

**CHILD AND ADULT CARE FOOD PROGRAM  
APPEAL PROCEDURES  
(Revised May 2012)**

**7 CFR § 226.6(k): Institution Appeal Procedures**

7 CFR § 226.6(k) of the Child and Adult Care Food Program regulations mandate that the State Agency establish procedures for a fair hearing (i.e. appeal) to be used by institutions, responsible principals, and responsible individuals requesting a review of adverse action taken by the State Agency in the following areas:

**Actions Subject to Administrative Review:**

Application Denial - Denial of a new or renewing institution's application for participation (refer to 226.6(b), dealing with State Agency review of an institution's application; and 226.6(c)(1) and (c)(2), dealing with State Agency denial of a new or renewing institution's application);

Denial of Sponsored Facility Application - Denial of an application submitted by a sponsoring organization on behalf of a facility;

Notice of Proposed Termination - Proposed termination of an institution's agreement (refer to 226.6(c)(2)(iii)(C), (c)(3)(iii)(C), and (c)(5)(i)(B), dealing with proposed termination of agreements with renewing institutions, participating institutions, and participating institutions suspended for health or safety violations);

Notice of Proposed Disqualification of a Responsible Principal or Responsible Individual - Proposed disqualification of a responsible principal or responsible individual (refer to 226.6(c)(1)(iii)(C), (c)(2)(iii)(C), (c)(3)(iii)(C), and (c)(5)(i)(B), dealing with proposed disqualification of responsible principals or responsible individuals in new, renewing, and participating institutions, and participating institutions suspended for health or safety violations);

Suspension of Participation - Suspension of an institution's participation (refer to 226.6(c)(5)(i)(B) and (c)(5)(ii)(D), dealing with suspension for health or safety reasons or submission of a false or fraudulent claim);

Start-up or Expansion Funds Denial - Denial of an institution's application for start-up or expansion payments (refer to 226.7(h));

Advance Denial - Denial of a request for an advance payment (refer to 226.10(b));

Recovery of Advances - Recovery of all or part of an advance in excess of the claim for the applicable period. The recovery may be through a demand for full repayment or an adjustment of subsequent payments (refer to 226.10(b)(3));

Claim Denial - Denial of all or a part of an institution's claim for reimbursement (except for a denial based on a late submission under 226.10(e)) (refer to 226.10(f) and 226.14(a));

Overpayment Demand - Demand for the remittance of an overpayment (refer to 226.14(a)); and

Other Actions - Any other action of the State Agency affecting an institution's participation or its claim for reimbursement.

## **Actions Not Subject to Administrative Review:**

U.S. Department of Agriculture Food and Nutrition Service (FNS) decision on claim deadline exceptions and requests for upward adjustments to a claim - A decision by FNS to deny an exception request by an institution for payment of a late claim, or for an upward adjustment to a claim (refer to 226.10 (e));

Determination of Serious Deficiency - A determination that an institution is seriously deficient (refer to 226.6(c)(1)(iii)(A), (c)(2)(iii)(A), (c)(3)(iii)(A), and (c)(5)(i)(B), dealing with proposed disqualification of responsible principals or responsible individuals in new, renewing, and participating institutions, and participating institutions suspended for health or safety violations);

State Agency determination that corrective action is inadequate - A determination by the State Agency that the corrective action taken by an institution or by a responsible principal or individual does not completely and permanently correct a serious deficiency;

Disqualification and placement on State Agency List and National Disqualified List - Disqualification of an institution or a responsible principal or responsible individual, and the subsequent placement on the State Agency list and the National Disqualified List (refer to 226.6(c)(1)(iii)(E), (c)(2)(iii)(E), (c)(3)(iii)(E), and (c)(5)(i)(C), dealing with proposals to disqualify related to new, renewing, and participating institutions, and in institutions suspended for health or safety violations);

Termination - Termination of a participating institution's agreement, including termination of a participating institution's agreement based on the disqualification of the institution by another State Agency or FNS (refer to 226.6(c)(3)(i) and (c)(7)(ii));

State Agency or FNS decision regarding removal from the National Disqualified List - A determination by USDA, in consultation with the State Agency, that an institution, responsible principal or responsible individual may be removed from the National Disqualified List because the serious deficiencies that led to placement on the list have been corrected, or because seven years have elapsed since they were disqualified from participation. If the institution, principal or individual has failed to repay a debt owed under the Program, they will remain on the list until the debt has been repaid; or

State Agency's refusal to consider an application submitted by an institution or facility on the National Disqualified List - The State Agency's refusal to consider an institution's application when either the institution or one of its principals is on the National Disqualified List, or the State Agency's refusal to consider an institution's submission of an application on behalf of a facility when either the facility or one of its principals is on the National Disqualified List.

