

April 13, 2006

Memo Code: CACFP 11-2006

SUBJECT: Prohibition on State Agencies' Establishing Geographic Territories for Sponsoring Organizations in the Child and Adult Care Food Program (CACFP)

TO: Child Nutrition Programs

The purpose of this memorandum is to clarify that policies establishing limits on the specific and/or exclusive geographic areas in which CACFP sponsoring organizations may operate are inconsistent with Program regulations and, as such, prohibited.

As a result of recent regional office management evaluations, we understand that some State agencies (SAs) have assigned specific and exclusive territories to sponsoring organizations of day care homes in their States. In those cases, a SA would deny an application submitted by a sponsoring organization for a day care home located outside of its assigned territory, solely on that basis. While Program regulations preserve the right of State agencies to impose "additional requirements..." that are not inconsistent with the regulations, it also stipulates that such additional requirements may not "deny the Program to an eligible institution." Limiting an eligible day care home sponsor to a specific geographic area has the effect of denying Program participation.

Current CACFP statutory provisions ensure that all participating sponsoring organizations are well qualified, and place limits on day care home provider transfers. These statutory provisions include:

- Demonstration by all institutions of financial viability, administrative capability, and Program accountability;
- Termination for cause and Program ineligibility for any institution terminated for cause from another publicly-funded program;
- Tax exempt status for all private nonprofit institutions at the time of approval;
- Approval of only those new applicant sponsoring organizations which would provide Program benefits to unserved children or facilities; and
- Prohibition of day care home provider transfers more frequently than annually, unless good cause exists.

These statutory provisions make the use of exclusive geographic territories for sponsoring organizations unnecessary, and even counter-productive. In fact, the establishment of exclusive geographic territories may have the unintended effect of causing a sponsoring organization to decrease its responsiveness and services to day care home providers, since the granting of an exclusive territory, combined with the statutory limits on provider transfers, diminishes a dissatisfied provider's ability to transfer to another sponsor.

In limited circumstances, geographic factors may be taken into account by a SA making an approval decision about an applicant sponsoring organization, or about a sponsoring organization's ability to administer the Program in additional facilities. It is appropriate for a SA to exercise its management judgment in determining whether a sponsoring organization has demonstrated that it has the resources and the ability to properly manage the Program in all of its proposed facilities. For example, a SA might decide that a sponsoring organization applying to operate facilities at a distance from its current facilities lacks the infrastructure and resources to adequately monitor and train the proposed facilities. Similarly, a SA might take into account the location of proposed facilities when a new sponsoring organization applies to enter the Program, to determine whether the new sponsor's participation will make the Program available to unserved children or facilities. A SA considering geographic factors like these should consult closely with its FNS regional office.

At this time, SAs which have established policies specifically and/or exclusively limiting sponsoring organizations' operations to limited areas must rescind those policies. Similarly, SAs must ensure that sponsoring organizations, as a group, have not created such exclusive geographic territories themselves.