CHILD AND ADULT CARE FOOD PROGRAM PERMANENT AGREEMENT FOR SPONSORING ORGANIZATIONS OF DAY CARE HOMES
Catalog of Federal Domestic Assistance (CFDA) 10.558
PARTS II AND III

PREFACE: to carry out the purposes of the Child and Adult Care Food Program (CACFP), 7 CFR Part 226, as amended, the Nebraska Department of Education, Nutrition Services (NDE) and the sponsoring organization agree to the following for the fiscal year stated in Part I. This agreement shall include Parts I, II and III and all applicable attachments and policy statements pertaining to the sponsoring organization.

PART II - SECTION I.
GENERAL INFORMATION

A. Authority

To the extent of funds available, NDE shall reimburse the sponsoring organization in accordance with the applicable provisions of the CACFP, for any fiscal year this agreement is in effect, provided that the sponsoring organization agrees to administer the CACFP in accordance with the applicable requirements of 7 CFR Part 226, as amended, and all other regulations and circulars incorporated therein; 7 CFR 3015 and all other regulations and circulars incorporated therein; Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975 and United States Department of Agriculture (USDA) regulations concerning nondiscrimination (7 CFR Parts 15, 15a and 15b); USDA Food and Nutrition Services (FNS) instructions; the Management Plan for Nebraska Family Day Care Home Sponsors, the Nebraska Family Day Care Home Sponsors Recruitment Policy; and the administrative requirements of NDE.

B. Participating Institutions (Sponsoring Organizations)

1. Institutions participating in the CACFP may include: public or IRS tax-exempt sponsoring organizations of day care homes which have agreed to accept final financial and administrative responsibility for the management of an effective food service in day care homes and to comply with all requirements of participation in the CACFP as stated in 7 CFR Part 226.
2. Day care home means an organized nonresidential child care program for children enrolled in a private home, licensed or approved as a family or group day care home and under the auspices of a sponsoring organization.
3. Tier I day care home means:
   a. a day care home that is operated by a provider whose household meets the income standards for free or reduced-price meals, as determined by the sponsoring organization based on a completed free and reduced price application, and whose income is verified by the sponsoring organization of the home in accordance with 7 CFR 226.23 (h) (6);
   b. a day care home that is located in an area served by a school in which at least 50 per cent of the total number of students enrolled are certified eligible to receive free or reduced price meals; or
   c. a day care home that is located in a geographic area, as defined by FNS based on census data, in which at least 50 percent of the children residing in the area are members of households which meet the income standards for free or reduced price meals.
4. Tier II day care home means a day care home that does not meet the criteria for a Tier I day care home.

C. Reimbursement

1. The rates for meals served in Tier I and Tier II day care homes shall be in accordance with 7 CFR 226.4 and 7 CFR 226.13.
2. Sponsoring organizations for day care homes shall receive payments for administrative costs. During any fiscal year, administrative costs payments to a sponsoring organization may not exceed the sum of the products obtained by multiplying each month the sponsoring organization's number of “homes times rates” structure determined annually by USDA and as specified in 7 CFR 226.12.
   a. The Healthy, Hunger-Free Kids Act of 2010, Public Law 111-296 permits sponsors to carry over to the next federal fiscal year a maximum of 10 percent of administrative reimbursements received, but not used in the current fiscal year.
3. The method of calculating reimbursement shall be as directed by NDE in accordance with 7 CFR 226.12.

4. Advance payments made to sponsoring organizations shall be in accordance with 7 CFR 226.10. Advances will ONLY be made available to family day care home sponsoring organizations that did not have an approved agreement with NDE in the prior fiscal year.
5. Failure to comply with 7 CFR 226 will result in the withholding of administrative funds.

