

CHILD NUTRITION PROGRAMS (CNP)

- National School Lunch Program (NSLP)
- Special Milk Program (SMP)
- School Breakfast Program (SBP)
- Summer Food Service Program (SFSP)
- Child and Adult Care Food Program (CACFP)

A LEGISLATIVE AUTHORITY

1 CNP: Richard B. Russell National School Lunch Act (NSLA)
42 USC 1751 et seq. Child Nutrition Act of 1966 (42 U.S.C. § 1771 et seq.)

2 NSLP: Section 2 of the National School Lunch Act (NSLA), as amended, established the National School Lunch Program (NSLP) to safeguard the health and well-being of the Nation's children and to encourage the domestic consumption of nutritious agricultural commodities and other foods.

3 SMP: Section 3 of the Child Nutrition Act, as amended, established the Special Milk Program (SMP) to encourage the domestic consumption of fluid milk by children in nonprofit schools and institutions that do not participate in a meal service program authorized under the NSLA or Child Nutrition Act.

4 SBP: Section 4 of the Child Nutrition Act, as amended, established the School Breakfast Program (SBP), to authorize payments to the States to assist them to initiate, maintain, or expand nonprofit breakfast programs in schools.

5 SFSP: Section 13 of the NSLA, as amended, established the Summer Food Service Program (SFSP) to provide meals for children from needy areas during periods when area schools are not in session.

6 CACFP: Section 17 of the NSLA, as amended, established the Child and Adult Care Food Program (CACFP) to initiate, maintain, and expand nonprofit food service programs for children or adult participants in nonresidential institutions that provide care.

B REGULATORY

- 1 NSLP: 7 CFR Part 210
- 2 SMP: 7 CFR Part 215
- 3 SBP: 7 CFR Part 220

4 SFSP: 7 CFR Part 225

5 CACFP: 7 CFR Part 226

C DEFINITIONS

1 CNP:

(a) CND -- The Child Nutrition Division of FNS is the Federal entity responsible for administering the NSLP, SBP and SMP, CACFP, and SFSP.

(b) NSLP, SBP, and SMP -- School Nutrition Programs that include NSLP, SBP, and SMP.

(c) Local Agency or Other Subrecipient -- Refer to Section V of this Instruction. For the purposes of this Instruction, entities such as the following will be considered a “local agency”: public or private nonprofit organizations, such as school food authority (SFA) or local educational agency that are approved to administer NSLP, SMP, SBP, or SFSP; institutions that are approved to administer CACFP or SFSP; and sponsoring organizations of family day care homes (FDCHs) and/or child care centers, or summer feeding sites. The following entities will be considered a subrecipient: a school, child care facility, a FDCH provider, a CACFP center site, or a SFSP site that receives benefits from a local agency to operate the CACFP or SFSP under the auspices of a sponsoring organization.

(d) School Food Authority (SFA) -- The legal governing body responsible for the administration of one or more schools and that has the legal authority to enter into an agreement with the State agency or FNSRO, where applicable, to operate the NSLP, SBP, SMP, SFSP, and/or CACFP.

(e) State Agency -- The State educational agency or such other agency of the State that has been designated by the Governor or other appropriate executive or legislative authority of the State that enters into an agreement with USDA to administer NSLP, SBP and SMP, CACFP, and/or SFSP within the State.

(f) School Year -- The period July 1 to June 30 of the following year.

2 SFSP:

(a) Camps -- Residential summer camps and nonresidential day camps that offer a regularly scheduled food service as part of an organized program for enrolled children. Nonresidential camp sites shall offer a continuous schedule of organized cultural or recreational programs for enrolled children between meal services.

(b) Sponsor -- A public or private nonprofit school food authority, a public or private nonprofit residential summer camp, a unit of local, municipal, county, or State government, a public or private nonprofit college or university currently participating in the National Youth Sports Program, or a private nonprofit organization that develops a special

summer or other school vacation program providing food service similar to that made available to children during the school year under the NSLP and SBP and that is approved to participate in the Program. Sponsors are referred to in the NSLA as “service institutions.”

3 CACFP:

(a) Adult Day Care Center -- Any public or private nonprofit organization or any for-profit Title XIX or Title XX center that (a) is licensed or approved by Federal, State, or local authorities to provide nonresidential adult day care services to functionally impaired adults or persons 60 years of age or older in a group setting outside their homes or a group living arrangement on a less than 24-hour basis and (b) provides for such care and services directly or under arrangements made by the agency or organization whereby the agency or organization maintains professional management responsibility for all such services. Such centers shall provide a structured, comprehensive program that provides a variety of health, social, and related support services to enrolled adult participants through an individual plan of care.