## **Provision of Administrative Review Procedures to Institutions and Responsible Principals and Responsible Individuals:**

The State Agency's administrative review procedures must be provided:

- Annually to all institutions;
- To an institution and to each responsible principal and responsible individual when the State Agency takes action subject to an administrative review as described in 226.6(k)(2); and
- Any other time upon request.

## **Administrative Review Procedures**

Except as described below, which sets forth the circumstances under which an abbreviated administrative review is held, the State Agency must follow the following procedures when an institution or a responsible principal or responsible individual appeals any action subject to administrative review as described in 226.6(k)(2).

Notice of Action - The institution's executive director or owner, the chairman of the board of directors (if applicable), and the responsible principals and responsible individuals must be given notice of the action being taken or proposed, the basis for the action, and the procedures under which the institution and the responsible principals or responsible individuals may request an administrative review of the action.

Time to Request Administrative Review - The request for an administrative review must be submitted in writing not later than 5 P.M. on the 15<sup>th</sup> calendar day after the date the notice of action is received, and the State Agency must acknowledge its receipt of the request for an administrative review within 10 calendar days of its receipt of the request. Note: The day after the date of receipt is the first calendar day.

Representation - The institution and the responsible principals and responsible individuals may retain legal counsel, or may be represented by another person.

Review of Records - Any information on which the State Agency's action was based must be available to the institution and the responsible principals and responsible individuals for inspection from the date of receipt of the request for an administrative review.

Opposition - The institution and the responsible principals and responsible individuals may refute the findings contained in the notice of action in person or by submitting written documentation to the Administrative Review Official. In order to be considered, written documentation must be submitted to the Administrative Review Official not later than 30 calendar days after receipt of the notice of action.

Hearing - A hearing must be held by the Administrative Review Official in addition to, or in lieu of, a review of written information only if the institution or the responsible principals and responsible individuals request a hearing in the written request for an administrative review. If the institution's representative, or the responsible principals or responsible individuals or their representative, fail to appear at a scheduled hearing, they waive the right to a personal appearance before the Administrative Review Official, unless the Administrative Review Official agrees to reschedule the hearing. A representative of the State Agency must be allowed to attend the hearing to respond to the testimony of the institution and the responsible principals and responsible individuals and to answer questions posed by the Administrative Review Official. If a hearing is requested, the institution, the responsible principals and responsible individuals, and the State Agency must be provided with at least 10 calendar days advance notice of the time and place of the hearing.

Administrative Review Official - The Administrative Review Official must be independent and impartial. This means that, although the Administrative Review Official may be an employee of the State Agency, he/she must not have been involved in the action that is the subject of the administrative review, or have a direct personal or financial interest in the outcome of the administrative review. The institution and the responsible principals and responsible individuals must be permitted to contact the Administrative Review Official directly if they so desire.

Basis for Decision - The Administrative Review Official must make a determination based solely on the information provided by the State Agency, the institution, and the responsible principals and responsible individuals, and based on Federal and State laws, regulations, policies, and procedures governing the Program.

Time for Issuing a Decision - Within 60 calendar days of the State Agency's receipt of the request for an administrative review, the Administrative Review Official must inform the State Agency, the institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, of the administrative review's outcome. This timeframe is an administrative requirement for the State Agency and may not be used as a basis for overturning the State Agency's action if a decision is not made within the specified timeframe.

Final Decision - The determination made by the Administrative Review Official is the final administrative determination to be afforded the institution and the responsible principals and responsible individuals.

Record of Result of Administrative Reviews - The State Agency must maintain searchable records of all administrative reviews and their disposition.

Combined Administrative Reviews for Responsible Principals and Responsible Individuals - The State Agency must conduct the administrative review of the proposed disqualification of the responsible principals and responsible individuals as part of the administrative review of the application denial, proposed termination, and/or proposed disqualification of the institution with which the responsible principals or responsible individuals are associated. However, at the Administrative Review Official's discretion, separate administrative reviews may be held if the institution does not request an administrative review or if either the institution or the responsible principal or responsible individual demonstrates that their interests conflict.