PART II - SECTION II.
AGREEMENT OF PARTICIPATING INSTITUTION (SPONSORING ORGANIZATION)

A. Program Requirements - Sponsoring Organization Provisions

1. The sponsoring organization shall comply with all provisions of 7 CFR 226.16.
2. The sponsoring organization shall submit to NDE all information required for its approval and the approval of all family day care homes under its jurisdiction, including:
   a. A sponsoring organization management plan, in accordance with 7 CFR 226.6(f)(2). This management plan shall include:
      i. Detailed information on the organizational administrative structure;
      ii. The staff assigned to Program management and monitoring;
      iii. Administrative budget;
      iv. Procedures which will be used by the sponsoring organization to administer the Program and disburse payments to the child care facilities under its jurisdiction;
      v. A description of the system for making Tier I day care home determinations;
      vi. A description of the system of notifying Tier II day care homes of their options for reimbursement.
   b. An application for participation, or renewal materials, for each family dare care home accompanied by all necessary supporting documentation; and
   c. Timely information concerning the eligibility status of day care homes (such as licensing/approval actions).
3. The sponsoring organization shall accept final administrative and financial responsibility for management of an effective food service, and comply with all requirements of 7 CFR 226.
4. The sponsoring organization shall provide adequate supervisory and operational personnel for the effective management and monitoring of the Program at all family day care home facilities under its jurisdiction. At a minimum, such Program assistance shall include:
   a. Pre-approval visits to each family day care home for which application is made to discuss Program benefits and verify that the proposed food service does not exceed the capability of the child care provider;
   b. Staff training for all child care providers in Program duties and responsibilities prior to beginning Program operations;
   c. Additional training sessions, to be provided not less frequently than annually; and
   d. Reviews of food service operations to assess compliance with meal pattern, record keeping, and other Program requirements. Such reviews shall be made not less frequently than:
      (1) Three times each year at each day care home, provided that at least one review is made during each day care home's first four weeks of Program operations and not more than six months elapse between reviews.
      (2) Of the three required reviews, at least two reviews must be unannounced; at least one of the unannounced reviews must include the observation of a meal service.
5. Sponsoring organizations shall make payments of Program funds to child care homes within five working days of receipt from NDE. This disbursement may not exceed the rates times the number of meals documented at each day care home during any fiscal year.
6. Disbursements of advance payments may be withheld from child and adult day care facilities which fail to submit reports required by 7 CFR 226.15(e).
7. The sponsoring organization agrees to determine which of the day care homes under its sponsorship are eligible as Tier I day care homes. A sponsoring organization may use current school or census data provided by NDE or free and reduced price applications collected from day care home providers in making a determination for each day care home. Determinations of a day care home's eligibility as a Tier I day care home shall be valid for one year if based on a provider's household income, five years if based on school data, or until more current data are available if based on census data. However, a sponsoring organization, State agency, or FNS may change the determination if information becomes available indicating that a home is no longer in a qualified area.
8. The sponsoring organization agrees to comply with the Management Standards for Nebraska Family Day Care Home Sponsors and with the Nebraska Family Day Care Home Sponsors Recruitment Policy.

B. Meal Pattern Requirements

In order to qualify for reimbursement, all meals served by participating day care homes must meet the meal pattern requirements of 7 CFR 226.20.

C. Records

Records required to document claims for reimbursement shall be kept for a period of four years, or longer as necessary, to resolve all audits and review findings, from the date of the last payment made to the sponsoring organization under the CACFP.

1. The sponsoring organization shall establish procedures to collect and maintain all necessary Program records. Such records shall include:
    a. Copies of the approved CACFP application, agreement, management plan and all supporting documents submitted to NDE:
    b. Documentation of:
        i. the enrollment of each child at day care homes;
        ii. information used to determine the eligibility of enrolled providers' children from free or reduced price meals;
        iii. information used to classify day care homes as Tier I day care homes; and
        iv. information used to determine the eligibility of enrolled children in Tier II day care homes that have been identified as eligible in accordance with 7 CFR 226.23(e)(1).
    c. Daily records indicating the number of participants in attendance and the number of meals, by type (breakfast, lunch, supper, and supplements), served to participants.
    d. Copies of invoices, receipts, or other records required by NDE financial management instructions to document:
        i. Administrative costs claimed by the sponsoring organization;
        ii. Income to the Program.
    e. Copies of all claims for reimbursement submitted to NDE;
    f. Receipts for all Program payments received from NDE;
    g. Copies of menus, and any other food service records required by NDE; and
    h. Information on training session date(s) and location(s), as well as topics presented and names of participants; information concerning the dates and amounts of disbursements to each day care home;
    i. Information concerning the location and dates of each day care home review, any problems noted, and the corrective action prescribed and effected.
2. These records must be made available, and made available to copy, during the sponsoring organization's normal business hours, to representatives of NDE, USDA and the Government Accounting Office (GAO) for such CACFP reviews or audits as may be determined to be necessary by such representatives in accordance with 7 CFR Part 226.

