OCTOBER 23, 1998

SUBJECT: Child and Adult Case Food Program (CACFP) Policy Memo # 1-99
Participation of Tribal Child Care Facilities in CACFP

TO: Regional Directors
Child Nutrition Division
All Regions

It has recently come to our attention that some Native American child care facilities are having difficulty participating in the Child and Adult Care Food Program (CACFP). These difficulties may arise for a number of reasons, but often stem from a reluctance by State agencies administering CACFP to recognize tribal licensing. This memorandum is intended to clarify that, consistent with Section 1 7(a)(1) of the National School Lunch Act (NSLA) and Section 226.6(d) of the CACFP regulations there are a variety of ways for Native American 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 Section 226.6(d)(2) of the regulations Thus, instead of meeting Statewide licensing/approval criteria, a Native American facility may:

(1) Be licensed or approved by local, tribal authorities, provided that this does not conflict with State licensing laws. This would not be an "alternate approval" situation, rather, the tribal licensing would be a form of "local licensing or approval"; or

(2) If the State licensing agency can not or will not license or approve tribal facilities, and if no tribal licensing exists, then licensing is "not available" and the facilities must rely on alternate approval. In this case, such facilities may be approved under either: the CACFP child care standards set forth at Section 226.6(d)(2) of the regulations; 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 Section 226.6(d)(3) Under local alternate approval, the submission of the locality's standards is not for the purpose of gaining State agency approval; rather, it is intended to ensure that the State agency can c~ out its review responsibilities for compliance with alternate State or local standards under Section 226.6(n) of the regulations. Thus, if State or tribal licensing is not available, tribal child care facilities may participate under Federal, State, or local alternate approval.

A second issue which has come to our attention concerns whether tribal child care centers are considered for-profit or non-profit. In determining whether an institution is eligible to participate in CACFP, the Native American tribal government may be recognized as a "public entity" or a "local government" unless this is inconsistent with State law. Thus, a tribal government may be a sponsor of family day care homes or centers on a reservation or other tribal lands over which it has jurisdiction.

With regard to independent child care centers, an independent center which is directly administered by the tribal government should also be considered a "public entity" if this is consistent with State law. In addition, if the tribal government is not a "public entity" under State law, but has been granted non-profit status by the Internal Revenue Service and directly administers the center, the center should be considered a private nonprofit entity. Only if the center is independent of the tribal government and does not have nonprofit status would it be considered a "proprietary center" subject to meeting the 25 percent Title XX requirements.

Please contact Ed Morawetz or Melissa Rothstein if you have questions concerning this memorandum.

/ORIGINAL SIGNED/

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Director
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