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SUPERINTENDENT OF
PUBLIC INSTRUCTION

FISCAL YEAR 2012
CHILD AND ADULT CARE FOOD PROGRAM
OPERATIONAL MEMORANDUM #23

TO: Child and Adult Care Food Program Institutions

FROM: Kyle L. Guerrant, Director (K.G.) 8-6-12
Office of School Support Services

DATE: August 6, 2012

SUBJECT: Tribal Participation in the Child and Adult Care Food Program

Attached is the reissue of the United States Department of Agriculture's (USDA) Food and Nutrition Service (FNS) guidance on tribal participation in the Child and Adult Care Food Program (CACFP). The memorandum was originally released on October 23, 1998, and focused on the participation of tribal child care facilities in CACFP and Summer Food Service Program. The reissue, dated July 24, 2012, is clarification to the original memorandum.

If you have any questions regarding this memorandum, contact the CACFP office at 517-373-7391.

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United States
Department of
Agriculture

Food and
Nutrition
Service

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DATE: July 24, 2012

MEMO CODE: CACFP 18-2012, SFSP 14-2012

SUBJECT: Tribal Participation in the Child and Adult Care Food Program and the Summer Food Service Program

TO: Regional Directors
Child Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All Regions

During recent consultation and collaboration with the U.S. Department of Health and Human Services, Administration for Children and Families, it has come to our attention that some Tribal child care facilities continue to face specific difficulties that may discourage participation in the Child and Adult Care Food Program (CACFP).

The purpose of this memorandum is to reissue previous guidance, CACFP 01-1999, *Participation of Tribal Child Care Facilities in CACFP*, October 23, 1998, and provide Questions and Answers intended to clarify current Program policies and how these policies may impact the operation of the CACFP, as well as the Summer Food Service Program (SFSP), in Indian Country. We encourage State agencies to work with Tribes to ensure that any additional barriers to participation within the States also are addressed.

Recent research shows that American Indian and Alaska Native children have approximately twice the levels of food insecurity, obesity, and Type II diabetes, relative to the averages for all U.S. children of similar ages. Therefore, it is especially important that Tribal child care programs have access to the Federal Child Nutrition Programs.

CACFP Licensing or Approval

Consistent with Section 17(a)(1) of the National School Lunch Act (NSLA) and 7 CFR §226.6(d) of CACFP regulations, there are a variety of ways for Tribal child care facilities to meet the licensing and approval requirements for participation in CACFP.

The NSLA requires that all facilities participating in CACFP have Federal, State, or local licensing or approval. In the absence of such licensing or approval mechanisms, facilities must demonstrate compliance with any applicable State or local government standards or

the CACFP standards set forth at 7 CFR §226.6(d)(3). Thus, if a Tribal facility is not licensed or approved by the State or another local authority, it may participate in CACFP if it:

- Is licensed or approved by Tribal authorities. Tribal licensing is considered a form of "local licensing or approval" not "alternate approval."

- Receives "local alternate approval," if the State licensing agency cannot or will not license/approve Tribal facilities and if no Tribal licensing/approval exists. In this case, such facilities may be approved under either:

  - the CACFP child care standards set forth in 7 CFR §226.6(d)(3);

  - a system of State alternate approval administered by the CACFP State agency; or

  - a system of local alternate approval administered by a local government entity, where such local standards have been identified and submitted to the State agency in accordance with 7 CFR §226.6(d)(4).

Under the local alternate approval process, the submission of the local government standards is solely intended to ensure that the State agency can meet its review responsibilities for compliance with alternate State or local standards under 7 CFR §226.6(o) of the regulations. Submission is not for the purpose of gaining State agency approval of the standards.

Tribal Eligibility under CACFP and SFSP

In determining whether an institution is eligible to participate in CACFP, the Tribal government is recognized as a "public entity" or "local government," if this is not inconsistent with State law. Thus, a Tribal government may be a CACFP sponsor of day care homes or centers and may sponsor SFSP sites assuming other eligibility requirements are met. With regard to independent child care centers, for purposes of CACFP, an independent center that is directly administered by the Tribal government is also considered a "public entity" or "local government" if this is consistent with State law.

If a Tribal government is not a "public entity" under State law, but has been granted tax-exempt status by the Internal Revenue Service (IRS), a child care center operated by the Tribal government would be considered a private nonprofit entity. A Tribal child care center would only be considered "for-profit" and subject to additional eligibility requirements described in 7 CFR §226.2 if the center is independent of the Tribal government and does not have non-profit status.