PART II - SECTION III.
APPEAL STANDARDS FOR CACFP

A. Right to Appeal

All participating sponsoring organizations have the right to appeal a NDE action or decision to:

1. Deny an application to participate in the CACFP;
2. Deny all or part of a claim for reimbursement;
3. Deny an advance payment which was available to new sponsoring organizations that did not have an agreement with NDE in the prior fiscal year;
4. Terminate participation in the CACFP; or,
5. Suspend participation in the CACFP; or,
6. Demand repayment for an overclaim; or,
7. Deny or refuse to forward to USDA an exception request by the sponsoring organization for payment of a late claim or a request for an upward adjustment to a claim; or,
8. Take action which affects participation in the Program or a claim for reimbursement.

B. Requests for Review

Sponsoring organizations wishing to appeal a NDE action or decision must file a request for review in the format of the sample request for review contained in the CACFP Appeal Standards (Appendix A), and in accordance with the provisions in the Standards.

C. Timeline
A hearing request or a request for a review of the record to appeal a NDE action or decision must be filed within 15 calendar days of the day the sponsoring organization receives notice of the action or decision from NDE.

D. Submission
The request shall be sent by certified mail, return receipt requested, to:

Nutrition Services
Nebraska Department of Education
301 Centennial Mall South, 6th Floor
P.O. Box 94987
Lincoln, NE 68509-4987

PART II - SECTION IV.
CONTRACTUAL PROVISIONS

A. Disclaimer of Liability
Neither the State of Nebraska nor any agency thereof shall hold harmless or indemnify any contractor for any liability whatsoever.

B. Arbitration, Damages
Notwithstanding any language to the contrary, no interpretation shall be allowed to find the State of Nebraska, or any agency thereof, has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, the State of Nebraska shall not agree to pay attorney fees and late payment penalties in the absence of a judicial order.

C. Authority to Contract
By signing this agreement, the representative of the sponsoring organization thereby represents that such person is duly authorized by the sponsoring organization to execute this agreement and that the sponsoring organization agrees to be bound by the terms of the agreement.

D. Responsibility for Taxes
The State of Nebraska, or any agency thereof, is not responsible for any Federal, State, or local tax liability which a sponsoring organization may incur as a result of participation in the CACFP.

E. Effective Dates
This agreement shall be in effect for the duration of the fiscal year shown in Part I of this agreement, beginning October 1 of the indicated year or upon the effective date of approval by NDE, whichever is later, and terminating on the last day of the fiscal year shown in Part I of this agreement unless terminated at an earlier date on the basis of a serious deficiency as defined in 7 CFR 226.6(c), or upon a sponsoring organization's voluntary termination of CACFP participation

F. Termination Due to Lack of Funding
If sufficient funds are not appropriated by the Federal government to continue reimbursement claimed by a sponsoring organization participating in the CACFP, NDE may terminate the agreement. If possible, NDE will attempt to notify the sponsoring organization participating in the CACFP in writing by regular mail at least 30 days before the termination becomes effective.

PART II - SECTION V.
ADMINISTRATIVE AND FINANCIAL RESPONSIBILITIES

A. Duties and Responsibilities of the Authorized Representative

Authority is given under the terms of this agreement to the designated authorized representative to enter into written agreements on behalf of the sponsoring organization with NDE for the operation of the CACFP in sponsoring organization named in Part I and to present claims for reimbursement and sign for the sponsoring organization on any other documents or reports relating thereto.

