in their review of facilities.

Were there any changes from the review elements proposed on September 12, 2000?

There are two changes to the sponsor review elements proposed on September 12, 2000.

A number of commenters objected to the requirement to include health and safety as a required review element. Many sponsors commented that the inclusion of this review

element would expose them to legal liability in the event of mistaken findings, and would require their monitors to make evaluations about health and safety without having the requisite training or expertise to make such determinations.

Although we removed the review of health and safety from the list of required review elements in this interim rule, SAs and sponsors are reminded that the law and regulations (section 17(d)(5)(C) of the NSLA, as implemented in § 226.16(l)(4) of the first interim rule) nevertheless require sponsors conducting CACFP reviews in facilities to take appropriate action when they encounter conduct or conditions that pose an imminent threat to children's health or safety, or to public health or safety.

A second area that proved somewhat controversial involved the clarification that family day care homes were only required to record meal counts on a daily basis (as opposed to a time-of-service or point-of-service requirement in centers). Some SAs felt strongly that it was unrealistic to expect providers to remember meal counts accurately at the end of the day, especially when the provider cares for many children or provides shift care. In recognition of this concern, the interim rule clarifies that SAs have the authority to require meal counts more frequently than daily, but only if there are a total of 12 or more children enrolled in the home (i.e., in group day care homes or in homes providing shift care to 12 or more children). As a reminder, SAs or sponsors would always be permitted to require more frequent than daily meal counts as part of a provider's corrective action plan, regardless of the number of children enrolled and in the provider's care.

Meal Claim Edit Checks (preamble, pp. 53518-53520; regulatory language: §§ 226.10(c), 226.11(b), and 226.13(b) [pp. 53543-53544]).

The interim rule requires that, by October 1, 2005, SAs and sponsors have monthly edit checks in place to ensure that:

- The facility or institution has been approved to serve the meal types being claimed; and
- The number of meals claimed does not exceed the number derived by multiplying approved meal types times days of operation times enrollment.

In addition, sponsors are required to have in place, by October 1, 2005, an edit check to detect block claims and to take required follow-up action when a block claim is detected.

What is the revised definition of a "block claim" in the interim rule?

The interim rule defines a "block claim" as a claim on which the number of meals claimed by a facility for one or more meal types is identical for 15 consecutive days within a claiming period. This modifies the proposed definition, which would have required follow-up action if the claim was identical for 10 or more consecutive days within one or more claiming period. Thus, for facilities that serve meals on weekdays only, the block claim edit check would be triggered when the facility claimed the same

number of meals for one meal type for three consecutive weeks within the same claiming period. For facilities that serve meals on weekdays and weekends, the block claim edit check would be triggered when the facility claimed the same number of meals for one meal type for just over two weeks within the same claiming period.

What penalty does the interim rule attach to a facility's submission of a block claim?

The interim rule does not attach a "penalty" to the submission of a block claim. For that matter, there was no "penalty" for submission of a block claim in the proposed rule either. Rather, the term "block claim" is descriptive: it describes a pattern of claiming that constitutes a "red flag" and triggers a required follow-up action on the part of the sponsor. In the interim rule, the required follow-up action is that the sponsor must conduct an unannounced review of the facility submitting the block claim within 60 days of receiving the claim.

Does the interim rule provide relief from follow-up review requirements to sponsors with one or more facilities submitting legitimate block claims?

Yes. Block claims can be the result of legitimate factors, though they are among the claiming patterns most likely to indicate the submission of a false claim. However, because block claims can be innocuous, the rule prevents sponsors from having to repeatedly conduct unannounced visits to a facility that regularly submits a legitimate block claim.

The interim rule, at § 226.10(c)(3), requires that, if a sponsor detects a block claim and determines during the conduct of the required unannounced follow-up review that the facility will legitimately submit block claims on a regular basis, the sponsor must document that reason in the review file. The sponsor is not required to conduct additional unannounced follow-up reviews for additional block claims detected during that year. However, any facility that submits a block claim during the year must receive at least three reviews during the year from its sponsor (see discussion of review "averaging" by sponsors, below).

In addition, we recognize that some sponsors (especially small and mid-size sponsors serving many small day care homes spread over a large geographic area) might find it difficult, if not impossible, to conduct all of the required unannounced reviews within a 60-day period. In such situations, the rule permits SAs, on a case-by-case basis, to grant a sponsor up to 30 additional days to conduct all of the required unannounced reviews.

