United States Department of Agriculture

Food and Nutrition Service

Mountain Plains Region

1244 Speer Boulevard
Denver, CO
80204-2581

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Reply to Attn of:

CACFP-711

Subject: Applicability of FNS Instruction 788-16 to Multi-State Proprietary Child and Adult Care Food Program Sponsors (CACFP)

To: STATE AGENCY DIRECTORS - (Special Nutrition Programs) Colorado DPHE, Iowa, Kansas, Missouri DHSS, Montana DPHHS, Nebraska, North Dakota, South Dakota, Utah and Wyoming

FNS Instruction 788-16, Administrative Procedures for Multi-State Sponsoring Organization-Child Care Food Program, dated October 19, 1983, implemented FNS' policy on the administration of multi-state sponsoring organizations in the Child Care Food Program.

This memorandum is intended to clarify that the provisions of FNS Instruction 788-16, copy attached, also apply to proprietary multi-state CACFP sponsors. The remainder of this memorandum addresses some specific questions that have arisen regarding how State Agencies (SA) and Regional offices should address a variety of issues involving multi-state proprietary CACFP sponsors.

If there are questions, please contact our office at (303) 844-0359.

for DARLENE SANCHEZ
Regional Director
Special Nutrition Programs

Attachments

Question 1: When is a proprietary organization considered multi-state for purposes of Instruction 788-16?

Answer: Instruction 788-16, copy attached, applies to proprietary organizations under the same standards for applying the Instruction to nonprofit multi-state family day care home sponsors. A proprietary organization is multi-state when the parent corporation operates affiliated proprietary centers in more than one state. In addition, the Instruction applies to a franchisee of the parent corporation when the franchisee operates affiliated centers in more than one state.

Question 2: Why doesn't the Instruction apply to proprietary organizations sponsoring unaffiliated centers in more than one state?

Answer: Proprietary organizations are not permitted to sponsor unaffiliated centers.

Question 3: How does the Instruction apply to franchised operations?

Answer: A franchise is a business arrangement where the developer/owner (the franchisor) of a business concept grants others (the franchisees) the licensed right to own and operate businesses based on the business concept, using the trademark associated with the business concept. Historically, FNS has viewed an institution providing child care under a franchise arrangement as distinct entity (institution) from the organization (parent company) that granted the franchise, even when the franchisee operates more than one center. For this reason, a franchisee operating multiple centers in a single state would not be subject to Instruction 788-16, but a franchisee operating multiple centers in more than one state would be subject to Instruction 788-16.

Question 4: Can a SA require that all proprietary centers participating in the CACFP within its State must be independently owned or franchised?

Answer: No. Neither the statute nor the regulations permit the SA to establish a specific form of ownership as a prerequisite to CACFP participation.

Question 5: Can the SA assume that a center is a franchised operation?

Answer: No. In the absence of documentation that a particular center is a franchisee under the federal and state laws regulating franchise arrangements, the SA should consider the center to be part of the parent corporation.

Question 6: How does a SA determine if a particular center is a franchise?

Answer: The easiest way is to obtain documentation from the center or the SA can ask the parent corporation. Since many states regulate franchise arrangements, information on approved franchises may also be available from the State's regulators.

Question 7: We have been requiring that all proprietary centers obtain a program-specific audit as allowed under Department's regulation 7 CFR Part 3052. Can we still require program-specific audits when the center is part of a multi-state organization?

Answer: No. While the cognizant SA can continue to establish audit requirements for franchised proprietary institutions; pursuant to Instruction 788-16, the affiliated centers of a multi-state proprietary sponsor will be included in the organization-wide audit of the multi-state sponsor. Copies of the organization-wide audit will be shared with all administrating SAs. Regional Offices will assist the affected SAs in coordinating this activity.

Question 8: Is the cognizant SA permitted to develop its own requirements for the organization-wide audit?

