CACFP-670

JAN 31 2002

Reply to
Attn of:

Subject: Child and Adult Care Food Program (CACFP) Questions and Answers (Q&A’s)

To: STATE AGENCY DIRECTORS (Special Nutrition Programs) Colorado DPHE, Iowa, Kansas, Missouri DH, Montana DPHHS, Nebraska, North Dakota, South Dakota, Utah, Wyoming

For your information attached is a list of policy Q&As on the CACFP that we have compiled based on questions raised by state agencies since our last Q&A memorandum, CACFP-662 issued October 25, 2001.

As you know, we periodically review questions asked by state agencies and issue a Q&A policy memorandum such as this. We will continue to transmit any National policies as the need arises.

If you have any questions, please contact our office.

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Acting Regional Director
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Attachment

FORM FCS-607 (4-96)
CORRECTION TO CACFP-560, question 7 – The reference to the Regulation should be 226.18(e) rather than 226.19(e).

**Audits**

1. **Q.** How long must audits be kept on file? Is the timeframe the same for A-133 audits and audits conducted by a state agency (SA)?

   **A.** 7 CFR Part 3016.42, Retention and access requirements for records, states, "...records must be retained for three years ...." It goes further to state, "If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later." Part 3016 does not make a distinction between A-133 audits and audits conducted by the SA; therefore, the same guidelines are followed for both A-133 audits and audits conducted by the SA.

**Civil Rights**

2. **Q.** A sponsoring organization (SO) of family day care homes (FDCHs) has an agreement with a deaf provider. The SO decides it is too expensive to provide an interpreter for the deaf provider. May the SO terminate the agreement with the deaf provider because of the expense of providing an interpreter?

   **A.** Per 7 CFR Part 15b, Nondiscrimination on the Basis of Handicap, the SO may not terminate a provider due to the provider’s disability. In addition, the SO is required to provide training to the provider. It may be possible that other organizations might provide an interpreter such as the state department of health and human services.
Financial Management
(Selected items of cost from FM Instruction 796-2, Revision 3 will be notated with the
item number in this section.)

3. Q. If a meeting or conference is directed toward day care providers, but is not
100 percent CACFP related, is the cost to attend and have an exhibit,
demonstration or display an allowable cost? Example: state NAEYC
conference or a provider’s day out which may be sponsored by SOs or
provider support groups. See item #3, Advertising and Public Relations
Costs, of the Instruction.

Further, if the meeting or conference is directed toward parents or the
general public, would exhibits, demonstrations or displays be an allowable
cost?

A. First and foremost, the SA must determine that the cost is necessary
and reasonable. In addition, the SA must determine if the cost is to
inform individuals, groups or the general public about the CACFP or
to increase an institution’s CACFP participation. If that is truly the
purpose, the costs would be allowable with prior approval. In the
example given regarding a provider’s day out, we caution that the SA
determine if the providers are already participating in the CACFP. If
the providers are, what would be the purpose of the exhibit? SAs
must ensure this type of cost is not abused by SOs.

4. Q. Are legal fees associated with personnel matters allowable costs? What if
a CACFP employee is terminated and then files a law suit against the
institution?

A. Legal Expenses, item #24, allows the costs of these expenses when the
services are required in the administration of the Program. These
costs would include those routine in nature (i.e., legal costs for looking
over employee contracts, consulting with a lawyer to draft a written
personnel policy, etc.). If an employee brings suit against the
institution based on the termination of the employee, the allowability
of these legal costs would be determined on a case-by-case basis. It
depends on the basis of the termination. If the employee is terminated
due to cause related to CACFP such as being fired for not performing
job duties (i.e., doing a bad job), and the state supports the
institution’s decision to terminate, the legal defense costs are
allowable if the employee sues the institution for being terminated for
that cause. The legal costs would not be allowable if the employee’s
suit against the institution is related to the violation of a Federal or
state employment regulation and the institution loses the case. For
example, if the employee brings a discrimination suit against the
institution due to the termination and the institution loses, the legal costs would not be allowable.

5. Q. Per item #24, is the cost of a collection agency an allowable cost for a SO of FDCHs as it attempts to recover overpayments made to a FDCH?

A. Yes. The category “Legal Expenses and Other Professional Services” does allow SOs to pursue administrative and judicial recovery of funds due from sponsored facilities when the costs are reasonable in relation to……” Please note that it does require specific prior written approval.

6. Q. Is the SO liable for the overpayments made to FDCHs when the SO is unable to collect them?

A. If the SO identifies and establishes an overclaim of a FDCH provider and is unable to collect, the SO would not necessarily be liable to repay the money back to the SA. As long as the SO performed its monitoring, training, etc., duties appropriately and took appropriate steps to collect the overclaim, the SA could determine that the SO is not liable for the overclaim amount. If the SO did not identify this problem earlier because it had not properly monitored, trained, etc., its FDCHs, the SO would be liable and required to return the money to FNS via the SA. In contrast, if the SA or a Federal agency identifies a problem requiring an overclaim against a FDCH provider and the SO is unable to collect, the SO would be liable for that overclaim amount if the SA determines the SO has not fulfilled its duties. The SO should communicate with the SA regarding overclaims it is unable to collect for its concurrence on the appropriateness of the SO actions.

7. Q. Per item #28, is attendance at a general dietetic conference, such as ADA, considered 100 percent allowable under the CACFP or must it be prorated based on child nutrition sessions attended?