The authorized representative is responsible for the accuracy of claims for reimbursement submitted by the sponsoring organization. Failure to submit accurate claims may result in overclaims being assessed, and/or suspension, termination, or legal action being taken against the sponsoring organization, and/or authorized representative. Reimbursement shall only be claimed for meals served to eligible enrolled participants. NDE or USDA officials have the right to verify information and shall have access, during the sponsoring organization's normal business hours, to applicable records by having records made available for onsite review, to have records copied on the premises or removing records from the premises to make copies or for further review in the NDE offices.

B. Duties and Responsibilities of the Sponsoring Organization

The sponsoring organization or officials of the sponsoring organization understand and agree that they are legally and financially responsible for all actions taken pursuant to this agreement, including actions taken by the authorized representative.

The sponsoring organization or officials of the sponsoring organization are responsible for the accuracy of claims for reimbursement submitted by this sponsoring organization. Reimbursement shall only be claimed for meals served to eligible enrolled participants. Failure to submit accurate claims may result in overclaims being assessed, and/or suspension, termination, or legal action being taken against the owner (individual, corporate or otherwise), sponsoring organization, sponsoring organizational official and/or authorized representative. NDE or USDA officials have the right to verify information and shall have access to applicable records, during the sponsoring organization's normal business hours, by having records made available for onsite review, to have records copied on the premises or removing records from the premises to make copies or for further review in the NDE offices.

The sponsoring organization or officials of the sponsoring organization assume full administrative and financial responsibility for all CACFP operations of the sponsoring organization.

C. Record Retention

All reports, documents, policies, administrative memorandums, records and information as required or requested by NDE; the National School Lunch Act, as amended; 7 CFR Part 226; and all regulations incorporated therein; shall be kept for a period of not less than four years or longer as necessary to resolve all audits and review findings. All records shall be securely kept and maintained on site. On site shall be defined as the physical location/s of the sponsoring organization/s included in Part I of this agreement. Failure to keep, maintain and secure all the necessary CACFP records to document each claim for reimbursement may result in overclaim assessments against the sponsoring organization, sponsoring organization officials and/or authorized representative. Audits will be conducted through the organization annually, in accordance with the provisions of 7 CFR 226 and the Federal OMB Circular A-128 or A-133 if the sponsoring organization receives more than $300,000 annually from all Federal sources.

D. Change of Authorized Representative

If the authorized representative changes during the period of time covered by this agreement, sponsoring organization or sponsoring organization officials must submit a new certificate of authority to NDE within 10 calendar days of the change. Claims with unauthorized signatures will not be paid.

E. Change of Business Structure or Ownership

If the business structure or ownership of the participating institution changes during the period of time covered by this agreement, the sponsoring organization or sponsoring organization officials must submit a new certificate of authority to NDE within 10 calendar days of the change. Examples of business structure or ownership changes include the following: formation or dissolution of a corporate entity; creation of a lease/purchase agreement; and changes of corporate officials. Some of these changes in business structure or ownership may necessitate the termination of this agreement and the submission of a new CACFP application and agreement with the new entity.

F. Fraud
Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property that are the subject of a grant or other form of assistance under 7 CFR 226, whether received directly or indirectly from NDE or USDA, or whoever receives, conceals or retains such funds, assets or property to his use or gain, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud shall, if such funds, assets, or property are of the value of $100 or more, be fined not more than $10,000 or imprisoned not more than five years, or both, or, if such funds, assets, or property are of value of less than $100, shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

G. Collection
Any unpaid overclaim assessed to the sponsoring organization shall be subject to collection proceedings through any means deemed necessary, including use of a private collection agency. Any fees associated with the collection of unpaid overclaims shall be assessed to the sponsoring organization or sponsoring organization officials, and/or authorized representatives.

PART III. POLICY STATEMENTS
SECTION I. NONDISCRIMINATION POLICY

The sponsoring organization hereby agrees that it will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d through 2000d-7) and all requirements imposed by the regulations of the Department of Agriculture (7 CFR Part 15), Department of Justice (28 CFR Parts 42 & 50) and Food and Nutrition Service directives or regulations issued pursuant to that act and the regulations, to the effect that, no person in the United States shall, on the grounds of age, sex, (including gender identity and sexual orientation), disability, color, race, or national origin, be excluded from participation in, or be denied the benefits of, or be otherwise subject to discrimination under any Program or activity for which the applicant received Federal financial assistance through NDE; and hereby gives assurance that it will immediately take any measures necessary to effectuate this agreement.

