

Food and Nutrition Service, USDA

§ 245.6

who become unemployed are eligible for free or reduced price meals or for free milk during the period of unemployment, *Provided*, that the loss of income causes the household income during the period of unemployment to be within the eligibility criteria;

(viii) A statement to the effect that in certain cases foster children are eligible for free or reduced price meals or free milk regardless of the income of the household with whom they reside and that households wishing to apply for such benefits for foster children should contact the local educational agency;

(ix) The statement: “In the operation of child feeding programs, no child will be discriminated against because of race, sex, color, national origin, age or disability;” and

(x) An explanation that Head Start enrollees and certain migrant, homeless, and runaway children are categorically eligible for free meals and free milk and their families should contact the school for more information.

(xi) How a household may appeal the decision of the local educational agency with respect to the application under the hearing procedure set forth in § 245.7. The letter or notice shall be accompanied by a copy of the application form required under § 245.6.

(xii) A statement to the effect that the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) participants may be eligible for free or reduced price meals.

(2) On or about the beginning of each school year, a public release, containing the same information supplied to parents, and including both free and reduced price eligibility criteria shall be provided to the informational media, the local unemployment office, and to any major employers contemplating large layoffs in the area from which the school draws its attendance.

(b) Copies of the public release shall be made available upon request to any interested persons. Any subsequent changes in a school's eligibility criteria during the school year shall be publicly announced in the same man-

ner as the original criteria were announced.

(Sec. 803, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1758); Pub. L. 79-396, 60 Stat. 231 (42 U.S.C. 1751); Pub. L. 89-642, 80 Stat. 885-880 (42 U.S.C. 1773); Pub. L. 91-248, 84 Stat. 207 (42 U.S.C. 1759))

[Amdt. 8, 40 FR 57207, Dec. 8, 1975, as amended by Amdt. 10, 41 FR 28783, July 13, 1976; 47 FR 31852, 31853, July 23, 1982; Amdt. 24, 48 FR 19355, Apr. 29, 1983; 49 FR 26034, June 26, 1984; 52 FR 19275, May 22, 1987; 64 FR 50744, Sept. 20, 1999; 64 FR 72472, Dec. 28, 1999; 66 FR 48328, Sept. 20, 2001; 68 FR 53489, Sept. 11, 2003; 72 FR 10900, Mar. 12, 2007; 72 FR 63793, Nov. 13, 2007; 76 FR 22800, Apr. 25, 2011]

§ 245.6 Application, eligibility and certification of children for free and reduced price meals and free milk.

(a) *General requirements—content of application and descriptive materials.* Each local educational agency, as defined in § 245.2, for schools participating in the National School Lunch Program, School Breakfast Program or Special Milk Program or a commodity only school, shall provide meal benefit forms for use by families in making application for free or reduced price meals or free milk for their children.

(1) *Household applications.* The State agency or local educational agency must provide a form that permits a household to apply for all children in that household who attend schools in the same local educational agency. The local educational agency must provide newly enrolled students with an application and determine eligibility promptly. The local educational agency cannot require the household to submit an application for each child attending its schools. The application shall be clear and simple in design and the information requested therein shall be limited to that required to demonstrate that the household does, or does not, meet the eligibility criteria for free or reduced price meals, respectively, or for free milk, provided by the local educational agency. In accordance with § 245.3(c), a foster child or an institutionalized child is considered a family of one.

(2) *Understandable communications.* Any communication with households for eligibility determination purposes

must be in an understandable and uniform format and to the maximum extent practicable, in a language that parents and guardians can understand.

(3) *Electronic availability.* In addition to the distribution of applications and descriptive materials in paper form as provided for in this section, the local educational agency may establish a system for executing household applications electronically and using electronic signatures. The electronic submission system must comply with the disclosure requirements in this section and with technical assistance and guidance provided by FNS. Descriptive materials may also be made available electronically by the local educational agency.

(4) *Transferring eligibility status.* When a student transfers to a new school district, the new local educational agency may accept the eligibility determination from the student's former local educational agency without incurring liability for the accuracy of the initial determination. As required under paragraph (c)(3) of this section, the accepting local educational agency must make changes that occur as a result of verification activities or coordinated review findings conducted in that local educational agency.