A. The costs must be prorated since the agenda generally includes many more topics than CACFP related issues.

8. Q. Are local child care network organizations and the National Education of the Young Child considered Program-related organizations for determining allowability of costs, or are they civic organizations of which the costs would require RO approval as stated in item #29?
A. We believe these organizations are Program-related organizations rather than civic organizations and do not require RO approval. However, it is up to each SA to ensure that the costs related to these organizations are allowable.

9. Q. Are the following types of subscription services included in the definition of "subscriptions to professional and technical periodicals related to the program" found in item #29 a (3), "Membership, Subscriptions, and Professional Organization Activities": general nutrition publications, magazines regarding specific software products, management and personnel publications, general early childhood publications, provider services (clip art, newsletter articles, inserts, etc.)?

A. Item #29 a (3) states the cost is allowable if the periodical is related to the Program. Nutrition related periodicals would be allowable; however, software magazines, management and personnel publications would not be allowable. Early childhood publications and other publications involving clip art, etc., would need to be evaluated by the SA to determine if it is Program related. See page 50, item (3), "Labor Costs", of the Instruction which discusses employee's individual memberships in professional organizations and the cost of subscriptions to professional periodicals for these employees.

10. Q. Does the interpretation of "...materials related solely to the program..." found in item #33 a(1), "Publication, Printing and Reproduction," include such topics as: general nutrition, early childhood eating patterns and behavior, health and safety issues related to eating (choking, CPR, etc.)?

A. SAs need to determine if the materials are related solely to the Program. If so, they are allowable. However, in the example above, we would not consider materials related to childhood behavior or CPR as related to the Program.

11. Q. Must the indirect cost rate that DHHS assigns to a CACFP institution be accepted by the SA?

A. Yes. However, it is up to the SA to ensure the rate is being appropriately applied.

12. Q. A SO conducts internal audits/reviews each month of a few FDCH files. In many cases, this audit triggers a claim revision. In actuality, what this means is that the SO submits a revised claim one month for one FDCH based on the audit and the next month submits another revised claim for the very same month due to the audit of another FDCH. Upward revisions are always completed within the 90-day requirement. But what about
downward revisions? The SO would like to only make these downward revisions once a quarter. Is this acceptable? And does it require FNS approval?

A. There is no prohibition against a SO submitting downward adjustments quarterly or even semi-annually. The SO needs a plan that has been approved by the SA to ensure revisions are submitted timely. These downward revisions do not require FNS approval.

Food Service Management Companies

13. Q. Is it possible for CACFP meals to be delivered by a FSMC in bulk and then “unitized” by the center staff?

A. Yes. The SFSP regulations require vended meals to be unitized; however, this is not a requirement of the CACFP.

Income Eligibility

14. Q. A parent completes an Income Eligibility Form (IEF) for his/her child who is being cared for in a Tier II FDCH. The parent does not date the IEF. May the meals served to this child be reimbursed at Tier I rates as long as the information provided by the family indicates its eligibility for Tier I?

A. Yes. According to the definition of “Documentation” found in the Regulations, it is not a requirement that the parent date the IEF. However, institution personnel must document the approval date indicating the date meals served to the child may be claimed at the Tier I rates.

Meals

15. Q. A Head Start facility buses children. The children who ride the bus are on the bus for as long as 1 1/2 hours. Other children who attend the Head Start facility do not ride the bus. Is it acceptable to serve and claim snacks to the children on the bus and not the other children who do not ride the bus?

A. Since the children riding the bus are in care longer than the others and as long as the children on the bus are still considered to be in the care of the Head Start facility, snacks may be served to these children and claimed for reimbursement. However, if possible, we encourage the Head Start facility to try and serve all children a snack before they leave for the day.
16. Q. A FDCH provider wants to provide a lunch to his/her own school-age children on school days? Is this a reimbursable meal?

A. The FDCH provider may claim for reimbursement meals served to his/her children if they decide not to eat the free/reduced price meals served at school. However, Part 226.18(e) identifies requirements that must be met in order for providers to claim meals served to his/her own children. This supercedes longstanding policy that if children have the National School Lunch Program (NSLP) available to them at school, they must participate in the NSLP.

Provider Transfers

17. Q. Public Law 106-224 says that provider transfers from one SO to another may only happen once a year. Is once a year defined as calendar year, Federal Fiscal Year (FY), state FY, etc?

A. The SA may determine how to define once a year. We believe the intent of the law was that transfers would not happen more than once during a 12 month period. However, the SA must ensure that if the Federal FY or state FY is chosen that it is not abused.

18. Q. What is the date used for the transfer when determining that only one occurs per year?

A. The date the transfer is completed. So, if a provider dropped from one sponsor and did not sign up with another one for a couple of months, the transfer date would be noted as the date the provider signs up with the second sponsor.

19. Q. How should SOs notify providers that they may only transfer once a year?

A. This is up to the SA. It is suggested that the SO inform the provider at the time he/she initially signs up with the SO.

Tiering

20. Q. A provider is classified as a Tier II mixed home. Some months all the children in attendance are all high or all low. Other months the children in attendance are mixed. On the FNS-44, the instructions on page 3 define a Tier II mixed home as one enrolling at least one child in each reimbursement category. How is the situation described above describing a Tier II mixed home with all children in attendance for the month as all high or all low reported by the SA on the FNS-44?
A. The SA should report participation for the Tier II mixed home based on actual participation for the reporting month. So, if all children in attendance are all high, the participation would be reported in the Tier II All Higher category.