

JANUARY 27, 1997

SUBJECT: WELFARE REFORM ADVISORY MEMO #2: CHANGES TO THE CHILD
AND ADULT CARE FOOD PROGRAM (CACFP) AS MANDATED BY THE
PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY
RECONCILIATION ACT OF 1996 (Pub. L. 104-193)

TO: Regional Directors
Child Nutrition Programs
All Regions

The attached memorandum is intended for immediate distribution to State agencies in your region. Dissemination of this memorandum without changes will ensure uniform implementation of these legislative provisions. To facilitate immediate dissemination, a CC:Mail file of this memo with attachment has been transmitted to your attention.

As mentioned in Welfare Reform Advisory Memo number one, issued on August 13, 1996, this memorandum provides implementation guidance on all remaining CACFP provisions contained in Pub. L. 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Due to the complexity of some of the changes made in Pub. L. 104-193, our guidance for several provisions will be limited until the publication of implementing regulations.

Please contact Ed Morawetz or Lorie Conneen of my staff if you have any questions concerning the issues addressed in this memorandum.

/ORIGINAL SIGNED/

TERRY A. HALLBERG
Acting Director
Child Nutrition Division

Attachment

Dear State Child Nutrition Director:

President Clinton signed the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104-193), on August 22, 1996. This law amends a number of provisions in the National School Lunch Act (NSLA) and the Child Nutrition Act.

This letter provides implementation guidance on the provisions contained in Pub. L. 104-193 which affect the Child and Adult Care Food Program (CACFP). Due to the complexity of some of the changes made by the law, the guidance provided herein for several provisions will be limited until the publication of additional guidance or implementing regulations.

Many of the provisions discussed in this letter will have an immediate administrative or financial impact on State Agencies, institutions, and facilities which administer the CACFP. This is official notification to State agencies and CACFP sponsoring organizations that they must implement these provisions based on the guidance in this letter. Therefore, it is important that you immediately share this information with institutions participating in the CACFP in your State. If the method of implementing these provisions is later changed through regulation, State agencies and CACFP sponsoring organizations will not be held responsible for implementing these provisions out of compliance with the regulations. As mentioned previously, regulations addressing all implementation issues related to Pub. L. 104-193 are forthcoming.

The following amendments were made to the CACFP by Pub. L. 104-193:

FREE AND REDUCED PRICE ELIGIBILITY

Section 109(g) of P.L. 104-193 amends Sections 9(b) and (d) of the NSLA by removing all references to the Aid to Families with Dependent Children (AFDC) Program and adding references to the State-funded program which is replacing the AFDC Program. Children who would have been categorically eligible for free meals under the AFDC Program will continue to be eligible for free meals if they are receiving benefits under the State-funded program, provided that the State-funded program has the same or more restrictive eligibility than the AFDC program in effect on June 1, 1995. States must implement the State funded program by July 1, 1997, but may implement earlier. For CACFP, this provision is effective when the State has been approved by the Department of Health and Human Services to implement the State-funded program. Guidance will be issued, and a final regulation will be published to reflect this change.

ANNUAL ADJUSTMENTS OF MEAL REIMBURSEMENT RATES

Section 704(b) of Pub. L. 104-193 amends Section 11(a) of the NSLA by changing the method for the annual adjustments to reimbursement rates for paid lunches, breakfasts, and supplements in schools and child care centers. Prior to the enactment of this provision, meal reimbursement rates were rounded up or down to the nearest quarter cent. Pub. L. 104-193 requires that the operating reimbursement rates for meals and supplements served in schools and centers to individuals not determined to be eligible for free or reduced price meals and supplements (meals served to children from families with income above 185 percent of the poverty level) be adjusted to the nearest lower cent increment and be based on the unrounded amount for the preceding

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.

twelve month period. This new rounding requirement is effective beginning July 1, 1997. In addition, Section 708(e) of Pub. L. 104-193 amends Section 17(f) of the NSLA by changing the method for the annual adjustments to reimbursement rates for all meals served in family day care homes. The law requires that the operating reimbursement rates for meals and supplements served in family day care homes be adjusted to the nearest lower cent increment and be based on the unrounded amount for the preceding 12-month period. This new rounding method will be in effect for all family day care homes upon the implementation of the means test requirement on July 1, 1997.

