

NOV 25, 1996

SUBJECT: Questions and Answers Concerning P.L. 104-193: Two-tier Reimbursement Structure for Family Day Care Homes (FDCHs) Participating in the Child Adult Care Food Program (CACFP)

TO: Regional Directors
Child Nutrition Programs
All Regions

Attached are answers to a series of questions which we have received concerning the new two-tiered reimbursement system mandated for FDCHs in the CACFP. All of these answers are based strictly on the provisions of the law; they do not address additional questions which we have received but will be unable to answer until after publication of the interim rule on this new reimbursement system.

These Q&A's may not be transmitted to the State agencies responsible for administering the CACFP until they have been formally cleared by the Department. Until that time, regional offices may use these materials to train their own staff on the provisions of the law and to answer questions that State agencies may pose concerning the future implementation of these provisions. Although you may discuss this information with your State agencies, please do not issue any written guidance related to these Q&A's.

Please contact Bob Eadie or Ed Morawetz of my staff if you have additional questions regarding the substance or intended use of these materials.

Original Signed

ALBERTA C. FROST
Director
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Attachment

INTRODUCTION

As you know, effective July 1, 1997, a two-tiered reimbursement rate structure will be implemented for day care homes participating in the Child and Adult Care Food Program (CACFP). Under this structure, current rates (as adjusted for inflation and rounded down to the lower whole cent) will continue to be paid for all meals served in tier I day care homes. Tier I day care homes are defined in the law as those which are: (1) located in a geographic area, as defined by the Secretary, based on census data, in which at least 50 percent of the children residing in the area are members of households whose income are at or below 185 percent of poverty; (2) located in an area served by an elementary school in which at least 50 percent of enrolled children are eligible for free or reduced price meals; or (3) operated by a provider whose household income is at or below 185 percent of poverty as verified by the sponsoring organization. All homes which do not meet the criteria for a tier I day care home are tier II day care homes.

In tier II day care homes, it is the provider's choice whether to receive the (lower) tier II reimbursement for all meals served to enrolled children, or to request that their sponsoring organization collect applications and identify income eligible children. If a provider requests that income eligible children be identified by the sponsor all meals served to children whose income eligibility, is documented are reimbursed at the tier I rates, while all other meals are reimbursed at the tier II rates. To accommodate homes in which two reimbursement rates are provided the law requires the Secretary, to establish simplified counting and claiming procedures. The law also allows an expanded categorical eligibility, involving participation in any Federal or State program with an income limit at or below 185 percent of poverty, for use by households with children in tier II homes. The tier II rates will be 95 cent for lunches and suppers, 27 cents for breakfasts, and 13 cents for supplements, as adjusted for inflation and rounded down to the lower whole cent on July 1, 1997.

Though we are unable to provide guidance beyond what is contained in the law until the interim regulation is published we hope that the attached questions and answers will clarify the main provisions of the law.

Prior to implementation one of the primary concerns of State agencies should be advising sponsors of the law's provisions and providing them with the appropriate data so that they are able to determine which of their day care homes are tier I homes. To accomplish this, we recommend that CACFP State agencies initiate discussions with the State agencies that administer the National School Lunch Program regarding the provision of elementary school free and reduced price enrollment data. They may also want to obtain and become familiar with the census block group data that was provided to the State agencies administering the Summer Food Service Program (SFSP) in 1994. Finally, it may be useful for them to explore the possibility of using, or contracting with someone to use, geomapping software to facilitate the effective use of the census data, and to initiate contact with one of the State Data Centers listed in the attachment the February 25, 1994, memorandum transmitting census data to SFSP State agencies. [We are mailing hard copies of this memorandum to you. Please let us know if you need copies of the magnetic disks containing the special tabulation.]

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.

Please let us know if you have any questions on the attachment. We also encourage you to continue forwarding any questions on the two-tiered structure that we can include in the guidance that will be issued upon publication of the interim regulation.

Questions & Answers

Tier I Day Care Homes

Elementary School and Census Data

Question: State agencies are required to provide sponsoring organizations with census data and with elementary school free and reduced price enrollment data. Are State agencies also required to provide sponsors with census maps and elementary school attendance area maps, or may they require sponsors to obtain these maps on their own?

