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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.

(ii) Collateral contacts are verbal confirmations of a household's circumstances by a person outside of the household. The collateral contact may be made in person or by phone. The verifying official may select a collateral contact if the household fails to designate one or designates one which is unacceptable to the verifying official. If the verifying official designates a collateral contact, the contact shall not be made without providing written or oral notice to the household. At the time of this notice, the household shall be informed that it may consent to the contact or provide acceptable documentation in another form. If the household refuses to choose one of these options, its eligibility shall be terminated in accordance with the normal procedures for failure to cooperate with verification efforts. Collateral contacts could include employers, social service agencies, and migrant agencies.

(iii) Agency records to which the State agency or local educational agency may have access are not considered collateral contacts. Information concerning income, household size, or Food Stamp Program, FDPIR, or TANF eligibility maintained by other government agencies to which the State agency, the local educational agency or school can legally gain access may be used to confirm a household's income, size, or receipt of benefits. Information may also be obtained from individuals or agencies serving the homeless, as defined under section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)); administering a runaway and homeless youth grant program, as established under the Runaway and Homeless Youth Act (42 U.S.C. 5701); or serving migratory children, as they are defined in section 1309 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6399). Agency records may be used for verification conducted after the household has been notified of its selection for verification or for the direct verification procedures in paragraph (g) of this section. Any information derived from other agencies must be used in accordance with the provisions concerning use and disclosure of

eligibility information found in § 245.6(f) through (i) of this part.

(iv) Households which dispute the validity of income information acquired through collateral contacts or a system of records shall be given the opportunity to provide other documentation.

(b) *Deadline and extensions for local educational agencies*—(1) *Deadline*. The local education agency must complete the verification efforts specified in paragraph (c) of this section not later than November 15 of each school year.

(2) *Deadline extensions*. (i) The local educational agency may request an extension of the November 15 deadline, in writing, from the State agency. The State agency may approve an extension up to December 15 of the current school year due to natural disaster, civil disorder, strike or other circumstances that prevent the local educational agency from timely completion of verification activities.

(ii) In the case of natural disaster, civil disorder or other local conditions, USDA may substitute alternatives for the verification deadline in paragraph (b)(1) of this section.

(3) *Beginning verification activities*. The local educational agency may conduct verification activity once it begins the application approval process for the current school year and has approved applications on file. However, the final required sample size must be based on the number of approved applications on file as of October 1.

(c) *Verification requirement*—(1) *General*. The local educational agency must verify eligibility of children in a sample of household applications approved for free and reduced price meal benefits for that school year.

(i) A State may, with the written approval of FNS, assume responsibility for complying with the verification requirements of this section on behalf of its local educational agencies. When assuming such responsibility, States may qualify, if approved by FNS, to use one of the alternative sample sizes provided for in paragraph (c)(4) of this section if qualified under paragraph (d) of this section.

(ii) An application must be approved if it contains the essential documentation specified in the definition of *Documentation* in § 245.2 and, if applicable,

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the household meets the income eligibility criteria for free or reduced price benefits. Verification efforts must not delay the approval of applications.

(2) *Exceptions from verification.* Verification is not required in residential child care institutions; in schools in which FNS has approved special cash assistance claims based on economic statistics regarding per capita income; or in schools in which all children are served with no separate charge for food service and no special cash assistance is claimed. Local educational agencies in which all schools participate in the special assistance certification and reimbursement alternatives specified in §245.9 shall meet the verification requirement only in those years in which applications are taken for all children in attendance. Verification of eligibility is not required of households if all children in the household are determined eligible based on documentation provided by the State or local agency responsible for the administration of the Food Stamp Program, FDPIR or TANF or if all children in the household are determined to be homeless, as defined under section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)); served by a runaway and homeless youth grant program established under the Runaway and Homeless Youth Act (42 U.S.C. 5701); or are migratory as defined in section 1309 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6399).

(3) *Standard sample size.* Unless eligible for an alternative sample size under paragraph (d) of this section, the sample size for each local educational agency shall equal the lesser of:

(i) Three (3) percent of all applications approved by the local educational agency for the school year, as of October 1 of the school year, selected from error prone applications; or

(ii) 3,000 error prone applications approved by the local educational agency for the school year, as of October 1 of the school year.

