

GUIDANCE

Recruitment and Eligibility under section 418A of the Higher Education Act of 1965, as amended



Other than statutory and regulatory requirements included in the document, the contents of this guidance do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

U.S. Department of Education
Office of Elementary and Secondary Education

Purpose of the Guidance

The purpose of this guidance is to provide information about participant recruitment and eligibility for the High School Equivalency Program (HEP) and the College Assistance Migrant Program (CAMP), authorized under section 418A of the Higher Education Act of 1965, as amended (HEA). This guidance represents the Department's current thinking on this topic. It does not create or confer any rights for or on any person. This guidance does not impose any requirements beyond those required under applicable law and regulations.

If you are interested in commenting on this guidance document, please send your comment to OESEGuidanceDocument@ed.gov.

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I. RECRUITMENT AND ELIGIBILITY

Both the High School Equivalency Program (HEP) and College Assistance Migrant Program (CAMP) are authorized under section 418A of title IV of the Higher Education Act of 1965, as amended by section 408 of the Higher Education Opportunity Act, P.L. 110-315 (HEA). The purposes of HEP are to help migrant and seasonal farmworkers and members of their immediate family: (1) obtain the equivalent of a secondary school diploma, and (2) subsequently to gain employment or be placed in an institution of higher education (IHE) or other postsecondary education or training. The purpose of CAMP is to provide the academic and financial support necessary to help migrant and seasonal farmworkers and members of their immediate families successfully complete their first year of college.

In order to successfully achieve these purposes, grantees funded under HEP or CAMP are responsible for: (1) identifying and recruiting potential project participants in the recruitment areas described in their approved grant application; (2) determining and documenting participant eligibility; (3) enrolling participants in their projects; and (4) maintaining appropriate records documenting the eligibility of project participants. Furthermore, grantees must select and train recruiters, control the quality of eligibility documentation, and maintain other appropriate project records.

Providing recruitment services and determining participant eligibility is required of both HEP and CAMP grantees. Section 418(A)(b)(1) and (A)(c)(1) of the HEA and 34 CFR 206.3 identify the eligibility requirements for participants served by HEP and CAMP projects.

Locating and enrolling eligible HEP and CAMP participants is critical to the success of a project. However, determining whether an individual is eligible to participate in a HEP or CAMP project can be difficult at times, and it requires gathering specific information about the individual and his or her family. This document, which will be part of a larger set of non-regulatory guidance for HEP and CAMP, addresses--

1. Recruitment of potential participants;
2. Establishment of their eligibility for HEP and CAMP in each of the four ways the HEA permits-- (a) as a migrant or seasonal farmworker; (b) as an immediate family member of a migrant or seasonal farmworker; (c) as one whose eligibility for HEP or CAMP is based on eligibility under the Migrant Education Program (MEP); or, (d) as one whose eligibility for HEP or CAMP is based on eligibility under the National Farmworker Jobs Program (NFJP) (administered by the U.S. Department of Labor); and
3. Documentation of participant eligibility.

The MEP provides formula grants to State educational agencies (SEAs) to establish and improve education programs for migratory children. Many HEP and CAMP projects coordinate closely with projects funded under the MEP for recruitment and other purposes.

Statutory Requirements:

Section 418A(b) and (c) of HEA

Section 1309(2) of Title I, Part C of Elementary and Secondary Education Act (ESEA)

Section 167(h) of Workforce Investment Act (WIA)

Regulatory Requirements:

34 CFR part 206

34 CFR 200.81 (Program Definitions for Migrant Education Program)

20 CFR 669.110 (Definitions Applicable to the National Farmworker Jobs Program (NFJP) and the other services and activities established under WIA section 167)¹

A. Recruitment

A1. Must each recipient of HEP and CAMP funds develop and implement a plan for recruiting eligible participants?

Yes. 34 CFR 206.20(d)(1) requires each applicant for a HEP or CAMP project to provide an assurance with its application that, if awarded a grant, it will develop and implement a plan for identifying, informing, and recruiting eligible participants who are most in need of the academic and supporting services and financial assistance provided by the project. The project's geographical recruitment area should be described in the approved application.

A2. What is meant by the terms “identifying,” “informing,” and “recruiting,” as they are used in 34 CFR 206.20(d)(1)?

We intend these terms to mean the following with respect to HEP and CAMP:

- *identifying* means determining the presence and location of eligible migrant or seasonal farmworkers and their immediate family members;
- *informing* means providing potential participants with information about the purpose of the program, participant eligibility, and the services provided by the project;
- *recruiting* means locating potential applicants, determining and documenting their eligibility for participating in the grantee's project, including determining which eligible applicants are

¹ Section 418(A)(b)(1) and (A)(c)(1) of the HEA refer to programs under section 167 of the Workforce Investment Act of 1998 (WIA), which authorizes the National Farmworker Jobs Program (NFJP) administered by the U.S. Department of Labor (DOL). The regulations for the NFJP are found in 20 CFR part 669. However, the HEP/CAMP regulations in 34 CFR 206.3(a)(2) refer incorrectly to 20 CFR part 633 as the regulations for the relevant DOL program. The regulations in 20 CFR part 633 are, in fact, obsolete and apply to the former Migrant and Seasonal Farmworker Programs authorized under the Job Training Partnership Act, which was replaced by WIA in 1998. For the purposes of this guidance, the regulations in 20 CFR part 669 will be cited; the Department will be working to correct this discrepancy in the HEP/CAMP regulations.

most in need of the project's services in accordance with 34 CFR 206.20(d)(1), and enrolling these new participants in the grantee's project.

A3. In developing and implementing an effective recruiting plan, what are the qualities that a HEP or CAMP project should consider for its recruiter(s)?

In general, a recruiter should (1) have access to the population in the project's recruitment area that is potentially able to participate in and benefit from the HEP or CAMP project, and (2) be able to communicate with this population about the services offered through and eligibility requirements for participating in HEP and CAMP projects. In many cases, grantees will need to conduct training and professional development for their recruiters to ensure they possess these competencies. We therefore would expect recruiters for HEP and CAMP grantees to have the following qualities and qualifications:

- knowledge of the HEP and CAMP eligibility requirements;
- knowledge of the locations within the project's geographical recruitment area where migrant and seasonal farmworkers reside, work and frequently visit, including roads, labor camps, and other housing areas where migrant and seasonal farmworker families typically live;
- knowledge of local organizations that may assist migrant and seasonal farmworkers and their families in the project's recruitment area, including community agencies that may provide services to them; churches that they and their families attend; events that might attract them; and other local areas where they might gather;
- knowledge of the agricultural community in the recruitment area, including the local growers, and agricultural production activities outlined in the project's recruitment plan;
- willingness and skills to collaborate with local and State MEPs and NFJP grantees;
- knowledge of the language(s) spoken by migrant and seasonal farmworkers in the project's recruitment area;
- knowledge of the migrant lifestyle, cultures, values, and beliefs, and the ability to develop a strong rapport with migrant and seasonal farmworker families;
- knowledge of the type of student who would most likely benefit from the HEP or CAMP project;
- knowledge of the services provided by the individual HEP or CAMP project;
- knowledge of the secondary schools that potential participants have attended, and good communication with teachers and counselors at those schools; and
- willingness to work flexible hours and to visit places migrant and seasonal farmworkers are likely to be found.

A4. In developing and implementing an effective recruiting plan, what responsibilities should a HEP or CAMP project assign to its recruiter?

