

**SUPPORTING STATEMENT FOR
OMB CONTROL NUMBER 0584-0584
CHILD AND ADULT CARE FOOD PROGRAM (CACFP)
NATIONAL DISQUALIFIED LIST**

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Part

A JUSTIFICATION

A.1 Circumstances that make the Collection of Information Necessary.....3

A.2 Purpose and Use of the Information.....4

A.3 Use of Information Technology and Burden Reduction.....5

A.4 Efforts to Identify Duplication6

A.5 Impacts on Small Businesses or other Small Entities.....6

A.6 Consequences of Collecting the Information less Frequently.....6

A.7 Special Circumstances Relating to the Guidelines of 5 CFR 1320.5:.....7

A.8 Comments to the Federal Register Notice and Efforts for Consultation.....9

A.9 Explain any Decision to Provide any Payment or Gift to Respondents.....12

A.10 Assurances of Confidentiality Provided to Respondents.....13

A.11 Justification for any Questions of a Sensitive Nature.....14

A.12 Estimates of the Hour Burden of the Collection of Information.....14

A.13 Estimates of Other Total Annual Cost Burden.....16

A.14 Provide Estimates of Annualized Cost to the Federal Government.....17

A.15 Explanation of Program Changes or Adjustments.....17

A.16 Plans for Tabulation, and Publication and Project Time Schedule.....18

A.17 Displaying the OMB Approval Expiration Date.....18

A.18 Exceptions to the Certification Statement Identified in Item 19.....18

Attachments

A-1 FNS-843 Report of Disqualification from Participation – Institution and Responsible Principals/Individuals

A-2 FNS-844 Report of Disqualification from Participation – Individually Disqualified Responsible Principal/Individual or Day Care Home Provider

B-1 Authorizing Statute: National School Lunch Act (42 U.S.C. 1766 (d)(5)(E)(i) and (ii))

B-2 7 CFR 226.6(c)(7)(i)

C-1 Comment 1: FNS-2019-0032-0002

C-2 Comment 2: FNS-2019-0032-0003

C-3 Comment 3: FNS-2019-0032-0004

C-4 Comment 4: FNS-2019-0032-0005

C-5 Comment 5: FNS-2019-0032-0006

C-6 Comment 6: FNS-2019-0032-0007

D-1-Response to Comment 2

D-2-Response to Comment 3

D-3-Response to Comment 4

D-4-Response to Comment 5

A. JUSTIFICATION

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

This collection collects the information necessary to maintain the National Disqualified List (NDL) of institutions, day care home providers, and individuals that have been terminated or otherwise disqualified from participation in the Child and Adult Care Food Program (CACFP). These federal requirements affect eligibility under the CACFP. State agencies will be required to enter data as institutions and individuals become disqualified from participating in the CACFP. This collection is the result of a Food and Nutrition Service (FNS) web-based system constructed to update and maintain the list of disqualified institutions and individuals so that no State agency or sponsoring organization may approve any entity on the NDL to ensure the integrity of the Program.

Section 243(c) of Public Law 106-224, the Agricultural Risk Protection Act of 2000, amended section (42 U.S.C. 1766 (d)(5)(E)(i) and (ii)) (Attachment B-1) of the Richard B. Russell National School Lunch Act (NSLA) by requiring the Department of Agriculture to maintain a list of institutions, day care home providers, and individuals that have been terminated or otherwise disqualified from Child and Adult Care Food Program participation. The law also requires the Department to make the list available to State

agencies for their use in reviewing applications to participate and to sponsoring organizations to ensure that they do not employ as principals any persons who are disqualified from the program. This statutory mandate has been incorporated into §226.6(c)(7)(i) of the Program regulations (Attachment B-2).

- 2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.**

This collection is an extension, without change, of the currently approved collection. The purpose of this collection is to comply with Section 243(c) of Public Law 106-224, the Agricultural Risk Protection Act of 2000, that amended section 17(d)(5) of the NSLA (42 U.S.C. 1766 (d)(5)(E)(i) and (ii)) by requiring the Department of Agriculture to maintain a list of institutions, day care home providers, and individuals that have been terminated or otherwise disqualified from Child and Adult Care Food Program participation. The law also requires the Department to make the list available to State agencies for their use in reviewing applications to participate and to sponsoring organizations to ensure that they do not employ as principals any persons who are disqualified from the program. It is mandatory for the state agencies to provide the information necessary to maintain the National Disqualified List.