Additionally, a Tribal government granted non-profit status would be considered a private non-profit entity for purposes of SFSP and, therefore, could act as a sponsor of SFSP sites assuming other eligibility requirements are met.

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 Food and Nutrition Service (FNS) Regional Office.

Original Signed

Cynthia Long
Director
Child Nutrition Division

Attachment

Questions and Answers on Tribal Participation in the Child and Adult Care Food Program (CACFP) and Summer Food Service Program (SFSP)

1. **Is direct funding to Tribes available in CACFP and SFSP?**

   No. The Richard B. Russell National School Lunch Act (NSLA), the statute that authorizes the CACFP and SFSP, allows USDA to provide funding only to States to administer the programs [42 USC §§1766(a)(1)(B), 1761(a)(2)]. The programs are administered within most States by the State educational agency. In some States, they are administered by an alternate agency, such as the State health, social services, or agriculture agency.

   Child and adult day care centers may participate in CACFP as independent centers or under the auspices of a sponsoring organization; however, day care homes are required by CACFP regulations to have a sponsoring organization. The independent center or sponsoring organization enters into an agreement with the administering State agency to assume administrative and financial responsibility for CACFP operation.

   In SFSP, feeding sites operate under a sponsor. As in CACFP, the sponsor enters into an agreement with the administering State agency to assume administrative and financial responsibility for the SFSP meal service at the sites.

2. **Can CACFP or SFSP be administered at the Tribal level with FNS Regional Office oversight?**

   No. As noted above, FNS administers the CACFP and SFSP only through grants to States. In CACFP, sponsoring organizations and independent day care centers must enter into an agreement with the CACFP State agency in order to participate. Similarly, in SFSP, sponsors must enter into an agreement with the SFSP State agency to participate.

3. **Are Tribes eligible to act as sponsoring organizations for day care homes and centers?**

   Yes. Public or non-profit private organizations that accept responsibility for the administration of the food program in day care homes and child or adult day care centers may apply to be a CACFP sponsor. Tribal governments and authorities are encouraged to work with the State agency administering CACFP in their State in order to sponsor Tribal day care homes and/or centers. For more detailed information on Tribal eligibility, see the attached memorandum.

4. **Are Tribes applying to act as a CACFP sponsoring organization required to demonstrate financial viability, administrative capability, and Program accountability?**

   Yes. Tribes applying to act as a CACFP sponsoring organization must meet the application requirements as described in 7 CFR §226.6(b), including demonstrating compliance with the performance standards. Similarly, tribes applying to act as an SFSP sponsor must meet the applications requirements as described in 7 CFR §225.6(c).

5. **Are Tribes eligible to sponsor SFSP sites?**

   Yes. Any public or private nonprofit that accepts financial and administrative responsibility for Program operations at the sponsored sites may apply to be an SFSP sponsor. Tribal governments and authorities are encouraged to work with the State agency administering SFSP in their State in order to sponsor SFSP sites. For more detailed information on Tribal eligibility, see the attached memorandum.

6. **Are Tribal day care homes and centers required to be licensed by the State licensing agency?**

   No. Although all facilities participating in CACFP must have Federal, State, or local licensing or approval, Tribal licensing or approval is considered a form of "local licensing or approval." For more detailed information, see the attached memorandum.

7. **If a child care center is licensed by a Tribe is the State required to accept the Tribal licensing for purposes of CACFP participation or may the State require that the center meet State licensing requirements?**

   A child care center or day care home located on a reservation or on other lands over which a Tribe has jurisdiction may be licensed or approved by the Tribe. This would be considered "local licensing or approval" as required by 7 CFR §226.6(d). In order to be acceptable, the State agency may require that the Tribal licensing or approval standards at a minimum meet the Minimum Standards for Tribal Child care developed by HHS (see http://www.acf.hhs.gov/programs/ccb/ta/pubs/ms/ms1.htm).

8. **Some Tribal lands cross State lines. Can a sponsor in CACFP or SFSP operate in multiple States?**

   Yes. However, sponsors must enter into agreements with the CACFP or SFSP State agency in each State in which they sponsor child care centers or day care homes or operate independent centers through CACFP or sponsor sites through SFSP.