A recruiter's primary responsibilities should be to:

- identify prospective participants based on the program's eligibility criteria;
- work closely with NFJP and MEP staff to locate eligible participants for HEP or CAMP who potentially qualify by being currently eligible for, or having participated in, the NFJP or MEP. (For more information on requirements for documenting eligibility of participants served by these programs, see the response to question I2 in this document.);
- gather eligibility information from prospective participants, their parents, guardians, immediate family and others;
- work with his or her project to make and document eligibility determinations for potential participants; and
- maintain, in conjunction with other relevant project staff, a record of the eligibility documentation of individuals who are recruited and enrolled.
- Note: While an individual might self-identify herself or himself as eligible for HEP or CAMP, it is the responsibility of the recruiter and project staff, not the prospective participant, to make the eligibility determination. Determinations should be based on credible documentation of the individual's status.

A5. What should the project's recruiting plan include?

A HEP or CAMP grantee should develop and implement a recruitment plan that includes:

- a defined geographical recruitment area (targeted recruitment area) that reflects a known population of individuals who are likely to be eligible to participate in a HEP or CAMP project and that corresponds to the recruitment area defined in the grantee's approved application;
- the steps the grantee will take for identifying and recruiting prospective participants, particularly those individuals who are most in need of the academic and supporting services and financial assistance provided by the project, and for informing them about potential HEP or CAMP services;
- a list and contact information of local growers, MEP staff, and other helpful contacts; and
- the steps the grantee will take to collaborate with local schools and agencies, MEP and NFJP grantees, and other projects that serve migrant and seasonal farmworkers in the targeted recruitment area.

A6. How should grantees determine the geographical area of recruitment for a HEP or CAMP project?

The geographic recruitment area that is identified in the plan should be consistent with the grantee's approved application. Grantees should determine the geographical areas where the project will recruit based on their knowledge of where migratory and seasonal farmworkers are employed and reside. Typically, for projects in which students are expected to commute to receive services (as opposed to projects in which students reside in the location where services are provided), the recruitment area should extend far enough to ensure an adequate number of participants while not creating unreasonable travel distances for commuters. For residential projects, the recruitment area could extend farther and could even cross State lines. That said, residential projects are still encouraged to not unduly scatter their efforts by attempting to recruit in an area that is unreasonably large. For projects that establish satellite instructional sites, the project should apply similar standards to determine the size of the recruitment area for each site.

A7. What should the grantee do if it becomes necessary to change the recruitment area after the project has been funded?

Grantees should notify their ED program officer whenever there is a proposed change to the recruitment area. ED staff would then determine whether such a proposed change is consistent with the project's scope and objectives as described in the grantee's application.

B. Eligibility

B1. Who is eligible to participate in a HEP project?

Under section 418A(b)(1) of the HEA² and 34 CFR 206.3(a) and (b), an individual is eligible to participate in a HEP project if he or she:

1. Has, or has at least one immediate family member who has, spent a minimum of 75 days during the past 24 months as a migrant or seasonal farmworker (34 CFR 206.3(a)(1)); or
2. Is eligible to participate, or has participated within the past 24 months, in the MEP or the NFJP (see questions G1-G12 regarding participant eligibility under 34 CFR 206.3(a)(2)); and
3. Has not have earned a secondary school diploma or its equivalent (34 CFR 206.3(b)(1)); and
4. Is not be currently enrolled in an elementary or secondary school (34 CFR 206.3(b)(2)); and

² The Higher Education Opportunity Act of 2008 (HEOA) amended the HEA to extend eligibility from an individual's parent who meets the program's eligibility requirements to the individual's immediate family member who does so.

5. Is 16 years of age or over, or beyond the age of compulsory school attendance in the State in which he or she resides (34 CFR 206.3(b)(3)); and
6. Is determined by the grantee to need the academic and supporting services and financial assistance provided by the project in order to attain the equivalent of a secondary school diploma and to gain employment or be placed in an institution of higher education (IHE) or other postsecondary education or training (34 CFR 206.3(b)(4)).

B2. Who is eligible to participate in a CAMP project?

Under section 418A(c)(1) of the HEA and 34 CFR 206.3(a) and (c), an individual is eligible to participate in the CAMP if he or she:

1. Has, or has at least one immediate family member who has, spent a minimum of 75 days during the past 24 months as a migrant or seasonal farmworker (34 CFR 206.3(a)(1)); or
2. Is eligible to participate, or has participated, in the MEP or the NFJP (see questions G1-G12 regarding participant eligibility under 34 CFR 206.3(a)(2)); and
3. Is enrolled or admitted for enrollment as a full-time student at the participating IHE (34 CFR 206.3(c)(1)); and
4. Is not beyond the first academic year of a program of study at the IHE, as determined under the standards of the IHE (34 CFR 206.3(c)(2)); and
5. Is determined by the grantee to need the academic and supporting services and financial assistance provided by the project in order to complete an academic program of study at the IHE (34 CFR 206.3(c)(3)).

B3. What family members are eligible to participate in HEP and CAMP?

An individual who, or whose immediate family member, has spent a minimum of 75 days during the past 24 months as a migrant or seasonal farmworker is eligible to participate in a HEP or CAMP project.

B4. Who can be an individual’s “immediate family member” for purposes of eligibility for HEP and CAMP?

Under 34 CFR 206.5(c)(5), the term “immediate family member” means:

- (i) A spouse.
- (ii) A parent, step-parent, adoptive parent, foster parent, or anyone with guardianship.
- (iii) Any person who --
 - (A) Claims the prospective HEP or CAMP participant as a dependent on a Federal income tax return for either of the previous two years, or
 - (B) Resides in the same household as the prospective HEP or CAMP participant, supports

that individual financially, and is a relative of that individual.

B5. Who is a “spouse” for the purposes of eligibility for HEP and CAMP?

The term “spouse” is not defined in section 418A(b) and (c) of HEA or 34 CFR part 206. Therefore, for purposes of HEP and CAMP, the definition of spouse is governed by the laws of the State in which the project delivers services to the participants.

B6. What is an example of an immediate family member who would qualify under 34 CFR 206.5(c)(5)(iii)(B)?

If a potential HEP or CAMP student lives with his or her uncle and that uncle supports the potential student financially, that uncle would be considered an “immediate family member” for the purposes of the eligibility of the potential HEP or CAMP student. However, in this example, as an “immediate family member” the uncle can only help to confer HEP or CAMP eligibility if he also “spent a minimum of 75 days during the past 24 months as a migrant or seasonal farmworker” (see 34 CFR 206.3(a)(1)). And to be an eligible student in the HEP or CAMP project, the prospective student must meet the special HEP or CAMP qualifications in 34 CFR 206.3(b) and 206.3(c), respectively.

B7. According to 34 CFR 206.3(b)(1), a potential HEP participant must not have earned a secondary school diploma or its equivalent. If a student has graduated from the equivalent of secondary school in his or her native country, would that student still be eligible to participate in a HEP project?

It depends on whether the IHE identified as the HEP grantee, or in the case of a private nonprofit organization, the IHE with which the organization collaborates, accepts the credential from the foreign school as the equivalent of a high school diploma for purposes of a student’s eligibility for admission to the IHE. If the IHE accepts the foreign credential, the student would not be eligible to participate in the HEP project (because the student would have an equivalent to a high school diploma as determined by the IHE). On the other hand, if the IHE does not accept the credential from the foreign secondary school for these purposes, then the student would be eligible to participate in the HEP project provided, however, that the student meets the other program eligibility requirements.

B8. If a student meets all of CAMP’s eligibility criteria, but does not meet the participating IHE’s admissions policies, is the student eligible to participate in the CAMP project at that IHE?

