



United States
Department of
Agriculture

Food and
Nutrition
Service

3101 Park
Center Drive

Alexandria, VA
22302-1500

DATE: April 8, 2011

MEMO CODE: SFSP 13-2011

SUBJECT: For-Profit Locations as Meal Sites in the Summer Food Service Program

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

The purpose of this memorandum is to advise that FNS Instruction 776-6, revision 1 has been determined to be obsolete and to notify State agencies that beginning in Summer 2011, State agencies may approve meal service at for-profit sites operated by eligible non-profit Summer Food Service Program (SFSP) service institutions. In addition, this memorandum establishes limitations for meal service at those sites.

Section 13(a)(7) of the Richard B. Russell National School Lunch Act, 42 USC 1761(a)(7), and SFSP regulations at 7 CFR 225.2 require that in order to be eligible to participate in the SFSP, a private service institution must be non-profit, which is defined as having tax exempt status under section 501 of the Internal Revenue Code of 1986. In addition, *site* for meal service purposes is defined in SFSP regulations merely in terms of physical location or place. Previously, FNS Instruction 776-6, revision 1, issued in 1987, limited SFSP access to meal service sites which were nonprofit in nature. SFSP sites were not required to have tax-exempt status, but could not participate under the sponsorship of an eligible private non-profit or public service institution if identified as for-profit.

It has come to our attention that access to the SFSP in low-income areas is often limited by the lack of non-profit site locations. For example, a number of eligible children live in an apartment complex located in an eligible area and owned by a for-profit corporation, which offers the use of its complex community room as an SFSP site. However, because the *site* has been deemed “for-profit”, this otherwise well-placed location is not eligible to participate as a site under sponsorship of an eligible private non-profit or public sponsor due to existing SFSP policy. After careful consideration of the statutory and regulatory authorities, as well as consultation with service institutions and State agencies administering the SFSP, we have determined that it would be in the best interest of the SFSP to expand site participation eligibility to for-profit sites, but with limitations.

As a result, State agencies may approve meal service sites which are not identified as non-profit locations if the sites meet all of the following criteria:

- The sites must be operated under the sponsorship of an eligible public or private non-profit service institution;
- The sites must operate as open sites or restricted open sites;
- The sites must be located in an area in which at least 50 percent of the children are from households that are eligible for free or reduced priced school meals;
- The sites must make meals available to all children in the area and must serve meals to children on a first come, first served basis; and
- The sites must serve all meals at no charge.

Enrolled for-profit sites or for-profit camps remain ineligible for participation in SFSP.

A service institution approved to operate the meal service at a for-profit site must maintain operational control over the meal service at the site and must also ensure that no SFSP funds are provided to the site. The site operators cannot prepare the meals, and funds cannot be provided, given or otherwise paid to the site to employ site staff. Only the sponsor's trained staff and volunteers and sponsor trained site staff serving as volunteers are permitted to distribute the meals. For-profit sites must adhere to the same provisions applicable to all other sites in the SFSP.

State agencies continue to have the authority to deny the participation of a for-profit site location. If the for-profit site is approved, State agencies must be able to monitor the site. State agencies should work to ensure the purpose of allowing a for-profit site in the SFSP is to improve access to the community and not provide a competitive advantage among for-profit entities in the community.

FNS intends to monitor the implementation of this notice for potential effects on Program integrity.

State agencies should direct any questions concerning this memorandum to the appropriate FNS Regional Office. Regional offices with questions should contact the Child Nutrition Division.

Original Signed

Cynthia Long
Director
Child Nutrition Division