

AUGUST 06, 1997

SUBJECT: Memorandum Concerning Overclaims Resulting From Misclassification of Tier I
Family Day Care Homes in the Child and Adult Care Food Program (CACFP)

TO: Regional Directors
Special Nutrition Programs
All Regions

Attached is a memorandum to be issued to the State agencies responsible for administering the CACFP. The purpose of the memorandum is to provide guidance for use by State agencies on determining when to assert an overclaim against a sponsoring organization for misclassification of a day care home as a tier I home.

We appreciate the regional office input provided during the drafting of this memorandum. In order to help ensure consistent dissemination of this guidance, we request that you issue the memorandum without changes. Therefore, an electronic copy of the attached memorandum is being provided to you via cc:mail so that you may copy the memorandum onto your letterhead, include a regional office contact person, if you wish, and insert your signature block. Please contact Ed Morawetz, Melissa Rothstein, or Janet Wallington if you have any questions concerning this memorandum.

Ronald J. Vogel
Acting Director
Child Nutrition Division

Attachment

SUBJECT: Overclaims Resulting from Misclassification of Tier I Family Day Care Homes (FDCH) in the Child and Adult Care Food Program (CACFP)

TO: State Director
Child Nutrition Programs

The purpose of this memorandum is to provide guidance for use by State agencies (SA) on determining when to assert overclaims against a sponsoring organization (SO) for misclassification of a FDCH as a tier I home. To that end, this memorandum establishes broad criteria for SAs to use in deciding when it is appropriate to assert an overclaim in such cases.

Misclassification of FDCHs as Tier I Homes

The interim rule published January 7, 1997, (62 FR 903) amended Section 226.14(a) of the CACFP regulations to include the following: “State agencies shall assert overclaims against any sponsoring organization of day care homes which misclassifies a day care home as a tier I day care home unless the misclassification is determined to be inadvertent under guidance issued by FCS.”

When conducting reviews of SOs in accordance with Section 226.6(l), SA reviewers will, on occasion, discover some misclassified tier I homes. In general, when the SA determines that such misclassifications have resulted from clerical errors, circumstances beyond the SO’s control, or inadvertent mistakes, the SA should not assert an overclaim against the SO. Instead, in such circumstances, the SA should require the SO to reclassify the home as a tier II home immediately. However, when misclassifications result from systemic errors in the SO’s procedures for classifying FDCHs, from the SO’s failure to implement the classification system described in the SO’s management plan amendments required by Section 226.6(f)(2), or from an intentional misclassification of the home’s proper tiering status, the interim rule at Section 226.14(a) and this guidance require the SA to assert an overclaim. Therefore, it is critical for SAs to understand how to: differentiate between clerical and systemic errors; identify “circumstances beyond the SO’s control”; and differentiate between inadvertent mistakes and intentional misclassification.

A “clerical error” is an inadvertent mistake. Typically, a clerical error will be identifiable as a misclassification due to an error made by an individual SO employee. For example, if a SO administrator transposed the percentage of free and reduced price enrollees on a list containing schools which both did and did not exceed the 50 percent threshold, this would represent a clerical error. “Systemic errors” will often (though not always) be identifiable by the frequency of misclassifications, especially if the errors result from the actions of more than one SO employee. For example, if a SO misclassified a significant number or percentage of its FDCHs as tier I homes, this could indicate that the SO was fundamentally incapable of managing its responsibilities as a CACFP sponsor, or that it had failed to implement the classification system described in its amended management plan, as approved by the SA. In such cases of systemic errors, establishment of an overclaim would be required, and the SA should give full consideration to the possibility that the SO may be “seriously deficient” in its management of the CACFP, as defined in Section 226.6(c) of the regulations.

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In other cases, misclassifications will result from circumstances beyond the SO's control. An example of such circumstances might include an error by school officials in reporting the percentage of free and reduced price enrollees in a particular school. Similarly, where a home's tiering status is based on a provider's household income, misclassification may have resulted from the provider's failure to report all sources of income or from its falsification of information submitted to verify household income. It would be unreasonable to expect a SO to be aware of all such instances. Thus, in such circumstances, the SA should not assert an overclaim, since the primary reason for the misclassification was beyond the SO's ability to control. This would not excuse the SO from its responsibility to investigate further instances of suspected fraud by a provider, or questionable data from school officials.

In some cases, it may be difficult for SAs to differentiate between intentional and inadvertent errors. To some extent, the difference between the two may be discernible based on the frequency of error, as discussed above with reference to clerical and systemic errors. However, there may also be other indications of a SO's intent which are discernible from the pattern of misclassification that SAs uncover in the course of conducting their reviews. For example, if a SO had carried out its management plan in determining the tiering status of FDCHs located in a town which was predominantly low-income, but had misclassified most of its homes in a more affluent town because it did not implement the system described in the management plan, the evidence would suggest that the SO had ignored the system described in the plan, resulting in the misclassification of homes in the second town. In this instance, establishment of an overclaim would be warranted, as would a notification of "serious deficiency."

In summary, consistent with the above, when the SA determines that tier I homes have been misclassified due to clerical errors, circumstances beyond the SO's control, or inadvertent mistakes, the SA should not assert overclaims. In circumstances where the SA establishes that tier I misclassifications are the result of systemic errors in the SO's procedures for classifying FDCHs, the SO's failure to implement the classification system described in the management plan amendments described in Section 226.6(f)(2), or an intentional attempt to misrepresent the home's proper tiering status, the interim rule at Section 226.14(a) requires the SA to assert an overclaim. In addition, SAs should give full consideration to the possibility that the SO may be "seriously deficient" in its ability to administer the CACFP and work with the SO to rectify the errors in its classification system. In all cases, the SA must require the SO to reclassify the home immediately and to reflect the reclassification on all future claims.

Please disseminate this guidance to the SOs in your State as quickly as possible. If you have any questions concerning this memorandum, please contact [insert regional contact and phone number]

Regional Director
Special Nutrition Programs