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except with approval from the appropriate FNSRO, State agencies shall consider claims for reimbursement not payable when an institution fails to comply with the recordkeeping requirements that pertain to records directly supporting claims for reimbursement. Records that directly support claims for reimbursement include, but are not limited to, daily meal counts, menu records, and enrollment and attendance records, as required by § 226.15(e). State agencies shall assert overclaims against any sponsoring organization of day care homes which misclassifies a day care home as a tier I day care home unless the misclassification is determined to be inadvertent under guidance issued by FNS. However, the State agency shall notify the institution of the reasons for any disallowance or demand for repayment, and allow the institution full opportunity to submit evidence on appeal as provided for in § 226.6(k). Minimum 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 in-

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stitution 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; 69 FR 53544, Sept. 1, 2004]

Subpart E—Operational Provisions

§ 226.15 Institution provisions.

(a) *Tax exempt status.* Except for for-profit 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 a new institution has the administrative and financial capability to operate the Program in accordance with this part and with the performance standards set forth in § 226.6(b)(1)(xvii), and that a renewing institution has the administrative and financial capability to operate the Program in accordance with this part and with the performance standards set forth in § 226.6(b)(2)(vii).

(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

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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 (except for outside-school-hours care centers) and adult day care centers. All types of centers must maintain information used to determine eligibility for free or reduced-price meals in accordance with § 226.23(e)(1). For child care centers, such documentation of enrollment must be updated annually, signed by a parent or legal guardian, and include information on each child's normal days and hours of care and the meals normally received while in care.

(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). Such documentation of enrollment must be updated annually, signed by a parent or legal guardian, and include information on each child's normal days and hours of care and the meals normally received while in care.

(4) Daily records indicating the number of participants in attendance and the daily meal counts, by type (breakfast, lunch, supper, and snacks), served to family day care home participants, or the time of service meal counts, by type (breakfast, lunch, supper, and snacks), served to center participants.

State agencies may require family day care homes to record meal counts at the time of meal service only in day care homes providing care for more than 12 children in a single day, or in day care homes that have been found seriously deficient due to problems with their meal counts and claims.

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

(6) 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.

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

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

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

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

(11) 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;

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

(13) 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.

(14) For sponsoring organizations, records documenting the attendance at training of each staff member with monitoring responsibilities. Training must include instruction, appropriate to the level of staff experience and duties, on the Program's meal patterns, meal counts, claims submission and

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claim review procedures, recordkeeping requirements, and an explanation of the Program's reimbursement system.

(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, five 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) *Payment to employees.* No institution that is a sponsoring organization of family day care homes and that employs more than one person is permitted to base payment (including bonuses or gratuities) to its employees, contractors, or family day care home providers solely on the number of new family day care homes recruited for the sponsoring organization's Program.

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

(i) *Program agreement.* Each institution shall enter into a Program agreement with the State agency in accordance with § 226.6(b)(4).

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

(k) *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.

(l) *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.*).

(m) *Regulations and guidance.* Each institution must comply with all regulations issued by FNS and the Department, all instructions and handbooks issued by FNS and the Department to clarify or explain existing regulations, and all regulations, instructions and handbooks issued by the State agency that are consistent with the provisions established in Program regulations.

(n) *Information on WIC.* Each institution must ensure that parents of enrolled children are provided with current information on the benefits and importance of the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) and the eligibility requirements for WIC participation.

[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; 69 FR 53544, Sept. 1, 2004; 70 FR 8503, Feb. 22, 2005; 70 FR 43262, July 27, 2005]

§ 226.16 Sponsoring organization provisions.

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

(b) Each sponsoring organization must submit to the State agency with its application all information required for its approval, and the approval of the facilities under its jurisdiction, as set forth in §§ 226.6(b) and 226.6(f). The application must demonstrate that the institution has the administrative and financial capability to operate the Program in accordance with the Program regulations. In addition to the information required in §§ 226.6(b) and 226.6(f), the application must include:

(1) A sponsoring organization management plan and administrative budget, in accordance with §§ 226.6(b)(1)(iv), 226.6(b)(1)(v), 226.6(b)(2)(i), 226.6(f)(2)(ii), and 226.7(g), which includes information sufficient to document the sponsoring organization's compliance with the performance standards set forth at § 226.6(b)(1)(xvii) and 226.6(b)(2)(vii). 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 management 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 these specified ranges and factors that the State agency will use to determine the appropriate level of monitoring staff for each sponsor. The monitoring staff equivalent may include the employee's time spent on scheduling, travel time, review time, follow-up activity, report writing, and activities related to the annual updating of children's enrollment forms. Sponsoring organizations that were participating in the Program on July 29, 2002, were to have submitted, no later than July 29, 2003, a management plan or plan amendment that meets the monitoring staffing requirement. For sponsoring organizations of centers, the portion of the administrative costs to be 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 waiver in accordance with § 226.7(g). A sponsoring organization of centers must include in the administrative budget all administrative costs, whether incurred by the sponsoring organization or its sponsored centers. If at any point a sponsoring organization determines that the meal reimbursements estimated to be earned during the budget year will be lower than that estimated in its administrative budget, the sponsoring organization must amend its administrative budget to stay within the 15 percent limitation (or any higher limit established pursuant to a waiver granted under § 226.7(g)) or seek a waiver. Failure to do so will result in appropriate fiscal action in accordance with § 226.14(a).

(2) An application for participation, or renewal materials, for each child