(5) *Required income information.* The information requested on the application with respect to the current income of the household must be limited to:

(i) The income received by each member identified by the household member who received the income or an indication which household members had no income; and

(ii) The source of the income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, social security and other cash income). Other cash income includes cash amounts received or withdrawn from any source, including savings, investments, trust accounts, and other resources which are available to pay for a child's meals or milk.

(6) *Household members and social security numbers.* The application must require applicants to provide the names of all household members. In addition, the social security number of the adult household member who signs the application must be provided. If the adult

member signing the application does not possess a social security number, the household must so indicate. However, if application is being made for a child(ren) who is a member of a household receiving assistance under the SNAP, or is in a FDPIR or TANF household, the application shall enable the household to provide the appropriate SNAP or TANF case number or FDPIR case number or other FDPIR identifier in lieu of names of all household members, household income information and social security number.

(7) *Adult member's signature.* The application must be signed by an adult member of the family. The application must contain clear instructions with respect to the submission of the completed application to the official or officials designated by the local educational agency to make eligibility determinations. A household must be permitted to file an application at any time during the school year. A household may, but is not required to, report any changes in income, household size or program participation during the school year.

(8) *Required statements for the application.* The application and/or descriptive materials must contain substantially the following statements:

(i) "The Richard B. Russell National School Lunch Act requires the information on this application. You do not have to give the information, but if you do not, we cannot approve your child for free or reduced price meals. You must include the social security number of the adult household member who signs the application. The social security number is not required when you apply on behalf of a foster child or you list a Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF) Program or Food Distribution Program on Indian Reservations (FDPIR) case number for your child or other FDPIR identifier or when you indicate that the adult household member signing the application does not have a social security number. We will use your information to determine if your child is eligible for free or reduced price meals, and for administration and enforcement of the lunch and breakfast programs." When the State agency or

local educational agency, as appropriate, plans to use or disclose children's eligibility information for non-program purposes, additional information, as specified in paragraph (h) of this section, must be added to the Privacy Act notice/statement. State agencies and local educational agencies are responsible for drafting the appropriate notice and ensuring that the notice complies with section 7(b) of the Privacy Act of 1974 (5 U.S.C. 552a note (Disclosure of Social Security Number)); and

(ii) "In certain cases, foster children are eligible for free or reduced price meals or free milk regardless of your household income. If you have foster children living with you and wish to apply for such meals or milk for them, please contact us." Also, certain migrant, homeless, and runaway children and children enrolled in a Head Start program are categorically eligible for free meals and free milk. If you are completing an application for these children, contact the school for more information.

(9) *Attesting to information on the application.* The application must also include a statement, immediately above the space for signature, that the person signing the application certifies that all information furnished in the application is true and correct, that the application is being made in connection with the receipt of Federal funds, that school officials may verify the information on the application, and that deliberate misrepresentation of the information may subject the applicant to prosecution under applicable State and Federal criminal statutes. Applicants must attest to changes in information as specified in this paragraph (b), if changes are voluntarily reported in writing during the eligibility period.

(b) *Direct certification.* In lieu of requiring a household to complete the free and reduced price meal or free milk application, as specified in paragraph (a) of this section, the local educational agency must certify children as eligible for free meals or free milk in accordance with paragraph (b)(1)(i) of this section or may certify children as eligible for free meals or free milk in accordance with paragraph (b)(2) of this section. If a household also sub-

mits an application for directly certified children, the direct certification eligibility determination will take precedence.

(1) *Mandatory direct certification of children in SNAP households.* (i) All local educational agencies conducting eligibility determinations must directly certify children who are members of a household receiving assistance under *SNAP*, as defined in § 245.2, in School Year 2008–2009, which begins on July 1, 2008, and each subsequent school year.

(ii) Schools participating only in the Special Milk Program authorized under part 215 of this chapter may directly certify children for that program but are not required to conduct direct certification with *SNAP*. In addition, residential child care institutions, as defined in paragraph (c) of the definition of *School* in § 210.2 of this chapter, that do not have non-residential children are also not required to conduct direct certification with *SNAP*.

(iii) Beginning in School Year 2012–2013, direct certification shall be conducted using a data matching technique only and letters to household for direct certification may be used only as an additional means to notify households of children's eligibility based on receipt of *SNAP* benefits. The last period that letters to households may be used as the primary method for direct certification is School Year 2011–12.