If the SA is aware that a sponsor of centers is actually preparing the claims for each of its sponsored centers (i.e., the sponsored center submits raw data to the sponsor, and the sponsor then develops the proper claim for each of its sponsored centers and submits a consolidated claim to the SA), can it exempt that sponsor from instituting a block claim edit check?

In this case, since it is the sponsor, rather than the individual sponsored center, that is aggregating the claim, and then consolidating the claim for submission to the SA, we would expect the center sponsor to have a different form of "edit check". Nevertheless, regardless of who aggregates the raw data for the sponsored center's claim, it is still incumbent on the sponsor to have a system for determining whether the center's raw data does or does not fit the "block claim" pattern. In addition, when the SA reviews a sponsor that is aggregating raw data for its sponsored centers, the SA should pay particular attention to the sponsor's management controls to ensure that it receives accurate information from its sponsored centers, and that it submits valid claims to the SA.

When are SAs and sponsors required to have these required edit checks in place?

The rule requires both SAs and sponsors to implement the required edit checks no later than October 1, 2005. This will allow SAs and sponsors time to modify existing automated edit check systems, or to develop new systems. Management evaluations conducted in FY 2006 will evaluate the edit check systems in place as of October 1, 2005.

Review Elements for SA reviews of institutions (preamble, p. 53521; regulatory language: § 226.6(m) [p. 53542]).

The interim rule requires that, as part of each review of an institution, the SA must assess the institution's compliance with the regulatory requirements pertaining to:

- Recordkeeping;
- Meal counts;
- Administrative costs;
- Facility licensing or approval;
- The new requirements pertaining to annually updated enrollment forms; and
- Any applicable instructions and handbooks issued by FNS, the Department of Agriculture, or the SA, and all other Program requirements.

For sponsoring organizations, the SA review would also include an assessment of the sponsor's:

- Implementation of the serious deficiency, termination, and appeals procedures (home sponsors only);
- Training and monitoring of facilities;
- Implementation of the SA's household contact system; and
- Tiering classification (home sponsors only).

In reviewing the adequacy of a family day care home sponsor's monitoring, we encourage SAs to pay special attention to the sponsor's efforts to adequately monitor all of the meal services claimed by providers, including suppers. If 20 percent of all meals claimed by the sponsor's providers are suppers, a roughly proportionate amount of the

sponsor's monitoring effort should be devoted to ensuring the accuracy and integrity of supper meal counts.

Finally, reviews of independent centers must always include the observation of a meal service.

These, of course, are minimum requirements. SAs may choose to include additional elements in their review of institutions.

Review Cycle for Sponsored Facilities (preamble, pp. 53521-53523; regulatory language: § 226.16(d)(4)(iii) and (d)(4)(iv) [p. 53545]).

The interim rule permits sponsors, at their discretion, to "average" their reviews of facilities. The intent of this change is to permit sponsors to focus their review efforts on facilities that are more likely to commit errors (i.e., newer facilities and facilities with a history of operational problems). Sponsors may elect to implement review averaging for the review year beginning October 1, 2004. The sponsor must inform their SA that it will use the "review averaging" option and, to facilitate SA review of sponsor monitoring, should also describe how it plans to implement the review averaging option.

Sponsors electing this option must conduct the same total number of annual reviews (three times the number of facilities they sponsor) as before, but may arrive at that number by reviewing some facilities twice a year, and other facilities more than three times per year. However, each facility must receive two unannounced reviews per year. As previously noted, the interim rule at § 226.16(d)(4)(iv) prohibits a facility from receiving less than three reviews per year if the facility has submitted a block claim during the review year.

The interim rule also makes the standard review requirements identical for all types of sponsored facilities:

- Each participating home, sponsored child and adult care center, and sponsored outside-school-hours care center must be reviewed three times per year, unless the review averaging provision is used;

- Two of the three required reviews must be unannounced;

- One of the unannounced reviews must include the observation of a meal service;

- A new facility must be reviewed during its first four weeks of operation; and

- Not more than six months may elapse between reviews of any facility.

Can you provide an example of how averaging might work?

