United States Department of Agriculture

Food and Nutrition Service

3101 Park Center Drive
Alexandria, VA 22302-1500

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SUBJECT: CACFP Policy # 06-2005: Questions and Answers Regarding Institution Applications from Training on the Second Interim Rule

TO: Special Nutrition Programs
All Regions

State Agencies
Child Nutrition Programs
All States

This memorandum transmits Attachment 1, which compiles questions and answers on institution application requirements raised during our training on the second interim Child and Adult Care Food Program (CACFP) management improvement rule (69 FR 53501, September 1, 2004. This is the first in a series of questions and answers on various topics addressed in that training. We hope to have all of these sets of questions and answers issued over the next 60 days.

If there are any additional questions concerning these topics, Regional offices should contact Keith Churchill or Ed Morawetz of my staff. State agencies should contact their Regional office.

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Attachment

ATTACHMENT 1

Questions from New Orleans and Denver training sessions

I. QUESTIONS RELATING TO THE APPLICATION PROCESS

1. **If a new or renewing application is denied based on failure to meet the VCA standards, can the organization apply again? If so, how long would the organization have to wait to re-apply?**

   Answer: Yes, the organization can apply again. There is no waiting period, and it is not permissible for the State agency (SA) to establish a waiting period.

2. **During the training, it was stated that a SA has 30 days to approve or deny an application resubmitted by an organization whose application had previously been denied. However, our understanding is that the 30-day timeframe applies only after the application is determined to be complete. Is that correct?**

   Answer: That is correct. We should have stated that the SA must approve or deny the organization's resubmitted application within 30 days of determining that the application is complete.

3. **It was also stated during the training that an incomplete application must eventually be denied, and that the applicant institution must be given the opportunity to appeal. However, our understanding is that the SA should work with the institution to help it submit a complete application but that, if it fails to do so, the SA simply returns the application without denying it. Is that correct?**

   Answer: If an incomplete application is received, an SA should work with the institution to help it submit a complete application. If an SA returns an incomplete application to an institution and the institution chooses not to finish the application process, than the SA has no obligation to act on that application. However, if the institution resubmits the application, it must be dealt with. If the institution is not approvable or cannot complete an application because it simply fails to meet the program requirements, the application must be denied. An SA cannot use an incomplete application determination to sidestep the appeal process.

4. **How does FNS define a "complete application?" Is it an application that includes enough information to be considered approvable (i.e., a "complete application is not just having all of the blanks filled in")?**

   Answer: A complete application contains all required information as described in 226.6 (b), including enough information to determine VCA, and any additional information required by the State.

5. **What if an applicant organization keeps re-submitting the identical application to the SA over and over again, even though the application has already been denied? Can the SA stop reviewing this organization's re-application?**

   Answer: The SA must take some action, but it can take appropriate steps to avoid unnecessary paperwork. As a condition of re-submitting a denied application, the SA can require the applicant to summarize and highlight the changes it has made in those areas of the application that the SA identified as inadequate or deficient. If an application has been denied once, and the institution has had the opportunity to appeal the denial, the SA is not required to repeatedly review and deny the identical application.

6. **What if an organization that is on the National Disqualified List (NDL) submits an application?**

   Answer: An organization on the NDL is not eligible to participate in CACFP unless the SA and FNS both agree to remove the organization from the NDL. No action is necessary on an application received from an institution on the NDL unless and until the organization is removed from the NDL. The SA should notify the organization that it must first request removal from the list, and may reapply once it has been removed from the NDL.

7. **Must the budget submitted by a multi-purpose organization be an institution-wide budget, or can it be a CACFP-specific budget?**

   Answer: An institution may submit a CACFP-specific budget if all revenues and expenses of the program operations are accounted for through CACFP funding. If, however, the institution plans to use non-CACFP funds to cover some portion of CACFP expenses, then the institution would have to submit enough information from its institution-wide budget to show how the CACFP funding shortfall will be addressed.

8. **Does USDA have any recommendation regarding what constitutes reasonable pay for the executive director of a single-purpose sponsor of family day care homes?**

   Answer: FNS Instruction 796-2 offers guidance on how to determine the allowability of staff compensation in part VIII (I)(23). To paraphrase paragraph (e) of that part of the instruction, the basic rule is that salaries are reasonable when they are consistent with rates paid for similar work in the same geographical area, or consistent with the amounts reported by the U.S. Department of Labor or the State labor department for that field of employment.

   Of course, caution must be exercised in applying these standards. The executive directors of similar types of organizations in the same location may have vastly different responsibilities and would, therefore, be expected to have very different levels of compensation. For example, one would expect that the director of a small nonprofit charity would probably receive lower compensation than the director of a private nonprofit FDCH sponsorship operating 2,000 homes and handling $10 million in Federal funds each year.

It is also crucial for the SA to ensure that the institution has effectively allocated its Program resources, and that all of its proposed expenses (including salaries) are necessary and reasonable. We recommend that when SAs review institution budgets to determine whether salaries are reasonable, they begin by determining whether the institution is adequately performing all of its required Program functions, and has apportioned an appropriate amount of its administrative reimbursement to the performance of each of these functions (e.g., training, monitoring, claims processing, eligibility determinations, internal administration, etc.)

9. **If a single-purpose sponsor of family day care homes is audited, and the audit states that the sponsor may be in financial trouble, can the sponsor still be financially viable?**

   Answer: Yes. The purpose of an audit is to review the financial practices and records of an institution and determine the accuracy and weaknesses of such. Negative findings are reported and most often are corrected by the institution prior to the next audit. However, if in subsequent audits, weaknesses are not corrected, this may signal a more serious problem that would require more scrutiny or indicate a risk to the organization's viability.

