



United States Department of Agriculture

Food and
Nutrition
Service

DATE: August 11, 2021
MEMO CODE: SP 20-2021, CACFP 16-2021

Braddock
Metro Center

SUBJECT: Child Nutrition Emergency Operational Costs Reimbursement Programs:
Q&As #3

1320
Braddock
Place
Alexandria
VA 22314

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

Issuing Agency/Office:	FNS/Child Nutrition Programs
Title of Document:	Child Nutrition Emergency Operational Costs Reimbursement Programs, Q&As #3
Document ID:	
Z-RIN:	
Date of Issuance:	August 11, 2021
Replaces:	N/A
Summary:	(1) This memorandum provides further clarification on questions related to the Child Nutrition Emergency Operational Costs Reimbursement Programs established in Sec. 722 of the Consolidated Appropriations Act, 2021 (the Act). (2) This memorandum applies to State agencies administering the National School Lunch Program, School Breakfast Program, and Child and Adult Care Food Program. (3) This document details further instructions and administrative procedures for participation in the reimbursement program established in Sec. 722 of the Act, which makes funding available via State agencies to program operators for the purposes of covering emergency operating costs incurred during the public health emergency.

Pursuant to Section 722 of P.L. 116-260, the Consolidated Appropriations Act, 2021, Title VII, Chapter 3 (the Act), the Food and Nutrition Service (FNS) has offered additional funds to State agencies administering the National School Lunch Program (NSLP), School Breakfast Program (SBP), and the Child and Adult Care Food Program (CACFP) to provide local operators of those programs with additional reimbursements for emergency operating costs they incurred during the public health emergency. These additional funds are being provided by way of two temporary reimbursement programs, the *School Programs Emergency Operational Costs Reimbursement*

Guidance documents lack the force and effect of law, unless expressly authorized by statute or incorporated into a contract. USDA may not cite, use, or rely on any guidance that is not available through their guidance portal, except to establish historical facts.

CN Emergency Operational Costs Reimbursement Programs
Question and Answer Set #3

Page | 2

Program and Child and Adult Care Food Program Emergency Operational Costs Reimbursement Program.

This memorandum includes questions and answers intended to provide clarification to State agencies as they implement the Child Nutrition Emergency Operational Costs Reimbursement Programs. This set of Q&As addresses questions regarding assurance statements, program operator eligibility, financial management, reporting, and monitoring and operations.

FNS appreciates the exceptional efforts of State agencies and local Program operators working to meet the nutritional needs of child and adult participants during this challenging time. State agencies with questions should contact the appropriate FNS Regional Office.

SARAH SMITH
HOLMES

Digitally signed by
SARAH SMITH HOLMES
Date: 2021.08.11
16:47:51 -04'00'

Sarah E. Smith-Holmes
Director
Program Monitoring and Operational Support Division

Child Nutrition Emergency Operational Costs Reimbursement Programs: Q&A #3

Assurance Statements

- 1. Which Child Nutrition (CN) Program operators must provide their State agency with an assurance statement in order to receive a payment in either of the reimbursement programs?**

School Meal Programs and Child and Adult Care Food Program (CACFP) operators must provide their State agency with an assurance statement that they will file a claim within the required time period if they did not file any valid claims during September – December 2020, or later.

As a reminder, assurance statements require that a program operator who has temporarily paused their Child Nutrition Program operations to resume by filing a claim no later than:

For school programs: A month that occurs during the first full semester or equivalent term following the end of the public health emergency.

For CACFP: A month occurring within 90 days after the conclusion of the public health emergency.

- 2. Is an assurance statement still required if a claim has already been filed by the program operator for a month *after* December 2020?**

No. A valid claim filed for any month after December 2020 (i.e. January 2021 onwards) confirms participation in the CN programs and therefore may serve in lieu of an assurance statement provided to the State agency.

- 3. What are the documentation requirements for assurance statements?**

Assurance statements must:

- Be in writing (all forms of written communication are acceptable, including web-based/digital formats);
- Be signed or submitted by the program operator or their authorized representative and contain that individual's contact information and;
- Display the date on which the assurance was submitted to the State agency.

Documentation of each assurance must be retained by the State agency, subject to standard Child Nutrition Program recordkeeping requirements as described at 7 CFR 210, 220, and 226.

Guidance documents lack the force and effect of law, unless expressly authorized by statute or incorporated into a contract. USDA may not cite, use, or rely on any guidance that is not available through their guidance portal, except to establish historical facts.