The CACFP family day care sponsor administrative reimbursement rates are not affected by Pub. L. 104-193 and, therefore, will remain the same. In addition, the CACFP operating reimbursement rates for meals and supplements served in centers to individuals determined to be eligible for free or reduced price meals and supplements are not affected by Pub. L. 104-193 and, therefore, will remain the same. The annual adjustments to the operating reimbursement rates will be reflected in the annual CACFP Rates Notice to be published in the Federal Register on or about July 1, 1997.

CHANGES IN PAYMENTS TO SPONSOR'S EMPLOYEES BASED ON THE NUMBER OF HOMES RECRUITED

Section 708(b) of Pub. L. 104-193 amends Section 17(a) of the NSLA to prohibit family or group day care home sponsoring organizations from making payments based on the number of homes recruited to any individual, provider, employee or contractor. Prior to the enactment of this provision, family or group day care home sponsoring organizations were allowed to make payments based on a number of factors, including the number of homes a provider recruited for participation in the CACFP.

The prohibition extends to incentive payments as well as to regular compensation. Compensation may take the form of salaries, hourly wages, or piece work, (i.e., payments for a specific work function) and non-cash compensation that is charged as a cost to the CACFP (e.g., offering employees additional paid vacation based on the number of homes recruited).

Sponsors may continue to use the number of homes recruited as an evaluation factor when determining whether an employee is performing as expected. However, sponsors must develop a new basis for providing compensation. Inherent in the recruitment of new homes is an increase in participation. Therefore, in developing a new compensation system, sponsors may not substitute increased participation, as measured by meals, children, or providers, as a basis for either regular compensation or incentive payments.

The CACFP Financial Management Instruction, FCS Instruction 796-2, will be revised during fiscal year 1997 to reflect this change in the law, but State agencies should proceed with implementation immediately based on this letter.

REMOVAL OF THE TECHNICAL ASSISTANCE REQUIREMENT FOR INSTITUTIONS SUBMITTING INCOMPLETE APPLICATIONS

Section 708(c) of Pub. L. 104-193 amends Section 17(d) of the NSLA to remove the requirement that State agencies provide technical assistance to an institution which has submitted an incomplete application. Prior to the enactment of this provision, any independent center or sponsoring organization applying for participation in the CACFP was notified of approval or disapproval by the State agency in writing within 30 calendar days of filing a complete and correct application. If an institution submitted an incomplete application, the State agency was required to notify the institution within 15 calendar days of receipt of the application and was further required to provide technical assistance to the institution, if necessary, for the purpose of completing the application.

Pub. L. 104-193 removes the requirement that State agencies provide technical assistance to an independent center or sponsoring organization which has submitted an incomplete application. State agencies are still required to notify institutions within 15 calendar days of the State agency's receipt that they have submitted an incomplete application and that they will not be considered for approval until all information is completed. However, they are no longer required to provide technical assistance to these institutions for the purpose of completing the application. Although they are no longer required to provide technical assistance, there is nothing in the law that prohibits State agencies from continuing to assist independent centers and sponsoring organizations in completing their applications.

OPTIONAL ADVANCE CACFP PAYMENTS

Section 708(1) of Pub. L. 104-193 amends Section 17(t) of the NSLA by making payment of advances to CACFP institutions optional. Prior to the enactment of this provision, all independent centers and sponsoring organizations could elect to receive advance payments equal to their average monthly reimbursement.

Pub. L. 104-193 makes these advance payments to CACFP institutions optional for State agencies. At this time, we are interpreting this to mean that each State may implement this provision as they see fit. In other words, State agencies could adopt a "blanket" policy of issuing or denying advance payments to all CACFP institutions in that State; issue or deny advances to certain types of institutions; or issue or deny advances based on an assessment of each institution's program performance. As in the past, the State agency should not issue an advance in situations where it doubts that the center or sponsor will be able to submit a valid claim for reimbursement for any month.

If a State issues or denies advances based on program performance, it will be required to provide the institution with written reasons for withholding an advance payment, and guidance on how to appeal the decision through the State's fair hearing procedure. In addition, each sponsoring organization that has chosen to receive advance payments must continue to disburse the appropriate amount to each sponsored facility within five working days after receipt of the advance payment from the administering agency. We strongly recommend that State agencies implement any changes in procedure based on this new flexibility through written policy.

notification to all sponsoring organizations.

