COMMISSION ON CIVIL RIGHTS

December 21, 1988.

PLACE: Stouffer Harbor Place Hotel, 202 East Pratt Street, Baltimore, Maryland 21202.

DATE AND TIME: Monday, January 9, 1988, 3:00 p.m.—6:00 p.m. Tuesday, January 10, 1989, 9:00 a.m.—6:00 p.m.

STATUS OF MEETING: Open to the public.

MATTERS TO BE CONSIDERED:

I. Commission Reorganization

II. Discussion—Commission Reauthorization

III. Discussion and Action—Program Planning for FY '89–'90

A. Current Projects

B. Proposed Projects

IV. Staff Briefings

A. Press Coverage—CPA

B. Ethics & FOIA Issues—Solicitor

C. Defame & Degrade—OGC

D. FACA, SAC Recharters, Consultants, and Other Administrative Procedures—OSD

PERSONS TO CONTACT FOR FURTHER INFORMATION: John Eastman, Press and Communications Division, (202) 376–8312.

William H. Gillers,

Solicitor.

[FR Doc. 88–29956 Filed 12–23–88; 3:43 am]

BILLING CODE 6335-01-M

COMMISSION ON CIVIL RIGHTS

December 21, 1988.

PLACE: Stouffer Harbor Place Hotel, 202 East Pratt Street, Baltimore, Maryland 21202.

DATE AND TIME: Monday, January 9, 1988 9:00 a.m.—1:00 p.m.

STATUS OF MEETING: Portion open to the public and portion closed.

MATTERS TO BE CONSIDERED:

I. Approval of Agenda

II. Approval of Minutes of December Meeting

III. Announcements

IV. Discussion and Resolution: *Patterson v. McLean Credit Union*

V. SAC Reports

VI. Staff Director's Report

VII. Discussion and Action Regarding Revised Draft, *Medical Discrimination Against Children with Disabilities*

VIII. Executive Session closed to the public to discuss internal personnel matters

IX. Future Agenda Items

PERSON TO CONTACT FOR FURTHER INFORMATION: John Eastman, Press and Communications Division, (202) 376–8312.

William H. Gillers,

Solicitor.

[FR Doc. 88–29957 Filed 12–23–88; 3:43 pm]

BILLING CODE 6335-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, January 5, 1989.

PLACE: 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Regulation of Hybrid and Related Instruments/ proposed rules.

Application for designation as a contract market Thirty Day Federal Funds Index futures/New York Cotton Exchange.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88–30012 Filed 12–23–88; 3:43 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., Friday, January 27, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88–30013 Filed 12–23–88; 3:43 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, January 31, 1989.

PLACE: 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Applications for designations as contract markets for:

Japanese Yen Euro-Rate Differential Futures/Chicago Mercantile Exchange.

Deutsche Mark Euro-Rate Differential Futures/Chicago Mercantile Exchange.

Pound Sterling Euro-Rate Differential Futures/Chicago Mercantile Exchange.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88–30014 Filed 12–23–88; 3:43 pm]

BILLING CODE 6351-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of December 26, 1988, January 2, 9, and 16, 1989.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of December 26

THERE ARE NO COMMISSION MEETINGS SCHEDULED FOR THE WEEK OF DECEMBER 26.

Week of January 2—Tentative

Thursday, January 5

2:00 p.m.—Briefing on Regulatory Responsibilities and Schedules for the HLW Repository Program (Public Meeting)

3:30 p.m.—Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, January 6

10:00 a.m.—Briefing on Staff Actions to Reduce Testing at Power (Public Meeting)

Week of January 9—Tentative

Thursday, January 12

3:30 p.m.—Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of January 16—Tentative

Thursday, January 19

10:00 a.m.—Briefing on Medical Use of By-Product Materials (Public Meeting)

11:30 a.m.—Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION: By a vote of 5–0 on December 21, 1988, the Commission determined pursuant to 5 U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that Commission business required that "Affirmation of Final Policy Statement On the Professional Conduct of Nuclear Power Plant Operators; Petition for Leave to Intervene in the Comanche Peak Operating License and Construction Permit Amendment Proceedings; Petitions for Review of Three Shoreham Appeal Board Decisions (ALAB–900, ALAB–901, ALAB–902); Order on Seabrook Station (Financial Qualification Issues—Decommissioning Funding and Rule Waiver); and Vote on Authorization to Restart Pilgrim Nuclear Power Plant," scheduled for December 21, 1988, be held on less than one week's notice to the public.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL: (Recording)—(301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

December 23, 1988.

Jack Guttmann,

Office of the Secretary.

[FR Doc. 88–29991 Filed 12–23–88; 3:43 pm]

BILLING CODE 7590-01-M

Corrections

Federal Register
Vol. 53, No. 249
Wednesday, December 28, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 87-072]

Garbage

Correction

In rule document 88-28579 beginning on page 49974 in the issue of Tuesday, December 13, 1988, make the following correction:

§ 94.5 [Corrected]

On page 49978, in the first column, in § 94.5(c)(2)(ii), in the first line, remove "being cleared of".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-AWA-52]

Establishment of an Airport Radar Service Area; Colorado Springs, CO

Correction

In rule document 88-28838 beginning on page 50494 in the issue of Thursday, December 15, 1988, make the following correction:

On page 50494, in the second column, in the **DICUSSION OF COMMENTS**, after the first paragraph, add the following paragraph:

The Air Transport Association expressed support for the ARSA concept and the design of the Colorado Springs ARSA.

BILLING CODE 1505-01-D

federal register

Wednesday
December 28, 1988

Part II

Department of Education

34 CFR Parts 674, 675, and 676

Perkins Loan Program, College Work-Study Program, and Supplemental Educational Opportunity Grant Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 674, 675, and 676

Perkins Loan Program, College Work-Study Program, and Supplemental Educational Opportunity Grant Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations for the Perkins Loan, College Work-Study (CWS) and Supplemental Educational Opportunity Grant (SEOG) programs. These amendments interpret provisions of the Higher Education Amendments of 1986 and modify provisions contained in the December 1, 1987 regulations. The interpretations will result in a reduction of administrative burden on institutions and individuals.

EFFECTIVE DATE: These regulations become effective either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Richard P. Coppage or Michael Oliver, Policy Section, Campus and State Grant Branch, Division of Policy and Program Development, Office of Student Financial Assistance, 400 Maryland Avenue SW., (Room 4018, ROB-3), Washington, DC 20202-5446. Telephone (202) 732-4490.

SUPPLEMENTARY INFORMATION: The Perkins Loan, CWS and SEOG programs (known collectively as the campus-based programs) are "need-based" student financial aid programs administered by institutions of higher education. In order to award financial aid under each program, an institution must determine whether a student has financial need. The institution determines a student's financial need by subtracting from the student's educational cost his or her resources and his or her expected family contribution (EFC), i.e., the amount the student, his or her spouse and, in the case of a dependent student, his or her parents, may reasonably be expected to contribute toward his or her educational costs. The EFC is based on the following elements—

(1) The available income of (A) the student and his or her spouse, or (B) the student (and spouse) and the student's parents, in the case of a dependent student, estimated as an amount equal to base year income;

(2) The number of dependents in the family of the student;

(3) The number of dependents in the student's family who are enrolled in a program of postsecondary education on at least a half-time basis and for whom the family may reasonably be expected to contribute toward postsecondary education costs;

(4) The net assets of (A) the student and his or her spouse, and (B) the student (and spouse) and the student's parents, in the case of a dependent student;

(5) The marital status of the student;

(6) Any unusual medical and dental expenses of (A) the student and the student's parents, in the case of a dependent student, or (B) the student and his or her dependents, in the case of an independent student;

(7) The number of dependents of an independent student, or of the parents of a dependent student, other than the student, enrolled in private elementary or secondary institutions and the unreimbursed tuition paid (A) in the case of a dependent student, by the student's parents for such dependent children who are so enrolled, or (B) in the case of an independent student with dependents, by the student or his or her spouse for such dependent children who are so enrolled; and

(8) The additional employment expenses incurred (A) in the case of a dependent student, when both parents of the student are employed or when the family is headed by a single parent who is employed, or (B) in the case of an independent student, when both the student and his or her spouse are employed or when the employed student qualifies as a surviving spouse or as a head of a household under section 2 of the Internal Revenue Code of 1986.

On December 1, 1987, the Secretary published final regulations for the campus-based programs in the **Federal Register** (52 FR 45738). These regulations require institutions to include as a resource (funds available to help pay for a student's costs) net earnings from employment during the award period (other than CWS employment) that are not included in calculating the EFC. This procedure represented a continuation of previous policy.

The 1986 amendments to Part F of Title IV of the HEA mandated the use of new formulas (Congressional Methodology (CM)) for determining a student's EFC for the campus-based programs. Unlike the old formulas, under which a dependent student's non-need-based earnings during the award period were treated as a resource, the new formulas require that an amount equal to base year income be used in calculating an EFC for both dependent and independent students.

Beginning with the 1988-89 award year an amount equal to all taxable and untaxable income received during the calendar year preceding the academic year is considered as base year income in calculating the EFC. Thus, for example, in calculating an EFC for the 1988-89 award year, an amount equal to base year 1987 income is used.

The December 1, 1987 regulations require that earnings for student employment, known to the institution, be monitored and adjustments be made to financial aid award packages to prevent overawards. Questions on the continued applicability of the student employment monitoring provision were raised by the financial aid community since non-need-based earnings will now be considered base-year income for the subsequent award period. If the monitoring and adjustment provisions remain intact, these same earnings will also be treated as a resource in the year earned and, thus, will be "double-counted."

As a result of this community concern regarding the treatment of non-need-based earnings, already counted as base year income, as a "resource," the Secretary has issued an interpretative ruling which provides that non-need-based earning will be treated only as base-year income and not as a resource. As in the past, institutions will continue to be responsible for monitoring earnings from all need-based employment programs to ensure that the student does not receive need-based employment earnings in excess of his or her need. Need-based employment means employment awarded by the institution itself or by another entity to a student who demonstrates a financial need for those funds for the purpose of defraying educational costs of attendance for the award period. Examples of need-based employment would include employment awarded under the Veterans Administration work-study program, and employment provided by a States, if awarded on the basis of financial need for the purposes of defraying educational expenses.

Under the revised regulations, monitoring of non-need-based employment is never required if the student is not employed under the CWS program. Monitoring of non-need-based employment is required only if all of the following conditions are met—(1) the student is employed under the CWS program, (2) the student's financial need has been met, and (3) the institution wishes to continue to employ the student under the CWS program. Under these revised regulations, monitoring of employment is only required in order to determine when CWS funds may no longer be used to pay wages. Section 443(b)(4) of the HEA provides that for a student employed under the CWS program, at the time income derived from any employment (need-based or non-need-based) exceeds the amount of such student's need by more that $200, continued employment shall not be subsidized with CWS funds. The Department has interpreted this statutory provision to mean that institutions must terminate CWS compensation for employment when the income from any employment earned subsequent to time that the student's need is met, exceeds the student's need by more than $200. An institution should not consider CWS earnings, in excess of need, which are less than or equal to $200, as a resource the following year or as income for purpose of computing the EFC. Earnings from non-need-based employment will be counted as income for the following year.

The institution may not consider non-need-based earnings as a "resource." If, in a specific case, the institution believes that the amount of base year earnings does not accurately reflect the amount a student can be expected to earn in the subsequent award year, the institution has the authority under Section 479A of the HEA to make adjustments to the EFC or to use the projected income in the calculation.

Therefore, the Secretary is amending 34 CFR 674.14, 675.14 and 676.14, regulations applicable to the Perkins Loan, CWS and SEOG programs respectively, to exclude from the definition of "resources" award period non-need-based earnings. Non-need-based earnings are used, however, to count toward the determination of when the $200 threshold requiring a discontinuation of CWS funding is needed in cases in which the following conditions are met:

(a) The student is employed under the CWS program;

(b) The student's financial need has been met; and

(c) The institution wishes to continue to employ the student under the CWS program.

The following employment case studies illustrate the application of the monitoring requirement:

Employment case study #1

Julie has a financial need of $3,000. She was awarded a Pell Grant of $1,000, and SEOG of $1,000 and a Perkins Loan of $1,000. She also has employment off-campus that she obtained herself. The institution has deterrmined this employment to be non-need-based employment. No monitoring of her earnings is required nor is an adjustment to her student financial aid package required as a result of her non-need-based employment.

Employment case study #2

Howard has a financial need of $2,000. He was awarded a CWS job of $2,000. He also works off-campus in a position which he obtained himself. The institution has determined this employment to be non-need-based employment. He has earned $2,000 in the College Work-Study program, had job-related costs of $100 for taxes and uniforms, and the school plans to terminate his employment when he reaches $2,100 in CWS earnings. The institution must monitor only his CWS employment since it plans to terminate his CWS employment when his need is met.

Employment case study #3a

Marcia has a financial need of $5,000. She has been awarded a Perkins Loan of $2,000 and CWS employment of $3,000. She also works on campus in the biology lab. The institution considers her biology lab employment to be non-need-based employment and the school plans to terminate her CWS employment when her CWS earnings reach $3,000. The institution must monitor only her CWS employment until she has earned the $3,000. No further monitoring is required if her employment under the CWS program is then terminated.

Employment case study #3b

Please refer to case study 3a. It is nearing the end of the award year and Marcia's Perkins Loan has been fully disbursed. She has earned $2,900 in CWS earnings and has job-related costs of $100. The institution wants to continue her CWS employment for four more weeks and expects her additional CWS earnings to be about $400. The steps the institution must follow are as follows:

(1) The institution must monitor only her CWS employment earnings until she earns a total of $3,100 in CWS funds (her CWS award amount for $3,000 plus $100 in job-related costs).

(2) When her CWS earnings reach $3,100 the institution must begin monitoring BOTH her subsequent CWS and biology lab earnings.

(3) When the combination of CWS earnings and biology lab earnings, earned subsequent to the time her need was met, exceed $200, no further CWS funds may be used to pay for her employment. In this case, the additional CWS funds permitted to be paid after her need has been met may be less than $200 (e.g., if she earns $75 from the biology lab employment, only $125 may be paid from CWS funds for her CWS employment). The institution is free, however, to continue to employ her in the same position on its own payroll; no CWS funds may be used to pay wages for such employment or to defray administrative costs associated with that employment.

Were she employed only under the CWS program, a total of $3,300 in CWS funds could be expended ($3,100 to meet her need plus the additional earnings of $200).

In all of these examples, non-need-based earnings will be treated as base year income for the following award year if the student applies for financial aid.

Waiver of Notice of Proposed Rulemaking

The Higher Education Amendments of 1986 changed the formulas contained in the HEA, for determining students' EFCs toward their higher education costs for Title IV programs, including the campus-based programs. One change is the requirement that an amount equal to base year income, rather than projected year earnings, be used in determining the EFC. The financial aid community has raised a concern that unless the Department interprets Part F of Title IV of the HEA to require that earnings from non-need-based employment be considered only as part of base year income and not as a resource, these earnings will be "double-counted" by being treated as a resource in the year earned and considered as base year income for the subsequent award year.

The Department had not identified this concern as of the time it published campus-based regulations on December 1, 1987 that continued the Department's former practice of treating non-need-based earnings as a resource. (34 CFR 674.14, 675.14, 676.14.) However, the Department now recognizes that it is necessary to make an interpretative ruling in order to avoid the anomalous consequences identified above, which the Department believes that Congress did not intend. The Department has determined that non-need-based earnings should be treated as part of base year income and not as a resource.

Section 443(b)(4) of the HEA requires that institutions stop funding CWS employment with CWS funds once the CWS recipient has earned more than $200 above his or her need from any employment, whether or not that employment is need-based. The statutory language is silent as to the time period to be considered in making the assessment of whether a student's earnings have exceeded his or her need. The Department is issuing an additional interpretative rule to provide this time element, which is necessary to implement the statute. The Department will consider all earnings earned subsequent to the time that a student's need is met, including both need-based and non-need-based earnings, to count toward the determination of when the $200 threshold requiring a discontinuation of CWS funding is reached. Non-need-based earnings earned prior to the time a student's need is met will not be counted toward meeting the student's need but will instead be used only as part of base year income in the subsequent award year.

As a direct consequence of these interpretative rulings, the Department's monitoring requirements for non-need-based earnings are being eliminated and no adjustments to financial aid packages will be required to be made as a result of such earnings during the award year except with respect to the CWS exception, noted above. Therefore, monitoring of non-need-based employment is not necessary except when an institution continues to fund a student's CWS employment with CWS funds after that student's need has been met. In that circumstance, monitoring will begin when the need has been met and will end when the use of CWS funds is discontinued.

In accordance with Section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, as noted, these amendments are interpretative rules and therefore exempt from rulemaking under 5 U.S.C. 553(b)(A). The changes in the treatment of non-need-based earnings made by these regulations are necessary to effectuate statutory changes made as part of the Higher Education Amendments of 1986.

In the interest of providing immediate guidance to affected parties, the Secretary has decided, pursuant to 5 U.S.C. 553(b)(A), to forego notice and comment procedures for these interpretative rules.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Regulatory Flexibility Act

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. The small entities affected are small institutions of higher education. The regulations reduce burden and provide guidance to affected parties. The regulations will not have a significant economic impact on any of the entities affected.

Assessment of Educational Impact

The Secretary has determined that regulations in this document would not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Parts 674, 675, and 676

Education loan programs—education, Student aid, Reporting and recordkeeping requirements.

Dated: November 3, 1988.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: Supplemental Educational Opportunity Grant Program, 84.007; College Work-Study Program, 84.033; Perkins Loan Program, 84.038)

The Secretary amends Parts 674, 675, and 676 of Title 34 of the Code of Federal Regulations as follows:

PART 674—PERKINS LOAN PROGRAM

1. The authority citation for Part 674 continues to read as follows:

Authority: 20 U.S.C. 1087aa–1087hh and 20 U.S.C. 421–429 unless otherwise noted.

2. Section 674.2(b) is amended by adding, in alphabetical order, a definition of *Need-based employment* to read as follows. (The asterisk indicates provisions common to Parts 674, 675, and 676.)

§ 674.2 Definitions.

* * * * *

(b) * * *

**Need-based employment:* Employment provided by an institution itself or by another entity to a student who has demonstrated to the institution or the entity (through standards or methods it establishes) a financial need for the earnings from that employment for the purpose of defraying educational costs of attendance for the award year for which the employment is provided.

* * * * *

3. Section 674.14 is revised to read as follows. (The asterisk indicates provisions common to Parts 674, 675, and 676.)

§ 674.14 Overaward.

*(a) *Overaward prohibited.* (1) An institution may only award or disburse a Direct loan or a Perkins loan to a student if that loan, combined with the other resources the student receives, does note exceed the student's financial need.

(2) When awarding and disbursing a Direct loan or a Perkins loan to a student, the institution shall take into account those resources it—

(i) Can reasonable anticipate at the time it awards loan funds to the student;

(ii) Makes available to its students; or

(iii) Otherwise knows about.

(3) If a student receives resources at any time during the award period that were not considered in calculating the loan amount, and the total resources including the loan exceed the student's need, the overaward is the amount that exceeds need.