Abbreviated Administrative Review - The State Agency must limit the administrative review to a review of written submissions concerning the accuracy of the State Agency's determination if the application was denied or the State Agency proposes to terminate the institution's agreement because:

- the information submitted on the application was false (refer to 226.6(c)(1)(ii)(A), (c)(2)(ii)(A), and (c)(3)(ii)(A));
- the institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is on the National Disqualified List (refer to 226.6(b)(12));
- the institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is ineligible to participate in any other publicly funded program by reason of violation of the requirements of the Program (refer to 226.6(b)(13) and (c)(3)(ii)(S)); or
- the institution, one of its sponsored facilities, or one of the principals of the institution or its facilities has been convicted for any activity that indicates a lack of business integrity (refer to 226.6(b)(14) and (c)(3)(ii)(T)).

Effect of State Agency Action - The State Agency's action must remain in effect during the administrative review. The effect of this requirement on particular State Agency actions is as follows.

Overpayment Demand - During the period of the administrative review, the State Agency is prohibited from taking action to collect or offset the overpayment. However, the State Agency must assess interest

beginning with the initial demand for remittance of the overpayment and continuing through the period of administrative review unless the Administrative Review Official overturns the State Agency's action.

Recovery of Advances - During the administrative review, the State Agency must continue its efforts to recover advances in excess of the claim for reimbursement for the applicable period. The recovery may be through a demand for full repayment or an adjustment of subsequent payments.

Program Payments - The availability of Program payments during an administrative review of the denial of a new institution's application, denial of a renewing institution's application, proposed termination of a participating institution's agreement, and suspension of an institution are addressed in 226.6(c)(1)(iii)(D), (c)(2)(iii)(D), (c)(3)(iii)(D), (c)(5)(i)(D), and (c)(5)(ii)(E), respectively.

# How Do I File For an Appeal?

**First, read these instructions and the procedures outlined above completely and thoroughly. Any failure to comply with these procedures may result in the loss of your appeal rights.**

The written request for review must be received by the Office of the State Superintendent of Education (OSSE) Office of the General Counsel not later than 5 P.M. on the 15<sup>th</sup> calendar day after the date that the appellant received the notice of the action being taken by the OSSE, acting as the State Agency (SA).

It is mandatory to mail your original request via certified mail, return receipt requested, and addressed to:

Office of the State Superintendent of Education  
Office of the General Counsel  
810 First Street, N.E. - 9<sup>th</sup> Floor  
Washington, D.C. 20002

In addition to the mailed request, the written request may also be hand delivered to the above address or faxed to the **Office of the State Superintendent of Education, attention Office of General Counsel, at (202) 299-2134**. The date that the request is delivered or that the fax is received may be counted as the official date of receipt by the SA. If delivering the request in person, ask that the request be time-stamped. If submitting the request via fax, keep the fax transmittal report on file to document that the fax was successfully transmitted.

The request must include:

- the name of the institution against which the action is being taken, or with which the responsible individuals or responsible principals are associated;
- the name of the institution that wishes to appeal the action being taken against it and/or the name(s) of responsible principals or responsible individuals who wish to appeal the action being taken against them;
- the name, address, title, and signature of the person requesting the appeal (i.e. the institution's representative, the responsible individual or responsible principal, or their representative); a telephone number, fax number, and email address should be included, if available;
- the date that the notice of action letter was received;
- a statement of the relief being requested (i.e. the specific findings being contested or action being appealed); and
- a specific request for either:
  - a face-to-face hearing, if one is desired; or
  - a review of only written documentation.

In addition, enclose a copy of the certified letter from the SA in which the action being appealed is described.

In order to be considered as part of the review, you must submit (i.e. postmark, email, fax or hand deliver) written documentation to the Administrative Review Official (ARO) not later than 30 calendar days after your receipt of the notice of action, or after the date of your receipt of the reason for the action, whichever is later.

This deadline applies to both reviews of written documentation only as well as reviews that include a face-to-face hearing in conjunction with a review of written records. In either case, the records upon which the State Agency based its action are available to you, upon request, from the date of receipt of your request for an administrative review.

If your request for an administrative review is determined to be timely (i.e. received by 5 P.M. on the 15<sup>th</sup> calendar day after the date that you received of the notice of action), then you will receive acknowledgment of that fact from the OSSE. If it is determined that your request is not filed in a timely manner, you will be notified that no review will be conducted and that the original determination has become final.