(iv) Each State agency must enter into an agreement with the State agency conducting eligibility determinations for *SNAP*. The agreement must specify the procedures that will be used to facilitate the direct certification of children who are members of a household receiving assistance under *SNAP*, as defined in § 245.2. The agreement must address procedures to comply with the requirements of paragraphs (b)(3) through (b)(9) of this section. Direct certification must allow for notifying parents that their children have been determined eligible for free meals or free milk, as applicable, and that no further application is required. Such agreements must address how phase-out of non-electronic matches as the primary method for conducting direct

§ 245.6

7 CFR Ch. II (1–13 Edition)

certification for SNAP will be completed by School Year 2012–2013. The agreement shall be maintained by the State agency.

(v) Schools applying to use Provision 2 or Provision 3, as permitted under § 245.9, are required to conduct direct certification only in base years. However, schools may elect to conduct direct certification at other times, such as streamlined base years, when eligibility determinations are made.

(2) *Children who may be directly certified.* The local educational agency may directly certify children for free meals or free milk based on documentation received from the appropriate State or local agency that administers *FDPIR* or *TANF*, as defined in § 245.2, when that agency indicates that the children are members of a household receiving assistance under one of these programs. In addition, the local educational agency may directly certify children for free meals or free milk based on documentation from the appropriate State or local agency or other appropriate individual, as specified by FNS, that the child is a *Migrant child*, a *Homeless child*, a *Runaway child*, or a *Head Start child*, as defined in § 245.2.

(3) *Frequency of direct certification contacts with SNAP.* (i) Until School Year 2011–2012, local educational agencies must conduct direct certification activities with *SNAP* at least at the beginning of the school year.

(ii) (A) Beginning in School Year 2011–2012, at a minimum, all local educational agencies must conduct direct certification as follows:

(1) At or around the beginning of the school year;

(2) Three months after the initial effort; and

(3) Six months after the initial effort.

(B) The information used shall be the most recent available.

(iii) The names of all newly enrolled children and all children not certified for free meals shall be submitted for the direct certification required in paragraph (b)(3)(ii)(B) and paragraph (b)(3)(ii)(C) of this section. Newly enrolled children must be provided with application materials in order to alleviate a delay in receipt of free meals or free milk if direct certification for

these children cannot be completed promptly upon enrollment.

(iv) State agencies are encouraged to conduct direct certification more frequently to obtain information about newly enrolled children or children who may be newly certified for that program's benefits.

(4) *Frequency of direct certification with other programs.* Local educational agencies opting to conduct direct certification activities with *FDPIR* or *TANF* should conduct such activities at or around the beginning of the school year. Obtaining information about homeless, migrant, runaway children or Head Start enrollees should be done, at a minimum, at or around the beginning of the school year and when newly enrolled children or children newly eligible for those programs are being certified.

(5) *Direct certification documentation.*

(i) The required documentation for direct certification is provided in paragraph (2) of the definition of *Documentation* in § 245.2.

(ii) (A) Beginning in School Year 2012–2013, direct certification with *SNAP* shall be conducted using a data matching technique only. Letters to households for direct certification may be used only as an additional means to notify households of children's eligibility based on receipt of *SNAP* benefits. The last period that letters to households may be used as the primary method for direct certification is School Year 2011–2012. While such notices cannot be the primary method used by a state to document receipt of *SNAP*, the local educational agency shall accept such a letter if presented by a household.

(B) Letters or other documents may be used as the primary method for direct certification to document receipt of *FDPIR* or *TANF* benefits.

(iii) Individual notices from officials of eligible programs for a *Migrant child*, *Homeless child* or *Runaway child*, as defined in § 245.2, or for a *Head Start child*, as defined in § 245.2 may continue to be used. These notices are provided to school officials who must certify these children as eligible for free meals or free milk, as applicable, without further application, upon receipt of such notice.

(6) *Officials who can provide documentation for direct certification.* (i) The local educational agency must accept documentation from officials of the State or local agency that administers SNAP, certifying that a child is a member of a household receiving assistance under SNAP as defined in § 245.2, or officials of the State or local agency that administers FDPIR or TANF, as defined in § 245.2, certifying that a child is a member of a household receiving assistance under one of those programs.

