

DATE: January 14, 2011

MEMO CODE: CACFP 07-2011, SFSP 03-2011

SUBJECT: Child Nutrition Reauthorization 2010:
Permanent Agreements in the Summer Food Service Program and
the Child and Adult Care Food Program

TO: Child Nutrition Programs

The Healthy, Hunger-Free Kids Act of 2010 (the Act), Public Law 111-296, was signed into law by the President on December 13, 2010. The Act modifies requirements for permanent agreements in the Summer Food Service Program (SFSP) and the Child and Adult Care Food Program (CACFP). The purpose of this memorandum is to implement these modifications to the SFSP and CACFP.

Section 321 of the Act amends section 13(b) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761(b)) to require permanent operating agreements between the State agency and SFSP sponsors. Previously, under 7 CFR 225.6(e), permanent agreements were required only for school food authority (SFA) sponsors. In February 2007, FNS memo SFSP 03-2007 granted State agencies the authority to extend permanent agreements to any SFSP sponsor.

Section 331(a) of the Act amends section 17(d)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(d)(1)) to require permanent operating agreements between the State agency and institutions participating in the CACFP. Previously, under 7 CFR 226.6(b)(4), permanent agreements were required for SFA sponsors and were optional and granted solely at the discretion of the State for other sponsors.

It is important to understand that describing the agreement as “permanent” is intended solely to convey that the agreement has no predetermined expiration date and does not need to be renewed. Such agreements may be amended as necessary to ensure compliance with all federal requirements. Such agreements may be terminated for convenience, in accordance with Program regulations, by the institution or State agency that is a party to the permanent agreement. Permanent agreements shall be terminated for cause by the State agency if the institution fails to adhere to program requirements.

The provisions requiring permanent agreements for the SFSP and CACFP are retroactive to October 1, 2010. Therefore, all new SFSP agreements between State agencies and sponsors and new CACFP agreements between State agencies and institutions entered into on or after October 1, 2010, must be permanent. Additionally, all current annual agreements must be converted to permanent agreements as soon as possible. State agencies may simply notify

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institutions that existing agreements are now permanent and will not need to be renewed or may issue new permanent agreements.

Please note that section 321 of the Act makes clear that SFSP sponsors now operating under a permanent agreement must submit an annual budget for administrative costs that must be approved by the State agency. Institutions that participate in the CACFP must continue to submit budgets as required under 7 CFR 226.7(g).

Additional provisions in sections 331(b) and (c) of the Act relating to CACFP applications, reviews, and agreements between sponsors and facilities will be addressed in future guidance.