



**United States  
Department of  
Agriculture**

Food and  
Nutrition  
Service

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**DATE:** August 27, 2009

**MEMO CODE:** SP 39-2009

**SUBJECT:** Additional Administrative Reviews and State Retention of Improperly-Paid Funds in SY 2009-10

**TO:** Regional Directors  
Special Nutrition Programs  
All Regions

State Directors  
Child Nutrition Programs  
All States

The 2007 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 (AARs) 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 AAR requirement.

This memorandum provides intermediate guidance to SAs on these two provisions, which were designed to reduce administrative and payment error among participating institutions. This guidance is intended to provide direction to SAs for the 2009-2010 school year and supersedes our July 7, 2008 (SP 28-2008) and Question # 15 of the October 9, 2008 (SP 01-2009) memorandum. Please pay particular attention to changes made to the policy regarding SA retention of improperly paid funds to School Food Authorities (SFAs).

## **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 2009-10, 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.** 7 CFR 245.11 (i) requires annual collection and aggregation of verification data; this verification data (collected on the FNS 742) 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 those noted above must be reported to the FNS Regional Office (RO).

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. *1% Percent of SFAs:* 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. *3% 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 2008.

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 AAR results in significant findings, the SA must conduct a follow-up review to confirm that required corrective actions have been taken. Note: CREs and follow-ups as part of the regular CRE process do not count towards the statutory requirement for the number of AARs that must be conducted.

## Reporting Requirements

State agencies must notify their FNS RO of the anticipated schedule of CRE reviews, along with the required notification under 7 CFR 210.18(d)(1) and (2). SAs must maintain records related to these additional administrative reviews, and they are strongly encouraged to ensure these records maintain consistency 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

After the experience of the first year of implementation of the provision authorizing SAs to retain a portion of improperly paid funds, FNS now has a better understanding of the legislation and of the obstacles SAs may face. Consequently, for SY 2009-2010, FNS is amending the guidelines specifically pertaining to the time period used to determine the amount of funds SAs can *retain*.

As specified in the legislation, SAs are able to retain up to 25% of funds recovered during a very prescribed time period resulting from the CRE or AAR process. The following discussion pertains **ONLY** to an SA's *retention* (i.e., up to 25%) of improperly paid funds and does not in any way impact an SA's *collection* of improperly paid funds; when overpayments are discovered during an initial or follow-up CRE or additional administrative review, SAs must *collect* the full value of any overpayment to the SFA.

The retention of funds is limited to the following specified time periods, which vary depending on the type of review conducted; i.e., whether the review is the initial or follow-up review.

- **For the initial AAR or initial CRE**, the SA may retain up to 25% of the overpayment for the portion of the claim which begins at the start date of the error and ends at the earlier of the date of corrective action *or* 60 operating days; i.e., the maximum period for determining the amount the SA may retain is 60 operating days beginning the date the erroneous claim was made.

- **For any follow-up AAR or any follow-up CRE,** the SA may retain up to 25% of the overpayment for the portion of the claim which begins at the start date of the error and ends at the earlier of the date of corrective action *or* 90 operating days; i.e., the maximum period for determining the amount the SA may retain is 90 operating days beginning the date the erroneous claim was made.

It is important to recognize that these time periods pertain **ONLY** to an SA's *retention* of improperly paid funds and do not in any way impact an SA's *collection* of improperly paid funds.

Pursuant to the changes noted above, SAs may retain up to 25% of recovered funds to use in carrying out integrity initiatives. 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 their RO 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 RO approval for the plan.

Recovered funds not kept by the SA for use in program integrity initiatives (75% or more of the total) shall be returned to FNS.

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 offered a streamlined process for ART grant funding specifically for this purpose in FY 2009 and plans to do so again in FY 2010.

State agencies with questions regarding this guidance should contact their ROs.

**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 fiscal year in which the funds were recovered.

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);
- Amount of funds retained in the prior fiscal year;
- A general discussion of how recovered funds will be used to improve program integrity within the SA, including 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.

The plan must be submitted to FNS ROs by October 1<sup>st</sup> of each year.