

December 03, 1998

SUBJECT: Child and Adult Care Food Program (CACFP): #3-99:
Implementation of Public Law 105-336

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
All States

On October 31, 1998, President Clinton signed the Child Nutrition Reauthorization Act of 1998 (Public Law 105-336). Several provisions in this law affect the administration of CACFP. We intend to publish regulations to implement these provisions as soon as possible. However, except as noted below, these provisions must be implemented in accordance with the statutory effective date. This memorandum provides guidance for State agencies (SA) to use until final rules are published.

AFTERSCHOOL “AT-RISK” PROGRAM

Section 107(h) of Public Law 105-336 added section 17(r) to the National School Lunch Act (NSLA, 42 U.S.C. 1766(r)) to authorize CACFP reimbursement for meal supplements provided to children through the age of 18 in certain afterschool programs.

Specifically:

1. Afterschool programs must be located in a geographical area served by a school in which 50 percent or more of the children enrolled are certified as eligible for free or reduced price school meals;
2. These programs must be organized primarily to provide care after school hours, on weekends and holidays during the regular school year and have an educational or enrichment purpose;
3. Reimbursement is limited to one supplement per child per day; and
4. Supplements must be served to children free of charge and will be reimbursed at the “free” rate.

The Conference Report for Public Law 105-336 indicates the intent of the Conference Committee that these afterschool programs provide “the types of activities known to help reduce or prevent involvement in juvenile crime.” The provision is not intended to provide support “to members of athletic teams and others who are not participating in

such activities.” In addition, the Conference Committee indicated its intent that these programs can continue to claim reimbursement for supplements served to children who turn age 19 during the school year.

The Department of Agriculture (USDA) will issue more comprehensive guidance in the near future on implementation of the afterschool at-risk program in CACFP. Until guidance is issued, potentially eligible institutions may wish to serve supplements which meet CACFP meal pattern requirements, and keep records to document their meal service. It is possible that such institutions could be reimbursed retroactively once their eligibility is confirmed.

PROGRAM LICENSING REQUIREMENTS

Section 107(a)(2) of Public Law 105-336 amended section 17(a)(1) of the NSLA (42 U.S.C. 1766(a)(1)) to reorganize and revise program licensing requirements. First, section 107(a)(2) revises the licensing requirement for facilities providing care to children outside of school hours. Specifically, outside-school-hours care programs, in areas where Federal, State or local licensing or approval is not required, are permitted to participate in CACFP by meeting State or local health and safety standards. In addition, section 107(a)(2) explicitly exempts schools from the licensing requirement.

Finally, the provision removes reference to an institution’s receipt of Title XX funds as an acceptable form of approval when Federal, State or local licensing or approval is not available. However, the Conference Report for Public Law 105-336 indicates that this revision is not intended “to disqualify any institution which originally qualified under Title XX.”

MOVING TOWARD TAX EXEMPT STATUS

Section 107(d)(1) of Public Law 105-336 amended section 17(d)(1) of the NSLA (42 U.S.C. 1766(d)(1)) to limit the participation of private institutions seeking tax exempt status from the Internal Revenue Service to a period of not more than 180 days. This 180-day timeframe may be extended an additional 90 days by the SA if the institution demonstrates to the satisfaction of the SA that the institution’s inability to obtain tax exempt status is beyond its control. Prior to this change, there were no time limits or restrictions on CACFP participation for institutions seeking tax exempt status.

In implementing this provision, SAs should begin the 180-day timeframe on October 1, 1998, for institutions already in the process of seeking tax exempt status, because that is the effective date of this provision.

CONSOLIDATING BENEFITS FOR HOMELESS CHILDREN

Section 107(j) of Public Law 105-336 amended sections 13(a)(3)(C) and 17 of the NSLA (42 U.S.C. 1761 (a)(3)(C) and 1766 respectively) by transferring authority over Summer Food Service Program (SFSP) homeless sites to CACFP. The law also abolished the Homeless Children Nutrition Program under section 17B of the NSLA (42 U.S.C. 1766(B), and added a new paragraph (q), "Participation by emergency shelters," to section 17 of the NSLA (42 U.S.C. 1766(q)), to consolidate the administration and delivery of benefits to homeless children under a single program. Moving homeless sites from SFSP into CACFP provides an opportunity to deliver important nutrition benefits to children, aged 12 and younger (and certain older children with disabilities and children of migrant workers), year-round. It allows sponsors to serve each eligible child up to three meals or two meals and one supplement, each day. However, teenaged youths living in homeless shelters who would have been eligible for SFSP will not be eligible for CACFP benefits with the exception of the at-risk program.