*(b) *Resources.* (1) Except as provided in paragraph (b)(2) of this section, the Secretary considers that "resources" include but are not limited to any—

(i) Funds a student is entitled to receive from a Pell Grant, regardless of whether the student applies for the Pell Grant;

(ii) Guaranteed Student Loans;

(iii) Waiver of tuition and fees;

(iv) Grants, including SEOGs and ROTC subsistence allowances;

(v) Scholarships, including athletic scholarships and ROTC scholarships;

(vi) Fellowships or assistantships;

(vii) Insurance programs for the student's education;

(viii) Veterans benefits;

(ix) Net earnings from need-based employment; and

(x) Except as provided in paragraph (b)(3) of this section, long-term loans, including Perkins and Direct Loans and need-based ICLs, made by the institution.

(2) The Secretary does not consider as a resource—

(i) Any portion of the resources described in paragraph (b)(1) of this section that are included in the student's expected family contribution (EFC); and

(ii) Earnings from non-need-based employment.

(3) The institution may treat a Supplemental Loan for Students (SLS), State-sponsored or private loan, PLUS loan, or non-need-based ICL as a

substitute for a student's EFC. However, if the sum of the loan amounts received exceeds the student's EFC, the excess is a resource.

*(c) *Treatment of resources in excess of need.* An institution shall take the following steps if it learns that a student has received additional resources not included in the calculation of Direct or Perkins Loan eligibility that would result in the student's total resources exceeding his or her financial need by more than $200:

(1) The institution shall decide whether the student has increased financial need that was unanticipated when it awarded financial aid to the student. If the student demonstrates increased financial need and the total resources do not exceed this increased need by more than $200, no further action is necessary.

(2) If no increased need is demonstrated, or the student's total resources still exceed his or her need by more than $200, as recalculated pursuant to paragraph (c)(1) of this section, the institution shall cancel any undisbursed loan or grant (other than a Pell Grant).

(3) If the student's total resources still exceed his or her need by more than $200 after the institution takes the steps required in paragraphs (c) (1) and (2) of this section, the institution shall consider the amount by which the resources exceed the student's financial need by more than $200 as an overpayment.

(d) *Liability for and recovery of overpayments.* (1) A student is liable for any overpayment of loan advances made to him or her.

(2) The institution is also liable for an overpayment if the overpayment occurred because the institution failed to follow the procedures set forth in this part. The institution shall restore an amount equal to the overpayment and any administrative cost allowance claimed on that amount to its loan fund even if it cannot collect the overpayment from the student.

(3) If an institution makes an overpayment for which it is not liable, it shall help the Secretary recover the overpayment by making a reasonable effort to contact the student and recover the overpayment. The Secretary regards a written demand to the student for repayment of the overawarded funds, with notice that failure to make that repayment will render the student ineligible for further Title IV aid, constitute such a reasonable effort.

(Authority: 20 U.S.C. 1087dd, 1087hh)

PART 675—COLLEGE WORK-STUDY AND JOB LOCATION AND DEVELOPMENT PROGRAMS

Part 675 of Title 34 of the Code of Federal Regulations is amended as follows:

4. The authority citation for Part 675 continues to read as follows:

Authority: 42 U.S.C. 2571–2756z, unless otherwise noted.

5. Section 675.2(b) is amended by adding, in alphabetical order, a definition of *Need-based employment* to read as follows: (The asterisk indicates provisions common to Parts 674, 675, and 676.)

§ 675.2 Definitions.

* * * * *

(b) * * *

* *Need-based employment:* Employment provided by an institution itself or by another entity to a student who has demonstrated to the institution or the entity (through standards or methods it establishes) a financial need for the earnings from that employment for the purpose of defraying educational costs of attendance for the award year for which the employment is provided.

* * * * *

6. Section 675.14 is revised to read as follows: (The asterisk indicates provisions common to Parts 674, 675, and 676.)

§ 675.14 Overaward.

* (a) *Overaward prohibited.* (1) An institution may only award CWS employment to a student if the award, combined with the other resources the student receives, does not exceed the student's financial need.

(2) When awarding CWS employment to a student, the institution shall take into account those resources it—

(i) Can reasonably anticipate at the time it awards CWS funds to the student;

(ii) Makes available to its students; or

(iii) Otherwise knows about.

(3) If a student receives resources at any time during the award period that were not considered in calculating the CWS award, and the total resources including the prospective CWS wages exceed the student's need, the overaward is the amount that exceeds need.

* (b) *Resources.* (1) Except as provided in paragraph (b)(2) of this section, the Secretary considers that "resources" include but are not limited to any—

(i) Funds a student is entitled to receive from a Pell Grant, regardless of whether the student applies for the Pell Grant;

(ii) Guaranteed Student Loans;

(iii) Waiver of tuition and fees;

(iv) Grants, including SEOGs and ROTC subsistence allowances;

(v) Scholarships, including athletic scholarships and ROTC scholarships;

(vi) Fellowships or assistantships;

(vii) Insurance programs for the student's education;

(viii) Veterans benefits;

(ix) Net earnings from need-based employment; and

(x) Except as provided in paragraph (b)(3) of this section, long-term loans, including Perkins and Direct Loans and need-based ICLs, made by the institution.

(2) The Secretary does not consider as a resource—

(i) Any portion of the resources described in paragraph (b)(1) of this section that are included in the student's expected family contribution (EFC); and

(ii) Earnings from non-need-based employment.

(3) The institution may treat a Supplemental Loan for Students (SLS), State-sponsored or private loan, PLUS loan, or non-need-based ICL as a substitute for a student's EFC. However, if the sum of the loan amounts received exceeds the student's EFC, the excess is a resource.

* (c) *Treatment of resources in excess of need.* An institution shall take the following steps if it learns that a student has received additional resources not included in the calculation of CWS eligibility that would result in the student's total resources exceeding his or her financial need by more than $200:

(1) The institution shall decide whether the student has increased financial need that was unanticipated when it awarded financial aid to the student. If the student demonstrates increased financial need and the total resources do not exceed this increased need by more than $200, no further action is necessary.

(2) If no increased need is demonstrated, or the student's total resources still exceed his or her need by more than $200, as recalculated pursuant to paragraph (c)(1) of this section, the institution shall cancel any undisbursed loan or grant (other than a Pell Grant).

(d)(1) An institution may fund a student's CWS employment with CWS funds only until the amount of the CWS award has been earned or until the student's financial need, as recalculated under paragraph (c)(1) of this section, is met.

(2) Notwithstanding the provisions of paragraph (d)(1) of this section, an institution may provide additional CWS funding to a student whose need has been met until that student's cumulative earnings from all employment occurring subsequent to the time his or her financial need has been met exceed $200.

(Authority: 42 U.S.C. 2753(b)(3))

Part 676 of Title 34 of the Code of Federal Regulations is amended to read as follows:

7. The authority citation for Part 676 continues to read as follows:

Authority: 20 U.S.C. 1070b–1070b-3, unless otherwise noted.

PART 676—SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

8. Section 676.2(b) is amended by adding, in alphabetical order, a definition of *Need-based employment* to read as follows. (The asterisk indicates provisions common to Parts 674, 675, and 676.)

§ 676.2 Definitions.

* * * * *

(b) * * *

* *Need-based employment:* Employment provided by an institution itself or by another entity to a student who has demonstrated to the institution or the entity (through standards or methods it establishes) a financial need for the earnings from that employment for the purpose of defraying educational costs of attendance for the award year for which the employment is provided.

* * * * *

9. Section 676.14 is revised to read as follows. (The asterisk indicates provisions common to Parts 674, 675, and 676.)

§ 676.14 Overaward.

*(a) *Overaward prohibited.* (1) An institution may only award or disburse an SEOG to a student if the SEOG, combined with the other resources the student receives, does not exceed the student's financial need.

(2) When awarding and disbursing an SEOG to a student, the institution shall take into account those resources it—

(i) Can reasonably anticipate at the time it award SEOG funds to the student;

(ii) Makes available to its students; or

(iii) Otherwise knows about.

(3) If a student receives resources at any time during the award period that were not considered in calculating the SEOG award, and the total resources including SEOG exceed the student's need, the overaward is the amount that exceeds need.

*(b) *Resources.* (1) Except as provided in paragraph (b)(2) of this section, the Secretary considers that "resources" include but are not limited to any—

(i) Funds a student is entitled to receive from a Pell Grant, regardless of whether the student applies for the Pell Grant;

(ii) Guaranteed Student Loans;

(iii) Waiver of tuition and fees;

(iv) Grants, including SEOGs and ROTC subsistence allowances;

(v) Scholarships, including athletic scholarships and ROTC scholarships;

(vi) Fellowships or assistantships;

(vii) Insurance programs for the student's education;

(viii) Veterans benefits;

(ix) Net earnings from need-based employment; and

(x) Except as provided in paragraph (b)(3) of this section, long-term loans, including Perkins and Direct Loans and need-based ICLs, made by the institution.

(2) The Secretary does not consider as a resource—

(i) Any portion of the resources described in paragraph (b)(1) of this section that are included in the student's expected family contribution (EFC); and

(ii) Earnings from non-need-based employment.

(3) The institution may treat a Supplemental Loan for Students (SLS), State-sponsored or private loan, PLUS loan, or non-need-based ICL as a substitute for a student's EFC. However, if the sum of the loan amounts received exceeds the student's EFC, the excess is a resource.

*(c) *Treatment of resources in excess of need.* An institution shall take the following steps when it learns that a student has received additional resources not included in the calculation of SEOG eligibility that would result in the student's total resources exceeding his or her financial need by more than $200:

(1) The institution shall decide whether the student has increased financial need that was unanticipated when it awarded financial aid to the student. If the student demonstrates increased financial need and the total resources do not exceed this increased need by more than $200, no further action is necessary.

(2) If no increased need is demonstrated, or the student's total resources still exceed his or her need by more than $200, as recalculated pursuant to paragraph (c)(1) of this section, the institution shall cancel any undisbursed loan or grant (other than a Pell Grant).

(3) If the student's total resources still exceed his or her need by more than $200 after the institution takes the steps required in paragraphs (c) (1) and (2) of this section, the institution shall consider the amount by which the resources exceed the student's financial need by more than $200 as an overpayment.

(d) *Liability for and recovery of overpayments.* (1) A student is liable for any SEOG overpayment made to him or her.

(2) The institution is also liable for an overpayment if the overpayment occurred because the institution failed to follow the procedures set forth in this part. The institution shall restore an amount equal to the overpayment and any administrative cost allowance claimed on that amount to its SEOG account even if it cannot collect the overpayment from the student.

(3) If an institution makes an overpayment for which it is not liable, it shall help the Secretary recover the overpayment by making a reasonable effort to contact the student and recover the overpayment. The Secretary regards a written demand to the student for repayment of the overawarded funds, with notice that failure to make that repayment will render the student ineligible for further Title IV aid, to constitute such a reasonable effort.

(Authority: 20 U.S.C. 1070b–1)

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Part III

Department of Agriculture

Food and Nutrition Service

7 CFR Part 226

Child Care Food Program; Adult Day Care Provision; Interim Rule With Request for Comments

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 226

Child Care Food Program: Adult Day Care Provision

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim Rule with request for comments.

SUMMARY: This interim rule amends the Child Care Food Program (CCFP) regulations by providing Program eligibility for certain adult day care centers. It implements a provision of the Older Americans Act (OAA) Amendments of 1987, which allows these centers to receive cash and commodity assistance available under the CCFP for meals served to eligible enrolled individuals and a provision of the Rural Development, Agriculture and Related Agencies Appropriations Act of 1989, which provides categorical eligibility for free meals for participants of these centers who receive assistance under Title XVI or XIX in the Social Security Act or are members of a household receiving assistance under the Food Stamp Act and defines the income to be included in determining eligibility for free and reduced-price meal benefits.

DATES: This interim rule is effective December 28, 1988. To be assured of consideration, comments must be postmarked on or before April 27, 1989.

ADDRESS: Comments should be addressed to Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, United States Department of Agriculture, 3101 Park Center Drive, Room 515, Alexandria, Virginia 22302. Comments in response to these rules may be inspected at the address above during normal business hours 8:30 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Eadie or Mr. James C. O'Donnell at the above address or by phone at (703) 756–3620.

SUPPLEMENTARY INFORMATION: .

Classification

This rule implements the provisions of the Older Americans Act Amendments of 1987 (Pub. L. 100–175, enacted November 29, 1987) and the Rural Development, Agriculture and Related Agencies Appropriations Act of 1989 (Pub. L. 100–460, enacted October 1, 1988) regarding the participation of adult day care centers in the CCFP. Section 701 of Pub. L.100–175 requires that the amendments made by that Act take effect on October 1, 1987. Publication of this rule without prior public comment is necessary to implement these provisions as soon as possible, in keeping with the October 1, 1987, effective date of Pub. L. 100–175. With regard to the provisions of Pub. L. 100–460, that legislation became effective upon enactment. Furthermore, those provisions are nondiscretionary. In light of the October 1, 1988, effective date and because the provisions in question are nondiscretionary, the Department believes that the public would be best served by including them in this interim regulation. This will allow earlier participation by institutions which are clearly eligible and will still allow for public comment on those provisions where such comment may be helpful in developing a final rule. Had the Department issued regulations containing the provisions of either legislation in proposed form, CCFP benefits would not have been available to any institution until the final rules were issued. For these reasons, Anna Kondratas, Administrator of the Food and Nutrition Service, has determined, in accordance with 5 U.S.C. 553(b), that it is impracticable and contrary to the public interest to take prior public comment and that good cause exists for publishing this rule without prior public notice and comment. For the same reasons, and in accordance with 5 U.S.C. 553(b), the Administrator has determined that good cause exists for making this rule effective without a 30-day post-publication waiting period.

This action has been reviewed under Executive Order 12291 and has been classified as not major because it will not have an annual effect on the economy of $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). Pursuant to this review, Anna Kondratas, Administrator of the Food and Nutrition Service, has certified that this interim rule will not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping requirements that are included in this interim rule have been approved by the Office of Management and Budget under clearance 0584–0055.

This Program is listed in the Catalog of Federal Domestic Assistance under No. 10.558 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.)

Background

Pub. L. 100–175, the OAA Amendments of 1987, was enacted on November 29, 1987. Section 401 of that Act amended section 17 of the National School Lunch Act (42 U.S.C. 1766) by adding a new subsection (p). Under that subsection, certain adult day care centers are eligible for cash and commodity assistance under the CCFP. Pub. L. 100–460, the Rural Development, Agriculture and Related Agencies Appropriations Act of 1989, was enacted on October 1, 1988. Section 641 of that legislation further amended section 17(p) by defining the income to be included in determining eligibility for free and reduced-price meals and providing for categorical eligibility for individuals enrolled in adult day care centers who receive assistance under Title XVI or Title XIX of the Social Security Act or are members of a household receiving assistance under the Food Stamp Act of 1977.

In general, given the legislative language of Pub. L. 100–175, the Department views these adult day care centers as eligible for the CCFP in essentially the same manner, and under the same terms and conditions, as those child care centers which are currently eligible for or participating in the Program. There are differences in the nature and ages of the populations they serve, the needs of their clients and, presumably in many cases, the type(s) of organizations which operate them. However, these differences are generally not addressed in the OAA Amendments and will not be dealt with in these regulations, except to the extent that specific legislative provisions dictate or the Department determines that distinctions need to be made. In this regard, the Department invites public comment as to other areas where CCFP regulatory distinctions between child care facilities and adult care facilities may be appropriate.

Center Eligibility

The OAA Amendments define an eligible adult day care center as "* * * any public agency or private nonprofit organization, or any proprietary Title XIX or XX center which—(i) is licensed or approved by Federal, State or local authorities to provide adult day care services to chronically impaired disabled adults or persons 60 years of age or older in a group setting outside their homes on a less than 24-hour basis; and (ii) provides for such care and services directly or under arrangements made by the agency or organization whereby the agency or organization maintains professional management responsibility for all such services * * *" (42 U.S.C. 1766(p)(2)(A)). The law limits participation by proprietary Title XIX and Title XX centers to those which receive compensation under Titles XIX and XX for at least 25 percent of their enrolled eligible participants in the calendar month preceding initial application or annual reapplication for Program participation. The Conference Report which accompanies the OAA Amendments (H.R. Rep. 427, 100th Cong., 1st Sess. (1987)) provides further guidance on the type of adult day care center envisioned as eligible. It describes the care offered by these centers as "* * * a community-based group program designed to meet the needs of functionally impaired adults through an individual plan of care * * * a structured comprehensive program that provides a variety of health, social, and related support services in a protective setting during any part of the day, but less than 24-hour care" (H.R. Rep. 427, 100th Cong., 1st Sess. 85 (1987)).

In § 226.19a(b), these regulations reflect the legislative intent that eligibility for the CCFP be available through a narrowly defined group of centers which provide highly specialized care services to a specific group (i.e., functionally impaired individuals). Thus, the aim of these eligible centers must be to care for the needs of the functionally impaired. The law recognizes, however, that these eligible centers may enroll and provide services to individuals who may not be classified as functionally impaired but who are 60 years of age or older. It stipulates that CCFP reimbursement be made available for meals served to those individuals as well. However, centers which provide care (or socialization/recreation opportunities) only for persons 60 years of age or over who are not functionally impaired are not eligible to participate. In this regard, the Department also considers organizations such as sheltered workshops to be ineligible, even though they may enroll functionally impaired persons. Their overriding purpose is to provide employment and developmental opportunities and not the type of care envisioned in the law.

Participant Eligibility

Pub. L. 100–175 provides for CCFP reimbursement for meals served to "persons 60 years of age or older or to chronically impaired disabled persons, including victims of Alzheimer's disease and related disorders with neurological and organic brain dysfunction." Beyond this clause, however, the law does not define "chronically impaired disabled persons." In an attempt to insure that CCFP benefits are available only to persons 60 years of age or older and those who can be determined "chronically impaired" or "functionally impaired", this rule incorporates into the definition of "functionally impaired adult" certain criteria contained in Federal regulations which implement Title II (Federal Old-Age Survivors and Disability Insurance) and Title XVI (Supplemental Security Income for the Aged, Blind and Disabled Program) of the Social Security Act. These regulations (20 CFR Part 404, Appendix 1, Subpart P) are used in determining disability for both those programs. The criteria incorporated in this regulation were selected by the Department based on the intent of Congress in defining eligibility for centers and adults under Pub. L. 100–175. They relate specifically to an individual's ability to carry out activities of daily living and to function independently and effectively. Only those criteria specifically included in this rule will apply in making eligibility determination. Since Pub. L. 100–175 defines adult beneficiaries as those who are 60 years of age or older or chronically impaired, it will be the responsibility of each adult day care center participating in the CCFP to make CCFP eligibility determinations for each adult in care who is less than 60 years of age using the definition of "functionally impaired adult" contained in this rule. Further, participating centers will be required to maintain records to demonstrate how each such eligibility determination is made.

Meal Reimbursement

As stated in Pub. L. 100–175, the guidelines for CCFP reimbursement to be paid to adult day care centers shall contain provisions designed to assure that CCFP reimbursement "* * * shall not duplicate reimbursement under Part C of Title III of the Older Americans Act of 1965, for the same meals served." (42 U.S.C. 1766(p)(3)(B)). The conference report which accompanied the legislation makes the point that these adult day care centers are eligible for both the CCFP and Title III feeding programs but that "They could not, however, receive benefits or reimbursement from both programs for the same meal served." (H.R. Rep. 427, 100th Cong., 1st Sess. 85 (1987)). Accordingly, § 226.19a(b)(6) limits reimbursement claims under the CCFP to those meals not claimed under Title III of the Older Americans Act.