4. Are State agencies required to solicit assurance statements from school food authorities (SFAs) and CACFP operators who have been determined to be owed a payment based on one or more of the applicable calculation formulas, but have not resumed operations per question #1?

Yes. State agencies are required to calculate and offer payments to all eligible program operators, including those whose operations are still temporarily paused. In addition to informing these program operators of their payment amount, State agencies must share instructions for providing the necessary assurance statement as a condition of receiving said payment(s).

5. Must the State accept an assurance statement from a program operator who is owed a payment based on one or more of the applicable calculation formulas, but has not resumed Child Nutrition Program operations?

Yes. State agencies must accept assurance statements from program operators who are eligible to receive a payment.

6. Will FNS issue a template to State agencies to use for soliciting and documenting assurances?

No. FNS has no plans to issue a template for program operator assurance statements at this time. However, State agencies are encouraged to develop their own template or other standardized collection method in line with the statutory requirements and FNS guidance. Doing so will serve to reduce burden and streamline the process for obtaining and documenting assurances from local program operators. Please refer to question #3 for further information on documentation requirements.

7. May State agencies establish additional requirements or conditions attached to assurance statements?

No. State agencies may not establish additional requirements as a condition of receiving any payment owed to a program operator under the statutory formula.

8. Is there any established deadline for providing or documenting an assurance statement?

State agencies requesting an assurance statement from a program operator should do so in accordance with the key dates and deadlines required by FNS, per *SP-06, CACFP-05-2021*. The State agency must liquidate (i.e., pay out to local program operators) all funds provided for emergency operational costs by January 31, 2022.

Guidance documents lack the force and effect of law, unless expressly authorized by statute or incorporated into a contract. USDA may not cite, use, or rely on any guidance that is not available through their guidance portal, except to establish historical facts.

The State agency should attempt to account for all potentially eligible program operators, regardless of current assurance status, in their funding estimates and/or subsequent requests for additional funds made in advance of the September 30, 2021 obligation deadline. This is necessary to ensure that payments are available to any program operators who must provide an assurance statement.

9. If a program operator resumed operations prior to the September – December 2020 timeframe but was forced to suspend operations again prior to September 2020, are they exempt from providing an assurance statement?

No. In line with statutory requirements, if any program operator that is due a payment per the formula was not operating during the September – December 2020 eligibility period and remains inactive, they must provide their State agency with an assurance that they will resume operations by the required deadlines.

10. If a Child Nutrition program operator suspended operations in one Child Nutrition Program but has since resumed operations in another Child Nutrition Program (or Programs), is an assurance statement still required?

It depends on the programs operated and under which Emergency Operational Costs Reimbursement Program a payment is owed.

For cases in which an SFA switched from NSLP/SBP to SFSP operations under the [COVID-19 Child Nutrition Response #59 Nationwide Waiver to Allow Summer Food Service Program and Seamless Summer Option Operations through School Year 2020-2021 – Extension](#), no assurance statement is necessary in order to receive a payment under the School Programs Emergency Operational Costs Reimbursement Program.

However, in order to receive a payment under the CACFP Emergency Operational Costs Reimbursement Program, CACFP operators who have temporarily paused their CACFP participation must still provide an assurance statement, regardless of whether they were actively participating in other Child Nutrition Programs during the applicable timeframe. This includes CACFP operators of any type who are temporarily operating SFSP under the nationwide waiver, and SFAs who have suspended their CACFP at-risk afterschool operations while maintaining other Child Nutrition Program meal service.

Guidance documents lack the force and effect of law, unless expressly authorized by statute or incorporated into a contract. USDA may not cite, use, or rely on any guidance that is not available through their guidance portal, except to establish historical facts.

Payment Calculations

- 11. If an SFA that was previously operating under its own State agency agreement became a site (or sites) under the auspices of another SFA during the public health emergency, how should payments be calculated and which organization receives the resulting reimbursement payments?**

The reimbursement payment should be provided to the organization that is responsible for the financial obligations incurred during the reimbursement period of March-June 2020 (i.e. the adoptive SFA that has temporarily accepted new sites under its own agreement).

When calculating payments, the State agency must count the revenues earned by the formerly independent SFA/site(s) during the applicable reference period(s) as belonging to the 'adoptive' SFA. The adoptive SFA may then distribute a share of the reimbursement payment(s) to the formerly independent SFA/sites commensurate with those sites' claims activity. The State agency is strongly encouraged to provide this breakout to the adoptive SFA if they are capable of doing so.

