



United States  
Department of  
Agriculture

Food and  
Nutrition  
Service

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**DATE:** April 16, 2013

**MEMO CODE:** SP 17-2011, CACFP 08-2011, SFSP 05-2011 - Revised

**SUBJECT:** Child Nutrition Reauthorization 2010: Categorical Eligibility of  
Children in Foster Care

**TO:** Regional Directors  
Special Nutrition Programs  
All Regions

State Directors  
Child Nutrition Programs  
All States

This memorandum provides additional questions and answers and clarification to update SP 17-2011, CACFP 08-2011, SFSP 05-2011, Categorical Eligibility of Foster Children, dated March 16, 2011. The Healthy, Hunger-Free Kids Act of 2010 (HHFKA) authorized categorical eligibility for foster children in Section 9(b)(12)(A) of the Richard B. Russell National School Lunch Act (NSLA) and defined a foster child as “a foster child whose care and placement is the responsibility of an agency that administers a State plan under part B or E of title IV of the Social Security Act (42 U.S.C. 621 et seq.); or a foster child who a court has placed with a caretaker household.”

In addition, the HHFKA amended Section 9(b)(5) of the NSLA to allow certification of children in foster care for free meals, without application, if the local educational agency (LEA) or other institution administering a Child Nutrition Program obtains documentation from an appropriate State or local agency indicating the status of the child as a child in foster care. These provisions were effective October 1, 2010.

It is important to note that these provisions only apply to children formally placed in foster care by a State child welfare agency or a court. They do not apply to informal arrangements such as caretaker arrangements or permanent guardianship placements that may exist outside of or as a result of State or court based systems. Whether placed by the State child welfare agency or a court, in order for a child to be considered categorically eligible for free meals, the State must retain legal custody of the child. If the State relinquishes custody of a child, the child is no longer considered to be in foster care and categorical eligibility no longer applies.

In implementing this provision of the HHFKA, FNS recognizes there are different types of placements made by child welfare agencies and courts. It is possible that States may use different terms and may have different definitions for children in foster care. Therefore, it is imperative that the State child nutrition agency work with the State child welfare agency to understand the placement arrangements and terminology used in that State so that they can provide appropriate guidance regarding eligibility determinations.

We strongly encourage school food authorities and other institutions administering Child Nutrition Programs to establish formal mechanisms with State and local child welfare agencies to receive information directly from these agencies to facilitate certification for free meals for children in foster care.

### **The Application Process**

Previously, a separate application for free and reduced price meals was submitted for a foster child who was considered a household of one. Now, the foster child is categorically eligible and may be certified without an application. Households with foster and non-foster children may choose to include the foster child as a household member, as well as any personal income earned by the foster child, on the same household application that includes their non-foster children. This will streamline the application process and may help the foster family's non-foster children qualify for free or reduced price meals based on household size and income.

In processing the application, the LEA or other institution administering a Child Nutrition Program would certify the foster child for free meals, and then make an eligibility determination for the remainder of the household based on the household's income (including personal income earned by the foster child) or other categorical eligibility information reported on the application. As before, foster care payments received by the family from the placing agency are not considered income and do not need to be reported. Please note that the presence of a foster child in the household does not convey eligibility for free meals to all children in the household in the same manner as Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF), and Food Distribution Program on Indian Reservation (FDPIR) participation does.

Again, we encourage State Child Nutrition Directors to reach out to their State Health and Human Services colleagues to develop or strengthen communication that will ease the implementation of this provision locally. States can request contact information for State child welfare officials by contacting the appropriate Health and Human Services regional staff through [www.acf.hhs.gov/programs/oro/regions/regional\\_contacts.html](http://www.acf.hhs.gov/programs/oro/regions/regional_contacts.html).

Regional Directors

State Directors

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State agencies are reminded to distribute this information to Program operators immediately. Program operators should direct any questions regarding this memorandum to the appropriate State agency. State agency contact information is available at <http://www.fns.usda.gov/cnd/Contacts/StateDirectory.htm>. State agencies should direct questions to the appropriate FNS Regional Office.

**Original Signed**

Melissa Rothstein

Acting Director

Child Nutrition Division

Attachment

## **General**

### **Q1. Who is covered by this provision?**

A foster child means an individual who is placed by an authorized placement agency or by judgment, decree or other order of any court of competent jurisdiction and is distinct from a “child” of the household (*see* 26 U.S.C. 152 (f)(C)).

As such, any child formally placed by a State child welfare agency or court with a caretaker household is included in this provision. Children formally placed in kinship care by a child welfare agency or a court also are included. Children informally placed in kinship care or with families who assume guardianship responsibilities that exist outside of State or court based systems are not included.

While adopted children are placed by an authorized placement agency or by court order, children placed for legal adoption are thereafter considered the child of the adopting parent(s) and treated the same as a child of such parents by blood. As such, adopted children are not covered by this provision (*see* 26 U.S.C. 152 (f)(B)).

### **Q2. Who should determine whether a child is considered a foster child?**

The Food and Nutrition Service is frequently asked to make a determination when questions arise regarding whether a child is in foster care. It is important to remember that schools must rely on the laws in their State that define a foster child. If the court that has made the placement, or the State/child welfare agency that administers the foster care program considers a child to be a child in foster care under the State’s plan, then the child should be treated as such and is categorically eligible for free meals.

If the child is not considered to be a child in foster care by the court or State/child welfare agency making the placement, the determination for free meals would need to be made separately based on income or another source of categorical eligibility. In cases where it is unclear or there is disagreement between the child’s household and the approving school official regarding whether a child is in foster care, it is the responsibility of the household to provide the school with appropriate documentation to support the designation of foster child.