In a related area, the Department is aware that some adult day care centers currently receive funds, other than Title III funds, which are available to support the meal service. Centers which receive such funds may continue to use these other funds, even for meals for which it claims reimbursement under the CCFP. However, given the fact that the National School Lunch Act specifically limits the use of Program funds disbursed to institutions to assist in providing meals, the Department considers CCFP reimbursement as their primary source of food assistance and all other sources as supplementary to it. Centers must be able to demonstrate such fund usage in the documentation of nonprofit food service status required under § 226.15(e)(11).

Center Licensing

Pub. L. 100–175 requires eligible adult day care centers to be "* * * licensed or approved by Federal, State or local authorities to provide adult day care services to chronically impaired disabled adults or persons 60 years of age or older in a group setting outside their homes on a less than 24-hour basis." (42 U.S.C. 1766(p)(1)). In § 226.6(e), the Department has interpreted this to mean that in order for a center to be eligible for CCFP participation, it must have Federal, State or local licensing or approval which is specifically established to regulate such center, or be complying with applicable renewal procedures (unless the State agency has information which indicates renewal will be denied). Further, the Department believes that the law clearly limits eligibility to centers which have such licensing and approval and does not envision participation by centers under the alternate approval methods available to child care centers and day care homes under current CCFP statute. This decision is based on the lack of reference to such alternate approval methods in the portion of the statute concerning adult day care center licensing, unlike the specific reference to such procedures in the statutory provision describing licensing for child care institutions and day care homes (42 U.S.C. 1766(p)(2)(A)(1) and (a)(1)).

Meal Patterns

Current CCFP regulations contain specific requirements for meals served under the Program. These requirements establish minimum amounts of food, by type, which must be served in order for meals to be reimbursable. In implementing regulations intended to meet the nutritional needs of individuals enrolled in adult day care centers, the Department has reservations about the appropriateness of the current CCFP meal requirements for this group of individuals. Accordingly, the Department has begun the work necessary to evaluate the current meal patterns and, if necessary, to develop appropriate meal requirements for this group. In this regard, the Department welcomes comment on the current meal patterns, as well as suggestions for changes. However, given the need to publish these regulations implementing Program eligibility for adult day care centers as quickly as possible, as well as the time necessary to give adequate consideration to these meal patterns, § 226.20(c) has been amended to specify an interim adult meal pattern and permit certain milk alternates. This added flexibility for milk alternates has been granted to enable adult day care centers to provide meals that better respond to the individual food preferences of adult participants. In the CCFP, as well as the other Child Nutrition Programs, the Department advises that institutions consider the needs of the individuals involved when determining the amounts of food to be served and adjust portion sizes (within the regulatory minimum portion size limits) to meet the needs of participants. Further, the Department recommends that persons responsible for developing menus in these centers make use of information currently available with respect to beneficial dietary strategies. These would include choosing foods which are low in salt, sugar and fats, such as lowfat milk and fresh fruits and vegetables.

Determining Free and Reduced-price Eligibility in Adult Day Care Centers

Public Law 100–460 contains two provisions which affect the free and reduced-price eligibility determinations for individuals enrolled in adult day care centers. The first establishes a definition of "household" or "family" different than that which has been utilized traditionally in the CCFP. The traditional definition requires the consideration of all income earned by all individuals, related or not, who are living as one economic unit when determining free and reduced-price meal eligibility. The new definition, which applies only to adult participants, limits the income to be counted to only that earned by the adult participant and his or her spouse and any dependents residing with the adult participant. In this regard, the term "dependent" means an individual or individuals who are economically dependent on the adult participant. Therefore, in the case of an adult participant who is residing with and being cared for by his or her children, the income of the children would not be counted when determining free or reduced-price meal eligibility. The second provision contained in the legislation establishes categorical free meal eligibility criteria specific to the adult participant population. Under previous law and existing regulations, categorical eligibility for free meals is available only to children who are members of food stamp households or AFDC assistance units. Now, persons enrolled in adult centers will be categorically eligible for free meals if they are members of food stamp households or if they receive benefits under Title XVI of the Social Security Act, the Supplemental Security Income (SSI) for the Aged, Blind and Disabled Program, or Title XIX of the Social Security Act, which authorizes the Grants to States for Medical Assistance Programs—Medicaid.

Other Provisions

The amendments contained in this regulations, although extensive, are for the most part technical in nature. They are extensive primarily because there are numerous references to children, parents, etc., in existing regulations which must be modified to bring a new group of institutions and individual beneficiaries into the CCFP. The provisions which deal solely with these adult day care centers are relatively few in number and are discussed above. They reflect the fact, as previously stated, that these centers will participate in the CCFP essentially under the same requirements as other institutions.

Although Public Law 100–175 was enacted on November 29, 1987, the effective date of the adult day care provision is October 1, 1987. Consequently, based on the effective date of the legislation, the Department is making an exception to: § 226.11(a) that limits retroactive cash and commodity reimbursement to meals served in the calender month preceding the calendar month in which a written agreement to operate the Program is executed; and § 226.10(e), which requires that final claims be submitted not later than 60 days following the last day of the full month covered by the claim. The Department is allowing an exception to the latter provision to allow reimbursement retroactive to October 1, 1987, provided that the institution can document that, for any meals claimed: (1) The meals served met all requirements including items and quantities served; (2) free and reduced-price applications were on file if reimbursement for free or reduced-price meals is sought; (3) meal counts by category (free, reduced-price and paid) and type served (breakfast, lunch, supper and supplement) are available; (4) appropriate food service revenue and expenditure records are available; and (5) reimbursement has not been received under Title III of the Older Americans Act for the claimed meals and CCFP reimbursement does not duplicate other funding for the claimed meals. In addition, institutions which intend to claim retroactive reimbursement must have executed a Progam agreement with the State agency by March 31, 1989 and must have submitted a claim for reimbursement for each month of operation covering the meals served between October 1, 1987 and the date of the initial program agreement between the State agency and the center by March 31, 1989 or the date set by § 226.10(e), whichever is later. All other institutions should make application to the appropriate State agency as soon as possible and will be subject to the routine reimbursement procedures set out in the Program regulations.

In establishing this general retroactivity, the Department is limiting its applicability to provisions found in existing regulations and Pub. L. 100–175. However, certain other retroactive provisions resulted from the enactment of Pub. L. 100–460. Specifically, adult day care centers may claim retroactive reimbursement for free meals served (1) beginning with October 1, 1987, based on documented food stamp participation; (2) for the period October 1, 1987 to September 30, 1988, based on documented AFDC participation; and (3) beginning October 1, 1988, based on Medicaid and SSI participation. Further, for the period October 1, 1987 through September 30, 1988, the family of an adult participant applying for free or reduced price meals shall include a group of related or nonrelated individuals, who are not residents of an institution or boarding house, but who are living as one economic unit. However, beginning October 1, 1988, adult participants need only report their income and the income of any spouse or dependent(s) with whom they reside when applying for free or reduced-price meals. These retroactive provisions are found in § 226.25(g).

List of Subjects in 7 CFR Part 226

Day care, Food assistance programs, Grant programs—Health, infants and children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, Part 226 is amended as follows:

PART 226—CHILD CARE FOOD PROGRAM

1. The authority citation for Part 226 is revised to read as follows, and all other authority citations in the Part are removed:

Authority: Secs. 9, 11, 14, 16, and 17, National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765 and 1766).

2. Section 226.1 is revised to read as follows:

§ 226.1 General purpose and scope.

This part announces the regulations under which the Secretary of Agriculture will carry out the Child Care Food Program. Section 17 of the National School Lunch Act, as amended, authorizes assistance to States through grants-in-aid and other means to initiate, maintain, and expand nonprofit food service programs for children or adult participants in nonresidential institutions which provide care. The Program is intended to enable such institutions to integrate a nutritious food service with organized care services for enrolled participants. Payments will be made to State agencies or FNS Regional Offices to enable them to reimburse institutions for food service to enrolled participants.

3. In § 226.2:

a. New definitions of "Adult day care center", "Adult day care facility", "Adult participant", "Enrolled participant", "Functionally impaired adult", "Medicaid participant", "Participants", "Proprietary Title XIX center", "SSI participant", "Title XVI" and "Title XIX" are added in alphabetical order.

b. The definitions of "Claiming percentage", "Family", "Free meal", "Income to the program", "Independent center", "Institution", "Meals", "Nonpricing program", "Nonprofit food service", "Nonresidential", "Operating costs", "Pricing program", "Proprietary Title XX center", "Reduced-price meal", "Sponsoring organization" and "Verification" are revised.

c. In the definition of "Documentation," the second sentence is removed and the third sentence is revised.

The additions and revisions specified above read as follows:

§ 226.2 Definitions.

* * * * *

"Adult day care center" means any public or private nonprofit organization or any proprietary Title XIX or Title XX center (as defined in this section) which (a) is licensed or approved by Federal, State or local authorities to provide nonresidential adult day care services to functionally impaired adults (as defined in this section) or persons 60 years of age or older in a group setting outside their homes on a less than 24-hour basis and (b) provides for such care and services directly or under arrangements made by the agency or organization whereby the agency or organization maintains professional management responsibility for all such services. Such centers shall provide a structured, comprehensive program that provides a variety of health, social and related support services to enrolled adult participants through an individual plan of care.

"Adult day care facility" means a licensed or approved adult day care center under the auspices of a sponsoring organization.

"Adult participant" means a person enrolled in an adult day care center who is functionally impaired (as defined in this section) or 60 years of age or older.

* * * * *

"Claiming percentage" means the ratio of the number of enrolled participants in an institution in each reimbursement category (free, reduced-price or paid) to the total of enrolled participants in the institution.

* * * * *

"Documentation" * * * Alternatively, "documentation" for a child who is a member of a food stamp household or an AFDC assistance unit means completion of only the following information on a free and reduced-price application: the name(s) and appropriate food stamp or AFDC case number(s) for the child(ren); and the signature of an adult member of the household: "documentation" for an adult participant who is a member of a food stamp household or is an SSI or Medicaid participant, as defined in this section, means completion of only the following information on a free and reduced-price application: the name(s) and appropriate food stamp case number(s) for the participant(s) or the adult participant's SSI or Medicaid identification number, as defined in this section, and the signature of an adult member of the household.

* * * * *

"Enrolled participant" means an "Enrolled child" (as defined in this section) or "Adult participant" (as defined in this section).

"Family" means, in the case of children, a group of related or nonrelated individuals, who are not residents of an institution or boarding house, but who are living as one economic unit or, in the case of adult participants, the adult participant, and if residing with the adult participant, the spouse and dependent(s) of the adult participant.

* * * * *

"Free meal" means a meal served under the Program to (a) a participant from a family which meets the income standards for free school meals, or to (b) a child who is automatically eligible for free meals by virtue of food stamp or AFDC recipiency, or to (c) an adult participant who is automatically eligible for free meals by virtue of food stamp recipiency or is a SSI or Medicaid participant. Regardless of whether the participant qualified for free meals by virtue of (a), (b) or (c), neither the participant nor any member of their family shall be required to pay or to work in the food service program in order to receive a free meal.

"Functionally impaired adult" means chronically impaired disabled persons 18 years of age or older, including victims of Alzheimer's disease and related disorders with neurological and organic brain dysfunction, who are physically or mentally impaired to the extent that their capacity for independence and their ability to carry out activities of daily living is markedly limited. Activities of daily living include, but are not limited to, adaptive activities such as cleaning, shopping, cooking, taking public transportation, maintaining a residence, caring appropriately for one's grooming or hygiene, using telephones and directories, or using a post office. Marked limitations refer to the severity of impairment, and not the number of limited activities, and occur when the degree of limitation is such as to seriously interfere with the ability to function independently.

* * * * *

"Income to the program" means any funds used in an institution's food service program, including, but not limited to all monies, other than Program payments, received from other Federal, State, intermediate, or local government sources; participant's payments for meals and food service fees; income from any food sales to adults; and other income, including cash donations or grants from organizations or individuals.

"Independent center" means a child care center, outside-school-hours care center or adult day care center which enters into an agreement with the State agency to assume final administrative and financial responsibility for Program operations.

* * * * *

"Institution" means a sponsoring organization, child care center, outside-school-hours care center or adult day care center which enters into an agreement with the State agency to assume final administrative and financial responsibility for Program operations.

* * * * *

"Meals" means food which is served to enrolled participants at an institution, child care facility or adult day care facility and which meets the nutritional requirements set forth in this part.

"Medicaid participant" means an adult participant who receives assistance under Title XIX of the Social Security Act, the Grant to States for Medical Assistance Programs—Medicaid.

* * * * *

"Nonpricing program" means an institution in which there is no separate identifiable charge made for meals served to participants.

"Nonprofit food service" means all food service operations conducted by the institution principally for the benefit of enrolled participants, from which all of the Program reimbursement funds are used solely for the operations or improvement of such food service.

"Nonresidential" means that the same participants are not maintained in care for more than 24 hours on a regular basis.

* * * * *

"Operating costs" means expenses incurred by an institution in serving meals to participants under the Program, and allowed by the State agency financial management instruction.

* * * * *

"Participants" means "Children" or "Adult participants" as defined in this section.

* * * * *

"Pricing program" means an institution in which a separate identifiable charge is made for meals served to participants.

* * * * *

"Proprietary Title XIX center" means any private, for profit center (a) providing nonresidential adult day care services for which it receives compensation from amounts granted to the States under Title XIX of the Social Security Act and (b) in which Title XIX beneficiaries were not less than 25 percent of enrolled eligible participants in the calendar month preceding initial application or annual reapplication for Program participation.

"Proprietary Title XX center" means any private, for profit center (a) providing nonresidential child or adult day care services for which it receives compensation from amounts granted to the States under Title XX of the Social Security Act and (b) in which Title XX beneficiaries were not less than 25 percent of enrolled eligible participants during the calendar month preceding initial application or annual reapplication for Program participation.

"Reduced-price meal" means a meal served under the Program to a participant from a family which meets the income standards for reduced-price school meals. Any separate charge imposed shall be less than the full price of the meal, but in no case more than 40 cents for a lunch or supper, 30 cents for a breakfast, and 15 cents for a supplement, and for which neither the participant nor any member of his family is required to work in the food service program.

* * * * *

"SSI participant" means an adult participant who receives assistance under Title XVI of the Social Security Act, the Supplemental Security Income (SSI) for the Aged, Blind and Disabled Program.

"Sponsoring organization" means a public or nonprofit private organization which is entirely responsible for the administration of the food program in: (a) One or more day care homes; (b) a child care center, outside-school-hours care centers, or adult day care center which is a legally distinct entity from the sponsoring organization; (c) two or more child care centers, outside-school-hours care centers, or adult day care centers; or (d) any combination of child care centers, adult day care centers, day care homes, and outside-school-hours care centers. The term "sponsoring organization" also includes a for-profit organization which is entirely responsible for administration of the Program in any combination of two or more child care centers, adult day care centers and outside-school-hours care centers which are part of the same legal entity as the sponsoring organization, and which are proprietary Title XIX or XX centers, as defined in this section ("Proprietary Title XIX center", "Proprietary Title XX center").

* * * * *

"Title XVI" means Title XVI of the Social Security Act which authorizes the Supplemental Security Income for the Aged, Blind, and Disabled Program—SSI.

"Title XIX" means Title XIX of the Social Security Act which authorizes the Grants to States for Medical Assistance Programs—Medicaid.

* * * * *

"Verification" means a review of the information reported by institutions to the State agency regarding the eligibility of participants for free or reduced-price meals, and, in addition, for a pricing program, confirmation of eligibility for free or reduced-price benefits under the program. Verification for a pricing program shall include confirmation of income eligibility and, at State discretion, any other information required on the application which is defined as documentation in § 226.2. Such verification may be accomplished by examining information (e.g., wage stubs, etc.) provided by the household or other sources of information as specified in § 226.23(h)(2)(iv). However, if a food stamp or AFDC case number is provided for a child, verification for such child shall include only confirmation that the child is included in a currently certified food stamp household or AFDC assistance unit; or, for an adult participant, if a food stamp case number or SSI or Medicaid assistance identification number is provided, verification for such participant shall include only confirmation that the participant is included in a currently certified food stamp household or is a current SSI or Medicaid participant.

4. In § 226.4:

a. Introductory paragraph (b) is revised.

b. Paragraphs (b)(1), (b)(2), (b)(3), (b)(5), (b)(6), (b)(7), (b)(8), and (b)(9), are amended by removing the word "children" in each place it appears and adding in its place the word "participants".

c. In paragraph (g)(2) the first sentence is amended by adding the words ", adult day care centers" following the words "child care centers".

The revision specified above reads as follows:

§ 226.4 Payments to States and use of funds.

* * * * *

(b) *Center funds.* For meals served to participants in child care centers, adult day care centers and outside-school-hours care centers, funds shall be made available to each State agency in an amount no less than the sum of the products obtained by multiplying:

* * * * *

5. In § 226.6:

a. Paragraphs (b)(2), (b)(7), and (b)(8) are revised.

b. Introductory paragraph (c) is amended by removing the reference "§ 226.6(j)" and adding the reference "§ 226.6(k)" in its place.

c. Paragraphs (c)(5) and (c)(6) are amended by removing the words "participating children" and adding the word "participants" in its place.

d. Paragraph (c)(11) is revised.

e. The paragraph heading for paragraph (d) is revised.

f. In paragraph (d)(3), the last sentence is amended by removing the reference "§ 226.6(m)" and adding the reference "§ 226.6(n)" in its place.

g. Paragraphs (e) through (o) are redesignated as paragraphs (f) through (p) and a new paragraph (e) is added.

h. Newly redesignated paragraph (f)(7) is revised.

i. In newly redesignated paragraph (f)(8), the first sentence is amended by removing the words "enrolled children" and adding the word "participants" in its place.

j. In newly redesignated paragraph (g), the second and third sentences are revised.

k. In newly redesignated paragraph (h), the sentence is amended by removing the word "children" and adding the word "participants" in its place.

l. Newly redesignated paragraph (i)(1) is amended by adding the words "adult day care centers" following the words "day care homes,".

m. In newly redesignated paragraph (k)(9), the second sentence is amended by removing the word "children" and adding the word "participants" in its place.

n. In newly redesignated paragraph (l)(1), the second sentence is amended by adding the word ", adult day care" following the words "child care".

o. Newly redesignated paragraph (l)(3), is amended by adding the words "or adult day care facilities" following the word "facilities".

p. In newly redesignated paragraph (p), the first sentence is amended by removing the reference "§ 226.6(k)" and adding the reference "§ 226.6(l)" in its place.

The revisions specified above read as follows:

§ 226.6 State agency administrative responsibilities.

* * * * *

(b) * * *

(2) For child care centers, adult day care centers and outside-school-hours care centers, submission of current eligibility information on enrolled participants.

* * * * *

(7) Submission of documentation that all child care centers, adult day care centers, outside-school-hours care centers, and day care homes for which application is made are in compliance with Program licensing/approval provisions;

(8) For proprietary Title XIX or Title XX centers, submission of documentation that they are currently providing nonresidential day care services for which they receive compensation under Title XIX or Title XX of the Social Security Act, and certification that not less than 25 percent of enrolled participants in each such center during the most recent calendar month were Title XIX or Title XX beneficiaries;

* * * * *

(c) * * *

(11) The claiming of Program payment for meals served by a proprietary Title XIX or Title XX center during a calendar month in which less than 25 percent of enrolled participants were Title XIX or Title XX beneficiaries.