No. One of the eligibility requirements for CAMP is that the individual be enrolled, or be admitted for enrollment, as a full-time student at the participating IHE (34 CFR 206.3(c)(1)). Therefore, an individual who does not meet the university’s admissions standards and requirements (or is otherwise unable to secure the university’s provisional admission) would not meet the eligibility requirement that he or she be enrolled or admitted for enrollment as a full-time student at the participating IHE.

B9. As stated above, 34 CFR 206.3(c)(1) requires students to be enrolled, or admitted for enrollment, as full-time students at the participating IHE in order to be eligible to participate in a CAMP project. How is “full-time” defined?

Section 206.5(c)(4) of the HEP and CAMP regulations define “full-time” as, “with respect to an individual, a student who is carrying a full-time academic workload, as defined in 34 CFR part 690.” Part 690, through a cross-reference to 34 CFR 668.2(b), defines the term “full-time student” as:

An enrolled student who is carrying a full-time academic workload, as determined by the institution, under a standard applicable to all students enrolled in a particular educational program. The student’s workload may include any combination of courses, work, research, or special studies that the institution considers sufficient to classify the student as a full-time student, including for a term-based program, repeating any coursework previously taken in the program but not including either more than one repetition of a previously passed course, or any repetition of a previously passed course due to the student failing other coursework. However, for an undergraduate student, an institution’s minimum standard must equal or exceed one of the following minimum requirements:

- (1) For a program that measures progress in credit hours and uses standard terms (semesters, trimesters, or quarters), 12 semester hours or 12 quarter hours per academic term.
- (2) For a program that measures progress in credit hours and does not use terms, 24 semester hours or 36 quarter hours over the weeks of instructional time in the academic year, or the prorated equivalent if the program is less than one academic year.
- (3) For a program that measures progress in credit hours and uses non-standard terms (terms other than semesters, trimesters or quarters) the number of credits determined by—
 - (i) Dividing the number of weeks of instructional time in the term by the number of weeks of instructional time in the program’s academic year; and
 - (ii) Multiplying the fraction determined under paragraph (3)(i) of this definition by the number of credit hours in the program’s academic year.
- (4) For a program that measures progress in clock hours, 24 clock hours per week.
- (5) A series of courses or seminars that equals 12 semester hours or 12 quarter hours in a maximum of 18 weeks.
- (6) The work portion of a cooperative education program in which the amount of work performed is equivalent to the academic workload of a full-time student.
- (7) For correspondence coursework, a full-time course load must be—

(i) Commensurate with the full-time definitions listed in paragraphs (1) through (6) of this definition; and

(ii) At least one-half of the coursework must be made up of non-correspondence coursework that meets one-half of the institution's requirement for full-time students.

B10. According to 34 CFR 206.3(c)(2), in order to be eligible for CAMP, a potential student must not be beyond the first academic year of a program of study at the IHE, as determined under the standards of the IHE. How is the “first academic year of a program of study” defined?

Each IHE determines for itself what constitutes the “first academic year of a program of study.” Grantees should review their participating IHE's policies to determine what constitutes a first academic year of a program of study at that IHE.

B11. If a student has completed a year of study at a foreign post-secondary institution, could that student still be eligible for CAMP services?

Possibly. If the participating IHE does not accept the full year of credits obtained from the foreign institution, the student could still be considered to be in his or her first year of the program of study and, therefore, could still be eligible for CAMP services. Note, however, that regardless of the length of the CAMP project at the IHE, this student would cease to be eligible to participate in a CAMP project once he or she is considered to be beyond the first academic year of a program of study, according to the guidelines of the IHE.

C. Determining Need

C1. Must a grantee consider academic, supporting-services, and financial need when recruiting project participants?

Yes. In selecting applicants for funding, the Secretary looks at the overall quality of the recruitment plan, and looks specifically for “...information that shows that the applicant has adequate plans for...recruiting eligible participants who are most in need of the academic and supporting services and financial assistance provided by the project.” 34 CFR 206.20(d)(1)

As such, the grantee should establish a written policy for choosing students according to their level of need for the academic and supporting services and financial assistance provided by the project. Documentation of the student's need for assistance should be maintained in the student's official project file.

C2. How might a CAMP grantee determine that a potential participant has the academic, supporting-service, and financial-assistance needs that the project is designed to serve?

In order to determine a prospective participant's need for academic and supporting services, grantees may use information from a variety of sources, including correspondence with teachers and

counselors, student records and transcripts, and interviews with prospective students and their families.

How one documents financial assistance need is left to the grantee. Most CAMP projects rely on the Free Application for Federal Student Aid (FAFSA) to determine financial assistance needs as this is a commonly used tool to determine financial need throughout post-secondary education. Relying on a FAFSA to make this determination has the added benefit of making CAMP students more prepared to apply for additional Federal financial aid when they are no longer eligible for financial assistance through the CAMP project.

C3. How might a HEP grantee determine that a potential participant has the academic and supporting-service and financial-assistance needs that the project is designed to serve?

With regard to determining academic and supporting-services needs, as with CAMP grantees, HEP grantees may consider information from a variety of sources, including correspondence with teachers and counselors, student records and transcripts, and interviews with prospective students and their families. While not required, most HEP projects tend to use a standard placement test to determine the academic skill level and potential academic needs of their incoming students.

In order to determine a prospective participant's financial assistance needs, a HEP grantee may consider information from a variety of sources, such as a worker's pay stubs or W-2 forms. In contrast to the CAMP, there is no common form, such as the FAFSA, that is generally used by HEP grantees to make this determination. New HEP grantees are encouraged to seek advice and assistance from successful established grantees on best practices for making this determination.

D. Farmwork under 34 CFR 206.3(a)(1)

D1. What does 34 CFR 206.3(a)(1) require relating to qualifying work?

To be eligible to participate in a HEP or CAMP project, an individual must demonstrate his or her connection to migrant or seasonal farmwork based on criteria in either 34 CFR 206.3(a)(1) or (a)(2). Section 206.3(a)(1) provides for eligibility to participate in a HEP or CAMP project if a person or his or her immediate family member has spent a minimum of 75 days during the past 24 months as a migrant or seasonal farmworker. This eligibility requirement is often referred to as the "75-days/24 months rule" or the "HEP/CAMP rule."

Please note that the MEP definition of "qualifying work" is not used as part of the definition of a migrant farmworker in section 206.3(a)(1). The MEP definition of "qualifying work" is used in section 206.3(a)(2). This second method of establishing HEP or CAMP eligibility is discussed in more detail in section G of this document.

D2. What is a seasonal farmworker for the purpose of 34 CFR 206.3(a)(1)?

The term "seasonal farmworker" means a person whose primary employment was in farmwork on a temporary or seasonal basis (that is, not a constant year-round activity) for a period of at least 75 days within the past 24 months. (34 CFR 206.5(c)(8))

D3. Must the period of at least 75 days be continuous?

No.

D4. What is a migrant farmworker for purposes of determining eligibility under 34 CFR 206.3(a)(1)?

A migrant farmworker is a seasonal farmworker, as defined in the response to D2, above, whose employment required travel that precluded the farmworker from returning to his or her domicile (permanent place of residence) within the same day. (34 CFR 206.5(c)(7))

D5. How is farmwork defined for purposes of determining eligibility under 34 CFR 206.3(a)(1)?