Answer: Yes; however FNS recommends that the cognizant SA adopt the Part 3052 organization-wide audit requirements. If the cognizant SA chooses to develop its own organization-wide audit requirements, FNS recommends the cognizant SA coordinate its efforts with the other affected SAs. To that end, please let the Regional Office know if the SA will be requiring audits that meet requirements other than Part 3052.

Question 9: Do the corporate audits of some multi-state sponsors obtain for other purposes meet the organization-wide audit requirements of Part 3052?

Answer: Without a review of the actual audit report, it is not possible to determine if a particular corporate audit meets the Part 3052 requirements. In keeping with the intent of Part 3052, FNS recommends the cognizant SA develop organization-wide audit requirements that permit a multi-state sponsor to build upon any audit work already performed for its corporate audit.

Question 10: How will the 15 percent limitation of the sponsor's retention of CACFP reimbursements apply in the case of multi-state sponsors?

Answer: The 15 percent limitation is still computed on the sponsor's earnings in each state. Multi-state sponsors must meet the 15 percent limitation individually and in total. This means that if a sponsor operates in two states with the same amount of reimbursement earned in each state, the sponsor could not average its earnings over the two states by recovering 17 percent in one state and 13 percent in the second state. Consistent with Instruction 788-16, the multi-state sponsor would develop a comprehensive budget that identifies its costs, by state and in total. These costs represent the sum of direct and shared costs from each individual state program and the sponsor's home office costs. The budget would also identify the method used by the sponsor to allocate shared costs between state programs and the budget would identify the amount of CACFP reimbursement the sponsor would retain for home office costs and the amount of reimbursement that each state would receive for direct administrative costs occurring within the state. The cognizant Regional Office would be responsible for verifying that the total budget does not exceed the 15 percent

limitation on a corporate-wide basis, approving the sponsor's cost allocation methods for shared costs and the amount of each state's shared costs. Each SA, upon receiving information from the cognizant Regional Office on the amount of allocated costs approved in its State, would then add its share of the allocated administrative costs to direct state administrative costs to determine that the sponsor was within the 15 percent limitation for its own State.

Question 11: If a SA determines that a multi-state sponsor's request to retain more than 15 percent for its operations is approvable, does the approval apply to all states?

Answer: No. When a multi-state sponsor seeks permission to retain more than 15 percent for its entire operation, the cognizant Regional Office is responsible for approving that request. However, if the sponsor were seeking to increase the retention percentage to cover its administrative costs in a specific state, the affected SA would be responsible for the approval or denial of the request.

UNITED STATES DEPARTMENT OF AGRICULTURE
Food and Nutrition Service
3101 Park Center Drive
Alexandria, VA 22302

ACTION BY: Regional Directors
Special Nutrition Programs

Source Citation: Section 226.10

Administrative Procedures for Multi-State Sponsoring Organization - Child Care Food Program

I Purpose

This Instruction implements the Agency's policy on administration of multi-State sponsoring organizations in the Child Care Food Program. Due to their structure it is necessary to utilize special management procedures to ensure effective and consistent administration of these organizations.

II Background

In 1982, the Child Care and Summer Programs Division issued FNS Instruction 788-5 (previously Policy Memorandum No. 25) which designated certain Regional Offices as cognizant for multi-State sponsoring organizations in the Child Care Food Program (CCFP). These cognizant Regional Offices were determined based upon the location of the headquarters office of the multi-State sponsoring organization. Cognizant offices were designated as responsible for negotiating and approving an allocation method by which the multi-State sponsoring organization could claim shared costs among the various administering agencies. Approval of the levels of these shared costs was left to the discretion of the individual administering agencies.

