

## Child and Adult Care Food Program (CACFP) Appeal Procedures – New Institutions (Revised May 2016)

All references in this document to “State Agency” shall mean the Department of Education, Child and Adult Care Food Program (CACFP). Deadlines will be strictly observed.

### Appeal Procedures

In accordance with 7 CFR § 226.6, each State agency shall establish an appeal procedure to be followed by an institution, a responsible principal, or a responsible individual.

#### 7 CFR § 226.6(4)

(c) *Denial of applications and termination of agreements*—(1) *Denial of a new institution's application*—(i) *General*. If a new institution's application does not meet all of the requirements in paragraph (b) of this section and in §§226.15(b) and 226.16(b), the State agency must deny the application. If, in reviewing a new institution's application, the State agency determines that the institution has committed one or more serious deficiency listed in paragraph (c)(1)(ii) of this section, the State agency must initiate action to:

(A) Deny the new institution's application; and

(B) Disqualify the new institution and the responsible principals and responsible individuals (e.g., the person who signs the application).

(ii) *List of serious deficiencies for new institutions*. The list of serious deficiencies is not identical for each category of institution (new, renewing, participating) because the type of information likely to be available to the State agency is different, depending on whether the State agency is reviewing a new or renewing institution's application or is conducting a review of a participating institution. Serious deficiencies for new institutions are:

(A) Submission of false information on the institution's application, including but not limited to a determination that the institution has concealed a conviction for any activity that occurred during the past seven years and that indicates a lack of business integrity. A lack of business integrity includes fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice, or any other activity indicating a lack of business integrity as defined by the State agency; or

(B) Any other action affecting the institution's ability to administer the Program in accordance with Program requirements.

(iii) *Serious deficiency notification procedures for new institutions.* If the State agency determines that a new institution has committed one or more serious deficiency listed in paragraph (c)(1)(ii) of this section, the State agency must use the following procedures to provide the institution and the responsible principals and responsible individuals with notice of the serious deficiency(ies) and an opportunity to take corrective action.

(A) *Notice of serious deficiency.* The State agency must notify the institution's executive director and chairman of the board of directors that the institution has been determined to be seriously deficient. The notice must identify the responsible principals and responsible individuals (e.g., for new institutions, the person who signed the application) and must be sent to those persons as well. The State agency may specify in the notice different corrective action, and time periods for completing the corrective action, for the institution and the responsible principals and responsible individuals. At the same time the notice is issued, the State agency must add the institution to the State agency list, along with the basis for the serious deficiency determination, and provide a copy of the notice to the appropriate FNSRO. The notice must also specify:

(1) The serious deficiency(ies);

(2) The actions to be taken to correct the serious deficiency(ies);

(3) The time allotted to correct the serious deficiency(ies) in accordance with paragraph (c)(4) of this section.

(4) That the serious deficiency determination is not subject to administrative review;

(5) That failure to fully and permanently correct the serious deficiency(ies) within the allotted time will result in denial of the institution's application and the disqualification of the institution and the responsible principals and responsible individuals;

(6) That the State agency will not pay any claims for reimbursement for eligible meals served or allowable administrative expenses incurred until the State agency has

approved the institution's application and the institution has signed a Program agreement; and

(7) That the institution's withdrawal of its application, after having been notified that it is seriously deficient, will still result in the institution's formal termination by the State agency and placement of the institution and its responsible principals and individuals on the National disqualified list; and

(8) That, if the State agency does not possess the date of birth for any individual named as a "responsible principal or individual" in the serious deficiency notice, the submission of that person's date of birth is a condition of corrective action for the institution and/or individual.

(B) *Successful corrective action.* (1) If corrective action has been taken to fully and permanently correct the serious deficiency(ies) within the allotted time and to the State agency's satisfaction, the State agency must:

(i) Notify the institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, that the State agency has temporarily defer its serious deficiency determination; and

(ii) Offer the new institution the opportunity to resubmit its application. If the new institution resubmits its application, the State agency must complete its review of the application within 30 days after receiving a complete and correct application.

(2) If corrective action is complete for the institution but not for all of the responsible principals and responsible individuals (or vice versa), the State agency must:

(i) Continue with the actions (as set forth in paragraph (c)(1)(iii)(C) of this section) against the remaining parties;

(ii) At the same time the notice is issued, the State agency must also update the State agency list to indicate that the serious deficiency(ies) has(ve) been corrected and provide a copy of the notice to the appropriate FNSRO; and

(iii) If the new institution has corrected the serious deficiency(ies), offer it the opportunity to resubmit its application. If the new institution resubmits its application, the State agency must complete its review of the application within 30 days after receiving a complete and correct application.

(3) If the State agency initially determines that the institution's corrective action is complete, but later determines that the serious deficiency(ies) has recurred, the State agency must move immediately to issue a notice of intent to terminate and disqualify the institution, in accordance with paragraph (c)(1)(iii)(C) of this section.