Farmwork means any agricultural activity, performed for either wages or personal subsistence, on a farm, ranch, or similar establishment. (34 CFR 206.5(c)(3))

D6. The definition of farmwork in 34 CFR 206.5(c)(3) refers to an agricultural activity being performed on a farm, ranch, or similar establishment. What are some examples of a “similar establishment”?

Similar establishments include, for example, mushroom-growing facilities, tree farms, nurseries, forest nurseries, and cranberry bogs. They also include some establishments that are primarily engaged in performing one or more activities typically associated with agricultural production (*e.g.*, packing or sorting), but not all of them. Facilities that perform only processing activities (*e.g.*, poultry or meat processing facilities) would not be considered “similar establishments” because processing and manufacturing are not among the activities that are considered to be directly related to the production of crops, dairy products, poultry, or livestock; the cultivation or harvesting of trees; or fish farms.

D7. Could a packing or sorting facility be considered a “similar establishment”?

A packing or sorting facility may be considered a similar establishment to a ranch or farm if it is either (a) part of a larger establishment that performs agricultural production (*e.g.*, a farm where harvesting, sorting, and packing all occur) or (b) an establishment that is primarily engaged in packing or sorting that would otherwise take place on a farm. Packing or sorting areas of a food processing facility would not be considered similar establishments. See also question D19 in this document.

D8. What is the definition of agricultural activity for purposes of determining whether one’s farmwork qualifies for HEP and CAMP eligibility (34 CFR 206.3(a)(1))?

An agricultural activity is:

1. Any activity directly related to the production of crops, dairy products, poultry, or livestock;

2. Any activity directly related to the cultivation or harvesting of trees; or
3. Any activity directly related to fish farms. (34 CFR 206.5(c)(2))

D9. In the definition of agricultural activity, what is a “crop”?

The Department considers a crop to be a plant that is harvested for use by people or by livestock.

D10. In the definition of agricultural activity, what is the “production of a dairy product”?

For the purposes of HEP and CAMP participant eligibility, the “production of a dairy product” is restricted to the production of milk. Other items commonly referred to as “dairy products,” such as cheese or yogurt, are processed -- not produced. Because processing is different from producing, we do not consider processing cheese or yogurt as constituting the production of a dairy product.

D11. In the definition of agricultural activity, what is “poultry”?

In general, we consider the term “poultry” to refer to any bird produced and used primarily for meat or egg production. The most common examples of poultry are chickens and turkeys, but this term also includes other birds used for the same purposes, such as ducks, geese, pheasant, and quail.

D12. In the definition of agricultural activity, what is “livestock”?

We consider the term “livestock” to refer to any animal produced or kept primarily for breeding or slaughter, including, but not limited to, beef and dairy cattle, hogs, sheep, goats, and horses. For the purposes of HEP and CAMP, livestock does not include animals that are raised for sport, recreation, research, service, or pets. The Department does not consider the term “livestock” to include animals hunted or captured in the wild.

D13. What are some examples of activities that would be considered agricultural activities because they are directly related to the production of crops?

Some examples of activities directly related to the production of crops include, but are not limited to: preparing land or greenhouse beds, planting, seeding, watering, fertilizing, staking, pruning, thinning, weeding, transplanting, applying pesticides, harvesting, picking, and gathering.

D14. What are some examples of activities that would be considered agricultural activities because they are directly related to the production of dairy products?

Some examples of activities that are directly related to the production of dairy products include, but are not limited to: milking or operating milking machines, cleaning and maintaining animal housing areas for livestock that produce milk, and administering vaccinations or medicines for livestock that produce milk.

D15. What are some examples of activities that would be considered agricultural activities because they are directly related to the production of livestock?

The Department considers the production of livestock to involve raising and taking care of animals that are produced or kept primarily for breeding or slaughter. Such work includes, but is not limited to: herding, handling, feeding, watering, milking, caring for, branding, tagging, and assisting in the raising of livestock.

D16. What are some examples of activities that would be considered agricultural activities because they are directly related to the production of poultry?

Examples of activities directly related to the production of poultry might include, but are not limited to, breeding, hatching, and raising poultry for meat or egg production.

D17. What are some examples of activities that are not directly related to the production of crops, dairy products, poultry, or livestock, and so not an agricultural activity for purposes of 34 CFR 206.5(c)(2)(i)?

Some activities that are not directly related to production of crops, dairy products, poultry or livestock include: transporting a product outside of the farm, ranch or similar establishment; selling an agricultural or fishing product; landscaping; managing a farm; providing accounting, bookkeeping, or clerical services for farmworkers; providing babysitting or childcare services for farmworkers; and working at a restaurant. With regard to work such as repairing or maintaining equipment used for agricultural production or cleaning or sterilizing farm machinery or equipment, the Department does not consider individuals who were hired solely to do this work to be performing work directly related to the production of crops, dairy products, poultry, or livestock. Therefore, these activities and work are not considered agricultural activities or farmwork and thus could not be used as a basis for establishing HEP or CAMP eligibility under 34 CFR 206.3(a)(1).

D18. Could employment in agricultural processing be an agricultural activity that would qualify an individual to be eligible for a HEP or CAMP project under 34 CFR 206.3(a)?

No. To qualify under 34 CFR 206.3(a)(1) an individual's (or the individual's immediate family member's) primary employment must have been in farmwork (*i.e.*, an agricultural activity being performed for wages or personal subsistence on a farm, ranch, or similar establishment) on a temporary or seasonal basis (that is not constant year-round activity) for a minimum of 75 days during the past 24 months. As noted above, 34 CFR 206.5(c)(2) defines an agricultural activity as "(a)ny activity directly related to the *production* of crops, dairy products, poultry, or livestock..." (emphasis added). The term "agricultural activity" does not include agricultural processing. Therefore, employment in agricultural processing does not constitute farmwork for purposes of determining HEP or CAMP eligibility under 34 CFR 206.3(a)(1).

However, 34 CFR 206.3(a)(2) extends HEP and CAMP eligibility to individuals who have participated, or are eligible to participate, in programs under 34 CFR part 200, subpart C (MEP) or 20 CFR part 669 (for HEP, the individual must have participated in one of these programs within the last 24 months; for CAMP, there is no corresponding time limitation).

The MEP program regulations in 34 CFR 200.81(a) define “agricultural work” as the production or initial processing of crops, dairy products, poultry, or livestock, as well as the cultivation or harvesting of trees. In addition, the definition makes clear that this work must be performed for wages or personal subsistence. Therefore, individuals who perform agricultural processing activities may qualify for HEP or CAMP under 34 CFR 206.3(a)(2) if they have participated in the MEP or are eligible to participate in the MEP and meet all other HEP or CAMP eligibility criteria.

The regulations for NFJP make no such provision for individuals whose work was in processing. In 20 CFR 669.110, “farmwork” is defined as those occupations and industries within agricultural production and agricultural services that are identified for the National Farmworker Jobs Program. The U.S. Department of Labor clarifies this definition further in eligibility guidance for the NFJP (www.doleta.gov/MSFW/pdf/TEGL-25-04attach.pdf). Page two states that “farmwork” for the purposes of NFJP means agricultural labor performed for wages in agricultural production and agricultural services as provided under three subsections of the North American Industry Classification System (NAICS): 111 -- Crop Production; subsection 112 -- Animal Production; and subsection 115 -- Support Activities for Agriculture and Forestry. None of these subsections include activities in processing.

D19. Is sorting and packing considered to be an agricultural activity, and, therefore, farmwork, for purposes of determining HEP or CAMP eligibility under 34 CFR 206.3(a)(1)?