(iii) Local educational agencies shall not exceed the standard sample size in paragraphs (c)(3)(i) or (c)(3)(ii) of this section, as applicable, and, unless eligible for one of the alternative sample sizes provided in paragraph (c)(4) of

this section, the local educational agency shall not use a smaller sample size than those in paragraphs (c)(3)(i) or (c)(3)(ii) of this section, as applicable.

(iv) If the number of error-prone applications exceeds the required sample size, the local educational agency shall select the required sample at random, i.e., each application has an equal chance of being selected, from the total number of error-prone applications.

(4) *Alternative sample sizes.* If eligible under paragraph (d) of this section for an alternative sample size, the local educational agency may use one of the following alternative sample sizes:

(i) *Alternative One.* The sample size shall equal the lesser of:

(A) 3,000 of all applications selected at random from applications approved by the local educational agency as of October 1 of the school year; or

(B) Three (3) percent of all applications selected at random from applications approved by the local educational agency as of October 1 of the school year.

(ii) *Alternative Two.* The sample size shall equal the lesser of the sum of:

(A) 1,000 of all applications approved by the local educational agency as of October 1 of the school year, selected from error prone applications or

(B) One (1) percent of all applications approved by the local educational agency as of October 1 of the school year, selected from error prone applications PLUS

(C) The lesser of:

(1) 500 applications approved by the local educational agency as of October 1 of the school year that provide a case number in lieu of income information showing participation in an eligible program as defined in paragraph (a)(1) of this section; or

(2) One-half (½) of one (1) percent of applications approved by the local educational agency as of October 1 of the school year that provide a case number in lieu of income information showing participation in an eligible program as defined in paragraph (a)(1) of this section.

(5) *Completing the sample size.* When there are an insufficient number of error prone applications or applications with case number to meet the

sample sizes provided for in paragraphs (c)(3) or (c)(4) of this section, the local educational agency shall select, at random, additional approved applications to comply with the specified sample size requirements.

(6) *Local conditions.* In the case of natural disaster, civil disorder, strike or other local conditions as determined by FNS, FNS may substitute alternatives for the sample size and sample selection criteria in paragraphs (c)(3) and (c)(4) of this section.

(7) *Verification for cause.* In addition to the required verification sample, local educational agencies must verify any questionable application and should, on a case-by-case basis, verify any application for cause such as an application on which a household reports zero income or when the local educational agency is aware of additional income or persons in the household. Any application verified for cause is not considered part of the required sample size. If the local educational agency verifies a household's application for cause, all verification procedures in this section must be followed.

(d) *Eligibility for alternative sample sizes—(1) State agency oversight.* At a minimum, the State agency shall establish a procedure for local educational agencies to designate use of an alternative sample size and may set a deadline for such notification. The State agency may also establish criteria for reviewing and approving the use of an alternative sample size, including deadlines for submissions.

(2) *Lowered non-response rate.* Any local educational agency is eligible to use one of the alternative sample sizes in paragraph (c)(4) of this section for any school year when the non-response rate for the preceding school year is less than twenty percent.

(3) *Improved non-response rate.* A local educational agency with more than 20,000 children approved by application as eligible for free or reduced price meals as of October 1 of the school year is eligible to use one of the alternative sample sizes in paragraph (c)(4) of this section for any school year when the non-response rate for the preceding school year is at least ten percent below the non-response rate for the second preceding school year.

(4) *Continuing eligibility for alternative sample sizes.* The local educational agency must annually determine if it is eligible to use one of the alternative sample sizes provided in paragraph (c)(4) of this section. If qualified, the local educational agency shall contact the State agency in accordance with procedures established by the State agency under paragraph (d)(1) of this section.