The amendments affecting benefits to homeless children are effective July 1, 1999. USDA will issue a separate memorandum to address implementation of these provisions in the near future.

ROUNDING OF REIMBURSEMENT RATES

Section 103(b) of Public Law 105-336 amended section 11(a)(3)(B) of the NSLA (42 U.S.C. 1759a(a)(3)(B)) to change the method for the annual adjustments to reimbursement rates for free and reduced price meals and supplements served in centers participating in CACFP. This amendment requires that operating reimbursement rates for meals and supplements served in centers be adjusted to the nearest lower cent increment and be based on the unrounded amount for the preceding 12-month period. This parallels the amendment made by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193) for paid meal reimbursements in centers, and for all meals served in CACFP family day care homes. With section 103(b)'s amendment, all reimbursement rates for meals in CACFP will be adjusted and then rounded down to the lower cent.

This new rounding requirement is effective beginning July 1, 1999. This provision will be implemented through the annual *Federal Register* notice published in July.

EVEN START CATEGORICAL (AUTOMATIC) ELIGIBILITY

Section 107(b) of Public Law 105-336 amended section 17(c)(6) of the NSLA (42 U.S.C. 1766(c)(6)) to permanently reinstate categorical (automatic) eligibility for free meals in CACFP for pre-kindergarten children participating in the Even Start Program. Categorical eligibility for these Even Start participants previously expired on September 30, 1997. The Conference Report indicates this provision was included in the law to place the children of Even Start families "on an equal footing with Head Start participants," since participants in Even Start generally have lower incomes than those families participating in Head Start. To implement this provision, SAs should operate under guidance we issued on June 14, 1995, until we issue an update to that guidance.

KENTUCKY/IOWA DEMONSTRATION PROJECTS

Section 107(f) of Public Law 105-336 amended section 17(p) of the NSLA (42 U.S.C. 1766(p)) to permanently authorize and provide funding on an entitlement basis for the demonstration projects conducted in the States of Kentucky and Iowa. Under these demonstration projects, for-profit child care centers in these two States are eligible to receive CACFP reimbursement if at least 25 percent of the children enrolled in the center, or 25 percent of its licensed capacity, are determined eligible for free or reduced price meals. These changes ensure uninterrupted funding under the demonstration project for eligible centers in these two States. We will issue separate guidance to Kentucky and Iowa to inform them of any changes in reporting that may occur as a result of this amendment.

SINGLE AGREEMENTS/CLAIMS

Section 102(d) amended section 9 of the NSLA (42 U.S.C. 1758) by establishing two requirements with respect to school food authorities (SPA) which administer any combination of the Child Nutrition Programs under the same State administering agency. First, the SA must use a single State/local agreement for all programs operated by the SFA under that SA. This also means that multiple programs operated under an alternate SA must be combined into a single agreement. Moreover, these agreements must be permanent and may be amended as necessary. Secondly, an SA must use a common reimbursement form to claim meals under all of the programs. Previously, single agreements and common claim forms were permitted at SA option for SPAs administering multiple Child Nutrition Programs under a single SA.

We are providing a general waiver for 2 years for this provision as it pertains to claims, because many SAs have insufficient computer resources to make the necessary changes due to the potential difficulties rising from the preparations for the year 2000. We are

also providing a waiver of the requirement for single agreements until School Year 1999/2000, because agreements for this school year have already been signed.

Congress intended these provisions to provide both SAs and school districts with additional administrative flexibility. In the Conference Report for Public Law 105-336, the Conference Committee also expressed the view that SAs may conduct consolidated reviews of the school meal programs and the CACFP when the school(s) operate all of these programs. Moreover, the Conference Committee stated that, when the same school food service personnel administer the SFSP as well as the school meal programs, the SA need not conduct a review of the summer program in the same year in which the school food service operations have been reviewed and determined to be satisfactory. The Conference Committee expects this flexibility to result in savings at the State level but notes that States may conduct additional reviews when they deem it appropriate.

Finally, to provide an additional measure of flexibility, the Conference Report makes clear that school districts may prepare meals for CACFP and SFSP using whatever approved menu planning option they employ in the school meal programs. CACFP and SFSP regulations already permit this flexibility.

STATE ADMINISTRATIVE EXPENSE (SAE) FUNDING

Section 202(b) of Public Law 105-336 amended section 7(a)(6) of the Child Nutrition Act of 1966 (CNA, 42 U.S.C. 1776(a)(6)) by removing the previous 10 percent limit on SAE funds and State Administrative Funds (SAF) for the SFSP that may be transferred from one program to another. Now, SAs may transfer their SAE funds and SAP among the programs as they deem necessary for efficient administration of the programs.