It depends on where this activity occurs. Sorting and packing that takes place on a farm or in a facility off the farm that is primarily engaged in sorting and packing would likely be classified as agricultural activities (*i.e.*, activities directly related to the production of crops, dairy products, poultry, or livestock under the definition of “agricultural activity” in 34 CFR 206.5(c)(2)). This is because these activities are an integral part of harvesting the crop. In contrast, sorting and packing that takes place at a processing facility would likely be classified as the beginning of processing, rather than the end of agricultural production, and would therefore not be considered an agricultural activity under this part. As such, such an activity would not meet the definition of “farmwork” and an individual performing such an activity would not be considered a migrant or seasonal farmworker under 34 CFR 206.3(a)(1).

D20. Is slaughtering considered to be an agricultural activity, and, therefore, farmwork, for purposes of determining HEP or CAMP eligibility under 34 CFR 206.3(a)(1)?

No. Slaughtering is considered to be the beginning of processing of livestock or poultry, and generally takes place in a processing facility. Because slaughtering is not an agricultural activity under the program’s regulatory definitions, it does not constitute farmwork and, thus, could not serve as the basis of HEP or CAMP eligibility under 34 CFR 206.3(a)(1).

D21. Is transportation of agricultural products considered to be an agricultural activity, and, therefore, farmwork, for purposes of determining HEP or CAMP eligibility under 34 CFR 206.3(a)(1)?

It depends. Transporting activities such as “trucking,” whereby agricultural products are shipped from the farm or similar establishment to a processing plant or other location, would not meet the definition of “agricultural activity” in 34 CFR 206.5(c)(2), because this type of transporting (*i.e.*, shipping) is not directly related to agricultural production. However, if transporting the agricultural products takes place on the farm or similar establishment or is otherwise part of the harvest (such as transporting the crop to a packing shed with a truck or tractor), a HEP or CAMP grantee may determine this activity to be an “agricultural activity,” and, therefore, farmwork for purposes of establishing participant eligibility under 34 CFR 206.3(a)(1).

D22. What are some examples of activities that would be considered agricultural activities because they are directly related to the cultivation or harvesting of trees?

Examples of activities that are directly related to the cultivation or harvesting of trees include, but are not limited to: soil preparation; plowing or fertilizing land; sorting seedlings; planting seedlings; transplanting; staking; watering; removing diseased or undesirable trees; applying insecticides; shearing tops and limbs; pruning or trimming trees; and felling or cutting.

D23. Is transporting trees from a harvesting site to a processor an agricultural activity, and, therefore, farmwork, for purposes of determining HEP or CAMP eligibility under 34 CFR 206.3(a)(1)?

No. Transporting trees is agricultural *processing* if it occurs after the cultivation and harvesting of the trees; at this point in the process, transporting trees it is not a qualifying activity. If, however, similar to the discussion in question D21 in this document, transportation takes place at the tree-producing establishment, such as transporting saplings with the truck or tractor, this could be considered to be directly related to agricultural production and, therefore, a qualifying activity under 34 CFR 206.3(a)(1).

D24. Does work in a tree nursery normally constitute an agricultural activity, and, therefore, farmwork, for purposes of determining HEP or CAMP eligibility under 34 CFR 206.3(a)(1)?

Work that is directly related to the cultivation or harvesting of the trees, such as soil preparation, planting, watering, spraying, tending, pruning, and weeding would be considered agricultural activities, and, therefore, farmwork for the HEP and CAMP programs under 34 CFR 206.3(a)(1).

D25. Does commercial landscaping qualify as farmwork for purposes of determining eligibility under 34 CFR 206.3(a)(1)?

No. Commercial landscaping activities such as contouring land and planting grounds are not directly related to the cultivation and harvesting of trees or the actual *production* of a crop and, therefore, are not considered agricultural activities or farmwork for purposes of determining eligibility under 34 CFR 206.3(a)(1).

D26. In the definition of “agricultural activity” in 34 CFR 206.5(c)(2), what is a “fish farm”?

For purposes of HEP and CAMP, the Department considers a fish farm to be a tract of water, such as a pond, a floating net pen, a tank, or a raceway reserved for the raising or harvesting of fish or shellfish. Large fish farms sometimes cultivate fish in the sea, relatively close to shore. In these farms, the fish are artificially cultivated, rather than caught, as they would be in “fishing.” Fish species raised on fish farms include, but are not limited to, catfish, salmon, cod, carp, eels, oysters, and clams.

D27. What are some examples of activities that are considered agricultural activities because they are directly related to fish farms?

Examples of activities directly related to fish farms include, but are not limited to, breeding, stocking, feeding, collecting, and harvesting fish or shellfish.

E. Temporary and Seasonal Employment

E1. What is seasonal employment?

Seasonal employment generally is employment that occurs only during a certain period of the year because of the cycles of nature and that is not constant year-round employment.

E2. What is temporary employment?

Temporary employment generally is employment that lasts for a limited period of time, usually a few months, but is not constant year-round employment.

E3. How does one determine whether employment was temporary?

For a worker to meet the definition of a migrant or seasonal farmworker for purposes of establishing eligibility for HEP or CAMP, the recruiter must determine that the worker’s employment was not constant year-round employment (*i.e.*, that it was temporary or seasonal). To do so, the Department recommends that recruiters rely on a statement from the worker’s employer, the worker, or another credible source that establishes the temporary or seasonal nature of the employment. The recruiter should document the basis for his or her determination.

E4. If a worker is employed year round by the same employer performing a series of different activities, may the worker, or his or her immediate family members, be eligible for HEP or CAMP?

No. Workers who are hired to work year round by the same employer, regardless of how many different jobs they perform, are not employed on a temporary or seasonal basis and are, therefore, not eligible for a HEP or CAMP project. Eligibility intake forms should include a means for capturing information that establishes that the worker’s employment was temporary or seasonal.

F. Primary Employment

F1. The definitions of both “migrant farmworker” and “seasonal farmworker” in 34 CFR 206.5((c)(7) and (c)(8), respectively, require the worker’s “primary employment” to be in temporary or seasonal farmwork. What is meant by the term “primary employment”?

“Primary employment” means that for a period of at least 75 days in the past 24 months, temporary or seasonal employment in migrant or seasonal farmwork is the principal, but not necessarily the sole, means of support for the worker or his or her immediate family.

F2. Must the period of “primary employment” in temporary or seasonal farmwork for at least 75 days in the past 24 months be continuous?

No. If, for example --

1. An individual did 30 days of work that constitutes farmwork under 34 CFR 206.5(c)(3);
2. The farmwork was his or her primary employment during that time;
3. After that time, he or she worked in construction for 12 months (*i.e.*, work that does not meet the definition of farmwork);
4. After the 12 months of construction, but still in the same 24-month period during which the individual did the 30 days of farmwork, he or she returned to the farmwork for at least another 45 days; and
5. During this period of farmwork, the work was again the individual’s primary employment, he or she may qualify to be eligible for a HEP or CAMP project under 34 CFR206.3(a)(1), assuming all other eligibility requirements are met.

F3. If a person holds a job as an instructional aide, bus driver, or other temporary or seasonal non-agricultural worker during the regular school year, and works in seasonal farmwork for 75 days during the summer months, would he or she qualify as a migrant or seasonal farmworker?

It depends. If during the 75 days of seasonal farmwork, the qualifying farmwork was the worker’s primary employment, the worker would qualify as a migrant or seasonal farmworker. However, the recruiter should keep in mind that in order for the worker or his or her immediate family members to be eligible to participate in a HEP or CAMP project, the potential participant must also meet all other eligibility criteria, including being in need of the academic and supporting services and financial assistance provided by a project. It may be the case that an individual who has worked only 75 days in seasonal farmwork and had steady employment during the school year would not need these services and assistance. HEP and CAMP grantees should follow the policies they have in place for determining which individuals need services and assistance.

