

December 3, 2018

Andrea Farmer
Chief, Community Meals Branch
Policy and Program Development Division
USDA Food and Nutrition Services
3101 Park Center Drive
Alexandria, VA 22302

Dear Ms. Farmer:

Thank you for this opportunity to comment on the proposed rule, Increasing Flexibility for Verification of For-Profit Center Eligibility in the Child and Adult Care Food Program, 83 Fed. Reg. 50038 (October 4, 2018).

The Food Research and Action Center is a research, policy, public education, and advocacy center working for more effective public and private policies to eradicate domestic hunger and improve the nutrition and health of low-income individuals and families. We appreciate the United States Department of Agriculture's (USDA) effort to implement the Paperwork Reduction Work Group verification and payment recommendations through this rule. We believe substantial improvements will be needed before the rule can effectively reach the intended paperwork reduction goals and the estimated deregulatory impact. Our comments address USDA's request for feedback and provide the following recommendations for strengthening the proposed rule:

- I. Establishing Annual Eligibility Determinations for For-Profit Centers Serving High Numbers of Low-Income Children:
 - A. Expand the proposed new annual eligibility for for-profit centers by allowing for-profit centers serving 40 percent or more low-income children to qualify for annual eligibility and dropping the proposed 50 percent requirement.
 - B. Allow for-profit centers qualifying for annual eligibility to claim for reimbursement without additional monthly eligibility determinations or reporting requirements.
- II. Program Payments: Assignment of Reimbursement Rates for Centers:
 - A. Allow all centers the option to use an annual blended rate.

- B. Allow all centers the option of amending the annual blended rate more frequently than annually.
- C. Provide State agencies clear guidance on the implementation of annual blended rates and adjustments: emphasize the importance of practical and reasonable review policies and prohibit punitive policies which automatically generate increased scrutiny on centers making adjustments.
- D. Require State agencies calculate payments to sponsors based on each center's blended-rate instead of paying based on the average of the blended-rates of all centers under the sponsoring organization.
- E. Provide State agencies with the best practices (specifications and contracts), technical assistance, resources, and leverage to procure the necessary programming and MIS system enhancements to implement the new rule.

III. State Agency Responsibilities: Annual Verification of For-profit Centers Eligibility:

- A. Clarify the proposed State agency responsibilities (7 CFR 226.6) to prevent misinterpretations and ensure the final rule does not generate significant new annual paperwork, documentation or auditing requirements for State agencies, sponsors or centers.

I. Establishing Annual Eligibility Determinations for For-Profit Centers Serving High Numbers of Low-Income Children:

- A. Recommendation: Expand the proposed new annual eligibility for for-profit centers by allowing for-profit centers serving 40 percent or more low-income children to qualify for annual eligibility and dropping the proposed 50 percent requirement.**

Under the proposed rule only for-profit centers with 50 percent or more low-income children would be eligible for annual eligibility. We recommend allowing for-profit centers serving 40 percent or more low-income children to qualify for annual eligibility. The 40 percent standard is consistent with the parameters of USDA's deregulatory action based on the following rationale:

- The 40 percent standard is consistent with USDA's intention to establish annual eligibility for for-profit centers serving a high number of low-income children.

- The 40 percent standard benchmark is similar to the 40 percent standard USDA uses to qualify schools serving a high proportion of needy students for severe need school breakfast reimbursements.
- Centers meeting the 40 percent level are very unlikely to drop down over 15 percent to below the 25 percent minimum needed for for-profit eligibility: USDA's and other data demonstrate that the percentage of low-income children served by centers is relatively stable varying within a predictably small margin well within 15 percent.

In addition, eliminating the proposed 50 percent requirement, substituting a 40 percent standard instead, will increase the impact of the rule by extending annual eligibility to more for-profit centers. The rule's projection that "about 80 percent" of for-profit institutions "would meet the 50 percent standard" is a significant over-estimate for many states. For this reason, meeting the rule's regulatory impact estimates, cost savings and the reduction in the number of hours spent on paperwork, would be better met by a 40 percent standard.

B. Recommendation: Allow for-profit centers qualifying for annual eligibility to claim for reimbursement without additional monthly eligibility determinations or reporting requirements.

In the preamble, USDA states that "*Through this deregulatory action, USDA proposes to address the verification issue in the [paperwork] report*". Under the proposed exemption, "*the number of times eligibility must be verified would be reduced from monthly to annually. This rule would exempt for-profit child or adult care centers from re-verifying their eligibility to submit claims each month...*" This is an important goal. However, to reach this goal the final rule will need to focus on clearly eliminating the requirement to verify/determine eligibility monthly, rather than only eliminating the requirement to report eligibility on monthly claims forms.

USDA's proposed regulatory language offers an exemption from the requirement to report eligibility on monthly claims for reimbursement, but it does not clearly eliminate the need to verify/determine eligibility monthly. Aspects of the proposed rule appear to create an expectation that centers with the exemption will still need to verify/determine eligibility to claim on a monthly basis and be prepared to notify the State agency if the percentage drops below 25 percent. This is unnecessary given that USDA's analysis and other data demonstrate that the percentage of low-income children served by centers is relatively stable varying within a predictably small margin. In addition, the implied

requirement to determine eligibility to claim monthly is inconsistent with “establishing annual eligibility determinations for for-profit centers.” The intent of the paperwork reduction group’s recommendation was to establish annual institutional eligibility for for-profit centers which would, as with all other Child Nutrition Programs including CACFP, confer annual eligibility to claim. Perhaps unintentionally, this rule appears open to interpretations that would offer only a limited exemption, falling short of a robust deregulatory action. Hopefully, USDA’s request for feedback and recommendations will provide the information and leverage needed to strengthen this aspect of the final rule.