- 12. May a program operator receive payments using the calculation for “new” program operators if they did not operate during one or more of the reference months in 2019, even if they were already operating in prior months during that same reference period?**

A “new” program operator is one that is operating for the first time, and generally speaking, did not file claims during the March-June 2019 reference period because it was not yet participating in the Child Nutrition Programs. If an SFA or CACFP institution or provider was already participating and had meal claims in any of the prior months during the 2019 reference period, it may not be considered “new”.

To determine if the “new” calculation may be utilized, all four months of the reference period must be reviewed concurrently. For example, if an SFA did not operate in March and April of 2019, but started its operations and filed claims in May and June of 2019, then the March and April 2020 calculations would utilize the “new” SFA calculation, and the May and June 2020 calculations would utilize the “all other” calculation (i.e. the calculations for March and April 2020 would use the avg. of January-February for the reference period, and the calculations for May and June 2020 would use those months from 2019). This would constitute a “partially new” SFA.

Conversely, if an SFA operated during the reference period in March, April, and May 2019, but not in June 2019 (per their normal academic schedule or otherwise), then all reimbursement months would utilize the “all other” calculation. The month of June would not be eligible for the “new” calculation because the SFA was actively operating in the earlier reference months.

Guidance documents lack the force and effect of law, unless expressly authorized by statute or incorporated into a contract. USDA may not cite, use, or rely on any guidance that is not available through their guidance portal, except to establish historical facts.

13. May State agencies allow sponsors of affiliated centers to also retain up to 15% of the payment to cover administrative expenses?

Sponsoring organizations of affiliated centers may follow the same processes they use to distribute monthly meal reimbursements, which includes retention of up to 15% for administrative expenses, as applicable.

14. If a sponsored unaffiliated CACFP center or a day care home provider has transferred to a new sponsoring organization since March-June 2020, to which sponsoring organization (previous or current) should the share of administrative reimbursement be paid?

In the case that a day care home provider transferred to a new sponsor since the reimbursement period, the administrative reimbursement should be paid by the State agency to the Sponsoring organization that the day care home resided under during the applicable reimbursement period.

For unaffiliated centers, the agreement to provide a share of administrative funds only exists with the current sponsoring organization, which would typically receive and process the payment from the State agency. In such cases, the share of administrative funding may be retained by the current sponsoring organization.

Program Operator Eligibility

15. If a program operator is currently declared seriously deficient or has outstanding administrative review findings (i.e., they are not presently in good standing), are they still eligible for payments?

Yes. If a program operator has not been terminated or suspended pending termination from the applicable Child Nutrition program(s), they are eligible to receive payments under either or both reimbursement programs, regardless of their current standing.

16. If a program operator filed valid claims during an applicable reference period but terminated their participation in the Child Nutrition Programs prior to September 2020 (i.e. no intent to return to CN operations), are they entitled to a payment?

No. A program operator who terminated their participation in the Child Nutrition Programs (i.e. their agreement with the State agency or sponsoring organization) prior to the September – December 2020 claims period is not entitled to an emergency operational costs reimbursement payment because they do not meet the statutory requirements for participation during September 1, 2020 - December 31, 2020. Nor may they satisfy the assurance statement conditions to resume operations following the public health emergency due to their status as former/non-participants in the Child Nutrition Programs.

Guidance documents lack the force and effect of law, unless expressly authorized by statute or incorporated into a contract. USDA may not cite, use, or rely on any guidance that is not available through their guidance portal, except to establish historical facts.

- 17. If a program operator filed valid claims during both an applicable reference month as well as the months September – December 2020, and have since terminated their participation in the Child Nutrition Programs (i.e. no intent to return to CN operations), are they still owed a payment under the Child Nutrition Emergency Operational Costs Reimbursement Programs?**

Program operators that submitted valid claims for an applicable reference month as well as during the months of September - December 2020 may be entitled to an emergency costs payment. However, consistent with the statutory language, emergency cost funds allocated to a State may only be made available to a Child Nutrition Program participant. A State agency or a sponsoring organization no longer has any formal or binding relationship with a program operator who has terminated their Program agreement and would be unable to ensure program integrity. Accordingly, if a former Child Nutrition Program participant believes they are entitled to emergency cost payments, FNS encourages them to renew their Program participation agreement to facilitate an appropriate payment of emergency cost reimbursements.

- 18. Are payments owed to CACFP unaffiliated centers and day care homes that have left their previous sponsoring organization and have not yet established an agreement under another sponsor?**

In order to receive a payment, a CACFP unaffiliated center or day care home must be operating the CACFP under an agreement with an approved sponsoring organization per the requirements for sponsored facilities as described at 7 CFR 226.18(b). Upon entering into a new agreement following any gap in program participation, such providers may work with their new sponsoring organization (which would then work with their State agency) to determine if a CACFP Emergency Operational Costs Reimbursement Program payment is owed.

