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7 CFR Ch. II (1–1–03 Edition)

State agency collection procedures for unearned payments shall include:

(1) Written demand to the institution for the return of improper payments; (2) if, after 30 calendar days, the institution fails to remit full payment or agree to a satisfactory repayment schedule, a second written demand for the return of improper payments sent by certified mail return receipt requested; and (3) if, after 60 calendar days, the institution fails to remit full payment or agree to a satisfactory repayment schedule, the State agency shall refer the claim against the institution to appropriate State or Federal authorities for pursuit of legal remedies.

(b) In the event that the State agency finds that an institution which prepares its own meals is failing to meet the meal requirements of § 226.20, the State agency need not disallow payment or collect an overpayment arising out of such failure if the institution takes such other action as, in the opinion of the State agency, will have a corrective effect. However, the State agency shall not disregard any overpayments or waive collection action arising from the findings of Federal audits.

(c) If FNS does not concur with the State agency's action in paying an institution or in failing to collect an overpayment, FNS shall notify the State agency of its intention to assert a claim against the State agency. In all such cases, the State agency shall have full opportunity to submit evidence concerning the action taken. The State agency shall be liable to FNS for failure to collect an overpayment, unless FNS determines that the State agency has conformed with this part in issuing the payment and has exerted reasonable efforts to recover the improper payment.

[47 FR 36527, Aug. 20, 1982; 47 FR 46072, Oct. 15, 1982, as amended at 50 FR 8580, Mar. 4, 1985; 53 FR 52590, Dec. 28, 1988; 62 FR 903, Jan. 7, 1997; 64 FR 72260, Dec. 27, 1999; 67 FR 43490, June 27, 2002]

Subpart E—Operational Provisions

§ 226.15 Institution provisions.

(a) *Tax exempt status.* Except for proprietary title XIX and title XX centers,

and sponsoring organizations of such centers, institutions must be public, or have tax exempt status under the Internal Revenue Code of 1986.

(b) *New applications and renewals.* Each institution must submit to the State agency with its application all information required for its approval as set forth in §§ 226.6(b) and 226.6(f). Such information must demonstrate that the institution has the administrative and financial capability to operate the Program in accordance with this part and with the performance standards set forth at § 226.6 (b)(18). The State agency must deny the application of any institution that does not demonstrate in its application that it is administratively and financially capable of operating the Program in accordance with this part, and may approve only those applicant institutions that meet the performance standards. No institution may submit an application if the institution or any of its principals is on the National disqualified list, and no sponsoring organization may submit an application on behalf of a facility if the facility or any of its principals is on the National disqualified list. At a minimum, such information must include:

(1) Except for proprietary title XIX and title XX centers and sponsoring organizations or proprietary title XIX and title XX centers, evidence of non-profit status, in accordance with § 226.15(a).

(2) An application for participation, or application renewal materials, accompanied by all necessary supporting documentation;

(3) An administrative budget;

(4) If an independent child care center or independent outside-school-hours care center, documentation that it meets the licensing/approval requirements of § 226.6(d)(1); or, if an independent adult day care center, the licensing/approval requirements of § 226.19a(b)(3).

(5) A nondiscrimination and free and reduced-price policy statement, and information regarding a public release, in accordance with § 226.23;

(6) For each proprietary title XX child care center, documentation that it provides nonresidential day care

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services for which it receives compensation under title XX of the Social Security Act, and certification that not less than 25 percent of the enrolled children, or 25 percent of the licensed capacity, whichever is less, during the most recent calendar month were title XX beneficiaries. For each proprietary title XIX or title XX adult day care center, documentation that it provides nonresidential day care services for which it receives compensation under title XIX or title XX of the Social Security Act, and certification that not less than 25 percent of the adult participants enrolled during the most recent calendar month were title XIX or title XX beneficiaries. Sponsoring organizations shall provide documentation and certification for each proprietary title XIX or title XX center under its jurisdiction;

(7) A list of the publicly funded programs in which the institution and its principals have participated in the past seven years and a certification that, during the preceding seven years, neither the institution nor any of its principals has been declared ineligible to participate in any publicly funded program by reason of violating that program's requirements. Instead of such a certification, the institution may submit documentation that the institution or the principal previously declared ineligible was later reinstated in, or determined eligible for, the program, including the payment of any debts owed;

(8) A statement certifying that neither the institution nor any of its principals has been convicted of any activity that occurred during the past seven years and that indicated a lack of business integrity. A lack of business integrity includes fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice, or any other activity indicating a lack of business integrity as defined by the State agency; and

(9) A statement certifying that all information on the application is true and correct, along with the name, mailing address, and date of birth of

the institution's executive director and chairman of the board of directors.

