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

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

As a result of recent Regional Office (RO) management evaluations, we understand that some State agencies (SAs) have assigned specific and exclusive territories to SOs of day care homes (DCHs) in their states. In those cases, a SA would deny an application submitted by a SO for a DCH located outside of its assigned territory, solely on that basis. While Program regulations preserve the right of SAs 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 DCH sponsor to a specific geographic area has the effect of denying Program participation.

Current CACFP statutory provisions ensure that all participating SOs are well qualified, and place limits on DCH 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 SOs which would provide Program benefits to unserved children or facilities; and
- Prohibition of DCH provider transfers more frequently than annually, unless good cause exists.
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These statutory provisions make the use of exclusive geographic territories for SOs unnecessary, and even counter-productive. In fact, the establishment of exclusive geographic territories may have the unintended effect of causing a SO to decrease its responsiveness and services to DCH 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 SO, or about a SO’s ability to administer the Program in additional facilities. It is appropriate for a SA to exercise its management judgment in determining whether a SO 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 SO 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 SO 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 RO.

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

Please contact our office at (303) 844-0354 if you have any questions.

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