(C) *Application denial and proposed disqualification.* If timely corrective action is not taken to fully and permanently correct the serious deficiency(ies), the State agency must notify the institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, that the institution's application has been denied. At the same time the notice is issued, the State agency must also update the State agency list and provide a copy of the notice to the appropriate FNSRO. The notice must also specify:

(1) That the institution's application has been denied and the State agency is proposing to disqualify the institution and the responsible principals and responsible individuals;

(2) The basis for the actions; and

(3) The procedures for seeking an administrative review (in accordance with paragraph (k) of this section) of the application denial and proposed disqualifications.

(D) *Program payments.* The State agency is prohibited from paying any claims for reimbursement from a new institution for eligible meals served or allowable administrative expenses incurred until the State agency has approved its application and the institution and State agency have signed a Program agreement.

(E) *Disqualification.* When the time for requesting an administrative review expires or when the administrative review official upholds the State agency's denial and proposed disqualifications, the State agency must notify the institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals that the institution and the responsible principal and responsible individuals have been disqualified. At the same time the notice is issued, the State agency must also update the State agency list and provide a copy of the notice and the mailing address and date of birth for each responsible principal and responsible individual to the appropriate FNSRO.

# Questions

## 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 shall be filed by the appellant not later than 15 calendar days from the date the appellant received the notice of action from the DDOE CACFP. The written request may be faxed to the Education Associate, CACFP at (302) 739-6357 but it is prudent to also send a follow-up request sent via certified mail, return receipt requested, and addressed to

Education Associate, Nutrition Programs  
School Support Services  
Department of Education  
401 Federal Street, Suite 2  
Dover, Delaware 19901  
302-857-3356 (t)  
302-739-6397 (f)

**IMPORTANT NOTE:** The request must include the name, address, title and signature of the person requesting the appeal and should include telephone and fax numbers if available, a copy of the certified letter from the DDOE CACFP in which the action being appealed is described; the date the letter was received, a specific request for a face to face hearing if one is desired, (otherwise an administrative review of the record will be conducted); and a statement of the relief being requested. If your request is determined to be timely (within the 15 day period), you will receive acknowledgment of that fact from the Administrative Review Officer. If your request is determined to be not timely filed, you will be notified that no review will be conducted and that the original determination has become final.

## **What are your rights?**

You have a right to a review of the record upon which the determination was based with the right to file written information, and a hearing which you and/or your attorney may attend in person. However, if you wish to exercise the right to attend in person, you must so indicate in your letter requesting the review or by default no hearing will be held and a review of the record will take place based upon written submissions only.

If the information upon which the State Agency Office action was based was not included with the notice of adverse action letter, you have a right to receive it for inspection before the regulatory timetable is started. If you request a hearing you will be given at least 10 calendar days advance written notice, sent by certified mail, return receipt requested, of the date, time and place of the hearing.

If you have not requested a hearing, then from the date of receipt of the request for review or the receipt of the information upon which the determination was based, whichever is later, you will have up to 30 days to post mark your written reply and associated documentation. Appellants are assured of a fair and impartial review or hearing before an independent official. Determinations will be made within 60 days.

You may be represented by legal counsel. A representative of the CACFP agency shall be allowed, but not required, to attend the hearing to respond to the appellant's testimony and to answer questions posed by the review official. In cases involving OIG Audits, a representative of the appropriate OIG Audit Office shall also be allowed, but not required, to attend the hearing to respond to the appellants testimony and to answer questions posed by the review official.

You also have the right to contact the Administrative Review Officer 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 agreed to be bound by those regulations. The determination by the Administrative Review Officer 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 which support your contentions.

This is your opportunity to demonstrate how the DDOE CACFP made an error in the interpretation or application of program law or regulations or with 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, 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 been 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 Officer:**

Within 60 calendar days, the Administrative Review Officer will make a written determination based upon:

- Written information submitted by the DDOE CACFP. Written information submitted by the Institution in support of its position;
- Such additional written information as may be obtained by the Administrative Review Officer 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 Administrative Review Officer.

This determination is the Department's 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 institution or its representative.

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

## **USDA Non-Discrimination Statement**

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.

Persons with disabilities who require alternative means of communication for program information (e.g. Braille, large print, audiotape, American Sign Language, etc.), should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, (AD-3027) found online at: [http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html), and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by:

- (1) mail: U.S. Department of Agriculture  
Office of the Assistant Secretary for Civil Rights  
1400 Independence Avenue, SW  
Washington, D.C. 20250-9410;
- (2) fax: (202) 690-7442; or
- (3) email: [program.intake@usda.gov](mailto:program.intake@usda.gov).

This institution is an equal opportunity provider.