G. Qualifying work under 34 CFR 206.3(a)(2)

G1. What does 34 CFR 206.3(a)(2) state?

Section 206.3(a)(2) of the regulations establishes the second of the two possible means of participant eligibility (along with 34 CFR 206.3(a)(1), referred to as the “75 days/24 months rule”). To be eligible to participate in a HEP or a CAMP project under 34 CFR 206.3(a)(2), an individual must have participated (with respect to HEP within the last 24 months), or be eligible to participate in programs under 34 CFR part 200, subpart C (MEP) or 20 CFR part 669 (NFJP).

G2. Who is eligible to receive MEP services?

Consistent with sections 1115(b)(1)(A), 1304(c)(2), and 1309(2) of the of the Elementary and Secondary Education Act, as amended (ESEA) and 34 CFR 200.81(e) and 200.103(a) of the MEP regulations, a child is a “migratory child” and is eligible for MEP services if all of the following conditions are met:

- The child is not older than 21 years of age;
- The child is entitled to a free public education (through grade 12);
- The child is a migratory agricultural worker or a migratory fisher, or the child has a parent, spouse, or guardian who is a migratory agricultural worker or a migratory fisher;
- The child moved within the preceding 36 months in order to seek or obtain qualifying work, or to accompany or join the child’s parent, spouse, or guardian who is a migratory agricultural worker or a migratory fisher, in order to seek or obtain qualifying work; and
- With regard to the move identified in the preceding paragraph, the child:
 - Has moved from one school district to another;
 - In a State that is comprised of a single school district, has moved from one administrative area to another within such district; or
 - Resides in a school district of more than 15,000 square miles and migrates a distance of 20 miles or more to a temporary residence to engage in or to accompany or join a parent, spouse, or guardian who engages in a fishing activity. (This provision currently applies only to Alaska.)

Note: The terms “migratory agricultural worker,” “migratory fisher,” “move or moved,” “in order to obtain,” and “qualifying work” are defined in 34 CFR 200.81.

G3. What types of information and resources regarding MEP eligibility requirements are available to HEP and CAMP grantees?

Grantees should refer to sections 1115(b)(1)(A) and 1309 of the of the ESEA; 34 CFR 200.81 (of the MEP regulations); and 34 CFR 200.103(a) (definitions in the general ESEA Title I regulations) for the statutory and regulatory requirements governing eligibility under the MEP, as well as to non-regulatory guidance that the Department has issued on MEP eligibility. See <http://www2.ed.gov/programs/mep/legislation.html>.

G4. Should HEP or CAMP project staff make MEP eligibility determinations?

No. The Department strongly discourages HEP and CAMP grantees from making MEP eligibility determinations independent of a State MEP's determination. Eligibility for the MEP is complex, and these determinations should be left to State or local MEP staff with the training and experience to make these determinations. Questions on MEP eligibility should be addressed to State MEP staff.

G5. May a HEP/CAMP project rely upon an MEP Certificate of Eligibility (COE) that a State educational agency (SEA) has already accepted to establish and document eligibility for a HEP or CAMP project under 34 CFR 206.3(a)(2)?

Yes. The Department considers a valid State MEP COE to adequately establish eligibility for the MEP, and a HEP and CAMP project may rely on that COE.

G6. If a HEP/CAMP project cannot obtain an SEA-accepted COE that confirms the eligibility of a prospective HEP/CAMP student for the MEP, how else may the project document MEP participation or eligibility under 34 CFR 206.3(a)(2)?

To document MEP participation or eligibility under 34 CFR 206.3(a)(2), a HEP or CAMP project may rely on an official signed letter or other official documentation from the State MEP program verifying that the potential student is currently eligible for the MEP program, or formerly participated in the MEP program (in the case of HEP, within the past 24 months).

G7. Who is eligible to participate in the NFJP?

The NFJP program regulations in 20 CFR 669.320³ state that eligible participants are disadvantaged migrant and seasonal farmworkers, as defined in 669.110, or their dependents. In addition, the eligibility guidance for the NFJP (www.doleta.gov/MSFW/pdf/TEGL-25-04attach.pdf) states that to qualify as eligible for participation in the NFJP under section 167 of the WIA and 20 CFR 669, an individual on the date of application for enrollment must--

- 1) be an "eligible farmworker" or a "dependent" of an eligible farmworker;

³ See footnote 1 on page 2.

- 2) be a citizen, a national of the United States, a lawfully admitted permanent resident alien, a refugee, an asylee, a parolee, or other immigrant authorized by the Attorney General to work in the United States [*WIA section 188(a)(5)*]; and
- 3) if a male applicant, not have violated section 3 of the Military Selective Service Act by failing to present and submit to selective service registration as required [*WIA section 189(h)*].

G8. How does the NFJP define “eligible farmworker”?

Consistent with 20 CFR 669.320, an “eligible farmworker” is a person who, during the 12-month eligibility determination period, is a disadvantaged migrant farmworker or seasonal farmworker. The term “disadvantaged” is defined in 20 CFR 669.10 as a farmworker whose income, for any 12 consecutive months out of the 24 months immediately before the farmworker applies for the program, does not exceed the higher of either the poverty line or 70 percent of the lower living standard income level, adjusted for the farmworker’s family size and including the income of all wage earners, except when its inclusion would be unjust due to unstable conditions of the family unit (20 CFR 669.110). Additionally, 20 CFR 669.110 defines “farmwork” as those occupations and industries within agricultural production and agricultural services that are identified for the NFJP. The eligibility guidance for that program further states, on page two, that for the purposes of NFJP “farmwork” means agricultural labor performed for wages in agricultural production and agricultural services as provided under three subsections of the North American Industry Classification System (NAICS): 111 -- Crop Production; subsection 112 -- Animal Production; and subsection 115 -- Support Activities for Agriculture and Forestry (www.doleta.gov/MSFW/pdf/TEGL-25-04attach.pdf).

G9. Should HEP or CAMP project staff make a determination regarding NFJP eligibility?

No. The Department strongly discourages HEP and CAMP grantees from making NFJP eligibility determinations. Rather, HEP and CAMP staff should rely on NFJP staff to make NFJP eligibility determinations, and staff should rely on documentation provided by NFJP projects to establish HEP and CAMP eligibility.

G10. If an individual participated in, or is eligible to participate in, the MEP or NFJP, must he or she also meet the “special HEP qualifications” specified in 34 CFR 206.3(b) or the “special CAMP qualifications” cited in 34 CFR 206.3(c) in order to be eligible for a HEP or CAMP?

Yes. While an individual may have participated in or be eligible to participate in the MEP or NFJP, he or she must also meet the requirements in 34 CFR 206.3(b) or 206.3(c) in order to qualify for HEP or CAMP, respectively. Under the additional HEP qualifications in 34 CFR 206.3(b), to be eligible to participate in a HEP project, a person also must --

- (1) Not have earned a secondary school diploma or its equivalent;
- (2) Not be currently enrolled in an elementary or secondary school;

(3) Be 16 years of age or over, or beyond the age of compulsory school attendance in the State in which he or she resides; and

(4) Be determined by the grantee to need the academic and supporting services and financial assistance provided by the project in order to attain the equivalent of a secondary school diploma and to gain employment or be placed in an IHE or other postsecondary education or training.

