



United States
Department of
Agriculture

Food and
Nutrition
Service

3101 Park
Center Drive
Alexandria, VA
22302-1500

DATE: May 13, 2011

MEMO CODE: SP 34 - 2011, CACFP 22 - 2011, SFSP 15 - 2011

SUBJECT: Child Nutrition and WIC Reauthorization 2010: Implementation of Section 361, *Full Use of Federal Funds*, Frequently Asked Questions (FAQ) – Second Edition

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

On March 29, 2011 the Food and Nutrition Service (FNS) issued Child Nutrition (CN) policy memorandum SP 25 - 2011, CACFP 14 - 2011, SFSP 09 - 2011 addressing implementation of Section 361, *Full Use of Federal Funds*, of the Healthy, Hunger-Free Kids Act of 2010 (the Act). That memorandum provided State Agencies with a fact sheet of FAQs to support State administration of the CN programs such as administrative oversight, compliance, and technical assistance.

Subsequent to the issuance of the memorandum, FNS received additional questions regarding the implementation of Section 361, *Full Use of Federal Funds*. To respond to those questions, we developed the attached fact sheet of FAQs.

As Federal partners in administering CN programs, we stand ready to work with State Agencies, through our FNS Regional Offices, to ensure compliance with requirements of the Act.

Original Signed

Cynthia Long
Director
Child Nutrition Division

Attachment

The Healthy, Hunger-Free Kids Act of 2010
Public Law 111-296, Section 361: Full Use of Federal Funds

Q.1 Must a State sign and submit the addendum to the Federal/State Agreement? If a state does not sign, what actions can/will USDA take? If a state cannot meet the USDA deadline for compliance, how can they demonstrate to USDA their intent to comply?

A.1 Yes, States are required to sign the addendum to the Federal/State Agreement and comply with Section 361 of the Healthy, Hunger-Free Kids Act of 2010, which amended Section 12 of the Richard B. Russell National School Lunch Act (the Act), 42 USC 1760. As Federal partners in administering Child Nutrition and WIC programs, we stand ready to work with State Agencies (SAs) through our FNS Regional Offices, regarding State-specific considerations and to ensure compliance on a timely basis. We encourage SAs to work closely with our FNS Regional Offices as particular questions arise. As with other compliance matters, in the event a SA is determined non-compliant with this provision, FNS will work with SAs to develop a corrective action plan required to bring the SA into compliance. A SA must be in compliance with requirements of the Act and regulations to participate in the National School Lunch Program (NSLP). Federal statutory and regulatory authorities, as well as the Federal/State Agreement identify actions FNS may implement for non-compliance should the corrective action plan be unsuccessful.

Q.2 Does Section 361 impact the number of staff that a State sends to conduct compliance reviews/inspections? (i.e. must the State send the “full” inspection team, or can it send a “partial” inspection team?)

A.2 In order to provide a more precise and helpful answer to this question, FNS would require more detailed information from the SA. We encourage SAs to work closely with the appropriate FNS Regional Office. That said, SAs are responsible for accomplishing the compliance reviews/inspections or monitoring requirements established in program regulations. Each SA must determine the appropriate number of staff necessary to fulfill regulatory review requirements.

Q.3 Can USDA modify the addendum to the Federal/State Agreement to reflect agreements between individual States and USDA regarding a State’s efforts to comply with Section 361? (i.e. issue of rotating furlough days.)

A.3 The addendum to the Federal/State Agreement is uniform for all SAs, and consistent with the other provisions of that Agreement cannot be modified for an individual SA. However, in the event that a SA is determined non-compliant with this provision, a SA may include in its corrective action plan submission a description of how it intends to comply with Section 361.

Q.4 State government routinely implements and updates policies and procedures to assure efficient and effective use of funds regardless of the funding source or the existing fiscal climate. With this new language, is USDA/FNS asserting that it has the authority to prohibit any changes to the State’s policies and procedures (salary, benefits, personnel,

hiring, fiscal controls on purchase of goods and services, etc.) that would affect Child Nutrition staff and/or program activities?

A.4 Federal statutory requirements must be met. As with other compliance matters, in the event that a SA has difficulties meeting the requirements of the provision, FNS is committed to working with a SA to develop a corrective action plan to bring the SA into compliance within a reasonable period of time. To effect compliance with the federal requirement, FNS would expect a SA to amend existing collective bargaining/union agreements within a reasonable period of time to ensure staff positions funded by Federal administrative funds are not subject to State budget restrictions including furloughs, hiring freezes, and travel restrictions. We encourage SAs to work closely with the appropriate FNS Regional Office to work through these issues.