CLARIFICATION OF LANGUAGE CONCERNING SPONSOR USE OF ADMINISTRATIVE FUNDS

Section 708(f) of Pub. L. 104-193 also revises the language in Section 17(1) of the NSLA concerning the authority for family day care home sponsors to use administrative funds for certain purposes. Pub. L. 103-448 had previously amended the NSLA to allow family day care home sponsoring organizations to use administrative funds “to conduct outreach and recruitment” to unlicensed day care homes so that the day care homes could become licensed. Pub. L. 104-193 clarified that the intent of this provision was to allow family day care home sponsoring organizations to use funds for administrative expenses to “assist unlicensed family or group day care homes in becoming licensed”.

The original provision contained in Pub. L. 103-448 is included in an interim regulation that is currently being cleared. We have reviewed the language used in Pub. L. 104-193 and have determined that no changes need to be made to this interim regulation. However, State agencies are not to implement this provision until publication of the interim rulemaking.

STATE AGENCY TRAINING AND TECHNICAL ASSISTANCE REQUIREMENTS

Section 708(h) of Pub. L. 104-193 amends Section 17(k) of the NSLA to replace the current, specific requirements for State agencies’ provision of training and technical assistance to institutions with a more general statement of responsibilities. Prior to the enactment of this provision, the law required State agencies “to facilitate expansion and effective operation of the Program . The law further specified that States must annually notify each nonparticipating institution of the availability of the Program, the requirements for Program participation, and the application procedures to be followed in the CACFP. Pub. L. 104-193 removes these specific requirements and adds more general language requiring that the State agency provide sufficient training, technical assistance, and monitoring to facilitate effective operation of the Program.

This change to the law will affect State agencies’ outreach requirements for the Program year beginning on October 1, 1997. The Department plans to issue additional guidance or a regulation prior to that time to provide States with the status of current regulatory requirements pertaining to outreach.

DISSEMINATION OF INFORMATION ON SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC)

Section 708(j) of Pub. L. 104-193 removes Section 17(q) of the NSLA to eliminate the requirement that the Department, State agencies, and CACFP child care institutions disseminate specific WIC information. Pub. L. 103-448 required the Department to provide State agencies that administer the CACFP with basic information concerning the importance and benefits of the WIC Program. Further, it required these State agencies to provide each child care institution participating in CACFP (except for outside-school-hours care centers) with specified WIC materials, including annually updated information on each State’s maximum income limits for

WIC. Finally, State agencies were required to ensure that, at least once a year, the WIC information provided to these child care institutions was provided to the parents of the children served by the institutions. Pub. L. 104-193 removes these requirements.

We provided guidance for implementing the Pub. L. 103-448 requirement through a policy memorandum issued on September 1, 1995. As a result of the enactment of Pub. L. 104-193, we are canceling this earlier guidance. No adjustments to the CACFP regulations are necessary.

REMOVAL OF ANNUAL FREE AND REDUCED PRICE POLICY STATEMENT REQUIREMENTS

Section 703 of Pub. L. 104-193 amends Section 9(b)(2) of the NSLA to prohibit the required submission of the Free and Reduced Price Policy Statement for all Child Nutrition Programs once the initial policy statement has been submitted, unless there are substantive changes to the original document. Accordingly, annual submission of the Free and Reduced Price Policy Statement by CACFP participants is no longer required. A child care institution with an approved policy statement shall only be required to resubmit its policy statement to the State agency for approval when there is a substantive change in the institution's policy. In a September 26, 1995, memorandum to all regions, we granted State agencies authority to determine when policy statements are required to be submitted to the State from institutions reapplying for the CACFP. In that memo, we strongly encouraged State agencies to consider at a minimum, requiring submission of such documentation only when substantive changes occur in the statement. This provision of Pub. L. 104-193 reinforces our previous guidance this area.

We plan to address this provision in future regulatory action.

CITIZENSHIP STATUS

Section 742 of Pub. L. 104-193 stipulates that individuals who are eligible to receive the benefits of public school education under State and local law are eligible to receive benefits under the National School Lunch and School Breakfast Programs. The law also stipulates that States have the option of deciding whether benefits under the CACFP are made available to illegal aliens. Due to the complexity of the issues involved, this provision will be address& separately.

As stated above, please share this information with child care institutions immediately. State agencies must ensure that CACFP institutions are adhering to the provisions outlined in this letter.

If you would like further guidance or have additional questions related to this matter, please contact [insert regional contact].

[Signature]