



Summer Food Service Program (SFSP) Federal Appeal Procedures

7 CFR§225.13(a) Each State agency shall establish a procedure to be followed by an applicant appealing:

A denial of an application for participation; a denial of a sponsor's request for an advance payment; a denial of a sponsor's claim for reimbursement (except for late submission under § 225.9(d)(5)); a State agency's refusal to forward to FNS an exception request by the sponsor for payment of a late claim or a request for an upward adjustment to a claim; a claim against a sponsor for remittance of a payment; the termination of the sponsor or a site; a denial of a sponsor's application for a site; a denial of a food service management company's application for registration; or the revocation of a food service management company's registration. Appeals shall not be allowed on decisions made by FNS with respect to late claims or upward adjustments under § 225.9(d)(5).

(b) At a minimum, appeal procedures shall provide that:

(1) The sponsor or food service management company is advised in writing of the grounds upon which the State agency based the action. The notice of action, which shall be sent by certified mail, return receipt requested, shall also state that the sponsor or food service management company has the right to appeal the State's action;

(2) The sponsor or food service management company be advised in writing that the appeal must be made within a specified time and must meet the requirements of paragraph (b)(4) of this section. The State agency shall establish this period of time at not less than seven (7) calendar days or more than fourteen (14) calendar days from the date on which the notice of action is received.

(3) The appellant be allowed the opportunity to review any information upon which the action was based;

(4) The appellant be allowed to refute the charges contained in the notice of action either in person or by filing written documentation with the review official. To be considered, written documentation must be submitted by the appellant within seven (7) calendar days of submitting the appeal, must clearly identify the State agency action being appealed and must include a photocopy of the notice of action issued by the State agency;

(5) A hearing will be held by the review official in addition to or in lieu of a review of written information submitted by the appellant only if the appellant so specifies in the letter appealing the action. The appellant may retain legal counsel or may be represented by another person. Failure of the appellant's representative to appear at a scheduled hearing shall constitute the appellant's waiver of the right to a personal appearance before the review official, unless the review official agrees to reschedule the hearing. A representative of the State agency shall be allowed to attend the hearing to respond to the appellant's testimony and written information and to answer questions from the review official;

(6) If the appellant has requested a hearing, the appellant and the State agency shall be provided with at least five (5) calendar days advance written notice, sent by certified mail, return receipt requested, of the time and place of the hearing;

(7) The hearing is held within fourteen (14) calendar days of the date of the receipt of the request for review, but where applicable, not before the appellant's written documentation is received in accordance with paragraphs (b) (4) and (5) of this section;

(8) The review official is independent of the original decision-making process;

(9) The review official make a determination based on information provided by the State agency and the appellant, and on Program regulations;

(10) Within 5 working days after the appellant's hearing, or within 5 working days after receipt of written documentation if no hearing is held, the reviewing official make a determination based on a full review of the administrative record and inform the appellant of the determination of the review by certified mail, return receipt requested;

(11) The State agency's action remains in effect during the appeal process. However, participating sponsors and sites may continue to operate the Program during an appeal of termination, and if the appeal results in overturning the State agency's decision, reimbursement shall be paid for meals served during the appeal process. However, such continued Program operation should not be allowed if the State agency's action is based on imminent dangers to the health or welfare of children. If the sponsor or site has been terminated for this reason, the State agency shall so specify in its notice of action; and

(12) The determination by the State review official is the final administrative determination to be afforded to the appellant.

(c) The State agency shall send written notification of the complete appeal procedures and of the actions, which are appealable, as specified in paragraph (a) of this section, to each potential sponsor applying to participate and to each food service management company applying to register in accordance with § 225.6(g).

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 appellant 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 7th calendar day from the date the appellant received the notice of the action from the OSSE, acting as the State Agency (SA).

The State highly recommends that your written request be sent certified mail, return receipt requested. However, you may fax your written request to (202) 299-2134 or hand delivered to the following address.

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

IMPORTANT TIMELINESS NOTES:

The request must be submitted within seven (7) calendar days of the date that you receive the certified letter notifying you of the adverse action you wish to appeal.

The request for appeal must include:

- The name, address, title and signature of the person requesting the appeal
- A specific request for a face to face hearing if one is desired, (otherwise an Administrative review of the record will be conducted).

The request should also include:

- Telephone and fax numbers if available;
- A copy of the certified letter from the State Agency in which the action being appealed is described
- The date the letter was received
- A statement of the relief being requested.

Any additional information you wish to be considered in your review:

- Must be submitted within seven (7) calendar days of submitting the appeal,
- Must clearly identify the State agency action being appealed, and

- Must include a photocopy of the notice of action issued by the State agency;

If your request is determined to be timely (submitted within fourteen (14) calendar days) from the receipt of the certified letter and seven (7) additional calendar days for submitting written documentation and evidence), 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. Timeliness deadlines will be strictly observed.

What actions can be appealed?

A denial of an application for participation;

A denial of a sponsor's request for an advance payment;

A denial of a sponsor's claim for reimbursement (except for late submission under § 225.9(d)(5));

A State agency's refusal to forward to FNS an exception request by the sponsor for payment of a late claim or a request for an upward adjustment to a claim;

A claim against a sponsor for remittance of a payment;

The termination of the sponsor or a site;

A denial of a sponsor's application for a site;

A denial of a food service management company's application for registration;

The revocation of a food service management company's registration; and

A demand for recovery of funds determined to have been illicitly or inappropriately obtained as determined by a Federal Audit conducted by the USDA Office of Inspector General (OIG) or other authorized Federal Audit/Oversight Agency.

What are your rights?

You have 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 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's 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 5 (five) calendar days advance written notice, sent by certified mail, return receipt requested, of the date, time and place of the hearing.

You have up to seven (7) calendar days from the date you file your appeal to postmark your written reply and associated documentation. Appellants are assured of a fair and impartial review/hearing before an independent official. Determinations affecting current program year issues will generally be made within five (5) working days. Submissions postmarked after that seven (7) calendar day period will not be considered timely and will not be considered in the review.

Legal counsel may represent you. A representative from the State agency shall be allowed to attend the hearing to respond to your 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 to attend the hearing to respond to your 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 familiarity with the program regulations and you have agreed to be bound by those regulations. The determination by the Administrative Review Officer is the final 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 referencing regulatory citations, which support your contentions. You must meet the regulatory time frames regarding submission of filings, supplemental information, and attendance at the hearing, should one be requested. Failure to observe the timeliness standards will ordinarily terminate the appeal process.

This is your opportunity to demonstrate how the State Agency made an error in the interpretation or application of program law or regulations or with facts that formed the basis for the 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 State's program specialist and upon which the State based its findings. You may find it helpful to highlight specific areas or provide explanatory notes to accompany the documentation.

Most sanctions, including issues of serious deficiency, do not involve emergency life or death issues or serious immediate hazards to the health and wellbeing 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 the State's program specialist 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 five (5) calendar days from the date of a hearing or receipt of written materials, the Administrative Review Officer (ARO) will make a written determination based upon;

Written information submitted by the State Agency or the USDA Office of Inspector General (OIG) or other cognizant federal audit/oversight agency;

Written information submitted by the Institution in support of its 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 by the ARO 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 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.