



**United States
Department of
Agriculture**

July 20, 2000

Food and
Nutrition
Service

SUBJECT: Implementing Statutory Changes to the Child and Adult Care Food Program (CACFP) Mandated by the Agricultural Risk Protection Act of 2000 (Pub. L. 106-224)

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TO: Regional Directors
Child Nutrition Programs
All Regions

This memorandum provides guidance for States agencies to implement the statutory changes mandated by Pub. L. 106-224, which was signed into law by the President on June 20, 2000. We have attached a letter for this purpose, and we ask you to transmit it to your State agencies without change. This will help ensure uniform implementation of these legislative provisions. To facilitate the process, we have also sent you an electronic version of this memorandum by email.

Due to the complexity of the legislative changes, the guidance is limited. Regulations codifying the legislative changes and their implementation will be published as soon as possible. Until implementing regulations are published, program changes must be implemented based on the attached guidance.

Please contact Melissa Rothstein, Ed Morawetz, or Linda Jupin if you have any questions about this guidance. We appreciate your assistance.

Original Signed

STANLEY C. GARNETT
Director
Child Nutrition Programs

Attachments

Dear State Child Nutrition Director:

On June 20, 2000, President Clinton signed the Agricultural Risk Protection Act of 2000 (Pub. L. 106-224). Pub. L. 106-224 amended a number of provisions in the Richard B. Russell National School Lunch Act (NSLA) and the Child Nutrition Act of 1966. Attached is guidance to assist in the initial implementation of the provisions affecting Section 17 of the NSLA, the Child and Adult Care Food Program (7 U.S.C. 1766). Due to the complexity of the legislative changes, the guidance is limited. Regulations codifying the legislative changes and their implementation will be published as soon as possible.

Until implementing regulations are published, program changes must be implemented based on the attached guidance. Implementation of the statutory provisions based on this guidance is extremely important. USDA expects State agencies to share information in this guidance with CACFP institutions and facilities as soon as possible, carefully highlighting those changes affecting those organizations. State agencies, institutions and facilities will be given reasonable time to comply with any future implementation changes made in guidance or regulations.

Sincerely,

Regional Director

Attachment

Attachment

Changes to CACFP Mandated by Public Law 106-224

1. Definition of "Institution"

Section 243(a)(2) of Pub. L. 106-224 amended section 17(a)(2) of the NSLA providing a restructured definition of the term "Institution." Sponsoring organizations of centers are added to the statutory definition. These expanded definitions of "Institution" and "Sponsoring Organization" are already contained in the CACFP regulations at 7 CFR 226.2.

2. Eligibility Criteria for Institutions

Section 243(a)(8) of Pub. L. 106-224 amended section 17(a)(6) of the NSLA to mandate four new criteria that institutions must meet to be eligible for program participation. A description of these criteria and a discussion of how State agencies should implement the provisions follow:

- **Institutions determined ineligible to participate in any other publicly-funded program for violating that program's requirements are ineligible to participate in CACFP.**

State agencies should implement this provision by immediately requiring all institutions that apply or reapply for CACFP to certify that the institution has not been disqualified from participation in any other publicly-funded program for violating that program's requirements. "Publicly-funded program" means any program or grant funded by Federal, State, or local government. More complete guidance will be provided in future regulations.

- **Sponsoring organizations must employ an appropriate number of program monitors as approved by State agencies in accordance with Federal regulations.**

Minimum Federal staffing standards for monitors will be addressed in forthcoming regulations. We encourage State agencies to continue using their own staffing standards for monitors until that time.

- **Sponsoring organizations must have policies restricting other employment by their employees that interferes with their program responsibilities and duties.**

Sponsors must immediately develop or review their policies on outside employment of their CACFP employees. General principles to consider in approving outside employment would include likely schedule conflicts with CACFP responsibilities and duties and ethical or conflict-of-interest issues. One approach a sponsor may use would be to require that any outside employment be approved in advance by the sponsor, allowing a case-by-

case consideration of the appropriateness of any job. State agencies should provide guidance to sponsors on developing outside employment policies. State agencies should use sponsors' management plans to determine CACFP responsibilities of each employee. In addition, during reviews, State agency reviewers should monitor sponsors' implementation of this provision.

- **Where required by State law, regulation, or policy, sponsoring organizations making initial application to participate in CACFP must be bonded.**

Those sponsors making an initial application to participate in CACFP after June 20, 2000, must meet any bonding requirements imposed by applicable State law, regulation, or policy. Bonding requirements must be met for an organization's application to be considered complete. In States where bonding requirements exist, State agencies must ensure that all applicant organizations are made aware of this new requirement in the application process.