- 19. If a program operator has been suspended (pending termination) or terminated from the Child Nutrition Program(s) for which they would otherwise be due a calculated payment, are they still eligible for that payment?**

School Meals

If an SFA was suspended or terminated from participation in the School Meal Programs (i.e. their agreement with the State agency described under 7 CFR 210.9(b) was severed by the State for cause), they are not eligible to receive a payment.

CACFP

If an institution, day care home, or unaffiliated center has been suspended or terminated from their participation in the CACFP for cause, or if they have been placed on the National Disqualified List, they are not eligible to receive a payment.

Guidance documents lack the force and effect of law, unless expressly authorized by statute or incorporated into a contract. USDA may not cite, use, or rely on any guidance that is not available through their guidance portal, except to establish historical facts.

Financial Management

20. For accounting purposes, which Federal fiscal year are Child Nutrition Emergency Operational Costs funds considered to be tied to?

Funds awarded to States under the Child Nutrition Emergency Operational Costs Reimbursement Programs should be treated as FY 2021 funding, in line with their award date during that same fiscal year and the period performance end date, September 30, 2021. September 30, 2021 is the deadline by which state-level obligations must be made.

21. What program activities may continue to occur following the September 30, 2021 obligation deadline through the January 31, 2022 liquidation deadline?

State agencies may continue to disburse or further adjust any payments that were obligated on or prior to the September 30, 2021 obligation deadline through January 31, 2022. They are to use the close-out period between September 30, 2021 and January 31, 2022 to return unexpended funds. January 31, 2022 is the deadline by which all disbursement activities must cease. It is important to note that no new payments may be obligated to program operators after the September 30, 2021 obligation deadline.

22. Are Child Nutrition Emergency Operational Costs payments tax deductible?

FNS is not aware of an authority that would allow or preclude tax deductibility of CN Emergency Operational Cost Payments. FNS encourages State agencies to work with their counsel to determine the extent to which Child Nutrition Emergency Operational Costs payments may be tax deductible within their jurisdiction.

Reporting

23. What information will FNS collect from State agencies regarding calculation and disbursement of payments under the Emergency Operational Costs Reimbursement Program?

FNS will review reports submitted by State agencies summarizing the use of these funds by program operators as well as State agencies' use of the funds for administrative purposes. These include the quarterly SF-425 reports as well as the final financial report due to FNS no later than January 31, 2022, both of which were included under the standard terms and conditions of the State agency's grant award. The latter report includes an accounting of the State agency's use of its 1% administrative funding (if applicable), a tally of program operators who received funds by type (i.e. SFA, independent day care centers, family day care homes, etc.), and the total amount of funds disbursed to each of these operators.

Guidance documents lack the force and effect of law, unless expressly authorized by statute or incorporated into a contract. USDA may not cite, use, or rely on any guidance that is not available through their guidance portal, except to establish historical facts.

In addition, State agencies will provide information to FNS through the School Meals Operations Study (OMB control number 0584-0607), expected Fall 2021. This mandatory survey issued to all Child Nutrition Program State agency operators will include a section dedicated to the Child Nutrition Emergency Operational Costs Reimbursement Programs, and contain a series of basic operational questions and narrative prompts. Together, completing these reporting exercises will satisfy the statutory requirement for State agencies to provide USDA a report on the use of funds by March 31, 2022.

If the State agency elects to do so, it may also provide additional summary data to FNS in a format and at a time of its choosing, but no later than March 31, 2022. FNS understands that many State agencies surveyed or will survey local program operators on the use of Emergency Operational Costs funding; sharing of any such data or summarized findings is encouraged but not required.

Monitoring and Operations

24. How will State agencies monitor the use of Emergency Operational Costs Reimbursement Program funds?

State agencies will monitor the use of Emergency Operational Costs Reimbursement Program funds during their normal review of a program operator's financial management and Nonprofit Food Service account. Once deposited, emergency operational costs funds do not need to be tracked separately from other funds in the Nonprofit Food Service account (i.e. the funds in these accounts are fungible). Program operators must maintain documentation to ensure funds are used solely for allowable program costs, as they would under any other circumstances.

25. If a State agency finds that a program operator incorrectly implemented the Child Nutrition Emergency Operational Costs Reimbursement Programs, what action should they take?