(b) Adult Day Care Facility -- A licensed or approved adult day care center under the auspices of a sponsoring organization.

(c) Child Care Center – Any public or private nonprofit organization or for-profit center in which 25 percent or more of the children are eligible for free or reduced-price meals, or receive benefits under Title XX, licensed or approved to provide nonresidential child care services to enrolled children, primarily of preschool age, including, but not limited to, day care centers, settlement houses, neighborhood centers, Head Start centers, and organizations providing day care service for disabled children. Child care centers may participate in the program as independent institutions or under the auspices of a sponsoring organization.

(d) Outside-School-Hours Care Center -- Any public or private nonprofit organization or for-profit center in which 25 percent or more of the children are eligible for free or reduced-price meals, or receive benefits under Title XX, licensed or approved to provide organized nonresidential child care services to enrolled children outside of school hours. Outside-school-hours care centers may participate in the program as independent centers or under the auspices of a sponsoring organization.

(e) Proprietary Title XIX Center – Any private, for-profit center (a) providing nonresidential adult day care services for which it receives compensation from amounts granted to the States under Title XIX of the Social Security Act and (b) in which Title XIX beneficiaries were not less than 25 percent of enrolled eligible participants in the calendar month preceding initial application or annual reapplication for program participation.

(f) Proprietary Title XX Center – Any private, for-profit center (a) providing nonresidential child care services for which it receives compensation from amounts granted to the States under Title XX of the Social Security Act, and in which Title XX child care beneficiaries constitute no less than 25 percent of enrolled eligible participants or licensed capacity, whichever is less, during the calendar month preceding initial application or annual reapplication for program participation, or (b) providing nonresidential adult day care services for which it receives compensation from amounts granted to the States under Title XX of the

Social Security Act, and in which adult beneficiaries were not less than 25 percent of enrolled eligible participants during the calendar month preceding initial application or annual reapplication for program participation.

(g) Child Care Facility -- A licensed or approved child care center, day care home, emergency shelter, at-risk afterschool site, or outside-school-hours care center operating under the auspices of a sponsoring organization.

(h) Family Day Care Home -- An organized nonresidential child care program for children enrolled in a private home, licensed or approved as a family or group day care home and under the auspices of a sponsoring organization.

(i) Institution -- A sponsoring organization, child care center, emergency shelter, outside-school-hours care center, or adult day care center that enters into an agreement with the State agency to assume final administrative and financial responsibility for program operations.

(j) Sponsor/Sponsoring Organization -- A public or nonprofit private organization which is entirely responsible for the administration of the food program in (a) one or more day care homes; (b) a child care center, outside-school-hours care center, emergency shelter, or adult day care center which is a legally distinct entity from the sponsoring organization; (c) two or more child care centers, outside-school-hours care centers, or adult day care centers; or (d) any combination of child care centers, adult day care centers, day care homes, emergency shelters, and outside-school-hours care centers. The term sponsoring organization also includes a for-profit organization that is entirely responsible for administration of the program in any combination of two or more child care centers, adult day care centers, and outside-school-hours day care centers that are part of the same legal entity as the sponsoring organization, and that are for-profit Title XIX or XX centers.

D CIVIL RIGHTS ASSURANCES

1 NSLP, SBP, and SMP:

(a) To qualify for Federal financial assistance, the program application must be accompanied by a written assurance that the program or facility will be operated in compliance with the CR laws and implementing nondiscrimination regulations.

(b) The FNSRO is responsible for obtaining from each State agency a written Statement of Assurance, using Federal-State Agreement, Form FNS-74. By accepting this assurance, the program applicant agrees to compile data, maintain records, and submit reports, as required, to permit effective enforcement of the nondiscrimination laws and permit authorized USDA personnel to review such records, books, and accounts as needed to ascertain compliance with the nondiscrimination laws. If there are any violations of this assurance, FNS shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the program applicant and its successors, transferees, and assignees, as long as they receive assistance or retain possession of any assistance from USDA.