Forms FNS-843 Report of Disqualification from Participation – Institution and

Responsible Principals/Individuals and FNS-844 Report of Disqualification from Participation – Individually Disqualified Responsible Principal/Individual or Day Care Home Provider are used to collect and maintain this data (Attachments A-1 and A-2). The state agencies use these forms to report the disqualification information, such as name, address, contact information, and the reason for the disqualification on all individuals and institutions that have been disqualified and are therefore ineligible to participate in CACFP. The information is collected from state agencies as the disqualifications occur so that the list is kept current. By maintaining this web-based system, the Department ensures program integrity by making the NDL data available to sponsoring organizations and State agencies so that no one disqualified can participate in CACFP. There have been no changes to this information collection since its last renewal.

- 3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also, describe any consideration of using information technology to reduce burden.**

FNS is complying with the E-Government Act of 2002. The NDL is a web-based system which allows the 56 State agencies administering the CACFP to enter the disqualification information into the system which notifies the FNS Regional Office staff that will approve or deny the submission. Sponsoring organizations are able to search the system to ensure that

new applicants have not been disqualified from the Program. FNS estimates that 100% of the disqualification reports will be filed electronically.

- 4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purpose described in item 2 above.**

There is no similar information collection. Every effort has been made to avoid duplication. FNS has reviewed USDA reporting requirements and state administrative agency requirements. There is no other system that captures and maintains a nationwide list of people and institutions disqualified from participating in CACFP.

- 5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.**

Information being requested has been held to the minimum required for the intended use. State agencies are not considered small entities as state populations exceed the 50,000 threshold for a small government jurisdiction; therefore, they do not meet the definition of “small entity” in the Regulatory Flexibility Act. None of respondents are small entities.

- 6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal**

obstacles to reducing burden.

This is an ongoing mandatory information collection that is required under the statute. The information is collected at the national level to ensure State agencies and sponsoring organizations have access to a nationwide list of individuals and institutions that have been disqualified and terminated from participation and are no longer permitted to reapply to participate in CACFP to ensure program integrity. This information is for the purpose of administering an ongoing program and is collected from the state agencies as the disqualifications occur. If the information is not collected or is collected less frequently, State agencies would not be able to prevent individuals and institutions disqualified in other States from reapplying to participate in the Child Nutrition Programs.

7. Circumstances that would cause an information collection to be conducted in a manner that is inconsistent with 5 CFR 1320.5:

- **requiring respondents to report information to the agency more often than quarterly;**

The NSLA requires that a list of individuals and organizations be made available to State agencies and sponsoring organizations to ensure that no institution, individual or day care home provider previously disqualified participates in the Program. Submissions are made in “real time” when disqualifications occur rather than a required monthly or quarterly report to ensure that the NDL is kept current.

- **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- **requiring respondents to submit more than an original and two copies of any document;**
- **requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;**
- **in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
- **requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
- **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
- **requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

There are no other special circumstances. The collection of information is conducted in a manner consistent with the guidelines in 5 CFR 1320.5.

- 8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments.**

A notice was published in the Federal Register on May 3, 2019, Volume 84, No. 86 on pages 19030-19031. The comment period closed on July 2, 2019. Six public comments were received in response to the Agency's notice. Three of the comments were from State agencies, two were from individuals (one of these was anonymous) and the other was from an association.

The first comment was received from an association, which expressed that "We appreciate that the list was developed as a response to individuals and institutions that did not operate the Child and Adult Care Food Program (CACFP) with full integrity and fidelity (Attachment C-2). It has allowed administering State Agencies across the country and territories to research prospective sponsors and individuals looking to sponsor CACFP and assist in determining viability and capability." The association also expressed a suggestion regarding "the limitation of not being able to export dates of birth to an exportable file. Because the date of birth of the principal(s) of an organization is a required data field to collect under CACFP regulations, State Agencies conducting a sponsor application review of a potential CACFP sponsor should have access to that data in an easily accessible report." However, the removal of the dates of birth from the excel spread sheets was required as a measure of security to protect Personally Identifiable Information (PII), as outlined in the FNS response (Attachment D-1).

A State agency commented that they appreciated having this system as it has made the approval process easier than the previous system (Attachment C-5). The State agency also expressed a concern that e-authorization level 1 access might be too loose allowing almost anyone to access the system. FNS responded that efforts have been made to increase security for those accessing the NDL with e-Authentication level 1 clearance. The commenter also noted that annually checking the NDL for renewing institutions is unnecessary. However, FNS responded that this annual check is required in the Federal Regulations even if the State agency is not in the contiguous 48 States (Attachment D-4).

