

agencies are currently notified of the adjusted guidelines for elderly persons annually. Prior to 2002, this notification was provided through publication of a separate notice. However, in order to expedite the implementation of the guidelines, in 2002 we provided notification of the adjusted guidelines by memorandum. We propose to include, in paragraph (d) of this proposed section 247.9, reference to the notification, by memorandum, of the annual adjustment of the income guidelines by household size, and the effective date of the adjustments. The notification will provide the adjusted guidelines for 185 percent, 130 percent, and 100 percent, of the poverty guidelines. We propose to require that the adjusted guidelines be implemented for the elderly immediately upon receipt of the memorandum, in order to minimize the time gap between the adjustment of the guidelines and the cost-of-living adjustment in Social Security benefits, which is made in January. This requirement would help to ensure that elderly persons receiving Social Security benefits do not become temporarily ineligible for CSFP. We propose to require that the adjusted guidelines be implemented for women, infants, and children at the same time that the State WIC agency implements the adjusted guidelines for WIC eligibility. These implementation dates are current practice in CSFP, even though implementation of adjusted guidelines is not currently addressed in regulations.

In paragraph (e) of this proposed section 247.9, we propose to more clearly indicate how income is defined and considered in determining eligibility for CSFP. In making this clarification, we propose to include the following WIC regulatory provisions:

(1) Income means gross income before deductions for such items as income taxes, employees' social security taxes, insurance premiums, and bonds.

(2) The State agency may exclude from consideration the following sources of income listed under 7 CFR 246.7(d)(2)(iv):

(i) Any basic allowance for housing received by military services personnel residing off military installations.

(ii) The value of in-kind housing and other in-kind benefits.

(3) The State agency must exclude from consideration all income sources excluded by legislation, and which are listed in 7 CFR 246.7(d)(2)(iv)(C). FNS notifies State agencies of any new forms of income excluded by statute through program policy memoranda.

(4) The State agency may allow local agencies to consider the household's

average income during the previous 12 months and current household income to determine which more accurately reflects the household's status. In instances in which the State makes the decision to permit local agencies to determine a household's income in this manner, all local agencies must comply with the State's decision and apply this method of income determination in situations in which it is warranted.

Currently, the CSFP regulations do not define income, or list income exclusions. Thus, it is up to the State or local agency to determine how they are to define and consider income in determining eligibility for CSFP. Based on a review of State Plans, we believe that gross income has generally been used in eligibility determination. We also believe that the WIC income exclusions listed have generally been used, as most of them are established by law. However, the lack of guidance in regulations or policy has resulted in some questions and uncertainty. We believe that adoption of these proposals would help to alleviate the confusion in how income should be considered in CSFP, and would not have a significant impact on participation.

Annual cost-of-living increases in Social Security benefits usually take effect in January. Since the Department of Health and Human Services does not usually adjust the Federal Poverty Income Guidelines until February, these increases make some elderly participants ineligible for benefits for a few months. Providing the option of looking at average income over the previous 12 months, as well as present income, would allow these elderly participants to remain on the program, instead of being discontinued for a few months each year. Similar options are already available for WIC, see 7 CFR 246.7(d)(2)(vii), and school lunch, see 7 CFR 245.2(a)(a-2) free and reduced price eligibility determinations.

Currently, under § 247.7(a), the State has the option to establish "nutritional risk" criteria for CSFP eligibility, and to require that individuals reside within the local CSFP service area at the time of application. Under paragraph (f) of this proposed section, entitled *What other options does the State agency have in establishing eligibility requirements for CSFP?*, we propose to include these options substantially unchanged but reworded in the interest of clarity. As at present, the State agency may not require that an individual reside in the area for any fixed period of time.

Distribution and Use of CSFP Commodities, Section 247.10

Currently, § 247.7(c) describes the monthly issuance of CSFP foods to participants, and allows local agencies the option of distributing a two-month supply of foods every other month. We propose to include this option under this proposed § 247.10. However, we propose to remove the current requirement that the local agency choosing to distribute foods every other month provide the participant the option of continuing to receive foods on a monthly basis. Although the local agency may provide this option, we believe that the requirement to do so may place an undue burden on the local agency. We propose to include in this section the requirement that the local agency require each participant, or participant's proxy, to present some form of identification before receiving CSFP commodities. This requirement is currently under § 247.7(j)(4). We also propose to include in this section current restrictions in the distribution and use of CSFP commodities that are presently contained in §§ 247.7(h) and 247.8(e). As at present, State and local agencies may not require, or request, that participants make any payments, or provide any materials or services in connection with the distribution of CSFP commodities, and may not use commodities to further the political interests of any person or party. Also, CSFP commodities may be used for nutrition education for CSFP participants, but may not be used for outreach, refreshments, or for any purpose other than distribution to CSFP participants.

Applicants Exceed Caseload Levels, Section 247.11

Currently, under § 247.7(b), if all caseload slots are filled, the local agency is required to maintain waiting lists of applicants and, when caseload slots open up, provide benefits to eligible persons on the waiting list in a specific order of priority. This order of priority does not apply, however, to the caseload assigned to the original elderly pilot projects. The current order of priority in service is:

- (1) Pregnant women, breastfeeding women, and infants.
- (2) Children ages 1 through 3.
- (3) Children ages 4 and 5.
- (4) Postpartum women.
- (5) Elderly persons.

The local agency must include on the waiting list the date of application, the population group of the applicant, and information necessary to be able to contact the applicant if caseload space