Similarly, under the additional CAMP qualifications in 34 CFR 206.3(c), to be eligible to participate in a CAMP project, a person also must --

(1) Be enrolled or be admitted for enrollment as a full-time student at the participating IHE;

(2) Not be beyond the first academic year of a program of study at the IHE, as determined under the standards of the IHE; and

(3) Be determined by the grantee to need the academic and supporting services and financial assistance provided by the project in order to complete an academic program of study at the IHE.

G11. Is there a timeframe within which a potential HEP participant must have participated in the MEP or NFJP in order to be eligible for the HEP?

Yes. Under 34 CFR 206.3(a)(2), in order to be eligible to participate in a HEP project, an individual must either --

1. Have participated in the MEP or NFJP within the preceding 24 months, or
2. Be currently eligible to participate in either of these programs.

With regard to the first option, if, for example, a project were to begin delivering services other than recruitment (e.g. instruction, tutoring, transportation assistance, or stipends) to a HEP student on August 1, 2013, then that student must have participated in either the MEP or NFJP on or after August 1, 2011. With the second option, the HEP student must be currently eligible for the MEP or NFJP program.

G12. Is there a timeframe within which a potential CAMP participant must have participated in the MEP or NFJP in order to be eligible for the CAMP?

No. Neither the statute nor regulations set a timeframe for when a potential CAMP participant must have participated in the MEP or NFJP. Therefore, to be eligible for CAMP under 34 CFR 206.3(a)(2), individuals must simply have participated in the MEP or NFJP at some point in their lifetime, or be currently eligible for either of those programs.

H. Other Eligibility and Recruitment Issues

H1. Once an individual is enrolled in a HEP project, how long is he or she eligible for HEP services?

An individual who is enrolled in a HEP project may continue to receive services until he or she receives the equivalent of a high school diploma.

H2. Once an individual is enrolled in a CAMP project how long is he or she eligible for CAMP services?

An individual who is enrolled in a CAMP project may continue to receive services until he or she completes the first academic year of a program of study, as determined under the standards of the participating IHE.

H3. Under what circumstances must a HEP or CAMP project re-establish eligibility of a student who has already been enrolled in the project and begun receiving services but has not yet finished the program?

As noted in questions H1 and H2 above, once a student is enrolled in a HEP or CAMP project and begins receiving services, that student is eligible to continue receiving services until he or she has received the equivalent of a high school diploma (in the case of HEP), or completed the first academic year of a program of study at the IHE (in the case of CAMP). As long as a student has no break in services, meaning the student remained a project participant and did not leave (*i.e.*, withdraw from) the project and re-enter, there is no need to re-establish his or her eligibility for HEP or CAMP.

However, if a student does withdraw from the HEP or CAMP project and subsequently wishes to re-enroll or re-enter, eligibility for that student must be re-established before the student may begin receiving project services (other than recruitment). The HEP Annual Performance Report (APR) defines a “withdrawal” in terms of a HEP GED eligible student who was enrolled in and attended HEP GED instruction for at least 12 hours of instructional services in the reported budget period, who then left the HEP GED program without attaining a GED, and who did not return for instruction in the subsequent budget period.

The CAMP APR defines a “withdrawal” in terms of a CAMP student who completed intake and was enrolled and attended college courses past the IHE’s last date for adding courses, but who then left the CAMP program without completing the first academic year of college and did not re-enroll for instruction in the project’s subsequent budget period.

All HEP or CAMP students reported on the APR for any given budget period as “withdrawals” must have their eligibility re-established if they subsequently re-enroll or re-enter a HEP or CAMP project. In fact, a project that reported a student as a “withdrawal” in an APR for a prior budget year must report the same students on its current year’s APR as a “new participant” if the student re-enrolled or re-entered the program during the budget period covered by the new APR. More broadly, projects should establish eligibility for anyone it reports on the APR as a “new participant,”

whether that individual is re-entering the project after leaving as a “withdrawal” or is participating in the project for the first time.

H4. Must a HEP or CAMP project re-establish eligibility for individuals who, during the budget period, are unable to attain the equivalent of a high school diploma (in the case of HEP), or complete the first academic year of a program of study at an IHE (in the case of CAMP), but who wish to resume HEP or CAMP activities?

Not necessarily. The Department recognizes that due to the many challenges facing students with backgrounds in migrant and seasonal farmwork, it may take project participants more than one year (*i.e.*, budget period) to achieve the primary objective of the program. Because each budget period of the five-year HEP or CAMP grant cycle is a distinct grant award for which enrollment and performance must be reported, the HEP and CAMP APRs create a special category called “persisters” to account for those students whose participation stretches across budget periods.

For the purposes of the HEP program, the term “persisters” is defined in the program’s APR as HEP students who completed intake and were enrolled and attending HEP GED instruction for at least 12 hours of instructional services in the reported budget period and did not attain a GED, but either:

- (1) re-enrolled for continuing instructional services in support of a GED in the subsequent budget period prior to the mid-November APR submission date, or
- (2) re-enrolled for the sole purpose of taking the GED assessment in the subsequent budget period prior to the mid-November APR submission due date.

For the purposes of the CAMP program, the term “persisters” is defined in the program’s APR as CAMP students enrolled in their first academic year of college who:

- (1) completed intake and were enrolled and attending college courses past the Add/Drop deadline assigned by the project’s IHE, but
- (2) did not complete their first academic year of college, and then re-enrolled -- for continuing instructional services in support of completing their first academic year of postsecondary education -- in the subsequent budget period prior to the mid-November APR submission due date.

Students reported as “persisters” on a given budget period’s APR are reported as “returning participants,” rather than “new participants,” on the subsequent budget period’s APR; they do not need to have their eligibility re-established as they are not considered to have left and re-entered the project. If, however, as noted in H3 above, the student had left the project and been reported as a “withdrawal” on a previous APR and comes back in the future to resume HEP or CAMP activities, that student must be reported as a “new participant” after the student’s eligibility has been re-established.

H5. If an individual is identified toward the end of the individual’s period of HEP / CAMP eligibility, is there a limit on how long he or she may receive HEP or CAMP services?

So long as the individual begins receiving services other than recruitment (*e.g.*, instruction, tutoring, transportation assistance, or stipends) during a period in which he or she is eligible and is not reported as a “withdrawal,” that individual may continue to receive services -- even across multiple budget periods -- until he or she receives a secondary school diploma or its equivalent (in the case of HEP) or completes the first academic year of a program of study at the IHE (in the case of CAMP).

H6. Are individuals who do not meet the civil status requirements for student financial assistance eligible to participate in the CAMP program?

No. While this issue is not addressed in the CAMP regulations in 34 CFR Part 206, section 401(a) and (b) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (also known as the Welfare Reform Act), which became law on August 22, 1996, states that an alien who is not a “qualified alien” may not receive what the law refers to as “Federal public benefits.” The term “Federal public benefits,” under section 401(c) of the Welfare Reform Act, includes “postsecondary education or any similar benefit for which payments or assistance are provided to an individual by an agency of the United States or appropriated funds of the United States.” Since CAMP is a federally-funded program under which participants receive direct services in order to help them to succeed in their first year of college or university, participants who are not “qualified aliens” would be recipients of postsecondary education services, and so they are not eligible to participate in CAMP.