(c) State agencies will incorporate the following CR assurance into all written agreements for SFAs:

"The program applicant hereby agrees that it will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.); all provisions required by the implementing regulations of the Department of Agriculture; Department of Justice Enforcement Guidelines, 28 CFR Part SO.3 and 42; and FNS directives and guidelines, to the effect that, no person shall, on the grounds of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied benefits of, or otherwise be subject to discrimination under any program or activity for which the program applicant receives Federal financial assistance from FNS; and hereby gives assurance that it will immediately take measures necessary to effectuate this agreement."

"By accepting this assurance, the Program applicant agrees to compile data, maintain records, and submit reports as required, to permit effective enforcement of nondiscrimination laws and permit authorized USDA personnel during hours of program operation to review such records, books, and accounts as needed to ascertain compliance with the nondiscrimination laws. If there are any violations of this assurance, the Department of Agriculture, FNS, shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Program applicant, its successors, transferees, and assignees as long as it receives assistance or retains possession of any assistance from USDA. The person or persons whose signatures appear below are authorized to sign this assurance on the behalf of the Program applicant."

2 CACFP and SFSP:

(a) To qualify for Federal financial assistance, the program application must be accompanied by a written assurance that the program or facility will be operated in compliance with the CR laws and implementing nondiscrimination regulations.

(b) The FNSRO is responsible for obtaining from each State agency a written Statement of Assurance, using Federal-State Agreement, Form FNS-74. By accepting this assurance, the program applicant agrees to compile data, maintain records, and submit reports, as required, to permit effective enforcement of the nondiscrimination laws and permit authorized USDA personnel during hours of program operation to review such records, books, and accounts as needed to ascertain compliance with the nondiscrimination laws. If there are any violations of this assurance, FNS shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the program applicant and its successors, transferees, and assignees, as long as they receive assistance or retain possession of any assistance from USDA.

(c) State agencies will incorporate the following CR assurance into all written agreements:

“The Program applicant hereby agrees that it will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and all requirements imposed by the regulations of the Department of Agriculture (7 CFR Part 15), DOJ (28) CFR Parts 42 and 50) and FNS directives or regulations issued pursuant to that Act and the regulations, to the effect that, no person in the United States shall, on the ground of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under any program or activity for which the Program applicant received Federal financial assistance from USDA; and hereby gives assurance that it will immediately take any measures necessary to fulfill this agreement.”

“This assurance is given in consideration of and for the purpose of obtaining any and all Federal financial assistance, grants, and loans of Federal funds, reimbursable expenditures, grant, or donation of Federal property and interest in property, the detail of Federal personnel, the sale and lease of, and the permission to use Federal property or interest in such property or the furnishing of services without consideration or at a nominal consideration, or at a consideration that is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale, lease, or furnishing of services to the recipient, or any improvements made with Federal financial assistance extended to the Program applicant by USDA. This includes any Federal agreement, arrangement, or other contract that has as one of its purposes the provision of cash assistance for the purchase of food, and cash assistance for purchase or rental of food service equipment or any other financial assistance extended in reliance on the representations and agreements made in this assurance.”

“By accepting this assurance, the Program applicant agrees to compile data, maintain records, and submit reports as required, to permit effective enforcement of nondiscrimination laws and permit authorized USDA personnel during hours of program operation to review such records, books, and accounts as needed to ascertain compliance with the nondiscrimination laws. If there are any violations of this assurance, the Department of Agriculture, FNS, shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Program applicant, its successors, transferees, and assignees as long as it receives assistance or retains possession of any assistance from USDA. The person or persons whose signatures appear below are authorized to sign this assurance on the behalf of the Program applicant.”

E PARTICIPANTS

1 NSLP:

(a) Child -- A student of high school grade or under as determined by the State educational agency, who is enrolled in an educational unit of high school grade or under, including students who are mentally or physically disabled as defined by the State and who are participating in a school program established for the mentally or physically disabled;

(b) a person under 21 chronological years of age who is enrolled in an institution or center, or

(c) for purposes of reimbursement for meal supplements served in after school care programs, an individual enrolled in an after school care program operated by an eligible school who is 18 years of age or under, or in the case of children of migrant workers and children with disabilities, not more than 15 years of age.

2 SMP:

Children –

(a) Persons under 19 chronological years of age in child care institutions;

(b) Persons under 21 chronological years of age attending schools; and

(c) Students, including students who are mentally or physically disabled as defined by the State and who are participating in a school program for the mentally or physically disabled, of high school grade or under as defined by the State educational agency.