(c) *Responsibility.* Each institution shall accept final administrative and financial responsibility for Program operations. No institution may contract out for management of the Program.

(d) *Staffing.* Each institution shall provide adequate supervisory and operational personnel for management and monitoring of the Program.

(e) *Recordkeeping.* Each institution shall establish procedures to collect and maintain all program records required under this part, as well as any records required by the State agency. Failure to maintain such records shall be grounds for the denial of reimbursement for meals served during the period covered by the records in question and for the denial of reimbursement for costs associated with such records. At a minimum, the following records shall be collected and maintained:

(1) Copies of all applications and supporting documents submitted to the State agency;

(2) Documentation of the enrollment of each participant at child care centers, adult day care centers and outside-school-hours care centers including information used to determine eligibility for free or reduced price meals in accordance with § 226.23(e)(1).

(3) Documentation of: The enrollment of each child at day care homes; information used to determine the eligibility of enrolled providers' children for free or reduced price meals; information used to classify day care homes as tier I day care homes, including official source documentation obtained from school officials when the classification is based on elementary school data; and information used to determine the eligibility of enrolled children in tier II day care homes that have been identified as eligible for free or reduced price meals in accordance with § 226.23(e)(1).

(4) Daily records indicating the number of participants in attendance and the number of meals, by type (breakfast, lunch, supper, and supplements), served to participants.

(5) For child care centers and outside-school-hours care centers claiming reimbursement for two meals and two

supplements or three meals and one supplement per child per day, either:

(i) Documentation of total time-in-attendance for each child at the center for each day for which the fourth meal service was claimed, including a time-in/time-out form which records time-in-attendance for each child at the center; or, at the discretion of the State agency,

(ii) Documentation which demonstrates that at least eight hours elapse between the end of the first meal service and the beginning of the fourth meal service on any day in which reimbursement is claimed for a fourth meal; service.

(6) Except at day care homes, daily records indicating the number of meals, by type, served to adults performing labor necessary to the food service;

(7) Copies of invoices, receipts, or other records required by the State agency financial management instruction to document:

(i) Administrative costs claimed by the institution;

(ii) Operating costs claimed by the institution except sponsoring organizations of day care homes; and

(iii) Income to the Program.

(8) Copies of all claims for reimbursement submitted to the State agency;

(9) Receipts for all Program payments received from the State agency;

(10) If applicable, information concerning the dates and amounts of disbursement to each child care facility or adult day care facility under its auspices;

(11) Copies of menus, and any other food service records required by the State agency;

(12) If applicable, information concerning the location and dates of each child care or adult day care facility review, any problems noted, and the corrective action prescribed and effected;

(13) Information on training session date(s) and location(s), as well as topics presented and names of participants; and

(14) Documentation of nonprofit food service to ensure that all Program reimbursement funds are used: (i) Solely for the conduct of the food service operation; or (ii) to improve such food

service operations, principally for the benefit of the enrolled participants.

(f) *Day care home classifications.* Each sponsoring organization of day care homes shall determine which of the day care homes under its sponsorship are eligible as tier I day care homes. A sponsoring organization may use current school or census data provided by the State agency or free and reduced price applications collected from day care home providers in making a determination for each day care home. When using elementary school or census data for making tier I day care home determinations, a sponsoring organization shall first consult school data, except in cases in which busing or other bases of attendance, such as magnet or charter schools, result in school data not being representative of an attendance area's household income levels. In these cases, census data should generally be consulted instead of school data. A sponsoring organization may also use census data if, after reasonable efforts are made, as defined by the State agency, the sponsoring organization is unable to obtain local elementary school attendance area information. A sponsoring organization may also consult census data after having consulted school data which fails to support a tier I day care home determination for rural areas with geographically large elementary school attendance areas, for other areas in which an elementary school's free and reduced price enrollment is above 40 percent, or in other cases with State agency approval. However, if a sponsoring organization believes that a segment of an otherwise eligible elementary school attendance area is above the criteria for free or reduced price meals, then the sponsoring organization shall consult census data to determine whether the homes in that area qualify as tier I day care homes based on census data. If census data does not support a tier I classification, then the sponsoring organization shall reclassify homes in segments of such areas as tier II day care homes unless the individual providers can document tier I eligibility on the basis of their household income. When making tier I day care home determinations based on school data, a sponsoring organization

