



Food and Nutrition Service

DATE: January 5, 2021

Braddock Metro Center

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1320 Braddock Place Alexandria VA 22314

SUBJECT: Questions and Answers Relating to the Nationwide Waiver to Allow Summer Food Service Program and Seamless Summer Option Operations during School Year 2020-2021 – Q&As #4<sup>1</sup>

TO: Regional Directors  
Special Nutrition Programs  
All Regions

State Directors  
Child Nutrition Programs  
All States

<b>Issuing Agency/Office:</b>	FNS/Child Nutrition Programs
<b>Title of Document:</b>	Questions and Answers Relating to the Nationwide Waiver to Allow Summer Food Service Program and Seamless Summer Option Operations during School Year 2020-2021 – Q&As #4
<b>Document ID:</b>	
<b>Z-RIN:</b>	
<b>Date of Issuance:</b>	January 5, 2021
<b>Replaces:</b>	N/A
<b>Summary:</b>	(1) This memorandum provides clarification on additional questions related to the operation of the National School Lunch Program, School Breakfast Program, National School Lunch Seamless Summer Option, Summer Food Service Program, and Child and Adult Care Food Program during school year (SY) 2020-2021. (2) This memorandum applies to State agencies administering, and local organizations operating, the National School Lunch Program, School Breakfast Program, National School Lunch Program Seamless Summer Option, Summer Food Service Program, and Child and Adult Care Food Program in SY 2020-2021. (3) This document relates to 7 CFR Parts 210, 220, 225, and 226.
<b>Disclaimer:</b>	<b>The contents of this guidance document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.</b>

This memorandum includes questions and answers intended to provide clarification to State agencies and Program operators as they continue to operate the National School Lunch Program (NSLP), School Breakfast Program (SBP), NSLP Seamless Summer Option (SSO), Summer

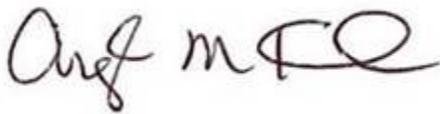
<sup>1</sup> Pursuant to the Congressional Review Act (5 U.S.C. § 801 et seq.), the Office of Information and Regulatory Affairs designated this memo as *not major*, as defined by 5 U.S.C. § 804(2).

Food Service Program (SFSP), and Child and Adult Care Food Program (CACFP) during the school year.

Pursuant to the Families First Coronavirus Response Act (P.L. 116-127), and based on the exceptional circumstances of the COVID-19 public health emergency, the Food and Nutrition Service (FNS) has issued several nationwide waivers and has exercised existing statutory and regulatory authorities to support access to nutritious meals while minimizing potential exposure to the novel coronavirus. Additional information on the FNS Response to COVID-19 is available at <https://www.fns.usda.gov/disaster/pandemic/covid-19>.

FNS appreciates the exceptional effort of State agencies and local Program operators working to meet the nutritional needs of child and adult participants during a challenging time. State agencies are reminded to distribute this memorandum to Program operators immediately. Program operators should direct any questions concerning this guidance to their State agency. State agencies with questions should contact the appropriate FNS Regional Office.

Sincerely,

A handwritten signature in black ink, appearing to read "Ang M Kline". The signature is written in a cursive, flowing style.

Angela M. Kline  
Director  
Policy and Program Development Division

## Questions and Answers

### **Child and Adult Care Food Program (CACFP)**

**1. Can a Child Nutrition Program operator donate leftover food or milk to a CACFP day care home provider?**

Section 9(l) of the Richard B. Russell National School Lunch Act allows leftover foods to be donated to eligible local food banks or other charitable organizations. This includes any food bank or charitable organization which is exempt from tax under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. § 501(c)(3)). Therefore, if the CACFP day care home provider has 501(c)(3) status, they are eligible to receive donations from other Child Nutrition Program operators. SP 11-2012, CACFP 05-2012, SFSP 07-2012 *Guidance on the Food Donation Program in Child Nutrition Programs* encourages schools, CACFP institutions, and Summer Food Service Program (SFSP) sponsors to maximize the use of leftover food before discarding it. The memo allows leftover foods to be used in subsequent Child Nutrition Program meal services or transferred to other meal sites. However, Child Nutrition Program operators must check State and local food safety requirements prior to transferring or donating leftover food and milk. If a school, CACFP institution, or SFSP sponsor has leftover food on a frequent basis, menu planning and production practices should be adjusted to reduce leftovers.