3. Institution Approval and Applications

- **Section 243(b) of Pub. L. 106-224 amended section 17(d)(1)(A) of the NSLA to require that State agencies must only approve institutions for participation in the program that are financially viable, administratively capable, and have in effect internal controls to ensure program accountability.**

The statutory language specifically describes administrative capability for an applicant institution as having business experience and management plans in place that are appropriate for operating the program. In addition, FNS has provided guidance to State agencies through the CACFP Management Improvement Training, held in 1999 and 2000 in various locations throughout the country, on how to determine whether an applicant institution meets these three conditions. We encourage State agencies to review materials that were provided during the training as questions arise in the implementation of this provision. In particular, we recommend that State agency staff review the "Management Plan Evaluation Guide - Handout C" that was provided in the Session I module of the training. This guide contains useful information on evaluating applicant institutions for financial viability, organizational capability, and internal controls.

- **Section 243(b) of Pub. L. 106-224 amended section 17(d)(1)(B) of the NSLA to require that applicant institutions:**
 - ◆ **Have tax exempt status, as defined under the Internal Revenue Code of 1986;**
 - ◆ **Operate a Federal program requiring nonprofit status to participate in the program; or**
 - ◆ **Receive Title XX compensation for at least 25 percent of the children enrolled in the day care center or 25 percent of the licensed capacity, whichever is less.**

This provision eliminates the "moving toward tax exemption status" that was previously allowed by the NSLA and current CACFP regulations (7 CFR Part 226). Section 17(d)(1)(B)(ii) of the NSLA specifically exempts family and group day care homes from these requirements. State agencies must promptly notify institutions that are affected by this change. The date of enactment of the law, June 20, 2000, is the pivotal date which affects State agency action on an institution's application for participation, as discussed below:

- Institutions that were approved for participation prior to June 20, 2000:
 1. must receive tax exempt status by October 1, 2000; or
 2. must be terminated by the State agency; and
 3. terminations under this provision may not be appealed.
- Institutions that applied for participation on or after June 20, 2000:
 1. must have tax exempt status at the time of application; or
 2. must be terminated by the State agency; and
 3. terminations under this provision may not be appealed.
- **Section 243(b) of Pub. L. 106-224 amended section 17(d)(1)(C) of the NSLA to limit the approval of new sponsoring organizations to those eligible institutions which would provide benefits to unserved children or unserved centers or family or group day care homes. State agencies must establish criteria for selection.**

Although this provision is effective immediately, the developmental work required of State agencies in establishing criteria to evaluate an eligible sponsor's application will take time. In the meantime, State agencies should begin developing reasonable criteria. When developing criteria on unmet needs, we encourage State agencies to consider any unique characteristics that exist within the State. Examples of such uniqueness might include pockets of populations that speak a different language or dialect, major changes in employment resulting in a significant loss or gain of jobs, or geographical remoteness.

State agencies should note that a criterion requiring a sponsor to administer a minimum number of homes would not be acceptable. The law now requires a State agency to reject the application of any sponsor which is not financially viable, and it is the sponsor's financial viability--not the fact that it has not recruited a particular number of homes - that must be evaluated by the State agency. A new sponsoring organization with no non-CACFP sources of administrative funding would clearly need to sponsor a higher number of homes to be "financially viable" than would a multi-purpose community organization which could pay for some of the costs of administering CACFP out of other resources.

When the State agency's criteria are in place, as part of its initial application to participate, a new sponsoring organization will be required to justify the need for its services in its initial application by showing that it proposes to provide benefits to areas, providers, or children that have a need for Program coverage. As always, FNS makes itself available to consult and discuss this provision as State agencies develop their criterion.

4. State and Sponsor Monitoring Requirements

Section 243(b) of Pub. L. 106-224 amended section 17(d)(2)(A)(ii) of the NSLA to mandate minimum visits to sponsoring organizations, family day care homes, and centers as follows

- **Periodic unscheduled visits by sponsoring organizations to family day care homes and day care centers not less than once every 3 years;**
- **At least one scheduled visit each year to family day care homes and day care centers by sponsoring organizations;**
- **At least one scheduled visit every 3 years to sponsoring organizations and independent centers by State agencies.**

Until regulations are published, State agencies are obligated to continue to adhere to the monitoring requirements in 7 CFR 226.6(1). In addition, State agencies must ensure that sponsors implement the new statutory monitoring provisions described above no later than October 1, 2000, or beginning with their next review cycle if that begins prior to October 1, 2000.

5. Parental Notification Requirements

Section 243(b) of Pub. L. 106-224 amended section 17(d)(3) of the NSLA to require that day care homes and child care centers (or their sponsoring organizations) inform parents or guardians of children enrolled in CACFP facilities about the program and its benefits. Other information that must be shared with parents or guardians of enrolled children includes the name and telephone number of the sponsoring organization and the State agency. Both the format and, to the maximum extent practicable, the language of this notice must be easily understandable to the parent or guardian.