Averaging would work somewhat differently for each sponsor, depending on the nature of its concerns about its “problem-prone” providers. For example, in some cases, a sponsor might want to make four unannounced reviews of each problem-prone provider during the year. In other cases, it might be more appropriate to make two unannounced and two announced reviews of each problem-prone provider. When we provide training on this rule, we will present several scenarios for how averaging might “play out” in different circumstances.

Disallowing Payments to Facilities (preamble, pp. 53523-53524; regulatory language: § 226.10(f) [p. 53543]).

The second interim rule clarifies that, based on the results of audits, investigations, or reviews, SAs must deny payments to facilities that have engaged in unlawful acts with respect to the Program, including the submission of false claims based on absent or non-existent children. For example, this could occur if the SA was aware of audit results showing fraudulent claiming activity by a particular sponsored center. The SA could notify the sponsor that, based on the audit findings, it was removing that center’s meals from the sponsor’s consolidated claim, and provide the sponsor with the right to appeal the disallowance. Of course, the SA could choose instead to request that the sponsor submit an amended claim for the month.

Change to Audit Requirements (preamble, p. 53524; regulatory language: § 226.8 [p. 53543]).

The second interim rule conforms the CACFP regulations to OMB circular and Departmental audit requirements by:

- Increasing the audit threshold for organization-wide audits from $25,000 to the dollar amount mandated by Department-wide financial management regulations;

- Prohibiting the use of Federal funds for audits not required by Federal regulations; and

- Clarifying that SAs may use audit funds to conduct agreed-upon procedures engagements (i.e., limited-scope reviews conducted by auditors), as described in 7 CFR 3052.230(b)(2).

Tier I Income Eligibility based on Food Stamp Program Participation (preamble, pp. 53524-53526; regulatory language: § 226.6(f)(1)(x) [p. 53541]).

The interim rule requires sponsors to provide to the SA a list of family day care homes claiming eligibility for tier I reimbursement on the basis of the provider’s participation in the Food Stamp Program (FSP). The SA, in turn, is required to pass this list to the SA responsible for administering the FSP. Thus, the list must include:

- Providers living outside Tier I eligible areas, who claim eligibility for Tier I reimbursement for all children in care based on the provider's food stamp eligibility; and

- Providers in eligible areas who have established their child's eligibility for Tier I reimbursement based on the provider household's food stamp participation.

What action is the CACFP SA required to take if the SA administering FSP finds that a provider has not fully reported her household income, and was, therefore, ineligible to receive food stamps?

The regulations do not require a specific response, since the appropriate response by the SA would vary with the circumstances of each case. At a minimum, we expect a SA to share this information with the provider's sponsor and to require the sponsor to take appropriate action. Such action might include changing the provider's tiering classification if the provider lives in a non-eligible area, or changing the eligibility status of the provider's own children if the provider lives in an eligible area.

However, in some cases, a provider's ineligibility for food stamps would not affect her ability to receive tier I benefits, either for her own child or for all of the children in care. The FSP requires that recipient households have income at or below 130 percent of the Federal income poverty guidelines. Thus, if a provider loses food stamp eligibility, but her actual household income was still at or below 185 percent of the income poverty guidelines, the provider would still be eligible to receive tier I reimbursement for meals served to her child and to all children in care, based on the submission of a completed and verified IEF.

Please note that, since the recent reauthorization (Public Law 108-265, the Child Nutrition and WIC Reauthorization Act of 2004) includes provisions that could affect implementation of this provision, we will issue further guidance on proper implementation in the near future.

Should the sponsor declare the provider "seriously deficient" in cases where the provider loses her food stamp eligibility?

Not necessarily. The appropriate response would depend on whether the provider lost food stamp eligibility as a result of having knowingly submitted false information about the income received from child care (i.e., the provider had submitted false information on her application for the CACFP or for food stamps, which would meet the "serious deficiency" criteria set forth at §§ 226.16(l)(2)(i), (l)(2)(vii) or (l)(2)(viii)).

What if the SA responsible for the FSP fails to report a provider's loss of food stamp eligibility to the SA administering CACFP?

This provision is primarily designed to ensure proper receipt of food stamp benefits. The CACFP SA is responsible for submitting the information to the SA administering the

FSP. If SA administering FSP fails to notify the SA administering CACFP of a provider's change in food stamp eligibility, the provider's eligibility will be adjusted when they reapply for tier I status the following year and their food stamp case number can no longer be verified.