(ii) In the case of a child who is a *Homeless child*, as defined in § 245.2, the director of a homeless shelter or the local educational liaison for homeless children and youth may provide the appropriate documentation. The Migrant Education Program coordinator or the local educational liaison, as applicable, may provide the supporting documentation for a *Migrant child*, as defined in § 245.2. For a *Head Start child*, as defined in § 245.2, an official from that program may supply the documentation indicating enrollment in the Head Start program. Once the appropriate official has provided the direct certification documentation to the local educational agency, the child must have free benefits made available as soon as possible but no later than three operating days after the date the local educational agency receives the direct certification documentation.

(7) *Extension of eligibility to all children in a family.* If any child is identified as a member of a household receiving assistance under SNAP, FDPIR, or TANF, all children in the *Family*, as defined in § 245.2, shall be categorically eligible for free meals or free milk. This applies to children identified through direct certification or through a free and reduced price application.

(8) *Migrant, Runaway, Homeless or Head Start Children.* To be categorically eligible as a Migrant child, Runaway child, Homeless child or a Head Start child, the child's individual eligibility or participation for these programs shall be established. Categorical eligibility based on these programs shall not be extended to other children in the household.

(9) *Confidential nature of direct certification information.* Information about

children or their households obtained through the direct certification process must be kept confidential and is subject to the limitations on disclosure of information in section 9 of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1758. Therefore, information that a household is receiving benefits from SNAP, FDPIR or TANF or that a child is participating in another program which makes children categorically eligible for free school meals or free milk must be used solely for the purposes of direct certification for determining children's eligibility for free school meals or free milk and as otherwise permitted under § 245.6(f).

(10) *Notification to families.* For children who are directly certified, local educational agencies are not required to provide application materials and notice to parents informing them of the availability of free and reduced price meal benefits, as specified in § 245.5(a), when that information is distributed by mail, individualized student packets, or other method which prevents overt identification of children eligible for direct certification.

(c) *Determination of eligibility—*(1) *Duration of eligibility.* Except as otherwise specified in paragraph (c)(3) of this section, eligibility for free or reduced price meals, as determined through an approved application or by direct certification, must remain in effect for the entire school year and for up to 30 operating days into the subsequent school year. The local educational agency must determine household eligibility for free or reduced price meals either through direct certification or the application process at or about the beginning of the school year. The local educational agency must determine eligibility for free or reduced price meals when a household submits an application or, if feasible, through direct certification, at any time during the school year.

(2) *Use of prior year's eligibility status.* Prior to the processing of applications or the completion of direct certification procedures for the current school year, children from households with approved applications or documentation of direct certification on file from the preceding year shall be offered reimbursable free and reduced

§ 245.6

7 CFR Ch. II (1–13 Edition)

price meals or free milk, as appropriate. The local educational agency must extend eligibility to newly enrolled children when other children in their household (as defined in §245.2) were approved for benefits the previous year. However, applications and documentation of direct certification from the preceding year shall be used only to determine eligibility for the first 30 operating days following the first operating day at the beginning of the school year, or until a new eligibility determination is made in the current school year, whichever comes first.

(3) *Exceptions for year-long duration of eligibility.* (i) *Voluntary reporting of changes.* Households are not required to report changes in circumstances during the school year, but a household may voluntarily contact the local educational agency to report any changes. If the household voluntarily reports a change in income or in program participation that would result in loss of categorical eligibility, the local educational agency may only reduce benefits if the household requests the reduction in writing, for example, by submitting a new application.

(ii) Households must attest to changes in information as specified in §245.6(a)(9). In addition, benefits cannot be reduced by information received through other sources without the written consent of the household, except for information received through verification.

(iii) *Changes resulting from verification or administrative reviews.* The local educational agency must change the children's eligibility status when a change is required as a result of verification activities conducted under §245.6a or as a result of a review conducted in accordance with §210.18 of this chapter.

(4) *Calculating income.* The local educational agency must use the income information provided by the household on the application to calculate the household's total current income. When a household submits an application containing complete documentation, as defined in §245.2, and the household's total current income is at or below the eligibility limits specified in the Income Eligibility Guidelines as defined in §245.2, the children in that

household must be approved for free or reduced price benefits, as applicable.