(e) *Activities prior to household notification—(1) Confirmation of a household's initial eligibility.* (i) Prior to conducting any other verification activity, an individual, other than the individual who made the initial eligibility determination, shall review for accuracy each approved application selected for verification to ensure that the initial determination was correct. If the initial determination was correct, the local educational agency shall verify the approved application. If the initial determination was incorrect, the local educational agency must:

(A) If the eligibility status changes from reduced price to free, make the increased benefits immediately available and notify the household of the change in benefits; the local educational agency will then verify the application;

(B) If the eligibility status changes from free to reduced price, first verify the application and then notify the household of the correct eligibility status after verification is completed and, if required, send the household a notice of adverse action in accordance with paragraph (j) of this section; or

(C) If the eligibility status changes from free or reduced price to paid, send the household a notice of adverse action in accordance with paragraph (j) of this section and do not conduct verification on this application and select a similar application (for example, another error-prone application) to replace it.

(ii) The requirements in paragraph (e)(1)(i) of this section are waived if the local educational agency is using a technology-based system that demonstrates a high level of accuracy in processing an initial eligibility determination based on the income eligibility guidelines for the National

School Lunch Program. Any local educational agency that conducts a confirmation review of all applications at the time of certification meets this requirement. The State agency may request documentation to support the accuracy of the local educational agency's system. If the State agency determines that the technology-based system is inadequate, it may require that the local educational agency conduct a confirmation review of each application selected for verification.

(2) *Replacing applications.* The local educational agency may, on a case-by-case basis, replace up to five percent of applications selected and confirmed for verification. Applications may be replaced when the local educational agency determines that the household would be unable to satisfactorily respond to the verification request. Any application removed shall be replaced with another approved application selected on the same basis (i.e., an error-prone application must be substituted for a withdrawn error-prone application).

(f) *Verification procedures and assistance for households—(1) Notification of selection* Other than households verified through the direct verification process in paragraph (g) of this section, households selected for verification shall be provided written notice that their applications were selected for verification and that they are required, by such date as determined by the local educational agency, to submit the requested information to verify eligibility for free or reduced price meals. Any communications with households concerning verification must be in an understandable and uniform format and, to the maximum extent practicable, in a language that parents and guardians can understand. The written notice shall also include a telephone number for assistance in accordance with paragraph (f)(5) of this section. These households shall be advised of the type or types of information and/or documents acceptable to the school. This information must include a social security number for each adult household member or an indication that such member does not have one. Local educational agencies must inform selected households that:

(i) Section 9 of the Richard B. Russell National School Lunch Act requires that, unless the child's Food Stamp Program/FDPIR case number or other FDPIR identifier or TANF case number was provided, households selected for verification must provide the social security number of each adult household member;

(ii) In an adult member does not possess a social security number, that adult member must indicate that s/he does not possess one;

(iii) Provision of a social security number is not mandatory but if a social security number is not provided for each adult household member or an indication is not made that he/she does not possess one, benefits will be terminated;

(iv) The social security numbers may be used to identify household members in carrying out efforts to verify the correctness of information stated on the application and continued eligibility for the program. These verification efforts may be carried out through program reviews, audits, and investigations and may include contacting offices administering means-tested programs or the State employment security office and checking documentation produced by household members to prove the amount of income received. These verification efforts may also include contacting employers to determine income.

(v) The provisos in paragraphs (f)(1)(i) through (f)(1)(iv) of this section must be provided to the attention of each adult household member disclosing his/her social security number. State agencies and local educational agencies must ensure that the notice complies with section 7 of Public Law 93-579 (Privacy Act of 1974).

(vi) Households notified of their selection for verification must also be informed that, in lieu of any information that would otherwise be required, they can submit proof that the children are members of a household receiving assistance under the Food Stamp Program, FDPIR or TANF as described in paragraph (f)(3) of this section to verify the free meal eligibility of a child who is a member of a household receiving assistance under the Food Stamp Program, FDPIR or TANF household.

Households must also be informed that, in lieu of any information that would otherwise be required, they may request that the local educational agency contact the appropriate officials to confirm that their children are homeless, as defined under section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)); are served by a runaway and homeless youth grant program established under the Runaway and Homeless Youth Act (42 U.S.C. 5701 et seq.); or are migratory as defined in section 1309 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6399). Households notified of their selection for verification shall be advised that failure to cooperate with verification efforts will result in the termination of benefits.