This provision is effective immediately for new children as they are enrolled. For children that are already enrolled in the program, parent notification must be provided by September 20, 2000. The information should be provided at a minimum in English and in the second most frequently spoken language within the State or locality.

We strongly recommend that State agencies provide any technical assistance that may be needed by sponsoring organizations or CACFP facilities in order to meet these requirements. FNS has developed a brochure containing basic program information that can be used to meet the notification requirement. The name and telephone number of the sponsor and the State agency must be added. This publication will be available in both English and Spanish, and will be provided in bulk quantities to State agencies in the near future. We will contact you as soon as the brochure is ready for shipment.

6. Administrative Expenses for Sponsors

Pub. L. 106-224 addressed administrative expenses for sponsoring organizations in two separate provisions.

- **Section 243(b) amended section 17(d)(4) of the NSLA to require USDA to**

develop, in consultation with State agencies and sponsoring organizations, a list of allowable reimbursable administrative expenses for CACFP sponsoring organizations.

We are in the process of revising FNS Instruction 796-2, Financial Management - Child and Adult Care Food Program. The revised instruction will contain a list of allowable administrative expenses for sponsoring organizations based on principles established in USDA Uniform Federal Assistance Regulations (7 CFR Part 3015) and applicable OMB circulars (in particular, A-87 and A-122). State agencies and sponsors, through their representatives on the Management Improvement Task Force, will have an opportunity to comment on the list. In this regard, however, commenters should note that we are obligated to utilize well-established principles of cost allowability in Part 3015 and OMB circulars which are not subject to change through this exercise.

- **Section 243(e) of Pub. L. 106-224 added section 17(f)(2)(C) to the NSLA to establish a 15 percent limit on the amount of funds that sponsoring organizations can retain from a sponsored day care center's funding for its administrative expenses. The provision allows State agencies to waive this limit if a sponsor can justify the need for more than 15 percent.**

State agencies must implement the restrictions on center sponsors' administrative funds retention no later than October 1, 2000. This should allow for an orderly transition at the beginning of the new budget cycle for FY 2001. When evaluating a sponsoring organization's proposed budget, States should consider how effectively the sponsoring organization's proposed allocations support all aspects of program operations. State agencies should also consider the effects of geography on the sponsoring organization's cost of doing business, the types of centers the sponsor oversees, and the total amount of reimbursement due to each center.

7. Terminations and Appeals

Section 243(c) of Pub. L. 106-224 amended section 17(d)(5) of the NSLA to mandate several new provisions concerning terminations and appeals of CACFP institutions and family or group day care homes.

- **USDA is required to establish procedures that State agencies will use to terminate CACFP institutions and family or group day care homes. The procedures must include:**
 - ◆ **standards for terminating an institution or family or group day care home that engages in unlawful practices, falsifies information, conceals criminal background, or substantially fails to fulfill the terms of the program agreement;**

- ◆ a requirement that institutions and family or group day care homes take corrective action prior to termination, except in situations that imminently threaten the health or safety of participants or the public, as determined by the State agency; and
- ◆ provision of a fair hearing for institutions and family or group day care homes before termination.
- **USDA must maintain and make available to State agencies a list of terminated institutions, family and group day care homes, and individuals. State agencies will use the list to approve or renew applications of institutions, family or group day care homes and individuals in the program.**

We will address implementation of these provisions in regulations.

8. Funds Recovery Procedures

Section 243(d) of Pub. L. 106-224 amended section 17(f)(1) of the NSLA to allow State agencies to recover disbursed funds when institutions have engaged in fraud or abuse with respect to CACFP or submitted an invalid claim. This provision stipulates that:

- **funds may be repaid over one or more years;**
- **repayments cannot come from funds that are used to pay for meals and supplements; and**
- **institutions must be provided a fair hearing prior to funds recovery.**

It has always been the position of FNS to prohibit the repayment of overclaims with reimbursements for meals. Furthermore, as stated at Section 226.14(a) of the CACFP regulations, institutions have had the right to appeal any disallowance and demand for repayment before the State agency proceeds. However, the provision that allows institutions to repay debts over one or more years does represent a change to the current FNS policy, and it must be implemented immediately. Pertinent regulatory provisions are discussed below.