(5) *Categorical eligibility.* (i) *SNAP, FDPIR, TANF.* When a household submits an application containing the required SNAP, FDPIR or TANF documentation, as defined under *Documentation* in §245.2, all children in that household shall be categorically eligible for free meals or free milk. Additionally, when the local educational agency obtains confirmation of eligibility for these programs through direct certification, all children who are identified as members of a *Family*, as defined in §245.2, shall be categorically eligible for free meals or milk.

(ii) *Homeless, migrant, runaway children and Head Start enrollees.* Upon receipt of *Documentation*, as defined in paragraph (2)(ii) and (2)(iv) of the definition in §245.2, the local educational agency must approve such children for free benefits without further application.

(6) *Notice of approval—(i) Income applications.* The local educational agency must promptly notify the household of the children's eligibility and provide the eligible children the benefits to which they are entitled.

(ii) *Direct Certification.* Households approved for benefits based on information provided by the appropriate State or local agency responsible for the administration of the SNAP, FDPIR or TANF must be notified, in writing, that their children are eligible for free meals or free milk, that no application for free and reduced price school meals or free milk is required. The notice of eligibility must also inform the household that the parent or guardian must notify the local educational agency if they do not want their children to receive free benefits. However, when the parent or guardian transmits a notice of eligibility provided by the SNAP, FDPIR or TANF office, the local educational agency is not required to provide a separate notice of eligibility. The local educational agency must notify, in writing, households with children who are approved on the basis of documentation that they are *Categorically eligible*, as defined in §245.2, that their children are eligible for free meals or free milk, and that no application is required.

(iii) *Households declining benefits.* Children from households that notify the local educational agency that they do not want free or reduced price benefits must have their benefits discontinued as soon as possible. Any notification from the household declining benefits must be documented and maintained on file, as required under paragraph (e) of this section, to substantiate the eligibility determination.

(7) *Denied applications and the notice of denial.* When the application furnished by a family is not complete or does not meet the eligibility criteria for free or reduced price benefits, the local educational agency must document and retain the reasons for ineligibility and must retain the denied application. In addition, the local educational agency must promptly provide written notice to each family denied benefits. At a minimum, this notice shall include:

- (i) The reason for the denial of benefits, e.g. income in excess of allowable limits or incomplete application;
- (ii) Notification of the right to appeal;
- (iii) Instructions on how to appeal; and
- (iv) A statement reminding parents that they may reapply for free or reduced price benefits at any time during the school year.

(8) *Appeals of denied benefits.* A family that wishes to appeal an application that was denied may do so in accordance with the procedures established by the local educational agency as required by § 245.7. However, prior to initiating the hearing procedure, the family may request a conference to provide the opportunity for the family and local educational agency officials to discuss the situation, present information, and obtain an explanation of the data submitted in the application or the decision rendered. The request for a conference shall not in any way prejudice or diminish the right to a fair hearing. The local educational authority shall promptly schedule a fair hearing, if requested.

(d) *Households that fail to apply.* After the letter to parents and the applications have been disseminated, the local educational agency may determine, based on information available to it,

that a child for whom an application has not been submitted meets the local educational agency's eligibility criteria for free and reduced price meals or for free milk. In such a situation, the local educational agency shall complete and file an application for such child setting forth the basis of determining the child's eligibility. When a local educational agency has obtained a determination of individual family income and family-size data from other sources, it need not require the submission of an application for any child from a family whose income would qualify for free or reduced price meals or for free milk under the local educational agency's established criteria. In such event, the School Food Authority shall notify the family that its children are eligible for free or reduced price meals or for free milk. Nothing in this paragraph shall be deemed to provide authority for the local educational agency to make eligibility determinations or certifications by categories or groups of children.

(e) *Recordkeeping.* The local educational agency must maintain documentation substantiating eligibility determinations on file for 3 years after the date of the fiscal year to which they pertain, except that if audit findings have not been resolved, the documentation must be maintained as long as required for resolution of the issues raised by the audit.