(2) *Documentation timeframe.* Households selected and notified of their selection for verification must provide documentation of income. The documentation must indicate the source, amount and frequency of all income and can be for any point in time between the month prior to application for school meal benefits and the time the household is requested to provide income documentation.

(3) *Food Stamp FDPIR or TANF recipients.* On applications where households have furnished Food Stamp Program or TANF case numbers or FDPIR case numbers or other FDPIR identifiers, verification shall be accomplished by confirming with the Food Stamp Program, FDPIR, or TANF office that at least one child who is eligible because a case number was furnished, is a member of a household participating in one of the eligible programs in paragraph (a)(1) of this section. The household may also provide a copy of "Notice of Eligibility" for the Food Stamp Program, FDPIR or the TANF Program or equivalent official documentation issued by the Food Stamp Program, FDPIR or TANF office which confirms that at least one child who is eligible because a case number was provided is a member of a household receiving assistance under the Food Stamp Program, FDPIR or the TANF program. An identification card for these programs is not acceptable as verification unless it contains an expiration date. If

it is not established that at least one child is a member of a household receiving assistance under the Food Stamp Program, FDPIR or the TANF program (in accordance with the timeframe in paragraph (f)(2) of this section), the procedures for adverse action specified in paragraph (j) of this section must be followed.

(4) *Household cooperation.* If a household refuses to cooperate with efforts to verify, eligibility for free or reduced price benefits shall be terminated in accordance with paragraph (j) of this section. Households which refuse to complete the verification process and which are consequently determined ineligible for such benefits shall be counted toward meeting the local educational agency's required sample of verified applications.

(5) *Telephone assistance.* The local educational agency shall provide a telephone number to households selected for verification to call free of charge to obtain information about the verification process. The telephone number must be prominently displayed on the letter to households selected for verification.

(6) *Followup attempts.* The local educational agency shall make at least one attempt to contact any household that does not respond to a verification request. The attempt may be through a telephone call, e-mail, mail or in person and must be documented by the local educational agency. Non-response to the initial request for verification includes no response and incomplete or ambiguous responses that do not permit the local educational agency to resolve the children's eligibility for free or reduced price meal and milk benefits. The local educational agency may contract with another entity to conduct followup activity in accordance with §210.21 of this chapter, the use and disclosure of information requirements of the Richard B. Russell National School Lunch Act and this section.

(7) *Eligibility changes.* Based on the verification activities, the local educational agency shall make appropriate modifications to the eligibility determinations made initially. The local educational agency must notify the household of any change. Households must be notified of any reduction

in benefits in accordance with paragraph (j) of this section. Households with reduced benefits or that are no longer eligible for free or reduced price meals must be notified of their right to reapply at any time with documentation of income or participation in one of the eligible programs in paragraph (a)(1) of this section.

(g) *Direct verification.* Local educational agencies may conduct direct verification activities with the eligible programs defined in paragraph (a)(1) of this section and with the public agency that administers the State plan for medical assistance under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.), (Medicaid), and under title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.), the State Children's Health Insurance Program (CHIP) as defined in §245.2. Records from the public agency may be used to verify income and program participation. The public agency's records are subject to the timeframe in paragraph (g)(5) of this section. Direct verification must be conducted prior to contacting the household for documentation.

(1) *Names submitted.* The local educational agency must only submit the names of school children certified for free or reduced price meal benefits or free milk to the agency administering an eligible program, the Medicaid program or the SCHIP program. Names and other identifiers of adult or non-school children must not be submitted for direct verification purposes.

(2) *Eligible programs.* If information obtained through direct verification of an application for free or reduced price meal benefits indicates a child is participating in one of the eligible programs in paragraph (a)(1) of this section, no additional verification is required.

(3) *States with Medicaid Income Limits of 133%.* In States in which the income eligibility limit applied in the Medicaid program or in SCHIP is not more than 133% of the official poverty line or in States that otherwise identify households that have income that is not more than 133% of the official poverty line, records from these agencies may be used to verify eligibility. If information obtained through direct

verification with these programs verifies the household's eligibility status, no additional verification is required.