10. **If a for-profit institution is sold to new owners, does the State need to take a new agreement with the new owners? Are the new owners liable for the cash advance received by the old owners?**

    Answer: The answer depends on State law, but generally yes, an SA must make a new agreement with the new owners if the legal ownership of the institution has changed. With the sale, the previous organization ceased to exist and the contract should be closed out just as if the organization had closed its doors without being bought by new owners. Any advance payments should be repaid. The SA must then take an application from, and enter into a new agreement with, the new owners, just as they would with any other new institution.

11. **What if the SA is unaware of the proprietary institution's sale until 3 to 6 months after it occurs?**

    Answer: The SA should still close out the old contract at that point, including recovery of advances, and enter into a new agreement with (and, if appropriate, issue a new advance to) the new owners. Until the SA becomes aware of the change in ownership, it can assume that its agreement with the previous institution is still in effect, and that Program meals served to children are eligible for reimbursement.

12. **It was our impression that we must collect budgets annually from independent centers. However, the training seemed to state that independent centers are only required to submit a budget at the time of initial application, and that subsequent collection of budgets from an independent center is at the SA's discretion.**

Answer: The second interim rule requires a budget for all new institutions, but SAs have discretion on collecting budgets from independent centers after their initial application.

13. VCA requirements may keep some independent centers out of CACFP, but these same entities may later enter CACFP under an unaffiliated sponsor. Does FNS expect unaffiliated sponsors to evaluate the center's VCA before applying to the SA on behalf of the sponsored center?

Answer: The law and the regulations do not require that sponsored centers or day care homes meet the VCA standards, since those facilities have limited Program responsibilities. Therefore, sponsors are not required to determine a sponsored center's VCA prior to applying to the SA on its behalf. However, since the center sponsor assumes final administrative and financial responsibility for all facilities, it would be prudent for the sponsor to evaluate whether the sponsored center is capable of meeting Program requirements.

14. Can a credit report be used to determine financial viability?

Answer: A credit report may be one useful tool for determining financial viability, but does not alone contain enough information to determine viability.

15. Can FNS issue guidance stating specifically that balance sheets and income statements should be used by the SA to determine an institution's financial viability?

Answer: As stated in the training, balance sheets and income statements are an excellent way of determining an institution's financial viability. No additional guidance on this issue is anticipated.

16. In New Orleans, the VCA presentation stated that independent centers had to have written procedures to be considered capable and accountable. However, § 226.6(b)(1)(xvii)(B)(3) states that <u>sponsors, but not independent centers,</u> must have written procedures. Which is right?

Answer: Only sponsors are required to have written procedures, though we recommend that independent centers do as well. The VCA script distributed to SAs on July 1, 2005 contains the correct information.

17. Who is responsible for determining the VCA of a large, multi-State organization like Knowledge Learning Corporation (the newly- formed corporation resulting from the merger of Kinder Care and the Knowledge Learning Corporation)?

Answer: The Cognizant State Agency is responsible for determining the VCA of a multi-state organization.

18. Can the SA take permanent agreements electronically?

Answer: Yes, if the State's laws and/or procedures allow them. However, there must be a way to assure that the agreement is legitimate and the signer is confirming the agreement, such as through an electronic signature or certification.

19. Describe how to handle updates to the agreement if the agreement is permanent.

Answer: An SA may amend agreements in the same manner it amends other contracts. Changes to the regulations and to guidance are usually added without a formal amendment, since a permanent agreement usually incorporates the CACFP regulations and Program guidance "by reference" in the agreement.

20. Provider agreements are now permanent. How often must sponsors collect renewal applications from each provider?

Answer: There are no regulatory requirements regarding the frequency or content of provider applications as there are regarding provider agreements. However, sponsors must ensure that they have current information on some aspects of the provider's operation such as the times and length of meal service, enrollment, etc. A renewal application process may be used to capture this information.

21. When a sponsor has to certify annually that all its facilities have adhered to training requirements, does that mean that the sponsor must terminate any facility which has not received training?

Answer: As stated in the training, facilities that do not participate in required training are in non-compliance. After a reasonable attempt to have the facility participate in makeup training, a sponsor would have to declare the facility seriously deficient, in accordance with § 226.16(l)(2)(viii). If a sponsor has one or more facilities in non-compliance at the time of its annual training certification, it could simply append to the certification the steps it was taking to bring all of its facilities into compliance.

22. On handout 1 to the presentation on Renewal Applications, what are the "non-discrimination statement" and the "free and reduced price statement"? What does it mean that collecting them is prohibited, unless they change?

Answer: Section 722 of Public Law 104-193 amended Section 4(b)(1) of the Child Nutrition Act of 1966, and prohibited SAs from requiring institutions to update their free and reduced policy statement unless there was a substantive change made to the statement. Handout 1 may have created confusion by listing the "non-discrimination statement" and the "free and reduced price policy statement" separately when, in fact, they are synonymous. [See also Question # 23]

23. Why aren't the civil rights requirements listed on the handouts?

Answer: FNS Instruction 113-4, "Civil Rights Compliance and Enforcement in the Child Care Food Program [sic]", requires SAs to review an institution's application to ensure that it will abide by civil rights requirements. We consider that requirement to be met if the SA ensures that the free and reduced price policy statement and the media release are issued, and include the relevant language on nondiscrimination, in accordance with §§ 226.6(b)(1)(iii), 226.6(b)(2), 226.6(f)(1)(vii), and 226.23 (a)-(d).