## **What Are Your Rights?**

You, the appellant, have a right to a review of the record(s) upon which the action was based as well as the right to file written information. You are assured of a fair and impartial review by an independent official, the Administrative Review Official (ARO). You also have a right to a hearing that you and/or your attorney or other representative may attend in person.

If the notice of action letter that you received from the Office of the State Superintendent of Education (OSSE), acting as the State Agency (SA), did not include a reason for the action that is supported by specific findings and, if applicable, claim recalculation summaries, you have the right to receive that information before the regulatory timetable is started. Any additional records upon which the SA action was based will be available to you, upon request, from the date of OSSE's receipt of your request for an administrative review.

A face-to-face hearing is not required. If you wish to exercise the right to appear in person at hearing or exercise the right to send an attorney or other representative to appear in person, you must indicate that in your letter requesting the review. If you do not specifically request a hearing, by default, no hearing will be held and the review will take place based upon written submissions only. In addition, if the institution's representative, the responsible principals or responsible individuals, or their representative fail to appear at a scheduled hearing, they waive the right to a personal appearance before the ARO, unless the ARO agrees to reschedule the hearing.

Whether you request a hearing or not, from the date of your receipt of the notice of action, or from the date of your receipt of the reason for the action, whichever is later, you will have up to 30 calendar days to submit (i.e. postmark email, fax or hand deliver) any written documentation, explanation, or records that you would like the ARO to consider.

If you request a hearing, you will be given written notice of the date, time, and place of the hearing at least 10 calendar days in advance. Determinations will be made within 60 calendar days.

You may retain legal counsel or be represented by another person. A representative of the SA shall be allowed to attend the hearing to respond to the appellant's testimony and to answer questions posed by the ARO. In cases involving Office of the Inspector General (OIG) Audits, a representative of the appropriate OIG Audit Office shall also be allowed to attend the hearing in order to respond to the appellant's testimony and answer questions posed by the ARO.

You also have the right to contact the ARO assigned to the case for any questions you may have. Please feel free to ask questions and seek clarification of issues as you may require.

## **What Are Your Responsibilities?**

By virtue of your successful application for and receipt of financial benefits from the Program, you have demonstrated sufficient familiarity with the Program regulations and have agreed to be bound by those regulations. The determination by the Administrative Review Official (ARO) is the final administrative determination to be afforded to you. As such, you should put forward your best efforts to present compelling arguments supported by evidence, comprehensive and extensive documentation, and regulatory citations that support your contentions.

This is your opportunity to demonstrate how the Office of the State Superintendent of Education (OSSE), acting as the State Agency (SA), or Audit agency made an error in the interpretation or application of Program law or regulations or the facts that formed the basis for their conclusions. In these reviews, the burden of proof rests upon you, the appellant, to disprove the government charges. In proving your contentions and supporting your argument, there is nothing that can substitute for good quality, accurate, extensive, and authentic documentation. Often documentation takes the form of copies of the original forms and documents examined by the auditor or by the program specialist and upon which they have based their findings. You may find it helpful to highlight specific areas or provide explanatory notes to accompany the documentation.

Most sanctions do not involve emergency life or death issues or serious immediate hazards to the health and well-being of Program benefit recipients. Most sanctions are not precipitated by clearly fraudulent or even criminal activities. Most involve serious inadequacies in meeting Program requirements regarding meal pattern compliance, recordkeeping, attendance irregularities, eligibility record inadequacies, and similar instances of documentation and recordkeeping failures. Unfortunately, the very documentation that auditor or program specialist has identified as inadequate or missing is generally the documentation you will need to provide in order to rebut the findings against you. **Please remember, a hearing, with only oral exchanges, is not a sufficient substitute for adequate documentation.**

## **Determination of the Administrative Review Official:**

Within 60 calendar days, the Administrative Review Official (ARO) will make a written determination based upon:

- Written information submitted by the Office of the State Superintendent of Education (OSSE), acting as the State Agency (SA),
- Written information submitted by the appellant in support of the appellant's position,
- Such additional written information as may be obtained by the ARO from any other person or persons having relevant and pertinent information, and,
- Information presented orally at a hearing and supported with subsequent documentation as directed by the ARO.

This determination is the final decision on the matter. It is not subject to further administrative review or reconsideration. The determination will be sent via certified mail, return receipt requested, and will take effect immediately upon receipt by the appellant or its representative.

If you have any questions, or need clarification of any issue, please feel free to contact the ARO who is assigned to the case.