

JANUARY 27, 1997

SUBJECT: WELFARE REFORM ADVISORY MEMO #3: CHANGES TO THE
SUMMER FOOD SERVICE PROGRAM (SFSP) AS MANDATED BY
THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY
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 SFSP 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 (CNA).

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

The provisions discussed in this letter will have an immediate administrative or financial impact on State Agencies and sponsors which administer the SFSP. This letter is official notification to State agencies and SFSP 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 all sponsors participating in the SFSP next summer. If the method of implementing these provisions is later changed through regulation, State agencies and SFSP sponsors will not be held responsible for implementing these provisions out of compliance with the regulations. Regulations addressing all implementation issues related to Pub. L. 104-193 are forthcoming.

The following amendments were made to the SFSP 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 a 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 SFSP 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.

CHANGES IN SFSP REIMBURSEMENT RATES

Section 706(b) of Pub. L. 104-193 amends Section 13(b) of the NSLA to revise the SFSP operating reimbursement rates to the following: \$1.97 for lunches and suppers, \$1.13 for breakfasts, and \$.46 for supplements. These rates were adjusted on January 1, 1997, and will be adjusted each January 1 thereafter, to reflect changes in the Consumer Price Index Sponsors of year-round SFSP sites should have been notified of this change before so they could adjust their budgets accordingly for the period beginning January 1, 1997. Pub. L. 104-193 also stipulates that the operating reimbursement rates be adjusted to the nearest lower cent increment each January 1 to reflect changes in the Consumer Price Index. The rounding rules pertaining to the SFSP administrative reimbursement rates, and the administrative reimbursement rates

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themselves, are not affected by Pub. L. 104-193 and, therefore, will continue to be adjusted and rounded as in the past. The appropriate adjustments to all SFSP reimbursement rates were reflected in the annual SFSP Rates Notice that was published in the Federal Register on January 9, 1997.

CHANGES IN THE PARTICIPATION OF NATIONAL YOUTH SPORTS PROGRAM (NYSP) SPONSORS IN THE SFSP

Section 706(d) of Pub. L. 104-193 amends Section 13(c) of the NSLA to eliminate the participation of academic-year NYSP in the SFSP. Prior to the enactment of this provision, academic-year NYSP sponsors could receive Federal reimbursement under the SFSP for the period October 1 through April 30.

Pub. L. 104-193 eliminates this academic-year eligibility and allows NYSP sponsors to participate in the SFSP during the months of May through September only. As a result, they are now subject to the same policies that govern other sponsors during the period May 1 through September 30. Authority for the academic-year NYSP portion of the SFSI ended on August 22, 1996.

Section 706(d) of Pub. L. 104-193 also amends Section 13(c) of the NSLA to allow children participating in the NYSP to participate in the SFSP based on their demonstration of residence in an area where poor economic conditions exist or based on individual economic eligibility. Prior to the enactment of this provision, all children participating at NYSP sites (which are considered “closed enrolled sites”) in the SFSP received reimbursable meals if at least 50 percent or more of the enrolled children were individually determined eligible for free or reduced price meals. This eligibility was determined by the submission of a free and reduced price application for each child.

Pub. L. 104-193 revises this eligibility criteria slightly to allow all children participating at a NYSP site to receive reimbursable SFSP meals if at least 50 percent of the children reside in areas where poor economic conditions exist or if at least 50 percent are individually determined to meet income eligibility guidelines. Thus, the law now allows all children participating in a NYSP sponsored SFSP to receive reimbursable meals if at least 50 percent or more of the enrolled children reside in geographical areas where 50 percent or more of the local children are eligible for free or reduced price meals. These sponsors may use either school data or census tract data to determine whether the area in which the child resides meets income eligibility guidelines. The sponsor may conduct either an individual assessment of each enrolled child’s area of residence or, under certain circumstances may conduct a group assessment (e.g., all enrolled children are determined to reside in a housing project located in one or more eligible census block groups) to determine if the enrollees are residents of an eligible area. As in the past, the sponsor may also collect free and reduced price Program applications to document the site’s eligibility.

EXEMPTION OF SCHOOL SPONSORS FROM ADVANCE PAYMENT REQUIREMENT

Section 706(e) of Pub. L. 104-193 amends Section 13(e) of the NSLA to exempt schools from the requirement that SFSP sponsors certify that they have held training for their own staff and

site staff before they can receive a second advance. Prior to the enactment of this provision, in order to receive advance payments from the State agency for a second month, all sponsoring organizations were required to certify that they had held training sessions on the Program requirements for site and sponsor personnel. Pub. L. 104-193 removes this requirement for school sponsors only and allows them to request advance payments for a second month of operation without submitting a certification to the State agency that they have held these training sessions. All other SFSP sponsors must continue to certify to the State agency that they have held such training when they apply for a second advance payment.

CLARIFICATION OF LANGUAGE CONCERNING MEALS WHICH ARE SUPPLIED BY FOOD SERVICE MANAGEMENT COMPANIES (FSMC)

Section 706(f) of Pub. L. 104-193 amends Section 13(1) of the NSLA by changing the current language governing the bacteria level requirements contained in FSMC contracts. Prior to the enactment of this provision, FSMC contracts were required to specify that “bacteria levels conform to the standards which are applied by the local health authority for that locality with respect to the levels of bacteria that may be present in meals served by other establishments in that locality”. Pub. L. 104-193 altered this language to require that FSMC contracts stipulate “conformance with standards set by local health authorities”. This language change does not represent a substantive change to previous SFSP FSMC contract requirements. Rather, it recognizes the fact that each State or local government has its own specialized health regulations and is in a better position to evaluate whether or not a FSMC is meeting these health standards.

