



**United States  
Department of  
Agriculture**

Food and  
Nutrition  
Service

3101 Park  
Center Drive  
Alexandria, VA  
22302-1500

MEMO CODE: SP 41-2008

DATE: September 30, 2008

SUBJECT: Questions Relevant to Additional Administrative Reviews and  
State Retention of Improperly-Paid Funds

TO: Regional Directors  
Special Nutrition Programs  
All Regions

State Directors  
Special Nutrition Programs  
All States

Recently, we have received a number of questions regarding the guidance provided to Regional and State Directors on July 7, 2008 in SP 28-2008. This guidance addressed amendments created by Section 126 of the Child Nutrition and WIC Reauthorization Act of 2004 (Pub. L. 108-265). The amendments to Section 22 of the Richard B. Russell National School Lunch Act and Section 7 of the Child Nutrition Act of 1966 were designed to reduce administrative error and erroneous payments among participating institutions. Attached are the most recently received questions and answers. As in the past, please share these questions and answers with your State agencies and request that they provide this information to their school food authorities. If you have any questions, please contact your regional office.

A handwritten signature in blue ink that reads "Cynthia Long".

CYNTHIA LONG  
Director  
Child Nutrition Division

Attachment

## Q & As for SP 28-2008

1. Question: What does an additional administrative review mean in the National School Lunch Program (NSLP)?

Answer: As defined by the statute, an additional administrative review in the NSLP includes a review of applications, certification, verification, meal counting and meal claiming procedures. These areas are those covered by CRE Performance Standard 1 (PS1) 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 additional administrative review results in significant findings, the SA must conduct a follow-up review to confirm that required corrective actions have been taken.

Note: Follow-up as part of the regular CRE process does not fulfill the expanded statutory requirements establishing the additional administrative review.

2. Question: One of the suggested criteria for determining “high risk” in the selection of SFAs for additional administrative reviews is those SFAs with verification data that indicate a high level of non-response or response-based terminations. In small districts, one non-response can cause the SFA to have a very high non-response rate. Should these small SFAs always be selected?

Answer: No, not necessarily. For example, if the SA uses verification errors to select their SFAs for additional administrative reviews, it does not have to choose all SFAs in the top 25%.

Flexibility for SA discretion was purposely built into the risk criteria selection procedures. A State does not have to use any one particular risk criterion to select the additional SFAs to be reviewed, but may pick and choose among the recommended criteria or use their own.

3. Question: Another suggested criterion for determining “high risk” in the selection of SFAs for additional administrative reviews is those SFAs consistently claiming over 90% free eligibles or 80% reduced price eligibles. Does this apply to the entire SFA or to sites within the SFA?

Answer: This suggested criterion refers to the SFA as a whole.

4. Question: What are examples of alternate risk-based criteria that must be reported to FNS?

Answer: SP 28-2008 provides three suggestions of criteria SAs may use for selecting an SFA to review. If an SA chooses to use any other criteria, then the SA must report it to FNS.

5. Question: Does the SA report the alternate criteria to the Regional Office or Headquarters?

Answer: The SA should report the alternate criteria to the Regional Office. However, Headquarters may collect information from the Regional Offices to examine national trends in alternate criteria.

6. Question: How does an SA select the number of SFAs for additional review?

Answer: There are two requirements for selecting the number of SFAs to be reviewed. First, SAs must conduct additional administrative reviews on no less than 1% of the SFAs in the state. Although SP 28-2008 states the minimum is determined by the “percent of SFAs undergoing CRE Reviews,” the intention is that 1% of all of the SFAs in the State will be subject to these additional administrative reviews annually. If the calculation does not yield a whole number, the SA should round up to the next highest whole number to determine the minimum number of required additional administrative reviews.

Second, SAs must select enough SFAs for additional administrative reviews to ensure that the reviews cover at least 3% of the statewide reimbursement. SAs do not have to choose their largest school districts; rather, they must select the SFAs such that their combined reimbursements comprise at least 3% of the State total.

These requirements provide the minimum number of additional required reviews; States may choose to conduct more reviews.

The following example demonstrates how to determine the minimum number of additional administrative reviews that must be conducted.