(d) *Licensing/approval for child care centers, outside-school-hours care centers and day care homes.* * * *

(e) *Licensing/approval for adult day care centers.* This paragraph prescribes State agency responsibilities to ensure that adult day care centers meet the licensing/approval criteria set forth in this Part. Sponsoring organizations shall submit to the State agency documentation that facilities under their jurisdiction are in compliance with licensing/approval requirements. Independent adult day care centers shall submit such documentation to the State agency on their own behalf. Each State agency shall establish procedures to annually review information submitted by institutions to ensure that all participating adult day care centers either:

(1) Are licensed or approved by Federal, State or local authorities, provided that institutions which are approved for Federal programs on the basis of State or local licensing shall not be eligible for the Child Care Food Program if their licenses lapse or are terminated; or

(2) Are complying with applicable procedures to renew licensing or approval in situations where the State agency has no information that licensing or approval will be denied.

(f) * * *

(7) Inform institutions with separate meal charges of their responsibility to ensure that free and reduced-price meals are served to participants unable to pay the full price and provide to all institutions a copy of the income standards to be used by institutions for determining the eligibility of participants for free and reduced-price meals under the Program.

* * * * *

(g) * * * At a minimum, the State shall annually notify each nonparticipating child care center, outside-school-hours care center, and day care home within the State that is licensed, approved, registered, or receiving funds under Title XX and each nonparticipating adult day care center that is licensed or approved, of the availability of the Program, the requirements for Program participation, and the application procedures to be followed in the Program. The State agency shall make the list of child care centers, adult day care centers, outside-school-hours care centers, and day care homes notified each year available to the public upon request.

* * * * *

6. In § 226.7:

a. Paragraph (b)(2) is amended by removing the words "enrolled children" and adding the word "participants" in its place.

b. In paragraph (i), the second sentence is revised.

c. Paragraph (k) is amended by removing the reference "§ 226.6(j)" and adding the reference "§ 226.6(k)" in its place.

d. Paragraph (l) is revised.

e. Paragraph (m)(1) is amended by removing the words "child's parents" and adding the words "participant's family" in its place.

The revisions specified above read as follows:

§ 226.7 State agency responsibilities for financial management.

* * * * *

(i) * * * The State agency shall maintain on file a statement of the State's law and policy governing the use of interest earned on advanced funds by sponsors, institutions, child care facilities and adult day care facilities.

* * * * *

(l) *Participation controls.* The State agency may establish control procedures to ensure that payment is not made for meals served to participants attending in excess of the authorized capacity of each independent center, adult day care facility or child care facility.

* * * * *

§ 226.8 [Amended]

7. In § 226.8, paragraph (a) is amended by adding the words "XIX and Title" following the word "Title" in the second sentence.

8. In § 226.9:

a. Paragraph (b)(1) is revised.

b. Paragraph (b)(2) is amended by removing the word "children" and adding the word "participants" in its place.

The revision specified above reads as follows:

§ 226.9 Assignment of rates of reimbursement for centers.

* * * * *

(b) * * *

(1) Require that institutions submit each month's figures for meals served daily to participants from families meeting the eligibility standards for free meals, to participants from families meeting the eligibility standards for reduced-price meals, and to participants from families not meeting such guidelines; or

* * * * *

9. In § 226.10 paragraph (c) is amended by revising the third, fourth and fifth sentences to read as follows:

§ 226.10 Program payment procedures.

* * * * *

(c) * * * Independent proprietary Title XIX or Title XX centers, for months in which not less than 25 percent of enrolled participants were Title XIX or Title XX beneficiaries, shall submit the percentages of enrolled participants receiving Title XIX or Title XX benefits for the month covered by the claim month. Sponsoring organizations of such centers shall submit the percentage of enrolled participants receiving Title XIX or Title XX benefits for each center for the claim. Sponsoring organizations of such centers shall not include in any claim those centers in which less than 25 percent of enrolled participants were Title XIX or Title XX beneficiaries for the month claimed.

* * * * *

10. In § 226.11:

a. The section title is revised.

b. The first sentence in paragraph (a) is amended by adding the words ", adult day care centers" following the words "child care centers".

c. Paragraphs (b) and (c) are revised.

The revisions specified above read as follows:

§ 226.11 Program payments for child care centers, adult day care centers and outside-school-hours care centers.

* * * * *

(b) Each institution shall report each month to the State agency the total number of meals, by type (breakfasts, lunches, suppers, and supplements), served to participants except that such reports shall be made for a proprietary Title XIX or Title XX center only for calendar months during which not less than 25 percent of enrolled participants were Title XIX or Title XX beneficiaries.

(c) Each State agency shall base reimbursement to each institution on the number of meals, by type, served to participants multiplied by the assigned rates of reimbursement, except that reimbursement shall be payable to proprietary Title XIX and Title XX centers only for calendar months during which not less than 25 percent of enrolled participants were Title XIX or Title XX beneficiaries. In computing reimbursement, the State agency shall either:

(1) Base reimbursement to institutions on actual daily counts of meals served, and multiply the number of meals, by type, served to participants eligible to receive free meals, served to participants eligible to receive reduced-price meals, and served to participants from families not meeting such standards by the applicable national average payment rate; or

(2) Apply the applicable claiming percentage or percentages to the total number of meals, by type, served to participants and multiply the product or products by the assigned rate of reimbursement for each meal type; or

(3) Multiply the assigned blended per meal rate of reimbursement by the total number of meals, by type, served to participants.

* * * * *

§ 226.12 [Amended]

11. In § 226.12 the concluding text at the end of paragraph (b) is amended by removing the reference "§ 226.6(j)" where it appears and adding the reference "§ 226.6(k)" in its place.

§ 226.14 [Amended]

12. In Section 226.14, paragraph (a) is amended by removing the reference "§ 226.6(j)" and adding the reference "§ 226.6(k)" in its place.

13. In § 226.15:

a. The first sentence of paragraph (a) is amended by adding the words "Title XIX and" following the word "proprietary".

b. Paragraphs (b)(1), (b)(4), (b)(6), (e)(2), and (e)(4) are revised.

c. Paragraph (e)(3) is amended by removing the reference "§ 226.23(e)(1)(iii)" and adding the reference "§ 226.23(e)(1)(iv)" in its place.

d. Paragraph (e)(11)(ii) is amended by removing the word "children" and adding the word "participants" in its place.

e. Paragraph (g) is amended by removing the reference "§ 226.6(e)(1)" and adding the reference "§ 226.6(f)(1)" in its place.

The revisions specified above read as follows:

§ 226.15 Institution provisions.

* * * * *

(b) * * *

(1) Except for proprietary Title XIX and Title XX centers and sponsoring organizations or proprietary Title XIX and Title XX centers, evidence of nonprofit status, in accordance with Section 226.15(a).

* * * * *

(4) If an independent child care center or independent outside-school-hours care center, documentation that it meets the licensing/approval requirements of § 226.6(d)(1); or, if an independent adult day care center, the licensing/approval requirements of § 226.19a(b)(3).

* * * * *

(6) For each proprietary Title XIX or Title XX center, documentation that it provides nonresidential day care services for which it receives compensation under Title XIX or Title XX of the Social Security Act and certification that not less than 25 percent of the participants enrolled during the most recent calendar month were Title XIX or Title XX beneficiaries. Sponsoring organizations shall provide documentation and certification for each proprietary Title XIX or Title XX center under its jurisdiction.

* * * * *

(e) * * *

(2) Documentation of the enrollment of each participant including family-size and income information used to determine eligibility for free or reduced-price meals for each participant reported as being in either need category, at child care centers, adult day care centers and outside-school-hours care centers. Such information shall include the social security number of each adult member of the household. However, when a household applies for free meal eligibility on behalf of a child who is a member of a food stamp household or AFDC assistance unit in accordance with § 226.23(e)(1)(iv), such information shall consist of the food stamp or AFDC case number of the child(ren) for whom

free meal benefits are being claimed. When a household applies for free meal eligibility on behalf of an adult participant who is a member of a food stamp household or is an SSI or Medicaid participant in accordance with § 226.23(e)(1)(v), such information shall consist of the food stamp case number or SSI or Medicaid identification number of the adult participant for whom free meal benefits are being claimed.

* * * * *

(4) Daily records indicating the number of participants in attendance and the number of meals, by type (breakfast, lunch, supper, and supplements), served to participants.

* * * * *

14. In § 226.16:

a. Introductory paragraph (b), paragraphs (b)(2), (b)(3), (c), introductory paragraph (d), and paragraphs (d)(1) and (d)(2) are amended by adding the words "and adult day care" following the words "child care" in each place it appears.

b. Paragraph (b)(1) is amended by removing the reference "§ 226.6(e)(2)" and adding the reference "§ 226.6(f)(2)" in its place.

c. Paragraph (d)(4)(i) is revised.

d. Paragraphs (e)(1) and (e)(2) are amended by adding the words "or adult day care" following the words "child care".

e. Paragraph (f) is revised.

f. In paragraph (h), the first sentence is amended by adding the words ", adult day care centers" following the words "child care centers".

g. Paragraph (i) is amended by adding the words "and adult day" following the word "child".

h. Paragraph (j) is revised.

The revisions specified above read as follows:

§ 226.16 Sponsoring organization provisions.

* * * * *

(d) * * *

(4) * * *

(i) Three times each year at each child care center and adult day care center, provided at least one review is made during each child care or adult day care center's first six weeks of Program operations and not more than six months elapse between reviews;

* * * * *

(f) The State agency may require a sponsoring organization to enter into separate agreements for the administration of separate types of facilities (child care centers, day care homes, adult day care centers, and outside-school-hours care centers).

* * * * *

(j) A for-profit organization shall be eligible to serve as a sponsoring organization for proprietary Title XIX or Title XX centers which have the same legal identity as the organization, but shall not be eligible to sponsor proprietary Title XIX or Title XX centers which are legally distinct from the organization, day care homes, or public or private nonprofit centers.

15. In § 226.17 paragraph (b)(7) is amended by removing the reference "§ 226.23(e)(1)(iii)" and adding the reference "§ 226.23(e)(1)(iv)" in its place.

16. A new § 226.19a is added to read as follows:

§ 226.19a Adult day care center provisions.

(a) Adult day care centers may participate in the Program either as independent centers or under the auspices of a sponsoring organization; provided, however, that public and private nonprofit centers shall not be eligible to participate in the Program under the auspices of a for-profit sponsoring organization. Adult day care centers participating as independent centers shall comply with the provisions of § 226.15.

(b) All adult day care centers, independent or sponsored, shall meet the following requirements:

(1) Adult day care centers shall provide a community-based group program designed to meet the needs of functionally impaired adults through an individual plan of care. Such a program shall be a structured, comprehensive program that provides a variety of health, social and related support services to enrolled adult participants.

(2) Adult day care centers shall provide care and services directly or under arrangements made by the agency or organization whereby the agency or organization maintains professional management responsibility for all such services.

(3) Adult day care centers shall have Federal, State or local licensing or approval to provide day care services to functionally impaired adults (as defined in § 226.2) or individuals 60 years of age or older in a group setting outside their home on a less than 24-hour basis. Adult day care centers which are complying with applicable procedures to renew licensing or approval may participate in the Program during the renewal process, unless the State agency has information which indicates that renewal will be denied.

(4) Except for proprietary Title XIX or Title XX centers, adult day care centers shall be public, or have tax-exempt status under the Internal Revenue Code of 1954, or be moving toward compliance with the requirements for tax-exempt status, or be currently operating another Federal program requiring nonprofit status. An adult day care center which has applied to the Internal Revenue Service (IRS) for tax-exempt status may participate in the Program while its application is pending review by IRS. If IRS denies the application for tax-exempt status, the adult day care center shall immediately notify the State agency of such denial and the State agency shall terminate the participation of the center. If IRS certification of nonprofit status has not been received within 12 months of filing the application with IRS, and IRS indicates that the adult day care center has failed to provide all required information, the State agency shall terminate the participation of the adult day care center until such time as IRS tax-exempt status is obtained.

(5) Each adult day care center participating in the Program shall serve one or more of the following meal types:

(i) Breakfast,

(ii) Lunch,

(iii) Supper, and

(iv) Supplemental food.

Reimbursement shall not be claimed for more than two meals and one supplement provided daily to each adult participant.

(6) Each adult day care center participating in the Program shall claim only the meal types specified in its approved application in accordance with the meal pattern requirements specified in § 226.20. Participating centers may not claim CCFP reimbursement for meals claimed under Part C of Title III of the Older Americans Act of 1965. Reimbursement may not be claimed for meals served to persons who are not enrolled, or for meals served to participants at any one time in excess of the center's authorized capacity, or for any meal served at a proprietary Title XIX or Title XX center during a calendar month when less than 25 percent of enrolled participants were Title XIX or Title XX beneficiaries. Menus and any other nutritional records required by the State agency shall be maintained to document compliance with such requirements.

(7) An adult day care center may obtain meals from a school food service facility, and the pertinent requirements of this part shall be embodied in a written agreement between the center and school. The center shall maintain responsibility for all Program requirements set forth in this part.

(8) Adult day care centers shall collect and maintain current family-size and income information and the social security number of adult household members for participants classified as eligible for free and reduced-price meals, and documentation of the enrollment of participants not eligible for free or reduced-price meals. However, for households applying for free meal eligibility on behalf of adult participants from food stamp households or who are SSI or Medicaid participants in accordance with § 226.23(e)(1)(iv), adult day care centers shall collect and maintain food stamp case numbers or SSI or Medicaid assistance identification numbers in lieu of family-size and income information and social security numbers.

(9) Each adult day care center shall maintain daily records of the number of meals by type (breakfast, lunch, supper, and supplements) served to enrolled participants, and to adults performing labor necessary to the food service.

(10) Each adult day care center shall maintain records on the age of each enrolled person. In addition, each adult day care center shall maintain records which demonstrate that each enrolled person under the age of 60 meets the functional impairment eligibility requirements established under the definition of "functionally impaired adult" contained in this Part.

17. In § 226.20:

a. Paragraph (c) is revised.

b. Paragraph (h) is amended by removing the words "participating children" and adding the word "participants" in its place.

c. Paragraph (j) is amended by removing the words "child" and "children" each time the words appear and adding the words "participant" and "participants" respectively in their place.

d. A new paragraph (p) is added.

The revision and addition specified above read as follows:

§ 226.20 Requirements for meals.

* * * * *

(c) *Meal patterns for children age one through 12 and adult participants.* When individuals over age one participate in the Program, the total amount of food authorized in the meal patterns set forth below shall be provided in order to qualify for reimbursement.

Breakfast

(1) The minimum amount of food components to be served as breakfast as set forth in paragraph (a)(1) of this section are as follows:

Food components	Age 1 up to 3	Age 3 up to 6	Age 6 up to 12 [1]	Adult participants [6]
Milk				
Milk, fluid	½ cup [2]	¾ cup	1 cup	1 cup.[7]
Vegetables and Fruits				
Vegetable(s) and/or Fruit(s)	¼ cup	½ cup	½ cup	½ cup.
or				
Full-strength vegetable or fruit juice or an equivalent quantity of any combination of vegetable(s), fruit(s), and juice.	¼ cup	½ cup	½ cup	½ cup.
Bread and Bread Alternates [3]				
Bread	½ slice	½ slice	1 slice	1 slice.
or				
Cornbread, biscuits, rolls, muffins, etc.[4]	½ serving	½ serving	1 serving	1 serving.
or				
Cold dry cereal [5]	¼ cup or ⅓ oz	⅓ cup or ½ oz	¾ cup or 1 oz	¾ cup or 1 oz.
or				
Cooked cereal	¼ cup	¼ cup	½ cup	½ cup.
or				
Cooked pasta or noodle products	¼ cup	¼ cup	½ cup	½ cup.
or				
Cooked cereal grains or an equivalent quantity of any combination of bread/bread alternate.	¼ cup	¼ cup	½ cup	½ cup.

[1] Children age 12 and up may be served adult size portions based on the greater food needs of older boys and girls, but shall be served not less than the minimum quantities specified in this section for children age 6 up to 12.

[2] For purposes of the requirements outlined in this subsection, a cup means a standard measuring cup.

[3] Bread, pasta or noodle products, and cereal grains, shall be wholegrain or enriched; cornbread, biscuits, rolls, muffins, etc., shall be made with wholegrain or enriched meal or flour; cereal shall be wholegrain or enriched or fortified.

[4] Serving sizes and equivalents to be published in guidance materials by FNS.

[5] Either volume (cup) or weight (oz.) whichever is less.

[6] Adult participants may be served larger-size portions based on the greater food needs of older persons, but shall not be served less than the minimum quantities specified for adult participants.

[7] For adult participants, 8 ounces of yogurt, 1½ ounces of natural cheese or 2 ounces of processed cheese may be substituted to meet the milk requirement. However, one serving a day must be fluid milk. Further, it is recommended that no more than two servings of milk/milk alternate be provided in a day. When cheese is used to fulfill the dairy requirement, it may not be used as a meat/meat alternate at the same meal service.

Lunch or Supper

(2) The minimum amounts of food components to be served as lunch or supper as set forth in paragraph (a)(2) of this section are as follows:

Food components	Age 1 up to 3	Age 3 up to 6	Age 6 up to 12 [1]	Adult participants [9]
Milk				
Milk, fluid	½ cup [2]	¾ cup	1 cup	1 cup.[10]
Vegetables and Fruits [3]				
Vegetable(s) and/or fruit(s)	¼ cup total	½ cup total	¾ cup total	¾ cup total.
Bread and Bread Alternates [4]				
Bread	½ slice	½ slice	1 slice	1 slice.

Food components	Age 1 up to 3	Age 3 up to 6	Age 6 up to 12 [1]	Adult participants [9]
or				
Cornbread, biscuits, roll, muffins, etc.[5]	½ serving	½ serving	1 serving	1 serving.
or				
Cooked pasta or noodle products	¼ cup	¼ cup	½ cup	½ cup.
or				
Cooked cereal grains or an equivalent quantity of any combination of bread/bread alternate.	¼ cup	¼ cup	½ cup	½ cup
Meat and Meat Alternates				
Lean meat or poultry or fish [6]	1 oz	1½ oz	2 oz	2 oz.
or				
Cheese	1 oz	1½ oz	2 oz	2 oz.
or				
Eggs	1 egg	1 egg	1 egg	1 egg.
or				
Cooked dry beans or peas	¼cup	⅜ cup	½ cup	½ cup.
or				
Peanut butter or soynut butter or other nut or seed butters.	2 tbsp	3 tbsp	4 tbsp	4 tbsp.
or				
Peanuts or soynuts or tree nuts or seeds.[7]	½ oz [8] = 50%	¾ oz [8] = 50%	1 oz [8] = 50%	1 oz [8] = 50%.
or				
An equivalent quantity of any combination of the above meat/meat alternates.				

[1] Children age 12 and up may be served adult size portions based on the greater food needs of older boys and girls, but shall be served not less than the minimum quantities specified in this section for children age 6 up to 12.

[2] For purposes of the requirements outlined in this subsection, a cup means a standard measuring cup.

[3] Serve 2 or more kinds of vegetable(s) and/or fruit(s). Full-strength vegetable or fruit juice may be counted to meet not more than one-half of this requirement.

[4] Bread, pasta or noodle products, and cereal grains shall be wholegrain or enriched, cornbread, biscuits, rolls, muffins, etc., shall be made with wholegrain or enriched meal or flour.

[5] Serving sizes equivalents to be published in guidance materials by FNS.