- ◆ Section 226.14(a) gives State agencies authority to recover funds that were improperly claimed. This paragraph states in part, "State agencies shall disallow any portion of a claim for reimbursement and recover any payment to an institution not properly payable under this part."
- ◆ USDA Uniform Federal Assistance Regulation at 7 CFR Part 3015 and OMB Circulars Nos. A-87 and A-122 provide guidelines that prohibit the use of Federal reimbursement funds for repayment of debts resulting from overclaims. In addition, FNS Instruction 796-2, Rev. 2, at (VII)(A)(1) requires that allowable costs "must represent an actual operating/administrative cost incurred in the normal course of conducting the program." In our revision of this instruction, we will clarify, through the use of examples, the prohibition on the use of Federal reimbursement funds to repay debts.

9. Limits on Family Day Care Home Transfers

Section 243(f) of Pub. L. 106-224 amended section 17(1)(3) of the NSLA to require State agencies to limit family and group day care homes transfers between sponsoring organizations to once a year. However, a State agency may permit or require more frequent transfers for "good cause," as the State agency defines the term. The statute provides one example of a situation that would justify transfers more frequently than once a year - when a sponsoring organization stops participating in the program.

State agencies should ensure that this policy is in place by the beginning of FY 2001.

10. Expansion of For-Profit Demonstration Project: Delaware

Section 243(g) of Pub. L. 106-224 amended section 17(p)(1) of the NSLA to authorize a third demonstration project that allows for-profit centers to participate in CACFP if 25 percent of their enrollment or licensed capacity are eligible for free or reduced price school meals.

Descriptive criteria that are specified in the statutory language at section 17(p)(3) of the NSLA qualify the State of Delaware. Beginning October 1, 2001, Delaware may begin operations, thus becoming the third State, in addition to Iowa and Kentucky, to operate a for-profit demonstration project, which was made permanent by the Child Nutrition Reauthorization Act of 1998 (Pub. L. 105-336).

11. USDA Management Training Requirements

Section 243(h) of Pub. L. 106-224 amended section 17(q)(2) of the NSLA to require that USDA provide continuous training to State agencies on the identification and prevention of fraud and abuse of the program. USDA must ensure that State agencies provide this training to sponsoring organizations.

Additional annual funding of \$1 million for fiscal years 1999-2003 enables FNS to provide CACFP Management Improvement Training as an ongoing process. New provisions that have been mandated by Pub. L. 106-224 will be incorporated into the training materials that were used to train State agencies from September 1999 to January 2000.

Section 243(j) of Pub. L. 106-224 amended section 7(a)(9)(A) of the Child Nutrition Act to give USDA authority to withhold state administrative funds (SAE) from State agencies for failure to provide sufficient training, technical assistance, or monitoring of the program.

This provision clarifies that the statutory authority of USDA to withhold State administrative expense (SAE) funds from State agencies for failure to properly administer the program specifically includes the failure to provide sufficient training, technical assistance, and monitoring of CACFP. This provision heightens the importance

of training, assisting, and monitoring CACFP institutions and facilities. Broad sanction authority, based on the previous statutory language, is found at 7 CFR 235.11 (b) which allows FNS to recover, withhold, or cancel payment of up to one hundred percent of State administrative expenses for failure of a State agency to comply with child nutrition program regulations, including part 226 (CACFP regulations). We will make revisions to the current regulatory language accordingly.

12. Meals Added to At-Risk Afterschool Care Centers for Six States

Section 243(i) of Pub. L. 106-224 amended section 17(r)(2) of the NSLA to add meal (supper) benefit provisions for at-risk afterschool care centers in six States. Section 17(r)(5) names the eligible States as: Delaware, Pennsylvania, Michigan, Missouri, and two other States that will be selected by USDA on a competitive basis.

We have addressed these provisions in separate memoranda to the four named States. In the near future, we will solicit applications from State agencies that want to make this additional meal reimbursement available to at-risk afterschool care centers in their State. In our communication to State agencies, we will describe the criteria that States must address in their applications, and the method by which FNS will select the two qualifying States.

13. Free and Reduced Price Application Confidentiality Requirements

Section 242 of Pub. L. 106-224 amended section 9(b)(2)(C)(iii) of the NSLA to permit sharing of information contained on free and reduced price meal applications with administrators of the State Medicaid Program (Medicaid) and the State Children's Health Insurance Program (SCHIP). Both the State agency and the school/institution must agree to share the information prior to disclosure. The use of this information is limited to identifying children eligible for benefits under, and enrolling children in, Medicaid/SCHIP. States and school food authorities that choose to provide the information must ensure that schools/institutions sharing this information:

- **have a written agreement with the respective Medicaid or SCHIP agencies in place prior to disclosure, which requires the recipient agencies to use the information to enroll children in their programs;**
- **notify each household of the information that will be disclosed and that it will be used only to enroll children in Medicaid or SCHIP, and**
- **provide each parent or guardian an opportunity to decline to have the information disclosed.**

Due to the complexity of this issue, we provided guidance in a separate memorandum dated July 6, 2000.