3 SBP:

Child –

(a) A student of high school grade or under as determined by the State educational agency, including a student who is mentally or physically disabled as defined by the State educational agency and who is participating in a school program for the mentally or physically disabled; and

(b) A person under 21 chronological years of age who is enrolled in residential child care institution.

4 SFSP:

Child –

(a) A person 18 years of age and under, and

(b) A person over 18 years of age who is determined by a State educational agency or a local public educational agency of a State to be mentally or physically disabled and who participates in a public or nonprofit private school program established for the mentally or physically handicapped.

5 CACFP:

(a) Children –

(1) Persons 12 years of age and under,

(2) Children of migrant workers who are 15 years of age and under

(3) Persons with mental or physical handicaps, as defined by the State, enrolled in an institution or a child care facility serving a majority of persons 18 years of age and under, and

(4) Persons 18 years of age or under who participate at at-risk after school snack or supper sites or in emergency shelters.

(b) Adult participant -- A person enrolled in an adult day care center who is functionally impaired or 60 years of age or older.

F DATA COLLECTION

1 NSLP, SBP, and SMP:

The collection and reporting of data on the actual number of children applying for free and reduced-price meals or free milk, by ethnic/racial group, is required by DOJ Regulations, 28 CFR Part 42, and 9 AR.

(a) The SFA or other program recipient agency will:

(1) Develop a method for data collection. Methods include determination of the information by a school official through observation, personal knowledge, or voluntary self-identification by an applicant on the free and reduced-price meal or free milk application. State agencies may also use data or information collected by other Federal and State agencies (e.g., Department of Education).

(2) Maintain information on file for 3 years.

(3) Establish procedures to ensure that the information is made available only to authorized State and Federal personnel as requested, or as part of Office of Management and Budget (OMB) approved surveys.

(b) The State agency, or FNSRO where applicable, will:

(1) Ensure that each SFA or other program recipient agency under its jurisdiction complies with the requirements set forth in the above paragraph.

(2) Review and evaluate the data during the civil rights compliance phase of the monitoring and review activities required by program regulations; and identify SFAs or other program recipient agencies that need closer review to determine their compliance with the CR laws and with the requirements of this Instruction.

2 CACFP:

The State agency must ensure that racial or ethnic beneficiary data are collected and maintained on file for 3 years for all institutions within its jurisdiction. These data must include the number of actual beneficiaries and the estimated number of potentially eligible

beneficiaries by racial or ethnic category. State agencies must use these data during routine compliance reviews to determine how effectively the program is reaching potentially eligible beneficiaries, identify areas where additional outreach is needed, and assess institution compliance.

(a) Determining the Number of Potentially Eligible Beneficiaries: The number of potentially eligible beneficiaries by racial or ethnic category for the area served by each institution is to be determined each year. Data concerning the number of potentially eligible beneficiaries, along with identification of all sources of the information, will be updated annually and maintained on file for 3 years. Sources for obtaining such data might include census data or public school enrollment data.

(b) Collecting and Maintaining Actual Beneficiary Data: Actual beneficiary data by racial or ethnic category for each child care center, outside-school-hours care center, adult day care centers, and family day care home under its jurisdiction are to be collected by the institution each year. Visual identification may be used by institutions to determine a beneficiary's racial or ethnic category or the parents/guardian of a beneficiary may be asked to identify the racial or ethnic group of the participant.

For data-collecting purposes, a beneficiary may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. Parents/guardian of beneficiaries may be asked to identify the racial or ethnic group of the participant only after it has been explained, and they understand, that the collection of this information is strictly for statistical reporting requirements and has no effect on the determination of their eligibility to receive benefits under the program. Such collection systems will ensure that:

(1) The actual beneficiary data will be maintained on file at the institution and retained for 3 years;

(2) The data will be maintained under safeguards, restricting access of records only to authorized personnel.

3 SFSP:

(a) Determining the Number of Potentially Eligible Beneficiaries: The number of potentially eligible beneficiaries by racial or ethnic category for the area served by each sponsor is to be determined each year. Data concerning the number of potentially eligible beneficiaries, along with identification of all sources of the information, are to be updated annually and maintained on file for 3 years. Sources for obtaining such data might include census data or public school enrollment data.