By the first requirement, the minimum number of additional reviews is no less than 1% of all SFAs in the state.

|  |          |
|--|----------|
| Number of SFAs in State X during SY 2008-2009              | 200      |
| Minimum Percentage = 1%                                    | x1%      |
| <hr/>  |          |
| <b>Minimum Number of Additional Administrative Reviews</b> | <b>2</b> |

By the second requirement, the total reimbursements for the SFAs selected for additional administrative reviews must cover at least 3% of total statewide reimbursements.

- 1) Determine the minimum amount of reimbursements that must be covered by the SFAs.

|  |                 |
|--|-----------------|
| Total Statewide Reimbursements                     | \$1,000,000     |
| Minimum Percentage = 3%                            | x3%             |
| <hr/>  |                 |
| <b>Minimum Total Reimbursement Covered by SFAs</b> | <b>\$30,000</b> |

- 2) Determine if the total reimbursements of the SFAs chosen by the first requirement meet the minimum amount of total reimbursement specified by the second requirement.

*Scenario 1*

|                      |          |
|----------------------|----------|
| SFA #1 Reimbursement | \$25,000 |
|----------------------|----------|

|  |                 |
|--|-----------------|
| SFA #2 Reimbursement   | +\$20,000       |
| <hr/>  |                 |
| <b>Total Reimbursement Amount of Additional SFAs to Review</b> | <b>\$45,000</b> |

Since the sum of the reimbursements for SFA #1 and SFA #2 is *greater than* \$30,000, no additional SFAs need to be chosen for review.

*Scenario 2*

|  |                 |
|--|-----------------|
| SFA #1 Reimbursement   | \$10,000        |
| SFA #2 Reimbursement   | \$15,000        |
| <hr/>  |                 |
| <b>Total Reimbursement Amount of Additional SFAs to Review</b> | <b>\$25,000</b> |

Since the sum of the reimbursements for SFA #1 and SFA #2 is *less than* \$30,000, additional SFAs need to be chosen for review until the sum of their reimbursements is at least \$30,000.

7. Question: For calculation purposes, does “total reimbursement” include School Breakfast Program (SBP) and Fresh Fruit and Vegetable Program (FFVP) funds, or just NSLP funds?

Answer: For the purpose of this calculation, the total reimbursement to an SFA includes only the NSLP funding because NSLP is the primary focus of the CRE. Review of other programs, i.e. SBP, FFVP, etc., are optional during the initial CRE.

8. Question: Due to several States being comprised of many very small SFAs, can SAs be granted waivers/exceptions due to the “undue burden” of our minimum requirements on the number of additional administrative reviews that must be conducted?

Answer: States are expected to fulfill the requirements. With significant flexibility in selection criteria, SAs should be able to choose SFAs for additional reviews such that the reviews are manageable and meet the requirements. Moreover, the availability of ART grants and retained funds should facilitate this process. States with limited resources should contact their Regional Office; however, States in such a situation this year are encouraged to focus their efforts on their larger SFAs if these SFAs receive a large portion of the reimbursements.

9. Question: Can an SA count any technical review towards the minimum number of required additional administrative reviews? What are other examples of types of reviews that could count?

Answer: Additional CREs (those above and beyond the minimum cycle) and/or additional administrative reviews that cover all CRE components except Performance Standard 2 could be counted toward the minimum required additional administrative reviews, as long as the SFAs reviewed meet the criteria for being at high risk for error.

**10. Question:** Since the additional administrative reviews are separate from the CRE, is it necessary to conduct another School Meal Initiative (SMI) review in these schools/SFAs as part of the additional administrative reviews?

Answer: No, an additional SMI is not required.

**11. Question:** To limit burden on SAs, would they have the option to focus only on administrative issues where problems have been demonstrated in a particular SFA, or does each additional administrative review require them to look at all CRE aspects, with the exception of Performance Standard 2?

Answer: Yes, SAs do have flexibility to focus their additional administrative reviews on problem areas, especially when it promotes efficiency. Such alternate plans must be submitted to the Regional Office for approval by FNS.

**12. Question:** Are SAs able to do desk reviews in lieu of following the CRE Performance Standard 1 and the verification component of the general areas of the view?

