


Date: September 2011ⁱ
To: Authorized Representatives of the Child and Adult Care Food Program (CACFP)
From: Amanda Kane, RD, CD, Director 
Community Nutrition Programs
Subject: CACFP Institution Eligibility Criteria – Governing Boards

The Final CACFP Rule, effective July 13, 2011, incorporates into the regulations governing the Child and Adult Care Food Program (CACFP) modifications, clarifications and technical changes to the two interim CACFP rules. The final CACFP rule can be viewed at http://www.fns.usda.gov/cnd/Care/Regs-Policy/policymemo/Integrity_Final_Rule.pdf

As of October 1, 2011, all nonprofit CACFP institutions must meet the definition of “independent governing board of directors,” as defined at 7 CFR 226.2. *Independent governing board of directors* means in the case of a nonprofit institution, 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, or the agency’s CACFP Authorized Representative when he or she reports directly to the board.

For the purposes of CACFP participation in Wisconsin this means that the President of the governing board cannot also be the Executive Director or the CACFP Authorized Representative. (The Executive Director can be the CACFP Authorized Representative.) An independent governing board of directors also prohibits a business relationship, other than serving as Executive Director or in the case of no executive director, as the Authorized Representative for the CACFP, between the board and the Executive Director or the Authorized Representative.

To meet the requirement of an independent governing board the following criteria must be met:

- The Executive Director and the Authorized Representative cannot be members of the governing board;
- The governing board members cannot be family members of each other;
- The Executive Director and the Authorized Representative cannot be a family member of any member of the governing board; and
- Board members cannot be employed by the institution.

Family-related members are defined as an individual’s spouse, domestic partner or similar designation, and the individual’s or spouse’s (or domestic partner’s) children, grandchildren, great grandchildren, siblings (whether by whole or half blood), and the spouses/ partners of the children, grandchildren, great grandchildren and siblings.

Compliance with this requirement must be achieved as soon as possible. Therefore, institutions renewing their Program participation for FFY 2012 will be given six months to reconstitute their governing board as specified above. **The affected institutions will be sent a conditional CACFP approval letter.** These institutions will only be approved for CACFP participation through the end of March 2012, by which time the governing board must meet all of the above criteria. If the nonprofit institution does not properly reconstitute its governing board it can be declared seriously deficient for failure to operate the CACFP in

conformance with the performance standards of financial viability, organizational capability and internal controls as outlined in the application agreement. [7CFR226.6 (c)(3)(ii)(C)].

In some cases an institution holding Federal tax exempt status [501(c)(3)] may also qualify for the CACFP as a for-profit institution. (For-profit centers are eligible to participate in the CACFP if the center receives compensation for at least 25 percent of the enrolled children (or licensed capacity) under Title XX of the Social Security Act (in Wisconsin this is the Shares program), or which have 25 percent of the enrolled children (or licensed capacity) meeting the free and reduced price income eligibility of the CACFP). In these cases the institution could voluntarily leave the Program as a nonprofit and rejoin under the for-profit criteria of the CACFP, under a new agency code. However, a for-profit institution required to have a board of directors would still need to meet all the above criteria required for a non-profit institution.

Finally, **effective as of October 1, 2012**, institution staff as listed in the online application as performing CACFP-related duties cannot be related to any member of the governing board. Please prepare to make any board structure changes to meet this additional requirement that will be implemented with the Federal Fiscal Year (FFY) 2013 contract renewal.

Questions or concerns may be directed to your assigned consultant. If you are unsure of your assigned consultant, a map is located at <http://dpi.wi.gov/fns/cacfpapps.html>, or you may call our office at 608-267-9129.

ⁱ Sent via email transmission only on September 26, 2011