(b) Collecting and Maintaining Actual Beneficiary Data: Actual beneficiary data by racial or ethnic category for each site under a sponsor's jurisdiction are to be collected by the sponsor each year. Sponsors of residential camps must collect and maintain this information

separately for each session of the camp. For all other sites, the sponsor must count the participating children at least once during the site's operation. Visual identification may be used by the sponsors to determine a beneficiary's racial or ethnic category or the parents of a beneficiary may be asked to identify the racial or ethnic group of their child(ren).

(c) Once collected, actual beneficiary data shall be maintained on file by the sponsor. Data, as well as documentation for the data, shall be retained by the sponsor for the required 3 years. The data shall be maintained using safeguards that prevent its use for discriminatory purposes. Such safeguards shall include allowing access to program records containing this data only by authorized personnel.

G COMPLIANCE REVIEWS

1 NSLP, SBP, and SMP:

(a) FNSROs and State agencies are required to conduct compliance reviews, as part of the monitoring and review activities required by program regulations, to determine whether program delivery is in compliance with the requirements of 7 CFR Part 15 and this Instruction. FNSROs are responsible for ensuring Regional Office Administered Programs (ROAP) and State agency compliance; State agencies ensure compliance of SFAs and other program recipient agencies under their jurisdiction; and SFAs ensure compliance of schools in which they operate the program(s). Reviews will be conducted as part of ongoing program review procedures at each administrative level.

(b) Preaward Compliance Reviews -- State agencies or FNSROs, where applicable, are required to review applications from SFAs and other program recipient agencies to determine if the applicants are in compliance with the civil rights laws. These reviews are based on information provided by applicants in their official application for program funds. No Federal funds will be made available to a SFA or other program recipient agency until a preapproval compliance review has been conducted and the applicant determined to be in compliance. Information submitted for civil rights reviews as part of the application must include:

(1) Copies of free and reduced price policy statements, letters to parents, public releases, and any other materials used to publicize the program's availability and nondiscrimination requirements.

(2) Estimated data on the racial or ethnic makeup of the applicant organization's program service area and enrollment.

(3) A description of membership requirements as a prerequisite for admission to the applicant's institution, if applicable.

(4) The names of other Federal agencies providing assistance to the applicant organization and whether the applicant has ever been found to be in noncompliance by those Federal agencies.

2 CACFP/SFSP

Preaward Compliance Reviews -- The Regional Offices are required to perform thorough desk reviews of applications from previously unfunded State agencies to determine if the applicants are in compliance with CR provisions. Similarly, State agencies are to perform thorough desk reviews of applications from institutions. These reviews are based on information provided by applicants in their official application for program funds. No Federal funds shall be made available to a State agency or institution until a preaward compliance review has been conducted and the applicant is determined to be in compliance with nondiscrimination laws, regulations, instructions, or guidance. At a minimum, the following data will be analyzed during the preaward compliance review:

- (a) An estimate of the racial or ethnic makeup of the population to be served,
- (b) Efforts to be used to assure that underserved populations have an equal opportunity to participate,
- (c) Efforts to be used to contact grassroots organizations about the opportunity to participate, and
- (d) The names of other Federal agencies providing assistance to the applicant organization and whether the applicant has ever been found to be in noncompliance by those Federal agencies.

H COMPLIANCE REVIEWS FREQUENCY

1 NSLP, SBP, and SMP:

(a) Routine reviews of program operations, completed as a part of the overall management evaluation and administrative review processes, are the vehicle used to determine CR compliance in accordance with NSLP, SMP, and SBP, 7 CFR Parts 210, 215, and 220, respectively. In States where Regional Offices directly administer the program, Regional Offices shall conduct civil rights compliance reviews of participating SFAs and schools as a part of the program review process.

(b) The State agency or FNSRO, as applicable, shall review all SFAs according to the frequency set forth in 7 CFR Part 210.18.

2 CACFP:

(a) Regional Offices are required to review all State agencies within their region and a sampling of local institutions and facilities under those State agencies as a part of the management evaluation process. In States where Regional Offices directly administer the Program, Regional Offices are required to conduct CR compliance reviews of participating institutions and facilities as a part of the program review process.

(b) State agencies will conduct CR compliance reviews of participating institutions and facilities when they conduct program reviews according to the frequency set forth in 7 CFR Part 226.6.

3 SFSP:

(a) FNSROs are required to review State agencies within their region and a sampling of local sponsors and sites under those State agencies as a part of the management evaluation process.

(b) State agencies will conduct CR compliance reviews of participating sponsors and sites when they conduct program reviews according to the frequency set forth in 7 CFR Part 225.7.