9. **What is the relationship between Head Start and CACFP?**

   All Early Head Start and Head Start grantees and their delegate agencies are required to participate in CACFP according to the Head Start Regulations at 45 CFR §1304.23 (b)(1)(i). Children enrolled in Head Start are automatically eligible for free meals and snacks, including free milk, offered through any of the Child Nutrition Programs administered by FNS, without further application or eligibility determination [7 CFR §226.17(b)(8)].

   Due to the variety of sizes and structures of Head Start grantees, they may participate in CACFP in several ways. Some grantees are independent centers that work directly with the State, others participate in CACFP through a sponsoring organization and some may serve as a sponsoring organization for delegate agencies and child care partners. In the cases of

Tribal Head Start grantees, the grantee or the Tribe receives CACFP funding from the State and each Tribe decides how they will manage the food program for Head Start and other child care programs. More information about the Head Start program is available at: http://transition.acf.hhs.gov/programs/ohs.

10. What is the relationship between the Child Care and Development Fund (CCDF) and CACFP?

While child care programs that serve CCDF children are not required by statute or regulation to participate in CACFP, many CCDF children are also eligible for CACFP participation. Programs serving CCDF children can participate in CACFP as independent centers that enter into agreements directly with the administering State agency or through a sponsoring organization that assumes administrative and financial responsibility for CACFP operations. Day care homes, however, are required by CACFP regulations to have a sponsoring organization. More information about the Child Care and Development Fund is available at: http://www.acf.hhs.gov/programs/occ/.

11. What is the difference between the adult day care component of CACFP and the Older Americans Act Nutrition Programs?

The adult day care component of CACFP is administered by FNS and provides reimbursement for meals served to elderly and functionally impaired adults participating in adult day care programs. The purpose of the adult day care component of CACFP is to provide nutritional support to enable elderly and functionally impaired adults to remain in the community, either in their own home or in the home of a family member, guardian, or other caregiver, and avoid premature institutionalization.

The Department of Health and Human Services (HHS), Administration on Aging provides grants to support nutrition services to older people throughout the country. These programs are intended to improve the dietary intakes of participants and make community-based services available to older adults who may be at risk of losing their independence. More information on HHS nutrition services for the elderly is available at: http://www.aoa.gov/AoARoot/AoA_Programs/HCLTC/Nutrition_Services/index.aspx.

While the purpose of the two programs is similar, they are funded by different Federal agencies and have different requirements.

12. Are traditional Native American foods (e.g., fresh grown fruits and vegetables, hunted game, and fresh fish) allowable under CACFP or SFSP?

It depends. In all cases, food safety is paramount. Meat and meat products must be USDA inspected in order to be allowable in CACFP and SFSP. USDA's Food Safety and Inspection Service (FSIS) has mandatory inspection authority over all food products from cattle, sheep, swine, goats, horses, mules, and other equines, chickens, turkeys, ducks, geese, guineas, ratites (emu, ostrich, and rhea), and squab. Additionally, FSIS does voluntary inspection of

reindeer, elk, deer, antelope, water buffalo, bison, migratory water fowl (birds that swim such as ducks and geese), game birds, and rabbits.

Fresh grown fruits and vegetables and freshly caught fish are allowable in CACFP and SFSP if these foods meet the policies of the State or local public health agency regarding food safety. For these purposes, a Tribal public health agency would be considered a local public health agency. State or local authorities responsible for such inspections adopt standards, such as the Food Code, to guide their inspection process.

13. If a traditional Native American food has been determined not to be allowable under CACFP or SFSP, may the Tribe serve the food outside of reimbursable meals or in addition to the reimbursable meal?

Yes. CACFP and SFSP only require that meals meet the minimum meal pattern requirements. Additional foods may be served either with the reimbursable meal or outside the meal service. However, these foods must be served in addition to, not in place of, the required components of the meals and may not be purchased with CACFP or SFSP funds.

14. Our Tribe provides all members with per capita income distributions each year. Are these payments considered income for purposes of the Federal Child Nutrition Programs?

No, unless the payment is in excess of $2,000. The Indian Tribal Judgment Funds Use or Distribution Act states that "per capita payments shall not 'be considered as income or resources [or] otherwise utilized as a basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act or, except for per capita shares in excess of $2,000, any Federal or federally assisted program." Therefore, annual payments in amounts less than $2,000 are not considered income when determining individual income eligibility for the Child Nutrition Programs.