



United States
Department of
Agriculture

Food and
Nutrition
Service

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MEMO CODE: SP 25 - 2011, CACFP 14 - 2011, SFSP 09 - 2011

SUBJECT: Child Nutrition and WIC Reauthorization 2010: Implementation of Section 361, *Full Use of Federal Funds*

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

On February 18, 2011, the Food and Nutrition Service (FNS) issued Child Nutrition (CN) memorandum SP 20-2011, CACFP 10-2011, SFSP 07-2011 addressing implementation of Section 361 of the Healthy, Hunger-Free Kids Act of 2010 (the Act), *Full Use of Federal Funds*. That memorandum directed State agencies (SA) to sign an amendment to the Federal/State Agreement with FNS by March 31, 2011, acknowledging that each SA will abide by the requirements set forth in Section 361 of the Act, which amended Section 12(b) of the Richard B. Russell National School Lunch Act (NSLA), 42 USC 1760(b).

The NSLA, as amended by Section 361 of the Act, requires SAs to support full use of the Federal administrative funds provided for the CN Programs. The Federal administrative funds are specifically excluded from State budget restrictions or limitations including, at a minimum, hiring freezes, work furloughs, and travel restrictions. These Federal administrative funds are intended to support State administration of the CN Programs such as administrative oversight, compliance, and technical assistance.

In recent months, FNS has conducted a number of listening sessions to explain the provisions of the Act and its implementation. During those sessions, and through other means, we have heard concerns regarding the implementation of Section 361. To respond to those concerns, we developed the attached fact sheet of frequently asked questions (FAQs). In addition, we are allowing a four-week extension of the previously-stated March 31, 2011 due date for SAs' submission of signed amendments to the Federal/State Agreement. The due date for submission to your FNS Regional Office is no later than April 26, 2011.

Please keep in mind that CN Programs administrative funds are intended to ensure that our Programs are run effectively and efficiently in each State. These Programs provide immediate support for children, and most importantly, to those from low-income families. In these challenging fiscal times, we must put every effort into providing access to nutrition assistance for those in need. These Programs also have a secondary effect of

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stimulating local economies. As each State benefits from these Programs, we must continue to be mindful of our responsibility as stewards of Federal funds. SA outreach, technical assistance, and compliance activities provide the foundation of a viable nutrition safety net. We strongly encourage you to maximize the use of Federal funds, as returning unspent Federal administrative funds to USDA for reallocation could have the unintended consequence of undermining the nutrition safety net in your State.

We appreciate that each SA may have special challenges in implementing Section 361, depending on State specific personnel issues, union issues, cost allocation plans, and plans for dealing with budget deficits. We stand ready to work with SAs, through our FNS Regional Offices, to ensure compliance on a timely basis while being sensitive to the challenges and constraints a SA may face. We encourage you to work closely with our FNS Regional Office staff as questions arise.

We look forward to working with you as we strengthen the administration of the CN Programs. It is through this partnership that we can find better ways to meet the nutritional needs of the children in your State and throughout the nation.

Original Signed

Cindy 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. What are the potential penalties for non-compliance with the full use of federal funds requirement?

A. As with other compliance matters, the Food and Nutrition Service (FNS) will work with State agencies (SA) to develop a corrective action plan to bring the SA into compliance. Federal Child Nutrition regulations identify actions for non-compliance should the corrective action plan be unsuccessful.

Q. Does the law apply only to staff that are fully federally funded or does it also include partially federally funded positions?

A. The law applies to staff positions that are fully federally funded as well as those that are partially federally funded. In cases where staff positions are partially funded, the budgetary restrictions should be prorated. For example, if a particular State staff position is 50% federally funded and the State imposes 4 furlough days in a given period of time, the State could opt to furlough the position for 2 of the 4 days or 50% for each of the 4 days.

Q. Federal /State Agreements must be amended to incorporate verbiage assuring federal monies are exempt from travel restrictions, furloughs, hiring freezes, etc. The language in the agreement states that the "funds" are not subject to furloughs and travel restrictions. Does this mean that the people paid by federal funds are exempt from furloughs?

A. The term furlough applies by definition to individuals, not funds. Therefore, staff paid with the funds in question may not be furloughed.

Q. Federal/State Agreements between FNS and CNP State agencies must be amended to incorporate verbiage assuring federal monies are exempt from travel, furloughs, hiring freezes, etc. Who is authorized to sign the addendum?

A. The individual signing the addendum to the Federal/State Agreement must have the authority to bind the SA to the terms of the agreement (e.g., State Commissioner, Governor).

Q. Are SAs held accountable to this requirement even if it is counter to union agreements and if so, how will States with collective bargaining agreements that prohibit disparate treatment of staff based on their source of funding implement the full use of federal funds requirement?

A. Yes. SAs will be held accountable to this requirement regardless of existing union agreements. As with other compliance matters, FNS will work with a SA to develop a corrective action plan to bring the SA into compliance within a reasonable period of time. To effect compliance, FNS would expect SAs to amend existing collective bargaining/union agreements within a reasonable period of time to ensure staff positions funded by CN Program Federal administrative funds are not subject to State budget restrictions including furloughs, hiring freezes, and travel restrictions.

Q. Is there a full and complete list of what would be included in the prohibited actions covered by “State budget restrictions or limitations”?

A. FNS will seek the SA’s compliance with the minimum prohibited actions cited in Section 361 – hiring freezes, work furloughs, and travel restrictions. FNS intends to issue a final regulation this summer which will reassert the statutory provision. If FNS determines it is necessary to expand the types of minimum prohibited actions, we will seek comments through the rulemaking process.

Q. Does this requirement apply to the State Maintenance of Effort (MOE) funds as well as federal funds?

A. While Maintenance of Effort funds are required to support the CN Programs, they are State funds and therefore are not subject to this statutory requirement.

Q. Does Section 361 apply to all of the Federal funds SAs receive to administer CN Programs (including State Administrative Funds (SAF), Child Care Audit, etc.) or just State Administrative Expense (SAE) funds?

A. The full use requirement applies to all Federal funds SAs receive (SAE, SAF, Child Care audit, etc.) to administer CN Programs.

Q. Please advise as to whether the exemption of State budget restrictions is retroactive to October 1, 2010, or from this point going forward. Is the intent of the law to make SAs make up furlough days that have already been taken (after October 1, 2010) in order to fully use federal funds?

A. Due to the nature of the requirements and recognizing that there was a delay between the signing of the law (December 13, 2010) and the effective date (October 1, 2010), FNS will not take action for noncompliance that occurred between October 1, 2010 and December 13, 2010. FNS expects SAs to take actions to comply with the statutory requirements within a reasonable period of time beginning on April 26, 2011.