TO: Sponsors of the Child and Adult Care Food Program

FROM: Food and Nutrition Service
Minnesota Department of Education

DATE: November 14, 2011

SUBJECT: Requirement for Independent Board of Directors

This replaces the September 12, 2011 Food and Nutrition Service memorandum on the same subject.

The final rule *Child and Adult Care Food Program Improving Management and Program Integrity*, which was effective July 13, 2011, included a requirement that organizations that participate in the Child and Adult Care Food Program (CACFP) must have an "independent governing board of directors." The last section of this memorandum provides required actions for organizations participating in CACFP. Multi-site nonprofit and family child care sponsoring organizations are required to report on this requirement to the Minnesota Department of Education – Food and Nutrition Service by **January 1, 2012**.

Not applicable to for-profit corporations: Based on the scope of requirements in state law for governing boards of for-profit corporations, this requirement for an independent board of directors does not apply to for-profit corporations participating in the CACFP in Minnesota. Also the requirement for an independent board is not applicable to a business, such as a sole proprietorship, that is not required by state law to have a board of directors.

Independent Board of Directors

The following new regulatory language requiring CACFP sponsoring organizations to have an "independent governing board of directors" was added to 7 CFR 226.6(b)(1)(xviii)(C)(1) and 226.6(b)(2)(vii)(C)(1):

> *Governing board of directors*. Has adequate oversight of the Program by an independent governing board of directors as defined at § 226.2.

The following definition was added to 7 CFR 226.2:

> *Independent governing board of directors* means, in the case of a nonprofit organization, or in the case of a for-profit institution required to have a board of directors, a governing

> board which meets regularly and has the authority to hire and fire the institution's executive director.

The preamble of the final rule provides additional guidance from the U.S. Department of Agriculture on the requirement for an *independent* board. The preamble stated that "the board must be independent of the executive director's control" and cited the Child Care Assessment Project which found that "some private nonprofit organizations currently participating in the CACFP do not have a governing board of directors that fully meets this definition because of lack of independence." The preamble further stated:

> The MIG guidance and training emphasized that governing boards of directors which include the CACFP director, other sponsor officials, and/or members of their families cannot perform the type of independent oversight required for the sponsor's successful operation of the CACFP. One of the critical hallmarks of a governing board of directors' independence – the board's ability to hire and fire the organization's executive director – is limited when sponsor officials or their families serve on the board. We encourage State agencies to work closely with institutions participating in CACFP to ensure that such boards are in place, and that this requirement is fully met, as quickly as possible.

Based on these changes to program regulations and the additional guidance from USDA in the final rule, a governing board of directors of a nonprofit organization does not meet the program requirement for an independent board when *officials* of the sponsoring organization (see below), or *members of an official's family* (see below), serve as members of the board. The director, and as needed other sponsor officials, are expected to attend and participate in board meetings as requested by the board.

Sponsor Officials: All employees of a sponsoring organization are considered to be sponsor officials for this purpose. Employees may not be voting members on the organization's board of directors

Family Members: Family members of sponsor officials who may not be considered as voting members of the organization's board of directors include the sponsor official's spouse, parent, child, spouse of a child, brother, sister, or spouse of a brother or sister. This list does not mean that other relatives of sponsor officials are presumed to have the required independence. The relationship of any board member must be disclosed on the CACFP Board Composition form submitted with A3 of the Management Plan, and updated as needed. As a general rule, relatives of sponsor officials should rarely serve in a voting capacity on a sponsoring organization's board of directors.

Other:

Child care providers do not have the independence to be considered for appointment as voting board members. However providers can provide valuable input to a board in an advisory capacity.

All related party and less-than-arms-length transactions involving board members and related institutions require specific prior written approval from the Minnesota Department of Education before the costs are incurred.

Required Actions

Single-Site Nonprofit Organizations: Determine whether your board of directors is in compliance with the program requirement to have an independent governing board of directors. If necessary, take action to come into compliance as quickly as practicable. No reporting to the Minnesota Department of Education – Food and Nutrition Service (FNS) is required at this time.

Multi-Site Nonprofit and Family Child Care Organizations: Determine whether your board of directors is in compliance with the program requirement to have an independent governing board of directors. Submit an update to your CACFP 2011-12 management plan by **January 1, 2012** that describes how your board meets this requirement. If your board is not in compliance, the update must include a plan for coming into compliance as quickly as practicable.

For-Profit Organizations: No action is required from for-profit corporations.

If you have any questions about this information, contact Minnesota Department of Education – Food and Nutrition Service at 651-582-8526, 800-366-8922 (Minnesota toll-free) or email to fns@state.mn.us.