For this reason, State agencies and other child nutrition institutions are encouraged to establish strong partnerships with their appropriate State and local child welfare agencies in order to receive technical assistance and to better understand if placement arrangements that may be reported by households are considered foster care.

### **Q3. Is there a difference between a legal guardian and a foster care situation?**

Yes. The law clearly limits the categorical eligibility for free meals to children identified as children in a foster care situation and is not intended to include all guardianship decisions conducted by a court, such as adopted children, informal caretaker arrangements or legal guardianship placements.

Legal guardian means a judicially created relationship between a child and caretaker which is intended to be permanent and self-sustaining (*see* 42 U.S.C 675(7)). A child in foster care means an individual who is placed by an authorized placement agency or by judgment, decree or other order of any court of competent jurisdiction.

A child in foster care is under the responsibility of the State, whereas, a child who has a legal guardian is under the responsibility of the legal guardian. It is important to note that only in a formal foster care situation does the State retain legal custody of the child. If the State relinquishes custody of a child, the child is no longer considered to be in foster care and categorical eligibility no longer applies.

**Q4. Do Tribal child welfare agencies fall in the category of “an agency that administers a state plan under part B or E of title IV of the Social Security Act” under this provision?**

If the Tribal child welfare agency is directly responsible for the administration of a title IV-B program or a title IV-E program (meaning, the Tribal child welfare agency has submitted an approved title IV-B or title IV-E plan), or if the Tribal child welfare agency operates under an agreement with a title IV-E agency for the placement and care of children eligible under section 472(a) of the Social Security Act, the agency would be considered “an agency that administers the State plan under part B or E of the Social Security Act.”

**Q5. Do Tribal court placements fall under this provision?**

Yes, if the Tribal court has jurisdiction over the foster child placement.

**Q6. Is this provision retroactive and if so what action must be taken for foster children in the 2010-2011 School Year who currently do not receive free meals?**

If a child is known to be a foster child as defined in the memorandum we encourage the LEA to make them categorically eligible immediately.

**Q7. How will foster children be certified for free meals?**

School food authorities and other child nutrition institutions should establish formal mechanisms with State and local foster agencies to receive information directly from these agencies to facilitate certification for free meals for foster children.

**Q8. Can school food authorities and other child nutrition institutions obtain documentation from a private foster care agency?**

Yes, if the private foster care agency operates under approval and authority of the State child welfare agency and is responsible for placing the foster child in a caretaker household.

**Q9. Does this provision apply to the Special Milk Program?**

Yes.

**Q10. When will an application need to be filled out for a foster child?**

If a State or local foster agency does not initially provide documentation for a categorically eligible foster child, an application identifying the child as a foster child must be filled out. Additionally, a household may now include foster children on their application.

**Q11. Are foster children still considered a household of one?**

No. Foster children are categorically eligible so are no longer considered a household of one. In addition, foster child(ren) can now be included as part of the household on applications that include their non-foster children.

**Q12. Who decides whether to include a foster child on a household application?**

The household decides whether to include the foster child on their household application with non-foster children.

**Q13. If a household chooses to include a foster child on their household application, are they required to report any personal income received by that foster child?**

Yes. Households must report any personal income received by the foster child on their household application. As before, foster payments received by the family from the placing agency are not considered income and do not need to be reported.

**Q14. Can school food authorities determine the eligibility for the non-foster child(ren) both by including the foster child as a household member, and not including the foster child as a household member and give the better benefit level to the non-foster child(ren)?**

Yes.

**Q15. Now that foster children can be considered part of the household, can their eligibility be extended to other non-foster children in the household?**

No. The presence of a foster child in the household does not make all children in the household eligible for free meals in same the manner as Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF), and Food Distribution Program on Indian Reservation (FDPIR) participation does.

**Q16. If the foster child leaves the household and returns to his/her own home located within the same SFA, is the foster child still eligible for free meals, even though the student is no longer considered a foster child?**

Yes. A foster child's eligibility is in effect from the date of eligibility for the current school year and for up to 30 operating days in the subsequent school year.

**Q17. If the foster child leaves the household and returns to his/her own home outside of the SFA, is the child still eligible for free meals even though the student is no longer considered a foster child?**

Yes, as long as the SFA agrees to accept the original eligibility determination. In this scenario, the former foster child's eligibility/application is handled like any other transfer student's.

**Q18. Is the non-foster household that qualified for free meals based on including the foster child as a household member, still eligible for free meals once the foster child leaves their home?**

Yes. The non-foster household would continue to be eligible for the current school year and up to 30 operating days in the subsequent school year.

**Q19. If a child is in a home for just a few days in an emergency placement, can the foster family count the child(ren) and apply for benefits?**

Yes. A household may apply for eligibility at any time.

**Q20. If a foster child is listed on a family's application as a household member and that household happens to be selected for verification, does the school need anything extra for verification?**

It depends on the situation. If a household is chosen for verification and the foster child included on the application was identified by a State or local foster agency, then no additional verification is needed for the foster child. If not, then documentation verifying the foster child's status would be required.

**Q21. What documentation must be provided if a foster child is listed on a household application that is selected to be verified?**

Documentation from a State or local foster care agency or the court where the foster child received placement is acceptable for verification. Direct contact from the foster care agency or court (for example, a list of foster children is sent to the LEA) is also acceptable documentation for verification.