[6] Edible portion as served.

[7] Tree nuts and seeds that may be used as meat alternates are listed in program guidance.

[8] No more than 50% of the requirement shall be met with nuts or seeds. Nuts or seeds shall be combined with another meat/meat alternate to fulfill the requirement. For purpose of determining combinations, 1 oz. of nuts or seeds is equal to 1 oz. of cooked lean meat, poultry or fish.

[9] Adult participants may be served larger-size portions based on the greater food needs of older persons, but shall not be served less than the minimum quantities specified for adult participants.

[10] For adult participants, 8 ounces of yogurt, 1½ ounces of natural cheese or 2 ounces of processed cheese may be substituted to meet the milk requirement. However, one serving a day must be fluid milk. Further it is recommended that no more than two servings of milk/milk alternate be provided in a day. When cheese is used to fulfill the dairy requirement, it may not be used as a meat/meat alternate at the same meal service.

Supplemental Food

(3) The minimum amounts of food components to be served as supplemental food as set forth in paragraph (a)(3) of this section are as follows. Select two of the following four components. (Juice may not be served when milk is served as the only other component.)

Food components	Age 1 up to 3	Age 3 up to 6	Age 6 up to 12 [1]	Adult participate [8]
Milk				
Milk, fluid	½ cup [2]	½ cup	1 cup	1 cup.[9]
Vegetables and Fruits				
Vegetable(s) and/or fruit(s)	½ cup	½ cup	¾ cup	¾ cup.
or				
Full-strength vegetable or fruit juice or an equivalent quantity of any combination of vegetable(s), fruit(s) and juice.	½ cup	½ cup	¾ cup	¾ cup.
Bread and Bread Alternates [3]				
Bread	½ slice	½ slice	1 slice	1 slice.
or				
Cornbread, biscuits, rolls, muffins, etc [4]	½ serving	½ serving	1 serving	1 serving.
or				
Cold dry cereal [5]	¼ cup or ⅓ oz	⅓ cup or ½ oz	¾ cup or 1 oz	¾ cup or 1 oz.
or				
Cooked cereal	¼ cup	¼ cup	½ cup	½ cup.
or				
Cooked pasta or noodle products	¼ cup	¼ cup	½ cup	½ cup.
or				
Cooked cereal grains or an equivalent quantity of any combination of bread/bread alternate.	¼ cup	¼ cup	½ cup	½ cup.
Meat and Meat Alternates				
Lean meat or poultry or fish [6]	½ oz	½ oz	1 oz	1 oz.
or				
Cheese	½ oz	½ oz	1 oz	1 oz.
or				
Eggs	½ egg	½ egg	1 egg	1 egg.
or				
Cooked dry beans or peas	⅛ cup	⅛ cup	¼ cup	¼ cup.

Food components	Age 1 up to 3	Age 3 up to 6	Age 6 up to 12 [1]	Adult participate [8]
or				
Peanut butter or soynut butter or other nut or seed butters.	1 tbsp	1 tbsp	2 tbsp	2 tbsp.
or				
Peanuts or soynuts or tree nuts or seeds.[7]	½ oz	½ oz	1 oz	1 oz.
or				
An equivalent quantity of any combination of the meat/meat alternates.				

[1] Children age 12 and up may be served adult size portions based on the greater food needs of older boys and girls, but shall be served not less than the minimum quantities specified in this section for children age 6 up to 12.
[2] For purposes of the requirements outlined in this paragraph, a cup means a standard measuring cup.
[3] Bread, pasta or noodle products, and cereal grains shall be wholegrain or enriched, cornbread, biscuits, rolls, muffins, etc., shall be made with wholegrain or enriched meal or flour; cereal shall be wholegrain or enriched or fortified.
[4] Serving size and equivalents to be published in guidance materials by FNS.
[5] Either volume (cup) or weight (oz.), whichever is less.
[6] Edible portion as served.
[7] Tree nuts and seeds that may be used as meat alternates are listed in program guidance.
[8] Adult participants may be served larger-size portions based on the greater food needs of older persons, but shall not be served less than the minimum quantities specified for adult participants.
[9] For adult participants, 8 ounces of yogurt, 1½ ounces of natural cheese or 2 ounces of processed cheese may be substituted to meet the milk requirement. However, one serving a day must be fluid milk. Further, it is recommended that no more than two servings of milk/milk alternate be provided in a day. When cheese is used to fulfill the dairy requirement, it may not be used as a meat/meat alternate at the same meal service.

* * * * *

(p) *Adult participant meal provisions.* When persons enrolled in adult day care centers participate in the Program, the total amount of food authorized in the meal patterns for age six to twelve as set forth in § 226.20(c) shall be provided, at a minimum, in order to qualify for reimbursement.

§ 226.21 [Amended]

18. In § 226.21:

a. Paragraph (a)(5) is amended by removing the word "children" and adding the word "participants" in its place.

b. Paragraph (b) is amended by removing the reference "§ 226.6(h)" where it appears and adding the reference "§ 226.6(i)" in its place.

19. In § 226.23, the first sentence of paragraph (a) is amended by adding the words "and adult day care" following the words "child care".

20. In § 226.23 paragraph (b) is amended by removing the word "children" the second time it appears and adding the word "participants" in its place.

21. In § 226.23 paragraph (c) is amended as follows:

a. Paragraph (c)(2) is revised.

b. Paragraph (c)(3) is amended by removing the word "children" where it appears and adding the word "participants" in its place.

c. Paragraph (c)(5) is amended by removing the word "child" and adding the word "person" in its place.

The revisions specified above read as follows:

§ 226.23 Free and reduced-price meals.

* * * * *

(c) * * *

(2) A description of the method or methods to be used in accepting applications from families for free and reduced-price meals. Such methods will ensure that applications are accepted from households on behalf of children who are members of AFDC assistance units or food stamp households or, for adult participants, who are members of a food stamp household or SSI or Medicaid participants;

* * * * *

22. In § 226.23, the fourth and fifth sentences of paragraph (d) are revised and three new sentences are added to read as follows:

* * * * *

(d) * * * The release issued by child care institutions which charge separately for meals shall announce the availability of free and reduced-price meals to children meeting the approved eligibility criteria. The release issued by child care institutions shall also announce that children who are members of AFDC assistance units or food stamp households are automatically eligible to receive free meal benefits. The release issued by adult day care centers which charge separately for meals shall announce the availability of free and reduced-price meals to participants meeting the approved eligibility criteria. The release issued by adult day care centers shall also announce that adult participants who are members of food stamp households or who are SSI or Medicaid participants are automatically eligible to receive free meal benefits. All releases shall state that meals are available to all participants without regard to race, color, national origin, sex, age or handicap.

* * * * *

§ 226.23 [Amended]

23. In § 226.23 paragraph (e) is amended as follows:

a. Paragraphs (e)(1)(i) and (e)(1)(ii) are revised. The paragraph heading for paragraph (e)(i) is republished for the convenience of the reader.

b. Paragraph (e)(1)(iii) is redesignated as paragraph (e)(1)(iv) and a new paragraph (e)(1)(iii) is added.

c. A new paragraph (e)(1)(v) is added.

d. In paragraph (e)(2) the paragraph heading and introductory paragraph are revised and paragraphs (e)(2)(ii), (e)(2)(v), (e)(2)(vi), and (e)(2)(vii) are revised.

e. Paragraph (e)(2)(iv) is amended by removing the word "child" the second time it appears and adding the word "person" in its place.

f. Paragraph (e)(3) is amended by removing the word "parents" and adding the word "household" in its place.

g. Paragraph (e)(4) is revised.

h. In paragraph (e)(5) the second sentence is amended by removing the words "parent or guardian" and adding the word "household" in its place.

The revisions specified above read as follows:

* * * * *

(e)(1) *Application for free and reduced-price meals.* (i) For the purpose of determining eligibility for free and reduced-price meals, institutions other than sponsoring organizations of day care homes shall distribute applications for free and reduced-price meals to the families of participants enrolled in the institution. Sponsoring organizations of day care homes shall distribute applications for free and reduced-price meals to day care home providers who wish to enroll their eligible children in the Program. The application, and any other descriptive material distributed to such persons, shall contain only the family-size income levels for reduced-price meal eligibility with an explanation that households with incomes less than or equal to these levels are eligible for free or reduced-price meals. Such forms and descriptive materials may not contain the income standards for free meals. However, such forms and materials distributed by child care institutions shall state that, if a child is a member of a food stamp household or AFDC assistance unit, the child is automatically eligible to receive free CCFP meal benefits, subject to the completion of the application as described in § 226.23(e)(1)(ii) of this part; such forms and materials distributed by adult day care centers shall state that, if an adult participant is a member of a food stamp household or is a SSI or Medicaid participant, the adult participant is automatically eligible to receive free CCFP meal benefits, subject to completion of the application as described in § 226.23(e)(1)(iii) of this part.

(ii) Except as provided in paragraph (e)(1)(iv) of this section, the application for children shall contain a request for the following information:

(A) The names of all children for whom application is made;

(B) The names of all other household members;

(C) The social security number of all adult household members 21 years of age or older or an indication that a household member does not possess one;

(D) The total current household income, and the income received by each household member identified by source of income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, social security, and other cash income received or withdrawn from any other source, including savings, investments, trust accounts, and other resources);

(E) A statement to the effect that "In certain cases, foster children are eligible for free and reduced-price meals regardless of household income. If such children are living with you and you wish to apply for such meals, please contact us.";

(F) A statement which includes substantially the following information: "Section 9 of the National School Lunch Act requires that, unless you provide a food stamp or AFDC case number for your child, you must provide the social security numbers of all adult members of your household in order for your child to be eligible for free or reduced-price meals. Provision of these social security numbers is not mandatory, but failure to provide the numbers will result in a denial of the application for free or reduced-price meals. This notice must be brought to the attention of all household members whose social security numbers are disclosed. 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. These verification efforts may be carried out through progam reviews, audits, and investigations and may include contacting employers to determine income, contacting a food stamp or welfare office to determine current certification for receipt of food stamps or AFDC benefits, contacting the State employment security office to determine the amount of benefits received, and checking the documentation produced by household members to prove the amount of income received. These efforts may result in loss or reduction of benefits, administrative claims or legal action if incorrect information is reported." State agencies and institutions shall ensure that the notice complies with section 7 of Pub. L. 93-579. If a State or local agency plans to use the social security numbers for CCFP verification purposes in a manner not described by this notice, the notice shall be altered to include a description of those uses; and

(G) The signature of an adult member of the household which appears immediately below a statement that the person signing the application certifies that all information furnished is true and correct; that the application is being made in connection with the receipt of Federal funds; that Program officials may verify the information on the application; and that the deliberate misrepresentation of any of the information on the application may subject the applicant to prosecution under applicable State and Federal criminal statutes.

(iii) Except as provided in paragraph (e)(1)(v) of this section, the application for adults shall contain a request for the following information:

(A) The names of all adults for whom application is made;

(B) The names of all other household members;

(C) The social security number of all adult household members 21 years of age or older or an indication that a household member does not possess one;

(D) The total current household income, and the income received by source of income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, social security, and other cash income received or withdrawn from any other source, including savings, investments, trust accounts and other resources);

(E) A statement which includes substantially the following information: "Section 9 of the National School Lunch Act requires that, unless you provide a food stamp case number or SSI or Medicaid assistance identification number for the adult for whom benefits are sought, you must provide the social security numbers of all adult members of your household in order for the adult for whom benefits are sought to be eligible for free or reduced-price meals. Provision of these social security numbers is not mandatory, but failure to provide the numbers will result in a denial of the application for free or reduced-price meals. This notice must be brought to the attention of all household members whose social security numbers are disclosed. 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. These verification efforts maybe carried out through program review, audits and investigations and may include contacting employers to determine income, contacting a food stamp or welfare office to determine current certification for receipt of food stamps, contacting the issuing office of SSI or Medicaid benefits to determine current certification for receipt of these benefits, contacting the State employment security office to determine the amount of benefits received, and checking the documentation produced by household members to provide the amount of income received. These efforts may result in loss or reduction of benefits, administrative claims or legal action if incorrect information is reported." State agencies and institutions shall ensure that the notice complies with section 7 of Pub. L. 93-579. If a State or local agency plans to use the social security numbers for CCFP verification purposes in a manner not described by this notice, the notice shall be altered to include a description of those uses; and

(F) The signature of an adult member of the household which appears immediately below a statement that the person signing the application certifies that all information furnished is true and correct; that the application is being made in connection with the receipt of Federal funds; that Program officials may verify the information on the application; and that the deliberate misrepresentation of any of the information on the application may subject the applicant to prosecution under applicable State and Federal criminal statutes.

* * * * *

(v) If they so desire, households applying on behalf of adults who are members of food stamp households or SSI or Medicaid participants may apply for free meal benefits under this paragraph rather than under the procedures described in paragraph (e)(1)(iii) of this section. Households applying on behalf of adults who are members of food stamp households or SSI or Medicaid participants shall be required to provide:

(A) The names and food stamp case numbers or SSI or Medicaid assistance identification numbers of the adults for whom automatic free meal eligibility is claimed; and

(B) The signature of an adult member of the household as provided in § 226.23(e)(1)(iii)(F).

In accordance with § 226.23(e)(1)(iii)(G), if a food stamp case number or SSI or Medicaid assistance identification number is provided it may be used to verify the current food stamp or SSI or Medicaid certification for the adult(s) for whom free meal benefits are being claimed. Whenever households apply for benefits for adults not receiving food stamps or SSI or Medicaid benefits, they must apply in accordance with the requirements set forth in § 226.23(e)(1)(iii).

(2) *Letter to households.* Institutions shall distribute a letter to households or guardians of enrolled participants in order to inform them of the procedures regarding eligibility for free and reduced-price meals. The letter shall accompany the application required under paragraph (e)(1) of this section and shall contain:

(ii) How a participant's household may make application for free or reduced-price meals;

* * * * *

(v) A statement to the effect that participants having family members who become unemployed are eligible for free or reduced-price meals during the period of unemployment, provided that the loss of income causes the family income during the period of unemployment to be within the eligibility standards for those meals;

(vi) Except in the case of adult participants, a statement to the effect that in certain cases foster children are eligible for free or reduced-price meals regardless of the income of such household with whom they reside and that households wishing to apply for such benefits for foster children should contact the institution; and

(vii) An explanation that households receiving free and reduced-price meals must notify appropriate institution officials during the year of any decreases in household size or increases in income of over $50 per month or $600 per year or—

(A) In the case of households of enrolled children that provide a food stamp or AFDC case number to establish a child's eligibility for free meals, any termination in the child's certification to participate in the Food Stamp or AFDC Programs, or

(B) In the case of households of adult participants that provide a food stamp case number or an SSI or Medicaid assistance identification number to establish an adult's eligibility for free meals, any termination in the adult's certification to participate in the Food Stamp, SSI or Medicaid Programs.

* * * * *

(4) *Determination of eligibility.* When a completed application furnished by a family indicates that the family meets the eligibility criteria for free or reduced-price meals, the participants from that family shall be determined eligible for free or reduced-price meals. Institutions that are pricing programs shall promptly provide written notice to each family informing them of the results of the eligibility determinations. When the information furnished by the family is not complete or does not meet the eligibility criteria for free or reduced-price meals, institution officials must consider the participants from that family as not eligible for free or reduced-price meals, and must consider the participants as eligible for "paid" meals. When information furnished by the family of participants enrolled in a pricing program does not meet the eligibility criteria for free or reduced-price meals, pricing program officials shall provide written notice to each family denied free or reduced-price 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 the household that they may reapply for free or reduced-price benefits at any time during the year,

The reasons for ineligibility shall be properly documented and retained on file at the institution.

* * * * *

§ 226.23 [Amended]

24. In § 226.23 paragraph (f) is amended by removing the word "children" and adding the word "participants" in its place.

25. In § 226.23 paragraph (h) is amended as follows:

a. Introductory paragraph (h) is amended by removing the reference "§ 226.6(k)" where it appears and adding the reference "§ 226.6(l)" in its place.

b. Paragraph (h)(1), the second sentence of paragraph (h)(2)(i), paragraph (h)(2)(iii), introductory paragraph (h)(2)(iv), paragraphs (h)(2)(iv)(A), (h)(2)(iv)(C) and (h)(2)(v) are revised.

c. Paragraph (h)(2)(iv)(D) is removed.

d. Paragraph (h)(4) is amended by removing the words "enrolled children" and adding the word "participants" in its place.

The revisions specified above should read as follows:

* * * * *

(h) * * *

(1) *Verification procedures for nonpricing programs.* State agency verification procedures for nonpricing programs shall consist of a review of all approved free and reduced-price applications on file to ensure that: (i) The application has been correctly and completely executed by the household; (ii) the institution has correctly determined and classified the eligibility of enrolled participants for free or reduced-price meals based on the information included on the application submitted by the household; (iii) the institution has accurately reported to the State agency the number of enrolled participants meeting the criteria for free or reduced-price meal eligibility and the number of enrolled participants that do not meet the eligibility criteria for those meals; and (iv) in addition, the State agency may conduct further verification of the information provided by the household on the approved application for program meal eligibility. If this effort is undertaken, the State agency shall conduct this further verification for nonpricing programs in accordance with the procedures described in paragraph (h)(2) of this section.

(2) * * *

(i) * * * However, (A) if a food stamp or AFDC case number is provided for a child, verification for such child shall include only confirmation that the child is included in a currently certified food stamp household or AFDC assistance unit; or (B) if a food stamp case number or SSI or Medicaid assistance identification number is provided for an adult, verification for such adult shall include only confirmation that the adult is included in a currenty certified food stamp household or is currently certified to receive SSI or Medicaid benefits.

* * * * *

(iii) Households shall be informed in writing that they have been selected for verification and they are required to submit the requested verification information to confirm their eligibility for free or reduced-price benefits by such date as determined by the State agency. Those households shall be informed of the type or types of information and/or documents acceptable to the State agency and the name and phone number of an official who can answer questions and assist the household in the verification effort. Households of enrolled children selected for verification shall also be informed that if they are currently certified to participate in the Food Stamp or AFDC Program, they may submit proof of that certification in lieu of income information. In those cases, such proof shall consist of a current "Notice of Eligibility" for Food Stamp or AFDC Program benefits or equivalent official documentation issued by a food stamp or welfare office which shows that the children are members of households or assistance units currently certified to participate in the Food Stamp or AFDC Programs. An identification card for either program is not acceptable as verification unless it contain an expiration date. Households of enrolled adults selected for verification shall also be informed that if they are currently certified to participate in the Food Stamp Program or SSI or Medicaid Programs, they may submit proof of that certification in lieu of income information. In those cases, such proof shall consist of (A) a current "Notice of Eligibility" for Food Stamp benefits or equivalent official documentation issued by a food stamp or welfare office which shows that the adult participant is a member of a household currently certified to participate in the Food Stamp Program. An identification card is not acceptable as verification unless it contains an expiration date; or (B) official documentation issued by an appropriate SSI or Medicaid office which shows that the adult participant currently receives SSI or Medicaid assistance. An identification care is not acceptable as verification unless it contains an expiration date. All households selected for verification shall be advised that failure to cooperate with verification efforts will result in a termination of benefits.

(iv) Sources of information for verification may include written evidence, collateral contacts, and/or systems of records.

(A) *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, letters from employers, and, for enrolled children, current certification to participate in the Food Stamp or AFDC Programs, or, for adult participants, current certification to participate in the Food Stamp, SSI or Medicaid Programs. Whenever written evidence is insufficient to confirm eligibility, the State agency may use collateral contacts.

