



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY  
12234

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Office for Prekindergarten through Grade 12 Education  
School Operations and Management  
Child Nutrition Program Administration  
99 Washington Avenue, Room 1623 OCP, Albany, NY 12234  
(518) 473-8781 Fax (518) 473-0018  
[www.nysed.gov/cn/cnms.htm](http://www.nysed.gov/cn/cnms.htm)

November 13, 2012

Julie Brewer, Chief  
Policy and Program Development Branch  
Child Nutrition Division, Food and Nutrition Service  
United States Department of Agriculture  
3101 Park Center Drive, Room 640  
Alexandria, VA 22302-1594

Dear Ms. Brewer:

The New York State Education Department (SED) is pleased to submit the following comments in response to the September 13, 2012 publication in the Federal Register of the proposed rule amending the National School Lunch Meal Pattern regulations Part 210.15 and 210.20 and Part 245 Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools. The proposed rule describes the process/procedures local education agencies (LEAs) must follow to conform to requirements contained in Section 304 of the Healthy Hunger-Free Kids Act of 2010 (HHFKA).

We support USDA's efforts to improve the integrity of the data used by LEAs to claim reimbursement by improving the quality and accuracy of the information used to determine eligibility for free and reduced priced meals. The rule is very prescriptive and complex as USDA must assure Congress and the public that the fiscal integrity of the Child Nutrition Programs has improved sufficiently to continue to warrant the allocation of federal funds. It is not sound practice to ignore the long-term fiscal costs resulting from administrative errors in the application approval processes.

The proposed rule identifies the processes and procedures that must be followed by LEAs that have demonstrated that they have misclassified students eligible for free or reduced price meals due to administrative errors. Since misclassifications often result in overpayments, the rule establishes a second review to ensure that the designations for free or reduced meals are correct, before families are notified. The process must be completed within 10 operating days of the receipt of the income application.

Subsequently the LEA must submit a report of their actions including: the number of applications subject to a second review, the number and percentage of reviewed applications for which the eligibility was changed and a summary of the type of changes that were made. By

February 1 of each year, the State Agency must submit a report to USDA which compiles the required data collected from all its LEAs required to conduct second reviews.

Before the end of the school year, the state agency must identify the LEAs required to conduct the second review. The proposed rule establishes four criteria that must be used by state agencies to determine which LEAs are required to conduct a second review of applications.

We concur that any new requirement should be a deterrent to the improper processing of eligibility determinations. Those LEAs that process eligibility determinations carefully and thoroughly will not be required to incur these additional processes/procedures.

Concerns:

- Is there a real need for such a prescriptive rule? The proposed regulation is based on a SY 2005-06 study that found 4.2 percent of the administratively-approved applications were misclassified, resulting in a \$129 million net loss. A more recent report based on SY 2009-10 found that eligibility determinations were incorrect for 2.3 percent of students; about two-thirds (63 percent) of the incorrect determinations were over-certified, while approximately one-third (37 percent) were certified for lesser benefits than was justified.

Currently, the Office of Inspector General is beginning an audit in four states, California, Texas, Florida and New York, to ascertain if adequate controls are in place to ensure children approved for free and reduced priced meals meet the eligibility requirements and if meal claims are supported and accurately reimbursed.

It is obvious that USDA is proposing regulations to address a problem that may already have been greatly reduced, as currently there are far fewer applications to be reviewed by administrators. Specifically:

1. All states are using data matching, resulting in confirmed eligibility of free meals and fewer applications to be processed.
  2. Currently, seven states, including New York, are approved for the Community Eligibility Option (CEO). The SFAs with the highest number of free eligibles, that had the potential for the highest error rate, can apply. In New York, all schools in Buffalo, Rochester and Syracuse, along with schools in 67 other local education agencies, no longer approve applications for free and reduced priced meals.
- All States can apply for CEO in 2014-15, further reducing the need for these regulations.
  - Provision 2 schools do not collect applications in non-base years.
  - Since reviews of the application process will not be conducted in 2012-2013 due to the elimination of year five of the Coordinated Review Effort (CRE) monitoring reviews,

criterion 1 and 2 data used would be based on the 2011-2012 year for the 2013-2014 school year. Different persons may now be responsible for the eligibility process.

- Some LEAs or schools previously participating in Provision 2 have switched to the Community Eligibility Option, which is not based on income applications.
- Completion of verification is directed to the income applications, which also results in changes in eligibility status of families who fail to submit the required documentation to support their application designation.
- State Agencies are already conducting Additional Error Rate (AER) Monitoring reviews which can address these same issues.
- The new three-year monitoring review cycle beginning in school year 2013-2014 will replace a five-year cycle. This means schools will be subject to a more frequent review of their application approval process and the requisite corrective action that follows.

#### Other Concerns:

- The ten day time frame for completing the first and second review of applications is unrealistic for large LEAs.
- A review of our 2010-2011 Performance Standard One violations indicated 3 LEAs out of 233 had eligibility issues. In 2011-2012, we had 6 out of 274. The proposed regulation would seem to address a very limited problem in New York.
- It is not a reasonable expectation for the State Agency to attest to the efficiency and accuracy of all computerized systems used by LEAs. These systems are continuously evolving and changing to incorporate the mandates of the HHFKA. These systems continue to be monitored during all reviews of Child Nutrition Programs, i.e. validation, AER, and in the future, administrative reviews.
- The LEAs with the high administration error rates should be required to verify a higher portion of their applications-maybe 10 percent rather than three percent. The State Agency could then follow up to ensure the results of the verification efforts. This could be piloted to evaluate results before major complicated changes occur that may not be necessary to address a situation that is already diminished/reduced.

Another option is to have reviewing officials who have been determined to have high error rates complete an on-line training on correctly approving applications as part of their corrective action. Increased processes and procedures should be necessary, reasonably simple to implement and address the issues.

We are committed to ensuring the fiscal and nutritional integrity of the child nutrition programs. While the goal of these regulations is commendable, the need for this extensive procedure has greatly diminished over time.

Again, we appreciate the opportunity to submit these comments for your review.

Sincerely,

A handwritten signature in cursive script that reads "Frances N. O'Donnell".

Frances N. O'Donnell  
Coordinator

c: John Delaney