shall use attendance area information that it has obtained, or verified with appropriate school officials to be current, within the last school year. Determinations of a day care home's eligibility as a tier I day care home shall be valid for one year if based on a provider's household income, three years if based on school data, or until more current data are available if based on census data. However, a sponsoring organization, State agency, or FNS may change the determination if information becomes available indicating that a home is no longer in a qualified area. The State agency shall not routinely require annual redeterminations of the tiering status of tier I day care homes based on updated elementary school data.

(g) *Claims submission.* Each institution shall submit claims for reimbursement to the State agency in accordance with § 226.10.

(h) *Program agreement.* Each institution shall enter into a Program agreement with the State agency in accordance with § 226.6(f)(1).

(i) *Commodities.* Each institution receiving commodities shall ensure proper commodity utilization.

(j) *Special Milk Program.* No institution may participate in both the Child and Adult Care Food Program and the Special Milk Program at the same time.

(k) *Elderly feeding programs.* Institutions which are school food authorities (as defined in part 210 of this chapter) may use facilities, equipment and personnel supported by funds provided under this part to support a nonprofit nutrition program for the elderly, including a program funded under the Older Americans Act of 1965 (42 U.S.C. 3001 *et seq.*).

[47 FR 36527, Aug. 20, 1982, as amended at 48 FR 21530, May 13, 1983; 50 FR 8580, Mar. 4, 1985; 52 FR 15298, Apr. 28, 1987; 52 FR 36907, Oct. 2, 1987; 53 FR 52590, Dec. 28, 1988; 54 FR 26724, June 26, 1989; Amdt. 22, 55 FR 1378, Jan. 14, 1990; 56 FR 58174, Nov. 16, 1991; 61 FR 25554, May 22, 1996; 62 FR 903, Jan. 7, 1997; 62 FR 23619, May 1, 1997; 63 FR 9105, Feb. 24, 1998; 64 FR 72260, Dec. 27, 1999; 67 FR 43490, June 27, 2002]

§ 226.16 Sponsoring organization provisions.

(a) Each sponsoring organization shall comply with all provisions of § 226.15.

(b) A sponsoring organization is prohibited from submitting an application on behalf of a facility if either the facility or any of its principals is on the National disqualified list. Each sponsoring organization shall submit to the State agency all information required for its approval and the approval of all child care and adult day care facilities under its jurisdiction, including:

(1) A sponsoring organization management plan and administrative budget, in accordance with § 226.6(f)(2), which includes information sufficient to document the sponsoring organization's compliance with the performance standards set forth at § 226.6(b)(18). As part of its management plan, a sponsoring organization of day care homes must document that, to perform monitoring, it will employ the equivalent of one full-time staff person for each 50 to 150 day care homes it sponsors. As part of its monitoring plan, a sponsoring organization of centers must document that, to perform monitoring, it will employ the equivalent of one full-time staff person for each 25 to 150 centers it sponsors. It is the State agency's responsibility to determine the appropriate level of staffing for monitoring for each sponsoring organization, consistent with the specified ranges and the factors established by the State agency in accordance with § 226.6(f)(2). The monitoring staff equivalent may include the employee's time spent on scheduling, travel time, review time, follow-up activity, and report writing. Sponsoring organizations that are participating in the Program on July 29, 2002 must submit a management plan or plan amendment that meets the monitoring staffing requirement no later than July 29, 2003. For sponsoring organizations of centers, the portion of the administrative costs to be charged to the Program as shown on the administrative budget and the actual administrative costs charged to the Program may not exceed 15 percent of the meal reimbursements estimated or actually earned during the budget year, unless the State agency grants a