Part III: Training and other Operational Requirements (preamble, pp. 53526-53530):

Training of facilities (preamble, pp. 53526-53528; regulatory language: §§ 226.6(m)(3)(viii) [p. 53542], 226.15(e)(12) and (e)(14) [p. 53544], 226.16(d)(2), (d)(3), and (d)(4)(i)(C) [p. 53545], 226.18(b)(2) [p. 53546]; 226.19(b)(7) [p. 53546], and 226.19a(b)(11)[p. 53547]).

The interim rule requires mandatory training for key staff of all facilities, both before Program participation and annually thereafter. Like the proposed rule, the interim rule does not require a minimum number of annual training hours. The interim rule does correct an error in the proposal by clarifying that the SA, not the sponsor, always defines the "key staff" of a facility who must attend training.

Can a sponsor still conduct training in a provider's home, as opposed to conducting group training for providers outside of the home?

Yes. It was not the intent of the proposed rule to limit a sponsor's use of in-home training, distance learning, or other innovative training techniques, provided that the training is properly documented and that the SA is satisfied that this training will accomplish the regulatory requirements for training content and frequency.

Does the requirement apply to all types of sponsored facilities, including at-risk sites, adult day care centers, and all types of child care centers?

Yes.

Does the requirement that certain content be included in the annual training mean that facility staff will be required to be trained on the same information every year?

No. Repetition of some information may be necessary to ensure continued Program compliance, but it is not the interim rule's intent that experienced and inexperienced providers or facility staff receive the same training year after year.

Times of meal service (preamble, pp. 53528-53529; regulatory language: § 226.20(k) [p. 53547]).

The interim rule provides SAs with regulatory authority to specify the length of meal services and the time that elapses between meal services. This authority was added primarily to help SAs discourage a form of provider abuse, in which the provider claims

multiple meals for children who are only in care for a short period of time. Although many commenters requested that we add language to the interim rule requiring SAs to include waiver systems for any meal service limitations, we believe that any decision regarding waivers is best left to the SA. SAs should also note that we have eliminated the former requirements pertaining to times between meal services for outside-school-hours-care centers.

Reimbursement to new centers (preamble, p. 53529; regulatory language: § 226.11(a) [p. 53543]).

The interim rule clarifies that SAs have two options for reimbursing meals to new centers: they may reimburse a new center for documented meals served in the month prior to month of the SA's agreement with the center, or they may choose to reimburse a new center only for meals served on or after the date of the agreement. The interim rule clarifies that, regardless of the option chosen, the SA must have a uniform Statewide policy on this subject. As part of this uniform policy, the State could make distinctions in how payments would be made to centers with, or without, prior operational experience as a center.

SAs that have been following one of these approaches, but have no written policy in place, must formalize that policy and ensure that all new centers entering the Program are aware of the policy. SAs that wish to change their existing written policy must do so in writing and must make new centers entering the Program aware of the date for implementing the changed policy.

Regulations and guidance (preamble, pp. 53529-53530; regulatory language: §§ 226.6(m)(3)(iv) [p. 53542] and 226.15(m) [p. 53544]).

The interim rule clarifies that guidance issued by FNS is binding, and must be implemented by SAs and sponsors. Several commenters disagreed, apparently because they were unaware that the Administrative Procedures Act recognizes Federal agencies' authority to issue interpretive guidance on implementation of regulations.

Sponsor disbursement of food service payments (preamble, p. 53530; regulatory language: § 226.18(b)(7) [p. 53546]):

The interim rule clarifies that sponsors are not permitted to deduct money from providers' food service reimbursements, unless they have purchased food for the provider and have the provider's written consent to deduct payments for food. Based on public comment, the interim rule also underscores the fact that this language in no way limits a sponsor's ability to deny payment of invalid claims submitted by providers. It must also be noted that this language does not limit a sponsor's ability to withhold provider reimbursement due to a State or Federal tax offset or as a result of a court-ordered garnishment of wages.

Part IV: Miscellaneous non-discretionary changes from earlier laws (preamble, pp. 53530-53533):

This is a miscellaneous group of statutorily-mandated provisions that are addressed in this interim rule.