Another State agency expressed support for the current proposed information collection in order to track institutions and individual that have been terminated or disqualified (Attachment C-4). The State agency suggested an enhancement that allows the date of birth to be available when exporting data into a spreadsheet. However, the removal of the dates of birth from the excel spread sheets was required as a measure of security to protect Personally Identifiable Information (PII) (Attachment D-3).

An anonymous commenter also suggested support and also suggesting the same enhancement stating “the information is very useful as it prevents poor performing sponsors from operating as or with a new sponsor in the same state or different state” and to “allow state agencies to download more information, such as DOB, so that states can automate the process of matching (Attachment C-1). Otherwise it is a manual look up.” This commenter also expressed that “the estimate of time is accurate when inclusive of

the entire process.” The removal of the dates of birth from the excel spread sheets was required as a measure of security to protect Personally Identifiable Information (PII).

Another State agency commented that “The National Disqualification List does not address terminated responsible principals and sponsors who turn their business over to their spouses, or adult child, who restructure the organization by changing the FEIN federal DI number, change name of entity to an LLC or dba” (Attachment C-3). FNS responded by recommending they conduct a search by address which is located at the bottom of the search screen (Attachment D-2).

Another commenter may have misunderstood and submitted a one sentence regarding “Detention facilities operated by Customs and Border Patrol and ICE.” CACFP does not operate in those facilities (Attachment C-6).

- **Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting form, and on the data elements to be recorded, disclosed, or reported.**

FNS recently published the Child Nutrition Reducing Burden Study (OMB approved this study on April 6, 2018 under OMB# 0584-0613 Special Nutrition Programs Quick Response Surveys, which expires on February 28, 2021) where State agencies provided

feedback on FNS processes and procedures for this information collection. The research team conducted online surveys of State directors to identify challenges that States face related to program administration and reporting requirements for school meals programs. Survey topics and work group meeting topics included program standards, reporting, reviews, procurement, USDA guidance, and research participation. Within each topic area, States were asked about specific operational or reporting requirements and asked to identify those requirements that require the most effort and/or are the most time-consuming.

The surveys were administered in April and May 2018. A total of 52 States responded to the survey, including agencies for the 50 States; Washington, DC; and Guam. Quantitative subgroup analyses were conducted according to State agency size. Open-ended question responses in the survey were analyzed using qualitative methodologies to identify recurrent themes. Overall, the census of State agencies allowed for a range of voices to be heard on the surveyed topics. Included as part of the survey was 1.) Vonda Cooke (vcooke@pa.gov), Director of Child Nutrition Programs, Pennsylvania Department of Education 2.) Jo Dawson (Jo.Dawson@Alaska.gov), Child Nutrition Program Manager, Alaska Department of Education and Early Development and 3.) Robert Leshin (RLeshin@doe.mass.edu), Director of Child Nutrition Programs, Massachusetts Department of Education.

This information is available to the public at:

<https://fns-prod.azureedge.net/sites/default/files/resource-files/CN-Reducing%20Burden.pdf>.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

No payment or gift will be provided to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

The Department complies with the Privacy Act of 1974. E-authentication level 2 clearance is required prior to granting access to the NDL (additional information can be found in the SORN, USDA/OCIO-2 eAuthentication Service, which was published in the Federal Register on March 14, 2012 (77 FR 15024)). Data/Information/entries are stripped of Personally Identifiable Information data prior to sponsoring organizations viewing the data. Access to the records is limited to those individuals who process the applications. Files are kept in physically secured rooms and in locked cabinets, while access to the electronic files is restricted to those who have authorized access to the network and have the necessary password to access the information.

The SORN for this system, which is USDA/FNS-11: Information on Persons Identified as Responsible for Serious Deficiencies, Proposed for Disqualification, or Disqualified to Participate as Principals or Family Day Care Home Operators in the Child and Adult Care Food Program (CACFP), was published in the Federal Register on February 12, 2004 (69 FR

6933). It states that FNS will disclose information from this system of records on individuals who have been disqualified from participation in the CACFP to every agency, whether State or FNS that administers the CACFP directly in the States or at the Federal level, and to every sponsoring organization participating in the program. The information will be available to the State agency directors and staff members, who make decisions about application approval or termination from participation in the program or, in the case of sponsoring organizations, make hiring decisions or submit applications for approval of family day care home operators to the State agency.