* * * * *

(C) *Systems of records* to which the State agency may have routine access are not considered collateral contacts. Information concerning income, family size, or food stamp/AFDC certification for enrolled children, or food stamp/SSI/Medicaid certification for enrolled adults, which is maintained by other government agencies and to which a State agency can legally gain access may be used to confirm a household's eligibility for CCFP meal benefits. One possible source could be wage and benefit information maintained by the State unemployment agency, if that information is available. The use of any information derived from other agencies must be used with applicable safeguards concerning disclosure.

(v) Verification by State agencies of receipt of food stamps, AFDC, SSI or Medicaid benefits shall be limited to a review to determine that the period of eligibility is current. If the benefit period is found to have expired, or if the household's certification has been terminated, the household shall be required to document their income eligibility.

* * * * *

26. In § 226.25:

a. Paragraph (c) is amended by removing the word "children" and adding the word "participants".

b. A new paragraph (g) is added.

The addition specified above reads as follows:

§ 226.25 Other provisions.

* * * * *

(g) *Special retroactivity provisions.* Notwithstanding any other provisions contained in this Part, the following shall apply:

(1) State agencies shall provide reimbursement for meals served by any adult day care center between October 1, 1987 and the date of the initial Program agreement between the State agency and the center under the following conditions, provided that:

(i) The center can document that, for any meals claimed:

(A) Meals served met all requirements including items and quantities served;

(B) Free and reduced-price applications were on file if reimbursement for free or reduced-price meals is sought;

(C) Meal counts by category (free, reduced-price and paid) and type served (breakfast, lunch, supper and supplement) are available;

(D) Appropriate food service revenue and expenditure records are available;

(E) Reimbursement has not been received under Title III of the Older Americans Act for the claimed meals and CCFP reimbursement does not duplicate other funding for the claimed meals; and

(ii) The initial agreement between the State agency and the center is executed no later than March 31, 1989, and the claims for reimbursement for the meals served between October 1, 1987 and the date of the initial agreement between the State agency and the center are received by the State agency no later than March 31, 1989 or the date set by § 226.10(e), whichever is later.

(2) Alternative documentation for free meal eligibility for adult participants shall be based on the following:

(i) Beginning with October 1, 1987, documentation of membership in a food stamp household;

(ii) For the period October 1, 1987 through September 30, 1988, documentation of membership in an AFDC assistance unit; and

(iii) Beginning October 1, 1988, documentation of receipt of assistance under Medicaid or SSI.

(3) For the period October 1, 1987 through September 30, 1988, the family of an adult participant applying for free or reduced-price meals shall include a group of related or nonrelated individuals, who are not residents of an institution or boarding house, but who are living as one economic unit. However, beginning October 1, 1988, the family of an adult participant applying for free or reduced-price meals shall include only the adult participant and any spouse or dependent(s) residing with the adult participant.

27. In § 226.26, paragraphs (a) and (e) are revised to read as follows:

§ 226.26 Program information

* * * * *

(a) In the States of Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont:

Northeast Regional Office, FNS, U.S. Department of Agriculture, 10 Causeway Street, Room 501, Boston, MA 02222-1065.

* * * * *

(e) In the States of Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming: Mountain Plains Regional Office, FNS, U.S. Department of Agriculture, 1244 Speer Boulevard, Suite 903, Denver, CO 80204.

* * * * *

Anna Kondratas,

Administrator, Food and Nutrition Service.

Date: December 21, 1988.

[FR Doc. 88-29656 Filed 12-27-88; 8:45 am]

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federal register

Wednesday
December 28, 1988

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

Comprehensive Homeless Assistance Plan; Revised Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-88-1716; FR-2386]

Comprehensive Homeless Assistance Plan; Revised Notice

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice specifies revised requirements for the Comprehensive Homeless Assistance Plan (CHAP), as authorized by Subtitle A of Title IV of the Stewart B. McKinney Homeless Assistance Act (the McKinney Act). The revised requirements take effect upon publication, and will govern the award and use of amounts made available under Title IV of the McKinney Act, until final CHAP regulations are published for effect in November 1989.

The CHAP requirements govern the provision of assistance for each of Title IV's homeless assistance authorities administered by HUD: The Emergency Shelter Grants (ESG) program, the Supportive Housing Demonstration program, the Supplemental Assistance for Facilities to Assist the Homeless (SAFAH) program, and the Section 8 Housing Assistance Payments program for the Moderate Rehabilitation of Single Room Occupancy (SRO) Units for the Homeless. Under the McKinney Act, HUD may not make assistance available under any of these programs to, or within the jurisdiction of, States or certain larger metropolitan cities and urban counties (ESG formula cities and counties), unless the jurisdiction has a HUD-approved CHAP.

The CHAP provisions also apply to States receiving assistance under the Department of Labor's Job Training for the Homeless authority contained in Subtitle C of Title VII of the McKinney Act. Such States are required to describe how they will coordinate job training projects with other services for the homeless assisted under the Act.

This Notice provides that the CHAP requirements will be those set forth in the original CHAP Notice (52 FR 30628, published on August 14, 1987), revised to reflect amendments contained in the Stewart B. McKinney Homeless Assistance Amendments Act of 1988. The 1988 Amendments provide for: (1) Annual submission of CHAPs; (2) sharing of information copies of CHAPs among States and ESG formula cities and counties; (3) consideration of available facilities to assist the homeless in preparation of the CHAP; (4) identification of a CHAP contact person for information on the contents of the jurisdiction's CHAP; (5) an assurance in the CHAP that each grantee, recipient, and project sponsor will administer, in good faith, a policy designed to ensure that the homeless facility is free from the illegal use, possession, or distribution of drugs or alcohol by its beneficiaries; (6) a substantive response by the State or ESG city or county to timely HUD recommendations on the annual CHAP performance report; and (7) information from Federal agencies to help coordinate State homeless assistance efforts in States that have designated a contact person or agency to carry out such coordination.

In addition, this Notice implements section 6001 of the Augustus F. Hawkins-Robert B. Stafford Elementary and Secondary School Improvement Amendments of 1988. This amendment eliminates the requirement that the Secretary of Education distribute funds for the Adult Education for the Homeless Program under Title VII of the McKinney Act on the basis of CHAP data.

HUD also seeks public comment on the requirements set forth in this Notice. The Notice, and the public comments that the Department receives on it, will form the basis for a final CHAP rule that the Department will publish by November 7, 1989.

EFFECTIVE DATE: December 28, 1988. Comprehensive Homeless Assistance Plans must be submitted to HUD no later than February 13, 1989.

DATE: Comments must be received by February 27, 1989.

ADDRESS: Interested persons are invited to submit comments regarding this Notice to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, Washington, DC 20410-0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: For general information concerning HUD provisions under Title IV of the McKinney Act, or for information concerning Emergency Shelter Grants to ESG formula cities and counties: James R. Broughman, Director, Entitlement Cities Division, Room 7282, telephone (202) 755-5977. For matters relating to Emergency Shelter Grants to States and State CHAPs: James N. Forsberg, Director, State and Small Cities Division, Room 7184, telephone (202) 755-6322. For matters relating to the Supportive Housing Demonstration Program: Morris Bourne, Director, Transitional Housing Development Staff, Room 9140, telephone (202) 755-9075. The address for all HUD contacts is: Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

For the Department of Labor provisions under Title VII, John D. Heinberg, Office of Strategic Planning and Policy Development, Employment and Training Administration, Room N-5629, Frances Perkins Building, 200 Constitution Avenue, Washington, DC 20210, telephone (202) 535-0682.

For the Department of Education voluntary CHAP provisions under Title VII, Sarah Newcombe, Office of Vocational and Adult Education, 400 Maryland Avenue, SW., Room 4512, Washington, DC 20202, telephone (202) 732-2237. (None of these telephone numbers is toll-free).

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this notice have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2506-0093. Public reporting burden for each of these collections of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, *Other Matters*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., Room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

I. Purpose of Notice

This Notice has two purposes. It announces the requirements for the Comprehensive Homeless Assistance Plan (CHAP), as authorized by Subtitle A of Title IV of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100-77, approved July 22, 1987) (the McKinney Act). It also requests public comments on these requirements. The requirements specified in this Notice, and the public comments on them, will form the basis for the Department to issue a final CHAP rule by November 7, 1989. This timing and method of implementation are required by section 485 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100–628, approved November 7, 1988) (the 1988 Amendments).

The CHAP requirements established in this Notice consist of those set forth in the initial Notice to implement Subtitle A (52 FR 30628, published on August 14, 1987), as amended to reflect the CHAP revisions under the 1988 Amendments. These requirements will apply to the award and use of amounts made available for the homeless assistance programs of Title IV of the McKinney Act, until effective final CHAP regulations are published.

Section II of the Notice discusses the background of the CHAP requirements in the McKinney Act. Section III addresses the changes made to the CHAP authority by the 1988 Amendments.

Section IV specifies all the requirements applicable to the CHAP under the original August 14, 1987 CHAP Notice, as amended to reflect the 1988 Amendments. This is designed to assist the reader by providing a single point of reference for all applicable CHAP requirements.

The Notice also has three Appendices. Appendix A lists the jurisdictions that must have an approved CHAP, if Title IV assistance is to be made available to them, or within their jurisdiction. Appendix B contains highlights of the amendments made to each of the Title IV housing assistance programs by the 1988 Amendments. Readers should familiarize themselves with these changes, since they may affect the content of the CHAP to be submitted in accordance with this Notice. Appendix C contains a chart summarizing, on a program-by-program basis, the CHAP requirements for each of the grantees and recipients under Title IV of the McKinney Act.

II. The Stewart B. McKinney Homeless Assistance Act

On July 22, 1987, the President signed the McKinney Act into law. Title IV of the Act contained a number of homeless assistance and related provisions to be administered by HUD.

Subtitle A established requirements for the CHAP. The initial CHAP requirements were set forth in a Notice published on August 14, 1987 (52 FR 30628). This provision prohibited HUD from making assistance under Title IV's programs available to, or within the jurisdiction of, States, or metropolitan cities or urban counties eligible for a formula allocation under the Emergency Shelter Grants program (ESG formula cities and counties), unless the jurisdiction had a HUD-approved CHAP. In addition, individual applications for Title IV assistance were required to include a certification that the activities proposed for assistance were consistent with the jurisdiction's approved CHAP.

The CHAP was also required in connection with programs administered by the Departments of Education and Labor under Title VII of the Act. Section 702 originally required the Secretary of Education to distribute funds under the Adult Education for the Homeless Programs on the basis of assessments of the homeless population made in State CHAPs.

Under section 732, States were required to describe in their CHAPs how they would coordinate job training demonstration projects for homeless individuals under Subtitle C of Title VII with other services for homeless individuals assisted under the Act.

Subtitle B of the McKinney Act reauthorized with amendment the Emergency Shelter Grants program that was initially authorized in HUD's regular appropriation for fiscal year 1987.[1] Final regulations implementing the Emergency Shelter Grants program were published on August 10, 1988 (53 FR 30186).

Subtitle C authorized the Supportive Housing Demonstration program. This program had two components—a reauthorization (with amendment) of the Transitional Housing Demonstration program (also originally authorized in HUD's regular fiscal year 1987 appropriation),[2] and a new program of Permanent Housing for the Handicapped Homeless. Final regulations implementing both elements of the Supportive Housing Demonstration were published on June 24, 1988 (53 FR 23898).

Subtitle D created a new program of Supplemental Assistance for Facilities to Assist the Homeless (SAFAH). A Notice implementing the SAFAH program for fiscal year 1988 was published on October 19, 1987 (52 FR 38880).

Subtitle E provided new funding authority for the Section 8 Moderate Rehabilitation program. The authority was made available to public housing agencies (PHAs) to be used in connection with the moderate rehabilitation of Single Room Occupancy (SRO) housing. Homeless individuals were to be given a first priority for occupancy in assisted units. A Notice implementing the SRO program under Subtitle E for fiscal year 1988 was published on October 15, 1987 (52 FR 38380).

The reader is urged to review the regulations and Notices covering these homeless assistance authorities in conjunction with the CHAP requirements specified in this Notice. In addition, it should be noted that several of the requirements included in these homeless assistance regulations have been affected by the 1988 Amendments. The Department intends to issue Notices implementing the 1988 Amendments as expeditiously as possible, consistent with the 60-day statutory deadline. These Notices should be consulted for a complete discussion and interpretation of the legislative changes affecting each McKinney Act program.

Since, however, CHAPs may be due before the publication of these Notices, readers may wish to review Appendix B for highlights of the program changes resulting from the 1988 Amendments. These highlights may help States and ESG formula cities and counties fashion their CHAPs pending publication of more detailed guidance in the subsequent Notices.

III. Stewart B. McKinney Homeless Assistance Amendments Act of 1988

The 1988 Amendments were signed into law on November 7, 1988 (Pub. L. 100–628). This legislative enactment made the following changes to the McKinney's Act's CHAP provisions:

1. Annual CHAP Submission

The 1988 Amendments provide for the annual submission of CHAPs by States and ESG formula cities and counties. The original McKinney Act required a one-time CHAP submission. CHAP jurisdictions may amend their CHAPs as they deem appropriate.

The Department believes that the following language in the Report of the House Committee on Banking, Finance and Urban Affairs is instructive regarding Congress' intent in providing for the annual submission of CHAPs:

[1] Section 101(g), Pub. L. 99–500 (approved October 18, 1986) and Pub. L. 99–591 (approved October 30, 1986), making appropriations as provided for in Part C of Title V of H.R. 5313, 99th Cong., 2d Sess. (1986) as passed by the House of Representatives and by the Senate), to the extent and in the manner provided for in H. Rep. No. 977, 99th Cong., 2d Sess. (1986).

[2] Section 101(g), Pub. L. 99–500 (approved October 18, 1986) and Pub. L. 99–591 (approved October 30, 1986), making appropriations as provided for in Part B of Title V of H.R. 5313, 99th Cong., 2d Sess. (1986) (as passed by the House of Representatives and by the Senate), to the extent and in the manner provided for in H. Rep. No. 977, 99th Cong., 2d Sess. (1986).

The Committee created the Comprehensive Homeless Assistance Plan (CHAP) requirement in order that States and local communities provide a strategy to assist the homeless and provide coordination of services within their jurisdiction. The Committee bill requires the annual submission of the CHAP by States and local governments to ensure the planning of services to the homeless within communities is current. The Committee believes that the CHAP can bring together public and private organizations that serve the homeless. (H. Rep. No. 718, Part 2, 100th Cong., 2d Sess. 33 (1988).

Consequently, States and ESG formula grantees must annually submit a CHAP that meets the requirements of this Notice.

For purposes of receiving ESG grant amounts during fiscal year 1989, States and ESG formula cities and counties will be required to submit their CHAP by February 13, 1989. Thereafter, CHAPs must be submitted by October 1 of each year.

The Department encourages States and ESG formula cities and counties to review and revise their existing CHAPs as they deem appropriate. All submissions under this Notice, however, must contain a complete CHAP that addresses each of the required elements. Submissions in the nature of amendments to existing CHAPs will not be approved (of course, this is not intended to preclude the submission of amendments *following* CHAP approval). States and ESG formula cities and counties that fail to obtain approval of a CHAP in accordance with the requirements of this Notice and applicable provisions of the McKinney Act will not be eligible to participate in the homeless assistance programs under Title IV of the Act.

2. Response to HUD Recommendations

The 1988 Amendments require that, as a condition of future McKinney Act homeless assistance, each State and ESG formula grantee respond to HUD's recommendations on the jurisdiction's report describing its performance in implementing its CHAP. However, this requirement only applies if the recommendations are provided to the jurisdiction not later than 60 days before the end of the fiscal year: i.e., by each July 31. Given this time frame, the Department has selected May 31 as the final submission date for annual performance reports.

This overall schedule will give the Department the time necessary to formulate and transmit its recommendations to the jurisdictions involved. It will also provide the jurisdictions with adequate time to substantively respond to HUD's recommendations, and to make any appropriate changes to its CHAP for the succeeding fiscal year.

The annual performance report must address the period between that reviewed in the last performance report and April 30 of the year in question. For example, the report due on May 31, 1990 must cover the period from May 1, 1989 through April 30, 1990. HUD intends to separately provide guidance on the content of the CHAP performance report.

It should be noted that the first CHAP performance report will be due by May 31, 1989. The report should cover the period from the jurisdiction's initial CHAP approval (pursuant to the August 14, 1987 Notice) through April 30, 1989. The August 14, 1987 CHAP Notice required submission of the report by January 31, 1989 for the period ending December 31, 1988. The May 31, 1989 date specified in this Notice replaces the earlier submission date.

This change will put CHAP jurisdictions on the appropriate schedule and, by extending the report due date, will provide them with additional experience under Title IV's programs that may enhance the value of the CHAPs and the annual performance report in their future planning under the McKinney Act.

The 1988 Amendments simply require CHAP jurisdictions to "respond" to HUD's recommendations. This Notice requires that the response be "substantive." The Department believes that this is merely a clarification: A response that is not substantive would not further the HUD/jurisdiction dialogue that is contemplated by the amendment and, thus, would render the provision meaningless.

3. Relationship to Available Facilities

The 1988 Amendments alter the CHAP content by requiring that States and ESG formula grantees: (a) Develop a strategy to meet the needs of the homeless population with available services *and facilities* within their jurisdictions; and (b) provide an explanation of how McKinney Act assistance will "complement and enhance" the available services *and facilities* in their jurisdiction. Under the original McKinney Act, CHAP jurisdictions were only required to address these issues in light of available services.

4. Drug- and Alcohol-Free Facilities

The 1988 Amendments require CHAPs to contain an assurance that each grantee, recipient, and project sponsor (as appropriate) will administer, in good faith, a policy designed to ensure that the homeless facility is free from the illegal use, possession, or distribution of drugs or alcohol by its beneficiaries. The Department proposes to implement this requirement as follows:

A. Assistance to States and ESG Formula Cities and Counties

States, ESG formula cities and counties, and Territories that receive assistance from HUD under the Emergency Shelter Grants, Supportive Housing (both Transitional and Permanent Housing components), and SAFAH programs are responsible for carrying out the drug/alcohol-free assurance in their programs. This requirement applies whether or not the grantee or another entity actually carries out the assisted activities. Thus, States and ESG formula grantees receiving assistance from HUD in the Emergency Shelter Grants program are responsible for administering the assurance, even though they distribute amounts to units of general local government and nonprofit organizations in accordance with Subtitle B of the McKinney Act. Similarly, States receiving assistance under the Permanent Housing program are responsible for carrying out the assurance, even though the permanent housing will be operated by nonprofit organizations or PHAs.

B. Assistance Within the Jurisdiction of a State or ESG Formula City or County

As noted in greater detail later, Title IV of the McKinney Act makes a number of entities eligible to receive assistance that are not States or ESG formula cities or counties. These include units of general local government and nonprofit organizations receiving reallocated amounts from HUD in the Emergency Shelter Grants program; units of general local government and other governmental entities and nonprofit organizations in the Transitional Housing and SAFAH programs; and PHAs participating in the Section 8 Moderate Rehabilitation program to provide SRO units for the homeless.