Answer: While State agencies may assist, sponsors have the responsibility to obtain census and elementary school attendance area maps on their own. Identifying the geographic boundaries of particular census block groups can most readily be done by consulting State Data Centers. Many State Data Centers are part of State government and, if they have the staff and resources, may be willing to provide free copies of block group maps, or even to work in determining block group boundaries. [A list of all State Data Centers in the country was transmitted with the special tabulation for the Summer Food Service Program on February 25, 1994.] Census maps also may be available from municipalities or large public libraries. Elementary school attendance maps may be available from local school districts. Any costs associated with obtaining this information are allowable administrative costs. However, the Department also strongly encourages State agencies to provide sponsors as much assistance as possible in obtaining and effectively utilizing census and school data. States may wish to use a portion of their allocation of the \$5 million in grant funds provided under section 708(e)(2) of the law to assist sponsors in this effort.

Question: The legislative language regarding the use of elementary school free and reduced price enrollment data appears to assume that elementary schools draw their enrollment from a specifically defined geographical area. However, there are schools in which children are bussed in from throughout the school district. In such situations, how can elementary school free and reduced price enrollment data be used to qualify a day care home as a tier I day care home?

Answer: In a situation when mandatory bussing has affected the percentage of free and reduced price eligibles in a neighborhood school, a school may be able to “factor out” the pupils bussed in from other areas and provide data on the percentage of free and reduced price eligibles in the school’s immediate neighborhood. For example, some schools may maintain, for mailing purposes, a list of enrolled students by zip code, which could be used to identify pupils residing in low-income areas. However, when this is not possible, census block group data may be used to more precisely ascertain a neighborhood’s true income poverty status. Individual providers may also be qualified using free and reduced price applications, if area data is not readily

available or helpful.

Question: How is “elementary school” defined for the purposes of free and reduced price enrollment data?

Answer: Since there is no specific definition of “elementary school” in the law, States will be permitted to decide how to define “elementary” in accordance with how they typically categorize schools in the State. For example, a State with a rural area served by one school containing grades K-12 may define elementary school in such a case as K-12, while elementary schools in the rest of the State are K-5 or K-6.

Question: If there is a conflict between census data and elementary school free and reduced price enrollment data (i.e., a home is eligible as a tier I home using one data source but not the other), how should a determination be made?

Answer: In general, we believe that census block group data should not be used when relevant, current-year information on free and reduced price eligibility in neighborhood elementary schools is available. Since census data are collected only once every ten years, and release of the data by the Bureau of the Census typically does not occur until several years after the data are collected, school data are far more current and will, in most cases, more accurately represent current economic conditions in a given area. However, we recognize that there may be certain circumstances which warrant the use of census data to establish a day care home’s eligibility as a tier I day care home. For example, census data might be especially useful if the day care home is located in a rural area, where geographically large elementary school attendance areas may obscure localized pockets of poverty which can be identified through the use of census block group data. Similarly, in a case in which school data show an area to be close to the 50 percent threshold, census block group data may reveal specific portions of the school’s attendance area which are eligible. Based on the above guidance, when the two data sources provide conflicting information, sponsoring organizations should consult with State agencies to make an appropriate judgment on the home’s status.

Question: Is the use of elementary school free and reduced price enrollment data restricted to specific elementary school attendance zones, or can larger areas (e.g., the entire school district) be utilized?

Answer: School district data may not be utilized. Area eligibility determinations using school enrollment data must be made on a school by school basis.

Provision of Data

Question: How and when will elementary school data be provided?

Answer: Section 708(e)(3) of the law added section 17(f)(3)(e) to the NSLA to require that each State agency that administers the school nutrition programs annually provide a list of elementary schools in the State in which at least one-half of the enrolled children are certified to receive free or reduced price meals. In order to implement the two-tiered reimbursement structure by July 1,

1997, the forthcoming interim regulation will require that, no later than February 15, 1997, each school food authority provide the NSLP State agency with a list of all elementary schools under its jurisdiction in which 50 percent or more of enrolled children have been determined eligible for free or reduced price meals. No later than March 15, 1997, the NSLP state agency must consolidate the information provided by school food authorities and provide the CACFP State agency with a comprehensive list. The CACFP State agency, in turn, will be required to provide all sponsoring organizations in the State with this information no later than April 1, 1997. [For more information on the provision of elementary school data, please refer to the cc:mail message on this subject transmitted to regional offices on 10/31/96.]