(4) *States with Medicaid Income Limits between 133%–185%.* In States in which the income eligibility limit applied in the Medicaid program or in SCHIP exceeds 133% of the official poverty line, direct verification information must include either the percentage of the official poverty line upon which the applicant's Medicaid participation is based or Medicaid income and Medicaid household size in order to determine that the applicant is either at or below 133% of the Federal poverty line, or is between 133% and 185% of the Federal poverty line. Verification for children approved for free meals is complete if Medicaid data indicates that the percentage is at or below 133% of the Federal poverty line. Verification for children approved for reduced price meals is complete if Medicaid data indicates that the percentage is at or below 185% of the Federal poverty line. If information obtained through direct verification with these programs verifies eligibility status, no additional verification is required.

(5) *Documentation timeframe.* For the purposes of direct verification, documentation must be the most recent available but such documentation must indicate eligibility for participation or income within the 180-day period ending on the date of application. In addition, local educational agencies may use documentation, which must be within the 180-day period ending on the date of application, for any one month or for all months in the period from the month prior to application through the month direct verification is conducted. The information provided only needs to indicate eligibility for participation in the program at that point in time, not that the child was certified for that program's benefits within the 180-day period.

(6) *Incomplete information.* If it is the information provided by the public agency does not verify eligibility, the local educational agency must conduct verification in accordance with paragraph (f) of this section. In addition, households must be able to dispute the

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validity of income information acquired through direct verification and shall be given the opportunity to provide other documentation.

(h) *Verification reporting and record-keeping requirements.* By March 1, each local educational agency must report information related to its annual statutorily required verification activity, which excludes verification conducted in accordance with paragraph (c)(7) of this section, to the State agency in accordance with guidelines provided by FNS.

(i) *Nondiscrimination.* The verification efforts shall be applied without regard to race, sex, color, national origin, age, or disability.

(j) *Adverse action.* If verification activities fail to confirm eligibility for free or reduced price benefits or should the household fail to cooperate with verification efforts, the school or local educational agency shall reduce or terminate benefits, as applicable, as follows: Ten days advance notification shall be provided to households that are to receive a reduction or termination of benefits, prior to the actual reduction or termination. The first day of the 10 day advance notice period shall be the day the notice is sent. The notice shall advise the household of:

- (1) The change;
- (2) The reasons for the change;
- (3) Notification of the right to appeal and when the appeal must be filed to ensure continued benefits while awaiting a hearing and decision;
- (4) Instructions on how to appeal; and
- (5) The right to reapply at any time during the school year. The reasons for ineligibility shall be properly documented and retained on file at the local educational agency.

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

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§ 245.7 Hearing procedure for families and local educational agencies.

(a) Each local educational agency of a school participating in the National School Lunch Program, School Breakfast Program or the Special Milk Program or of a commodity only school shall establish a hearing procedure under which:

(1) A family can appeal from a decision made by the local educational agency with respect to an application the family has made for free or reduced price meals or for free milk, and

(2) The local educational agency can challenge the continued eligibility of any child for a free or reduced price meal or for free milk. The hearing procedure shall provide for both the family and the local educational agency:

(i) A simple, publicly announced method to make an oral or written request for a hearing;

(ii) An opportunity to be assisted or represented by an attorney or other person;

(iii) An opportunity to examine, prior to and during the hearing, any documents and records presented to support the decision under appeal;

(iv) That the hearing shall be held with reasonable promptness and convenience, and that adequate notice shall be given as to the time and place of the hearing;

(v) An opportunity to present oral or documentary evidence and arguments supporting a position without undue interference;

(vi) An opportunity to question or refute any testimony or other evidence and to confront and cross-examine any adverse witnesses;

(vii) That the hearing shall be conducted and the decision made by a hearing official who did not participate in making the decision under appeal or in any previously held conference;

(viii) That the decision of the hearing official shall be based on the oral and documentary evidence presented at the hearing and made a part of the hearing record;

(ix) That the parties concerned and any designated representative shall be notified in writing of the decision of the hearing official;

(x) That a written record shall be prepared with respect to each hearing,