PROVIDING WIC INFORMATION

Section 107(i) of Public Law 105-336 added section 17(s) to the NSLA (42 U.S.C. 1776(s)) to require that information about the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) be provided to certain facilities participating in CACFP. Specifically, the law requires USDA to provide SAs administering CACFP with information about WIC. SAs are then required to provide all family and group day care homes, and all child care centers (except outside-school-hours care centers), with the information. In addition, the SA must ensure that periodic updates of the information are provided to facilities, and that facilities provide the information to parents of enrolled children at the time of their enrollment.

We will issue a separate memorandum providing SAs the required information about WIC, as well as guidance on how to implement this provision.

NOTIFICATION OF INCOMPLETE APPLICATIONS

Section 107(d)(2) of Public Law 105-336 amended section 17(d)(1) of the NSLA (42 U.S.C. 1766(d)U)) to remove the requirement that SAs notify institutions applying for participation in CACFP that theft application is incomplete within 15 days of receipt of such application. Despite removing this notification requirement from the law, Congress continues to recognize the importance, for an institution, of feedback from the SA on whether its application is complete. Therefore, in the Conference Report, the Conference Committee “encourage[s] SAs to respond to institutions, in a timely fashion, as to the completeness of an application.”

Please note that the law continues to require that SAs notify applicant institutions whether they are approved or disapproved for participation in the program within 30 days of the date a completed application is filed.

SPONSOR APPROVAL AND REVIEW REQUIREMENTS

Section 107(c) of Public Law 105-336 amended section 17(d)(1) of the NSLA (42 U.S.C. 1766(d)(1)) to require SAs to visit all new private institutions prior to approval of their applications. This change should help SAs in ensuring that prospective institutions are capable of administering the program.

Section 107(c) also requires SAs to make periodic visits to private institutions participating in the program that SAs determine “have a high probability of program abuse.” Although we will further address this change in regulations, in the interim, each SA should develop a system for identifying, and a schedule for visiting, private institutions with a high probability of program abuse.

AUDIT FUNDING

Section 107(e) of Public Law 105-336 amended section 17(i) of the NSLA (42 U.S.C. 1766(i)) to reduce the amount of funding provided each year to SAs for expenses related to conducting audits of participating institutions. The law reduces the amount of such funding from 2 percent of the funds used by each State in the second preceding fiscal year (FY). to 1 ¹/₂ percent for FYs 1999 through 2004. The law further decreases the funding to 1 percent for FYs 2005 through 2007, though the Conference Report indicates the Conference Committee’s intent “that the audit funds be restored before the 2005 deadline.” We plan to issue guidance in the near future which clarifies acceptable uses of these funds.

FUNDING FOR MANAGEMENT SUPPORT

Section 107(g) of Public Law 105-336 added section 17(q) to the NSLA (42 U.S.C. 1766(q)) to require the Secretary to provide additional training and technical assistance to SAs to assist them in improving their program management and oversight of CACFP. The law earmarks \$1 million for each of FYs 1999 through 2003 to support these activities.

The Conference Report directs USDA to use this funding “in support of its current effort to improve program integrity and quality and to deal with the increasing incidence of mismanagement and fraud identified in the program. In addition, it is to be used to help ensure proper implementation of the family day care home tiering requirements.... Specific uses of the funding are to include development of technical assistance materials for program cooperators and training of SAs.”

ELIMINATION OF OUTSIDE-SCHOOL-HOURS CARE DEMONSTRATION PROJECT

Section 109(a) of Public Law 105-336 amended section 18(e) of the NSLA (42 U.S.C. 1769(e)) to remove the authority for the Outside-School-Hours Care Demonstration Project. Authority for the project expired on September 30, 1998.

CRIMINAL PENALTIES

Section 104(b) of Public Law 105-336 amended section 12(g) of the NSLA (42 U.S.C. 1760(g)) to increase to \$25,000 the maximum fine for embezzling, willfully misapplying, stealing or obtaining by fraud funds, assets or property acquired under the NSLA or the CNA.

SUMMARY

We realize there will be a lot of work involved in implementing these provisions, particularly in light of the October 1, 1998, effective date. We will make every effort to get memoranda, notices, and regulations out as quickly as possible. As always, we are available to provide you with whatever assistance we can in implementing Public Law 105-336. We look forward to working closely with you to implement these historic changes. We also intend to provide additional guidance in the future, as it is needed.

/ORIGINAL SIGNED/

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