Section 431 of the Welfare Reform Act defines a “qualified alien” as one who has been lawfully admitted for permanent residency, as well as one who falls into one of several other narrowly defined groups, such as those formally granted asylum, refugees, and Cuban and Haitian entrants, aliens paroled into the United States for a period of at least one year, aliens granted withholding of deportation by the United States Citizenship and Immigration Services (USCIS), aliens granted conditional entry into the United States, and certain battered alien spouses and children. Thus, the Department believes that all other aliens are prohibited from receiving services under CAMP.

H7. May a grantee use program funds for recruitment services?

Yes. 34 CFR 206.10(b)(1)(i) and (b)(2)(i) authorize the use of both HEP and CAMP funds for recruitment services to reach persons who are eligible for these programs.

H8. May a grantee use program funds to recruit participants through radio, TV or newspaper advertising?

Yes. Although advertising to recruit project participants is an allowable use of program funds, grantees may be able to minimize advertising costs, for example, by asking local radio and television stations to provide free air time as a public service announcement. More information on guidelines for the use of federal funds can be found in the OMB Cost Circulars, which have been incorporated into part 2 of the CFR and can be found online at www.gpoaccess.gov.

I. Documenting Eligibility

II. Is there a federally developed form for documenting eligibility for HEP or CAMP?

No. However, projects must maintain adequate documentation (see question I2 of this document) for each person whom they enroll in their project so that they can confirm that the person met all program eligibility requirements. Projects are encouraged to develop their own form and procedures for maintaining this information. Project-specific documentation should be used in conjunction with MEP or NFJP eligibility forms, where possible, for those participants who qualify for services under either of these programs. See questions G4, G5, G6, and G9 in this document for more information on how eligibility forms used by the MEP or NFJP may be used to determine eligibility for HEP or CAMP.

I2. What constitutes adequate documentation of eligibility as a migrant or seasonal farmworker?

Each project must maintain documentation for each HEP and CAMP participant to confirm that the individual has met all eligibility criteria under 34 CFR 206.3(a)(1) or 34 CFR 206.3(a)(2), as well as the additional eligibility requirements for either the HEP or CAMP programs. See questions B1 and B2, respectively.

- **MEP:** If eligibility is determined in conjunction with the MEP under 34 CFR 206.3(a)(2), a copy of a completed COE should be made part of the participant's official record to confirm that the individual either has participated in (within the preceding 24 months in the case of HEP), or is eligible to participate in, the MEP. If the SEA is not willing or able to provide a COE, a grantee may also obtain other forms of verification, such as a formal, signed letter from the SEA verifying that the student was a MEP participant (in the case of HEP, within the preceding 24 months) or is currently MEP eligible, or an official participant list for that MEP project. This documentation should be kept in the student's file.
- **NFJP:** If eligibility is determined in conjunction with the NFJP, the HEP or CAMP project should contact the NFJP project in which the potential student participated and obtain a copy of his or her NFJP eligibility record to demonstrate eligibility for, or participation in, this program. This documentation should be kept in the student's file.
- **75 Days in 24 Months:** If an individual qualifies under 34 CFR 206.3(a)(1), *i.e.*, the prospective student or an immediate family member spent 75 days during the past 24 months as a migrant or seasonal farmworker, the grantee is encouraged to develop and maintain a standard enrollment form that reflects the applicable eligibility factors. In general, this form should clearly identify when and where the migrant or seasonal farmwork occurred, what the qualifying activity was, and on what basis that work was deemed to be migrant or seasonal, as defined by 34 CFR 206.5(c).

Where it may be available, the Department encourages grantees to try to secure documentation verifying the migrant or seasonal farmwork, such as a signed statement by the employer or a pay stub. However, the Department does not require any particular item of documentation (*e.g.*, the employee's Social Security Card, W-2, W-4, I-9 form or pay

stub) to verify eligibility; nor are multiple forms of documentation required. Additionally, if these sources of information are not available, a HEP or CAMP recruiter may rely on what the recruiter believes is the worker's reasonable statement of work history to determine whether the worker has met the qualifying work requirements. Please note that while worker attestation is an acceptable form of documentation in this case, excessive reliance on worker attestations could be a cause for concern to Department staff or others conducting monitoring or audits. In general, projects should seek to document participant eligibility clearly, while not creating an undue barrier to participation by the documentation that they require.

If recruiters or other project staff has reasonable doubts about the reliability of information provided, they should try to obtain corroborating documentation. If corroborating documentation cannot be obtained, the Department would not recommend that the project enroll the individual in the HEP or CAMP project.

I3. Is maintaining a MEP COE or NFJP enrollment form sufficient for documenting an individual's participation in the MEP or NFJP according to 34 CFR 206.3(a)(2)?

Yes.

I4. Are HEP and CAMP projects permitted to determine independently whether an individual meets the eligibility requirements for the MEP or NFJP in order to qualify the individual for a HEP or CAMP project?

As stated in questions G4 and G9 in this document, HEP and CAMP project staff are strongly discouraged from determining whether individuals meet the MEP or NFJP eligibility requirements. The eligibility requirements under these programs are complex and require familiarity with specific criteria for each program. Instead, HEP and CAMP recruiters are encouraged to work closely with MEP and NFJP staff to learn of potential participants and to obtain the proper documentation for those individuals who qualify for HEP and CAMP under these programs. If a HEP or CAMP recruiter believes that an individual he or she has identified might be *currently* eligible for the MEP or NFJP, the recruiter should refer the individual to a local MEP or NFJP project in order for staff of those programs to make the eligibility determination. The HEP or CAMP recruiter can then work closely with staff of the MEP or NFJP to obtain the necessary documentation for eligibility in the HEP or CAMP program.

I5. If MEP or NFJP staff determine that an individual is not eligible for the MEP or NFJP, may a HEP or CAMP project find the individual eligible under 34 CFR 206.3(a)(2) based on its own independent determination of the MEP and NFJP eligibility requirements?

The Department strongly discourages grantees from doing so. If a HEP or CAMP grantee disagrees with the eligibility determination of the MEP or NFJP staff with whom they are working, the Department instead encourages the grantee to confer with other State-level MEP or local NFJP staff members to try to resolve the matter.

I6. Who is responsible for establishing the eligibility of participants?

The grantee is ultimately responsible for confirming and documenting that correct eligibility determinations were made for all project participants. In the case of eligibility determinations made under 34 CFR 206.3(a)(1), the grantee is responsible for both making the eligibility determination and adequately documenting that decision. In eligibility determinations made under 34 CFR 206.3(a)(2) (*i.e.*, eligibility decisions with regard to MEP and NFJP), the grantee is responsible for documenting that the student has a valid MEP or NFJP eligibility determination or record of participation, but is not responsible for making the eligibility determination itself.

To strengthen internal controls on eligibility determinations made by HEP and CAMP project recruiters, the Department strongly suggests that a person other than the recruiter, preferably the project director, review all eligibility determinations (and the supporting documentation) made by HEP or CAMP recruiters to verify that participants are eligible for project services based on the statutory and regulatory requirements discussed in this document, and that their eligibility is fully documented.

I7. 34 CFR 206.3(a)(1) extends eligibility to participate in HEP and CAMP to individuals who have spent a minimum of 75 days during the past 24 months as a migrant or seasonal farmworker. From what date should a recruiter count back to determine the 24-month period?

During the recruitment process it may be unclear if a student is actually eligible, if, in fact, he or she will become a participant, and if so, when. A potential project participant cannot be considered a “participant” until after the project has determined the student to be eligible and has begun delivering services other than recruitment (*e.g.*, instruction, tutoring, transportation assistance, or stipends) to him or her; therefore, a recruiter should count back the 24 months from the date the student has begun, or will begin, receiving services other than recruitment.