**2. How can CACFP at-risk centers track attendance to claim reimbursement for meals and snacks served to children participating virtually?**

At-risk centers approved to participate under the COVID-19 waivers continue to maintain attendance records, as required under 7 CFR 226.17a(o)(1). This includes daily attendance rosters, sign-in sheets, or with State agency approval, other methods that result in accurate recording of daily attendance. When children participate virtually, flexibility in using other methods may be needed. For example, if it would result in accurate recording of daily attendance, the State agency may approve documentation of meal pick-up or meal delivery as a record of a child's attendance. The State agency should work with at-risk centers and sponsors to develop appropriate methods to document attendance and conform with the program's COVID-19 safety policies.

**3. Do stimulus payments or the weekly unemployment insurance payments provided through the CARES Act and Consolidated Appropriations Act, 2021 count as income when determining eligibility for the Child Nutrition Programs?**

COVID-related stimulus payments do not count as income for determining free and reduced-price eligibility for the National School Lunch Program (NSLP) or School Breakfast Program (SBP) or eligibility for tier I reimbursement for CACFP. Because these payments are tax rebates, they "shall not be taken into account as resources for a period of 12 months from receipt, for purposes of determining the eligibility of such individual (or any other individual) for benefits or assistance (or the amount or extent of benefits or assistance) under any Federal program or under any State or local program financed in whole or in part with Federal funds" ([26 U.S. Code § 6409](#)). The [IRS](#) also

clarifies that these specific coronavirus payments will not affect income for purposes of determining eligibility for Federal government assistance or benefit programs.

However, the weekly COVID-related supplemental unemployment benefits provided through the CARES Act and Consolidated Appropriations Act, 2021 do count as income for means-tested benefits (other than Medicaid and the Children's Health Insurance Program), including free and reduced-price meals ([U.S. Senate Committee on Finance FAQ](#)). Food and Nutrition Service [Income Eligibility Guidelines](#) also indicate that unemployment benefits must be counted as income.

### **National School Lunch Program (NSLP)**

#### **4. If a school food authority (SFA) does not participate in NSLP/SBP in SY 2020-2021, must the SFA amend its State agency agreement?**

FNS will not require SFAs to terminate or amend their NSLP/SBP agreement to reflect an SFA is no longer operating those programs. However, if the SFA is operating SFSP and the State or SFA is utilizing a single State agency agreement as required under 7 CFR 210.9(b) or 220.7(e), then the State agency agreement must include an amendment to reflect that the SFA operates SFSP. Many SFAs already have this amendment in place, due to prior participation in SFSP.

Additionally, FNS clarifies that SFAs experiencing a gap in NSLP participation in SY 2020-2021 due to COVID-19 operations will not be considered new NSLP operators in SY 2021-2022. SFAs that participated in NSLP in SY 2019-2020 may return to NSLP according to standard Program procedures in SY 2021-2022.

#### **5. How will State agencies calculate eligibility for severe need funding in SY 2022-2023 for schools operating SFSP/SSO in SY 2020-2021?**

Schools that do not have adequate student eligibility data for SY 2020-2021 due to their participation in SFSP/SSO may demonstrate to the State agency that they qualify for severe need reimbursement using claims data from SY 2019-2020, SY 2021-2022, or SY 2022-2023. Schools should use the data they determine most accurately reflects their free and reduced price eligibility percentage. Consistent with existing policy for new schools, as outlined in SP 23-2005: *Eligibility for Severe Need Rates for the School Breakfast Program*, <https://www.fns.usda.gov/eligibility-severe-need-rates-school-breakfast-program>, schools that opt to use SY 2022-2023 data may qualify for severe need funding if they serve at least 40 percent of their lunches free or at a reduced price for the first three claims of SY 2022-2023. Severe need reimbursements to these schools will have retroactive effect, encompassing the three months that were used to establish the school's eligibility in SY 2022-2023.

#### **6. Are LEAs required to use approved household applications on file as of October 1, 2020, to develop their verification sample sizes for SY 2020-2021?**

Yes. Although FNS extended the verification deadline for SY 2020-2021 to February 28, 2021 (see *Q&As Relating to the Nationwide Waiver to Allow SFSP and SSO Operations*

through SY 2020-21 – Extension Q&As #3, <https://www.fns.usda.gov/disaster/pandemic/covid-19/qas3-nationwide-waiver-sfsp-seamless-summer-through-sy-2020-21>), the sample size used to conduct verification activities must be based on the number of approved applications on file as of October 1, 2020. LEAs are not required to verify any approved meal applications collected after October 1. All LEAs that collected household applications in SY 2020-2021 are required to conduct verification, regardless of the Child Nutrition Program they are operating this school year. However, LEAs that did not collect meal applications in SY 2020-2021 are not required to conduct verification activities.