Since the CHAP for the State or ESG formula grantee must contain the drug/alcohol-free assurance, that jurisdiction will be responsible for ensuring that the ultimate ESG recipient carries out its activities in accordance with the assurance. The McKinney Act requires the CHAP jurisdiction in which the assisted activities are to be located to certify that the activities proposed for assistance are consistent with the CHAP. At a minimum, CHAP jurisdictions must satisfy themselves that the grantee will adhere to the requirements of the assurance as a condition of providing the certification of consistency with the CHAP.

CHAP jurisdictions have broad latitude to ensure that the actual performance of grantees and recipients in carrying out their activities comports with the assurance's requirements. Options could include conditioning future certifications of consistency with the jurisdiction's CHAP on acceptable performance under the assurance.

C. Time for Which the Assurance Must Be Carried Out

Grantees/recipients must continue to carry out the terms of the assurance as long as the assisted facility is used as a facility for the homeless. Readers should consult the Notices to be published for each of the Title IV programs for the time periods for which assisted facilities are required to be used as homeless facilities.

D. Sanction for Failure To Carry Out the Assurance

If HUD determines that a drug/alcohol-free assurance has not been carried out in accordance with the requirements of this Notice, it may require additional actions or further assurances to be provided by the State or ESG formula city or county before approving subsequent CHAPs to ensure that the assurance is properly administered.

E. Relation to the Anti-Drug Abuse Act of 1988

The Department wishes to advise readers that additional drug-related requirements will apply to the McKinney homeless assistance programs under the Anti-Drug Abuse Act of 1988 (Pub. L. 100–690, approved November 18, 1988). The Department will provide further guidance on grantee and recipient responsibility to implement these new requirements in a separate Notice or Notices in the **Federal Register.**

5. Information Copies

When submitting a CHAP to HUD, the 1988 Amendments require States to provide an information copy of their CHAPs to all ESG formula cities and counties located in the State. Similarly, each ESG formula city and county is required to provide a copy of its CHAP to the State in which it is located. This provision is intended to improve the coordination of State and local homeless assistance efforts. The names, addresses, and telephone numbers of the contact for a particular CHAP jurisdiction may be obtained for this purpose from the local HUD field office.

States and ESG formula cities and counties that fail to comply with this provision are ineligible to receive assistance under Title IV of the McKinney Act.

It should be emphasized that it was not Congress' intent that this requirement delay the CHAP submission process. The House Committee on Banking, Finance and Urban Affairs reported:

> The exchange of the CHAP is for informational purposes only. The Committee does not intend this requirement to delay the submission of a CHAP or require each government entity to approve one another's CHAP before submission to HUD. (H. Rep. No. 718, *supra*, at 33).

Consistent with this guidance, copies of the CHAP should be submitted to the applicable State or ESG formula grantees at the same time the CHAP is forwarded to HUD for review and approval. To monitor compliance with this provision, each State or ESG formula grantee must include a certification with its CHAP submission to HUD that it has transmitted the appropriate CHAP information copies.

6. Contact Person or Agency

Each CHAP must identify a contact person or agency for the jurisdiction involved, including an address and telephone number. The purpose of this requirement is to provide a single point of reference for information concerning the contents of the jurisdiction's CHAP.

7. Coordination

The 1988 Amendments provide for a cooperative Federal-State homeless assistance information effort. States are authorized to designate a State agency or contact person to coordinate homeless assistance efforts in the State. If they do so, each Federal agency that provides assistance under the McKinney Act is required to provide the designated State agency or contact person with "such information as may be appropriate" to facilitate the coordination of homeless assistance efforts. The Conference Report on the 1988 Amendments limits this exchange of information to "appropriate program information." (H. Rep. No. 1089, *supra* at 71.)

It should be noted that HUD will *not* automatically construe the designated contact person or agency under paragraph 6 to be the person or agency that will assume coordination responsibilities. The State must separately specify the person or agency it selects for this purpose, if it chooses to make any designation at all.

The contact under paragraph 6 is only required to provide informational services on the CHAP, whereas the entity under this paragraph is required to assume greater responsibilities by coordinating homeless assistance efforts in the State. While the contact entity may also serve as the coordinating entity under this paragraph by assuming the additional coordination functions, it is not necessary that the same entity fulfill both functions.

It should also be noted that the coordination function under this paragraph is available only to States. ESG formula cities and counties are not eligible to participate in it.

8. Adult Education for the Homeless Program

In addition to the 1988 Amendments, an amendment to section 702 of the McKinney Act was contained in omnibus education legislation, the Augustus F. Hawkins-Robert B. Stafford Elementary and Secondary School Improvement Amendments of 1988, Pub. L. 100–217. Section 6001 of this Act removed the requirement that the Secretary of Education distribute funds for the Adult Education for the Homeless Program based upon CHAP data. It converted the program from a formula program to a discretionary program, and required the Secretary to consider the number of homeless adults receiving literacy and basic skills training in each project as a factor in making discretionary awards. Plans to provide for the educational needs of homeless adults are submitted in each State's adult education plan submitted directly to the Secretary of Education every four years. States may continue to include State Education Agencies in their CHAP process at the State's option, although CHAP data are not required for formula purposes.

IV. CHAP Requirements

1. Definitions

For purposes of paragraph 2.A. of this section:

(a) The term *State* means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(b) The term *ESG formula city or county* or *ESG formula grantee* means a metropolitan city or an urban county, as defined in sections 102(a) (4) and (6), respectively, of the Housing and Community Development Act of 1974 (the 1974 Act), that is eligible for a formula allocation under the Emergency

Shelter Grants program under 24 CFR 576.43. The eligibility of these grantees under 24 CFR 576.43(b) is generally limited to those whose allocations, based on their prior year's CDBG allocations under the 1974 Act, exceed .05 percent of the current year's Emergency Shelter Grants appropriation.

Appendix A contains a complete list of the jurisdictions that must have an approved CHAP, if assistance under Title IV of the McKinney Act is to be made available to them or within their jurisdiction.

2. Requirement for Plan

A. Prohibition of Assistance—In General

HUD may not make assistance available under any of the provisions of Title IV of the McKinney Act to, or within the jurisdiction of, a State or an ESG formula city or county, unless:

(i) The jurisdiction annually submits and receives HUD approval of a CHAP.

(ii) At the same time that it submits its CHAP to HUD:

(a) A State submits an information copy of its CHAP to each ESG formula city and county located in the State.

(b) Each ESG formula city or county submits an information copy of its CHAP to the State in which it is located.

B. Assistance to States and ESG Formula Cities and Counties

Each State or ESG formula city or county that applies for assistance under any of the homeless assistance programs contained in Title IV of the McKinney Act must have a HUD-approved CHAP. States and ESG formula cities and counties must have an approved CHAP in the following circumstances in Title IV's programs:

Emergency Shelter Grants

—*States* receiving formula allocations under § 576.43 and reallocations under §§ 576.61, 576.63, and 576.67.

—*ESG formula cities and counties* receiving formula allocations or assistance from a State under § 576.43, and reallocations under §§ 576.63 and 576.67.

—*Territories* receiving allocations under § 576.45 and reallocations under §§ 576.65 and 576.67.

Transitional Housing and SAFAH

—*States* receiving a grant under either program.

—*ESG formula cities and counties* receiving a grant under either program.

Permanent Housing for the Handicapped Homeless

—*States* receiving a grant under the program.

C. Recipients That Receive Amounts from Other Jurisdictions (other than HUD)

Title IV of the McKinney Act contains several instances in which the *applicant and the ultimate recipient* may be different. Thus:

—In the Emergency Shelter Grants program, States apply for assistance, but must distribute all amounts to units of general local government and/or (as added by the 1988 Amendments) to private nonprofit organizations, as they deem appropriate.

—In the Emergency Shelter Grants program, units of general local government—both those that receive funding from HUD or the State—may distribute amounts to nonprofit organizations.

—In the Permanent Housing element of the Supportive Housing Demonstration program, States apply for assistance, even though nonprofit organizations and (as added by the 1988 Amendments) PHAs carry out the assisted activities.

In each of these instances, the CHAP requirements apply to the *applicant* and *not the ultimate recipient,* since only the applicant has the right to seek funding under the statute and to enter into a grant agreement with the Department. Thus, depending on the applicant, the following types of jurisdictions must have approved CHAPs for each affected program:

Emergency Shelter Grants

—*For units of general local government receiving amounts from the State, and for non-profit organizations receiving amounts either from the State or from a unit of general local government,* there is no need to be concerned about the CHAP, since the State or the appropriate ESG formula city or county must have had an approved CHAP as a condition of funding availability.

Permanent Housing for the Handicapped Homeless

—*For all project sponsors—nonprofit organizations or PHAs*—the State must have the approved CHAP.

It should also be noted that if the applicant must have an approved CHAP to receive Title IV assistance, but it does not, it is irrelevant that the actual assisted activities will be carried out in a jurisdiction with a CHAP. For example, a State seeking funding under the Permanent Housing component of the Supportive Housing Demonstration program may not compensate for its failure to have an approved CHAP by applying for funding for a nonprofit or PHA that wishes to carry out an assisted project within the jurisdiction of an ESG formula grantee that has an approved CHAP.

D. Other Direct Assistance Recipients

As noted above, Subtitle A also prohibits the award of Title IV funds "within the jurisdiction" of entities that are subject to the CHAP requirements, but that do not have an approved CHAP. This could affect funding for the following entities that are eligible to apply for and receive Title IV funding *directly* from HUD:

—Units of general local government and other governmental entities receiving reallocated amounts in the Emergency Shelter Grants program.

—Nonprofit organizations receiving reallocated amounts in the Emergency Shelter Grants program.

—Units of general local government (other than ESG formula cities and counties) receiving grants in the Transitional Housing element of the Supportive Housing Demonstration and the SAFAH programs.

—Nonprofit organizations receiving grants in the Transitional Housing element of Supportive Housing Demonstration program and the SAFAH program.

—Public Housing Agencies (PHAs) receiving Section 8 Moderate Rehabilitation for SROs under Subtitle E of Title IV.

For each of these cases, the following types of jurisdictions must have approved CHAPs:

Emergency Shelter Grants

—*For reallocations to States or units of general local government (other than ESG formula cities and counties),* the State must have an approved CHAP.

—*For reallocations to nonprofit organizations,* the CHAP jurisdiction in which the proposed activities are to be located must have an approved CHAP. Thus, if the activities are to be located in an ESG formula city or county or Territory, the city, county, or Territory (as appropriate) must have the approved CHAP. If the proposed activities are not to be located in these jurisdictions, then the State must have the approved CHAP.

Transitional Housing and SAFAH

—*For units of general local government (other than ESG formula cities and counties) receiving Transitional Housing or SAFAH* *assistance*, the State must have the approved CHAP.

—*For nonprofit organizations receiving Transitional Housing or SAFAH assistance*, special rules apply. If the proposed project is to be located in an ESG formula city or county, the city or county must have the approved CHAP. *If, however, the city or county does not have an approved CHAP, assistance may be made available if the State has an approved CHAP.*

If the project is to be located outside an ESG formula city or county, the State must have an approved CHAP.

—*For governmental entities (other than units of general local government) receiving assistance under the Transitional Housing and SAFAH programs*, the CHAP jurisdiction in which the project is to be located must have the approved CHAP. Thus, if the proposed project is to be located within the jurisdiction of an ESG formula city or county, the city or county (as appropriate) must have the approved CHAP. If the proposed activities are not to be located in these jurisdictions, the State must have the approved CHAP.

Section 8 Moderate Rehabilitation for SRO units

For PHAs applying for Section 8 SRO Moderate Rehabilitation assistance, the jurisdiction within which the project is to be located determines the CHAP requirement: if the project is to be within the jurisdiction of an ESG formula city or county, the city or county must have the approved CHAP; otherwise, the State.

E. Summary Chart

Appendix C to this Notice contains a chart illustrating the various CHAP requirements discussed in paragraphs 2.B. through D. of this section for each of the housing assistance programs of Title IV of the McKinney Act.

F. Indian Tribes

Tribes are eligible applicants under the Transitional Housing component of the Supportive Housing Demonstration program and the program of Supplemental Assistance for Facilities to Assist the Homeless. For purposes of assistance under these programs, HUD uses the definition of Indian tribes for the CDBG program contained in section 102(a)(17) of the 1974 Act: Any Indian tribe, band, group, and nation, including Alaska Indians, Aleuts, and Eskimos, and any Alaskan Native Village, of the United States, which is considered an eligible recipient under the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638) or under chapter 67 of title 31, United States Code.

As noted above, the CHAP's funding prohibition applies only to assistance provided to, or within the jurisdiction of, States or ESG formula grantees. Because of the unique, sovereign status of these tribes, they are properly considered outside the jurisdiction of these governments. Thus, Indian tribes may apply for and receive assistance within their jurisdiction without submission and approval of a CHAP, or the submission of a certification of consistency of proposed activities with the CHAP. However, it is worth noting that if an Indian tribe seeks to carry out homeless assistance activities *outside* of its jurisdiction, it would be required to obtain a certification that its proposed activities are consistent with the CHAP for the jurisdiction in which the activities are to be located.

2. CHAP Content

CHAPs must contain the following elements:

A. Need for Assistance

A statement describing the need, or lack thereof, for assistance provided under each of the programs included in Subtitles B through E of Title IV of the McKinney Act: *i.e.*, the need for assistance provided by the Emergency Shelter Grants program; both the Transitional and Permanent Housing components of the Supportive Housing Demonstration program; the SAFAH program; and the Section 8 SRO Moderate Rehabilitation authority.

B. Inventory of Facilities and Services

A brief inventory of facilities and services that assist the homeless population in the jurisdiction.

C. Needs/resources Strategy

A strategy:

(i) To match the needs of the homeless population with available facilities and services in the jurisdiction; and

(ii) To recognize the special needs of the various types of homeless individuals, particularly families with children, the elderly, the mentally ill, and veterans.

D. Relation Between McKinney Act Assistance and Available Resources

An explanation of how assistance under each of the authorities referred to above in Subtitles B through E of Title IV of the Act will complement and enhance the available facilities and services.

E. Contact Point

An identification of the appropriate person or agency to contact for information on the contents of the CHAP, including their address and telephone number.

F. Information Copies

In the case of a State, a certification that it transmitted an information copy of its CHAP to each ESG formula city or county within its jurisdiction at the same time that it submitted its CHAP to HUD. In the case of an ESG formula city or county, a certification that it transmitted an information copy of its CHAP to the State in which it is located at the same time that it submitted its CHAP to HUD.

G. Drug- and Alcohol-Free Facilities Assurance

An assurance that each grantee, recipient, and project sponsor (as appropriate) will administer, in good faith, a policy designed to ensure that the homeless facility is free from the illegal use, possession, or distribution of drugs or alcohol by its beneficiaries.

H. Coordination

If a State designates an agency or contact person to coordinate homeless assistance efforts in the State, an identification of the person or agency, along with the appropriate address and telephone number.

I. Department of Labor Job Training Demonstrations

In the case of States, [3] a description of how the jurisdiction will coordinate job training demonstration projects for the homeless under Subtitle C of Title VII of the McKinney Act with other services for homeless individuals assisted under the Act.

In preparing the required information, jurisdictions should be aware that failure to address each of elements A. through G. of the CHAP (including the need for, and effect of, assistance under elements A. and D., above, for each of Title IV's programs) will result in disapproval of the CHAP. In addition, failure to indicate a need for assistance under any of Subtitles B through E will result in disapproval of a subsequent application for assistance under any such Subtitle on grounds that the

[3] States are defined for purposes of the Department of Labor's authority under Subtitle C of Title VII of the 1987 McKinney Act, as amended, as the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

application is inconsistent with the CHAP.

Element I. pertains to the Department of Labor's authority under Title VII of the McKinney Act. This element must be included in the CHAP, but failure to include it will not be grounds for HUD disapproval of an otherwise approvable CHAP. States should note, however, that failure to include this element—while not affecting their eligibility for Title IV assistance—could affect their participation under the Title VII program. Questions regarding Element I. should be addressed to the individual listed at the beginning of this Notice as a contact point for the Department of Labor.

In developing CHAPs, it should be noted that section 103 of the Act defines "homeless" or "homeless individual" to include:

(a) An individual who lacks a fixed, regular, and adequate nighttime residence; and

(b) an individual who has a primary nighttime residence that is—

(i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

The term does not include a prison inmate.

For the Permanent Housing component of the Supportive Housing Demonstration, the following definition of "handicapped homeless person" is used:

> A handicapped individual who is a homeless individual within the meaning of section 103, is at risk of becoming a homeless individual or is a handicapped individual who has been a resident of transitional housing carried out pursuant to provisions made effective by section 101(g) of Public Law 99-500 or 99-591 (the initial Transitional Housing Demonstration).

In addition, the scope of the Emergency Shelter Grants program has been broadened by the 1988 Amendments to include homelessness prevention as an eligible program activity. Consequently, in developing their CHAPs, CHAP jurisdictions should be aware of this new ESG-eligible activity for this new "at risk" population. The reader is advised to refer to Appendix B of this Notice for a summary of this legislative amendment.

Section 401 of the McKinney Act requires CHAPs to cover the "jurisdiction" of States and ESG formula cities and counties, and requires the CHAP to contain information for "that jurisdiction". Since the Act does not limit the term "jurisdiction", and cities and counties are located within the "jurisdiction" of the States, the State CHAP must address the CHAP elements for *all* its jurisdictions, including ESG formula cities and counties.

3. Plan Submission

CHAPs must be forwarded to the responsible HUD Field Office, and be received or postmarked, no later than February 13, 1989. Thereafter, CHAPs must be submitted by October 1 of each year.

4. Plan Review and Approval

HUD will process and review each CHAP as expeditiously as possible, and will approve the CHAP, unless HUD determines that is plainly does not satisfy the required CHAP content, described above. HUD will provide written notification to each jurisdiction that submits a CHAP of its approval, within 30 days after its receipt by HUD.

If a CHAP is disapproved, HUD will notify the jurisdiction of the disapproval, within 15 days of the determination to disapprove. The notification will inform the jurisdiction of the reasons for the disapproval, as well as the steps that need to be taken to make the CHAP acceptable. If HUD fails to notify the jurisdiction that its CHAP has been disapproved within the 15-day period, the CHAP will be deemed approved.

Since the 15-day period for HUD to notify a jurisdiction of disapproval of its CHAP is triggered by HUD's decision to disapprove—an event that, unbeknownst to the jurisdiction, may occur early or late in the 30-day review period—a jurisdiction receiving no notice may assume that its CHAP has been approved 45 days after HUD's receipt of the jurisdiction's CHAP.

HUD will permit amendments to, or the resubmission of, any CHAP, including one that has been disapproved. The procedures and time periods set forth in this section for the review and approval or disapproval of the initial submission of CHAPs also govern subsequent amendments to a CHAP, or its resubmission.

It should be noted, however, that the requirements of individual programs authorized by the McKinney Act may impose time limits that affect when approved CHAPs must be in place. These requirements may, in turn, cause a jurisdiction to have to amend or resubmit its CHAP. Additional information on these requirements may be found in the **Federal Register** documents implementing each of the Title IV programs.

5. Performance Reports

Each jurisdiction that has an approved CHAP must review annually the progress it has made in carrying out its CHAP, and must report annually the results of its review to HUD. Reports will be due not later than May 31 of each year, and must cover the period between that addressed in the last report and April 30 of the year in question.

The report that was to have been due by January 31, 1989 will be due instead on May 31, 1989, and must cover the entire period from the date of the jurisdiction's first CHAP approval pursuant to the August 14, 1987 CHAP Notice through April 30, 1989. HUD will review these reports, and make such recommendations as may be appropriate.