This assurance is given in consideration of and for the purpose of obtaining any and all Federal financial assistance, grants and loans of Federal funds, reimbursable expenditures, grant or donation of Federal property and interest in property, the detail of Federal personnel, the sale and lease of, and the permission to use, Federal property or interest in such property or the furnishing of services without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale, lease or furnishing of services to the recipient, or any improvements made with Federal financial assistance extended to the Program applicant by NDE. This includes any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of cash assistance for the purchase of food, and cash assistance for purchase or rental of food service equipment or any other financial assistance extended in reliance on the representations and agreements made in this assurance.

By accepting this assurance, the sponsoring organization agrees to compile data, maintain records and submit reports as required; to permit effective enforcement of Title VI of the Civil Rights Act; and to permit authorized representatives of NDE, State Auditor of Public Accounts, auditors on contract, or USDA to review such records, books, and accounts as needed to ascertain compliance with Title VI. If there are any violations of this assurance, NDE shall have the right to seek judicial enforcement of this assurance.

This assurance is binding on the sponsoring organization, its successors in interest, transferees, and assignees as long as it receives assistance or retains possession of any assistance under the CACFP. The person or persons whose signatures appear in Part I of this agreement are authorized to sign this assurance on behalf of the sponsoring organization.

The sponsoring organization assures NDE that all participants at the facility/s included in Part I are served the same meals at no separate charge, regardless of race, color, sex, (including gender identity and sexual orientation), age, national origin, or disability, and there is no discrimination in the course of the meal service.

The sponsoring organization acknowledges that NDE assumes the responsibility for distributing a news release about the sponsoring organization's policy for free and reduced price meals for pricing and non-pricing programs. If the sponsoring organization elects to submit its own news release it will retain a copy of the release in its permanent file and also submit a copy of the news release to NDE with its application.

The sponsoring organization gives assurance that it has collected actual beneficiary data by racial/ethnic category for each participant presently enrolled, and has included the data in Part I. The sponsoring organization understands that the collection of this information is strictly for statistical reporting requirements and has no effect on the determination of eligibility to receive benefits under the CACFP.

PART III - SECTION II. POLICY STATEMENT FOR FREE AND REDUCED PRICE MEALS FOR NONPRICING PROGRAMS

The representative of the sponsoring organization applying for participation in the CACFP agrees to accept the responsibility for and assure that the sponsoring organization:

(a) Will not physically segregate, nor discriminate in any way against any child receiving a free or reduced price meal benefit and that it will protect the anonymity of these children and that there will be no overt identification of children receiving a free or reduced price meal; and,

(b) Will serve the same meals or snacks to all CACFP participants at no separate charge, regardless of race, color, national origin, sex, age, or disability and that there will be no discrimination in the course of the food service.

Non-Discrimination Statement:
In accordance with federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, this institution is prohibited from discriminating on the basis of race, color, national origin, sex (including gender identity and sexual orientation), disability, age, or reprisal or retaliation for prior civil rights activity.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotape, American Sign Language), should contact the responsible state or local agency that administers the program or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339.

To file a program discrimination complaint, a Complainant should complete a Form AD-3027, USDA Program Discrimination Complaint Form which can be obtained online at: https://www.usda.gov/sites/default/files/documents/USDA-OASCR%20P-Complaint-Form-0508-0002-508-11-28-17Fax2Mail.pdf, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

1. **Mail:**
   U.S. Department of Agriculture
   Office of the Assistant Secretary for Civil Rights
   1400 Independence Avenue, SW
   Washington, D.C. 20250-9410; or

2. **Fax:**
   (833) 256-1665 or (202) 690-7442; or

3. **Email:**
   program.intake@usda.gov

This institution is an equal opportunity provider.

As stated above, all protected bases do not apply to all programs, "*the first six protected bases of race, color, national origin, age, disability and sex are the six protected bases for applicants and recipients of the Child Nutrition Programs.*"