State agencies should prioritize technical assistance for program operators in order to facilitate implementation that is fully consistent with FNS guidance on the Child Nutrition Emergency Operational Costs Reimbursement Programs and applicable State administrative guidelines. If implementation issues are found during a review, State agencies should not require unnecessary corrective action or utilize the serious deficiency process, which is reserved for egregious regulatory noncompliance.

Guidance documents lack the force and effect of law, unless expressly authorized by statute or incorporated into a contract. USDA may not cite, use, or rely on any guidance that is not available through their guidance portal, except to establish historical facts.

26. Are CACFP program operators required to amend their budget to reflect the receipt and expenditure of funds under the CACFP Emergency Operational Costs Reimbursement Program?

CACFP program operators should follow their State agency's normal requirements and procedures for making budget amendments, as applicable. However, the intent of the CACFP Emergency Operational Costs Reimbursement Program is to help address shortfalls experienced during the early months of the pandemic and to ensure that program operators are in the best position to rebuild while continuing to serve their communities. Therefore, FNS encourages State agencies to streamline and simplify any budget amendment requirements in order to support program operators and provide flexibility during this challenging time. For example, budget amendments may be needed for new purchases that weren't previously approved; however, State agencies may decide that allowable CACFP costs that were part of previously approved budgets do not need an amendment to be covered with Emergency Operational Cost funds.

27. May local program operators request a revision of the payment amount(s) calculated by and offered to them by their State agency and/or Sponsoring organization?

State agencies may consider requests from local program operators who seek a revision of their calculated payment amounts at their own discretion. The State agency is encouraged, at minimum, to demonstrate to any such program operators how their payment was calculated (if this information was not previously shared through other communications or technical assistance). However, the state agency is *not* required to consider these requests.

In the case that a sponsored day care home or unaffiliated center disputes a payment amount calculated by their sponsoring organization, the sponsoring organization should notify their State agency, which may adjudicate at their discretion.

28. Must the State agency account for further upward and downward adjustments of claims data from either of the designated reference or reimbursement periods?

No. Payment calculations are based on the valid meal/administrative claims on file with the State agency for the applicable reference/reimbursement periods, and it is reasonable to expect that these calculations will be of a 'point-in-time' nature. Upward and downward adjustments to *previously approved* claims that are made at a later date are not required to be taken into account.

In the case that a program operator submits a late or missing claim for an applicable reference month (i.e. March-June 2019 or January-February 2020 for new operators), the State agency is encouraged to complete a calculation adjustment if funds are available. All state-level obligations must be made by September 30, 2021.

Guidance documents lack the force and effect of law, unless expressly authorized by statute or incorporated into a contract. USDA may not cite, use, or rely on any guidance that is not available through their guidance portal, except to establish historical facts.

29. Are CACFP sponsoring organizations required to disburse the funds to their facilities within 5 working days of receipt as normally required for payments of program funds per 7 CFR 226.16(g) and (h)?

No. While FNS encourages the prompt disbursement of CACFP Emergency Operational Costs Reimbursement Program funds, these are not regular program reimbursements and therefore are not subject to a 5-day disbursement requirement. Sponsoring organizations should make every effort to disburse funds to their facilities as efficiently as possible. State agencies should provide technical assistance to sponsoring organizations in order to ensure a reasonable and timely disbursement of funds. State agencies have discretion to set their own requirement; however, FNS does not support punitive actions if timelines are not met.

30. Under what circumstances are funds awarded under the Child Nutrition Emergency Operational Costs Reimbursement Programs subject to recovery?

Any funds that remain unliquidated at the end of the specified period of performance (January 31, 2022) will be recovered by FNS. FNS does not anticipate similar recoveries from local program operators by sponsoring organizations or State agencies. State agencies are reminded that Child Nutrition emergency operational costs reimbursement payments are calculated through a statutory formula and are owed to program operators based on claims history and participation status at the time that payments are made. These payments are considered liquidated upon receipt by an eligible program operator; once deposited to the nonprofit food service account, they are fungible within that account (i.e. they do not need to be tracked separately) and are only subject to standard Child Nutrition Program requirements governing the use of Program funds.

31. If a program operator received a payment based on an assurance to the State agency that it would resume program operations and does not do so within the designated timeframe, what action should the State agency take?

State agencies should contact any Child Nutrition program operators that did not resume operations within the timeframe stipulated under their assurance statement regarding their intent to return to the Program(s), and are encouraged to offer additional technical assistance to facilitate a resumption of meal service where possible.

Guidance documents lack the force and effect of law, unless expressly authorized by statute or incorporated into a contract. USDA may not cite, use, or rely on any guidance that is not available through their guidance portal, except to establish historical facts.