II. Program Payments: Assignment of Reimbursement Rates for Centers:

In this section, we address the specific payment related proposal in the rule and offer additional recommendations based on the USDA’s request: *“USDA is actively looking for more information, particularly regarding the Paperwork Reduction Work Group’s recommendations for assigning reimbursement rates.”* The following recommendations will strengthen the deregulatory power of the proposed rule:

- Allow all centers the option to use an annual blended rate.
- Allow all centers the option of amending the annual blended rate more frequently than annually.
- Provide State agencies clear guidance on the implementation of annual blended rates and adjustments: emphasize the importance of practical and reasonable review policies and prohibit punitive policies which automatically generate increased scrutiny of centers making adjustments.
- Require State agencies calculate payments to sponsors based on each center’s blended-rate instead of paying based on the average of all the blended-rates of all centers under the sponsoring organization.
- Provide State agencies with the best practices (specifications and contracts), technical assistance, resources, and leverage to procure the necessary programming and MIS system enhancements to implement the new rule.

A. Recommendation: Allow all centers the option to use an annual blended rate.

We recommend that in the final rule, all centers have the option to choose a blended rate/claiming percentage. Consistent with the paperwork reduction work group recommendations, this would require all states to offer centers the option to choose a

blended rate/claiming percentage. The final rule will need language modifying the current 7CFR 226.9 to guarantee all centers access to a blended rate/claiming percentage. This will better support the proposed use of the blended rates/claiming percentage data to streamline qualifying for the exemption. This change is consistent with the deregulatory action.

B. Recommendation: Allow all centers the option of amending the annual blended rate more frequently than annually.

Sponsors and centers already have this option in some states. This type of flexibility has worked effectively for sponsors and centers.

C. Recommendation: Provide State agencies clear guidance on the implementation of annual blended rates and adjustments: emphasize the importance of practical and reasonable review policies and prohibit punitive policies which automatically generate increased scrutiny of centers making adjustments.

Clear guidance will be fundamental to the successful implementation of new payment procedures including the annual blended rates. Currently, there are widely varying and sometimes conflicting interpretations regarding the interface between blended rates/claiming percentage adjustments, reviews, findings and back claim periods. For example, under the current regulations, some state agencies have expressed concern that if a sponsor chooses to re-lock claiming percentages each month, it warrants conducting a more thorough program review. Conversely, other states have expressed concern when locked numbers are used, expressing that findings from a state program review would need to be investigated back to the date the claim numbers were locked and payback would be calculated for the full amount of time instead of just the sample month. Without clear guidance from USDA to state agencies on how to 'handle' findings with locked numbers, this could introduce significant complexity and lack of consistency across state agencies.

D. Recommendation: Require State agencies calculate payments to sponsors based on each center's blended-rate instead of paying based on the average of the blended-rates of all centers under the sponsoring organization.

The Paperwork Reduction Work Group recommended that USDA require State agencies to base payment to sponsored centers on each center's blended rate rather than paying based on the average of the blended rates of all the centers under the sponsorship.

Creating an average of the payment rates for all the centers under a sponsorship does not accurately reflect the real payment owed to each center. USDA has already taken steps to reduce the use of this method.

- E. Recommendation: Provide State agencies with the best practices (specifications and contracts), technical assistance, resources, and leverage to procure the necessary programming and MIS system enhancements to implement the new rule.**

State CACFP agencies, often struggling with legacy IT systems and software designed primarily for schools, can be challenged to find ways to make needed improvements. Many State agencies will need best practices (specifications and contracts), technical assistance, resources, and leverage to procure the programming changes and MIS system enhancements necessary to accommodate the new rule. USDA could facilitate State agency access to audit funds to help pay for MIS systems improvements and programming. To the extent that special funds are available, USDA could provide grants to support State agency MIS improvements. In addition, USDA could issue letters for State CACFP agency staff to use to convince State governments to give CACFP priority with in-house IT staff or to hire outside consultants. The Paperwork Reduction Work Group recommended this type of additional support for State agencies. USDA has been working on increased support for States including integrating CACFP as part of the USDA Child Nutrition Programs technology conference.

III. State Agency Responsibilities: Annual Verification of For-profit Centers Eligibility:

- A. Recommendation: Clarify the proposed State agency responsibilities (7 CFR 226.6) to prevent misinterpretations and ensure the final rule does not generate significant new annual paperwork, documentation or auditing requirements for State agencies, sponsors or centers.**

In the rule, the State agency administrative responsibilities section (7 CFR 226.6) is described as a corresponding change to facilitate the new annual eligibility determination. There are concerns that this aspect of the rule could potentially produce unintended negative consequences. For this reason, we recommend USDA modify the proposed new State agency administrative responsibilities section to clarify that implementation is not expected to generate significant new annual paperwork, documentation or auditing requirements related to annual eligibility. Stakeholder comments can inform needed modifications and clarifications.

Conclusion

In summary, the Food Research and Action Center strongly endorses the need for a final rule maximizing the power of this deregulatory action by fully implementing the Paperwork Reduction Work Group’s recommendations for streamlining payment requirements for all centers and establishing annual eligibility for for-profit centers. We appreciate USDA’s commitment to streamlining CACFP program operations and access while maintaining the program’s high level of integrity.

Sincerely,

Geraldine Henchy
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Food Research and Action Center