- 11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior or attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.**

There are no questions of a sensitive nature included in this data collection.

- 12. Provide estimates of the hour burden of the collection of information. The statement should include:**

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.**

This is an extension, without change, of a currently approved collection. This information collection has 56 respondents, 1,568 responses, and 784 burden hours. The respondents are all of the State agencies that administer CACFP. Based on an annual average, a State agency will place approximately 6 institutions and 22 individuals on the NDL for a total of 1,568 total responses. It is estimated that each response will take 30 minutes (0.50 hours) to complete. Estimated total reporting burden hours totals 784 hours. The recordkeeping burden associated with maintaining documentation related to institutions and providers terminated for cause at the State agency level is captured under the Information Collection for 7 CFR Part 226, Child and Adult Care Food Program (OMB Control Number 0584-0055), expiration date 2/29/2020. Therefore, the recordkeeping burden is not included in this collection to avoid double-counting that burden. The burden table below reflects the estimated burden associated with this information collection.

**ESTIMATED ANNUAL BURDEN FOR CACFP National Disqualified List Forms
FNS-843, FNS-844 (OMB #0584-0584)**

Respondent Type	Burden Activities	Section	Forms	Estimated Number of Respondents	Frequency of Response	Average Annual Responses	Average Burden per Response	Annual Burden Hours
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State Agency	The State agency creates, updates, and maintains a list of institutions, family day care home providers and individuals who have been terminated or otherwise disqualified from CACFP participation.	226.6(c)(8)	FNS-843	56	6	336	0.50	168
			FNS-844	56	22	1,232	0.50	616
State agency Level Reporting Totals				56	28	1,568	0.50	784

SUMMARY OF BURDEN (OMB #0584-0584)	
TOTAL NO. RESPONDENTS	56
AVERAGE NO. RESPONSES PER RESPONDENT	28
TOTAL ANNUAL RESPONSES	1,568
AVERAGE HOURS PER RESPONSE	0.50
TOTAL BURDEN HOURS	784

- **Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories.**

The respondent cost estimate is based on burden estimates utilizing the U.S. Department of Labor, Bureau of Labor Statistics May 2018 Occupational Employment and Wages (Occupational Group 25-0000) (<https://www.bls.gov/oes/current/oes250000.htm>). The hourly mean wage (education-related occupation) for functions performed by State agency staff are estimated at \$27.22 per staff hour. The estimated base annual cost to respondents is \$21,340 (784 hours X \$27.22 per hour). To account for fully loaded wages, an additional 33% of the estimated base cost is added (\$21,340 x .33) or \$7,042. Therefore, the total cost to respondents is \$28,382.

13. Provide estimates of the total annual cost burden to respondents or record keepers

resulting from the collection of information, (do not include the cost of any hour burden shown in items 12 and 14). The cost estimates should be split into two components: (a) a total capital and start-up cost component annualized over its expected useful life; and (b) a total operation and maintenance and purchase of services component.

There are no capital/start-up or annual operation/maintenance costs for this collection of information.

- 14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost and any other expense that would not have been incurred without this collection of information.**

It is estimated that federal employees receiving an average General Schedule (GS) grade 12 step 6 wage based on the 2019 Washington, DC-Baltimore, MD-Arlington, VA locality area hourly wage rates spend approximately 160 hours with NDL inquiries received from State agencies. The estimated base annualized cost is \$7,459 ($\$46.62 \times 160 \text{ hours} = \$7,459$). To account for a fully-loaded wage rate, an additional 33% of the base annualized cost must be added ($\$7,459 \times .33$), which equals \$2,461). Therefore, the estimated annualized cost to the Federal government is \$9,920.

- 15. Explain the reasons for any program changes or adjustments reported in Items 13 or**

14 of the OMB 83-I.

This is an extension, without change, for a currently approved data collection. There are no changes to the information collection since the last OMB approval so the burden for this collection remains at 784 burden hours and 1,568 responses.

16. For collections of information whose results are planned to be published, outline plans for tabulation and publication.

This collection does not employ statistical methods and there are no plans to publish the results of this collection for statistical use.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

The agency plans to display the expiration date for OMB approval of the information collection on all instruments.

18. Explain each exception to the certification statement identified in Item 19 "Certification for Paperwork Reduction Act."

There are no exceptions to the certification statement.