Advances to institutions (preamble, pp. 53530-53531; regulatory language: § 226.10(a) [p. 53543]).

The interim rule includes the provision that SAs may choose to issue advances to institutions at their discretion. This implements section 17(f)(4) of the NSLA, as amended by section 708(f)(2) of Public Law 104-193, the Personal Responsibility and Work Opportunities Reconciliation Act (PRWORA). This non-discretionary provision was previously implemented in guidance issued on January 27, 1997.

Change to rounding of meal rates to centers (preamble, p. 53531; regulatory language: § 226.4(g)(2) [p. 53536]).

The interim rule incorporates the provision at section 11(a)(3)(B) of the NSLA, as amended by section 704(b)(1) of PRWORA, and at sections 17(c)(1), (c)(2), (c)(3) and 17(o)(3) of the NSLA, as amended by section 103(b) of Public Law 105-336, the William F. Goodling Child Nutrition Reauthorization Act of 1998. These non-discretionary provisions were previously implemented in guidance issued on January 27, 1997, and December 3, 1998.

Elimination of AFDC, replacement with references to TANF (preamble, p. 53531; regulatory language: §§ 226.2 [p. 53535] and 226.23 [p. 53547]).

This change incorporates into the CACFP regulations PRWORA's elimination of the Aid for Families with Dependent Children (AFDC) Program and its replacement of AFDC with the Temporary Assistance for Needy Families (TANF) Program.

SA Outreach requirements (preamble, pp. 53531-53532; regulatory language: § 226.6(a) [p. 53536] and 226.6(g) [p. 53541]).

The interim rule clarifies that, although section 708(a) of PRWORA eliminated some specific statutory requirements relating to SA outreach activities, the broader requirement for SAs to conduct outreach, especially in low-income and rural areas, still remains.

Prohibition on incentive bonuses for FDCH recruitment (preamble, p. 53532; regulatory language: § 226.15(g) [p. 53544]).

The interim rule incorporates the provision of section 17(a)(6)(D) of the NSLA, as amended by section 708(b) of PRWORA. This non-discretionary provision prohibits family day care home sponsoring organizations from basing payment to their employees

on the number of homes recruited by the employee. This provision was previously implemented in guidance issued on January 27, 1997.

Pre-approval visits to private (child care) institutions (preamble, pp. 53532-53533; regulatory language: § 226.6(b)(1), introductory paragraph) [p. 53536].

The interim rule implements section 17(d)(1)(B) of the NSLA, as amended by section 107(c) of Public Law 105-336, which requires SAs to visit new private child care institutions (including for-profit and non-profit institutions, but not including public institutions or any type of adult day care institution). This requirement was implemented in guidance issued on December 3, 1998, and July 14, 1999.

Provision of WIC information to child care facilities and independent centers (preamble, p. 53533; regulatory language: §§ 226.6(r) [p. 53542] and 226.15(n) [p. 53544]).

The interim rule implements section 17(s) of the NSLA, which requires SAs to make available information on the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) to all participating institutions (except independent outside-school-hours centers), and for institutions to ensure that participating households receive the information. The required information on the WIC Program was provided by FNS to SAs on April 14, 1999.

Audit funding reduction (preamble, p. 53533; regulatory language: § 226.4(h) [p. 53536]).

The interim rule implements section 17(i) of the NSLA, as amended by section 107(e) of Public Law 105-336. This change reduced State audit funds, from 2 percent of Program funds used by the State in the second preceding year, to 1.5 percent of such funds through FY 2004. This change was implemented in guidance issued on December 3, 1998. However, at the time this guidance was issued, we anticipated that the law's reduction of audit funds to 1 percent in FY 2005 through 2007, would not occur. Because it now appears that this funding reduction will occur, we have included regulatory language specifically referring to FY 2005 through 2007 audit funding levels in the regulatory language at § 226.4(h).

Elimination of fourth meal in centers (preamble, p. 53533; regulatory language: §§ 226.15(e)(5) [p. 53544], 226.17(b)(3) [p. 53546], and 226.19(b)(5) [p. 53546]).

Section 708(d) of PRWORA amended section 17(f)(2)(B) of the NSLA by eliminating centers' ability to claim reimbursement for four meals per child per day. The change was implemented in guidance issued on August 13, 1996.

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