**7. May LEAs that are operating SFSP/SSO for the entire SY 2020-2021 collect and process free and reduced price meal applications?**

LEAs that are operating SFSP/SSO for the entire SY 2020-2021 may continue to collect and process meal applications to maintain POS system requirements and to establish eligibility for other benefits, particularly P-EBT. As noted in Question 6, LEAs that collected household applications prior to October 1, 2020, are required to conduct verification. If LEAs choose not to conduct their normal meal application processes in SY 2020-2021, then States may establish children’s P-EBT eligibility using LEAs’ free and reduced-price records from SY 2019-2020. However, States must provide new students, such as kindergarteners, and newly income-eligible children an opportunity to establish their eligibility for P-EBT benefits. USDA strongly encourages States and LEAs to use their existing school meal application processes and direct certification systems to determine these children’s eligibility for P-EBT.

**8. What information should be used to determine Fresh Fruit and Vegetable Program (FFVP) eligibility in SY 2021-2022?**

State agencies generally use free and reduced price school meal data from the preceding October to identify elementary schools eligible to participate in FFVP in the subsequent school year. However, as many SFAs will not have accurate October data because of program changes due to COVID-19, State agencies may use the data they determine to be most accurate. Therefore, State agencies may use data from October 2020 or a different month during SY 2020-2021 they determine to be more accurate, data from October 2019, or data newly collected for SY 2021-2022; the data chosen must be used consistently throughout the State.

**9. May an LEA participating in SFSP during SY 2020-2021 under *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* apply for and receive a FY 2020 NSLP Equipment Assistance Grant?**

Any LEA with a previously approved State agency agreement on file to operate the National School Lunch Program (per 7 CFR 210.9(b)), and that would otherwise be operating NSLP in SY 2020-2021, may continue to access NSLP Equipment Assistance Grants while utilizing the flexibilities granted under the current SFSP/SSO Nationwide Waiver. This is consistent with past circumstances in which SFSP was temporarily operated during an unanticipated school closure due to a hurricane, natural disaster, or

wildfire. Similar to those situations, school Program operators who may be currently operating SFSP in connection with the COVID-19 pandemic are doing so in line with temporary flexibilities offered by FNS.

FNS encourages State agencies to continue to request NSLP Equipment Assistance Grant applications and competitively award them as they normally would while continuing to work with their LEAs to make any necessary adjustments to ensure that the initial solicitation and obligation phase of the grant can be completed by September 30, 2021.

### **All Child Nutrition Programs**

#### **10. May Child Nutrition Program operators that have received a loan through the Paycheck Protection Program (PPP), made available through the Small Business Administration and qualified lending partners, use SFSP or CACFP Program funds received from the State (Child Nutrition Program Federal funds) to pay back a PPP loan?**

Congress authorized the Paycheck Protection Program (PPP) through the CARES Act and Consolidated Appropriations Act, 2021 to help businesses facing extenuating circumstances due to the COVID-19 pandemic to cover their payroll expenses. Some sponsors have used PPP funds to pay for Child Nutrition Program labor expenses.

Under certain circumstances, a PPP loan may be forgiven.

- **If the PPP loan is forgiven:** Any Child Nutrition Program expenses paid for using those forgiven PPP funds may not be claimed using Child Nutrition Program funds since they have *already* been paid with another source of Federal funding.
- **If the PPP loan is not forgiven:** Child Nutrition Program funds may only be used to repay that portion of the loan which was used to cover allowable Child Nutrition Program expenses. This is consistent with existing guidance outlined in FNS Instruction 796-2 Rev. 4 (refer to heading titled *Costs Funded From Other Sources and Under Recovery of Costs*). Program operators using Child Nutrition Program funds to repay any portion of a PPP loan must fully document such repayments, be able to demonstrate that funds were properly allocated, and that such repayments were limited to the portion of the loan that was used to cover allowable expenses under the Child Nutrition Programs. In most circumstances, FNS anticipates that the same payroll cost allocation used by the program operator under normal procedures will continue to apply when considering PPP repayments, though exceptions may occur.

However, please note that interest due in connection with a PPP or other loan repayment is not an allowable cost and may not be paid using Federal Child Nutrition Program funds, per requirements at 2 CFR 200.449(a). Program operators are further reminded that Child Nutrition Program funds may only be used to pay for allowable Child Nutrition Program expenses. For any portion of a PPP loan that was used to pay for non-Program expenses, Child Nutrition Program funds may not be used for repayment.