Question: The census data currently available, i.e., from the Summer Food Service Program (SFSP), provides information on the percentage of children, age 18 and under, who are free and reduced price eligible. The definition of child in the CACFP is age 12 and under. Can the SFSP census data be utilized until such time as census data establishing eligibility based upon children age 12 becomes available?

Answer: Yes. We will be providing a special tabulation for children age 12 and under, though we are unsure at this time how quickly it will be available. Therefore, we recommend that the special tabulation of children age 18 and under be used in the interim. Data from either of the special tabulations will be acceptable for documenting a home's eligibility as a tier I day care home.

Making Tier I Home Determinations

Question: Who will be required to determine which homes are eligible as tier I day care homes, the State agency or sponsoring organizations?

Answer: Since section 708(e)(3) of the law amends section 17(0)(3) of the NSLA to require that elementary school and census data ultimately be provided to sponsoring organizations, it is clear that the law intends that sponsoring organizations will be responsible for determining which day care homes are eligible as tier I day care homes. However, due to the financial liability associated with improper determinations, State agencies will need to establish controls to ensure that sponsoring organizations are making these determinations properly.

Duration of Determinations

Question: How long is a tier I eligibility determination based upon the provider's household income valid?

Answer: One year, as in all of the Child Nutrition Programs.

Question: How long are tier I determinations based on elementary school and census data valid?

Answer: When a tier I determination is made based on elementary school data, it is valid for three years. When census data are used, the determination is valid until more recent census data are available. In either case, a State agency may shorten the duration of the determination if it subsequently learns or determines that a home is no longer in an eligible area.

Verification of Free and Reduced Price Applications

Question: Will sponsors be required to verify income eligibility information for providers whose homes qualify as tier I day care homes on the basis of the provider's household income?

Answer: Yes. In accordance with the definition of a tier I day care home contained in section 708(e)(1) of the law, sponsors must verify the income of all providers whose homes qualify as tier I day care homes on the basis of the provider's household income. This will involve verifying the income and other information provided on the approved application through collection of information such as pay statements and tax returns from households.

Provider's Own Children

Question: In homes which qualify as tier I homes on the basis of area data (elementary school or census), are provider's own children automatically eligible for reimbursement?

Answer: In all day care homes, including tier I homes that qualify on the basis of area data, providers must continue to demonstrate eligibility for free or reduced price meals in order to receive reimbursement for meals served to their own children. (Since a day care home may qualify as a tier I home on the basis of the provider's household eligibility for free or reduced price meals, by definition there will be no meals reimbursed for provider's own children in tier II homes.)

Tier II Day Care Homes

Question: Is a sponsor required to offer a tier II day care provider the option of collecting income eligibility information from the families of enrolled children?

Answer: Yes.

Question: Which entity is responsible for collecting income eligibility information and making eligibility determinations for tier II homes electing this option, the sponsor or the provider?

Answer: The sponsor, not the provider, is required to collect income eligibility information and make eligibility determinations when a provider in a tier II day care home elects to have applications taken from the households of enrolled children.

Question: Can the household of a child in care in a tier II home be required to complete and

submit an income eligibility statement?

Answer: No, but all meals served to children with incomplete or missing applications will be reimbursed at the tier II reimbursement rates.

Question: Can a tier II provider increase the day care fee, or assess a separate meal charge, to households which are not eligible for tier I rates or households which decline to submit an income eligibility statement?

Answer: Except for the prohibition contained in Section 226.18(d) against assessment of separate charges for meals served to enrolled children, providers are free to establish and change their day care fees as they see fit.

Categorical Eligibility

Question: Will the “expanded” categorical eligibility contained in the law be restricted to children in care in tier II homes, or will it also be extended to child and adult day care centers?

Answer: Section 708(e)(1) of P.L. 104-193 amended section 17 of the NSLA in such a way as to apply the expanded categorical eligibility only to children enrolled in tier II day care homes. It does not apply to determinations of eligibility of provider’s own children in tier I day care homes, nor to enrollees in child or adult day care centers.