(f) *Disclosure of children's free and reduced price meal or free milk eligibility information to education and certain other programs and individuals without parental consent.* The State agency or local educational agency, as appropriate, may disclose aggregate information about children eligible for free and reduced price meals or free milk to any party without parental notification and consent when children cannot be identified through release of the aggregate data or by means of deduction. Additionally, the State agency or local educational agency also may disclose information that identifies children eligible for free and reduced price meals or free milk to persons directly connected with the administration or enforcement of the programs and the individuals specified in this paragraph (f) without parent/guardian consent. The

State agency or local educational agency that makes the free and reduced price meal or free milk eligibility determination is responsible for deciding whether to disclose children's free and reduced price meal or free milk eligibility information.

(1) *Persons authorized to receive eligibility information.* Only persons directly connected with the administration or enforcement of a program or activity listed in paragraphs (f)(2) or (f)(3) of this section may have access to children's eligibility information, without parental consent. Persons considered directly connected with administration or enforcement of a program or activity listed in paragraphs (f)(2) or (f)(3) of this section are Federal, State, or local program operators responsible for the ongoing operation of the program or activity or responsible for program compliance. Program operators may include persons responsible for carrying out program requirements and monitoring, reviewing, auditing, or investigating the program. Program operators may include contractors, to the extent those persons have a need to know the information for program administration or enforcement. Contractors may include evaluators, auditors, and others with whom Federal or State agencies and program operators contract with to assist in the administration or enforcement of their program in their behalf.

(2) *Disclosure of children's names and eligibility status only.* The State agency or local educational agency, as appropriate, may disclose, without parental consent, children's names and eligibility status (whether they are eligible for free or reduced price meals or free milk) to persons directly connected with the administration or enforcement of:

- (i) A Federal education program;
- (ii) A State health program or State education program administered by the State or local education agency;
- (iii) A Federal, State, or local means-tested nutrition program with eligibility standards comparable to the National School Lunch Program (i.e., food assistance programs for households with incomes at or below 185 percent of the Federal poverty level); or

(iv) A third party contractor assisting in verification of eligibility efforts by contacting households who fail to respond to requests for verification of their eligibility.

(3) *Disclosure of all eligibility information in addition to eligibility status.* In addition to children's names and eligibility status, the State agency or local educational agency, as appropriate, may disclose, without parental consent, all eligibility information obtained through the free and reduced price meals or free milk eligibility process (including all information on the application or obtained through direct certification) to:

(i) Persons directly connected with the administration or enforcement of programs authorized under the Richard B. Russell National School Lunch Act or the Child Nutrition Act of 1966. This means that all eligibility information obtained for the National School Lunch Program, School Breakfast Program or Special Milk Program may be disclosed to persons directly connected with administering or enforcing regulations under the National School Lunch or School Breakfast Programs (Parts 210 and 220, respectively, of this chapter), Child and Adult Care Food Program (Part 226 of this chapter), Summer Food Service Program (Part 225 of this chapter) and the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) (Part 246 of this chapter);

(ii) The Comptroller General of the United States for purposes of audit and examination; and

(iii) Federal, State, and local law enforcement officials for the purpose of investigating any alleged violation of the programs listed in paragraphs (g)(3) and (g)(4) of this section.

(4) *Use of free and reduced price meal or free milk eligibility information by other programs other than Medicaid or the State Children's Health Insurance Program (SCHIP).* State agencies and local educational agencies may use free and reduced price meal or free milk eligibility information for administering or enforcing the National School Lunch, Special Milk or School Breakfast Programs (Parts 210, 215 and 220, respectively, of this chapter). Additionally,

Food and Nutrition Service, USDA

§ 245.6

any other Federal, State, or local agency charged with administering or enforcing these programs may use the information for that purpose. Individuals and programs to which children's free and reduced price meal eligibility information has been disclosed under this section may use the information only in the administration or enforcement of the receiving program. No further disclosure of the information may be made.

(g) *Disclosure of children's eligibility information to Medicaid and/or SCHIP, unless parents decline.* Children's free or reduced price meal or free milk eligibility information only may be disclosed to Medicaid or SCHIP when both the State agency and the local educational agency so elect, the parent/guardian does not decline to have their eligibility information disclosed and the other provisions described in paragraph (i) of this section are met. Provided that both the State agency and local educational agency opt to allow the disclosure of eligibility information to Medicaid and/or SCHIP, the State agency or local educational agency, as appropriate, may disclose children's names, eligibility status (whether they are eligible for free or reduced price meals or free milk), and any other eligibility information obtained through the free and reduced price meal or free milk application or obtained through direct certification to persons directly connected with the administration of Medicaid or SCHIP. Persons directly connected to the administration of Medicaid and SCHIP are State employees and persons authorized under Federal and State Medicaid and SCHIP requirements to carry out initial processing of Medicaid or SCHIP applications or to make eligibility determinations for Medicaid or SCHIP.

