United States Department of Agriculture

Food and Nutrition Service

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SUBJECT: Written Codes of Conduct and Performance of Employees Engaged in Award and Administration of Contracts

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

This memorandum responds to a number of recent questions and requests to provide clarifying guidance to State agencies and Child Nutrition Program (CNP) operators, including the National School Lunch Program, School Breakfast Program, Child and Adult Care Food Program, and Summer Food Service Program, regarding the expectation and enforcement of ethical conduct by their employees engaged in procurement of Program goods and service. State agencies and CNP operators are reminded that 7 CFR 3016.36(b)(3) and 3019.42, as applicable, currently require entities receiving Federal funds to develop and implement a written code of conduct designed to govern the performance of employees engaged in procurement.

This code of conduct must prohibit employees from soliciting gifts, travel packages, and other incentives from prospective contractors. In addition, the code of conduct must prohibit an employee from participating in the selection, award, and administration of any contract to which an entity or certain persons connected to them, have financial interest. The code of conduct must also provide for CNP operators to set standards when financial interest is not substantial or the gift is an unsolicited item of nominal value and may be acceptable. Finally, the code of conduct must provide for disciplinary actions to be applied in the event the standards are violated.

State agency oversight and monitoring of subgrantee procurement activities includes a review of the written code of conduct as well as an investigation of reported real or apparent conflicts of interest by employees involved in procurement. The State agency's goal is to ensure the performance of individuals and organizations engaged in the selection, award, and contract administration meets Federal requirements. When reviewing a written code of conduct, the State agency must determine compliance with Federal, State and local regulations. In the absence of a written code of conduct, or when it is determined that a violation of the code has occurred, State agencies must issue a finding and require corrective action for noncompliance with 7 CFR 3016.36(b)(3) or

7 CFR 3019.42, as applicable. Remedies for failure to comply with these regulations are outlined in 7 CFR 3016.43 and 3019.62. State agencies are reminded that the regulatory citations in this memorandum will soon be replaced by new federal regulations at 2 CFR 200.318(c)(1), which sets substantially the same requirements.

Original Signed

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