

§ 226.9

7 CFR Ch. II (1–1–11 Edition)

made once per each management evaluation, review, or audit per Program within a fiscal year. However, no overpayment is to be disregarded where there is substantial evidence of violations of criminal law or civil fraud statutes.

(f) While OIG shall rely to the fullest extent feasible upon State sponsored audits, OIG may, whenever it considers necessary:

- (1) Make audits on a statewide basis;
- (2) Perform on-site test audits;
- (3) Review audit reports and related working papers of audits performed by or for State agencies.

(g) State agencies are not required to provide a hearing to an institution for State actions taken on the basis of a Federal audit determination. If a State agency does not provide a hearing in such situations, FNS will provide a hearing, upon request, in accordance with procedures set forth in § 226.6(k).

[47 FR 36527, Aug. 20, 1982, as amended at 50 FR 8580, Mar. 4, 1985; 51 FR 4295, Feb. 4, 1986; 52 FR 5526, Feb. 25, 1987; 53 FR 52590, Dec. 28, 1988; Amdt. 22, 55 FR 1378, Jan. 14, 1990; 67 FR 43490, June 27, 2002; 69 FR 53543, Sept. 1, 2004; 70 FR 43261, July 27, 2005; 71 FR 5, Jan. 3, 2006; 71 FR 30563, May 30, 2006; 72 FR 41607, July 31, 2007]

Subpart D—Payment Provisions

§ 226.9 Assignment of rates of reimbursement for centers.

(a) The State agency shall assign rates of reimbursement, not less frequently than annually, on the basis of family-size and income information reported by each institution. However, no rates should be assigned for emergency shelters and at-risk afterschool care centers. Assigned rates of reimbursement may be changed more frequently than annually if warranted by changes in family-size and income information. Assigned rates of reimbursement shall be adjusted annually to reflect changes in the national average payment rates.

(b) Except for emergency shelters and at-risk afterschool care centers, the State agency must either:

(1) Require that institutions submit each month's figures for meals served daily to participants from families meeting the eligibility standards for

free meals, to participants from families meeting the eligibility standards for reduced-price meals, and to participants from families not meeting such guidelines; or

(2) Establish claiming percentages, not less frequently than annually, for each institution on the basis of the number of enrolled participants eligible for free, reduced-price, and paid meals, except that children who only participate in emergency shelters or the at-risk afterschool care component of the Program must not be considered to be enrolled participants for the purpose of establishing claiming percentages; or

(3) Determine a blended per-meal rate of reimbursement, not less frequently than annually, by adding the products obtained by multiplying the applicable national average payment rate of reimbursement for each category (free, reduced-price, paid) by the claiming percentage for that category.

(c) States have two methods of reimbursing institutions. The method chosen by the State agency must be applied to all institutions participating in the Program in that State. These methods are:

(1) Meals times rates payment, which involves reimbursing an institution for meals served at the assigned rate for each meal. This method entails no comparison to the costs incurred by the institution for the meal service; and,

(2) Meals times rates or actual costs, whichever is the lesser, which involves reimbursing an institution for meals served at the assigned rate for each meal or at the level of the costs actually incurred by the institution for the meal service. This method does entail a comparison of the costs incurred to the meal rates, with the costs being a limiting factor on the level of reimbursement an institution may receive.

(d) In those States where the State agency has chosen the option to implement a meals times rates payment system State-wide, the State agency may elect to pay an institution's final claim for reimbursement for the fiscal year at higher reassigned rates of reimbursement for lunches and suppers; however, the reassigned rates may not exceed the applicable maximum rates

of reimbursement established under § 210.11(b) of the National School Lunch Program regulations. In those States which use the method of comparing meals times rates or actual costs, whichever is lesser, the total payments made to an institution shall not exceed the total net costs incurred for the fiscal year.

[47 FR 36527, Aug. 20, 1982, as amended at 48 FR 21530, May 13, 1983; 53 FR 52590, Dec. 28, 1988; Amdt. 22, 55 FR 1378, Jan. 14, 1990; 71 FR 5, Jan. 3, 2006; 72 FR 41607, July 31, 2007; 75 FR 16327, Apr. 1, 2010]

§ 226.10 Program payment procedures.

(a) If a State agency elects to issue advance payments to all or some of the participating institutions in the State, it must provide such advances no later than the first day of each month to those eligible institutions electing to receive advances in accordance with § 226.6 (f)(3)(iv)(F). Advance payments shall equal the full level of claims estimated by the State agency to be submitted in accordance with paragraph (c) of this section, considering prior reimbursement claims and other information such as fluctuations in enrollment. The institution may decline to receive all or any part of the advance.

(b) For each fiscal year, the amount of payment made, including funds advanced to an institution, shall not exceed the amount of valid reimbursement claimed by that institution. To ensure that institutions do not receive excessive advance payments, the State agency shall observe the following procedures:

(1) After three advance payments have been made to an institution, the State agency shall ensure that no subsequent advance is made until the State agency has validated the institution's claim for reimbursement for the third month prior to the month for which the next advance is to be paid.

(2) If the State agency has audit or monitoring evidence of extensive program deficiencies or other reasons to believe that an institution will not be able to submit a valid claim for reimbursement, advance payments shall be withheld until the claim is received or the deficiencies are corrected.

(3) Each month the State agency shall compare incoming claims against

advances to ensure that the level of funds authorized under paragraph (a) of this section does not exceed the claims for reimbursement received from the institution. Whenever this process indicates that excessive advances have been authorized, the State agency shall either demand full repayment or adjust subsequent payments, including advances.

(4) If, as a result of year end reconciliation as required by 7 CFR part 3016 or 7 CFR part 3019, as applicable, the State agency determines that reimbursement earned by an institution during a fiscal year is less than the amount paid, including funds advanced to that institution, the State agency shall demand repayment of the outstanding balance or adjust subsequent payments.

(c) Claims for Reimbursement shall report information in accordance with the financial management system established by the State agency, and in sufficient detail to justify the reimbursement claimed and to enable the State agency to provide the final Report of the Child and Adult Care Food Program (FNS 44) required under § 226.7(d). In submitting a Claim for Reimbursement, each institution shall certify that the claim is correct and that records are available to support that claim. For each month in which independent for-profit child care centers and independent for-profit outside-school-hours care centers claim reimbursement, they must submit the number and percentage of children in care (enrolled or licensed capacity, whichever is less) that documents at least 25 percent are eligible for free or reduced-price meals or are title XX beneficiaries. However, children who only receive at-risk afterschool snacks and/or at-risk afterschool meals must not be considered in determining this eligibility. Sponsoring organizations of for-profit child care centers or for-profit outside-school-hours care centers must submit the number and percentage of children in care (enrolled or licensed capacity, whichever is less) that documents that at least 25 percent are eligible for free or reduced-price meals or are title XX beneficiaries. Sponsoring organizations of such centers must not submit a claim for any for-profit center