On September 30, 1982, the Office of Inspector General released Audit Report No. 27639-1-Ch, Quality Child Care, Inc., to the Administrator. This audit made several recommendations concerning improved administration of multi-State sponsoring organizations in the areas of administrative reviews, audits, and administrative budgets. In the course of resolution of this audit, several meetings were held which were attended by representatives from four Regional Offices, the Child Care and Summer Programs Division and State agencies. A summary of the results of the final meeting was circulated to all Regional Offices in January 1983. This summary contained suggested procedures to address the administrative areas identified as problems by the audit. In addition, this summary contained procedures to be used to provide guidance and technical assistance to multi-State sponsoring organizations to coordinate procurements by these organizations. In general, comment received from Regional Offices concerning these suggested procedures was supportive. Therefore, this Instruction will establish new administrative procedures and responsibilities for multi-State sponsoring organizations in four general areas: administrative budgets, administrative reviews, audits and procurements.

III Policy

A Administrative Budgets

FNS Instruction 788-5 established procedures to develop appropriate methods of allocation for allowable shared costs for multi-State sponsoring organizations. However, this Instruction also specified that right of approval of the permissable levels of each shared cost item was to be retained by each administering agency. To ensure the accuracy of this process, it will be necessary for the cognizant Regional Office to receive and review the entire administrative budget of the multi-State sponsoring organization. While the procedures described in FNS Instruction 788-5 to develop methods of allocation remain in effect, authority is hereby given to cognizant offices to approve cost levels for these cost items to be allocated among more than one administering agency. Thus, for allocable cost items, the cognizant Regional Office will (1) negotiate and approve a method of allocation, (2) approve cost levels for those allocable costs, (3) notify the administering agencies of these approved allocable cost levels and the portion which each administering agency must consequently fund, and (4) provide guidance to each administering agency, as necessary, to ensure consistent treatment of these allocable costs. Should a multi-State sponsoring organization affected by this provision decide to appeal, its appeal will be filed with the FNS Administrative Review Staff.

Costs which are direct to each administering agency remain the responsibility of each such administering agency. This will permit the adjustments necessary for operation within a particular State. Of course, all requirements of Regulations and Instructions previously issued remain in effect for these direct costs, thus providing a framework for consistent treatment on a national basis of direct costs.

B Administrative Reviews

Each administering agency, whether State agency or Regional Office, continues to be responsible for the administrative review of any multi-State sponsoring organizations operating within their respective States. However, the timing of these reviews should be coordinated by the cognizant office. Summary reports of reviews conducted within each State should be forwarded to the cognizant office by a date established by the cognizant office. Should analysis of these reports by the cognizant office establish the necessity for an additional coordinated administrative review, the cognizant office will take the lead role in assembling the review team and conducting the review. Should a multi-State sponsoring organization operate in more than one Region, the Child Care and Summer Programs Division will take the lead role in assembling the necessary review team and conducting the review.

C Audits

Since multi-State sponsoring organizations are usually large and complex, multi-State sponsoring organizations should have annual audits. The agency administering the State where the headquarters office of the multi-State sponsoring organization is located shall take the lead role in ensuring that the organization-wide corporate audit requirement is met for the multi-State sponsoring organization. Payment for these audits shall be negotiated among the administering agencies. Complete audit reports shall be sent to all

administering agencies and appropriate resolution activity shall be the responsibility of each administering agency. Although this audit requirement will be the only Federal audit requirement, the State agencies may, at their discretion, engage in additional audit activity.

D Procurements

For procurements which benefit all States in which the multi-State sponsoring organization operates, the administering agency for the State in which the headquarters office of the sponsoring organization is located should apply that State's procurement requirements. For procurements which benefit a single State's program, the procurement requirements of that State agency should be applied.

The procedures described above are effective with the date of this Instruction. However, it is understood that all situations are not necessarily covered by these procedures. Therefore, Regional Offices and State agencies should take any additional appropriate action to ensure that multi-State sponsoring organizations are administered properly.

It is intended that this Instruction be modified, if necessary, as practical experience is gained. Therefore, please submit comments or suggestions to the Child Care and Summer Programs Division.

Robert E. Leard
Administrator