Answer: Maybe. Desk reviews, like other alternate review procedures, need approval from FNS and should be submitted to the Regional Office for approval by FNS.

**13. Question:** When selecting schools to review within a selected SFA, is the State required to use the normal CRE selection procedures or can they target particular schools where problems have been demonstrated?

Answer: SAs are able to target particular schools and they do not need approval to do so.

**14. Question:** Are the additional administrative reviews reported on the FNS-640?

Answer: No, but SAs need to maintain the appropriate documentation showing they have met the requirements.

**15. Question:** Can you clarify the specified time period regarding how SAs establish an overclaim?

Answer: The intention of the statute is to specify a time period for limiting overclaims established during follow-up reviews. The reference to 60 and 90 days applies in the case of follow-up reviews; the overclaim established during an initial review is not limited to 60 or 90 days.

For example, an SA performs its normal CRE review in January 2009 and establishes an overclaim against a school district. Based on the SA's findings, the period of this overclaim is from September 2008 to January 2009. When the SA performs its first follow-up review in May 2009, it finds the overclaim was never corrected. The period of time associated with this overclaim is limited to 60 food service days after the erroneous claim was first established, which was January 2009. Therefore, the claim is limited to the 20 food service days in each of January, February, and March, for a total of 60 days. As this time period is limited to 60 days it will not include the subsequent food service days through May 2009, when the first follow-up review was conducted.

If the SA performs a subsequent follow-up review in November 2009 and finds the error still uncorrected, the claim then includes the 90 days after the previous time period ended.

Assuming there are no food service days during July and August, the 90 day time period would include the 20 food service days in each of April, May, June, and September, and 10 food service days in October, for a total of 90 days. Again this time period is limited to 90 days and does not persist through November, when the subsequent review was conducted.

**16. Question:** What percentage of what types of funds can be retained?

Answer: SAs may retain up to 25% of recovered funds, which includes funds retained both through the regular CRE process and through the additional administrative reviews. Fund retention is optional but encouraged.

**17. Question:** Can you clarify the process by which States retain funds?

Answer: States retaining recovered funds must use the funds only for the purposes specified in the statute, and in accordance with an approved plan. States must be able to identify the retained funds and track them separately; a possible method would involve using a new accounting code in the State system to track obligations made with retained funds. States cannot make new obligations against retained funds beyond the end of the federal fiscal year in which they are retained; any unobligated funds will be recovered as part of the close out process. Given the potential for a short time period between when SAs retain the funds and the end of the fiscal year, States are encouraged to submit their fund retention plans for pre-approval. Plans should be submitted to the Regional Offices, with final approval by Headquarters.

**18. Question:** If we are required to submit an annual fund retention plan what should it include?

Answer: The plan for SA retention of funds must include:

- The estimated amount of funds expected to be recovered, and the estimated amount to be retained by the SA, not to exceed 25% of the total recovered. In future years, States will also be required to specify the actual amount of funds retained in the prior year;
- A clear discussion of how the funds will be used to improve program integrity within the SA, including descriptions of specific activities and estimated timelines,
- An explanation of selection criteria to determine which SFAs will receive assistance,
- An estimate of how many SFAs will receive assistance from the retained funds in the current year. In future years you will also be required to specify the number of SFAs that actually received assistance with retained funds,
- Cost estimates for proposed activities; and
- A brief discussion on the potential sustainability of changes resulting from the financial investment.

**19.** Question: Collecting the full value of any overpayment to the SFA seems to conflict with the \$600 disregard allowed in CREs. Does the disregard that is used in CRE apply to these administrative reviews?

Answer: Yes, as with CRE, the same optional disregard still applies. However, the amount of any claims that are disregarded cannot be included when calculating the 25% limitation on the amount the State is able to retain.

**20.** Question: Can the retained funds be used for State staff vacancies or other program expenses?

Answer: The purpose of the retained funds is to improve the integrity of the program, specifically in schools identified as high-risk. The State plan will be evaluated against these criteria. Provided that the use of funds is consistent with the required plan, the funds may be used to cover the portion of staff salaries, benefits, and travel required to conduct additional reviews, technical assistance and trainings to identified schools.