In addition, each jurisdiction that has an approved CHAP must provide a substantive response to recommendations made by HUD on its annual performance report, provided that HUD's recommendations are received by the jurisdiction at least 60 days before the beginning of the fiscal year (*i.e.* by July 31). Assistance under Title IV of the McKinney Act may not be made available to, or within the jurisdiction of, any State or ESG formula grantee that fails to review and report its progress to HUD, or that fails to make a substantive response to timely HUD recommendations on the performance report, as described above.

6. Assistance Applications

Any application for assistance under Title IV of the McKinney Act must contain, or be accompanied by, a CHAP certification of consistency. This certification must be provided by the public official responsible for submitting the CHAP for the jurisdiction in which the proposed activities are to be located. The certification is intended to inform HUD that the applicant's proposed activities are consistent with the jurisdiction's CHAP.

The regulations and Notices governing each of Title IV's programs should be consulted for specific certification requirements.

7. Waivers

The Secretary of HUD may waive any requirement of this Notice that is not required by law, whenever it is determined that undue hardship will result from applying the requirement, or where application of the requirement would adversely affect the purposes of Subtitle A of Title IV of the McKinney Act.

V. Other Matters

Environmental Requirements

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

Information Collection Requirements

The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2506-0093. The following sections of the Notice have been determined by the Department to contain collection of information requirements. Information on these requirements is provided as follows:

TABULATION OF ANNUAL REPORTING BURDEN NOTICE—COMPREHENSIVE HOMELESS ASSISTANCE PLAN

Description of information collection	Section of notice affected	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
Annual submission of CHAPs	III.1.	375	1	375	31.00	11,625.00
Sharing of information copies of CHAPs	III.5.	375	1	375	.75	281.25
Assurance of drug-free homeless facility	III.4.	375	1	375	.25	93.75
Annual performance report	III.2	375	1	375	16.00	6,000.00
Substantive response to HUD recommendations on annual performance report	III.2.	125	1	125	3.00	375.00
Total burden hours						18,375.00

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the provisions of this Notice have "federalism implications" within the meaning of the Order, and, thus, meet the Order's threshold of applicability. Each of the 1988 Amendments to the CHAP imposes additional requirements on State and local governments and, therefore, has substantial, direct effects on the States and their political subdivisions.

It is not, however, necessary to assess these federalism implications, since the Notice simply implements statutory directives, about which the Department has little or no discretion. For this reason, the General Counsel has determined that preparation of a Federalism Assessment under section 6(b) of the Order is not warranted.

Family Impact

The General Counsel, as the Designated Official for Executive Order 12606, *the Family*, has determined that the provisions of this Notice do not have the potential for significant impact on family formation, maintenance, and general well-being within the meaning of the Order. The CHAP serves primarily as a State and local tool for assessing homeless need and coordinating available resources, including assistance under Title IV of the McKinney Act. Any effect that the 1988 Amendments may have on families would be purely hypothetical.

In addition, the Notice implements statutory mandates that leave little or no discretion for the Department. In this circumstance, it is not necessary to conduct a detailed assessment of the family impact occasioned by the 1988 Amendments to the CHAP authority.

Catalog of Federal Domestic Assistance.

The Catalog of Federal Domestic Assistance program numbers are 14.178 and 14.231.

List of Subjects

Grant programs: Housing and community development, Emergency shelter grants, Reporting and recordkeeping requirements.

Authority: Sec. 485, Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628, approved November 7, 1988); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: December 16, 1988.

Jack R. Stokvis,

Assistant Secretary for Community Planning and Development.

Appendix A—Jurisdictions Subject to the Plan

I. All States and the Commonwealth of Puerto Rico

II. Territories:

Virgin Islands
Guam
American Samoa
Northern Mariana Islands
Trust Territory of the Pacific Islands (Palau)

III. ESG Formula Metropolitan Cities and Urban Counties:

State and Community

Alabama: Birmingham, Huntsville, Mobile, Montgomery, and Jefferson County.

Alaska: Anchorage.

Arizona: Mesa, Phoenix, Tucson, Maricopa County, and Pima County.

Arkansas: Little Rock.

California: Anaheim, Berkeley, Compton, El Monte, Fresno, Glendale, Inglewood, Long Beach, Los Angeles, Oakland, Oxnard, Pasadena, Pomona, Riverside, Sacramento, San Bernardino, San Diego, San Fransciso, San Jose, Santa Ana, Stockton, Alameda County, Contra Costa County, Fresno County, Kern County, Los Angeles County, Marin County, Orange County, Riverside County, Sacramento County, San Berardino County, San Diego County, San Joaquin County, San Mateo County, Santa Clara County, Sonoma County, and Ventura County.

Colorado: Colorado Springs, Denver, and Adams County.

Connecticut: Bridgeport, Hartford, New Britain, New Haven, and Waterbury.

Delaware: Wilmington, and New Castle County.

District of Columbia: Washington.

Florida: Fort Lauderdale, Hialeah, Jacksonville, Miami, Miami Beach, Orlando, St. Petersburg, Tallahassee, Tampa, Brevard County, Broward County, Dade County, Escambia County, Hillsborough County, Orange County, Palm Beach County, Pasco County, Pinellas County, Polk County, Seminole County, and Volusia County.

Georgia: Albany, Atlanta, Augusta, Columbus, Macon, Savannah, Cobb County, De Kalb County, and Fulton County.
Hawaii: Honolulu.
Illinois: Chicago, Cicero, East St Louis, Evanston, Oak Park, Peoria, Rockford, Cook County, DuPage County, Lake County, Madison County, St Clair County, and Will County.
Indiana: Evansville, Fort Wayne, Gary, Hammond, Indianapolis, South Bend, Terre Haute, and Lake County.
Iowa: Des Moines, and Sioux City.
Kansas: Kansas City, Topeka, and Wichita.
Kentucky: Covington, Lexington-Fayette, Louisville, and Jefferson County.
Louisiana: Baton Rouge, New Orleans, Shreveport, and Jefferson Parish.
Maine: Portland.
Maryland: Baltimore, Anne Arundel County, Baltimore County, Montgomery County, and Prince Georges County.
Massachusetts: Boston, Cambridge, Fall River, Lawrence, Lowell, Lynn, Medford, New Bedford, Newton, Quincy, Somerville, Springfield, and Worcester.
Michigan: Dearborn, Detroit, Flint, Grand Rapids, Kalamazoo, Pontiac, Saginaw, Genesee County, Oakland County, and Wayne County.
Minnesota: Duluth, Minneapolis, St Paul, and Hennepin County.
Mississippi: Jackson.
Missouri: Kansas City, St Joseph, St Louis, and St Louis County.
Nebraska: Omaha.
Nevada: Las Vegas, and Clark County.
New Hampshire: Manchester.
New Jersey: Atlantic City, Bayonne, Camden, East Orange, Elizabeth, Jersey City, Newark, Paterson, Trenton, Bergen County, Burlington County, Camden County, Essex County, Gloucester County, Hudson County, Middlesex County, Monmouth County, Morris County, Ocean County, and Union County.
New Mexico: Albuquerque.
New York: Albany, Babylon Town, Binghamton, Buffalo, Islip Town, Mount Vernon, New Rochelle, New York, Niagara Falls, Rochester, Schenectady, Syracuse, Tonawanda Town, Troy, Utica, Yonkers, Erie County, Monroe County, Nassau County, Onondaga County, Orange County, Rockland County, Suffolk County, and Westchester County.
North Carolina: Charlotte, Greensboro, Raleigh, and Winston Salem.
Ohio: Akron, Canton, Cincinnati, Cleveland, Columbus, Dayton, Lakewood, Springfield, Toledo, Youngstown, Cuyahoga County, Franklin County, Hamilton County, Montgomery County, and Stark County.
Oklahoma: Oklahoma City, and Tulsa.
Oregon: Portland, Clackamas County, and Washington County.
Pennsylvania: Allentown, Altoona, Chester, Erie, Harrisburg, Johnstown, Lancaster, Philadelphia, Pittsburgh, Reading,, Scranton, Upper Darby Township, Wilkes-Barre, York, Allegheny County, Beaver County, Berks County, Bucks County, Chester County, Delaware County, Lancaster County, Luzerne County, Montgomery County, Washington County, Westmoreland County, and York County.
Rhode Island: Pawtucket, Providence, and Woonsocket.
South Carolina: Greenville County.
Tennessee: Chattanooga, Knoxville, Memphis, and Nashville-Davidson.
Texas: Amarillo, Austin, Beaumont, Brownsville, Corpus Christi, Dallas, El Paso, Fort Worth, Houston, Laredo, Lubbock, McAllen, San Antonio, Waco, Bexar County, Harris County, Hidalgo County, and Tarrant County.
Utah: Provo, Salt Lake City, and Salt Lake County.
Virginia: Newport News, Norfolk, Portsmouth, Richmond, Roanoke, Virginia Beach, Arlington County, and Fairfax County.
Washington: Seattle, Spokane, Tacoma, Clark County, King County, Pierce County, and Snohomish County.
West Virginia: Charleston, and Huntington.
Wisconsin: Madison, Milwaukee, and Racine.
Puerto Rico: Aguadilla, Arecibo, Bayamaon Municipio, Caguas Municipio, Carolina Municipio, Guaynabo Municipio, Humacao Municipio, Mayaguez Municipio, Ponce Municipio, San Juan Municipio, Toa Baja Municipio, and Trujillo Alto Mun.

Appendix B—Highlights of Amendments to Subtitles B Through E of Title IV of the Stewart B. McKinney Homeless Assistance Act Made by the Stewart B. McKinney Homeless Assistance Amendments Act of 1988

Note: The reader is advised that the following represents only highlights of the legislative amendments made by the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, which may be helpful for purposes of preparing the CHAP submission for fiscal year 1989. However, it is important that the full text of the Notices being published to implement the 1988 Amendments be consulted for a complete description of how the Department intends to implement these legislative requirements.

Title IV—Housing Assistance

Subtitle B—Emergency Shelter Grants

1. *Sec. 421, Distribution of Assistance by States to Private Nonprofit Organizations.* Permits States (in addition to units of general local government) to distribute amounts directly to private nonprofit organizations, if the unit of general local government certifies that it approves of the project.

2. *Sec. 422, Essential Services.*
—Increases the base percentage of assistance that may be used for essential services from 15 to 20 percent.
—Measures the 20 percent against "the aggregate amount of all assistance to a State or local government" rather than against "the amount of any assistance to a local government," as provided by current law. In the case of States, the 20 percent limitation on the use of funds to provide essential services will be applied against the overall State grant rather than individually against amounts that units of general local government and nonprofit organizations receive from the State.

3. *Sec. 423, Homelessness Prevention as an Eligible Activity.* Adds homelessness prevention as an eligible ESG activity. Homelessness prevention involving short-term financial assistance to individuals or families that have received eviction notices or notices of termination of utility services may qualify for assistance only if:
—The individual or family is unable to make the required payments due to a sudden reduction in income;
—The assistance is necessary to avoid eviction or termination of services;
—There is a reasonable prospect that the family will be able to resume payments within three months; and
—The assistance provides:
A new homeless prevention activity; or
A quantifiable increase in the level of homeless prevention activities already being provided.
This category of eligible activity is treated as "essential services" and, therefore, is included under the 20 percent limitation on the use of grant amounts for these services. (See paragraph 2, above.)

4. *Sec. 424, Required Use of Building as Shelter.*
In the case of assisted essential services or operating costs (under sections 414(a) (2) or (3), respectively, of the 1987 McKinney Act) requires a recipient to certify it will provide services or shelter to the homeless for the period during which the assistance is provided, without regard to a particular site or structure, as long as the same general population is served.

Subtitle C—Supportive Housing

5. *Sec. 441, Availability of Operating and Technical Assistance for New Structures.* Provides that operating and technical assistance may be made available in connection with existing or newly constructed dwellings. Redefines "project" to provide that operating and technical assistance may be made available independently of assisted acquisition or rehabilitation.

6. *Sec. 442, Project Sponsor.*
Adds PHAs as eligible project sponsors under the permanent housing program.

7. *Sec. 443, Maximum Period of Residence in Transitional Housing.* Amends the purpose of transitional housing as facilitating the movement of homeless individuals to independent living within 24 months or a longer period determined necessary by HUD, instead of "within a reasonable amount of time, as determined by the Secretary."

8. *Sec. 444, Definition of Permanent Housing.* Authorizes HUD to waive the 8-person limitation on the number of residents that may reside in a permanent housing project, if the applicant demonstrates that (i) local market conditions dictate development of a larger project and (ii) a larger development will achieve the neighborhood integration objectives of the program within the context of the affected community.

9. *Sec. 445, Use of Advances to Repay Debt.* Provides that advances for the cost of acquisition or rehabilitation may be used for the repayment of any outstanding debt on a loan made to purchase an existing structure for use as supportive housing, but only if the structure was not used as supportive housing before receipt of assistance. This amendment applies to notifications of awards on or after November 1, 1987.

10. *Sec. 446, Limit on Grants.* Places $200,000 cap on the amount of a supportive housing grant for moderate rehabilitation. (See item 13 for authority to increase the limitation for high cost areas.)

11. *Sec. 447, Eligible Activities.*

—Makes operating costs eligible for assistance under the permanent housing program, not to exceed 50% of the annual operating costs for the first year and 25% for the second year.

—Permits supportive housing recipients to receive *both* an advance for acquisition or rehabilitation *and* a moderate rehabilitation grant.

12. *Sec. 448, Employment Assistance.* Authorizes grants for employment assistance programs for residents of transitional housing. Adds the extent to which the project contains such a program to the selection criteria.

13. *Sec. 449, Limits on Advances and Grants.*

—Authorizes the Secretary to increase from $200,00 to $400,000 the limit on advances for acquisition or rehabilitation and moderate rehabilitation in areas that HUD finds have high acquisition and rehabilitation costs.

—Authorizes advances for new construction in a limited situation, designed, according to the Conference Report, to permit funding of a model supportive housing project on land donated by the University of California at Berkeley.

14. *Sec. 450, Site Control.*

Contains the following provisions regarding ownership or control of the project site by supportive housing applicants:

—Requires applications for supportive housing to include reasonable assurances that the applicant will own or control the site within six months for notification of an award.

—Authorizes an applicant to obtain ownership or control of a suitable site different from the site specified in the application.

—Requires recapture and reallocation of the grant award, if the applicant fails to obtain ownership or control within one year from notification of the award.

—Applies to notifications on or after November 1, 1987.

Specifies as a selection criterion the extent to which the applicant or project sponsor has control of the site.

15. *Sec. 451, Flood Plain Restrictions.* Prohibits the flood protection standards that apply to supportive housing from being more restrictive than the standards applicable under Executive Order 11988 (May 24, 1977) to the other programs under title IV.

16. *Sec. 452, Matching Requirements.*

—Requires recipients of supportive housing assistance under section 423(a) (1) and (2) to match it with an equal amount of non-Federal funds. Requires each State submitting an application for permanant housing for handicapped homeless persons to certify it will supplement the amount of assistance under that section with an equal amount of non-Federal funds.

—Defines non-Federal funds to include salaries paid to staff, salaries paid to residents under an employment assistance program, and the value of volunteer time and services, in addition to sources permitted under current law.

Subtitle D—Supplemental Assistance for Facilities to Assist the Homeless

17. *Sec. 463, Site Control.*

Contains the following provisions regarding ownership or control of the project site by SAFAH applicants:

—Requires applications for SAFAH funding to include reasonable assurances that the applicant will own or control the site within six months from notification of an award.

—Authorizes an applicant to obtain ownership or control of a suitable site different from the site specified in the application.

—Requires recapture and reallocation if an applicant fails to obtain ownership or control within one year from notification of the award.

—Applies to notifications on or after November 1, 1987.

Subtitle E—Miscellaneous Provisions

18. *Sec. 481, Section 8 Assistance for Single Room Occupancy Dwellings.*

—Permits assistance under the program to be used for the moderate rehabilitation of efficiency units, if the owner agrees to pay the additional costs of rehabilitating and operating the units.

—Defines major spaces that must be protected by a water sprinkler system to mean hallways, large common areas, and other areas specified in local fire, building, or safety codes.

—Requires HUD to increase annually the current $14,000 per-unit cost limitation by the amount necessary to take into account increases in construction costs during the previous year. The first increase is effective with respect to assistance provided on or after October 1, 1988.

19. *Sec. 482, Administrative Provisions (Assumption of Environmental Review).* Makes the provisions of, and regulations and procedures applicable under, section 104(g) of the Housing and Community Development Act of 1974 applicable to assistance and projects under title IV of the McKinney Act. Section 104(g) provides for assumption of environmental review responsibilities by recipients. The reader should refer to the Notices being published for each of the McKinney homeless programs for a complete discussion of how these environmental standards will be implemented.

Appendix C—Jurisdictions That Must Have a HUD-Approved CHAP

Grantee/recipient	Entity that must have approved CHAP
Emergency Shelter Grants Program:	
State—formula allocations under §576.43 and reallocations under §§576.61, 576.63, and 576.67	State.
ESG Formula City—formula allocations under §576.43 or assistance from a State under §576.43, and reallocations under §§576.63 and 576.67.	ESG Formula City.
ESG Formula County—formula allocations under §576.43 or assistance from a State under §576.43, and reallocations under §§576.63 and 576.67.	ESG Formula County.
Territory—allocations under §576.45 and reallocations under §§576.65 and 576.67	Territory.
Unit of General Local Government (other than an ESG Formula City or County)—distributions from a State under §576.55.	State.
Unit of general local government that is participating in an urban county that is an ESG Formula County—distributions from a State under §576.55 or reallocations under §576.67.	ESG Formula County.
Nonprofit Organization—distributions from a State (added by 1988 McKinney Act)	State.
Nonprofit Organization—distributions from unit of general local government	If amounts distributed by an ESG Formula City or County, the City or County; otherwise, the State.
Unit of General Local Government (other than an ESG formula city or county)—reallocations under §576.67	State.
Any unit of general local government that proposes to use all or a portion of its grant assistance for a facility located outside of its jurisdiction, whether the grant is received directly as a formula allocation (or as a distribution thereof), or as a reallocation.	If the proposed activities are to be located in: —An ESG formula city or county, then the city or county; —Otherwise, the State.
Nonprofit Organization—reallocations under §576.67	If the proposed activities are to be located in: —A Territory, the Territory; —An ESG Formula City or County, the City or County; —Otherwise, the State.
Transitional housing component of the supportive housing demonstration and the Supplemental assistance for facilities to assist the Homeless Program:	
State	State.
ESG Formula City or County	ESG Formula City or County.

Grantee/recipient	Entity that must have approved CHAP
Unit of General Local Government (other than an ESG Formula City or County)	State.
Governmental Entity (other than a unit of general local government)	If project is to be located within an ESG Formula City or County, the City or County; otherwise, the State.
Tribe	No CHAP Requirement.
Non-Profit Organization	If the project is to be located within an ESG Formula City or County, the City or County; if the City or County does not have an approved CHAP, the State must have one. If the project is to be located outside an ESG Formula City or County, the State.
Permanent housing component of the supportive housing demonstration:	
State	State.
Section 8 Housing Assistance Payments Program for the moderate rehabilitation of single room occupancy (SRO) units:	
Public Housing Agencies (PHAs)	If the project is located within an ESG Formula City or County, the City or County. If outside an ESG Formula City or County, the State.

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