(1) The State agency must ensure that:

(i) The child care institution and health insurance program officials have a written agreement that requires the health insurance program agency to use the eligibility information to seek to enroll children in Medicaid and SCHIP; and

(ii) Parents/guardians are notified that their eligibility information may

be disclosed to Medicaid or SCHIP and given an opportunity to decline to have their children's eligibility information disclosed, prior to any disclosure.

(2) *Use of children's free and reduced price meal eligibility information by Medicaid/SCHIP.* Medicaid and SCHIP agencies and health insurance program operators receiving children's free and reduced price meal or free milk eligibility information may use the information to seek to enroll children in Medicaid or SCHIP. The Medicaid and SCHIP enrollment process may include targeting and identifying children from low-income households who are potentially eligible for Medicaid or SCHIP for the purpose of seeking to enroll them in Medicaid or SCHIP. No further disclosure of the information may be made. Medicaid and SCHIP agencies and health insurance program operators also may verify children's eligibility in a program under the Child Nutrition Act of 1966 or the Richard B. Russell National School Lunch Act.

(h) *Notifying households of potential uses and disclosures of children's eligibility information.* Households must be informed that the information they provide on the free and reduced price meal or free milk application will be used to determine eligibility for free and reduced price meals or free milk and that eligibility information may be disclosed to other programs.

(1) For disclosures to programs, other than Medicaid or SCHIP, that are permitted access to children's eligibility information, without parent/guardian consent, the State agency or local educational agency, as appropriate, must notify parents/guardians at the time of application that their children's free and reduced price meal or free milk eligibility information may be disclosed. The State agency or local educational agency, as appropriate, must add substantially the following statement to the Privacy Act notice/statement required under paragraph (a)(8)(i) of this section, "We may share your eligibility information with education, health, and nutrition programs to help them evaluate, fund, or determine benefits for their programs; auditors for program reviews; and law enforcement officials to help them look into violations of program rules." For children

determined eligible through direct certification, the notice of potential disclosure may be included in the document informing parents/guardians of their children's eligibility for free meals or free milk through direct certification.

(2) For disclosure to Medicaid or SCHIP, the State agency or local educational agency, as appropriate, must notify parents/guardians that their children's free and reduced price meal or free milk eligibility information will be disclosed to Medicaid and/or SCHIP unless the parent/guardian elects not to have their information disclosed. Additionally, the State agency or local educational agency, as appropriate, must give parents/guardians an opportunity to elect not to have their information disclosed to Medicaid or SCHIP. Only the parent or guardian who is a member of the household or family for purposes of the free and reduced price meal or free milk application may decline the disclosure of eligibility information to Medicaid or SCHIP. The notification must inform parents/guardians that they are not required to consent to the disclosure, that the information, if disclosed, will be used to identify children eligible for and to seek to enroll children in a health insurance program, and that their decision will not affect their children's eligibility for free and reduced price meals or free milk. The notification may be included in the letter/notice to parents/guardians that accompanies the free and reduced price meal or free milk application, on the application itself or in a separate notice provided to parents/guardians. The notice must give parents/guardians adequate time to respond. The State agency or local educational agency, as appropriate, must add substantially the following statement to the Privacy Act notice/statement required under paragraph (a)(8)(i) of this section, "We may share your information with Medicaid or the State Children's Health Insurance Program, unless you tell us not to. The information, if disclosed, will be used to identify eligible children and seek to enroll them in Medicaid or SCHIP." For children determined eligible through direct certification, the notice of potential disclosure and oppor-

tunity to decline the disclosure may be included in the document informing parents/guardians of their children's eligibility for free meal or free milk through direct certification.