OFFER-VERSUS-SERVE (OVS) IN THE SFSP

Section 706(g) of Pub. L. 104-193 amends Section 13(f) of the NSLA to make OVS an option for school SFSP sponsors operating programs at school sites on the same basis that OVS is operated during the school year under the National School Lunch Program (NSLP). Prior to the enactment of this provision, OVS was not an allowable option in the SFSP regardless of where the Program was administered.

Pub. L. 104-193 now allows school food authorities (SFA) sponsoring the SFSP to permit a child attending a SFSP site on school premises to refuse one or more items of a meal that a child does not intend to consume, under the same rules used for OVS in the NSLP or the School Breakfast Program (SBP). In utilizing the OVS provision in the SFSP, the SFA must also comply with the same rules provided in the NSLP regulations which include: (1) the utilization of the OVS rules governing NuMenus, Assisted NuMenus, or food-based menu systems (depending on which menu planning system is used during the school year) (2) the OVS provision must be implemented for breakfasts, lunches, or suppers only (i.e., the implementation of OVS does not apply to supplements, as OVS is not permitted in the rare case of supplements claimed under the NSLP); (3) the school must have utilized OVS during the school year when serving NSLP meals; and (4) the school must offer a complete meal to SFSP participants (i.e., all required food items/components must be offered and children must not be urged to decline components).

As a reminder, those schools which offer an accredited summer school program and also operate the SFSP must continue to claim meals under both programs unless summer school students receive meals at an open SFSP site which is open to participation by all children in the

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neighborhood. The inclusion of the OVS provision in Pub. L. 104-193 is not intended to allow accredited summer school programs to convert to the SFSP in order to claim the SFSP's higher reimbursement rates. A SFSP site operated in a school must open its food service to all children residing in the area served by the site. If the site primarily serves children who are enrolled in the accredited summer school program, it must participate in the NSLP, the SFSP.

REMOVAL OF TWO SFSP MANAGEMENT AND ADMINISTRATION PLAN (MAP) REQUIREMENTS

Section 706(i) of Pub. L. 104-193 amends Section 13(n) of the NSLA to remove the requirement that State agencies report in their MAP how they will announce the availability of the SFSP. Prior to the enactment of this provision, State agencies administering the SFSP were required to include in their MAP the State's plans and schedule for informing sponsors of the availability of the SFSP. Pub. L. 104-193 removes the requirement that State agencies include in their MAP their plan and schedule for announcing the availability of the SFSP in their State.

Section 706(j) of Pub. L. 104-193 further amends Section 13(n) of the NSLA to remove the SFSP MAP requirement relative to the State's methods for assessing need for the Program and the State's best estimate of the number of sponsors and children in participation. Prior to the enactment of this provision, State agencies administering the SFSP were required to include in their MAP the State's methods for assessing need, the State's best estimate of the number and character of sponsors and sites to be approved, the number of meals to be served, the number of children who will participate, and a description of the estimating methods used by the State. Pub. L. 104-193 eliminates these requirements. In addition, the law also eliminates the requirement that States include in the MAP their schedule for providing technical assistance and training to eligible sponsors. However, States are still required to submit as part of the MAP their plans for providing technical assistance and training to eligible sponsors. States should note, however, that this change means that their State Administrative Funding will be based entirely on prior year participation unless they include in the MAP projected Program growth, and their basis for making that projection.

REMOVAL OF STATE-LEVEL TRAINING FOR PRIVATE NONPROFIT SFSP SPONSORS

Section 706(k) of Pub. L. 104-193 amends Section 13(q) of the NSLA to remove the requirement that State agencies administering the SFSP provide special training specifically for private nonprofit organization sponsors. Prior to the enactment of this provision, State agencies administering the SFSP were required to establish and implement an ongoing training and technical assistance program that provided information on program requirements, procedures, and accountability for private nonprofit organizations. The Department was required to provide assistance to State agencies regarding the development of such training and technical assistance programs. Pub. L. 104-193 removes the requirement that State agencies establish and implement an ongoing training and technical assistance program specifically for private nonprofit organization sponsors. However, they are still required to provide to private nonprofit sponsors the same training and technical assistance that they are required to provide to all SFSP sponsors as outlined in Section 225.7 of the SFSP regulations.

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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 SFSP sponsoring organizations is no longer required. A SFSP sponsor 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 sponsor's policy. Regulatory changes will be issued to conform with this provision of the Law.

SBP AND SFSP START-UP AND EXPANSION GRANTS

Section 723 of Pub. L. 104-193 amends Section 4 of the CNA to eliminate the SBP and SFSP Start-up and Expansion Grants effective October 1, 1996. A guidance memorandum will be issued on this provision to address grant close-out responsibilities. We have completed all grant award activity.

SIMPLIFYING THE NSLP, SBP, AND SFSP

Section 741 of Pub. L. 104-193 requires the Department to develop proposed changes to the NSLP, SBP, and SFSP regulations for the purpose of simplifying and coordinating these Programs into a comprehensive meal program. In developing these proposals, the Department must consult with Regional, State, and local Program administrators. The Department must also report to Congress by November 1, 1997, as to the proposal developed.

We will inform you of our plans once we have determined how we will involve Program administrators in the development of these proposals. In accordance with earlier amendments to the NSLA, the Department is preparing a consolidation of the NSLP and the SBP. This consolidation is consistent with the above requirement and should facilitate completion of the task.

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 NSLP and SBP. The law also stipulates that States have the option of deciding whether benefits under the SFSP are made available to illegal aliens. Due to the complexity of the issues involved, this provision will be addressed separately.

As stated above, please share this information with SFSP sponsors immediately. State agencies must ensure that SFSP sponsors 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].