(i) *Other disclosures.* State agencies and local educational agencies that plan to use or disclose information about children eligible for free or reduced price meals or free milk in ways not specified in this section must obtain written consent from the child's parent or guardian prior to the use or disclosure. Only a parent or guardian who is a member of the child's household for purposes of the free and reduced price meal or free milk application may give consent to the disclosure of free and reduced price meal eligibility information.

(1) The consent must identify the information that will be shared and how the information will be used.

(2) The consent statement must be signed and dated by the child's parent or guardian who is a member of the household for purposes of the free and reduced price meal or free milk application.

(3) There must be a statement informing parents and guardians that failing to sign the consent will not affect the child's eligibility for free or reduced price meals or free milk and that the individuals or programs receiving the information will not share the information with any other entity or program.

(4) Parents/guardians must be permitted to limit the consent only to those programs with which they wish to share information.

(j) *Agreements with programs/individuals receiving children's free and reduced price meal or free milk eligibility information.*

(1) An agreement with programs or individuals receiving free and reduced price meal or free milk eligibility information is recommended for programs other than Medicaid or SCHIP. The agreement or MOU should include information similar to that required for disclosures to Medicaid and SCHIP specified in paragraph (j)(2) of this section.

(2) The State agency or school food authorities, as appropriate, must have a written agreement with the State or

Food and Nutrition Service, USDA

§ 245.6a

local agency or agencies administering Medicaid or SCHIP prior to disclosing children's free and reduced price meal or free milk eligibility information. At a minimum, the agreement must:

(i) Identify the health insurance program or health agency receiving children's eligibility information;

(ii) Describe the information that will be disclosed;

(iii) Require that the Medicaid or SCHIP agency use the information obtained and specify that the information must be used to seek to enroll children in Medicaid or SCHIP;

(iv) Require that the Medicaid or SCHIP agency describe how they will use the information obtained;

(v) Describe how the information will be protected from unauthorized uses and disclosures;

(vi) Describe the penalties for unauthorized disclosure; and

(vii) Be signed by both the Medicaid or SCHIP program or agency and the State agency or child care institution, as appropriate.

(k) *Penalties for unauthorized disclosure or misuse of information.* In accordance with section 9(b)(6)(C) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(6)(C)), any individual who publishes, divulges, discloses or makes known in any manner, or to any extent not authorized by statute or this section, any information obtained under this section will be fined not more than \$1,000 or imprisoned for up to 1 year, or both.

(Sec. 803, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1758))

[35 FR 14065, Sept. 4, 1970]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 245.6, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 245.6a Verification requirements.

(a) *Definitions*—(1) *Eligible programs.* For the purposes of this section, the following programs qualify as programs for which a case number may be provided in lieu of income information and that may be used for direct verification purposes:

(i) *SNAP*, as defined in 245.2;

(ii) The Food Distribution Program on Indian Reservations (FDPIR) as defined in § 245.2; and

(iii) A State program funded under the program of block grants to States for temporary assistance for needy families (TANF) as defined in § 245.2.

(2) *Error prone application.* For the purposes of this section, “error prone application” means an approved household application that indicates monthly income within \$100 or annual income within \$1,200 of the applicable income eligibility limit for free or for reduced meals.

(3) *Non-response rate.* For the purposes of this section, “non-response rate” means the percentage of approved household applications for which verification information was not obtained by the local educational agency after verification was attempted. The non-response rate is reported on the FNS-742 in accordance with paragraph (h) of this section.

(4) *Official poverty line.* For the purposes of this section, “official poverty line” means that described in section 1902(1)(2)(A) of the Social Security Act (42 U.S.C. 1396a(1)(2)(A)).

(5) *Sample size.* For the purposes of this section, “sample size” means the number of approved applications that a local educational agency is required to verify based on the number of approved applications on file as of October 1 of the current school year.

(6) *School year.* For the purposes of this section, a school year means a period of 12 calendar months beginning July 1 of any year and ending June 30 of the following year.

(7) *Sources of information.* For the purposes of this section, sources of information for verification may include written evidence, collateral contacts, and systems of records as follows:

(i) Written evidence shall be used as the primary source of information for verification. Written evidence includes written confirmation of a household's circumstances, such as wage stubs, award letters, and letters from employers. Whenever written evidence is insufficient to confirm income information on the application or current eligibility, the local educational agency may require collateral contacts.